

By: _____

____.B. No. _____

A BILL TO BE ENTITLED

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AN ACT

relating to property tax relief and certain taxes; making an appropriation; providing penalties.

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

ARTICLE 1. SCHOOL DISTRICT PROPERTY TAX RELIEF

SECTION 1.01. The heading to Section 26.08, Tax Code, is amended to read as follows:

Sec. 26.08. SCHOOL DISTRICT TAXES AND ELECTIONS [~~ELECTION~~]
TO AUTHORIZE OR RATIFY SCHOOL TAXES.

SECTION 1.02. Section 26.08, Tax Code, is amended by adding Subsections (n), (o), and (p) to read as follows:

(n) Subsections (i) and (k) do not apply to a school district for the 2006 and 2007 tax years. The rollback tax rate of a school district:

(1) for the 2006 tax year is the sum of:

(A) the greater of:

(i) the rate that is \$0.17 per \$100 of taxable value less than the rate adopted by the district for maintenance and operations for the 2005 tax year; or

(ii) the rate of \$1 per \$100 of taxable value;

(B) the rate of \$0.06 per \$100 of taxable value;
and

(C) the district's current debt rate; and

1 (2) for the 2007 tax year is the sum of:

2 (A) the lesser of:

3 (i) the rate that is \$0.33 per \$100 of
4 taxable value less than the rate adopted by the district for
5 maintenance and operations for the 2006 tax year; or

6 (ii) the rate of \$1 per \$100 of taxable
7 value;

8 (B) the rate of \$0.06 per \$100 of taxable value;
9 and

10 (C) the district's current debt rate.

11 (o) Subsection (n) and this subsection expire January 1,
12 2009.

13 (p) The commissioner may adopt rules specifying the method
14 for computing the rollback tax rate of a school district under
15 Subsections (i) and (k) for purposes of compliance with this
16 section. A rule adopted under this subsection is final and may not
17 be appealed by a school district.

18 SECTION 1.03. Effective September 1, 2007, Section 42.303,
19 Education Code, is amended to read as follows:

20 Sec. 42.303. LIMITATION ON ENRICHMENT TAX RATE. The
21 district enrichment tax rate ("DTR") under Section 42.302 may not
22 exceed \$0.44 [~~\$0.64~~] per \$100 of valuation, or a greater amount for
23 any year provided by appropriation.

24 SECTION 1.04. Effective January 1, 2007, Section 45.003(d),
25 Education Code, is amended to read as follows:

26 (d) A proposition submitted to authorize the levy of
27 maintenance taxes must include the question of whether the

1 governing board or commissioners court may levy, assess, and
2 collect annual ad valorem taxes for the further maintenance of
3 public schools, at a rate not to exceed the rate, which may be not
4 more than \$1.30 [~~\$1.50~~] on the \$100 valuation of taxable property in
5 the district, stated in the proposition.

6 SECTION 1.05. The changes in law made by this article apply
7 to the ad valorem tax rate of a school district beginning with the
8 2006 tax year.

9 SECTION 1.06. (a) Not later than September 1, 2006, the
10 secretary of state shall:

11 (1) prepare a letter that includes a brief explanation
12 of the property tax reduction provisions of ___B. No. ____, Acts of
13 the 79th Legislature, 3rd Called Session, 2006; and

14 (2) distribute a copy of the letter to the tax assessor
15 for each school district in this state.

16 (b) On October 1, 2006, or as soon thereafter as
17 practicable, the tax assessor for each school district in this
18 state shall mail a copy of the letter to each owner of taxable
19 property as shown on the appraisal roll for the school district.
20 The tax assessor should include a copy of the letter with each tax
21 bill for the school district for the 2006 tax year, if practicable.

22 (c) This section expires January 1, 2007.

23 ARTICLE 2. FRANCHISE TAX

24 SECTION 2.01. Subchapter A, Chapter 171, Tax Code, is
25 amended to read as follows:

26 SUBCHAPTER A. DEFINITIONS; TAX IMPOSED

27 Sec. 171.0001. GENERAL DEFINITIONS. In this chapter:

1 (1) "Affiliated group" means a group of one or more
2 entities in which a controlling interest is owned by a common owner
3 or owners, either corporate or noncorporate, or by one or more of
4 the member entities.

5 (2) "Assigned employee" has the meaning assigned by
6 Section 91.001, Labor Code.

7 (3) "Banking corporation" means each state, national,
8 domestic, or foreign bank, whether organized under the laws of this
9 state, another state, or another country, or under federal law,
10 including a limited banking association organized under Subtitle A,
11 Title 3, Finance Code, and each bank organized under Section 25(a),
12 Federal Reserve Act (12 U.S.C. Sections 611-631) (edge
13 corporations), but does not include a bank holding company as that
14 term is defined by Section 2, Bank Holding Company Act of 1956 (12
15 U.S.C. Section 1841).

16 (4) "Beginning date" means:

17 (A) for a taxable entity chartered or organized
18 in this state, the date on which the taxable entity's charter or
19 organization takes effect; and

20 (B) for any other taxable entity, the date on
21 which the taxable entity begins doing business in this state.

22 (5) "Charter" includes a limited liability company's
23 certificate of organization, a limited partnership's certificate
24 of limited partnership, and the registration of a limited liability
25 partnership.

26 (6) "Client company" has the meaning assigned by
27 Section 91.001, Labor Code.

1 (7) "Combined group" means taxable entities that are
2 part of an affiliated group engaged in a unitary business and that
3 are required to file a group report under Section 171.1014.

4 (8) "Controlling interest" means:

5 (A) for a corporation, either 80 percent or more,
6 owned directly or indirectly, of the total combined voting power of
7 all classes of stock of the corporation, or 80 percent or more,
8 owned directly or indirectly, of the beneficial ownership interest
9 in the voting stock of the corporation; and

10 (B) for a partnership, association, trust, or
11 other entity, 80 percent or more, owned directly or indirectly, of
12 the capital, profits, or beneficial interest in the partnership,
13 association, trust, or other entity.

14 (9) "Internal Revenue Code" means the Internal Revenue
15 Code of 1986 in effect for the federal tax year beginning on January
16 1, 2006, and any regulations adopted under that code applicable to
17 that period.

18 (10) "Retail trade" means the activities described in
19 Division G of the 1987 Standard Industrial Classification Manual
20 published by the federal Office of Management and Budget.

21 (11) "Savings and loan association" means a savings
22 and loan association or savings bank, whether organized under the
23 laws of this state, another state, or another country, or under
24 federal law.

25 (12) "Shareholder" includes a limited liability
26 company's member and a limited banking association's participant.

27 (13) "Staff leasing services company" has the meaning

1 assigned by Section 91.001, Labor Code.

2 (14) "Total revenue" means the total revenue of a
3 taxable entity as determined under Section 171.1011.

4 (15) "Unitary business" means a single economic
5 enterprise that is made up of separate parts of a single entity or
6 of a commonly controlled group of entities that are sufficiently
7 interdependent, integrated, and interrelated through their
8 activities so as to provide a synergy and mutual benefit that
9 produces a sharing or exchange of value among them and a significant
10 flow of value to the separate parts. In determining whether a
11 unitary business exists, the comptroller shall consider any
12 relevant factor, including whether:

13 (A) the activities of the group members:

14 (i) are in the same general line, such as
15 manufacturing, wholesaling, retailing of tangible personal
16 property, insurance, transportation, or finance; or

17 (ii) are steps in a vertically structured
18 enterprise or process, such as the steps involved in the production
19 of natural resources, including exploration, mining, refining, and
20 marketing; and

21 (B) the members are functionally integrated
22 through the exercise of strong centralized management, such as
23 authority over purchasing, financing, product line, personnel, and
24 marketing.

25 (16) "Wholesale trade" means the activities described
26 in Division F of the 1987 Standard Industrial Classification Manual
27 published by the federal Office of Management and Budget.

1 Sec. 171.0002. DEFINITION OF TAXABLE ENTITY. (a) Except as
2 otherwise provided by this section, "taxable entity" means a
3 partnership, corporation, banking corporation, savings and loan
4 association, limited liability company, business trust,
5 professional association, business association, joint venture,
6 joint stock company, holding company, or other legal entity. The
7 term includes a combined group.

8 (b) "Taxable entity" does not include:

9 (1) a sole proprietorship;

10 (2) a general partnership the direct ownership of
11 which is entirely composed of natural persons;

12 (3) a passive entity as defined by Section 171.0003;

13 or

14 (4) an entity that is exempt from taxation under
15 Subchapter B.

16 (c) "Taxable entity" does not include an entity that is:

17 (1) a grantor trust as defined by Sections 671 and
18 7701(a)(30)(E), Internal Revenue Code, all of the grantors and
19 beneficiaries of which are natural persons or charitable entities
20 as described in Section 501(c)(3), Internal Revenue Code, excluding
21 a trust taxable as a business entity pursuant to Treasury
22 Regulation Section 301.7701-4(b);

23 (2) an estate of a natural person as defined by Section
24 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable
25 as a business entity pursuant to Treasury Regulation Section
26 301.7701-4(b);

27 (3) an escrow;

1 (4) subject to Subsection (d), a family limited
2 partnership in which at least 80 percent of the interests are held,
3 directly or indirectly, by members of the same family, including an
4 individual's ancestors, lineal descendants, spouse, brothers and
5 sisters by the whole or half blood, and the estate of any of these
6 persons, and that is a limited partnership:

7 (A) formed pursuant to the Texas Revised Limited
8 Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);

9 (B) formed pursuant to the limited partnership
10 law of any other state; or

11 (C) treated as a partnership for federal income
12 tax purposes;

13 (5) a passive investment partnership that is a passive
14 entity and that is:

15 (A) formed pursuant to the Texas Revised Limited
16 Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);

17 (B) formed pursuant to the limited partnership
18 law of any other state; or

19 (C) formed pursuant to the limited partnership
20 laws of any foreign country;

21 (6) a passive investment partnership that is a passive
22 entity and is a general partnership;

23 (7) a trust that is a passive entity:

24 (A) that is taxable as a trust under Section 641,
25 Internal Revenue Code;

26 (B) all of the beneficiaries of which are natural
27 persons or charitable entities as defined in Section 501(c)(3),

1 Internal Revenue Code;

2 (C) that is not a trust taxable as a business
3 entity pursuant to Treasury Regulation Section 301.7701-4(b); and

4 (D) that is organized as a trust and is described
5 in Section 7701(a)(30)(E), Internal Revenue Code;

6 (8) a real estate investment trust (REIT) as defined
7 by Section 856, Internal Revenue Code, and its "qualified REIT
8 subsidiary" entities as defined by Section 856(i)(2), Internal
9 Revenue Code, provided that:

10 (A) a REIT with any amount of its assets in direct
11 holdings of real estate, other than real estate it occupies for
12 business purposes, as opposed to holding interests in limited
13 partnerships or other entities that directly hold the real estate,
14 is a taxable entity; and

15 (B) a limited partnership or other entity that
16 directly holds the real estate as described in Paragraph (A) is not
17 exempt under this subdivision, without regard to whether a REIT
18 holds an interest in it; or

19 (9) a real estate mortgage investment conduit (REMIC),
20 as defined by Section 860D, Internal Revenue Code.

21 (d) A family limited partnership described in Subsection
22 (c)(4) is a taxable entity if the partnership:

23 (1) is not a passive investment partnership described
24 under Subsection (c)(5) or (6); and

25 (2) receives more than 10 percent of its federal gross
26 income from conducting an active trade or business.

27 (e) An entity that can file as a sole proprietorship for

1 federal tax purposes is not a sole proprietorship for purposes of
2 Subsection (b)(1) and is not exempt under that subsection if the
3 entity is formed in a manner under the statutes of this state or
4 another state that limit the liability of the entity.

5 Sec. 171.0003. DEFINITION OF PASSIVE ENTITY. (a) An entity
6 is a passive entity only if:

7 (1) the entity is a general or limited partnership or a
8 trust, other than a business trust;

9 (2) during the period on which margin is based, the
10 entity's federal gross income consists of at least 90 percent
11 of the following income:

12 (A) dividends, interest, foreign currency
13 exchange gain, periodic and nonperiodic payments with respect to
14 notional principal contracts, option premiums, cash settlement or
15 termination payments with respect to a financial instrument, and
16 income from a limited liability company;

17 (B) distributive shares of partnership income to
18 the extent that those distributive shares of income are greater
19 than zero;

20 (C) gains from the sale of real property,
21 commodities traded on a commodities exchange, and securities; and

22 (D) royalties, bonuses, or delay rental income
23 from mineral properties and income from other nonoperating mineral
24 interests; and

25 (3) the entity does not receive more than 10 percent of
26 its federal gross income from conducting an active trade or
27 business.

1 (b) The income described by Subsection (a)(2) does not
2 include rent.

3 Sec. 171.0004. DEFINITION OF CONDUCTING ACTIVE TRADE OR
4 BUSINESS. (a) The definition in this section applies only to
5 Sections 171.0002(d) and 171.0003.

6 (b) An entity conducts an active trade or business if:

7 (1) the activities being carried on by the entity
8 include one or more active operations that form a part of the
9 process of earning income or profit; and

10 (2) the entity performs active management and
11 operational functions.

12 (c) Activities performed by the entity include activities
13 performed by persons outside the entity, including independent
14 contractors, to the extent the persons perform services on behalf
15 of the entity and those services constitute all or part of the
16 entity's trade or business.

17 (d) An entity conducts an active trade or business if
18 assets, including royalties, patents, trademarks, and other
19 intangible assets, held by the entity are used in the active trade
20 or business of one or more related entities.

21 (e) For purposes of this section:

22 (1) the ownership of a royalty interest or a
23 nonoperating working interest in mineral rights does not constitute
24 conduct of an active trade or business; and

25 (2) payment of compensation to employees or
26 independent contractors for financial or legal services reasonably
27 necessary for the operation of the entity does not constitute

1 conduct of an active trade or business.

2 Sec. 171.001. TAX IMPOSED. (a) A franchise tax is imposed
3 on[+]

4 [~~(1)~~] each taxable entity [~~corporation~~] that does
5 business in this state or that is chartered or organized in this
6 state [~~, and~~

7 [~~(2)~~ ~~each limited liability company that does business~~
8 ~~in this state or that is organized under the laws of this state~~].

9 (b) [~~In this chapter:~~

10 [~~(1)~~ ~~"Banking corporation" means each state,~~
11 ~~national, domestic, or foreign bank, whether organized under the~~
12 ~~laws of this state, another state, or another country, or under~~
13 ~~federal law, including a limited banking association organized~~
14 ~~under Subtitle A, Title 3, Finance Code, and each bank organized~~
15 ~~under Section 25(a), Federal Reserve Act (12 U.S.C. Secs. 611-631)~~
16 ~~(edge corporations), but does not include a bank holding company as~~
17 ~~that term is defined by Section 2, Bank Holding Company Act of 1956~~
18 ~~(12 U.S.C. Sec. 1841).~~

19 [~~(2)~~ ~~"Beginning date" means:~~

20 [~~(A)~~ ~~for a corporation chartered in this state,~~
21 ~~the date on which the corporation's charter takes effect, and~~

22 [~~(B)~~ ~~for a foreign corporation, the date on which~~
23 ~~the corporation begins doing business in this state.~~

24 [~~(3)~~ ~~"Corporation" includes:~~

25 [~~(A)~~ ~~a limited liability company, as defined~~
26 ~~under the Texas Limited Liability Company Act,~~

27 [~~(B)~~ ~~a savings and loan association, and~~

1 [~~(C)~~ a banking corporation.

2 [~~(4)~~ "Charter" includes a limited liability company's
3 certificate of organization.

4 [~~(5)~~ "Internal Revenue Code" means the Internal
5 Revenue Code of 1986 in effect for the federal tax year beginning on
6 or after January 1, 1996, and before January 1, 1997, and any
7 regulations adopted under that code applicable to that period.

8 [~~(6)~~ "Officer" and "director" include a limited
9 liability company's directors and managers and a limited banking
10 association's directors and managers and participants if there are
11 no directors or managers.

12 [~~(7)~~ "Savings and loan association" means a savings
13 and loan association or savings bank, whether organized under the
14 laws of this state, another state, or another country, or under
15 federal law.

16 [~~(8)~~ "Shareholder" includes a limited liability
17 company's member and a limited banking association's participant.

