

AN ACT

relating to technical changes to the revised franchise tax.

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

SECTION 1. Section 171.0001, Tax Code, as effective January 1, 2008, is amended by amending Subdivisions (6), (8), (9), (10), (15), and (17) and adding Subdivisions (11-a) and (13-a) to read as follows:

(6) "Client company" means:

(A) a person that contracts with a license holder under Chapter 91 [has the meaning assigned by Section 91.001], Labor Code, and is assigned employees by the license holder under that contract; or

(B) a client of a temporary employment service, as that term is defined by Section 93.001(2), Labor Code, to whom individuals are assigned for a purpose described by that subdivision.

(8) "Controlling interest" means:

(A) for a corporation, either more than 50 ~~[80]~~ percent ~~[or more]~~, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 ~~[80]~~ percent ~~[or more]~~, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation; ~~[and]~~

(B) for a partnership, association, trust, or

1 other entity other than a limited liability company, more than 50
2 [80] percent [or more], owned directly or indirectly, of the
3 capital, profits, or beneficial interest in the partnership,
4 association, trust, or other entity; and

5 (C) for a limited liability company, either more
6 than 50 percent, owned directly or indirectly, of the total
7 membership interest of the limited liability company or more than
8 50 percent, owned directly or indirectly, of the beneficial
9 ownership interest in the membership interest of the limited
10 liability company.

11 (9) "Internal Revenue Code" means the Internal Revenue
12 Code of 1986 in effect for the federal tax year beginning on January
13 1, 2007 [2006], not including any changes made by federal law after
14 that date, and any regulations adopted under that code applicable
15 to that period.

16 (10) "Lending institution" means an entity that makes
17 loans and:

18 (A) is regulated by the Federal Reserve Board,
19 the Office of the Comptroller of the Currency, the Federal Deposit
20 Insurance Corporation, the Commodity Futures Trading Commission,
21 the Office of Thrift Supervision, the Texas Department of Banking,
22 the Office of Consumer Credit Commissioner, [~~the Department of~~
23 ~~Savings and Mortgage Lending,~~] the Credit Union Department, or any
24 comparable regulatory body;

25 (B) is licensed by, registered with, or otherwise
26 regulated by the Department of Savings and Mortgage Lending;

27 (C) is a "broker" or "dealer" as defined by the

1 Securities Exchange Act of 1934 at 15 U.S.C. Section 78c; or

2 (D) provides financing to unrelated parties
3 solely for agricultural production.

4 (11-a) "Natural person" means a human being or the
5 estate of a human being. The term does not include a purely legal
6 entity given recognition as the possessor of rights, privileges, or
7 responsibilities, such as a corporation, limited liability
8 company, partnership, or trust.

9 (13-a) "Security," for purposes of Sections
10 171.1011(g), 171.1011(g-2), and 171.106(f) only, has the meaning
11 assigned by Section 475(c)(2), Internal Revenue Code, and includes
12 instruments described by Sections 475(e)(2)(B), (C), and (D) of
13 that code.

14 (15) "Staff leasing services company" means:

15 (A) a business entity that offers staff leasing
16 services, as that term is defined [~~has the meaning assigned~~] by
17 Section 91.001, Labor Code; or

18 (B) a temporary employment service, as that term
19 is defined by Section 93.001, Labor Code.

20 (17) "Unitary business" means a single economic
21 enterprise that is made up of separate parts of a single entity or
22 of a commonly controlled group of entities that are sufficiently
23 interdependent, integrated, and interrelated through their
24 activities so as to provide a synergy and mutual benefit that
25 produces a sharing or exchange of value among them and a significant
26 flow of value to the separate parts. In determining whether a
27 unitary business exists, the comptroller shall consider any

1 relevant factor, including whether:

2 (A) the activities of the group members[+]
 3 [~~(i)~~] are in the same general line, such as
 4 manufacturing, wholesaling, retailing of tangible personal
 5 property, insurance, transportation, or finance; [~~or~~]

6 (B) the activities of the group members [~~(ii)~~]
 7 are steps in a vertically structured enterprise or process, such as
 8 the steps involved in the production of natural resources,
 9 including exploration, mining, refining, and marketing; or [~~and~~]

10 (C) [~~(B)~~] the members are functionally
 11 integrated through the exercise of strong centralized management,
 12 such as authority over purchasing, financing, product line,
 13 personnel, and marketing.

14 SECTION 2. Section 171.0002, Tax Code, as effective January
 15 1, 2008, is amended to read as follows:

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

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

1 (1) a sole proprietorship;

2 (2) a general partnership;

3 (A) the direct ownership of which is entirely
4 composed of natural persons; and

5 (B) the liability of which is not limited under a
6 statute of this state or another state, including by registration
7 as a limited liability partnership;

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

9 or

10 (4) an entity that is exempt from taxation under
11 Subchapter B.

