

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) and (o) 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 lesser 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 the rate of \$1 per \$100 of taxable value, whichever is greater; or

(ii) the district's maintenance and operations tax rate for the 2005 tax year;

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

1 (C) the district's current debt rate; and
2 (2) for the 2007 tax year is the sum of:
3 (A) the lesser of:
4 (i) the rate that is \$0.33 per \$100 of
5 taxable value less than the rate adopted by the district for
6 maintenance and operations for the 2006 tax year or the rate of \$1
7 per \$100 of taxable value, whichever is greater; or
8 (ii) the district's maintenance and
9 operations tax rate for the 2006 tax year;
10 (B) the rate of \$0.06 per \$100 of taxable value;
11 and
12 (C) the district's current debt rate.
13 (o) The commissioner may adopt rules specifying the method
14 for computing the rollback tax rate of a school district for
15 purposes of compliance with this section. A rule adopted under this
16 subsection is final and may not be appealed by a school district.
17 SECTION 1.03. Effective January 1, 2007, Section 45.003,
18 Education Code, is amended by amending Subsection (d) and adding
19 Subsection (e) to read as follows:
20 (d) A proposition submitted to authorize the levy of
21 maintenance taxes must include the question of whether the
22 governing board or commissioners court may levy, assess, and
23 collect annual ad valorem taxes for the further maintenance of
24 public schools, at a rate not to exceed the rate, which may be not
25 more than \$1.30 [~~\$1.50~~] on the \$100 valuation of taxable property in
26 the district, stated in the proposition.
27 (e) A school district authorized by an election held before

1 June 1, 2006, to impose a maintenance tax at a rate greater than
2 \$1.30 on the \$100 valuation of taxable property in the district may
3 not impose a maintenance tax at a rate greater than \$1.30 on the
4 \$100 valuation of taxable property in the district. This
5 subsection does not apply to a district permitted by special law on
6 June 1, 2006, to impose a maintenance tax at a rate greater than
7 \$1.50 on the \$100 valuation of taxable property.

8 SECTION 1.04. The changes in law made by this article apply
9 to the ad valorem tax rate of a school district beginning with the
10 2006 tax year.

11 SECTION 1.05. (a) Not later than September 1, 2006, the
12 secretary of state shall:

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

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

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

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

25 ARTICLE 2. FRANCHISE TAX

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

1 SUBCHAPTER A. DEFINITIONS; TAX IMPOSED

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

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

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

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

18 (4) "Beginning date" means:

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

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

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

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

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

6 (8) "Controlling interest" means:

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

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

16 (9) "Internal Revenue Code" means the Internal Revenue
17 Code of 1986 in effect for the federal tax year beginning on January
18 1, 2006, and any regulations adopted under that code applicable to
19 that period.

20 (10) "Lending institution" means an entity that makes
21 loans and is regulated by the Federal Reserve Board, the Office of
22 the Comptroller of the Currency, the Federal Deposit Insurance
23 Corporation, the Texas Department of Banking, the Office of
24 Consumer Credit Commissioner, the Department of Savings and
25 Mortgage Lending, the Credit Union Department, or any comparable
26 regulatory body.

27 (11) "Retail trade" means the activities described in

1 Division G of the 1987 Standard Industrial Classification Manual
2 published by the federal Office of Management and Budget.

3 (12) "Savings and loan association" means a savings
4 and loan association or savings bank, whether organized under the
5 laws of this state, another state, or another country, or under
6 federal law.

7 (13) "Shareholder" includes a limited liability
8 company's member and a limited banking association's participant.

9 (14) "Staff leasing services company" has the meaning
10 assigned by Section 91.001, Labor Code.

11 (15) "Total revenue" means the total revenue of a
12 taxable entity as determined under Section 171.1011.

13 (16) "Unitary business" means a single economic
14 enterprise that is made up of separate parts of a single entity or
15 of a commonly controlled group of entities that are sufficiently
16 interdependent, integrated, and interrelated through their
17 activities so as to provide a synergy and mutual benefit that
18 produces a sharing or exchange of value among them and a significant
19 flow of value to the separate parts. In determining whether a
20 unitary business exists, the comptroller shall consider any
21 relevant factor, including whether:

22 (A) the activities of the group members:

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

26 (ii) are steps in a vertically structured
27 enterprise or process, such as the steps involved in the production

1 of natural resources, including exploration, mining, refining, and
2 marketing; and

3 (B) the members are functionally integrated
4 through the exercise of strong centralized management, such as
5 authority over purchasing, financing, product line, personnel, and
6 marketing.

7 (17) "Wholesale trade" means the activities described
8 in Division F of the 1987 Standard Industrial Classification Manual
9 published by the federal Office of Management and Budget.

10 Sec. 171.0002. DEFINITION OF TAXABLE ENTITY. (a) Except as
11 otherwise provided by this section, "taxable entity" means a
12 partnership, corporation, banking corporation, savings and loan
13 association, limited liability company, business trust,
14 professional association, business association, joint venture,
15 joint stock company, holding company, or other legal entity. The
16 term includes a combined group. A joint venture does not include
17 joint operating or co-ownership arrangements meeting the
18 requirements of Treasury Regulation Section 1.761-2(a)(3) that
19 elect out of federal partnership treatment as provided by Section
20 761(a), Internal Revenue Code.

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

22 (1) a sole proprietorship;

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

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

26 or

27 (4) an entity that is exempt from taxation under

1 Subchapter B.

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

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

9 (2) an estate of a natural person as defined by Section
10 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable
11 as a business entity pursuant to Treasury Regulation Section
12 301.7701-4(b);

13 (3) an escrow;

14 (4) a family limited partnership that is a passive
15 entity in which at least 80 percent of the interests are held,
16 directly or indirectly, by members of the same family, including an
17 individual's ancestors, lineal descendants, spouse, brothers and
18 sisters by the whole or half blood, and the estate of any of these
19 persons, and that is a limited partnership:

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

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

24 (C) treated as a partnership for federal income
25 tax purposes;

26 (5) a passive investment partnership that is a passive
27 entity and that is:

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

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

5 (C) formed pursuant to the limited partnership
6 laws of any foreign country;

7 (6) a passive investment partnership that is a passive
8 entity and is a general partnership;

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

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

12 (B) all of the beneficiaries of which are natural
13 persons or charitable entities as defined in Section 501(c)(3),
14 Internal Revenue Code;

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

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

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

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

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

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

7 (d) An entity that can file as a sole proprietorship for
8 federal tax purposes is not a sole proprietorship for purposes of
9 Subsection (b)(1) and is not exempt under that subsection if the
10 entity is formed in a manner under the statutes of this state or
11 another state that limit the liability of the entity.

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

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

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

19 (A) dividends, interest, foreign currency
20 exchange gain, periodic and nonperiodic payments with respect to
21 notional principal contracts, option premiums, cash settlement or
22 termination payments with respect to a financial instrument, and
23 income from a limited liability company;

24 (B) distributive shares of partnership income to
25 the extent that those distributive shares of income are greater
26 than zero;

27 (C) gains from the sale of real property,

1 commodities traded on a commodities exchange, and securities; and

2 (D) royalties, bonuses, or delay rental income
3 from mineral properties and income from other nonoperating mineral
4 interests; and

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

8 (b) The income described by Subsection (a)(2) does not
9 include:

10 (1) rent; or

11 (2) income received by a nonoperator from mineral
12 properties under a joint operating agreement if the nonoperator is
13 a member of an affiliated group and another member of that group is
14 the operator under the same joint operating agreement.

15 Sec. 171.0004. DEFINITION OF CONDUCTING ACTIVE TRADE OR
16 BUSINESS. (a) The definition in this section applies only to
17 Section 171.0003.

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

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

22 (2) the entity performs active management and
23 operational functions.

24 (c) Activities performed by the entity include activities
25 performed by persons outside the entity, including independent
26 contractors, to the extent the persons perform services on behalf
27 of the entity and those services constitute all or part of the

1 entity's trade or business.

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

6 (e) For purposes of this section:

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

10 (2) payment of compensation to employees or
11 independent contractors for financial or legal services reasonably
12 necessary for the operation of the entity does not constitute
13 conduct of an active trade or business.

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

16 [~~(1)~~] each taxable entity [~~corporation~~] that does
17 business in this state or that is chartered or organized in this
18 state[~~, and~~

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

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

22 [~~(1) "Banking corporation" means each state,~~
23 ~~national, domestic, or foreign bank, whether organized under the~~
24 ~~laws of this state, another state, or another country, or under~~
25 ~~federal law, including a limited banking association organized~~
26 ~~under Subtitle A, Title 3, Finance Code, and each bank organized~~
27 ~~under Section 25(a), Federal Reserve Act (12 U.S.C. Secs. 611-631)~~

1 ~~(edge corporations), but does not include a bank holding company as~~
2 ~~that term is defined by Section 2, Bank Holding Company Act of 1956~~
3 ~~(12 U.S.C. Sec. 1841).~~

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

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

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

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

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

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

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

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

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

20 ~~[(6) "Officer" and "director" include a limited~~
21 ~~liability company's directors and managers and a limited banking~~
22 ~~association's directors and managers and participants if there are~~
23 ~~no directors or managers.~~

24 ~~[(7) "Savings and loan association" means a savings~~
25 ~~and loan association or savings bank, whether organized under the~~
26 ~~laws of this state, another state, or another country, or under~~
27 ~~federal law.~~

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

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

6 Sec. 171.0011. ADDITIONAL TAX. (a) Except as provided by
7 Subsection (e), an ~~[An]~~ additional tax is imposed on a taxable
8 entity ~~[corporation]~~ that for any reason becomes no longer subject
9 to the ~~[earned surplus component of the tax, without regard to~~
10 ~~whether the corporation remains subject to the taxable capital~~
11 ~~component of the]~~ tax imposed under this chapter.