18 [~~(c)~~] The tax imposed under this chapter extends to the
19 limits of the United States Constitution and the federal law
20 adopted under the United States constitution.

21 Sec. 171.0011. ADDITIONAL TAX. (a) An additional tax is
22 imposed on a taxable entity [~~corporation~~] that for any reason
23 becomes no longer subject to the [~~earned surplus component of the~~
24 ~~tax, without regard to whether the corporation remains subject to~~
25 ~~the taxable capital component of the~~] tax imposed under this
26 chapter.

27 (b) The additional tax is equal to the appropriate rate

1 under Section 171.002 of the taxable entity's taxable margin [~~4.5~~
2 ~~percent of the corporation's net taxable earned surplus~~] computed
3 on the period beginning on the day after the last day for which the
4 tax imposed on taxable margin [~~net taxable earned surplus~~] was
5 computed [~~under Section 171.1532~~] and ending on the date the
6 taxable entity [~~corporation~~] is no longer subject to the [~~earned~~
7 ~~surplus component of the~~] tax imposed under this chapter.

8 (c) The additional tax imposed and any report required by
9 the comptroller are due on the 60th day after the date the taxable
10 entity [~~corporation~~] becomes no longer subject to the [~~earned~~
11 ~~surplus component of the~~] tax imposed under this chapter.

12 (d) Except as otherwise provided by this section, the
13 provisions of this chapter apply to the tax imposed under this
14 section.

15 Sec. 171.002. RATES; COMPUTATION OF TAX. (a) Except as
16 provided by Subsection (b), the rate [~~The rates~~] of the franchise
17 tax is one [~~are~~].

18 [~~(1) 0.25~~] percent per year of privilege period of
19 [~~net~~] taxable margin [~~capital, and~~
20 [~~(2) 4.5 percent of net taxable earned surplus~~].

21 (b) The rate of the franchise tax is 0.5 percent per year of
22 privilege period of taxable margin for those taxable entities
23 primarily engaged in retail or wholesale trade. [~~The amount of~~
24 ~~franchise tax on each corporation is computed by adding the~~
25 ~~following~~].

26 [~~(1) the amount calculated by applying the tax rate~~
27 ~~prescribed by Subsection (a)(1) to the corporation's net taxable~~

1 capital; and

2 [~~(2) the difference between:~~

3 [~~(A) the amount calculated by applying the tax~~
4 ~~rate prescribed by Subsection (a)(2) to the corporation's net~~
5 ~~taxable earned surplus; and~~

6 [~~(B) the amount determined under Subdivision~~
7 ~~(1).]~~

8 (c) A taxable entity is primarily engaged in retail or
9 wholesale trade only if:

10 (1) the total revenue from its activities in retail or
11 wholesale trade is greater than the total revenue from its
12 activities in trades other than the retail and wholesale trades;

13 (2) less than 50 percent of the total revenue from
14 activities in retail or wholesale trade comes from the sale of
15 products it produces or products produced by an entity that is part
16 of an affiliated group to which the taxable entity also belongs; and

17 (3) the taxable entity does not provide retail or
18 wholesale utilities, including telecommunications services and
19 electricity or gas. [In making a computation under Subsection (b),
20 an amount computed under Subsection (b)(1) or (b)(2) that is zero or
21 less is computed as a zero.]

22 (d) A taxable entity [~~corporation~~] is not required to pay
23 any tax and is not considered to owe any tax for a period if:

24 (1) the amount of tax computed for the taxable entity
25 [~~corporation~~] is less than \$100; or

26 (2) the amount of the taxable entity's total revenue
27 [~~corporation's gross receipts~~].

1 [~~(A)~~] from its entire business [~~under Section~~
2 ~~171.105~~] is less than or equal to \$300,000 or the amount determined
3 under Section 171.006 [~~\$150,000, and~~

4 [~~(B) from its entire business under Section~~
5 ~~171.1051, including the amount excepted under Section 171.1051(a),~~
6 ~~is less than \$150,000~~].

7 [~~Sec. 171.005. RATE OF TAX FOR CORPORATION IN PROCESS OF~~
8 ~~LIQUIDATION. The franchise tax rate on a corporation in the process~~
9 ~~of liquidation, as defined by Section 171.102 of this code, is the~~
10 ~~rate established by Section 171.002 of this code.~~]

11 Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR EXEMPTION AND
12 COMPENSATION DEDUCTION. (a) In this section, "consumer price
13 index" means the average over a state fiscal biennium of the
14 Consumer Price Index for All Urban Consumers (CPI-U), U.S. City
15 Average, published monthly by the United States Bureau of Labor
16 Statistics, or its successor in function.

17 (b) Beginning in 2009, on January 1 of each odd-numbered
18 year, the amounts prescribed by Sections 171.002(d)(2) and
19 171.1013(c) are increased or decreased by an amount equal to the
20 amount prescribed by those sections on December 31 of the preceding
21 year multiplied by the percentage increase or decrease during the
22 preceding state fiscal biennium in the consumer price index and
23 rounded to the nearest \$10,000.

24 (c) The amounts determined under Subsection (b) apply to a
25 report originally due on or after the date the determination is
26 made.

27 (d) The comptroller shall make the determination required

1 by this section and may adopt rules related to making that
2 determination.

3 (e) A determination by the comptroller under this section is
4 final and may not be appealed.

5 SECTION 2.02. Subchapter B, Chapter 171, Tax Code, is
6 amended by adding Section 171.088 to read as follows:

7 Sec. 171.088. EXEMPTION--NONCORPORATE ENTITY ELIGIBLE FOR
8 CERTAIN EXEMPTIONS. An entity that is not a corporation but that,
9 because of its activities, would qualify for a specific exemption
10 under this subchapter if it were a corporation, qualifies for the
11 exemption and is exempt from the tax in the same manner and under
12 the same conditions as a corporation.

13 SECTION 2.03. Subchapter C, Chapter 171, Tax Code, is
14 amended, including the reenacting and amending of Section
15 171.109(g), as amended by Chapters 801 and 1198, Acts of the 71st
16 Legislature, Regular Session, 1989, to read as follows:

17 SUBCHAPTER C. DETERMINATION OF TAXABLE MARGIN [~~CAPITAL AND TAXABLE~~
18 ~~EARNED SURPLUS~~]; ALLOCATION AND APPORTIONMENT

19 Sec. 171.101. DETERMINATION OF [~~NET~~] TAXABLE MARGIN
20 [~~CAPITAL~~]. (a) The [~~Except as provided by Subsections (b) and (c),~~
21 ~~the net~~] taxable margin [~~capital~~] of a taxable entity [~~corporation~~]
22 is computed by:

23 (1) determining the taxable entity's margin, which is
24 the lesser of:

25 (A) 70 percent of the taxable entity's total
26 revenue from its entire business, as determined under Section
27 171.1011; or

1 (B) an amount computed by:

2 (i) determining the taxable entity's total
3 revenue from its entire business, under Section 171.1011; and

4 (ii) subtracting, at the election of the
5 taxable entity, either:

6 (a) cost of goods sold, as determined
7 under Section 171.1012; or

8 (b) compensation, as determined under
9 Section 171.1013; [~~adding the corporation's stated capital, as~~
10 ~~defined by Article 1.02, Texas Business Corporation Act, and the~~
11 ~~corporation's surplus, to determine the corporation's taxable~~
12 ~~capital,]~~

13 (2) apportioning the taxable entity's margin
14 [~~corporation's taxable capital~~] to this state as provided by
15 Section 171.106 [~~171.106(a) or (c), as applicable,~~] to determine
16 the taxable entity's [~~corporation's~~] apportioned margin [~~taxable~~
17 ~~capital~~]; and

18 (3) subtracting from the amount computed under
19 Subdivision (2) any other allowable deductions to determine the
20 taxable entity's [~~corporation's net~~] taxable margin [~~capital~~].

21 (b) Notwithstanding Subsection (a)(1)(B)(ii), a staff
22 leasing services company may subtract only compensation as
23 determined under Section 171.1013.

24 (c) In making a computation under this section, an amount
25 that is zero or less is computed as a zero [~~The net taxable capital~~
26 ~~of a limited liability company is computed by:~~

27 [~~(1) adding the company's members' contributions, as~~

1 ~~provided for under the Texas Limited Liability Company Act, and~~
2 ~~surplus to determine the company's taxable capital;~~

3 ~~[(2) apportioning the amount determined under~~
4 ~~Subdivision (1) to this state in the same manner that the taxable~~
5 ~~capital of a corporation is apportioned to this state under Section~~
6 ~~171.106(a) or (c), as applicable, to determine the company's~~
7 ~~apportioned taxable capital; and~~

8 ~~[(3) subtracting from the amount computed under~~
9 ~~Subdivision (2) any other allowable deductions, to determine the~~
10 ~~company's net taxable capital.~~

11 ~~[(c) The net taxable capital of a savings and loan~~
12 ~~association is computed by:~~

13 ~~[(1) determining the association's net worth; and~~

14 ~~[(2) apportioning the amount determined under~~
15 ~~Subdivision (1) to this state in the same manner that the taxable~~
16 ~~capital of a corporation is apportioned to this state under Section~~
17 ~~171.106(a) to determine the association's net taxable capital].~~

18 Sec. 171.1011. DETERMINATION OF TOTAL REVENUE FROM ENTIRE
19 BUSINESS. (a) In this section, a reference to an Internal Revenue
20 Service form includes a variant of the form. For example, a
21 reference to Form 1120 includes Forms 1120-A, 1120-S, and other
22 variants of Form 1120. A reference to an Internal Revenue Service
23 form also includes any subsequent form with a different number or
24 designation that substantially provides the same information as the
25 original form.

26 (b) In this section, a reference to an amount entered on a
27 line number on an Internal Revenue Service form includes the

1 corresponding amount entered on a variant of the form, or a
2 subsequent form, with a different line number. The comptroller
3 shall adopt rules as necessary to accomplish the legislative intent
4 prescribed by this subsection and Subsection (a).

5 (c) Except as provided by this section, and subject to
6 Section 171.1014, for the purpose of computing its taxable margin
7 under Section 171.101, the total revenue of a taxable entity is:

8 (1) for a taxable entity treated for federal income
9 tax purposes as a corporation, an amount computed by:

10 (A) adding:

11 (i) the amount entered on line 1c, Internal
12 Revenue Service Form 1120; and

13 (ii) the amounts entered on lines 4 through
14 10, Internal Revenue Service Form 1120; and

15 (B) subtracting:

16 (i) bad debt expensed for federal income
17 tax purposes that corresponds to items of gross receipts included
18 in Subsection (c)(1)(A) for the current reporting period or a past
19 reporting period;

20 (ii) to the extent included in Subsection
21 (c)(1)(A), foreign royalties and foreign dividends, including
22 gross-ups determined under Section 78, Internal Revenue Code;

23 (iii) to the extent included in Subsection
24 (c)(1)(A), net distributive income from partnerships and trusts
25 and from limited liability companies and S corporations treated as
26 partnerships for federal income tax purposes;

27 (iv) allowable deductions from Internal

1 Revenue Service Form 1120, Schedule C, to the extent the relating
2 dividend income is included in total revenue;

3 (v) to the extent included in Subsection
4 (c)(1)(A), items of income attributable to an entity that is a
5 disregarded entity for federal income tax purposes; and

6 (vi) to the extent included in Subsection
7 (c)(1)(A), other amounts authorized by this section;

8 (2) for a taxable entity treated for federal income
9 tax purposes as a partnership, an amount computed by:

10 (A) adding:

11 (i) the amount entered on line 1c, Internal
12 Revenue Service Form 1065;

13 (ii) the amounts entered on lines 4 through
14 7, Internal Revenue Service Form 1065; and

15 (iii) the amounts entered on lines 2
16 through 11, Internal Revenue Service Form 1065, Schedule K; and

17 (B) subtracting:

18 (i) bad debt expensed for federal income
19 tax purposes that corresponds to items of gross receipts included
20 in Subsection (c)(2)(A) for the current reporting period or a past
21 reporting period;

22 (ii) to the extent included in Subsection
23 (c)(2)(A), foreign royalties and foreign dividends, including
24 gross-ups determined under Section 78, Internal Revenue Code;

25 (iii) to the extent included in Subsection
26 (c)(2)(A), net distributive income from partnerships and trusts
27 and from limited liability companies and S corporations treated as

1 partnerships for federal income tax purposes;

2 (iv) to the extent included in Subsection
3 (c)(2)(A), items of income attributable to an entity that is a
4 disregarded entity for federal income tax purposes; and

5 (v) to the extent included in Subsection
6 (c)(2)(A), other amounts authorized by this section; or

7 (3) for a taxable entity other than a taxable entity
8 treated for federal income tax purposes as a corporation or
9 partnership, an amount determined in a manner substantially
10 equivalent to the amount for Subdivision (1) or (2) determined by
11 rules that the comptroller shall adopt.

12 (d) Subject to Section 171.1014, a corporation that is part
13 of a federal consolidated group shall compute its total revenue
14 under Subsection (c) as if it had filed a separate return for
15 federal income tax purposes.

16 (e) A taxable entity that owns an interest in a passive
17 entity that is not included in a group report under Section 171.1014
18 shall include in the taxable entity's total revenue the taxable
19 entity's share of the net income of the passive entity, but only to
20 the extent the net income of the passive entity was not generated by
21 the margin of any other taxable entity.

22 (f) A taxable entity shall exclude from its total revenue,
23 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or
24 (c)(3), flow-through funds that are mandated by law or fiduciary
25 duty to be distributed to other entities, including:

26 (1) damages due a litigant the proceeds of which are
27 handled by the litigant's attorney; and

1 (2) sales and use taxes.

2 (g) A taxable entity shall exclude from its total revenue,
3 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or
4 (c)(3), only the following flow-through funds that are mandated by
5 contract to be distributed to other entities:

6 (1) sales commissions to nonemployees, including
7 split-fee real estate commissions;

8 (2) the principal value of securities and loans
9 underwritten; and

10 (3) subcontracting payments handled by the taxable
11 entity acting as a general contractor in the management of a real
12 property construction project.

13 (g-1) A taxable entity that is a lending institution
14 regulated under state or federal law shall exclude from its total
15 revenue, to the extent included under Subsection (c)(1)(A),
16 (c)(2)(A), or (c)(3), proceeds from the principal repayment of
17 loans.

18 (h) If the taxable entity belongs to an affiliated group,
19 the taxable entity may not exclude payments described by Subsection
20 (f), (g), or (g-1) that are made to entities that are members of the
21 affiliated group.

22 (i) Except as provided by Subsection (g), a payment made
23 under an ordinary contract for the provision of services in the
24 regular course of business may not be excluded.

25 (j) Any amount excluded under this section may not be
26 included in the determination of cost of goods sold under Section
27 171.1012 or the determination of compensation under Section

1 171.1013.

2 (k) A taxable entity that is a staff leasing services
3 company shall exclude from its total revenue payments received from
4 a client company for wages, payroll taxes on those wages, employee
5 benefits, and workers' compensation benefits for the assigned
6 employees of the client company.

7 (1) For purposes of Subsection (g):

8 (1) "Sales commission" means:

9 (A) any form of compensation paid to a person for
10 engaging in an act for which a license is required by Chapter 1101,
11 Occupations Code; and

12 (B) any form of compensation paid to a sales
13 representative by a principal in an amount or having a value that is
14 based on the amount or level of certain orders for or sales of the
15 principal's product and that the principal is required to report on
16 Internal Revenue Service Form 1099-MISC.

17 (2) "Principal" means a person who:

18 (A) manufactures, produces, imports, or
19 distributes a product for sale;

20 (B) uses a sales representative to solicit orders
21 for the product; and

22 (C) compensates the sales representative wholly
23 or partly by sales commission.

24 Sec. 171.1012. DETERMINATION OF COST OF GOODS SOLD. (a) In
25 this section:

26 (1) "Goods" means real or tangible personal property
27 sold in the ordinary course of business of a taxable entity.

1 (2) "Production" includes construction, installation,
2 manufacture, development, mining, extraction, improvement,
3 creation, raising, or growth.