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

13 (1) a grantor trust as defined by Sections 671 and
14 7701(a)(30)(E), Internal Revenue Code, all of the grantors and
15 beneficiaries of which are natural persons or charitable entities
16 as described in Section 501(c)(3), Internal Revenue Code, excluding
17 a trust taxable as a business entity pursuant to Treasury
18 Regulation Section 301.7701-4(b);

19 (2) an estate of a natural person as defined by Section
20 7701(a)(30)(D), Internal Revenue Code, excluding an estate taxable
21 as a business entity pursuant to Treasury Regulation Section
22 301.7701-4(b);

23 (3) an escrow;

24 (4) ~~[a family limited partnership that is a passive~~
25 ~~entity in which at least 80 percent of the interests are held,~~
26 ~~directly or indirectly, by members of the same family, including an~~
27 ~~individual's ancestors, lineal descendants, spouse, and brothers~~

1 ~~and sisters by the whole or half blood, and the estate of any of~~
2 ~~these persons, and that is a limited partnership.~~

3 ~~[(A) formed pursuant to the Texas Revised Limited~~
4 ~~Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes),~~

5 ~~[(B) formed pursuant to the limited partnership~~
6 ~~law of any other state; or~~

7 ~~[(C) treated as a partnership for federal income~~
8 ~~tax purposes;~~

9 ~~[(5) a passive investment partnership that is a~~
10 ~~passive entity and that is:~~

11 ~~[(A) formed pursuant to the Texas Revised Limited~~
12 ~~Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes),~~

13 ~~[(B) formed pursuant to the limited partnership~~
14 ~~law of any other state; or~~

15 ~~[(C) formed pursuant to the limited partnership~~
16 ~~laws of any foreign country;~~

17 ~~[(6) a passive investment partnership that is a~~
18 ~~passive entity and is a general partnership;~~

19 ~~[(7) a trust that is a passive entity:~~

20 ~~[(A) that is taxable as a trust under Section~~
21 ~~641, Internal Revenue Code;~~

22 ~~[(B) all of the beneficiaries of which are~~
23 ~~natural persons or charitable entities as defined in Section~~
24 ~~501(c)(3), Internal Revenue Code;~~

25 ~~[(C) that is not a trust taxable as a business~~
26 ~~entity pursuant to Treasury Regulation Section 301.7701-4(b); and~~

27 ~~[(D) that is organized as a trust and is~~

1 ~~described in Section 7701(a)(30)(E), Internal Revenue Code,~~

2 [~~8~~] a real estate investment trust (REIT) as defined
3 by Section 856, Internal Revenue Code, and its "qualified REIT
4 subsidiary" entities as defined by Section 856(i)(2), Internal
5 Revenue Code, provided that:

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

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

15 (5) [~~9~~] a real estate mortgage investment conduit
16 (REMIC), as defined by Section 860D, Internal Revenue Code;

17 (6) a nonprofit self-insurance trust created under
18 Chapter 2212, Insurance Code, or a predecessor statute;

19 (7) a trust qualified under Section 401(a), Internal
20 Revenue Code; or

21 (8) a trust or other entity that is exempt under
22 Section 501(c)(9), Internal Revenue Code.

23 (d) An entity that can file as a sole proprietorship for
24 federal tax purposes is not a sole proprietorship for purposes of
25 Subsection (b)(1) and is not exempt under that subsection if the
26 entity is formed in a manner under the statutes of this state, ~~or~~
27 another state, or a foreign country that limit the liability of the

1 entity.

2 SECTION 3. Section 171.0003(a), Tax Code, as effective
3 January 1, 2008, is amended to read as follows:

4 (a) An entity is a passive entity only if:

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

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

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

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

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

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

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

27 SECTION 4. Section 171.0004(e), Tax Code, as effective

1 January 1, 2008, is amended to read as follows:

2 (e) For purposes of this section:

3 (1) the ownership of a royalty interest or a
4 nonoperating working interest in mineral rights does not constitute
5 conduct of an active trade or business; ~~and~~

6 (2) payment of compensation to employees or
7 independent contractors for financial or legal services reasonably
8 necessary for the operation of the entity does not constitute
9 conduct of an active trade or business; and

10 (3) holding a seat on the board of directors of an
11 entity does not by itself constitute conduct of an active trade or
12 business.

13 SECTION 5. Section 171.001, Tax Code, as effective January
14 1, 2008, is amended by adding Subsection (c) to read as follows:

15 (c) The tax imposed under this section or Section 171.0011
16 is not imposed on an entity if, during the period on which the
17 report is based, the entity qualifies as a passive entity as defined
18 by Section 171.0003.

19 SECTION 6. Sections 171.0011(a) and (b), Tax Code, as
20 effective January 1, 2008, are amended to read as follows:

21 (a) Except as provided by Section 171.001(c) [~~Subsection~~
22 ~~(e)~~], an additional tax is imposed on a taxable entity that for any
23 reason becomes no longer subject to the tax imposed under this
24 chapter.

25 (b) The additional tax is equal to the appropriate rate
26 under Section 171.002 of the taxable entity's taxable margin
27 computed on the period beginning on the day after the last day for

1 which the tax imposed on taxable margin or net taxable earned
2 surplus was computed and ending on the date the taxable entity is no
3 longer subject to the tax imposed under this chapter.