12 (b) The additional tax is equal to the appropriate rate
13 under Section 171.002 of the taxable entity's taxable margin ~~[4.5~~
14 ~~percent of the corporation's net taxable earned surplus]~~ computed
15 on the period beginning on the day after the last day for which the
16 tax imposed on taxable margin ~~[net taxable earned surplus]~~ was
17 computed ~~[under Section 171.1532]~~ and ending on the date the
18 taxable entity ~~[corporation]~~ is no longer subject to the ~~[earned~~
19 ~~surplus component of the]~~ tax imposed under this chapter.

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

24 (d) Except as otherwise provided by this section, the
25 provisions of this chapter apply to the tax imposed under this
26 section.

27 (e) An additional tax is not imposed on a taxable entity

1 that becomes no longer subject to the tax imposed under this chapter
2 because the entity qualifies as a passive entity.

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

6 [~~(1) 0.25~~] percent per year of privilege period of
7 [~~net~~] taxable margin [~~capital; and~~

8 [~~(2) 4.5 percent of net taxable earned surplus~~].

9 (b) The rate of the franchise tax is 0.5 percent per year of
10 privilege period of taxable margin for those taxable entities
11 primarily engaged in retail or wholesale trade. [~~The amount of~~
12 ~~franchise tax on each corporation is computed by adding the~~
13 ~~following:~~

14 [~~(1) the amount calculated by applying the tax rate~~
15 ~~prescribed by Subsection (a)(1) to the corporation's net taxable~~
16 ~~capital; and~~

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

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

21 [~~(B) the amount determined under Subdivision~~
22 ~~(1).~~]

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

25 (1) the total revenue from its activities in retail or
26 wholesale trade is greater than the total revenue from its
27 activities in trades other than the retail and wholesale trades;

1 (2) except as provided by Subsection (c-1), less than
2 50 percent of the total revenue from activities in retail or
3 wholesale trade comes from the sale of products it produces or
4 products produced by an entity that is part of an affiliated group
5 to which the taxable entity also belongs; and

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

11 (c-1) Subsection (c)(2) does not apply to total revenue from
12 activities in a retail trade described by Major Group 58 of the
13 Standard Industrial Classification Manual published by the federal
14 Office of Management and Budget.

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

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

19 (2) the amount of the taxable entity's total revenue
20 [~~corporation's gross receipts:~~

21 [~~(A)~~] from its entire business [~~under Section~~
22 ~~171.105~~] is less than or equal to \$300,000 or the amount determined
23 under Section 171.006 [~~\$150,000, and~~

24 [~~(B)~~ from its entire business under Section
25 ~~171.1051, including the amount excepted under Section 171.1051(a),~~
26 ~~is less than \$150,000].~~

27 [~~Sec. 171.005. RATE OF TAX FOR CORPORATION IN PROCESS OF~~

1 ~~LIQUIDATION. The franchise tax rate on a corporation in the process~~
2 ~~of liquidation, as defined by Section 171.102 of this code, is the~~
3 ~~rate established by Section 171.002 of this code.]~~

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

10 (b) Beginning in 2009, on January 1 of each odd-numbered
11 year, the amounts prescribed by Sections 171.002(d)(2) and
12 171.1013(c) are increased or decreased by an amount equal to the
13 amount prescribed by those sections on December 31 of the preceding
14 year multiplied by the percentage increase or decrease during the
15 preceding state fiscal biennium in the consumer price index and
16 rounded to the nearest \$10,000.

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

20 (d) The comptroller shall make the determination required
21 by this section and may adopt rules related to making that
22 determination.

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

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

27 Sec. 171.088. EXEMPTION--NONCORPORATE ENTITY ELIGIBLE FOR

1 CERTAIN EXEMPTIONS. An entity that is not a corporation but that,
2 because of its activities, would qualify for a specific exemption
3 under this subchapter if it were a corporation, qualifies for the
4 exemption and is exempt from the tax in the same manner and under
5 the same conditions as a corporation.

6 SECTION 2.03. Subchapter C, Chapter 171, Tax Code, is
7 amended, including the reenacting and amending of Section
8 171.109(g), as amended by Chapters 801 and 1198, Acts of the 71st
9 Legislature, Regular Session, 1989, to read as follows:

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

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

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

18 (A) 70 percent of the taxable entity's total
19 revenue from its entire business, as determined under Section
20 171.1011; or

21 (B) an amount computed by:

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

24 (ii) subtracting, at the election of the
25 taxable entity, either:

26 (a) cost of goods sold, as determined
27 under Section 171.1012; or

1 (b) compensation, as determined under
2 Section 171.1013; [~~adding the corporation's stated capital, as~~
3 ~~defined by Article 1.02, Texas Business Corporation Act, and the~~
4 ~~corporation's surplus, to determine the corporation's taxable~~
5 ~~capital;~~]

6 (2) apportioning the taxable entity's margin
7 [~~corporation's taxable capital~~] to this state as provided by
8 Section 171.106 [~~171.106(a) or (c), as applicable,~~] to determine
9 the taxable entity's [~~corporation's~~] apportioned margin [~~taxable~~
10 ~~capital~~]; and

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

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

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

20 [~~(1) adding the company's members' contributions, as~~
21 ~~provided for under the Texas Limited Liability Company Act, and~~
22 ~~surplus to determine the company's taxable capital;~~

23 [~~(2) apportioning the amount determined under~~
24 ~~Subdivision (1) to this state in the same manner that the taxable~~
25 ~~capital of a corporation is apportioned to this state under Section~~
26 ~~171.106(a) or (c), as applicable, to determine the company's~~
27 ~~apportioned taxable capital; and~~

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

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

6 ~~[(1) determining the association's net worth, and~~

7 ~~[(2) apportioning the amount determined under~~
8 ~~Subdivision (1) to this state in the same manner that the taxable~~
9 ~~capital of a corporation is apportioned to this state under Section~~
10 ~~171.106(a) to determine the association's net taxable capital].~~

11 Sec. 171.1011. DETERMINATION OF TOTAL REVENUE FROM ENTIRE
12 BUSINESS. (a) In this section, a reference to an Internal Revenue
13 Service form includes a variant of the form. For example, a
14 reference to Form 1120 includes Forms 1120-A, 1120-S, and other
15 variants of Form 1120. A reference to an Internal Revenue Service
16 form also includes any subsequent form with a different number or
17 designation that substantially provides the same information as the
18 original form.

19 (b) In this section, a reference to an amount entered on a
20 line number on an Internal Revenue Service form includes the
21 corresponding amount entered on a variant of the form, or a
22 subsequent form, with a different line number. The comptroller
23 shall adopt rules as necessary to accomplish the legislative intent
24 prescribed by this subsection and Subsection (a).

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

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

3 (A) adding:

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

6 (ii) the amounts entered on lines 4 through
7 10, Internal Revenue Service Form 1120; and

8 (B) subtracting:

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

13 (ii) to the extent included in Subsection
14 (c)(1)(A), foreign royalties and foreign dividends, including
15 amounts determined under Section 78 or Sections 951-964, Internal
16 Revenue Code;

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

21 (iv) allowable deductions from Internal
22 Revenue Service Form 1120, Schedule C, to the extent the relating
23 dividend income is included in total revenue;

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

27 (vi) to the extent included in Subsection

1 (c)(1)(A), other amounts authorized by this section;
2 (2) for a taxable entity treated for federal income
3 tax purposes as a partnership, an amount computed by:
4 (A) adding:
5 (i) the amount entered on line 1c, Internal
6 Revenue Service Form 1065;
7 (ii) the amounts entered on lines 4 through
8 7, Internal Revenue Service Form 1065; and
9 (iii) the amounts entered on lines 2
10 through 11, Internal Revenue Service Form 1065, Schedule K; and
11 (B) subtracting:
12 (i) bad debt expensed for federal income
13 tax purposes that corresponds to items of gross receipts included
14 in Subsection (c)(2)(A) for the current reporting period or a past
15 reporting period;
16 (ii) to the extent included in Subsection
17 (c)(2)(A), foreign royalties and foreign dividends, including
18 amounts determined under Section 78 or Sections 951-964, Internal
19 Revenue Code;
20 (iii) to the extent included in Subsection
21 (c)(2)(A), net distributive income from partnerships and trusts
22 and from limited liability companies and S corporations treated as
23 partnerships for federal income tax purposes;
24 (iv) to the extent included in Subsection
25 (c)(2)(A), items of income attributable to an entity that is a
26 disregarded entity for federal income tax purposes; and
27 (v) to the extent included in Subsection

1 (c)(2)(A), other amounts authorized by this section; or

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

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

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

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

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

23 (2) taxes collected from a third party by the taxable
24 entity and remitted by the taxable entity to a taxing authority.

25 (g) A taxable entity shall exclude from its total revenue,
26 to the extent included under Subsection (c)(1)(A), (c)(2)(A), or
27 (c)(3), only the following flow-through funds that are mandated by

1 contract to be distributed to other entities:

2 (1) sales commissions to nonemployees, including
3 split-fee real estate commissions;

4 (2) the tax basis as determined under the Internal
5 Revenue Code of securities underwritten; and

6 (3) subcontracting payments handled by the taxable
7 entity to provide services, labor, or materials in connection with
8 the actual or proposed design, construction, or repair of
9 improvements on real property or the location of the boundaries of
10 real property.

11 (g-1) A taxable entity that is a lending institution shall
12 exclude from its total revenue, to the extent included under
13 Subsection (c)(1)(A), (c)(2)(A), or (c)(3):

14 (1) proceeds from the principal repayment of loans;
15 and

16 (2) the tax basis as determined under the Internal
17 Revenue Code of securities and loans sold.