4 (3)(A) "Tangible personal property" means:

5 (i) personal property that can be seen,
6 weighed, measured, felt, or touched or that is perceptible to the
7 senses in any other manner;

8 (ii) films, sound recordings, videotapes,
9 books, and other similar property embodying words, ideas, concepts,
10 images, or sound by the creator of the property for which, as costs
11 are incurred in producing the property, it is intended or is
12 reasonably likely that any tangible medium in which the property is
13 embodied will be mass-distributed by the creator or any one or more
14 third parties in a form that is not substantially altered; and

15 (iii) a computer program, as defined by
16 Section 151.0031.

17 (B) "Tangible personal property" does not
18 include:

19 (i) intangible property; or

20 (ii) services.

21 (b) Subject to Section 171.1014, a taxable entity that
22 elects to subtract cost of goods sold for the purpose of computing
23 its taxable margin shall determine the amount of that cost of goods
24 sold as provided by this section.

25 (c) The cost of goods sold includes all direct costs of
26 acquiring or producing the goods, including:

27 (1) labor costs;

- 1 (2) cost of materials that are an integral part of
2 specific property produced;
- 3 (3) cost of materials that are consumed in the
4 ordinary course of performing production activities;
- 5 (4) handling costs, including costs attributable to
6 processing, assembling, repackaging, and inbound transportation
7 costs;
- 8 (5) storage costs, including the costs of carrying,
9 storing, or warehousing property, subject to Subsection (e);
- 10 (6) depreciation, depletion, and amortization, to the
11 extent associated with and necessary for the production of goods,
12 including recovery described by Section 197, Internal Revenue Code;
- 13 (7) the cost of renting or leasing equipment,
14 facilities, or real property directly used for the production of
15 the goods, including pollution control equipment and intangible
16 drilling and dry hole costs;
- 17 (8) the cost of repairing and maintaining equipment,
18 facilities, or real property directly used for the production of
19 the goods, including pollution control devices;
- 20 (9) costs attributable to research, experimental,
21 engineering, and design activities directly related to the
22 production of the goods;
- 23 (10) geological and geophysical costs incurred to
24 identify and locate property that has the potential to produce
25 minerals;
- 26 (11) taxes paid in relation to acquiring or producing
27 any material or in relation to services that are a direct cost of

1 production; and

2 (12) the cost of electricity sold.

3 (d) In addition to the amounts includible under Subsection
4 (c), the cost of goods sold includes the following costs in relation
5 to the taxable entity's goods:

6 (1) deterioration of the goods;

7 (2) obsolescence of the goods;

8 (3) spoilage and abandonment, including the costs of
9 rework labor, reclamation, and scrap;

10 (4) if the property is held for future production,
11 preproduction direct costs allocable to the property, including
12 costs of purchasing the goods and of storage and handling the goods,
13 as provided by Subsections (c)(4) and (c)(5);

14 (5) postproduction direct costs allocable to the
15 property, including storage and handling costs, as provided by
16 Subsections (c)(4) and (c)(5);

17 (6) the cost of insurance on a plant or a facility,
18 machinery, equipment, or materials directly used in the production
19 of the goods;

20 (7) the cost of insurance on the produced goods;

21 (8) the cost of utilities, including electricity, gas,
22 and water, directly used in the production of the goods;

23 (9) the costs of quality control and inspection
24 directly allocable to the production of the goods; and

25 (10) licensing or franchise costs, including fees
26 incurred in securing the contractual right to use a trademark,
27 corporate plan, manufacturing procedure, special recipe, or other

1 similar right directly associated with the goods produced.

2 (e) The cost of goods sold does not include the following
3 costs in relation to the taxable entity's goods:

4 (1) the cost of renting or leasing equipment,
5 facilities, or real property that is not used for the production of
6 the goods;

7 (2) selling costs, including employee expenses
8 related to sales;

9 (3) distribution costs, including outbound
10 transportation costs;

11 (4) advertising costs;

12 (5) idle facility expense;

13 (6) rehandling costs;

14 (7) bidding costs, which are the costs incurred in the
15 solicitation of contracts ultimately awarded to the taxable entity;

16 (8) unsuccessful bidding costs, which are the costs
17 incurred in the solicitation of contracts not awarded to the
18 taxable entity;

19 (9) interest, including interest on debt incurred or
20 continued during the production period to finance the production of
21 the goods;

22 (10) income taxes, including local, state, federal,
23 and foreign income taxes, and franchise taxes that are assessed on
24 the taxable entity based on income;

25 (11) strike expenses, including costs associated with
26 hiring employees to replace striking personnel, but not including
27 the wages of the replacement personnel, costs of security, and

1 legal fees associated with settling strikes; and

2 (12) officers' compensation.

3 (f) A taxable entity may subtract as a cost of goods sold
4 indirect or administrative overhead costs, including all mixed
5 service costs, such as security services, legal services, data
6 processing services, accounting services, personnel operations,
7 and general financial planning and financial management costs, that
8 it can demonstrate are allocable to the acquisition or production
9 of goods, except that the amount subtracted may not exceed four
10 percent of the taxable entity's total indirect or administrative
11 overhead costs, including all mixed service costs. Any costs
12 excluded under Subsection (e) may not be subtracted under this
13 subsection.

14 (g) A taxable entity that is allowed a subtraction by this
15 section for a cost of goods sold shall capitalize that cost in the
16 same manner and to the same extent that the taxable entity is
17 required to capitalize the cost under federal law and regulations,
18 including Section 263A, Internal Revenue Code.

19 (h) A taxable entity shall determine its cost of goods sold,
20 except as otherwise provided by this section, in accordance with
21 the methods permitted by federal statutes and regulations. This
22 subsection does not affect the type or category of cost of goods
23 sold that may be subtracted under this section.

24 (i) A taxable entity may make a subtraction under this
25 section in relation to the cost of goods sold only if that entity
26 owns the goods. The determination of whether a taxable entity is an
27 owner is based on all of the facts and circumstances, including the

1 various benefits and burdens of ownership vested with the taxable
2 entity.

3 (j) Subject to the other provisions of this section, in
4 determining cost of goods sold, a taxable entity that is a client
5 company that contracts with a staff leasing services company for
6 assigned employees:

7 (1) shall include payments made to the staff leasing
8 services company for wages and benefits for the assigned employees
9 as if the assigned employees were actual employees of the entity;

10 (2) may not include an administrative fee charged by
11 the staff leasing services company for the provision of the
12 assigned employees; and

13 (3) may not include any other amount in relation to the
14 assigned employees, including payroll taxes.

15 (k) Notwithstanding any other provision of this section, if
16 the taxable entity is a lending institution regulated under state
17 or federal law that offers loans to the public and elects to
18 subtract cost of goods sold, the entity may subtract as a cost of
19 goods sold an amount equal to interest expense.

20 (l) Notwithstanding any other provision of this section, a
21 payment made by one member of an affiliated group to another member
22 of that affiliated group may be subtracted as a cost of goods sold
23 only if it is a transaction made at arm's length.

24 (m) In this section, "arm's length" means the standard of
25 conduct under which entities that are not related parties and that
26 have substantially equal bargaining power, each acting in its own
27 interest, would negotiate or carry out a particular transaction.

1 (n) In this section, "related party" means a person,
2 corporation, or other entity, including an entity that is treated
3 as a pass-through or disregarded entity for purposes of federal
4 taxation, whether the person, corporation, or entity is subject to
5 the tax under this chapter or not, in which one person, corporation,
6 or entity, or set of related persons, corporations, or entities,
7 directly or indirectly owns or controls a controlling interest in
8 another entity.

9 Sec. 171.1013. DETERMINATION OF COMPENSATION. (a) In this
10 section, "wages and cash compensation" includes:

11 (1) net distributive income from partnerships and
12 trusts and from limited liability companies and S corporations
13 treated as partnerships for federal income tax purposes, but only
14 if the person receiving the distribution is a natural person; and

15 (2) stock awards expensed for federal income tax
16 purposes and stock options exercised during the tax year.

17 (b) Subject to Section 171.1014, a taxable entity that
18 elects to subtract compensation for the purpose of computing its
19 taxable margin under Section 171.101 may subtract an amount equal
20 to:

21 (1) subject to the limitation in Subsection (c), all
22 wages and cash compensation paid by the taxable entity to its
23 officers, directors, owners, partners, and employees; and

24 (2) the cost of all benefits the taxable entity
25 provides to its officers, directors, owners, partners, and
26 employees, including workers' compensation benefits, health care,
27 and retirement to the extent deductible for federal income tax

1 purposes.

2 (c) Notwithstanding the actual amount of wages and cash
3 compensation paid by a taxable entity to its officers, directors,
4 owners, partners, and employees, a taxable entity may not include
5 more than \$300,000, or the amount determined under Section 171.006,
6 for any person in the amount of wages and cash compensation it
7 determines under Section 171.101.

8 (d) A taxable entity that is a staff leasing services
9 company:

10 (1) may not include as wages or cash compensation
11 payments described by Section 171.1011(k); and

12 (2) shall determine compensation as provided by this
13 section only for the taxable entity's own employees that are not
14 assigned employees.

15 (e) Subject to the other provisions of this section, in
16 determining compensation, a taxable entity that is a client company
17 that contracts with a staff leasing services company for assigned
18 employees:

19 (1) shall include payments made to the staff leasing
20 services company for wages and benefits for the assigned employees
21 as if the assigned employees were actual employees of the entity;

22 (2) may not include an administrative fee charged by
23 the staff leasing services company for the provision of the
24 assigned employees; and

25 (3) may not include any other amount in relation to the
26 assigned employees, including payroll taxes.

27 Sec. 171.1014. COMBINED REPORTING; AFFILIATED GROUP

1 ENGAGED IN UNITARY BUSINESS. (a) Taxable entities that are part of
2 an affiliated group engaged in a unitary business shall file a
3 combined group report based on the combined group's business. The
4 combined group may not include a taxable entity that conducts
5 business outside the United States if 80 percent or more of the
6 taxable entity's property and payroll, as determined by factoring
7 under Chapter 141, are assigned to locations outside the United
8 States.

9 (b) The combined group is a single taxable entity for
10 purposes of the application of the tax imposed under this chapter.

11 (c) For purposes of Section 171.101, a combined group shall
12 determine its total revenue by:

13 (1) determining the total revenue of each of its
14 members as provided by Section 171.1011 as if the member were an
15 individual taxable entity;

16 (2) adding the total revenues of the members
17 determined under Subdivision (1) together; and

18 (3) subtracting, to the extent included under Section
19 171.1011(c)(1)(A), (c)(2)(A), or (c)(3), items of total revenue
20 received from a member of the combined group.

21 (d) For purposes of Section 171.101, a combined group shall
22 make an election to subtract either cost of goods sold or
23 compensation that applies to all of its members.

24 (e) For purposes of Section 171.101, a combined group that
25 elects to subtract costs of goods sold shall determine that amount
26 by:

27 (1) determining the cost of goods sold for each of its

1 members as provided by Section 171.1012 as if the member were an
2 individual taxable entity;

3 (2) adding the amounts of cost of goods sold
4 determined under Subdivision (1) together; and

5 (3) subtracting from the amount determined under
6 Subdivision (2) any cost of goods sold amounts paid from one member
7 of the combined group to another member of the combined group, but
8 only to the extent the corresponding item of total revenue was
9 subtracted under Subsection (c)(3).

10 (f) For purposes of Section 171.101, a combined group that
11 elects to subtract compensation shall determine that amount by:

12 (1) determining the compensation for each of its
13 members as provided by Section 171.1013 as if each member were an
14 individual taxable entity;

15 (2) adding the amounts of compensation determined
16 under Subdivision (1) together; and

17 (3) subtracting from the amount determined under
18 Subdivision (2) any compensation amounts paid from one member of
19 the combined group to another member of the combined group, but only
20 to the extent the corresponding item of total revenue was
21 subtracted under Subsection (c)(3).

22 (g) A combined group may elect to include in the combined
23 group an exempt entity that would be included in the group if the
24 entity were not exempt and to treat the exempt entity as if it were a
25 taxable entity.

26 ~~[Sec. 171.102. DETERMINATION OF TAXABLE CAPITAL OF~~
27 ~~CORPORATION IN PROCESS OF LIQUIDATION. (a) "Corporation in the~~

1 ~~process of liquidation" means a corporation that:~~

2 ~~[(1) adopts and pursues in good faith a plan to marshal~~
3 ~~the assets of the corporation, to pay or settle with the~~
4 ~~corporation's creditors and debtors, and to apportion the remaining~~
5 ~~assets of the corporation among the corporation's stockholders;~~

6 ~~[(2) adopts the plan by a resolution approved by the~~
7 ~~corporation's board of directors and ratified by a majority of the~~
8 ~~stockholders of record; and~~

9 ~~[(3) conducts the liquidation in the manner provided~~
10 ~~by the law of this state to dissolve a corporation.~~

11 ~~[(b) The taxable capital of a corporation in the process of~~
12 ~~liquidation is the difference between the amount of the~~
13 ~~corporation's stock issued and the amount of the liquidating~~
14 ~~dividends paid on the stock.~~

15 ~~[(c) The president and the secretary of the corporation~~
16 ~~shall file an affidavit with the comptroller containing information~~
17 ~~about the amount of liquidating dividends paid and a statement that~~
18 ~~the corporation is in the process of liquidation. The plan~~
19 ~~described by Subsection (a) of this section for the corporation's~~
20 ~~liquidation shall be attached to and be a part of the affidavit.~~

21 ~~[(d) This section applies only to the computation of a~~
22 ~~corporation's taxable capital under Section 171.101 of this code.]~~

23 Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS
24 DONE IN THIS STATE FOR MARGIN [~~TAXABLE CAPITAL~~]. (a) Except for
25 the gross receipts of a taxable entity that are subject to the
26 provisions of Section 171.1061, and subject to Section 171.1055, in
27 [~~In~~] apportioning margin [~~taxable capital~~], the gross receipts of a

1 taxable entity [~~corporation~~] from its business done in this state
2 is the sum of the taxable entity's [~~corporation's~~] receipts from:

3 ~~[(1) each sale of tangible personal property if the~~
4 ~~property is delivered or shipped to a buyer in this state regardless~~
5 ~~of the FOB point or another condition of the sale, and each sale of~~
6 ~~tangible personal property shipped from this state to a purchaser~~
7 ~~in another state in which the seller is not subject to taxation,~~

8 ~~[(2) each service performed in this state,~~

9 ~~[(3) each rental of property situated in this state,~~

10 ~~[(4) the use of a patent, copyright, trademark,~~
11 ~~franchise, or license in this state,~~

12 ~~[(5) each sale of real property located in this state,~~
13 ~~including royalties from oil, gas, or other mineral interests, and~~

14 ~~[(6) other business done in this state.~~

15 ~~[Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM~~
16 ~~BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except~~
17 ~~for the gross receipts of a corporation that are subject to the~~
18 ~~provisions of Section 171.1061, in apportioning taxable earned~~
19 ~~surplus, the gross receipts of a corporation from its business done~~
20 ~~in this state is the sum of the corporation's receipts from:]~~

21 (1) each sale of tangible personal property if the
22 property is delivered or shipped to a buyer in this state regardless
23 of the FOB point or another condition of the sale[, and each sale of
24 tangible personal property shipped from this state to a purchaser
25 in another state in which the seller is not subject to any tax on, or
26 measured by, net income, without regard to whether the tax is
27 imposed];

1 (2) each service performed in this state, except that
2 receipts derived from servicing loans secured by real property are
3 in this state if the real property is located in this state;

4 (3) each rental of property situated in this state;

5 (4) the use of a patent, copyright, trademark,
6 franchise, or license in this state;

7 (5) each sale of real property located in this state,
8 including royalties from oil, gas, or other mineral interests; and

9 (6) ~~[each partnership or joint venture to the extent~~
10 ~~provided by Subsection (c); and~~

11 ~~[(7)]~~ other business done in this state.

