

By: Nelson

S.B. No. 72

A BILL TO BE ENTITLED

AN ACT

relating to the decrease of the rates of the franchise tax under certain circumstances and the expiration of that tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 171.002(a) and (b), Tax Code, are amended to read as follows:

(a) Subject to Sections 171.003, 171.004, and 171.1016 and except as provided by Subsection (b), the rate of the franchise tax is 0.75 percent of taxable margin.

(b) Subject to Sections 171.003, 171.004, and 171.1016, the rate of the franchise tax is 0.375 percent of taxable margin for those taxable entities primarily engaged in retail or wholesale trade.

SECTION 2. Subchapter A, Chapter 171, Tax Code, is amended by adding Section 171.004 to read as follows:

Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) In this section:

(1) "Biennial revenue estimate" means the estimate of anticipated revenue to this state for the succeeding state fiscal biennium the comptroller prepares in accordance with Section 49a(a), Article III, Texas Constitution.

(2) "Current fiscal biennium" means the state fiscal biennium in which a determination date occurs.

(3) "Determination date" means the first working day in a calendar year.

1 (4) "Working day" has the meaning assigned by Section
2 659.083, Government Code.

3 (b) On the determination date each year, the comptroller
4 shall:

5 (1) estimate total probable revenue to this state for
6 the current fiscal biennium:

7 (A) using information available on the
8 determination date; and

9 (B) assuming the franchise tax rates in effect on
10 December 31 of the previous year will be adjusted for the current
11 year as provided by Subsection (c);

12 (2) determine the amount of anticipated revenue stated
13 in the biennial revenue estimate for the current fiscal biennium,
14 as adjusted for estimates of revenue and disbursements associated
15 with legislation enacted during the regular legislative session
16 preceding the current fiscal biennium and any special sessions of
17 that legislature, including any contingent appropriations
18 certified before the determination date; and

19 (3) if the amount estimated under Subdivision (1) is
20 greater than or equal to the amount determined under Subdivision
21 (2), certify that sufficient probable revenue is available for tax
22 rate adjustments under Subsection (c).

23 (c) Effective January 1 of each year in which the
24 comptroller certifies under Subsection (b)(3) that sufficient
25 probable revenue is available for tax rate adjustments for that
26 year:

27 (1) the rate of the franchise tax under Section

1 171.002(a) is adjusted by subtracting 0.025 from the rate in effect
2 on December 31 of the previous year;

3 (2) the rate of the franchise tax under Section
4 171.002(b) is adjusted by subtracting 0.0125 from the rate in
5 effect on December 31 of the previous year; and

6 (3) the rate of the franchise tax under Section
7 171.1016(b)(3) is adjusted by subtracting 0.011 from the rate in
8 effect on December 31 of the previous year.

9 (d) The tax rates determined under Subsection (c):

10 (1) apply to a report originally due on or after
11 January 1 of the year the comptroller's certification under
12 Subsection (b)(3) is made; and

13 (2) are considered for purposes of this chapter to be
14 the rates provided by and imposed under Section 171.002 or
15 171.1016, as applicable.

16 (e) If the comptroller does not make the certification under
17 Subsection (b)(3), the rates of the franchise tax in effect on
18 December 31 of the previous year remain in effect for the year in
19 which the determination date occurs.

20 (f) Notwithstanding Subsection (c), if an adjustment
21 otherwise required by Subsection (c) would reduce a rate of the
22 franchise tax to less than zero, the rate is instead reduced to
23 zero.

24 (g) Notwithstanding any other law, if the rates of the
25 franchise tax under Section 171.002 are reduced to zero under
26 Subsection (c) or (f), a taxable entity does not owe any tax and is
27 not required to file a report that would otherwise be originally due

1 on or after the date those rates are reduced to zero, regardless of
2 whether the taxable entity would have computed the tax owed based on
3 a rate provided by Section 171.002 or a rate provided by Section
4 171.1016.

5 (h) The comptroller shall make the determinations and
6 estimates required by Subsections (b) and (f) and may adopt rules
7 related to making those determinations and estimates. The
8 comptroller shall publish the franchise tax rates in effect for a
9 year in the Texas Register and on the comptroller's Internet
10 website not later than January 15 of that year.

11 (i) In the state fiscal year in which the rates of the
12 franchise tax under Section 171.002 are reduced to zero under
13 Subsection (c) or (f):

14 (1) this chapter expires as provided by Section
15 171.9321; and

16 (2) not later than January 15 of that year the
17 comptroller shall:

18 (A) publish notice in the Texas Register that an
19 entity previously subject to the tax imposed under this chapter is
20 no longer required to file a report or pay the tax; and

21 (B) provide any other notice relating to the
22 expiration of the tax that the comptroller considers appropriate.

23 (j) An action taken by the comptroller under this section is
24 final and may not be appealed.

25 SECTION 3. Sections 171.1016(b) and (e), Tax Code, are
26 amended to read as follows:

27 (b) The amount of the tax for which a taxable entity that

1 elects to pay the tax as provided by this section is liable is
2 computed by:

3 (1) determining the taxable entity's total revenue
4 from its entire business, as determined under Section 171.1011;

5 (2) apportioning the amount computed under
6 Subdivision (1) to this state, as provided by Section 171.106, to
7 determine the taxable entity's apportioned total revenue; and

8 (3) multiplying the amount computed under Subdivision
9 (2) by the rate of 0.331 percent or, if applicable, an adjusted tax
10 rate determined under Section 171.004.

11 (e) A reference in this chapter or other law to the rate of
12 the franchise tax means, as appropriate:

13 (1) [r] the rate under Section 171.002 or, for a
14 taxable entity that elects to pay the tax as provided by this
15 section, the rate under this section; or

16 (2) the adjusted rates under Section 171.004.

17 SECTION 4. Chapter 171, Tax Code, is amended by adding
18 Subchapter Z to read as follows:

19 SUBCHAPTER Z. EXPIRATION

20 Sec. 171.9321. EXPIRATION. This chapter expires on
21 December 31 of the year in which the rates of the franchise tax
22 under Section 171.002 are reduced to zero under Section 171.004(c)
23 or (f).

24 SECTION 5. (a) Chapter 171, Tax Code, and Subtitle B,
25 Title 2, Tax Code, continue to apply to audits, deficiencies,
26 redeterminations, and refunds of any tax due or collected under
27 Chapter 171 until barred by limitations.

1 (b) The expiration of Chapter 171, Tax Code, does not
2 affect:

3 (1) the status of a taxable entity that has had its
4 corporate privileges, certificate of authority, certificate of
5 organization, certificate of limited partnership, corporate
6 charter, or registration revoked, a suit filed against it, or a
7 receiver appointed under Subchapter F, G, or H of that chapter;

8 (2) the ability of the comptroller of public accounts,
9 secretary of state, or attorney general to take action against a
10 taxable entity under Subchapter F, G, or H of that chapter for
11 actions that took place before the chapter expired; or

12 (3) the right of a taxable entity to contest a
13 forfeiture, revocation, lawsuit, or appointment of a receiver under
14 Subchapter F, G, or H of that chapter.

15 SECTION 6. This Act applies only to a report originally due
16 on or after January 1, 2018.

17 SECTION 7. This Act takes effect September 1, 2017.