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)(1):

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) compensation paid to a sales representative
13 by a principal in an amount that is based on the amount or level of
14 certain orders for or sales of the principal's product and that the
15 principal is required to report on Internal Revenue Service Form
16 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 taxes paid in relation to services that are a

1 direct cost of production;

2 (12) the cost of producing or acquiring electricity
3 sold; and

4 (13) a contribution to a partnership in which the
5 taxable entity owns an interest that is used to fund activities, the
6 costs of which would otherwise be treated as cost of goods sold of
7 the partnership, but only to the extent that those costs are related
8 to goods distributed to the taxable entity as goods-in-kind in the
9 ordinary course of production activities rather than being sold.

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

13 (1) deterioration of the goods;

14 (2) obsolescence of the goods;

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

17 (4) if the property is held for future production,
18 preproduction direct costs allocable to the property, including
19 costs of purchasing the goods and of storage and handling the goods,
20 as provided by Subsections (c)(4) and (c)(5);

21 (5) postproduction direct costs allocable to the
22 property, including storage and handling costs, as provided by
23 Subsections (c)(4) and (c)(5);

24 (6) the cost of insurance on a plant or a facility,
25 machinery, equipment, or materials directly used in the production
26 of the goods;

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

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

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

5 (10) licensing or franchise costs, including fees
6 incurred in securing the contractual right to use a trademark,
7 corporate plan, manufacturing procedure, special recipe, or other
8 similar right directly associated with the goods produced.

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

11 (1) the cost of renting or leasing equipment,
12 facilities, or real property that is not used for the production of
13 the goods;

14 (2) selling costs, including employee expenses
15 related to sales;

16 (3) distribution costs, including outbound
17 transportation costs;

18 (4) advertising costs;

19 (5) idle facility expense;

20 (6) rehandling costs;

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

23 (8) unsuccessful bidding costs, which are the costs
24 incurred in the solicitation of contracts not awarded to the
25 taxable entity;

26 (9) interest, including interest on debt incurred or
27 continued during the production period to finance the production of

1 the goods;

2 (10) income taxes, including local, state, federal,
3 and foreign income taxes, and franchise taxes that are assessed on
4 the taxable entity based on income;

5 (11) strike expenses, including costs associated with
6 hiring employees to replace striking personnel, but not including
7 the wages of the replacement personnel, costs of security, and
8 legal fees associated with settling strikes; and

9 (12) officers' compensation.

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

21 (g) A taxable entity that is allowed a subtraction by this
22 section for a cost of goods sold and that is subject to Section
23 263A, 460, or 471, Internal Revenue Code, shall capitalize that
24 cost in the same manner and to the same extent that the taxable
25 entity is required or allowed to capitalize the cost under federal
26 law and regulations, except for costs excluded under Subsection
27 (e), or in accordance with Subsections (c), (d), and (f).

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

6 (i) A taxable entity may make a subtraction under this
7 section in relation to the cost of goods sold only if that entity
8 owns the goods. The determination of whether a taxable entity is an
9 owner is based on all of the facts and circumstances, including the
10 various benefits and burdens of ownership vested with the taxable
11 entity.

12 (j) A taxable entity may not make a subtraction under this
13 section for cost of goods sold to the extent the cost of goods sold
14 was funded by partner contributions and deducted under Subsection
15 (c)(13).

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

21 (l) Notwithstanding any other provision of this section, a
22 payment made by one member of an affiliated group to another member
23 of that affiliated group not included in the combined group may be
24 subtracted as a cost of goods sold only if it is a transaction made
25 at arm's length.

26 (m) In this section, "arm's length" means the standard of
27 conduct under which entities that are not related parties and that

1 have substantially equal bargaining power, each acting in its own
2 interest, would negotiate or carry out a particular transaction.

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

11 Sec. 171.1013. DETERMINATION OF COMPENSATION. (a) Except
12 as otherwise provided by this section, "wages and cash
13 compensation" means the amount entered in the Medicare wages and
14 tips box of Internal Revenue Service Form W-2 or any subsequent form
15 with a different number or designation that substantially provides
16 the same information. The term includes:

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

21 (2) stock awards and stock options expensed for
22 federal income tax purposes.

23 (b) Subject to Section 171.1014, a taxable entity that
24 elects to subtract compensation for the purpose of computing its
25 taxable margin under Section 171.101 may subtract an amount equal
26 to:

27 (1) subject to the limitation in Subsection (c), all

1 wages and cash compensation paid by the taxable entity to its
2 officers, directors, owners, partners, and employees; and

3 (2) the cost of all benefits the taxable entity
4 provides to its officers, directors, owners, partners, and
5 employees, including workers' compensation benefits, health care,
6 and retirement to the extent deductible for federal income tax
7 purposes.

8 (c) Notwithstanding the actual amount of wages and cash
9 compensation paid by a taxable entity to its officers, directors,
10 owners, partners, and employees, a taxable entity may not include
11 more than \$300,000, or the amount determined under Section 171.006,
12 for any person in the amount of wages and cash compensation it
13 determines under Section 171.101.

14 (d) A taxable entity that is a staff leasing services
15 company:

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

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

21 (e) Subject to the other provisions of this section, in
22 determining compensation, a taxable entity that is a client company
23 that contracts with a staff leasing services company for assigned
24 employees:

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

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

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

6 Sec. 171.1014. COMBINED REPORTING; AFFILIATED GROUP
7 ENGAGED IN UNITARY BUSINESS. (a) Taxable entities that are part of
8 an affiliated group engaged in a unitary business shall file a
9 combined group report in lieu of individual reports based on the
10 combined group's business. The combined group may not include a
11 taxable entity that conducts business outside the United States if
12 80 percent or more of the taxable entity's property and payroll, as
13 determined by factoring under Chapter 141, are assigned to
14 locations outside the United States. In applying Chapter 141, if
15 either the property factor or the payroll factor is zero, the
16 denominator is one. The combined group may not include a taxable
17 entity that conducts business outside the United States and has no
18 property or payroll if 80 percent or more of the taxable entity's
19 gross receipts, as determined under Sections 171.103, 171.105, and
20 171.1055, are assigned to locations outside the United States.

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

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

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

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

3 (3) subtracting, to the extent included under Section
4 171.1011(c)(1)(A), (c)(2)(A), or (c)(3), items of total revenue
5 received from a member of the combined group.

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

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

12 (1) determining the cost of goods sold for each of its
13 members as provided by Section 171.1012 as if the member were an
14 individual taxable entity;

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

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

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

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

27 (2) adding the amounts of compensation determined

1 under Subdivision (1) together; and

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

7 (g) A combined group may elect to include in the combined
8 group an exempt entity that would be included in the group if the
9 entity were not exempt and to treat the exempt entity as if it were a
10 taxable entity.

11 ~~[Sec. 171.102. DETERMINATION OF TAXABLE CAPITAL OF~~
12 ~~CORPORATION IN PROCESS OF LIQUIDATION. (a) "Corporation in the~~
13 ~~process of liquidation" means a corporation that:~~

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

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

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

23 ~~[(b) The taxable capital of a corporation in the process of~~
24 ~~liquidation is the difference between the amount of the~~
25 ~~corporation's stock issued and the amount of the liquidating~~
26 ~~dividends paid on the stock.~~

27 ~~[(c) The president and the secretary of the corporation~~

1 shall file an affidavit with the comptroller containing information
2 about the amount of liquidating dividends paid and a statement that
3 the corporation is in the process of liquidation. The plan
4 described by Subsection (a) of this section for the corporation's
5 liquidation shall be attached to and be a part of the affidavit.

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

8 Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS
9 DONE IN THIS STATE FOR MARGIN ~~[TAXABLE CAPITAL]~~. (a) Subject to
10 Section 171.1055, in ~~[In]~~ apportioning margin ~~[taxable capital]~~,
11 the gross receipts of a taxable entity ~~[corporation]~~ from its
12 business done in this state is the sum of the taxable entity's
13 ~~[corporation's]~~ receipts from:

14 ~~[(1) each sale of tangible personal property if the
15 property is delivered or shipped to a buyer in this state regardless
16 of the FOB point or another condition of the sale, and each sale of
17 tangible personal property shipped from this state to a purchaser
18 in another state in which the seller is not subject to taxation,~~

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

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

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

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

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

26 ~~[Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM
27 BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS. (a) Except~~

1 ~~for the gross receipts of a corporation that are subject to the~~
2 ~~provisions of Section 171.1061, in apportioning taxable earned~~
3 ~~surplus, the gross receipts of a corporation from its business done~~
4 ~~in this state is the sum of the corporation's receipts from:]~~

5 (1) each sale of tangible personal property if the
6 property is delivered or shipped to a buyer in this state regardless
7 of the FOB point or another condition of the sale~~[, and each sale of~~
8 ~~tangible personal property shipped from this state to a purchaser~~
9 ~~in another state in which the seller is not subject to any tax on, or~~
10 ~~measured by, net income, without regard to whether the tax is~~
11 ~~imposed];~~

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

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

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

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

20 (6) ~~[each partnership or joint venture to the extent~~
21 ~~provided by Subsection (c), and~~

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

23 (b) A combined group shall include in its gross receipts
24 computed under Subsection (a) the gross receipts of each taxable
25 entity that is a member of the combined group and that has a nexus
26 with this state for the purpose of taxation. ~~[A corporation shall~~
27 ~~deduct from its gross receipts computed under Subsection (a) any~~

1 amount to the extent included under Subsection (a) because of the
2 application of Section 78 or Sections 951-964, Internal Revenue
3 Code, any amount excludable under Section 171.110(k), and dividends
4 received from a subsidiary, associate, or affiliated corporation
5 that does not transact a substantial portion of its business or
6 regularly maintain a substantial portion of its assets in the
7 United States.