12 (b) A combined group shall include in its gross receipts
13 computed under Subsection (a) the gross receipts of each taxable
14 entity that is a member of the combined group and that has a nexus
15 with this state for the purpose of taxation. ~~[A corporation shall~~
16 ~~deduct from its gross receipts computed under Subsection (a) any~~
17 ~~amount to the extent included under Subsection (a) because of the~~
18 ~~application of Section 78 or Sections 951-964, Internal Revenue~~
19 ~~Code, any amount excludable under Section 171.110(k), and dividends~~
20 ~~received from a subsidiary, associate, or affiliated corporation~~
21 ~~that does not transact a substantial portion of its business or~~
22 ~~regularly maintain a substantial portion of its assets in the~~
23 ~~United States.~~

24 ~~[(c) A corporation shall include in its gross receipts~~
25 ~~computed under Subsection (a) the corporation's share of the gross~~
26 ~~receipts of each partnership and joint venture of which the~~
27 ~~corporation is a part apportioned to this state as though the~~

1 ~~corporation directly earned the receipts, including receipts from~~
2 ~~business done with the corporation.~~

3 ~~[Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS:~~
4 ~~DEDUCTION FOR FOOD AND MEDICINE RECEIPTS. A corporation may deduct~~
5 ~~from its receipts includable under Section 171.103(1) of this code~~
6 ~~the amount of the corporation's receipts from sales of the~~
7 ~~following items, if the items are shipped from outside this state~~
8 ~~and the receipts would be includable under Section 171.103(1) of~~
9 ~~this code in the absence of this section:~~

10 ~~[(1) food that is exempted from the Limited Sales,~~
11 ~~Excise, and Use Tax Act by Section 151.314(a) of this code; and~~

12 ~~[(2) health care supplies that are exempted from the~~
13 ~~Limited Sales, Excise, and Use Tax Act by Section 151.313 of this~~
14 ~~code.]~~

15 Sec. 171.105. ~~[DETERMINATION OF GROSS RECEIPTS FROM ENTIRE~~
16 ~~BUSINESS FOR TAXABLE CAPITAL. (a) In apportioning taxable~~
17 ~~capital, the gross receipts of a corporation from its entire~~
18 ~~business is the sum of the corporation's receipts from:~~

19 ~~[(1) each sale of the corporation's tangible personal~~
20 ~~property;~~

21 ~~[(2) each service, rental, or royalty; and~~

22 ~~[(3) other business.~~

23 ~~[(b) If a corporation sells an investment or capital asset,~~
24 ~~the corporation's gross receipts from its entire business for~~
25 ~~taxable capital include only the net gain from the sale.~~

26 ~~[Sec. 171.1051.] DETERMINATION OF GROSS RECEIPTS FROM~~
27 ~~ENTIRE BUSINESS FOR MARGIN [TAXABLE EARNED SURPLUS]. (a) Except~~

1 for the gross receipts of a taxable entity [~~corporation~~] that are
2 subject to the provisions of Section 171.1061, and subject to
3 Section 171.1055, in apportioning margin [~~taxable earned surplus~~],
4 the gross receipts of a taxable entity [~~corporation~~] from its
5 entire business is the sum of the taxable entity's [~~corporation's~~]
6 receipts from:

7 (1) each sale of the taxable entity's [~~corporation's~~]
8 tangible personal property;

9 (2) each service, rental, or royalty; and

10 (3) [~~each partnership and joint venture as provided by~~
11 ~~Subsection (d); and~~

12 [~~4~~] other business.

13 (b) If a taxable entity [~~corporation~~] sells an investment or
14 capital asset, the taxable entity's [~~corporation's~~] gross receipts
15 from its entire business for taxable margin [~~earned surplus~~]
16 includes only the net gain from the sale.

17 (c) A combined group shall include in its gross receipts
18 computed under Subsection (a) the gross receipts of each taxable
19 entity that is a member of the combined group, without regard to
20 whether that entity has a nexus with this state for the purpose of
21 taxation.

22 Sec. 171.1055. EXCLUSION OF CERTAIN RECEIPTS FOR MARGIN.
23 In apportioning margin, receipts excluded from total revenue by a
24 taxable entity under Section 171.1011 or 171.1014(c)(3) may not be
25 included in either:

26 (1) the receipts of the taxable entity from its
27 business done in this state under Section 171.103; or

1 (2) the receipts of the taxable entity from its entire
2 business done under Section 171.105. [~~A corporation shall deduct~~
3 ~~from its gross receipts computed under Subsection (a) any amount to~~
4 ~~the extent included in Subsection (a) because of the application of~~
5 ~~Section 78 or Sections 951-964, Internal Revenue Code, any amount~~
6 ~~excludable under Section 171.110(k), and dividends received from a~~
7 ~~subsidiary, associate, or affiliated corporation that does not~~
8 ~~transact a substantial portion of its business or regularly~~
9 ~~maintain a substantial portion of its assets in the United States.~~

10 ~~[(d) A corporation shall include in its gross receipts~~
11 ~~computed under Subsection (a) the corporation's share of the gross~~
12 ~~receipts of each partnership and joint venture of which the~~
13 ~~corporation is a part.]~~

14 Sec. 171.106. APPORTIONMENT OF MARGIN [~~TAXABLE CAPITAL AND~~
15 ~~TAXABLE EARNED SURPLUS~~] TO THIS STATE. (a) [~~Except as provided by~~
16 ~~Subsections (c) and (d), a corporation's taxable capital is~~
17 ~~apportioned to this state to determine the amount of the tax imposed~~
18 ~~under Section 171.002(b)(1) by multiplying the corporation's~~
19 ~~taxable capital by a fraction, the numerator of which is the~~
20 ~~corporation's gross receipts from business done in this state, as~~
21 ~~determined under Section 171.103, and the denominator of which is~~
22 ~~the corporation's gross receipts from its entire business, as~~
23 ~~determined under Section 171.105.~~

24 ~~[(b)]~~ Except as provided by this section [~~Subsections (c)~~
25 ~~and (d)]~~, a taxable entity's margin [~~corporation's taxable earned~~
26 ~~surplus~~] is apportioned to this state to determine the amount of tax
27 imposed under Section 171.002 [~~171.002(b)(2)~~] by multiplying the

1 margin [~~taxable earned surplus~~] by a fraction, the numerator of
2 which is the taxable entity's [~~corporation's~~] gross receipts from
3 business done in this state, as determined under Section 171.103
4 [~~171.1032~~], and the denominator of which is the taxable entity's
5 [~~corporation's~~] gross receipts from its entire business, as
6 determined under Section 171.105 [~~171.1051~~].

7 (b) [~~(c)~~] A taxable entity's margin [~~corporation's taxable~~
8 ~~capital or earned surplus~~] that is derived, directly or indirectly,
9 from the sale of management, distribution, or administration
10 services to or on behalf of a regulated investment company,
11 including a taxable entity [~~corporation~~] that includes trustees or
12 sponsors of employee benefit plans that have accounts in a
13 regulated investment company, is apportioned to this state to
14 determine the amount of the tax imposed under Section 171.002 by
15 multiplying the taxable entity's [~~corporation's~~] total margin
16 [~~taxable capital or earned surplus~~] from the sale of services to or
17 on behalf of a regulated investment company by a fraction, the
18 numerator of which is the average of the sum of shares owned at the
19 beginning of the year and the sum of shares owned at the end of the
20 year by the investment company shareholders who are commercially
21 domiciled in this state or, if the shareholders are individuals,
22 are residents of this state, and the denominator of which is the
23 average of the sum of shares owned at the beginning of the year and
24 the sum of shares owned at the end of the year by all investment
25 company shareholders. [~~The corporation shall make a separate~~
26 ~~computation to allocate taxable capital and earned surplus.~~] In
27 this subsection, "regulated investment company" has the meaning

1 assigned by Section 851(a), Internal Revenue Code.

2 (c) [~~(d)~~] A taxable entity's margin [~~corporation's taxable~~
3 ~~capital or taxable earned surplus~~] that is derived, directly or
4 indirectly, from the sale of management, administration, or
5 investment services to an employee retirement plan is apportioned
6 to this state to determine the amount of the tax imposed under
7 Section 171.002 by multiplying the taxable entity's [~~corporation's~~]
8 total margin [~~taxable capital or earned surplus~~] from the sale of
9 services to an employee retirement plan company by a fraction, the
10 numerator of which is the average of the sum of beneficiaries
11 domiciled in Texas at the beginning of the year and the sum of
12 beneficiaries domiciled in Texas at the end of the year, and the
13 denominator of which is the average of the sum of all beneficiaries
14 at the beginning of the year and the sum of all beneficiaries at the
15 end of the year. [~~The corporation shall make a separate computation~~
16 ~~to apportion taxable capital and earned surplus.~~] In this section,
17 "employee retirement plan" means a plan or other arrangement that
18 is qualified under Section 401(a), Internal Revenue Code, or
19 satisfies the requirements of Section 403, Internal Revenue Code,
20 or a government plan described in Section 414(d), Internal Revenue
21 Code. The term does not include an individual retirement account or
22 individual retirement annuity within the meaning of Section 408,
23 Internal Revenue Code.

24 (d) [~~(e)~~] ~~On or before January 1, 1998, each entity~~
25 ~~registered with the State Securities Board under The Securities Act~~
26 ~~(Article 581, Vernon's Texas Civil Statutes) that provides~~
27 ~~management, administration, or investment services to an employee~~

1 ~~retirement plan, must file a report with the comptroller containing~~
2 ~~such information as the comptroller deems necessary in order to~~
3 ~~determine the fiscal impact of Subsection (d). The State~~
4 ~~Securities Board and the Securities Commissioner shall cooperate~~
5 ~~with the comptroller in obtaining the information. The Securities~~
6 ~~Commissioner shall impose the penalties provided in The Securities~~
7 ~~Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) against~~
8 ~~any entity that the comptroller certifies is delinquent in the~~
9 ~~filing of the report required by this section.~~

10 ~~[(f) On or before September 1, 1998, the comptroller shall~~
11 ~~issue a report which evaluates the statewide fiscal impact of~~
12 ~~Subsection (d). If the comptroller determines that implementing~~
13 ~~Subsection (d) will not have a negative fiscal impact on this state,~~
14 ~~Subsection (d) shall be effective for reports or returns originally~~
15 ~~due on or after January 1, 1999. If the comptroller determines that~~
16 ~~there will be a negative fiscal impact, that subsection shall not be~~
17 ~~implemented.~~

18 ~~[(g) If this Act and another Act of the 75th Legislature,~~
19 ~~Regular Session, 1997, make the same substantive change from the~~
20 ~~current law but differ in text, this Act prevails regardless of the~~
21 ~~relative dates of enactment.~~

22 ~~[(h)]~~ A banking corporation shall exclude from the
23 numerator of the bank's apportionment factor interest earned on
24 federal funds and interest earned on securities sold under an
25 agreement to repurchase that are held in this state in a
26 correspondent bank that is domiciled in this state. In this
27 subsection, "correspondent" has the meaning assigned by 12 C.F.R.

1 Section 206.2(c).

2 (e) [~~(i)~~] Receipts from services that a defense
3 readjustment project performs in a defense economic readjustment
4 zone are not receipts from business done in this state.

5 Sec. 171.1061. ALLOCATION OF CERTAIN MARGIN [~~TAXABLE EARNED~~
6 ~~SURPLUS~~] TO THIS STATE. Total revenue [~~An item of income~~] included
7 in a taxable entity's margin [~~corporation's taxable earned surplus,~~
8 ~~except that portion derived from dividends and interest,~~] that a
9 state, other than this state, or a country, other than the United
10 States, cannot tax because the activities generating that total
11 revenue [~~that item of income~~] do not have sufficient unitary
12 connection with the taxable entity's [~~corporation's~~] other
13 activities conducted within that state or country under the United
14 States Constitution, is allocated to this state if the taxable
15 entity's [~~corporation's~~] commercial domicile is in this state.
16 Total revenue [~~Income~~] that can only be allocated to the state of
17 commercial domicile because the total revenue [~~income~~] has
18 insufficient unitary connection with any other state or country
19 shall be allocated to this state or another state or country net of
20 deductions, subject to Section 171.101(a)(1), [~~expenses~~] related
21 to that total revenue [~~that income~~]. A portion of a taxable
22 entity's margin [~~corporation's taxable earned surplus~~] allocated to
23 this state under this section may not be apportioned under Section
24 171.101(a)(2) [~~171.110(a)(2)~~].

25 Sec. 171.107. DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM
26 MARGIN [~~TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS~~] APPORTIONED TO
27 THIS STATE. (a) In this section, "solar energy device" means a

1 system or series of mechanisms designed primarily to provide
2 heating or cooling or to produce electrical or mechanical power by
3 collecting and transferring solar-generated energy. The term
4 includes a mechanical or chemical device that has the ability to
5 store solar-generated energy for use in heating or cooling or in the
6 production of power.

7 (b) A taxable entity [~~corporation~~] may deduct from [~~its~~
8 ~~apportioned taxable capital the amortized cost of a solar energy~~
9 ~~device or from~~] its apportioned margin [~~taxable earned surplus~~] 10
10 percent of the amortized cost of a solar energy device if:

11 (1) the device is acquired by the taxable entity
12 [~~corporation~~] for heating or cooling or for the production of
13 power;

14 (2) the device is used in this state by the taxable
15 entity [~~corporation~~]; and

16 (3) the cost of the device is amortized in accordance
17 with Subsection (c) [~~of this section~~].

18 (c) The amortization of the cost of a solar energy device
19 must:

20 (1) be for a period of at least 60 months;

21 (2) provide for equal monthly amounts;

22 (3) begin on the month in which the device is placed in
23 service in this state; and

24 (4) cover only a period in which the device is in use
25 in this state.

26 (d) A taxable entity [~~corporation~~] that makes a deduction
27 under this section shall file with the comptroller an amortization

1 schedule showing the period in which a deduction is to be made. On
2 the request of the comptroller, the taxable entity [~~corporation~~]
3 shall file with the comptroller proof of the cost of the solar
4 energy device or proof of the device's operation in this state.

5 ~~[(c) A corporation may elect to make the deduction~~
6 ~~authorized by this section either from apportioned taxable capital~~
7 ~~or apportioned taxable earned surplus for each separate regular~~
8 ~~annual period. An election for an initial period applies to the~~
9 ~~second tax period and to the first regular annual period.]~~

10 Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM
11 MARGIN [~~TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS~~] APPORTIONED TO
12 THIS STATE. (a) In this section, "clean coal project" has the
13 meaning assigned by Section 5.001, Water Code.

14 (b) A taxable entity [~~corporation~~] may deduct from its
15 apportioned margin [~~taxable capital the amortized cost of equipment~~
16 ~~or from its apportioned taxable earned surplus~~] 10 percent of the
17 amortized cost of equipment:

18 (1) that is used in a clean coal project;

19 (2) that is acquired by the taxable entity
20 [~~corporation~~] for use in generation of electricity, production of
21 process steam, or industrial production;

22 (3) that the taxable entity [~~corporation~~] uses in this
23 state; and

24 (4) the cost of which is amortized in accordance with
25 Subsection (c).

26 (c) The amortization of the cost of capital used in a clean
27 coal project must:

- 1 (1) be for a period of at least 60 months;
2 (2) provide for equal monthly amounts;
3 (3) begin in the month during which the equipment is
4 placed in service in this state; and
5 (4) cover only a period during which the equipment is
6 used in this state.

7 (d) A taxable entity [~~corporation~~] that makes a deduction
8 under this section shall file with the comptroller an amortization
9 schedule showing the period for which the deduction is to be made.
10 On the request of the comptroller, the taxable entity [~~corporation~~]
11 shall file with the comptroller proof of the cost of the equipment
12 or proof of the equipment's operation in this state.