4 SECTION 7. Sections 171.002(a), (b), (c), and (d), Tax
5 Code, as effective January 1, 2008, are amended to read as follows:

6 (a) Subject to Sections [~~Section~~] 171.003 and 171.1016 and
7 except as provided by Subsection (b), the rate of the franchise tax
8 is one percent [~~per year of privilege period~~] of taxable margin.

9 (b) Subject to Sections 171.003 and 171.1016, the [~~The~~] rate
10 of the franchise tax is 0.5 percent [~~per year of privilege period~~]
11 of taxable margin for those taxable entities primarily engaged in
12 retail or wholesale trade.

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

15 (1) the total revenue from its activities in retail or
16 wholesale trade is greater than the total revenue from its
17 activities in trades other than the retail and wholesale trades;

18 (2) except as provided by Subsection (c-1), less than
19 50 percent of the total revenue from activities in retail or
20 wholesale trade comes from the sale of products it produces or
21 products produced by an entity that is part of an affiliated group
22 to which the taxable entity also belongs; and

23 (3) the taxable entity does not provide retail or
24 wholesale utilities, including telecommunications services, and [~~and~~]
25 electricity, or gas.

26 (d) A taxable entity is not required to pay any tax and is
27 not considered to owe any tax for a period if:

1 (1) the amount of tax computed for the taxable entity
2 is less than \$1,000; or

3 (2) the amount of the taxable entity's total revenue
4 from its entire business is less than or equal to \$300,000 or the
5 amount determined under Section 171.006 per 12-month period on
6 which margin is based.

7 SECTION 8. Subchapter A, Chapter 171, Tax Code, is amended
8 by adding Section 171.0021 to read as follows:

9 Sec. 171.0021. DISCOUNTS FROM TAX LIABILITY FOR SMALL
10 BUSINESSES. (a) A taxable entity is entitled to a discount of the
11 tax imposed under this chapter that the taxable entity is required
12 to pay after determining its taxable margin under Section 171.101,
13 applying the appropriate rate of the tax under Section 171.002(a)
14 or (b), and subtracting any other allowable credits, as follows:

15 (1) for a taxable entity for which the total revenue
16 from its entire business is greater than \$300,000 but less than
17 \$400,000, the taxable entity is entitled to a discount of 80
18 percent;

19 (2) for a taxable entity for which the total revenue
20 from its entire business is equal to or greater than \$400,000 but
21 less than \$500,000, the taxable entity is entitled to a discount of
22 60 percent;

23 (3) for a taxable entity for which the total revenue
24 from its entire business is equal to or greater than \$500,000 but
25 less than \$700,000, the taxable entity is entitled to a discount of
26 40 percent; and

27 (4) for a taxable entity for which the total revenue

1 from its entire business is equal to or greater than \$700,000 but
2 less than \$900,000, the taxable entity is entitled to a discount of
3 20 percent.

4 (b) The amounts under Subsection (a) are subject to
5 adjustment as provided by Section 171.006.

6 SECTION 9. The heading to Section 171.006, Tax Code, as
7 effective January 1, 2008, is amended to read as follows:

8 Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR NO TAX DUE,
9 DISCOUNTS, [EXEMPTION] AND COMPENSATION DEDUCTION.

10 SECTION 10. Section 171.006(b), Tax Code, as effective
11 January 1, 2008, is amended to read as follows:

12 (b) Beginning in 2010 [~~2009~~], on January 1 of each
13 even-numbered [~~odd-numbered~~] year, the amounts prescribed by
14 Sections 171.002(d)(2), 171.0021, and 171.1013(c) are increased or
15 decreased by an amount equal to the amount prescribed by those
16 sections on December 31 of the preceding year multiplied by the
17 percentage increase or decrease during the preceding state fiscal
18 biennium in the consumer price index and rounded to the nearest
19 \$10,000.

20 SECTION 11. Section 171.101(d), Tax Code, as effective
21 January 1, 2008, is amended to read as follows:

22 (d) An election under Subsection (a)(1)(B)(ii) shall be
23 made by the taxable entity on its annual report and is effective
24 only for that annual report. A taxable entity shall notify the
25 comptroller of its election not later than the due date of the
26 annual [~~The election may be changed by filing an amended~~] report.

27 SECTION 12. Section 171.1011, Tax Code, as effective

1 January 1, 2008, is amended by amending Subsections (b), (c), (d),
2 (e), (g-3), (h), (n), and (o) and adding Subsections (g-4) and (t)
3 to read as follows:

4 (b) In this section, a reference to an amount reportable as
5 income [~~entered~~] on a line number on an Internal Revenue Service
6 form is the amount entered to the extent the amount entered complies
7 with federal income tax law and includes the corresponding amount
8 entered on a variant of the form, or a subsequent form, with a
9 different line number to the extent the amount entered complies
10 with federal income tax law. [~~The comptroller shall adopt rules as~~
11 ~~necessary to accomplish the legislative intent prescribed by this~~
12 ~~subsection and Subsection (a).~~]

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

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

18 (A) adding:

19 (i) the amount reportable as income
20 [~~entered~~] on line 1c, Internal Revenue Service Form 1120; [~~and~~]

21 (ii) the amounts reportable as income
22 [~~entered~~] on lines 4 through 10, Internal Revenue Service Form
23 1120; and