8 [~~(c) A corporation shall include in its gross receipts
9 computed under Subsection (a) the corporation's share of the gross
10 receipts of each partnership and joint venture of which the
11 corporation is a part apportioned to this state as though the
12 corporation directly earned the receipts, including receipts from
13 business done with the corporation.~~

14 [~~Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS.
15 DEDUCTION FOR FOOD AND MEDICINE RECEIPTS. A corporation may deduct
16 from its receipts includable under Section 171.103(1) of this code
17 the amount of the corporation's receipts from sales of the
18 following items, if the items are shipped from outside this state
19 and the receipts would be includable under Section 171.103(1) of
20 this code in the absence of this section.~~

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

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

26 Sec. 171.105. [~~DETERMINATION OF GROSS RECEIPTS FROM ENTIRE
27 BUSINESS FOR TAXABLE CAPITAL. (a) In apportioning taxable~~

1 capital, the gross receipts of a corporation from its entire
2 business is the sum of the corporation's receipts from:

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

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

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

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

10 ~~[Sec. 171.1051.] DETERMINATION OF GROSS RECEIPTS FROM~~
11 ~~ENTIRE BUSINESS FOR MARGIN [TAXABLE EARNED SURPLUS]. (a) Subject~~
12 ~~to Section 171.1055 [Except for the gross receipts of a corporation~~
13 ~~that are subject to the provisions of Section 171.1061], in~~
14 ~~apportioning margin [taxable earned surplus], the gross receipts of~~
15 ~~a taxable entity [corporation] from its entire business is the sum~~
16 ~~of the taxable entity's [corporation's] receipts from:~~

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

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

20 (3) ~~[each partnership and joint venture as provided by~~
21 ~~Subsection (d), and~~

22 ~~[(4)] other business.~~

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

27 (c) A combined group shall include in its gross receipts

1 computed under Subsection (a) the gross receipts of each taxable
2 entity that is a member of the combined group, without regard to
3 whether that entity has a nexus with this state for the purpose of
4 taxation.

5 Sec. 171.1055. EXCLUSION OF CERTAIN RECEIPTS FOR MARGIN.

6 In apportioning margin, receipts excluded from total revenue by a
7 taxable entity under Section 171.1011 or 171.1014(c)(3) may not be
8 included in either:

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

11 (2) the receipts of the taxable entity from its entire
12 business done under Section 171.105. [~~A corporation shall deduct~~
13 ~~from its gross receipts computed under Subsection (a) any amount to~~
14 ~~the extent included in Subsection (a) because of the application of~~
15 ~~Section 78 or Sections 951-964, Internal Revenue Code, any amount~~
16 ~~excludable under Section 171.110(k), and dividends received from a~~
17 ~~subsidiary, associate, or affiliated corporation that does not~~
18 ~~transact a substantial portion of its business or regularly~~
19 ~~maintain a substantial portion of its assets in the United States.~~

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

24 Sec. 171.106. APPORTIONMENT OF MARGIN [~~TAXABLE CAPITAL AND~~
25 ~~TAXABLE EARNED SURPLUS]~~ TO THIS STATE. (a) [~~Except as provided by~~
26 ~~Subsections (c) and (d), a corporation's taxable capital is~~
27 ~~apportioned to this state to determine the amount of the tax imposed~~

1 under Section 171.002(b)(1) by multiplying the corporation's
2 taxable capital by a fraction, the numerator of which is the
3 corporation's gross receipts from business done in this state, as
4 determined under Section 171.103, and the denominator of which is
5 the corporation's gross receipts from its entire business, as
6 determined under Section 171.105.

7 ~~[(b)]~~ Except as provided by this section [~~Subsections (c)~~
8 ~~and (d)]~~, a taxable entity's margin [~~corporation's taxable earned~~
9 ~~surplus~~] is apportioned to this state to determine the amount of tax
10 imposed under Section 171.002 [~~171.002(b)(2)~~] by multiplying the
11 margin [~~taxable earned surplus~~] by a fraction, the numerator of
12 which is the taxable entity's [~~corporation's~~] gross receipts from
13 business done in this state, as determined under Section 171.103
14 [~~171.1032~~], and the denominator of which is the taxable entity's
15 [~~corporation's~~] gross receipts from its entire business, as
16 determined under Section 171.105 [~~171.1051~~].

17 (b) [~~(c)~~] A taxable entity's margin [~~corporation's taxable~~
18 ~~capital or earned surplus~~] that is derived, directly or indirectly,
19 from the sale of management, distribution, or administration
20 services to or on behalf of a regulated investment company,
21 including a taxable entity [~~corporation~~] that includes trustees or
22 sponsors of employee benefit plans that have accounts in a
23 regulated investment company, is apportioned to this state to
24 determine the amount of the tax imposed under Section 171.002 by
25 multiplying the taxable entity's [~~corporation's~~] total margin
26 [~~taxable capital or earned surplus~~] from the sale of services to or
27 on behalf of a regulated investment company by a fraction, the

1 numerator of which is the average of the sum of shares owned at the
2 beginning of the year and the sum of shares owned at the end of the
3 year by the investment company shareholders who are commercially
4 domiciled in this state or, if the shareholders are individuals,
5 are residents of this state, and the denominator of which is the
6 average of the sum of shares owned at the beginning of the year and
7 the sum of shares owned at the end of the year by all investment
8 company shareholders. [~~The corporation shall make a separate~~
9 ~~computation to allocate taxable capital and earned surplus.~~] In
10 this subsection, "regulated investment company" has the meaning
11 assigned by Section 851(a), Internal Revenue Code.

12 (c) [~~(d)~~] A taxable entity's margin [~~corporation's taxable~~
13 ~~capital or taxable earned surplus~~] that is derived, directly or
14 indirectly, from the sale of management, administration, or
15 investment services to an employee retirement plan is apportioned
16 to this state to determine the amount of the tax imposed under
17 Section 171.002 by multiplying the taxable entity's [~~corporation's~~
18 total margin [~~taxable capital or earned surplus~~] from the sale of
19 services to an employee retirement plan company by a fraction, the
20 numerator of which is the average of the sum of beneficiaries
21 domiciled in Texas at the beginning of the year and the sum of
22 beneficiaries domiciled in Texas at the end of the year, and the
23 denominator of which is the average of the sum of all beneficiaries
24 at the beginning of the year and the sum of all beneficiaries at the
25 end of the year. [~~The corporation shall make a separate computation~~
26 ~~to apportion taxable capital and earned surplus.~~] In this section,
27 "employee retirement plan" means a plan or other arrangement that

1 is qualified under Section 401(a), Internal Revenue Code, or
2 satisfies the requirements of Section 403, Internal Revenue Code,
3 or a government plan described in Section 414(d), Internal Revenue
4 Code. The term does not include an individual retirement account or
5 individual retirement annuity within the meaning of Section 408,
6 Internal Revenue Code.

7 ~~(d) [(c) On or before January 1, 1998, each entity~~
8 ~~registered with the State Securities Board under The Securities Act~~
9 ~~(Article 581, Vernon's Texas Civil Statutes) that provides~~
10 ~~management, administration, or investment services to an employee~~
11 ~~retirement plan, must file a report with the comptroller containing~~
12 ~~such information as the comptroller deems necessary in order to~~
13 ~~determine the fiscal impact of Subsection (d). The State~~
14 ~~Securities Board and the Securities Commissioner shall cooperate~~
15 ~~with the comptroller in obtaining the information. The Securities~~
16 ~~Commissioner shall impose the penalties provided in The Securities~~
17 ~~Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) against~~
18 ~~any entity that the comptroller certifies is delinquent in the~~
19 ~~filing of the report required by this section.~~

20 ~~[(f) On or before September 1, 1998, the comptroller shall~~
21 ~~issue a report which evaluates the statewide fiscal impact of~~
22 ~~Subsection (d). If the comptroller determines that implementing~~
23 ~~Subsection (d) will not have a negative fiscal impact on this state,~~
24 ~~Subsection (d) shall be effective for reports or returns originally~~
25 ~~due on or after January 1, 1999. If the comptroller determines that~~
26 ~~there will be a negative fiscal impact, that subsection shall not be~~
27 ~~implemented.~~

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

5 ~~[(h)]~~ A banking corporation shall exclude from the
6 numerator of the bank's apportionment factor interest earned on
7 federal funds and interest earned on securities sold under an
8 agreement to repurchase that are held in this state in a
9 correspondent bank that is domiciled in this state. In this
10 subsection, "correspondent" has the meaning assigned by 12 C.F.R.
11 Section 206.2(c).

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

15 ~~[Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED~~
16 ~~SURPLUS TO THIS STATE. An item of income included in a~~
17 ~~corporation's taxable earned surplus, except that portion derived~~
18 ~~from dividends and interest, that a state, other than this state, or~~
19 ~~a country, other than the United States, cannot tax because the~~
20 ~~activities generating that item of income do not have sufficient~~
21 ~~unitary connection with the corporation's other activities~~
22 ~~conducted within that state or country under the United States~~
23 ~~Constitution, is allocated to this state if the corporation's~~
24 ~~commercial domicile is in this state. Income that can only be~~
25 ~~allocated to the state of commercial domicile because the income~~
26 ~~has insufficient unitary connection with any other state or country~~
27 ~~shall be allocated to this state or another state or country net of~~

1 ~~expenses related to that income. A portion of a corporation's~~
2 ~~taxable earned surplus allocated to this state under this section~~
3 ~~may not be apportioned under Section 171.110(a)(2).]~~

4 Sec. 171.107. DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM
5 MARGIN [~~TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS~~] APPORTIONED TO
6 THIS STATE. (a) In this section, "solar energy device" means a
7 system or series of mechanisms designed primarily to provide
8 heating or cooling or to produce electrical or mechanical power by
9 collecting and transferring solar-generated energy. The term
10 includes a mechanical or chemical device that has the ability to
11 store solar-generated energy for use in heating or cooling or in the
12 production of power.