13 ~~[(c) A corporation may elect to make the deduction~~
14 ~~authorized by this section from apportioned taxable capital or~~
15 ~~apportioned taxable earned surplus, but not from both, for each~~
16 ~~separate regular annual period. An election for an initial period~~
17 ~~applies to the second tax period and to the first regular annual~~
18 ~~period.~~

19 ~~[Sec. 171.109. SURPLUS. (a) In this chapter:~~

20 ~~[(1) "Surplus" means the net assets of a corporation~~
21 ~~minus its stated capital. For a limited liability company,~~
22 ~~"surplus" means the net assets of the company minus its members'~~
23 ~~contributions. Surplus includes unrealized, estimated, or~~
24 ~~contingent losses or obligations or any writedown of assets other~~
25 ~~than those listed in Subsection (i) of this section net of~~
26 ~~appropriate income tax provisions. The definition under this~~
27 ~~subdivision does not apply to earned surplus.~~

1 ~~[(2) "Net assets" means the total assets of a~~
2 ~~corporation minus its total debts.~~

3 ~~[(3) "Debt" means any legally enforceable obligation~~
4 ~~measured in a certain amount of money which must be performed or~~
5 ~~paid within an ascertainable period of time or on demand.~~

6 ~~[(a-1) A legally enforceable obligation that requires the~~
7 ~~return of a like-kind property that was borrowed will be considered~~
8 ~~debt if it is a liability according to generally accepted~~
9 ~~accounting principles and if the return must be made within an~~
10 ~~ascertainable period of time or on demand. The amount that will be~~
11 ~~considered debt is the fair market value measured on the last day on~~
12 ~~which the report is based as required by Section 171.153. For~~
13 ~~purposes of this subsection, "like-kind property" means the same~~
14 ~~quantity, quality, and nature or character as the property~~
15 ~~borrowed.~~

16 ~~[(b) Except as otherwise provided in this section, a~~
17 ~~corporation must compute its surplus, assets, and debts according~~
18 ~~to generally accepted accounting principles. If generally accepted~~
19 ~~accounting principles are unsettled or do not specify an accounting~~
20 ~~practice for a particular purpose related to the computation of~~
21 ~~surplus, assets, or debts, the comptroller by rule may establish~~
22 ~~rules to specify the applicable accounting practice for that~~
23 ~~purpose.~~

24 ~~[(c) A corporation whose taxable capital is less than \$1~~
25 ~~million may report its surplus according to the method used in the~~
26 ~~corporation's most recent federal income tax return originally due~~
27 ~~on or before the date on which the corporation's franchise tax~~

1 ~~report is originally due. In determining if taxable capital is less~~
2 ~~than \$1 million, the corporation shall apply the methods the~~
3 ~~corporation used in computing that federal income tax return unless~~
4 ~~another method is required under this chapter.~~

5 ~~[(d) A corporation shall report its surplus based solely on~~
6 ~~its own financial condition. Consolidated reporting of surplus is~~
7 ~~prohibited.~~

8 ~~[(e) Unless the provisions of Section 171.111 apply due to~~
9 ~~an election under that section, a corporation may not change the~~
10 ~~accounting methods used to compute its surplus more often than once~~
11 ~~every four years without the written consent of the comptroller. A~~
12 ~~change in accounting methods is not justified solely because it~~
13 ~~results in a reduction of tax liability.~~

14 ~~[(f) A corporation declaring dividends shall exclude those~~
15 ~~dividends from its taxable capital, and a corporation receiving~~
16 ~~dividends shall include those dividends in its gross receipts and~~
17 ~~taxable capital as of the earlier of:~~

18 ~~[(1) the date the dividends are declared, if the~~
19 ~~dividends are actually paid within one year after the declaration~~
20 ~~date, or~~

21 ~~[(2) the date the dividends are actually paid.~~

22 ~~[(g) All oil and gas exploration and production activities~~
23 ~~conducted by a corporation that reports its surplus according to~~
24 ~~generally accepted accounting principles as required or permitted~~
25 ~~by this chapter must be reported according to the successful~~
26 ~~efforts or the full cost method of accounting.~~

27 ~~[(h) A parent or investor corporation must use the cost~~

1 ~~method of accounting in reporting and calculating the franchise tax~~
2 ~~on its investments in subsidiary corporations or other investees.~~
3 ~~The retained earnings of a subsidiary corporation or other investee~~
4 ~~before acquisition by the parent or investor corporation may not be~~
5 ~~excluded from the cost of the subsidiary corporation or investee to~~
6 ~~the parent or investor corporation and must be included by the~~
7 ~~parent or investor corporation in calculating its surplus.~~

8 ~~[(i) The following accounts may also be excluded from~~
9 ~~surplus, to the extent they are in conformance with generally~~
10 ~~accepted accounting principles or the appropriate federal income~~
11 ~~tax method, whichever is applicable:~~

12 ~~[(1) a reserve or allowance for uncollectable~~
13 ~~accounts; and~~

14 ~~[(2) a contra-asset account for depletion,~~
15 ~~depreciation, or amortization.~~

16 ~~[(j) A corporation may not exclude from surplus:~~

17 ~~[(1) liabilities for compensation and other benefits~~
18 ~~provided to employees, other than wages, that are not debt as of the~~
19 ~~end of the accounting period on which the taxable capital component~~
20 ~~is based, including retirement, medical, insurance,~~
21 ~~postretirement, and other similar benefits; and~~

22 ~~[(2) deferred investment tax credits.~~

23 ~~[(k) Notwithstanding any other provision in this chapter, a~~
24 ~~corporation subject to the tax imposed by this chapter shall use~~
25 ~~double entry bookkeeping to account for all transactions that~~
26 ~~affect the computation of that tax.~~

27 ~~[(1) The "first in-first out" and "last in-first out"~~

1 ~~methods of accounting are acceptable methods for computing surplus.~~

2 ~~[(m) A corporation may not use the push-down method of~~
3 ~~accounting in computing or reporting its surplus.~~

4 ~~[(n) A corporation must use the equity method of accounting~~
5 ~~when reporting an investment in a partnership or joint venture.~~

6 ~~[Sec. 171.110. DETERMINATION OF NET TAXABLE EARNED SURPLUS.~~

7 ~~(a) The net taxable earned surplus of a corporation is computed by:~~

8 ~~[(1) determining the corporation's reportable federal~~
9 ~~taxable income, subtracting from that amount any amount excludable~~
10 ~~under Subsection (k), any amount included in reportable federal~~
11 ~~taxable income under Section 78 or Sections 951-964, Internal~~
12 ~~Revenue Code, and dividends received from a subsidiary, associate,~~
13 ~~or affiliated corporation that does not transact a substantial~~
14 ~~portion of its business or regularly maintain a substantial portion~~
15 ~~of its assets in the United States, and adding to that amount any~~
16 ~~compensation of officers or directors, or if a bank, any~~
17 ~~compensation of directors and executive officers, to the extent~~
18 ~~excluded in determining federal taxable income to determine the~~
19 ~~corporation's taxable earned surplus,~~

20 ~~[(2) apportioning the corporation's taxable earned~~
21 ~~surplus to this state as provided by Section 171.106(b) or (c), as~~
22 ~~applicable, to determine the corporation's apportioned taxable~~
23 ~~earned surplus,~~

24 ~~[(3) adding the corporation's taxable earned surplus~~
25 ~~allocated to this state as provided by Section 171.1061, and~~

26 ~~[(4) subtracting from that amount any allowable~~
27 ~~deductions and any business loss that is carried forward to the tax~~

1 ~~reporting period and deductible under Subsection (e).~~

2 ~~[(b) Except as provided by Subsection (c), a corporation is~~
3 ~~not required to add the compensation of officers or directors as~~
4 ~~required by Subsection (a)(1) if the corporation is:~~

5 ~~[(1) a corporation that has not more than 35~~
6 ~~shareholders; or~~

7 ~~[(2) an S corporation, as that term is defined by~~
8 ~~Section 1361, Internal Revenue Code.~~

9 ~~[(c) A subsidiary corporation may not claim the exclusion~~
10 ~~under Subsection (b) if it has a parent corporation that does not~~
11 ~~qualify for the exclusion. For purposes of this subsection, a~~
12 ~~corporation qualifies as a parent if it ultimately controls the~~
13 ~~subsidiary, even if the control arises through a series or group of~~
14 ~~other subsidiaries or entities. Control is presumed if a parent~~
15 ~~corporation directly or indirectly owns, controls, or holds a~~
16 ~~majority of the outstanding voting stock of a corporation or~~
17 ~~ownership interests in another entity.~~

18 ~~[(d) A corporation's reportable federal taxable income is~~
19 ~~the corporation's federal taxable income after Schedule C special~~
20 ~~deductions and before net operating loss deductions as computed~~
21 ~~under the Internal Revenue Code, except that an S corporation's~~
22 ~~reportable federal taxable income is the amount of the income~~
23 ~~reportable to the Internal Revenue Service as taxable to the~~
24 ~~corporation's shareholders.~~

25 ~~[(e) For purposes of this section, a business loss is any~~
26 ~~negative amount after apportionment and allocation. The business~~
27 ~~loss shall be carried forward to the year succeeding the loss year~~

1 ~~as a deduction to net taxable earned surplus, then successively to~~
2 ~~the succeeding four taxable years after the loss year or until the~~
3 ~~loss is exhausted, whichever occurs first, but for not more than~~
4 ~~five taxable years after the loss year. Notwithstanding the~~
5 ~~preceding sentence, a business loss from a tax year that ends before~~
6 ~~January 1, 1991, may not be used to reduce net taxable earned~~
7 ~~surplus. A business loss can be carried forward only by the~~
8 ~~corporation that incurred the loss and cannot be transferred to or~~
9 ~~claimed by any other entity, including the survivor of a merger if~~
10 ~~the loss was incurred by the corporation that did not survive the~~
11 ~~merger.~~

12 ~~[(f) A corporation may use either the "first in-first out"~~
13 ~~or "last in-first out" method of accounting to compute its net~~
14 ~~taxable earned surplus, but only to the extent that the corporation~~
15 ~~used that method on its most recent federal income tax report~~
16 ~~originally due on or before the date on which the corporation's~~
17 ~~franchise tax report is originally due.~~

18 ~~[(g) For purposes of this section, an approved Employee~~
19 ~~Stock Ownership Plan controlling a minority interest and voted~~
20 ~~through a single trustee shall be considered one shareholder.~~

21 ~~[(h) A corporation shall report its net taxable earned~~
22 ~~surplus based solely on its own financial condition. Consolidated~~
23 ~~reporting is prohibited.~~

24 ~~[(i) For purposes of this section, any person designated as~~
25 ~~an officer is presumed to be an officer if that person:~~

26 ~~[(1) holds an office created by the board of directors~~
27 ~~or under the corporate charter or bylaws, and~~

1 ~~[(2) has legal authority to bind the corporation with~~
2 ~~third parties by executing contracts or other legal documents.~~

3 ~~[(j) A corporation may rebut the presumption described in~~
4 ~~Subsection (i) that a person is an officer if it conclusively shows,~~
5 ~~through the person's job description or other documentation, that~~
6 ~~the person does not participate or have authority to participate in~~
7 ~~significant policy making aspects of the corporate operations.~~

8 ~~[(k) Dividends and interest received from federal~~
9 ~~obligations are not included in earned surplus or gross receipts~~
10 ~~for earned surplus purposes.~~

11 ~~[(1) In this section:~~

12 ~~[(1) "Federal obligations" means:~~

13 ~~[(A) stocks and other direct obligations of, and~~
14 ~~obligations unconditionally guaranteed by, the United States~~
15 ~~government and United States government agencies; and~~

16 ~~[(B) direct obligations of a United States~~
17 ~~government-sponsored agency.~~

18 ~~[(2) "Obligation" means any bond, debenture,~~
19 ~~security, mortgage-backed security, pass-through certificate, or~~
20 ~~other evidence of indebtedness of the issuing entity. The term does~~
21 ~~not include a deposit, a repurchase agreement, a loan, a lease, a~~
22 ~~participation in a loan or pool of loans, a loan collateralized by~~
23 ~~an obligation of a United States government agency, or a loan~~
24 ~~guaranteed by a United States government agency.~~

25 ~~[(3) "United States government" means any department~~
26 ~~or ministry of the federal government, including a federal reserve~~
27 ~~bank. The term does not include a state or local government, a~~

1 ~~commercial enterprise owned wholly or partly by the United States~~
2 ~~government, or a local governmental entity or commercial enterprise~~
3 ~~whose obligations are guaranteed by the United States government.~~

4 ~~[(4) "United States government agency" means an~~
5 ~~instrumentality of the United States government whose obligations~~
6 ~~are fully and explicitly guaranteed as to the timely payment of~~
7 ~~principal and interest by the full faith and credit of the United~~
8 ~~States government. The term includes the Government National~~
9 ~~Mortgage Association, the Department of Veterans Affairs, the~~
10 ~~Federal Housing Administration, the Farmers Home Administration,~~
11 ~~the Export-Import Bank, the Overseas Private Investment~~
12 ~~Corporation, the Commodity Credit Corporation, the Small Business~~
13 ~~Administration, and any successor agency.~~

14 ~~[(5) "United States government-sponsored agency"~~
15 ~~means an agency originally established or chartered by the United~~
16 ~~States government to serve public purposes specified by the United~~
17 ~~States Congress but whose obligations are not explicitly guaranteed~~
18 ~~by the full faith and credit of the United States government. The~~
19 ~~term includes the Federal Home Loan Mortgage Corporation, the~~
20 ~~Federal National Mortgage Association, the Farm Credit System, the~~
21 ~~Federal Home Loan Bank System, the Student Loan Marketing~~
22 ~~Association, and any successor agency.~~

23 ~~[Sec. 171.111. TEMPORARY CREDIT ON NET TAXABLE EARNED~~
24 ~~SURPLUS. (a) Not later than March 1, 1992, a corporation may~~
25 ~~notify the comptroller in writing of its intent to preserve its~~
26 ~~right to take a credit in an amount allowed by this section on the~~
27 ~~tax due on net taxable earned surplus. The comptroller may not~~

1 ~~grant an extension. The corporation may thereafter elect to claim~~
2 ~~the credit for the current year and future year at or before the~~
3 ~~original due date of any report due after January 1, 1992, until the~~
4 ~~corporation revokes the election or this section expires, whichever~~
5 ~~is earlier. A corporation may claim the credit for not more than 20~~
6 ~~consecutive privilege periods beginning with the first report due~~
7 ~~under this chapter after January 1, 1992. A corporation may make~~
8 ~~only one election under this section and the election may not be~~
9 ~~conveyed, assigned, or transferred to another entity.~~

10 ~~[(b) The credit allowed under this section for any privilege~~
11 ~~period is computed by:~~

12 ~~[(1) determining the amount, as of the end of the~~
13 ~~corporation's accounting year ending in 1991, that is the~~
14 ~~difference between the basis used for financial accounting purposes~~
15 ~~and the basis used for federal income tax purposes of an asset or a~~
16 ~~liability that at some future date will reverse,~~

17 ~~[(2) apportioning the amount determined under~~
18 ~~Subdivision (1) to this state in the same manner earned surplus is~~
19 ~~apportioned under Section 171.106(b) or (c), as applicable, on the~~
20 ~~first report due on or after January 1, 1992,~~

21 ~~[(3) multiplying the amount determined under~~
22 ~~Subdivision (2) by five percent, and~~

23 ~~[(4) multiplying the amount determined under~~
24 ~~Subdivision (3) by the tax rate prescribed by Section~~
25 ~~171.002(a)(2).~~

26 ~~[(c) In computing the amount under Subsection (b)(1), the~~
27 ~~corporation may not consider differences that result from deferred~~

1 ~~investment tax credits, allowances for funds used during~~
2 ~~construction, or any other timing difference for which a deferred~~
3 ~~tax liability is not required under generally accepted accounting~~
4 ~~principles.~~

5 ~~[(d) After making the election under Subsection (a) the~~
6 ~~corporation must, for purposes of computing its taxable capital~~
7 ~~under this chapter, use the same accounting methods under generally~~
8 ~~accepted accounting principles to account for the assets and~~
9 ~~liabilities that determine the amount of the credit that the~~
10 ~~corporation uses to compute the credit. Notwithstanding Section~~
11 ~~171.109(c), if a corporation changes an accounting method for an~~
12 ~~asset or liability that determines, in whole or in part, the amount~~
13 ~~of the credit during the period the election is in effect, the~~
14 ~~election is automatically revoked.~~

15 ~~[(e) A corporation that notifies the comptroller of its~~
16 ~~intent to preserve its right to take a credit allowed by this~~
17 ~~section shall submit with its notice of intent a statement of the~~
18 ~~amount determined under Subsection (b)(1). The comptroller may~~
19 ~~request that the corporation submit in the annual report for each~~
20 ~~succeeding privilege period in which the corporation is eligible to~~
21 ~~take a credit information relating to the amount determined under~~
22 ~~Subsection (b)(1). The corporation shall submit in the form and~~
23 ~~content the comptroller requires any information relating to the~~
24 ~~assets and liabilities that determine the amount of the credit, the~~
25 ~~amount determined under Subsection (b)(1), or any other matter~~
26 ~~relevant to the computation of the credit for which the corporation~~
27 ~~is eligible.~~