24 (iii) any total revenue reported by a lower
25 tier entity as includable in the taxable entity's total revenue
26 under Section 171.1015(b); and

27 (B) subtracting:

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

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

9 (iii) to the extent included in Subsection
10 (c)(1)(A), net distributive income from a taxable entity
11 [~~partnerships and from trusts and limited liability companies~~]
12 treated as a partnership or [~~partnerships for federal income tax~~
13 ~~purposes and net distributive income from limited liability~~
14 ~~companies and corporations treated~~] as an S corporation
15 [~~corporations~~] for federal income tax purposes;

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

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

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

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

26 (A) adding:

27 (i) the amount reportable as income

1 ~~entered~~ on line 1c, Internal Revenue Service Form 1065;

2 (ii) the amounts reportable as income
3 ~~entered~~ on lines 4, 6, and ~~through~~ 7, Internal Revenue Service
4 Form 1065; ~~and~~

5 (iii) the amounts reportable as income
6 ~~entered~~ on lines 3a and 5 ~~2~~ through 11, Internal Revenue Service
7 Form 1065, Schedule K; ~~and~~

8 (iv) the amounts reportable as income on
9 line 17, Internal Revenue Service Form 8825;

10 (v) the amounts reportable as income on
11 line 11, plus line 2 or line 45, Internal Revenue Service Form 1040,
12 Schedule F; and

13 (vi) any total revenue reported by a lower
14 tier entity as includable in the taxable entity's total revenue
15 under Section 171.1015(b); and

16 (B) subtracting:

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

21 (ii) to the extent included in Subsection
22 (c)(2)(A), foreign royalties and foreign dividends, including
23 amounts determined under Section 78 or Sections 951-964, Internal
24 Revenue Code;

25 (iii) to the extent included in Subsection
26 (c)(2)(A), net distributive income from a taxable entity
27 ~~[partnerships and from trusts and limited liability companies]~~

1 treated as a partnership or [~~partnerships for federal income tax~~
2 ~~purposes and net distributive income from limited liability~~
3 ~~companies and corporations treated~~] as an S corporation
4 [~~corporations~~] for federal income tax purposes;

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

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

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

15 (d) Subject to Section 171.1014, a taxable entity
16 [~~corporation~~] that is part of a federal consolidated group shall
17 compute its total revenue under Subsection (c) as if it had filed a
18 separate return for federal income tax purposes.

19 (e) A taxable entity that owns an interest in a passive
20 entity [~~that is not included in a group report under Section~~
21 ~~171.1014~~] shall exclude from [~~include in~~] the taxable entity's
22 total revenue the taxable entity's share of the net income of the
23 passive entity, but only to the extent the net income of the passive
24 entity was [~~not~~] generated by the margin of any other taxable
25 entity.

26 (g-3) A taxable entity that provides legal services shall
27 exclude from its total revenue[, ~~to the extent included under~~

1 ~~Subsection (c)(1)(A), (c)(2)(A), or (c)(3)]:~~

2 (1) to the extent included under Subsection (c)(1)(A),
3 (c)(2)(A), or (c)(3), the following flow-through funds that are
4 mandated by law, contract, or fiduciary duty to be distributed to
5 the claimant by the claimant's attorney or to other entities on
6 behalf of a claimant by the claimant's attorney:

7 (A) damages due the claimant;

8 (B) funds subject to a lien or other contractual
9 obligation arising out of the representation, other than fees owed
10 to the attorney;

11 (C) funds subject to a subrogation interest or
12 other third-party contractual claim; and

13 (D) fees paid an attorney in the matter who is not
14 a member, partner, shareholder, or employee of the taxable entity;

15 (2) to the extent included under Subsection (c)(1)(A),
16 (c)(2)(A), or (c)(3), reimbursement of the taxable entity's
17 expenses incurred in prosecuting a claimant's matter that are
18 specific to the matter and that are not general operating expenses;
19 and

20 (3) [~~the actual out-of-pocket expenses of the~~
21 ~~attorney, not to exceed~~] \$500 per pro bono services case handled by
22 the attorney, [~~of providing pro bono legal services to a person,~~]
23 but only if the attorney maintains records of the pro bono services
24 for auditing purposes in accordance with the manner in which those
25 services are reported to the State Bar of Texas.

26 (g-4) A taxable entity that is a pharmacy cooperative shall
27 exclude from its total revenue, to the extent included under

1 Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through funds
2 from rebates from pharmacy wholesalers that are distributed to the
3 pharmacy cooperative's shareholders.

4 (h) If the taxable entity belongs to an affiliated group,
5 the taxable entity may not exclude payments described by Subsection
6 (f), (g), (g-1), (g-2), [~~or~~] (g-3), or (g-4) that are made to
7 entities that are members of the affiliated group.