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

17 (1) the device is acquired by the taxable entity
18 [~~corporation~~] for heating or cooling or for the production of
19 power;

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

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

24 (c) The amortization of the cost of a solar energy device
25 must:

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

27 (2) provide for equal monthly amounts;

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

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

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

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

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

20 (b) A taxable entity [~~corporation~~] may deduct from its
21 apportioned margin [~~taxable capital the amortized cost of equipment~~
22 ~~or from its apportioned taxable earned surplus~~] 10 percent of the
23 amortized cost of equipment:

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

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

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

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

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

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

8 (2) provide for equal monthly amounts;

9 (3) begin in the month during which the equipment is
10 placed in service in this state; and

11 (4) cover only a period during which the equipment is
12 used in this state.

13 (d) A taxable entity [~~corporation~~] that makes a deduction
14 under this section shall file with the comptroller an amortization
15 schedule showing the period for which the deduction is to be made.
16 On the request of the comptroller, the taxable entity [~~corporation~~]
17 shall file with the comptroller proof of the cost of the equipment
18 or proof of the equipment's operation in this state.

19 ~~[(c) A corporation may elect to make the deduction~~
20 ~~authorized by this section from apportioned taxable capital or~~
21 ~~apportioned taxable earned surplus, but not from both, for each~~
22 ~~separate regular annual period. An election for an initial period~~
23 ~~applies to the second tax period and to the first regular annual~~
24 ~~period.~~

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

26 ~~[(1) "Surplus" means the net assets of a corporation~~
27 ~~minus its stated capital. For a limited liability company,~~

1 ~~"surplus" means the net assets of the company minus its members'~~
2 ~~contributions. Surplus includes unrealized, estimated, or~~
3 ~~contingent losses or obligations or any writedown of assets other~~
4 ~~than those listed in Subsection (i) of this section net of~~
5 ~~appropriate income tax provisions. The definition under this~~
6 ~~subdivision does not apply to earned surplus.~~

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

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

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

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

1 ~~rules to specify the applicable accounting practice for that~~
2 ~~purpose.~~

3 ~~[(c) A corporation whose taxable capital is less than \$1~~
4 ~~million may report its surplus according to the method used in the~~
5 ~~corporation's most recent federal income tax return originally due~~
6 ~~on or before the date on which the corporation's franchise tax~~
7 ~~report is originally due. In determining if taxable capital is less~~
8 ~~than \$1 million, the corporation shall apply the methods the~~
9 ~~corporation used in computing that federal income tax return unless~~
10 ~~another method is required under this chapter.~~

11 ~~[(d) A corporation shall report its surplus based solely on~~
12 ~~its own financial condition. Consolidated reporting of surplus is~~
13 ~~prohibited.~~

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

20 ~~[(f) A corporation declaring dividends shall exclude those~~
21 ~~dividends from its taxable capital, and a corporation receiving~~
22 ~~dividends shall include those dividends in its gross receipts and~~
23 ~~taxable capital as of the earlier of:~~

24 ~~[(1) the date the dividends are declared, if the~~
25 ~~dividends are actually paid within one year after the declaration~~
26 ~~date, or~~

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

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

6 ~~[(h) A parent or investor corporation must use the cost~~
7 ~~method of accounting in reporting and calculating the franchise tax~~
8 ~~on its investments in subsidiary corporations or other investees.~~
9 ~~The retained earnings of a subsidiary corporation or other investee~~
10 ~~before acquisition by the parent or investor corporation may not be~~
11 ~~excluded from the cost of the subsidiary corporation or investee to~~
12 ~~the parent or investor corporation and must be included by the~~
13 ~~parent or investor corporation in calculating its surplus.~~

14 ~~[(i) The following accounts may also be excluded from~~
15 ~~surplus, to the extent they are in conformance with generally~~
16 ~~accepted accounting principles or the appropriate federal income~~
17 ~~tax method, whichever is applicable.~~

18 ~~[(1) a reserve or allowance for uncollectable~~
19 ~~accounts, and~~

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

22 ~~[(j) A corporation may not exclude from surplus.~~

23 ~~[(1) liabilities for compensation and other benefits~~
24 ~~provided to employees, other than wages, that are not debt as of the~~
25 ~~end of the accounting period on which the taxable capital component~~
26 ~~is based, including retirement, medical, insurance,~~
27 ~~postretirement, and other similar benefits, and~~

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

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

6 ~~[(l) The "first in-first out" and "last in-first out"~~
7 ~~methods of accounting are acceptable methods for computing surplus.~~

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

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

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

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

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

26 ~~[(2) apportioning the corporation's taxable earned~~
27 ~~surplus to this state as provided by Section 171.106(b) or (c), as~~

1 ~~applicable, to determine the corporation's apportioned taxable~~
2 ~~earned surplus;~~

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

5 ~~[(4) subtracting from that amount any allowable~~
6 ~~deductions and any business loss that is carried forward to the tax~~
7 ~~reporting period and deductible under Subsection (e).]~~

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

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

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

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

24 ~~[(d) A corporation's reportable federal taxable income is~~
25 ~~the corporation's federal taxable income after Schedule C special~~
26 ~~deductions and before net operating loss deductions as computed~~
27 ~~under the Internal Revenue Code, except that an S corporation's~~

1 ~~reportable federal taxable income is the amount of the income~~
2 ~~reportable to the Internal Revenue Service as taxable to the~~
3 ~~corporation's shareholders.~~

4 ~~[(e) For purposes of this section, a business loss is any~~
5 ~~negative amount after apportionment and allocation. The business~~
6 ~~loss shall be carried forward to the year succeeding the loss year~~
7 ~~as a deduction to net taxable earned surplus, then successively to~~
8 ~~the succeeding four taxable years after the loss year or until the~~
9 ~~loss is exhausted, whichever occurs first, but for not more than~~
10 ~~five taxable years after the loss year. Notwithstanding the~~
11 ~~preceding sentence, a business loss from a tax year that ends before~~
12 ~~January 1, 1991, may not be used to reduce net taxable earned~~
13 ~~surplus. A business loss can be carried forward only by the~~
14 ~~corporation that incurred the loss and cannot be transferred to or~~
15 ~~claimed by any other entity, including the survivor of a merger if~~
16 ~~the loss was incurred by the corporation that did not survive the~~
17 ~~merger.~~

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

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

27 ~~[(h) A corporation shall report its net taxable earned~~

1 ~~surplus based solely on its own financial condition. Consolidated~~
2 ~~reporting is prohibited.~~

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

5 ~~[(1) holds an office created by the board of directors~~
6 ~~or under the corporate charter or bylaws; and~~

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

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

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

17 ~~[(l) In this section:~~

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

19 ~~[(A) stocks and other direct obligations of, and~~
20 ~~obligations unconditionally guaranteed by, the United States~~
21 ~~government and United States government agencies; and~~

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

24 ~~[(2) "Obligation" means any bond, debenture,~~
25 ~~security, mortgage-backed security, pass-through certificate, or~~
26 ~~other evidence of indebtedness of the issuing entity. The term does~~
27 ~~not include a deposit, a repurchase agreement, a loan, a lease, a~~

1 ~~participation in a loan or pool of loans, a loan collateralized by~~
2 ~~an obligation of a United States government agency, or a loan~~
3 ~~guaranteed by a United States government agency.~~

4 ~~[(3) "United States government" means any department~~
5 ~~or ministry of the federal government, including a federal reserve~~
6 ~~bank. The term does not include a state or local government, a~~
7 ~~commercial enterprise owned wholly or partly by the United States~~
8 ~~government, or a local governmental entity or commercial enterprise~~
9 ~~whose obligations are guaranteed by the United States government.~~

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

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

1 Association, and any successor agency.

2 ~~[Sec. 171.111. TEMPORARY CREDIT ON NET TAXABLE EARNED~~
3 ~~SURPLUS. (a) Not later than March 1, 1992, a corporation may~~
4 ~~notify the comptroller in writing of its intent to preserve its~~
5 ~~right to take a credit in an amount allowed by this section on the~~
6 ~~tax due on net taxable earned surplus. The comptroller may not~~
7 ~~grant an extension. The corporation may thereafter elect to claim~~
8 ~~the credit for the current year and future year at or before the~~
9 ~~original due date of any report due after January 1, 1992, until the~~
10 ~~corporation revokes the election or this section expires, whichever~~
11 ~~is earlier. A corporation may claim the credit for not more than 20~~
12 ~~consecutive privilege periods beginning with the first report due~~
13 ~~under this chapter after January 1, 1992. A corporation may make~~
14 ~~only one election under this section and the election may not be~~
15 ~~conveyed, assigned, or transferred to another entity.~~

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

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

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

27 ~~[(3) multiplying the amount determined under~~

1 ~~Subdivision (2) by five percent, and~~

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

5 ~~[(c) In computing the amount under Subsection (b)(1), the~~
6 ~~corporation may not consider differences that result from deferred~~
7 ~~investment tax credits, allowances for funds used during~~
8 ~~construction, or any other timing difference for which a deferred~~
9 ~~tax liability is not required under generally accepted accounting~~
10 ~~principles.]~~

11 ~~[(d) After making the election under Subsection (a) the~~
12 ~~corporation must, for purposes of computing its taxable capital~~
13 ~~under this chapter, use the same accounting methods under generally~~
14 ~~accepted accounting principles to account for the assets and~~
15 ~~liabilities that determine the amount of the credit that the~~
16 ~~corporation uses to compute the credit. Notwithstanding Section~~
17 ~~171.109(c), if a corporation changes an accounting method for an~~
18 ~~asset or liability that determines, in whole or in part, the amount~~
19 ~~of the credit during the period the election is in effect, the~~
20 ~~election is automatically revoked.]~~