1 ~~[(f) A credit allowed under this section may not be carried~~
2 ~~forward or backward or used to create a business loss carryover~~
3 ~~under Section 171.110.~~

4 ~~[(g) A corporation may not use a credit allowed under this~~
5 ~~section in connection with the computation of the corporation's tax~~
6 ~~on net taxable capital.~~

7 ~~[(h) In addition to the tax imposed by Section 171.002, an~~
8 ~~additional tax is imposed on each corporation during each year the~~
9 ~~corporation takes the credit allowed under this section. The~~
10 ~~additional tax is equal to 0.2 percent of the corporation's net~~
11 ~~taxable capital per year of privilege period.~~

12 ~~[(i) This section expires September 1, 2012.~~

13 ~~[Sec. 171.112. GROSS RECEIPTS FOR TAXABLE CAPITAL. (a) For~~
14 ~~purposes of this section, "gross receipts" means all revenues that~~
15 ~~would be recognized annually under a generally accepted accounting~~
16 ~~principles method of accounting, without deduction for the cost of~~
17 ~~property sold, materials used, labor performed, or other costs~~
18 ~~incurred, unless otherwise specifically provided in this chapter.~~

19 ~~[(b) Except as otherwise provided in this section, a~~
20 ~~corporation must compute gross receipts in accordance with~~
21 ~~generally accepted accounting principles. If generally accepted~~
22 ~~accounting principles are unsettled or do not specify an accounting~~
23 ~~practice for a particular purpose related to the computation of~~
24 ~~gross receipts, the comptroller by rule may establish rules to~~
25 ~~specify the applicable accounting practice.~~

26 ~~[(c) A corporation whose taxable capital is less than \$1~~
27 ~~million may report its gross receipts according to the method used~~

1 ~~in the corporation's most recent federal income tax return~~
2 ~~originally due on or before the date on which the corporation's~~
3 ~~franchise tax report is originally due. In determining if taxable~~
4 ~~capital is less than \$1 million, the corporation shall apply the~~
5 ~~methods the corporation used in computing that federal income tax~~
6 ~~return unless another method is required under this chapter.~~

7 ~~[(d) A corporation shall report its gross receipts based~~
8 ~~solely on its own financial condition. Consolidated reporting is~~
9 ~~prohibited.~~

10 ~~[(e) Unless the provisions of Section 171.111 apply due to~~
11 ~~an election under that section, a corporation may not change its~~
12 ~~accounting methods used to calculate gross receipts more often than~~
13 ~~once every four years without the express written consent of the~~
14 ~~comptroller. A change in accounting methods is not justified~~
15 ~~solely because it results in a reduction of tax liability.~~

16 ~~[(f) Notwithstanding any other provision in this chapter, a~~
17 ~~corporation subject to the tax imposed by this chapter shall use~~
18 ~~double entry bookkeeping to account for all transactions that~~
19 ~~affect the computation of that tax.~~

20 ~~[(g) Chapter 141 does not apply to this chapter.~~

21 ~~[(h) Except as otherwise provided by this section, a~~
22 ~~corporation shall use the same accounting methods to apportion its~~
23 ~~taxable capital as it used to compute its taxable capital.]~~

24 Sec. 171.1121. GROSS RECEIPTS FOR MARGIN [~~TAXABLE EARNED~~
25 ~~SURPLUS~~]. (a) For purposes of this section, "gross receipts" means
26 all revenues reportable by a taxable entity [~~corporation~~] on its
27 federal tax return, without deduction for the cost of property

1 sold, materials used, labor performed, or other costs incurred,
2 unless otherwise specifically provided in this chapter. [~~"Gross
3 receipts" does not include revenues that are not included in
4 taxable earned surplus. For example, Schedule C special deductions
5 and any amounts subtracted from reportable federal taxable income
6 under Section 171.110(a)(1) are not included in taxable earned
7 surplus and therefore are not considered gross receipts.~~]

8 (b) Except as otherwise provided by this section, a taxable
9 entity [~~corporation~~] shall use the same accounting methods to
10 apportion margin [~~taxable earned surplus~~] as used in computing
11 reportable federal taxable income.

12 (c) A taxable entity [~~A corporation shall report its gross
13 receipts based solely on its own financial condition. Consolidated
14 reporting is prohibited.~~]

15 [~~(d) Unless the provisions of Section 171.111 apply due to
16 an election under that section, a corporation~~] may not change its
17 accounting methods used to calculate gross receipts more often than
18 once every four years without the express written consent of the
19 comptroller. A change in accounting methods is not justified
20 solely because it results in a reduction of tax liability.

21 [~~(e) A corporation's share of a partnership's gross receipts
22 that is included in the corporation's federal taxable income must
23 be used in computing the corporation's gross receipts under this
24 section. Unless otherwise provided by this chapter, a corporation
25 may not deduct costs incurred from the corporation's share of a
26 partnership's gross receipts. The gross receipts must be
27 apportioned as though the corporation directly earned them.~~]

1 ~~[Sec. 171.113. ALTERNATE METHOD OF DETERMINING TAXABLE~~
2 ~~CAPITAL AND GROSS RECEIPTS FOR CERTAIN CORPORATIONS. (a) This~~
3 ~~section applies only to:~~

4 ~~[(1) a corporation organized as a close corporation~~
5 ~~under Part 12, Texas Business Corporation Act, that has not more~~
6 ~~than 35 shareholders;~~

7 ~~[(2) a foreign corporation organized under the close~~
8 ~~corporation law of another state that has not more than 35~~
9 ~~shareholders; and~~

10 ~~[(3) an S corporation as that term is defined by~~
11 ~~Section 1361, Internal Revenue Code of 1986 (26 U.S.C. Section~~
12 ~~1361).~~

13 ~~[(b) A corporation to which this section applies may elect~~
14 ~~to compute its surplus, assets, debts, and gross receipts according~~
15 ~~to the method the corporation uses to report its federal income tax~~
16 ~~instead of as provided by Sections 171.109(b) and (g) and Section~~
17 ~~171.112(b). This section does not affect the application of the~~
18 ~~other subsections of Sections 171.109 and 171.112 and other~~
19 ~~provisions of this chapter to a corporation making the election.~~

20 ~~[(c) The comptroller may adopt rules as necessary to specify~~
21 ~~the reporting requirements for corporations to which this section~~
22 ~~applies.~~

23 ~~[(d) This section does not apply to a subsidiary corporation~~
24 ~~unless it applies to the parent corporation of the subsidiary.~~

25 ~~[(e) The election under Subsection (b) becomes effective~~
26 ~~when written notice of the election is received by the comptroller~~
27 ~~from the corporation. An election under Subsection (b) must be~~

1 ~~postmarked not later than the due date for the electing~~
2 ~~corporation's franchise tax report to which the election applies.]~~

3 SECTION 2.04. Subchapter D, Chapter 171, Tax Code, is
4 amended to read as follows:

5 SUBCHAPTER D. PAYMENT OF TAX

6 Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX. The
7 franchise tax shall be paid for each of the following:

8 (1) an initial period beginning on the taxable
9 entity's [~~corporation's~~] beginning date and ending on the day
10 before the first anniversary of the beginning date;

11 (2) a second period beginning on the first anniversary
12 of the beginning date and ending on December 31 following that date;
13 and

14 (3) after the initial and second periods have expired,
15 a regular annual period beginning each year on January 1 and ending
16 the following December 31.

17 Sec. 171.152. DATE ON WHICH PAYMENT IS DUE. (a) Payment of
18 the tax covering the initial period is due within 90 days after the
19 date that the initial period ends or, if applicable, within 91 days
20 after the date of the merger.

21 (b) Payment of the tax covering the second period is due on
22 the same date as the tax covering the initial period.

23 (c) Payment of the tax covering the regular annual period is
24 due May 15, of each year after the beginning of the regular annual
25 period. However, if the first anniversary of the taxable entity's
26 [~~corporation's~~] beginning date is after October 3 and before
27 January 1, the payment of the tax covering the first regular annual

1 period is due on the same date as the tax covering the initial
2 period.

3 ~~[Sec. 171.153. BUSINESS ON WHICH TAX ON NET TAXABLE CAPITAL~~
4 ~~IS BASED. (a) The tax covering the initial period is reported on~~
5 ~~the initial report and is based on the business done by the~~
6 ~~corporation during the period beginning on the corporation's~~
7 ~~beginning date and:~~

8 ~~[(1) ending on the last accounting period ending date~~
9 ~~that is at least six months after the beginning date and at least 60~~
10 ~~days before the original due date of the initial report; or~~

11 ~~[(2) if there is no such period ending date in~~
12 ~~Subdivision (1) of this subsection, then ending on the day that is~~
13 ~~the last day of a calendar month and that is nearest to the end of~~
14 ~~the corporation's first year of business; or~~

15 ~~[(3) ending on the day after the merger occurs, for the~~
16 ~~survivor of a merger which occurs after the day on which the tax is~~
17 ~~based in Subdivision (1) or Subdivision (2), whichever is~~
18 ~~applicable, of Subsection (a) and before January 1, of the year an~~
19 ~~initial report is due by the survivor.~~

20 ~~[(b) The tax covering the second period is reported on the~~
21 ~~initial report and is based on the same business on which the tax~~
22 ~~covering the initial period is based and is to be prorated based on~~
23 ~~the length of the second period.~~

24 ~~[(c) The tax covering the regular annual period is based on~~
25 ~~the business done by the corporation during its last accounting~~
26 ~~period that ends in the year before the year in which the tax is due,~~
27 ~~unless a corporation is the survivor of a merger which occurs~~

1 ~~between the end of its last accounting period in the year before the~~
2 ~~report year and January 1 of the report year, in which case the tax~~
3 ~~will be based on the financial condition of the surviving~~
4 ~~corporation for the 12-month period ending on the day after the~~
5 ~~merger. However, if the first anniversary of the corporation's~~
6 ~~beginning date is after October 3 and before January 1, the tax~~
7 ~~covering the first regular annual period is based on the same~~
8 ~~business on which the tax covering the initial period is based and~~
9 ~~is reported on the initial report.~~

10 ~~[Sec. 171.1531. CREDIT FOR SURVIVOR OF MERGER. (a) "Credit~~
11 ~~period" means the period from the date of the merger or the date the~~
12 ~~survivor was required to pay franchise tax, whichever is later,~~
13 ~~through the end of the privilege period for which tax was actually~~
14 ~~paid by the nonsurvivors.~~

15 ~~[(b) The survivor of a merger is entitled to a credit~~
16 ~~against the tax computed on its net taxable capital under Section~~
17 ~~171.002(b)(1) in the amount of the franchise tax computed on net~~
18 ~~taxable capital paid by the nonsurvivors for the credit period,~~
19 ~~provided the tax computed on net taxable capital paid by the~~
20 ~~survivor for the credit period is based on the survivor's financial~~
21 ~~condition after the merger. Only a survivor that is subject to the~~
22 ~~franchise tax is entitled to the merger credit. The merger credit~~
23 ~~shall be allocated among survivors based on net taxable capital~~
24 ~~reported, and as provided by Section 171.153.~~

25 ~~[(c) The credit will be limited to the lesser of the amount~~
26 ~~of tax on net taxable capital paid for the credit period by the~~
27 ~~survivor or by the nonsurvivors.]~~

1 Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE MARGIN
2 [~~EARNED SURPLUS~~] IS BASED. (a) The tax covering the privilege
3 periods included on the initial report[~~, as required by Section~~
4 ~~171.153,~~] is based on the business done by the taxable entity
5 [~~corporation~~] during the period beginning on the taxable entity's
6 [~~corporation's~~] beginning date and:

7 (1) ending on the last accounting period ending date
8 that is at least 60 days before the original due date of the initial
9 report; or

10 (2) if there is no such period ending date in
11 Subdivision (1) [~~of this subsection~~], then ending on the day that is
12 the last day of a calendar month and that is nearest to the end of
13 the taxable entity's [~~corporation's~~] first year of business.

14 (b) The tax covering the regular annual period, other than a
15 regular annual period included on the initial report, is based on
16 the business done by the taxable entity [~~corporation~~] during the
17 period beginning with the day after the last date upon which [~~net~~]
18 taxable margin [~~earned surplus~~] on a previous report was based and
19 ending with its last accounting period ending date for federal
20 income tax purposes in the year before the year in which the report
21 is originally due.

22 Sec. 171.154. PAYMENT TO COMPTROLLER. A taxable entity
23 [~~corporation~~] on which a tax is imposed by this chapter shall pay
24 the tax to the comptroller.

25 Sec. 171.158. PAYMENT BY FOREIGN TAXABLE ENTITY
26 [~~CORPORATION~~] BEFORE WITHDRAWAL FROM STATE. (a) Except as
27 provided by Subsection (b) [~~of this section~~], a foreign taxable

1 entity [~~corporation~~] holding a registration or certificate of
2 authority to do business in this state may withdraw from doing
3 business in this state by filing a certificate of withdrawal with
4 the secretary of state. The secretary of state shall file the
5 certificate of withdrawal as provided by law.

6 (b) The foreign taxable entity [~~corporation~~] may not
7 withdraw from doing business in this state unless it has paid,
8 before filing the certificate of withdrawal, any tax or penalty
9 imposed by this chapter on the taxable entity [~~corporation~~].

10 SECTION 2.05. Subchapter E, Chapter 171, Tax Code, is
11 amended to read as follows:

12 SUBCHAPTER E. REPORTS AND RECORDS

13 Sec. 171.201. INITIAL REPORT. (a) Except as provided by
14 Section 171.2022, a taxable entity [~~corporation~~] on which the
15 franchise tax is imposed shall file an initial report with the
16 comptroller containing:

17 (1) information showing the financial condition of the
18 taxable entity [~~corporation~~] on the day that is the last day of a
19 calendar month and that is nearest to the end of the taxable
20 entity's [~~corporation's~~] first year of business;

21 (2) the name and address of:

22 (A) each officer, [and] director, and manager of
23 the taxable entity [~~corporation~~];

24 (B) for a limited partnership, each general
25 partner;

26 (C) for a general partnership or limited
27 liability partnership, each managing partner or, if there is not a

1 managing partner, each partner; or

2 (D) for a trust, each trustee;

3 (3) the name and address of the agent of the taxable
4 entity [~~corporation~~] designated under Section 171.354; and

5 (4) other information required by the comptroller.

6 (b) The taxable entity [~~corporation~~] shall file the report
7 on or before the date the payment is due under [~~Subsection (a) of~~]
8 Section 171.152(a) [~~171.152~~].

9 Sec. 171.202. ANNUAL REPORT. (a) Except as provided by
10 Section 171.2022, a taxable entity [~~corporation~~] on which the
11 franchise tax is imposed shall file an annual report with the
12 comptroller containing:

13 (1) financial information of the taxable entity
14 [~~corporation~~] necessary to compute the tax under this chapter;

15 (2) the name and address of each officer and director
16 of the taxable entity [~~corporation~~];

17 (3) the name and address of the agent of the taxable
18 entity [~~corporation~~] designated under Section 171.354; and

19 (4) other information required by the comptroller.

20 (b) The taxable entity [~~corporation~~] shall file the report
21 before May 16 of each year after the beginning of the regular annual
22 period. The report shall be filed on forms supplied by the
23 comptroller.

24 (c) The comptroller shall grant an extension of time to a
25 taxable entity [~~corporation~~] that is not required by rule to make
26 its tax payments by electronic funds transfer for the filing of a
27 report required by this section to any date on or before the next

1 November 15, if a taxable entity [~~corporation~~]:

2 (1) requests the extension, on or before May 15, on a
3 form provided by the comptroller; and

4 (2) remits with the request:

5 (A) not less than 90 percent of the amount of tax
6 reported as due on the report filed on or before November 15; or

7 (B) 100 percent of the tax reported as due for the
8 previous calendar year on the report due in the previous calendar
9 year and filed on or before May 14.