8 (n) Except as provided by Subsection (o), a taxable entity
9 that is a health care provider shall exclude from its total
10 revenue[~~, to the extent included under Subsection (c)(1)(A),~~
11 ~~(c)(2)(A), or (c)(3)]:~~

12 (1) to the extent included under Subsection (c)(1)(A),
13 (c)(2)(A), or (c)(3), the total amount of payments the health care
14 provider received:

15 (A) under the Medicaid program, Medicare
16 program, Indigent Health Care and Treatment Act (Chapter 61, Health
17 and Safety Code), and Children's Health Insurance Program (CHIP);

18 (B) for professional services provided in
19 relation to a workers' compensation claim under Title 5, Labor
20 Code; and

21 (C) for professional services provided to a
22 beneficiary rendered under the TRICARE military health system; and

23 (2) the actual cost to the health care provider for any
24 uncompensated care provided, but only if the provider maintains
25 records of the uncompensated care for auditing purposes and, if the
26 provider later receives payment for all or part of that care, the
27 provider adjusts the amount excluded for the tax year in which the

1 payment is received.

2 (o) A health care provider that is a health care institution
3 shall exclude from its total revenue [~~, to the extent included under~~
4 ~~Subsection (c)(1)(A), (c)(2)(A), or (c)(3),~~] 50 percent of the
5 amounts described by Subsection (n).

6 (t) The comptroller shall adopt rules as necessary to
7 accomplish the legislative intent prescribed by this section.

8 SECTION 13. Section 171.1011(1)(1), Tax Code, as effective
9 January 1, 2008, is amended to read as follows:

10 (1) "Sales commission" means:

11 (A) any form of compensation paid to a person for
12 engaging in an act for which a license is required by Chapter 1101,
13 Occupations Code; or [~~and~~]

14 (B) compensation paid to a sales representative
15 by a principal in an amount that is based on the amount or level of
16 certain orders for or sales of the principal's product and that the
17 principal is required to report on Internal Revenue Service Form
18 1099-MISC.

19 SECTION 14. Section 171.1012(a)(3)(A), Tax Code, as
20 effective January 1, 2008, is amended to read as follows:

21 (A) "Tangible personal property" means:

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

25 (ii) films, sound recordings, videotapes,
26 live and prerecorded television and radio programs, books, and
27 other similar property embodying words, ideas, concepts, images, or

1 sound, without regard to the means or methods of distribution or the
2 medium in which the property is embodied, [by the creator of the
3 property] for which, as costs are incurred in producing the
4 property, it is intended or is reasonably likely that any
5 [~~tangible~~] medium in which the property is embodied will be
6 mass-distributed by the creator or any one or more third parties in
7 a form that is not substantially altered; and

8 (iii) a computer program, as defined by
9 Section 151.0031.

10 SECTION 15. Section 171.1012, Tax Code, as effective
11 January 1, 2008, is amended by amending Subsections (c), (g), (h),
12 and (k) and adding Subsection (o) to read as follows:

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

15 (1) labor costs;

16 (2) cost of materials that are an integral part of
17 specific property produced;

18 (3) cost of materials that are consumed in the
19 ordinary course of performing production activities;

20 (4) handling costs, including costs attributable to
21 processing, assembling, repackaging, and inbound transportation
22 costs;

23 (5) storage costs, including the costs of carrying,
24 storing, or warehousing property, subject to Subsection (e);

25 (6) depreciation, depletion, and amortization,
26 reported on the federal income tax return on which the report under
27 this chapter is based, to the extent associated with and necessary

1 for the production of goods, including recovery described by
2 Section 197, Internal Revenue Code;

3 (7) the cost of renting or leasing equipment,
4 facilities, or real property directly used for the production of
5 the goods, including pollution control equipment and intangible
6 drilling and dry hole costs;

7 (8) the cost of repairing and maintaining equipment,
8 facilities, or real property directly used for the production of
9 the goods, including pollution control devices;

10 (9) costs attributable to research, experimental,
11 engineering, and design activities directly related to the
12 production of the goods, including all research or experimental
13 expenditures described by Section 174, Internal Revenue Code;

14 (10) geological and geophysical costs incurred to
15 identify and locate property that has the potential to produce
16 minerals;

17 (11) taxes paid in relation to acquiring or producing
18 any material, or taxes paid in relation to services that are a
19 direct cost of production;

20 (12) the cost of producing or acquiring electricity
21 sold; and

22 (13) a contribution to a partnership in which the
23 taxable entity owns an interest that is used to fund activities, the
24 costs of which would otherwise be treated as cost of goods sold of
25 the partnership, but only to the extent that those costs are related
26 to goods distributed to the taxable entity as goods-in-kind in the
27 ordinary course of production activities rather than being sold.

1 (g) A taxable entity that is allowed a subtraction by this
2 section for a cost of goods sold and that is subject to Section
3 263A, 460, or 471, Internal Revenue Code, may [~~shall~~] capitalize
4 that cost in the same manner and to the same extent that the taxable
5 entity capitalized that cost on its federal income tax return or may
6 expense those costs [~~is required or allowed to capitalize the cost~~
7 ~~under federal law and regulations~~], except for costs excluded under
8 Subsection (e), or in accordance with Subsections (c), (d), and
9 (f). If the taxable entity elects to capitalize costs, it must
10 capitalize each cost allowed under this section that it capitalized
11 on its federal income tax return. If the taxable entity later
12 elects to begin expensing a cost that may be allowed under this
13 section as a cost of goods sold, the entity may not deduct any cost
14 in ending inventory from a previous report. If the taxable entity
15 elects to expense a cost of goods sold that may be allowed under
16 this section, a cost incurred before the first day of the period on
17 which the report is based may not be subtracted as a cost of goods
18 sold. If the taxable entity elects to expense a cost of goods sold
19 and later elects to capitalize that cost of goods sold, a cost
20 expensed on a previous report may not be capitalized.