21 ~~[(e) A corporation that notifies the comptroller of its~~
22 ~~intent to preserve its right to take a credit allowed by this~~
23 ~~section shall submit with its notice of intent a statement of the~~
24 ~~amount determined under Subsection (b)(1). The comptroller may~~
25 ~~request that the corporation submit in the annual report for each~~
26 ~~succeeding privilege period in which the corporation is eligible to~~
27 ~~take a credit information relating to the amount determined under~~

1 ~~Subsection (b)(1). The corporation shall submit in the form and~~
2 ~~content the comptroller requires any information relating to the~~
3 ~~assets and liabilities that determine the amount of the credit, the~~
4 ~~amount determined under Subsection (b)(1), or any other matter~~
5 ~~relevant to the computation of the credit for which the corporation~~
6 ~~is eligible.~~

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

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

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

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

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

25 ~~[(b) Except as otherwise provided in this section, a~~
26 ~~corporation must compute gross receipts in accordance with~~
27 ~~generally accepted accounting principles. If generally accepted~~

1 ~~accounting principles are unsettled or do not specify an accounting~~
2 ~~practice for a particular purpose related to the computation of~~
3 ~~gross receipts, the comptroller by rule may establish rules to~~
4 ~~specify the applicable accounting practice.~~

5 ~~[(c) A corporation whose taxable capital is less than \$1~~
6 ~~million may report its gross receipts according to the method used~~
7 ~~in the corporation's most recent federal income tax return~~
8 ~~originally due on or before the date on which the corporation's~~
9 ~~franchise tax report is originally due. In determining if taxable~~
10 ~~capital is less than \$1 million, the corporation shall apply the~~
11 ~~methods the corporation used in computing that federal income tax~~
12 ~~return unless another method is required under this chapter.~~

13 ~~[(d) A corporation shall report its gross receipts based~~
14 ~~solely on its own financial condition. Consolidated reporting is~~
15 ~~prohibited.~~

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

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

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

27 ~~[(h) Except as otherwise provided by this section, a~~

1 ~~corporation shall use the same accounting methods to apportion its~~
2 ~~taxable capital as it used to compute its taxable capital.]~~

3 Sec. 171.1121. GROSS RECEIPTS FOR MARGIN [~~TAXABLE EARNED~~
4 ~~SURPLUS~~]. (a) For purposes of this section, "gross receipts" means
5 all revenues reportable by a taxable entity [~~corporation~~] on its
6 federal tax return, without deduction for the cost of property
7 sold, materials used, labor performed, or other costs incurred,
8 unless otherwise specifically provided in this chapter. [~~"Gross~~
9 ~~receipts" does not include revenues that are not included in~~
10 ~~taxable earned surplus. For example, Schedule C special deductions~~
11 ~~and any amounts subtracted from reportable federal taxable income~~
12 ~~under Section 171.110(a)(1) are not included in taxable earned~~
13 ~~surplus and therefore are not considered gross receipts.]~~

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

18 (c) A taxable entity [~~A corporation shall report its gross~~
19 ~~receipts based solely on its own financial condition. Consolidated~~
20 ~~reporting is prohibited.~~

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

27 [~~(e) A corporation's share of a partnership's gross receipts~~

1 ~~that is included in the corporation's federal taxable income must~~
2 ~~be used in computing the corporation's gross receipts under this~~
3 ~~section. Unless otherwise provided by this chapter, a corporation~~
4 ~~may not deduct costs incurred from the corporation's share of a~~
5 ~~partnership's gross receipts. The gross receipts must be~~
6 ~~apportioned as though the corporation directly earned them.~~

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

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

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

16 ~~[(3) an S corporation as that term is defined by~~
17 ~~Section 1361, Internal Revenue Code of 1986 (26 U.S.C. Section~~
18 ~~1361).~~

19 ~~[(b) A corporation to which this section applies may elect~~
20 ~~to compute its surplus, assets, debts, and gross receipts according~~
21 ~~to the method the corporation uses to report its federal income tax~~
22 ~~instead of as provided by Sections 171.109(b) and (g) and Section~~
23 ~~171.112(b). This section does not affect the application of the~~
24 ~~other subsections of Sections 171.109 and 171.112 and other~~
25 ~~provisions of this chapter to a corporation making the election.~~

26 ~~[(c) The comptroller may adopt rules as necessary to specify~~
27 ~~the reporting requirements for corporations to which this section~~

1 ~~applies.~~

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

4 ~~[(e) The election under Subsection (b) becomes effective~~
5 ~~when written notice of the election is received by the comptroller~~
6 ~~from the corporation. An election under Subsection (b) must be~~
7 ~~postmarked not later than the due date for the electing~~
8 ~~corporation's franchise tax report to which the election applies.]~~

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

11 SUBCHAPTER D. PAYMENT OF TAX

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

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

17 (2) a second period beginning on the first anniversary
18 of the beginning date and ending on December 31 following that date;
19 and

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

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

27 (b) Payment of the tax covering the second period is due on

1 the same date as the tax covering the initial period.

2 (c) Payment of the tax covering the regular annual period is
3 due May 15, of each year after the beginning of the regular annual
4 period. However, if the first anniversary of the taxable entity's
5 [~~corporation's~~] beginning date is after October 3 and before
6 January 1, the payment of the tax covering the first regular annual
7 period is due on the same date as the tax covering the initial
8 period.

9 [~~Sec. 171.153. BUSINESS ON WHICH TAX ON NET TAXABLE CAPITAL~~
10 ~~IS BASED. (a) The tax covering the initial period is reported on~~
11 ~~the initial report and is based on the business done by the~~
12 ~~corporation during the period beginning on the corporation's~~
13 ~~beginning date and:~~

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

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

21 [~~(3) ending on the day after the merger occurs, for the~~
22 ~~survivor of a merger which occurs after the day on which the tax is~~
23 ~~based in Subdivision (1) or Subdivision (2), whichever is~~
24 ~~applicable, of Subsection (a) and before January 1, of the year an~~
25 ~~initial report is due by the survivor.~~

26 [~~(b) The tax covering the second period is reported on the~~
27 ~~initial report and is based on the same business on which the tax~~

1 ~~covering the initial period is based and is to be prorated based on~~
2 ~~the length of the second period.~~

3 ~~[(c) The tax covering the regular annual period is based on~~
4 ~~the business done by the corporation during its last accounting~~
5 ~~period that ends in the year before the year in which the tax is due,~~
6 ~~unless a corporation is the survivor of a merger which occurs~~
7 ~~between the end of its last accounting period in the year before the~~
8 ~~report year and January 1 of the report year, in which case the tax~~
9 ~~will be based on the financial condition of the surviving~~
10 ~~corporation for the 12-month period ending on the day after the~~
11 ~~merger. However, if the first anniversary of the corporation's~~
12 ~~beginning date is after October 3 and before January 1, the tax~~
13 ~~covering the first regular annual period is based on the same~~
14 ~~business on which the tax covering the initial period is based and~~
15 ~~is reported on the initial report.~~

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

21 ~~[(b) The survivor of a merger is entitled to a credit~~
22 ~~against the tax computed on its net taxable capital under Section~~
23 ~~171.002(b)(1) in the amount of the franchise tax computed on net~~
24 ~~taxable capital paid by the nonsurvivors for the credit period,~~
25 ~~provided the tax computed on net taxable capital paid by the~~
26 ~~survivor for the credit period is based on the survivor's financial~~
27 ~~condition after the merger. Only a survivor that is subject to the~~

1 ~~franchise tax is entitled to the merger credit. The merger credit~~
2 ~~shall be allocated among survivors based on net taxable capital~~
3 ~~reported, and as provided by Section 171.153.~~

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

7 Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE MARGIN
8 ~~[EARNED SURPLUS]~~ IS BASED. (a) The tax covering the privilege
9 periods included on the initial report~~[, as required by Section~~
10 ~~171.153,]~~ is based on the business done by the taxable entity
11 ~~[corporation]~~ during the period beginning on the taxable entity's
12 ~~[corporation's]~~ beginning date and:

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

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

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

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

4 Sec. 171.158. PAYMENT BY FOREIGN TAXABLE ENTITY
5 [~~CORPORATION~~] BEFORE WITHDRAWAL FROM STATE. (a) Except as
6 provided by Subsection (b) [~~of this section~~], a foreign taxable
7 entity [~~corporation~~] holding a registration or certificate of
8 authority to do business in this state may withdraw from doing
9 business in this state by filing a certificate of withdrawal with
10 the secretary of state. The secretary of state shall file the
11 certificate of withdrawal as provided by law.

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

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

18 SUBCHAPTER E. REPORTS AND RECORDS

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

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

27 (2) the name and address of:

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

3 (B) for a limited partnership, each general
4 partner;

5 (C) for a general partnership or limited
6 liability partnership, each managing partner or, if there is not a
7 managing partner, each partner; or

8 (D) for a trust, each trustee;

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

11 (4) other information required by the comptroller.

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

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

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

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

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

25 (4) other information required by the comptroller.

26 (b) The taxable entity ~~[corporation]~~ shall file the report
27 before May 16 of each year after the beginning of the regular annual

1 period. The report shall be filed on forms supplied by the
2 comptroller.