10 (d) In the case of a taxpayer whose previous return was its
11 initial report, the optional payment provided under Subsection
12 (c)(2)(B) or (e)(2)(B) must be equal to [~~the greater of:~~

13 [~~(1)~~] an amount produced by multiplying the [~~net~~]
14 taxable margin [~~capital~~], as reported on the initial report filed
15 on or before May 14, by the rate of tax in Section 171.002
16 [~~171.002(a)(1)~~] that is effective January 1 of the year in which the
17 report is due[~~, or~~

18 [~~(2) an amount produced by multiplying the net taxable~~
19 ~~earned surplus, as reported on the initial report filed on or before~~
20 ~~May 14, by the rate of tax in Section 171.002(a)(2) that is~~
21 ~~effective January 1 of the year in which the report is due].~~

22 (e) The comptroller shall grant an extension of time for the
23 filing of a report required by this section by a taxable entity
24 [~~corporation~~] required by rule to make its tax payments by
25 electronic funds transfer to any date on or before the next August
26 15, if the taxable entity [~~corporation~~]:

27 (1) requests the extension, on or before May 15, on a

1 form provided by the comptroller; and

2 (2) remits with the request:

3 (A) not less than 90 percent of the amount of tax
4 reported as due on the report filed on or before August 15; or

5 (B) 100 percent of the tax reported as due for the
6 previous calendar year on the report due in the previous calendar
7 year and filed on or before May 14.

8 (f) The comptroller shall grant an extension of time to a
9 taxable entity [~~corporation~~] required by rule to make its tax
10 payments by electronic funds transfer for the filing of a report due
11 on or before August 15 to any date on or before the next November 15,
12 if the taxable entity [~~corporation~~]:

13 (1) requests the extension, on or before August 15, on
14 a form provided by the comptroller; and

15 (2) remits with the request the difference between the
16 amount remitted under Subsection (e) and 100 percent of the amount
17 of tax reported as due on the report filed on or before November 15.

18 (h) If the sum of the amounts paid under Subsections (e)(2)
19 and (f)(2) is at least 99 percent of the amount reported as due on
20 the report filed on or before November 15, penalties for
21 underpayment with respect to the amount paid under Subsection
22 (f)(2) are waived.

23 (i) If a taxable entity [~~corporation~~] requesting an
24 extension under Subsection (c) or (e) does not file the report due
25 in the previous calendar year on or before May 14, the taxable
26 entity [~~corporation~~] may not receive an extension under Subsection
27 (c) or (e) unless the taxable entity [~~corporation~~] complies with

1 Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

2 Sec. 171.2022. EXEMPTION FROM REPORTING REQUIREMENTS. A
3 taxable entity [~~corporation~~] that does not owe any tax under this
4 chapter for any period is not required to file a report under
5 Section 171.201 or [7] 171.202 [~~or 171.2021~~]. The exemption
6 applies only to a period for which no tax is due.

7 Sec. 171.203. PUBLIC INFORMATION REPORT. (a) A
8 corporation on which the franchise tax is imposed, regardless of
9 whether the corporation is required to pay any tax, shall file a
10 report with the comptroller containing:

11 (1) the name of each corporation in which the
12 corporation filing the report owns a 10 percent or greater interest
13 and the percentage owned by the corporation;

14 (2) the name of each corporation that owns a 10 percent
15 or greater interest in the corporation filing the report;

16 (3) the name, title, and mailing address of each
17 person who is an officer or director of the corporation on the date
18 the report is filed and the expiration date of each person's term as
19 an officer or director, if any;

20 (4) the name and address of the agent of the
21 corporation designated under Section 171.354 [~~of this code~~]; and

22 (5) the address of the corporation's principal office
23 and principal place of business.

24 (b) The corporation shall file the report once a year on a
25 form prescribed by the comptroller.

26 (c) The comptroller shall forward the report to the
27 secretary of state.

1 (d) The corporation shall send a copy of the report to each
2 person named in the report under Subsection (a)(3) who is not
3 currently employed by the corporation or a related corporation
4 listed in Subsection (a)(1) or (2). An officer or director of the
5 corporation or another authorized person must sign the report under
6 a certification that:

7 (1) all information contained in the report is true
8 and correct to the best of the person's knowledge; and

9 (2) a copy of the report has been mailed to each person
10 identified in this subsection on the date the return is filed.

11 (e) If a person's name is included in a report under
12 Subsection (a)(3) and the person is not an officer or director of
13 the corporation on the date the report is filed, the person may file
14 with the comptroller a sworn statement disclaiming the person's
15 status as shown on the report. The comptroller shall maintain a
16 record of statements filed under this subsection and shall make
17 that information available on request using the same procedures the
18 comptroller uses for other requests for public information.

19 (f) A public information report that is filed
20 electronically complies with the signature and certification
21 requirements prescribed by Subsection (d).

22 Sec. 171.204. INFORMATION REPORT. (a) Except as provided
23 by Subsection (b), to determine eligibility for the exemption
24 provided by Section 171.2022, or to determine the amount of the
25 franchise tax or the correctness of a franchise tax report, the
26 comptroller may require [~~an officer of~~] a taxable entity
27 [~~corporation~~] that may be subject to the tax imposed under this

1 chapter to file an information report with the comptroller stating
2 the amount of the taxable entity's margin [~~corporation's taxable~~
3 ~~capital and earned surplus~~], or any other information the
4 comptroller may request.

5 (b) The comptroller may require a taxable entity [~~an officer~~
6 ~~of a corporation~~] that does not owe any tax because of the
7 application of Section 171.002(d)(2) to file an abbreviated
8 information report with the comptroller stating the amount of the
9 taxable entity's total revenue [~~corporation's gross receipts~~] from
10 its entire business. The comptroller may not require a taxable
11 entity [~~corporation~~] described by this subsection to file an
12 information report that requires the taxable entity [~~corporation~~]
13 to report or compute its margin [~~earned surplus or taxable~~
14 ~~capital~~].

15 Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY
16 COMPTROLLER. The comptroller may require a taxable entity
17 [~~corporation~~] on which the franchise tax is imposed to furnish to
18 the comptroller information from the taxable entity's
19 [~~corporation's~~] books and records that has not been filed
20 previously and that is necessary for the comptroller to determine
21 the amount of the tax.

22 Sec. 171.206. CONFIDENTIAL INFORMATION. Except as provided
23 by Section 171.207 [~~of this code~~], the following information is
24 confidential and may not be made open to public inspection:

25 (1) information that is obtained from a record or
26 other instrument that is required by this chapter to be filed with
27 the comptroller; or

1 (2) information, including information about the
2 business affairs, operations, profits, losses, or expenditures of a
3 taxable entity [~~corporation~~], obtained by an examination of the
4 books and records, officers, partners, trustees, agents, or
5 employees of a taxable entity [~~corporation~~] on which a tax is
6 imposed by this chapter.

7 Sec. 171.207. INFORMATION NOT CONFIDENTIAL. The following
8 information is not confidential and shall be made open to public
9 inspection:

10 (1) information contained in a document filed under
11 this chapter with a county clerk as notice of a tax lien; and

12 (2) information contained in a report required by
13 Section 171.203 [~~of this code~~].

14 Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A
15 person, including a state officer or employee or an owner [~~a~~
16 ~~shareholder~~] of a taxable entity [~~corporation~~], who has access to a
17 report filed under this chapter may not make known in a manner not
18 permitted by law the amount or source of the taxable entity's
19 [~~corporation's~~] income, profits, losses, expenditures, or other
20 information in the report relating to the financial condition of
21 the taxable entity [~~corporation~~].

22 Sec. 171.209. RIGHT OF OWNER [~~SHAREHOLDER~~] TO EXAMINE OR
23 RECEIVE REPORTS. If an owner [~~a person owning at least one share of~~
24 ~~outstanding stock~~] of a taxable entity [~~corporation~~] on whom the
25 franchise tax is imposed presents evidence of the ownership to the
26 comptroller, the person is entitled to examine or receive a copy of
27 an initial or annual report that is filed under Section 171.201 or

1 171.202 [~~of this code~~] and that relates to the taxable entity
2 [~~corporation~~].

3 Sec. 171.210. PERMITTED USE OF CONFIDENTIAL INFORMATION.

4 (a) To enforce this chapter, the comptroller or attorney general
5 may use information made confidential by this chapter.

6 (b) The comptroller or attorney general may authorize the
7 use of the confidential information in a judicial proceeding in
8 which the state is a party. The comptroller or attorney general may
9 authorize examination of the confidential information by:

10 (1) another state officer of this state;

11 (2) a law enforcement official of this state; or

12 (3) a tax official of another state or an official of
13 the federal government if the other state or the federal government
14 has a reciprocal arrangement with this state.

15 Sec. 171.211. EXAMINATION OF [~~CORPORATE~~] RECORDS. To
16 determine the franchise tax liability of a taxable entity
17 [~~corporation~~], the comptroller may investigate or examine the
18 records of the taxable entity [~~corporation~~].

19 Sec. 171.212. REPORT OF CHANGES TO FEDERAL INCOME TAX
20 RETURN. (a) A taxable entity [~~corporation~~] must file an amended
21 report under this chapter if:

22 (1) the taxable entity's [~~corporation's net~~] taxable
23 margin [~~earned surplus~~] is changed as the result of an audit or
24 other adjustment by the Internal Revenue Service or another
25 competent authority; or

26 (2) the taxable entity [~~corporation~~] files an amended
27 federal income tax return or other return that changes the taxable

1 entity's [~~corporation's net~~] taxable margin [~~earned surplus~~].

2 (b) The taxable entity [~~corporation~~] shall file the amended
3 report under Subsection (a)(1) not later than the 120th day after
4 the date the revenue agent's report or other adjustment is final.
5 For purposes of this subsection, a revenue agent's report or other
6 adjustment is final on the date on which all administrative appeals
7 with the Internal Revenue Service or other competent authority have
8 been exhausted or waived.

9 (c) The taxable entity [~~corporation~~] shall file the amended
10 report under Subsection (a)(2) not later than the 120th day after
11 the date the taxable entity [~~corporation~~] files the amended federal
12 income tax return or other return. For purposes of this subsection,
13 a taxable entity [~~corporation~~] is considered to have filed an
14 amended federal income tax return if the taxable entity
15 [~~corporation~~] is a member of an affiliated group during a period in
16 which an amended consolidated federal income tax report is filed.

17 (d) If a taxable entity [~~corporation~~] fails to comply with
18 this section, the taxable entity [~~corporation~~] is liable for a
19 penalty of 10 percent of the tax that should have been reported
20 under this section and that had not previously been reported to the
21 comptroller. The penalty prescribed by this subsection is in
22 addition to any other penalty provided by law.

23 SECTION 2.06. The heading to Subchapter F, Chapter 171, Tax
24 Code, is amended to read as follows:

25 SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

26 SECTION 2.07. Subchapter F, Chapter 171, Tax Code, is
27 amended by adding Section 171.2515 to read as follows:

1 Sec. 171.2515. FORFEITURE OF RIGHT OF TAXABLE ENTITY TO
2 TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the
3 same reasons and using the same procedures the comptroller uses in
4 relation to the forfeiture of the corporate privileges of a
5 corporation, forfeit the right of a taxable entity to transact
6 business in this state.

7 (b) The provisions of this subchapter, including Section
8 171.255, that apply to the forfeiture of corporate privileges apply
9 to the forfeiture of a taxable entity's right to transact business
10 in this state.

11 SECTION 2.08. Section 171.351, Tax Code, is amended to read
12 as follows:

13 Sec. 171.351. VENUE OF SUIT TO ENFORCE CHAPTER. Venue of a
14 civil suit against a taxable entity [~~corporation~~] to enforce this
15 chapter is either in a county where the taxable entity's
16 [~~corporation's~~] principal office is located according to its
17 charter or certificate of authority or in Travis County.

18 SECTION 2.09. Section 171.353, Tax Code, is amended to read
19 as follows:

20 Sec. 171.353. APPOINTMENT OF RECEIVER. If a court forfeits
21 a taxable entity's [~~corporation's~~] charter or certificate of
22 authority, the court may appoint a receiver for the taxable entity
23 [~~corporation~~] and may administer the receivership under the laws
24 relating to receiverships.

25 SECTION 2.10. Section 171.354, Tax Code, is amended to read
26 as follows:

27 Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each taxable

1 entity [~~corporation~~] on which a tax is imposed by this chapter shall
2 designate a resident of this state as the taxable entity's
3 [~~corporation's~~] agent for the service of process.

4 SECTION 2.11. Sections 171.362(a), (d), and (e), Tax Code,
5 are amended to read as follows:

6 (a) If a taxable entity [~~corporation~~] on which a tax is
7 imposed by this chapter fails to pay the tax when it is due and
8 payable or fails to file a report required by this chapter when it
9 is due, the taxable entity [~~corporation~~] is liable for a penalty of
10 five percent of the amount of the tax due.

11 (d) If a taxable entity [~~corporation~~] electing to remit
12 under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~]
13 Section 171.202(c)(2)(A) [~~171.202 of this code~~] remits less than
14 the amount required, the penalties imposed by this section and the
15 interest imposed under Section 111.060 [~~of this code~~] are assessed
16 against the difference between the amount required to be remitted
17 under [~~Paragraph (A) of Subdivision (2) of Subsection (c) of~~]
18 Section 171.202(c)(2)(A) [~~171.202~~] and the amount actually
19 remitted on or before May 15.

20 (e) If a taxable entity [~~corporation~~] remits the entire
21 amount required by [~~Subsection (c) of~~] Section 171.202(c) [~~171.202~~
22 ~~of this code~~], no penalties will be imposed against the amount
23 remitted on or before November 15.

24 SECTION 2.12. Sections 171.363(a) and (b), Tax Code, are
25 amended to read as follows:

26 (a) A taxable entity [~~corporation~~] commits an offense if the
27 taxable entity [~~corporation~~] is subject to the provisions of this

1 chapter and the taxable entity [~~corporation~~] wilfully:

2 (1) fails to file a report;

3 (2) fails to keep books and records as required by this
4 chapter;

5 (3) files a fraudulent report;

6 (4) violates any rule of the comptroller for the
7 administration and enforcement of the provisions of this chapter;

8 or

9 (5) attempts in any other manner to evade or defeat any
10 tax imposed by this chapter or the payment of the tax.

11 (b) A person commits an offense if the person is an
12 accountant or an agent for or an officer or employee of a taxable
13 entity [~~corporation~~] and the person knowingly enters or provides
14 false information on any report, return, or other document filed by
15 the taxable entity [~~corporation~~] under this chapter.

16 SECTION 2.13. Section 171.401, Tax Code, is amended to read
17 as follows:

18 Sec. 171.401. REVENUE DEPOSITED IN GENERAL REVENUE FUND.
19 The revenue from the tax imposed by this chapter [~~on corporations~~]
20 shall be deposited to the credit of the general revenue fund.

21 SECTION 2.14. (a) The repeal of Section 171.111, Tax Code,
22 by this article does not affect a credit that accrued under that
23 section before the effective date of this article.

24 (b) A corporation that has any unused credits accrued before
25 the effective date of this article under Section 171.111, Tax Code,
26 may claim those unused credits on or with the tax report for the
27 period in which the credits were accrued, and the former law under

1 which the corporation accrued the credits is continued in effect
2 for purposes of determining the amount of the credits the
3 corporation may claim and the manner in which the corporation may
4 claim the credits.

5 SECTION 2.15. (a) The following provisions of Chapter 171,
6 Tax Code, are repealed:

- 7 (1) Subchapter L;
- 8 (2) Subchapter M;
- 9 (3) Subchapter N;
- 10 (4) Subchapter O;
- 11 (5) Subchapter P;
- 12 (6) Subchapter Q;
- 13 (7) Subchapter R;
- 14 (8) Subchapter S;
- 15 (9) Subchapter T;
- 16 (10) Subchapter U as added by Chapter 209, Acts of the
17 78th Legislature, Regular Session, 2003; and
- 18 (11) Subchapter U as added by Chapter 1274, Acts of the
19 78th Legislature, Regular Session, 2003.

20 (b) This section does not affect a credit authorized by a
21 provision listed in Subsection (a) of this section that accrued
22 under Chapter 171, Tax Code, before the effective date of this
23 article or a credit that continues to accrue under Section 2.16 of
24 this Act.

25 (c) A corporation that has any unused credits accrued before
26 the effective date of this article under a provision other than
27 Subchapter O, P, or Q, Chapter 171, Tax Code, may claim those unused

1 credits on or with the tax report for the period in which the
2 credits were accrued, and the former law under which the
3 corporation accrued the credits is continued in effect for purposes
4 of determining the amount of the credits the corporation may claim
5 and the manner in which the corporation may claim the credits.