21 (h) A taxable entity shall determine its cost of goods sold,
22 except as otherwise provided by this section, in accordance with
23 the methods used on the federal income tax return on which the
24 report under this chapter is based [~~permitted by federal statutes~~
25 ~~and regulations~~]. This subsection does not affect the type or
26 category of cost of goods sold that may be subtracted under this
27 section.

1 (k) Notwithstanding any other provision of this section, if
2 the taxable entity is a lending institution that offers loans to the
3 public and elects to subtract cost of goods sold, the entity, other
4 than an entity primarily engaged in an activity described by
5 category 5932 of the 1987 Standard Industrial Classification Manual
6 published by the federal Office of Management and Budget, may
7 subtract as a cost of goods sold an amount equal to interest
8 expense. For purposes of this subsection, an entity engaged in
9 lending to unrelated parties solely for agricultural production
10 offers loans to the public.

11 (o) If a taxable entity, including a taxable entity with
12 respect to which cost of goods sold is determined pursuant to
13 Section 171.1014(e)(1), whose principal business activity is film
14 or television production or broadcasting or the distribution of
15 tangible personal property described by Subsection (a)(3)(A)(ii),
16 or any combination of these activities, elects to subtract cost of
17 goods sold, the cost of goods sold for the taxable entity shall be
18 the costs described in this section in relation to the property and
19 include depreciation, amortization, and other expenses directly
20 related to the acquisition, production, or use of the property,
21 including expenses for the right to broadcast or use the property.

22 SECTION 16. Section 171.1013, Tax Code, as effective
23 January 1, 2008, is amended by amending Subsections (a), (b), and
24 (c) and adding Subsection (b-1) to read as follows:

25 (a) Except as otherwise provided by this section, "wages and
26 cash compensation" means the amount entered in the Medicare wages
27 and tips box of Internal Revenue Service Form W-2 or any subsequent

1 form with a different number or designation that substantially
2 provides the same information. The term also includes, to the
3 extent not included above:

4 (1) net distributive income from a taxable entity
5 treated as a partnership [~~partnerships and from trusts and limited~~
6 ~~liability companies treated as partnerships~~] for federal income tax
7 purposes, but only if the person receiving the distribution is a
8 natural person;

9 (2) net distributive income from limited liability
10 companies and corporations treated as S corporations for federal
11 income tax purposes, but only if the person receiving the
12 distribution is a natural person; [~~and~~]

13 (3) stock awards and stock options deducted for
14 federal income tax purposes; and

15 (4) net distributive income from a limited liability
16 company treated as a sole proprietorship for federal income tax
17 purposes, but only if the person receiving the distribution is a
18 natural person.

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

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

26 (2) the cost of all benefits, to the extent deductible
27 for federal income tax purposes, the taxable entity provides to its

1 officers, directors, owners, partners, and employees, including
2 workers' compensation benefits, health care, employer
3 contributions made to employees' health savings accounts, and
4 retirement [~~to the extent deductible for federal income tax~~
5 ~~purposes~~].

6 (b-1) This subsection applies to a taxable entity that is a
7 small employer, as that term is defined by Section 1501.002,
8 Insurance Code, and that has not provided health care benefits to
9 any of its employees in the calendar year preceding the beginning
10 date of its reporting period. Subject to Section 171.1014, a
11 taxable entity to which this subsection applies that elects to
12 subtract compensation for the purpose of computing its taxable
13 margin under Section 171.101 may subtract health care benefits as
14 provided under Subsection (b) and may also subtract:

15 (1) for the first 12-month period on which margin is
16 based and in which the taxable entity provides health care benefits
17 to all of its employees, an additional amount equal to 50 percent of
18 the cost of health care benefits provided to its employees for that
19 period; and

20 (2) for the second 12-month period on which margin is
21 based and in which the taxable entity provides health care benefits
22 to all of its employees, an additional amount equal to 25 percent of
23 the cost of health care benefits provided to its employees for that
24 period.

25 (c) Notwithstanding the actual amount of wages and cash
26 compensation paid by a taxable entity to its officers, directors,
27 owners, partners, and employees, a taxable entity may not include

1 more than \$300,000, or the amount determined under Section 171.006,
2 per 12-month period on which margin is based, for any person in the
3 amount of wages and cash compensation it determines under this
4 section [~~Section 171.101~~]. If a person is paid by more than one
5 entity of a combined group, the combined group may not subtract in
6 relation to that person a total of more than \$300,000, or the amount
7 determined under Section 171.006, per 12-month period on which
8 margin is based.