3 (c) The comptroller shall grant an extension of time to a
4 taxable entity [~~corporation~~] that is not required by rule to make
5 its tax payments by electronic funds transfer for the filing of a
6 report required by this section to any date on or before the next
7 November 15, if a taxable entity [~~corporation~~]:

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

10 (2) remits with the request:

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

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

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

19 [~~(1)~~] an amount produced by multiplying the [~~net~~]
20 taxable margin [~~capital~~], as reported on the initial report filed
21 on or before May 14, by the rate of tax in Section 171.002
22 [~~171.002(a)(1)~~] that is effective January 1 of the year in which the
23 report is due[, ~~or~~

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

1 (e) The comptroller shall grant an extension of time for the
2 filing of a report required by this section by a taxable entity
3 [~~corporation~~] required by rule to make its tax payments by
4 electronic funds transfer to any date on or before the next August
5 15, if the taxable entity [~~corporation~~]:

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

8 (2) remits with the request:

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

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

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

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

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

24 (h) If the sum of the amounts paid under Subsections (e)(2)
25 and (f)(2) is at least 99 percent of the amount reported as due on
26 the report filed on or before November 15, penalties for
27 underpayment with respect to the amount paid under Subsection

1 (f)(2) are waived.

2 (i) If a taxable entity [~~corporation~~] requesting an
3 extension under Subsection (c) or (e) does not file the report due
4 in the previous calendar year on or before May 14, the taxable
5 entity [~~corporation~~] may not receive an extension under Subsection
6 (c) or (e) unless the taxable entity [~~corporation~~] complies with
7 Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

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

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

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

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

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

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

1 (5) the address of the corporation's principal office
2 and principal place of business.

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

5 (c) The comptroller shall forward the report to the
6 secretary of state.

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

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

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

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

25 (f) A public information report that is filed
26 electronically complies with the signature and certification
27 requirements prescribed by Subsection (d).

1 Sec. 171.204. INFORMATION REPORT. (a) Except as provided
2 by Subsection (b), to determine eligibility for the exemption
3 provided by Section 171.2022, or to determine the amount of the
4 franchise tax or the correctness of a franchise tax report, the
5 comptroller may require [~~an officer of~~] a taxable entity
6 [~~corporation~~] that may be subject to the tax imposed under this
7 chapter to file an information report with the comptroller stating
8 the amount of the taxable entity's margin [~~corporation's taxable~~
9 ~~capital and earned surplus~~], or any other information the
10 comptroller may request.

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

21 Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY
22 COMPTROLLER. The comptroller may require a taxable entity
23 [~~corporation~~] on which the franchise tax is imposed to furnish to
24 the comptroller information from the taxable entity's
25 [~~corporation's~~] books and records that has not been filed
26 previously and that is necessary for the comptroller to determine
27 the amount of the tax.

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

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

7 (2) information, including information about the
8 business affairs, operations, profits, losses, or expenditures of a
9 taxable entity [~~corporation~~], obtained by an examination of the
10 books and records, officers, partners, trustees, agents, or
11 employees of a taxable entity [~~corporation~~] on which a tax is
12 imposed by this chapter.

13 Sec. 171.207. INFORMATION NOT CONFIDENTIAL. The following
14 information is not confidential and shall be made open to public
15 inspection:

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

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

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

1 Sec. 171.209. RIGHT OF OWNER [~~SHAREHOLDER~~] TO EXAMINE OR
2 RECEIVE REPORTS. If an owner [~~a person owning at least one share of~~
3 ~~outstanding stock~~] of a taxable entity [~~corporation~~] on whom the
4 franchise tax is imposed presents evidence of the ownership to the
5 comptroller, the person is entitled to examine or receive a copy of
6 an initial or annual report that is filed under Section 171.201 or
7 171.202 [~~of this code~~] and that relates to the taxable entity
8 [~~corporation~~].

9 Sec. 171.210. PERMITTED USE OF CONFIDENTIAL INFORMATION.

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

12 (b) The comptroller or attorney general may authorize the
13 use of the confidential information in a judicial proceeding in
14 which the state is a party. The comptroller or attorney general may
15 authorize examination of the confidential information by:

16 (1) another state officer of this state;

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

18 (3) a tax official of another state or an official of
19 the federal government if the other state or the federal government
20 has a reciprocal arrangement with this state.

21 Sec. 171.211. EXAMINATION OF [~~CORPORATE~~] RECORDS. To
22 determine the franchise tax liability of a taxable entity
23 [~~corporation~~], the comptroller may investigate or examine the
24 records of the taxable entity [~~corporation~~].

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

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

5 (2) the taxable entity [~~corporation~~] files an amended
6 federal income tax return or other return that changes the taxable
7 entity's [~~corporation's net~~] taxable margin [~~earned surplus~~].

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

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

23 (d) If a taxable entity [~~corporation~~] fails to comply with
24 this section, the taxable entity [~~corporation~~] is liable for a
25 penalty of 10 percent of the tax that should have been reported
26 under this section and that had not previously been reported to the
27 comptroller. The penalty prescribed by this subsection is in

1 addition to any other penalty provided by law.

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

4 SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

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

7 Sec. 171.2515. FORFEITURE OF RIGHT OF TAXABLE ENTITY TO
8 TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the
9 same reasons and using the same procedures the comptroller uses in
10 relation to the forfeiture of the corporate privileges of a
11 corporation, forfeit the right of a taxable entity to transact
12 business in this state.

13 (b) The provisions of this subchapter, including Section
14 171.255, that apply to the forfeiture of corporate privileges apply
15 to the forfeiture of a taxable entity's right to transact business
16 in this state.

17 SECTION 2.08. Section 171.351, Tax Code, is amended to read
18 as follows:

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

24 SECTION 2.09. Section 171.353, Tax Code, is amended to read
25 as follows:

26 Sec. 171.353. APPOINTMENT OF RECEIVER. If a court forfeits
27 a taxable entity's [~~corporation's~~] charter or certificate of

1 authority, the court may appoint a receiver for the taxable entity
2 [~~corporation~~] and may administer the receivership under the laws
3 relating to receiverships.

4 SECTION 2.10. Section 171.354, Tax Code, is amended to read
5 as follows:

6 Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each taxable
7 entity [~~corporation~~] on which a tax is imposed by this chapter shall
8 designate a resident of this state as the taxable entity's
9 [~~corporation's~~] agent for the service of process.

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

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

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

26 (e) If a taxable entity [~~corporation~~] remits the entire
27 amount required by [~~Subsection (c) of~~] Section 171.202(c) [~~171.202~~]

1 ~~of this code~~], no penalties will be imposed against the amount
2 remitted on or before November 15.

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

5 (a) A taxable entity [~~corporation~~] commits an offense if the
6 taxable entity [~~corporation~~] is subject to the provisions of this
7 chapter and the taxable entity [~~corporation~~] wilfully:

8 (1) fails to file a report;

9 (2) fails to keep books and records as required by this
10 chapter;

11 (3) files a fraudulent report;

12 (4) violates any rule of the comptroller for the
13 administration and enforcement of the provisions of this chapter;
14 or

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

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

22 SECTION 2.13. Section 171.401, Tax Code, is amended to read
23 as follows:

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

27 SECTION 2.14. (a) The repeal of Section 171.111, Tax Code,

1 by this article does not affect a credit that accrued under that
2 section before the effective date of this article.

3 (b) A corporation that has any unused credits accrued before
4 the effective date of this article under Section 171.111, Tax Code,
5 may claim those unused credits on or with the tax report for the
6 period in which the credits were accrued, and the former law under
7 which the corporation accrued the credits is continued in effect
8 for purposes of determining the amount of the credits the
9 corporation may claim and the manner in which the corporation may
10 claim the credits.

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

- 13 (1) Subchapter L;
- 14 (2) Subchapter M;
- 15 (3) Subchapter N;
- 16 (4) Subchapter O;
- 17 (5) Subchapter P;
- 18 (6) Subchapter Q;
- 19 (7) Subchapter R;
- 20 (8) Subchapter S;
- 21 (9) Subchapter T;
- 22 (10) Subchapter U as added by Chapter 209, Acts of the
23 78th Legislature, Regular Session, 2003; and
- 24 (11) Subchapter U as added by Chapter 1274, Acts of the
25 78th Legislature, Regular Session, 2003.

26 (b) This section does not affect a credit authorized by a
27 provision listed in Subsection (a) of this section that accrued

1 under Chapter 171, Tax Code, before the effective date of this
2 article or a credit that continues to accrue under Section 2.16 of
3 this Act.

4 (c) A corporation that has any unused credits accrued before
5 the effective date of this article under a provision other than
6 Subchapter O, P, or Q, Chapter 171, Tax Code, may claim those unused
7 credits on or with the tax report for the period in which the
8 credits were accrued, and the former law under which the
9 corporation accrued the credits is continued in effect for purposes
10 of determining the amount of the credits the corporation may claim
11 and the manner in which the corporation may claim the credits.

12 (d) A corporation that has any unused credits accrued before
13 the effective date of this article under Subchapter O, Chapter 171,
14 Tax Code, may claim those unused credits on or with the tax report
15 for the period in which the credit was accrued. However, if the
16 corporation was allowed to carry forward unused credits under that
17 subchapter, the corporation may continue to apply those credits on
18 or with each consecutive report until the earlier of the date the
19 credit would have expired under the terms of Subchapter O, Chapter
20 171, Tax Code, had it continued in existence, or December 31, 2027,
21 and the former law under which the corporation accrued the credits
22 is continued in effect for purposes of determining the amount of the
23 credits the corporation may claim and the manner in which the
24 corporation may claim the credits.

25 (e) A corporation that has any unused credits accrued before
26 the effective date of this article under Subchapter P, Chapter 171,
27 Tax Code, may claim those unused credits on or with the tax report

1 for the period in which the credit was accrued. However, if the
2 corporation was allowed to carry forward unused credits under that
3 subchapter, the corporation may continue to apply those credits on
4 or with each consecutive report until the earlier of the date the
5 credit would have expired under the terms of Subchapter P, Chapter
6 171, Tax Code, had it continued in existence, or December 31, 2012,
7 and the former law under which the corporation accrued the credits
8 is continued in effect for purposes of determining the amount of the
9 credits the corporation may claim and the manner in which the
10 corporation may claim the credits.