6 (d) A corporation that has any unused credits accrued before
7 the effective date of this article under Subchapter O, Chapter 171,
8 Tax Code, may claim those unused credits on or with the tax report
9 for the period in which the credit was accrued. However, if the
10 corporation was allowed to carry forward unused credits under that
11 subchapter, the corporation may continue to apply those credits on
12 or with each consecutive report until the earlier of the date the
13 credit would have expired under the terms of Subchapter O, Chapter
14 171, Tax Code, had it continued in existence, or December 31, 2027,
15 and the former law under which the corporation accrued the credits
16 is continued in effect for purposes of determining the amount of the
17 credits the corporation may claim and the manner in which the
18 corporation may claim the credits.

19 (e) A corporation that has any unused credits accrued before
20 the effective date of this article under Subchapter P, Chapter 171,
21 Tax Code, may claim those unused credits on or with the tax report
22 for the period in which the credit was accrued. However, if the
23 corporation was allowed to carry forward unused credits under that
24 subchapter, the corporation may continue to apply those credits on
25 or with each consecutive report until the earlier of the date the
26 credit would have expired under the terms of Subchapter P, Chapter
27 171, Tax Code, had it continued in existence, or December 31, 2012,

1 and the former law under which the corporation accrued the credits
2 is continued in effect for purposes of determining the amount of the
3 credits the corporation may claim and the manner in which the
4 corporation may claim the credits.

5 (f) A corporation that has any unused credits accrued before
6 the effective date of this article under Subchapter Q, Chapter 171,
7 Tax Code, may claim those unused credits on or with the tax report
8 for the period in which the credit was accrued. However, if the
9 corporation was allowed to carry forward unused credits under that
10 subchapter, the corporation may continue to apply those credits on
11 or with each consecutive report until the earlier of the date the
12 credit would have expired under the terms of Subchapter Q, Chapter
13 171, Tax Code, had it continued in existence, or December 31, 2012,
14 and the former law under which the corporation accrued the credits
15 is continued in effect for purposes of determining the amount of the
16 credits the corporation may claim and the manner in which the
17 corporation may claim the credits.

18 (g) The comptroller shall adopt rules to administer this
19 section.

20 SECTION 2.16. A written agreement between this state and a
21 taxpayer effective before June 1, 2006, that allows for credits
22 against the tax imposed under Chapter 171, Tax Code, continues in
23 effect and the credits allowed under the agreement continue to
24 accrue and may be claimed in the manner provided by the agreement
25 against the tax imposed under Chapter 171, Tax Code, as amended by
26 this article, for the duration of the agreement. The former law
27 under which the agreement was made and under which the taxpayer

1 received the entitlement to the credits is continued in effect for
2 purposes of determining the amount of the credits the taxpayer may
3 claim and the manner in which the taxpayer may claim the credits.

4 SECTION 2.17. The franchise tax imposed by Chapter 171, Tax
5 Code, as amended by this article, is not an income tax and Pub. L.
6 No. 86-272 does not apply to the tax.

7 SECTION 2.18. (a) Subject to other provisions of this
8 section, this article applies to reports originally due on or after
9 the effective date of this article.

10 (b) For an entity becoming subject to the franchise tax
11 under this article:

12 (1) margin or gross receipts occurring before June 1,
13 2006, may not be considered for purposes of determining taxable
14 margin or for apportionment purposes;

15 (2) an entity subject to the franchise tax on January
16 1, 2008, that was not previously subject to the tax and for which
17 January 1, 2008, is not the beginning date, shall file an annual
18 report due May 15, 2008, based on the period:

19 (A) if the entity has an accounting period that
20 ends on or after January 1, 2007, and before June 1, 2007:

21 (i) beginning on the later of:

22 (a) June 1, 2006; or

23 (b) the date the entity was organized
24 in this state or, if a foreign entity, the date it began doing
25 business in this state; and

26 (ii) ending on the date that accounting
27 period ends in 2007;

1 (B) if the entity has an accounting period that
2 ends on or after June 1, 2007, and before December 31, 2007:

3 (i) beginning on the date that accounting
4 period begins; and

5 (ii) ending on the date that accounting
6 period ends in 2007; and

7 (C) if the entity has an accounting period that
8 ends on December 31, 2007, or if the entity does not have an
9 accounting period that ends in 2007:

10 (i) beginning on the later of:

11 (a) January 1, 2007; or

12 (b) the date the entity was organized
13 in the state or, if a foreign entity, the date it began doing
14 business in this state; and

15 (ii) ending on December 31, 2007; and

16 (3) an entity subject to the franchise tax as it
17 existed before the effective date of this article at any time after
18 December 31, 2006, and before January 1, 2008, but not subject to
19 the franchise tax on January 1, 2008, shall file a final report for
20 the privilege of doing business at any time after June 30, 2007, and
21 before January 1, 2008, based on the period:

22 (A) beginning on the later of:

23 (i) January 1, 2007; or

24 (ii) the date the entity was organized in
25 this state or, if a foreign entity, the date it began doing business
26 in this state; and

27 (B) ending on the date the entity became no

1 longer subject to the franchise tax.

2 (c) For purposes of this article, an existing partnership is
3 considered as continuing if it is not terminated.

4 (d) A partnership is considered terminated only if no part
5 of any business, financial operation, or venture of the partnership
6 continues to be carried on by any of its partners in a partnership.

7 (e) For a merger or consolidation of two or more
8 partnerships, the resulting partnership is, for purposes of this
9 article, considered the continuation of any merging or
10 consolidating partnership whose members own an interest of more
11 than 50 percent in the capital and profits of the resulting
12 partnership.

13 (f) For a division of a partnership into two or more
14 partnerships, the resulting partnerships, other than any resulting
15 partnership the members of which had an interest of 50 percent or
16 less in the capital and profits of the prior partnership, are, for
17 purposes of this article, considered a continuation of the prior
18 partnership.

19 SECTION 2.19. (a) The comptroller shall require the
20 entities specified by this section to file an information report in
21 the manner provided by this section. The information report is
22 confidential and exempt from disclosure under Chapter 552,
23 Government Code.

24 (b) The information report required under this section must
25 contain the same information that an entity required to file the
26 report would have submitted in its report due to the comptroller in
27 2006 under Chapter 171, Tax Code, if the changes made by this

1 article to Chapter 171, Tax Code, had been in effect January 1,
2 2006. The comptroller shall provide the forms and instructions to
3 the entities required to file a report under this section.

4 (c) The comptroller shall take action to revoke the charter,
5 as that term is defined by Section 171.0001, Tax Code, as added by
6 this article, of an entity that does not file an information return
7 in the manner and under the time limits provided by this section.

8 (d) The comptroller shall identify and require the
9 following entities to file an information report under this
10 section:

11 (1) the 1,000 entities that paid or are required to pay
12 the most franchise tax for the annual reporting period ending
13 December 31, 2005, under Chapter 171, Tax Code, as that chapter
14 existed on the effective date of this section;

15 (2) the 1,000 entities doing business in this state
16 that had the greatest amount of gross receipts in 2005, as
17 determined under Sections 171.105 and 171.1051, Tax Code, as those
18 sections existed on the effective date of this section; and

19 (3) the 1,000 entities doing business in this state
20 with the greatest number of employees in this state, according to
21 records maintained by the Texas Workforce Commission, in 2005.

22 (e) An entity may be listed in one or more of the categories
23 under Subsection (d) of this section. An entity that is listed more
24 than once is required by this section to file only one information
25 return.

26 (f) The comptroller:

27 (1) shall identify the entities described by

1 Subsection (d) of this section;

2 (2) shall prepare all forms and instructions required
3 for those entities to file their information reports as required by
4 this section;

5 (3) shall provide those forms and instructions to
6 those entities on or after November 15, 2006, but before December 2,
7 2006;

8 (4) shall require the entities to submit their
9 information reports on or before February 15, 2007;

10 (5) may not grant any extensions for filing the
11 information reports; and

12 (6) shall report to the governor, the lieutenant
13 governor, and the members of the legislature, on or before April 1,
14 2007, the results of the information reports, stating the amount of
15 revenue the tax under Chapter 171, Tax Code, would have generated
16 from the entities submitting information reports under this section
17 if the changes made by this article to Chapter 171, Tax Code, had
18 been in effect January 1, 2006.

19 (g) The report required under Subsection (f)(6) of this
20 section may not be formatted in a manner or include any information
21 that discloses or effectively discloses the specific identity of a
22 reporting entity.

23 (h) This section takes effect as provided by Section 6.01(a)
24 of this Act.

25 SECTION 2.20. (a) This section applies to a suit brought by
26 an entity subject to the tax under Chapter 171, Tax Code, as amended
27 by this article, contending that the imposition of the tax on the

1 entity is unconstitutional.

2 (b) The suit must be brought in a district court in Travis
3 County.

4 (c) The judgment of the district court may be reviewed only
5 by direct appeal to the supreme court filed on or before the 15th
6 day after the date the district court enters its judgment. The
7 district court shall try the suit and the supreme court shall hear
8 any appeal relating to the suit as expeditiously as possible.

9 (d) This section takes effect as provided by Section 6.01(a)
10 of this Act.

11 SECTION 2.21. Except as otherwise provided by this article,
12 this article takes effect January 1, 2008, and applies to reports
13 originally due on or after that date.

14 ARTICLE 3. MOTOR VEHICLE SALES AND USE TAXES

15 SECTION 3.01. Section 152.002, Tax Code, is amended by
16 adding Subsection (f) to read as follows:

17 (f) Notwithstanding Subsection (a), the total consideration
18 of a used motor vehicle is the amount on which the tax is computed as
19 provided by Section 152.0412.

20 SECTION 3.02. Section 152.041(a), Tax Code, is amended to
21 read as follows:

22 (a) The tax assessor-collector of the county in which an
23 application for registration or for a Texas certificate of title is
24 made shall collect taxes imposed by this chapter, subject to
25 Section 152.0412, unless another person is required by this chapter
26 to collect the taxes.

27 SECTION 3.03. Subchapter C, Chapter 152, Tax Code, is

1 amended by adding Section 152.0412 to read as follows:

2 Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX
3 ASSESSOR-COLLECTOR. (a) In this section, "standard presumptive
4 value" means the average retail value of a motor vehicle as
5 determined by the Texas Department of Transportation, based on a
6 nationally recognized motor vehicle industry reporting service.

7 (b) If the amount paid for a motor vehicle subject to the tax
8 imposed by this chapter is equal to or greater than the standard
9 presumptive value of the vehicle, a county tax assessor-collector
10 shall compute the tax on the amount paid.

11 (c) If the amount paid for a motor vehicle subject to the tax
12 imposed by this chapter is less than the standard presumptive value
13 of the vehicle, a county tax assessor-collector shall compute the
14 tax on the standard presumptive value unless the purchaser
15 establishes the retail value of the vehicle as provided by
16 Subsection (d).

17 (d) A county tax assessor-collector shall compute the tax
18 imposed by this chapter on the retail value of a motor vehicle if:

19 (1) the retail value is shown on an appraisal
20 certified by an adjuster licensed under Chapter 4101, Insurance
21 Code, or by a motor vehicle dealer operating under Subchapter B,
22 Chapter 503, Transportation Code;

23 (2) the appraisal is on a form prescribed by the
24 comptroller for that purpose; and

25 (3) the purchaser of the vehicle obtains the appraisal
26 not later than the 20th day after the date of purchase.

27 (e) On request, a motor vehicle dealer operating under

1 Subchapter B, Chapter 503, Transportation Code, shall provide a
2 certified appraisal of the retail value of a motor vehicle. The
3 comptroller by rule shall establish a fee that a dealer may charge
4 for providing the certified appraisal. The county tax
5 assessor-collector shall retain a copy of a certified appraisal
6 received under this section for a period prescribed by the
7 comptroller.

8 (f) The Texas Department of Transportation shall maintain
9 information on the standard presumptive values of motor vehicles as
10 part of the department's registration and title system. The
11 department shall update the information at least quarterly each
12 calendar year.

13 (g) This section does not apply to a transaction described
14 by Section 152.024 or 152.025.

15 SECTION 3.04. Not later than October 1, 2006, the Texas
16 Department of Transportation shall:

17 (1) establish standard presumptive values for motor
18 vehicles as provided by Section 152.0412, Tax Code, as added by this
19 article;

20 (2) modify the department's registration and title
21 system as needed to include that information and administer that
22 section; and

23 (3) make that information available through the system
24 to all county tax assessor-collectors.

25 SECTION 3.05. The changes in law made by this article do not
26 affect tax liability accruing before the effective date of this
27 article. That liability continues in effect as if this article had

1 not been enacted, and the former law is continued in effect for the
2 collection of taxes due and for civil and criminal enforcement of
3 the liability for those taxes.

4 SECTION 3.06. (a) Except as provided by Subsection (b) of
5 this section, this article takes effect July 1, 2006, if this Act
6 receives a vote of two-thirds of all the members elected to each
7 house, as provided by Section 39, Article III, Texas Constitution.
8 If this Act does not receive the vote necessary for effect on that
9 date, this article takes effect on the first day of the first month
10 that begins on or after the 91st day after the last day of the
11 legislative session.

12 (b) Section 152.0412, Tax Code, as added by this article,
13 takes effect October 1, 2006.

14 ARTICLE 4. TAX ON TOBACCO PRODUCTS AND ALCOHOL

15 PART A. CIGARETTES AND TOBACCO PRODUCTS

16 SECTION 4A.01. Section 154.021(b), Tax Code, is amended to
17 read as follows:

18 (b) The tax rates are:

19 (1) \$70.50 [~~\$20.50~~] per thousand on cigarettes
20 weighing three pounds or less per thousand; and

21 (2) the rate provided by Subdivision (1) plus \$2.10
22 per thousand on cigarettes weighing more than three pounds per
23 thousand.

24 SECTION 4A.02. Section 155.0211(b), Tax Code, is amended to
25 read as follows:

26 (b) The tax rate for tobacco products other than cigars is
27 40 [~~35.213~~] percent of the manufacturer's list price, exclusive of

1 any trade discount, special discount, or deal.

2 SECTION 4A.03. The changes in law made by this part do not
3 affect tax liability accruing before the effective date of this
4 part. That liability continues in effect as if this part had not
5 been enacted, and the former law is continued in effect for the
6 collection of taxes due and for civil and criminal enforcement of
7 the liability for those taxes.

8 SECTION 4A.04. This part takes effect September 1, 2006.

9 PART B. STATEMENT OF MIXED BEVERAGE TAX ALLOWED

10 SECTION 4B.01. Subchapter B, Chapter 183, Tax Code, is
11 amended by adding Section 183.0212 to read as follows:

12 Sec. 183.0212. SEPARATE STATEMENT OF TAX ALLOWED. (a) A
13 permittee may provide that each invoice, billing, sales slip, or
14 ticket for the purchase of an item include a separate statement of
15 the amount of tax imposed under this chapter in relation to the
16 gross receipts received from that item. The separately stated
17 amount is only to inform the recipient of the invoice, billing,
18 sales slip, or ticket of the tax and may not be included on the
19 invoice, billing, sales slip, or ticket as an additional amount due
20 from the recipient.

21 (b) For purposes of the tax imposed under this chapter, the
22 gross receipts of a permittee do not include amounts separately
23 stated in a statement authorized by Subsection (a).

24 SECTION 4B.02. This part takes effect September 1, 2006.

25 ARTICLE 5. APPROPRIATION

26 SECTION 5.01. The amount of \$1.9 billion is appropriated
27 out of the general revenue fund to the Texas Education Agency for

1 the state fiscal biennium ending August 31, 2007, for the purpose of
2 reimbursing school districts for revenue the districts lose by
3 reducing the districts' maintenance and operations taxes.

4 SECTION 5.02. The amount of \$2 million is appropriated out
5 of the general revenue fund to the comptroller of public accounts
6 for the state fiscal biennium ending August 31, 2007, for the
7 implementation of this Act and for audit and enforcement
8 activities.

9 ARTICLE 6. EFFECTIVE DATE

10 SECTION 6.01. (a) Except as provided by Subsection (b) of
11 this section, this Act takes effect June 1, 2006, if this Act
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for effect on that
15 date, this Act takes effect September 1, 2006.

16 (b) If a section, part, or article of this bill provides a
17 different effective date than provided by Subsection (a) of this
18 section, that section, part, or article takes effect according to
19 its terms.