9 SECTION 17. Section 171.1014, Tax Code, as effective
10 January 1, 2008, is amended by amending Subsections (b), (d), and
11 (f) and adding Subsections (d-1), (h), and (i) to read as follows:

12 (b) The combined group is a single taxable entity for
13 purposes of the application of the tax imposed under this chapter,
14 including Section 171.002(d).

15 (d) For purposes of Section 171.101, a combined group shall
16 make an election to subtract either cost of goods sold or
17 compensation that applies to all of its members. Regardless of the
18 election, the taxable margin of the combined group may not exceed 70
19 percent of the combined group's total revenue from its entire
20 business, as provided by Section 171.101(a)(1)(A).

21 (d-1) A member of a combined group may claim as cost of goods
22 sold those costs that qualify under Section 171.1012 if the goods
23 for which the costs are incurred are owned by another member of the
24 combined group.

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

27 (1) determining the compensation for each of its

1 members as provided by Section 171.1013 as if each member were an
2 individual taxable entity, subject to the limitation prescribed by
3 Section 171.1013(c);

4 (2) adding the amounts of compensation determined
5 under Subdivision (1) together; and

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

11 (h) Each taxable entity that is part of a combined group
12 report shall, for purposes of determining margin and apportionment,
13 include its activities for the same period used by the combined
14 group.

15 (i) Each member of the combined group shall be jointly and
16 severally liable for the tax of the combined group.

17 SECTION 18. Section 171.1015, Tax Code, as effective
18 January 1, 2008, is amended to read as follows:

19 Sec. 171.1015. REPORTING FOR CERTAIN PARTNERSHIPS IN TIERED
20 PARTNERSHIP ARRANGEMENT. (a) In this section, "tiered partnership
21 arrangement" means an ownership structure in which any [~~all~~] of the
22 interests in one taxable entity treated as a partnership or
23 [~~partnership, trust, or limited liability company that is treated~~
24 ~~for federal income taxes as a partnership or a limited liability~~
25 ~~company treated as~~] an S corporation for federal income tax
26 purposes (a "lower tier entity" [~~an "upper tier partnership"~~]) are
27 owned by one or more other taxable entities (an "upper [~~a "lower~~]

1 tier entity"). A tiered partnership arrangement may have two or
2 more tiers.

3 (b) In addition to the tax it is required to pay under this
4 chapter on its own taxable margin, a taxable entity that is an upper
5 ~~[a lower]~~ tier entity may include, for purposes of calculating its
6 own taxable margin, the total revenue ~~[pay the tax on the taxable~~
7 ~~margin]~~ of a lower tier entity ~~[higher tier partnership]~~ if the
8 lower tier entity ~~[higher tier partnership]~~ submits a report to the
9 comptroller showing the amount of total revenue ~~[taxable margin]~~
10 that each upper ~~[lower]~~ tier entity that owns it should include
11 within the upper ~~[lower]~~ tier entity's own taxable margin
12 calculation, according to the ownership ~~[profits]~~ interest of the
13 upper ~~[lower]~~ tier entity. ~~[An upper tier partnership is not~~
14 ~~required to pay tax under this chapter on any taxable margin~~
15 ~~reported under this section.]~~

16 (c) This section does not apply to that percentage of the
17 total revenue ~~[taxable margin]~~ attributable to an upper ~~[a lower]~~
18 tier entity by a lower tier entity ~~[an upper tier partnership]~~ if
19 the upper ~~[lower]~~ tier entity is not subject to the tax under this
20 chapter. In this case, the lower tier entity ~~[higher tier~~
21 ~~partnership]~~ is liable for the tax on its taxable margin.

22 (d) Section 171.002(d) does not apply to an upper tier
23 entity if, before the attribution of any total revenue by a lower
24 tier entity to an upper tier entity under this section, the lower
25 tier entity does not meet the criteria of Section 171.002(d)(1) or
26 (d)(2).

27 (e) The comptroller shall adopt rules to administer this

1 section.

2 SECTION 19. Subchapter A, Chapter 171, Tax Code, is amended
3 by adding Section 171.1016 to read as follows:

4 Sec. 171.1016. E-Z COMPUTATION AND RATE. (a)

5 Notwithstanding any other provision of this chapter, a taxable
6 entity whose total revenue from its entire business is not more than
7 \$10 million may elect to pay the tax imposed under this chapter in
8 the amount computed and at the rate provided by this section rather
9 than in the amount computed and at the tax rate provided by Section
10 171.002.

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

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

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

19 (3) multiplying the amount computed under Subdivision
20 (2) by the rate of 0.575 percent.

21 (c) A taxable entity that elects to pay the tax as provided
22 by this section may not take a credit, deduction, or other
23 adjustment that is not specifically authorized by this section.

24 (d) Section 171.0021 applies to a taxable entity that elects
25 to pay the tax as provided by this section.

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

1 171.002 or, for a taxable entity that elects to pay the tax as
2 provided by this section, the rate under this section.

3 SECTION 20. Section 171.103, Tax Code, as effective January
4 1, 2008, is amended by adding Subsections (c) and (d) to read as
5 follows:

6 (c) A taxable entity that is a combined group shall include
7 in a report filed under Section 171.201 or 171.202, for each member
8 of the combined group that does not have nexus with this state for
9 the purpose of taxation:

10 (1) the gross receipts computed under Subsection (a);
11 and

12 (2) the gross receipts computed under Subsection (a)
13 that are subject to taxation in another state under a throwback law
14 or regulation.