11 (f) A corporation that has any unused credits accrued before
12 the effective date of this article under Subchapter Q, Chapter 171,
13 Tax Code, may claim those unused credits on or with the tax report
14 for the period in which the credit was accrued. However, if the
15 corporation was allowed to carry forward unused credits under that
16 subchapter, the corporation may continue to apply those credits on
17 or with each consecutive report until the earlier of the date the
18 credit would have expired under the terms of Subchapter Q, Chapter
19 171, Tax Code, had it continued in existence, or December 31, 2012,
20 and the former law under which the corporation accrued the credits
21 is continued in effect for purposes of determining the amount of the
22 credits the corporation may claim and the manner in which the
23 corporation may claim the credits.

24 (g) The comptroller shall adopt rules to administer this
25 section.

26 SECTION 2.16. A written agreement between this state and a
27 taxpayer effective before June 1, 2006, that allows for credits

1 against the tax imposed under Chapter 171, Tax Code, continues in
2 effect and the credits allowed under the agreement continue to
3 accrue and may be claimed in the manner provided by the agreement
4 against the tax imposed under Chapter 171, Tax Code, as amended by
5 this article, for the duration of the agreement. The former law
6 under which the agreement was made and under which the taxpayer
7 received the entitlement to the credits is continued in effect for
8 purposes of determining the amount of the credits the taxpayer may
9 claim and the manner in which the taxpayer may claim the credits.

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

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

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

18 (1) margin or gross receipts occurring before June 1,
19 2006, may not be considered for purposes of determining taxable
20 margin or for apportionment purposes;

21 (2) an entity subject to the franchise tax on January
22 1, 2008, that was not previously subject to the tax and for which
23 January 1, 2008, is not the beginning date, shall file an annual
24 report due May 15, 2008, based on the period:

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

27 (i) beginning on the later of:

1 (a) June 1, 2006; or
2 (b) the date the entity was organized
3 in this state or, if a foreign entity, the date it began doing
4 business in this state; and
5 (ii) ending on the date that accounting
6 period ends in 2007;
7 (B) if the entity has an accounting period that
8 ends on or after June 1, 2007, and before December 31, 2007:
9 (i) beginning on the date that accounting
10 period begins; and
11 (ii) ending on the date that accounting
12 period ends in 2007; and
13 (C) if the entity has an accounting period that
14 ends on December 31, 2007, or if the entity does not have an
15 accounting period that ends in 2007:
16 (i) beginning on the later of:
17 (a) January 1, 2007; or
18 (b) the date the entity was organized
19 in the state or, if a foreign entity, the date it began doing
20 business in this state; and
21 (ii) ending on December 31, 2007; and
22 (3) an entity subject to the franchise tax as it
23 existed before the effective date of this article at any time after
24 December 31, 2006, and before January 1, 2008, but not subject to
25 the franchise tax on January 1, 2008, shall file a final report for
26 the privilege of doing business at any time after June 30, 2007, and
27 before January 1, 2008, based on the period:

1 (A) beginning on the later of:
2 (i) January 1, 2007; or
3 (ii) the date the entity was organized in
4 this state or, if a foreign entity, the date it began doing business
5 in this state; and

6 (B) ending on the date the entity became no
7 longer subject to the franchise tax.

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

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

13 (e) For a merger or consolidation of two or more
14 partnerships, the resulting partnership is, for purposes of this
15 article, considered the continuation of any merging or
16 consolidating partnership whose members own an interest of more
17 than 50 percent in the capital and profits of the resulting
18 partnership.

19 (f) For a division of a partnership into two or more
20 partnerships, the resulting partnerships, other than any resulting
21 partnership the members of which had an interest of 50 percent or
22 less in the capital and profits of the prior partnership, are, for
23 purposes of this article, considered a continuation of the prior
24 partnership.

25 SECTION 2.19. (a) The comptroller shall require the
26 entities specified by this section to file an information report in
27 the manner provided by this section. The information report is

1 confidential and exempt from disclosure under Chapter 552,
2 Government Code.

3 (b) The information report required under this section must
4 contain the same information that an entity required to file the
5 report would have submitted in its report due to the comptroller in
6 2006 under Chapter 171, Tax Code, if the changes made by this
7 article to Chapter 171, Tax Code, had been in effect January 1,
8 2006. The comptroller shall provide the forms and instructions to
9 the entities required to file a report under this section.

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

14 (d) The comptroller shall identify and require the
15 following entities to file an information report under this
16 section:

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

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

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

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

5 (f) The comptroller:

6 (1) shall identify the entities described by
7 Subsection (d) of this section;

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

11 (3) shall provide those forms and instructions to
12 those entities on or after November 15, 2006, but before December 2,
13 2006;

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

16 (5) may not grant any extensions for filing the
17 information reports; and

18 (6) shall report to the governor, the lieutenant
19 governor, and the members of the legislature, on or before April 1,
20 2007, the results of the information reports, stating the amount of
21 revenue the tax under Chapter 171, Tax Code, would have generated
22 from the entities submitting information reports under this section
23 if the changes made by this article to Chapter 171, Tax Code, had
24 been in effect January 1, 2006.

25 (g) The report required under Subsection (f)(6) of this
26 section may not be formatted in a manner or include any information
27 that discloses or effectively discloses the specific identity of a

1 reporting entity.

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

4 SECTION 2.20. (a) This section applies to a suit brought by
5 an entity subject to the tax under Chapter 171, Tax Code, as amended
6 by this article, contending that the imposition of the tax on the
7 entity is unconstitutional.

8 (b) The suit must be brought in a district court in Travis
9 County.

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

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

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

20 ARTICLE 3. MOTOR VEHICLE SALES AND USE TAXES

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

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

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

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

6 SECTION 3.03. Subchapter C, Chapter 152, Tax Code, is
7 amended by adding Section 152.0412 to read as follows:

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

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

17 (c) If the amount paid for a motor vehicle subject to the tax
18 imposed by this chapter is less than the standard presumptive value
19 of the vehicle, a county tax assessor-collector shall compute the
20 tax on the standard presumptive value unless the purchaser
21 establishes the retail value of the vehicle as provided by
22 Subsection (d).

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

25 (1) the retail value is shown on an appraisal
26 certified by an adjuster licensed under Chapter 4101, Insurance
27 Code, or by a motor vehicle dealer operating under Subchapter B,

1 Chapter 503, Transportation Code;

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

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

6 (e) On request, a motor vehicle dealer operating under
7 Subchapter B, Chapter 503, Transportation Code, shall provide a
8 certified appraisal of the retail value of a motor vehicle. The
9 comptroller by rule shall establish a fee that a dealer may charge
10 for providing the certified appraisal. The county tax
11 assessor-collector shall retain a copy of a certified appraisal
12 received under this section for a period prescribed by the
13 comptroller.

14 (f) The Texas Department of Transportation shall maintain
15 information on the standard presumptive values of motor vehicles as
16 part of the department's registration and title system. The
17 department shall update the information at least quarterly each
18 calendar year.

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

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

23 (1) establish standard presumptive values for motor
24 vehicles as provided by Section 152.0412, Tax Code, as added by this
25 article;

26 (2) modify the department's registration and title
27 system as needed to include that information and administer that

1 section; and

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

4 SECTION 3.05. The changes in law made by this article do not
5 affect tax liability accruing before the effective date of this
6 article. That liability continues in effect as if this article had
7 not been enacted, and the former law is continued in effect for the
8 collection of taxes due and for civil and criminal enforcement of
9 the liability for those taxes.

10 SECTION 3.06. (a) Except as provided by Subsection (b) of
11 this section, this article takes effect July 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 article takes effect on the first day of the first month
16 that begins on or after the 91st day after the last day of the
17 legislative session.

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

20 ARTICLE 4. TAX ON TOBACCO PRODUCTS AND ALCOHOL

21 PART A. CIGARETTES AND TOBACCO PRODUCTS

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

24 (b) The tax rates are:

25 (1) \$70.50 [~~\$20.50~~] per thousand on cigarettes
26 weighing three pounds or less per thousand; and

27 (2) the rate provided by Subdivision (1) plus \$2.10

1 per thousand on cigarettes weighing more than three pounds per
2 thousand.

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

5 (b) The tax rate for tobacco products other than cigars is
6 40 [~~35.213~~] percent of the manufacturer's list price, exclusive of
7 any trade discount, special discount, or deal.

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

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

15 PART B. STATEMENT OF MIXED BEVERAGE TAX ALLOWED

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

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

27 (b) For purposes of the tax imposed under this chapter, the

1 gross receipts of a permittee do not include amounts separately
2 stated in a statement authorized by Subsection (a).

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

4 ARTICLE 5. APPROPRIATION

5 SECTION 5.01. The amount of \$1.9 billion is appropriated
6 out of the general revenue fund to the Texas Education Agency for
7 the state fiscal biennium ending August 31, 2007, for the purpose of
8 reimbursing school districts for revenue the districts lose by
9 reducing the districts' maintenance and operations taxes.

10 SECTION 5.02. The amount of \$2 million is appropriated out
11 of the general revenue fund to the comptroller of public accounts
12 for the state fiscal biennium ending August 31, 2007, for the
13 implementation of this Act and for audit and enforcement
14 activities.

15 ARTICLE 6. EFFECTIVE DATE

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

22 (b) If a section, part, or article of this bill provides a
23 different effective date than provided by Subsection (a) of this
24 section, that section, part, or article takes effect according to
25 its terms.