86R217 BEF-D

By:  Nelson S.B. No. 66

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 biennium that the comptroller prepares in accordance with Section 49a(a), Article III, Texas Constitution.

(2)  "Current biennium" means the state fiscal biennium in which a biennial revenue estimate is submitted to the governor and legislature.

(3)  "Succeeding biennium" means the state fiscal biennium beginning after the current biennium.

(b)  The comptroller shall determine and include with the biennial revenue estimate:

(1)  the amount of total general revenue-related funds that would be available for certification for the succeeding biennium assuming a franchise tax rate adjustment under this section does not take effect in that biennium;

(2)  the percentage change between the amount of total general revenue-related funds available for certification for the current biennium, as provided by the biennial revenue estimate, and the amount provided by Subdivision (1) for the succeeding biennium;

(3)  if the percentage change under Subdivision (2) is greater than five percent, the amount of total general revenue-related funds that would be available for certification for the succeeding biennium assuming the franchise tax rate adjustment under this section takes effect in the succeeding biennium; and

(4)  if the percentage change under Subdivision (2) is greater than five percent, the percentage change between the amount of total general revenue-related funds available for certification for the current biennium, as provided by the biennial revenue estimate, and the amount provided by Subdivision (3) for the succeeding biennium.

(c)  If the percentage change determined under Subsection (b)(2) is greater than five percent, the comptroller shall determine the amount of revenue available for franchise tax reduction, which is computed as follows:

FTR = 0.5 X (SBGR - (CBGR X 1.05))

where:

"FTR" is the amount of revenue available for franchise tax reduction;

"SBGR" is the amount provided by Subsection (b)(1) for the succeeding biennium; and

"CBGR" is the amount of total general revenue-related funds available for certification for the current biennium, as provided by the biennial revenue estimate.

(d)  This subsection applies only if the percentage change determined under Subsection (b)(2) is greater than five percent. Not later than the last day of a state fiscal biennium, the comptroller shall determine the rates for purposes of Sections 171.002(a) and (b) and Section 171.1016 that, if effective beginning January 1 of the even-numbered year occurring during the succeeding biennium, are estimated to reduce the amount of revenue collected under this chapter for the succeeding biennium, as compared to the amount of revenue that would be collected if the rates then in effect remained in effect, by the amount of revenue available for franchise tax reduction determined under Subsection (c). In determining the rates under this subsection, the comptroller shall proportionally reduce the rates under Sections 171.002(a) and (b) and Section 171.1016 that are in effect on the date the comptroller makes the determination.

(e)  Not later than the last day of a state fiscal biennium, the comptroller shall:

(1)  adopt the adjusted tax rates determined under Subsection (d), if applicable;

(2)  publish notice of the adjusted tax rates in the Texas Register; and

(3)  provide any other notice relating to the adjusted tax rates that the comptroller considers appropriate.

(f)  The tax rates adopted under Subsection (e):

(1)  apply to a report originally due on or after January 1 of the even-numbered year described by Subsection (d); and

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

(g)  If the percentage change determined under Subsection (b)(2) is not greater than five percent, the rates of the franchise tax in effect when the biennial revenue estimate is submitted to the governor and legislature remain in effect for the succeeding biennium unless modified by other law.

(h)  Notwithstanding Subsection (d), if an adjustment otherwise required by that subsection would reduce a rate of the franchise tax to less than zero, the rate is instead reduced to zero.

(i)  Notwithstanding any other law, if the rates of the franchise tax are reduced to zero under Subsection (d) or (h), a taxable entity does not owe any tax and is not required to file a report that would otherwise be originally due on or after the date those rates are reduced to zero.

(j)  The comptroller may adopt rules related to making the determinations required by this section.

(k)  In the state fiscal year in which the rates of the franchise tax are reduced to zero under Subsection (d) or (h):

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

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

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

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

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

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

(b)  The amount of the tax for which a taxable entity that elects to pay the tax as provided by this section is liable is computed by:

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

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

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

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

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

(2)  the adjusted rates under Section 171.004.

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

SUBCHAPTER Z.  EXPIRATION

Sec. 171.9321.  EXPIRATION. This chapter expires on December 31 of the year in which the rates of the franchise tax under Sections 171.002 and 171.1016 are reduced to zero under Section 171.004(d) or (h).

SECTION 5.  (a)  After Chapter 171, Tax Code, expires as provided by Subchapter Z, Chapter 171, Tax Code, as added by this Act:

(1)  Chapter 171 and Subtitle B, Title 2, Tax Code, continue to apply to audits, deficiencies, redeterminations, and refunds of any tax due or collected under Chapter 171 until barred by limitations; and

(2)  Sections 171.206 through 171.210, Tax Code, continue to apply to information described by those sections.

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

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

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

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

SECTION 6.  This Act applies only to a report originally due on or after January 1, 2022.

SECTION 7.  This Act takes effect September 1, 2019.