15 (d) The information required by Subsection (c) may be used
16 for informational purposes only. The comptroller shall adopt rules
17 as necessary to enforce the reporting requirement prescribed by
18 Subsection (c).

19 SECTION 21. Section 171.1055(b), Tax Code, as effective
20 January 1, 2008, is amended to read as follows:

21 (b) In apportioning margin, receipts derived from
22 transactions between individual members of a combined group that
23 are excluded under Section 171.1014(c)(3) may not be included in
24 the receipts of the taxable entity from its business done in this
25 state as determined under Section 171.103, except that receipts
26 ultimately derived from the sale of tangible personal property
27 between individual members of a combined group where one member

1 party to the transaction does not have nexus in this state shall be
2 included in the receipts of the taxable entity from its business
3 done in this state as determined under Section 171.103 to the extent
4 that the member of the combined group that does not have nexus in
5 this state resells the tangible personal property without
6 substantial modification to a purchaser in this state. "Receipts
7 ultimately derived from the sale" means the amount paid for the
8 tangible personal property by the third party purchaser.

9 SECTION 22. Section 171.106, Tax Code, as effective January
10 1, 2008, is amended by adding Subsection (f) to read as follows:

11 (f) Notwithstanding Section 171.1055, if a loan or security
12 is treated as inventory of the seller for federal income tax
13 purposes, the gross proceeds of the sale of that loan or security
14 are considered gross receipts.

15 SECTION 23. Section 171.111, Tax Code, as effective January
16 1, 2008, is amended to read as follows:

17 Sec. 171.111. TEMPORARY CREDIT ON TAXABLE MARGIN. (a) On
18 the first report originally due under this chapter on or after
19 January 1, 2008, [~~Not later than March 1, 2007,~~] a taxable entity
20 must [~~may~~] notify the comptroller in writing of its intent to
21 [~~preserve its right to~~] take a credit in an amount allowed by this
22 section on the tax due on taxable margin. The taxable entity may
23 thereafter elect to claim the credit for the current year and future
24 year at or before the original due date of any report due after
25 January 1, 2008 [~~2007~~], until the taxable entity revokes the
26 election or this section expires, whichever is earlier. A taxable
27 entity may claim the credit for not more than 20 consecutive

1 privilege periods beginning with the first report originally due
2 under this chapter on or after January 1, 2008 [2007]. A taxable
3 entity may make only one election under this section and the
4 election may not be conveyed, assigned, or transferred to another
5 entity.

6 (b) The credit allowed under this section for any privilege
7 period is computed by:

8 (1) determining the amount of the business loss
9 carryforwards of the taxable entity under Section 171.110(e), as
10 that section applied to annual reports originally due before
11 January 1, 2008, that were not exhausted on a report originally due
12 under this chapter before January 1, 2008~~[, as of the end of the~~
13 ~~taxable entity's accounting year ending in 2006, of the difference~~
14 ~~between (i) the taxable entity's deductible temporary differences~~
15 ~~and net operating loss carryforwards, net of related valuation~~
16 ~~allowance amounts, shown on the taxable entity's books and records~~
17 ~~on the last day of its taxable year ending in 2006, and (ii) the~~
18 ~~taxable entity's taxable temporary differences as shown on those~~
19 ~~books and records on that date. The amount of other net deferred~~
20 ~~tax items may be less than zero. For the purpose of computing the~~
21 ~~amount of the taxable entity's other net deferred tax items, any~~
22 ~~credit carryforward allowed under this chapter shall be excluded~~
23 ~~from the amount of deductible temporary differences to the extent~~
24 ~~such credit carryforward amount, net of any related valuation~~
25 ~~allowance amount, is otherwise included in the taxable entity's~~
26 ~~deductible temporary differences, net of related valuation~~
27 ~~allowance amounts, shown on the taxable entity's books and records~~

1 ~~on the last day of the taxable entity's taxable year ending in~~
2 ~~2006];~~

3 (2) ~~[apportioning the amount determined under~~
4 ~~Subdivision (1) to this state in the same manner taxable margin is~~
5 ~~apportioned under Section 171.106 on the first report due on or~~
6 ~~after January 1, 2007;~~

7 ~~[(3)]~~ multiplying the amount determined under
8 Subdivision (1) ~~[(2)]~~ by:

9 (A) 2.25 ~~[10]~~ percent for reports originally due
10 on or after January 1, 2008, and before January 1, 2018; and

11 (B) 7.75 percent for reports originally due on or
12 after January 1, 2018, and before September 1, 2027; and

13 (3) ~~[(4)]~~ multiplying the amount determined under
14 Subdivision (2) ~~[(3)]~~ by 4.5 percent ~~[the tax rate prescribed by~~
15 ~~Section 171.002(a)(2)].~~

16 (c) ~~[A taxable entity that notifies the comptroller of its~~
17 ~~intent to preserve its right to take a credit allowed by this~~
18 ~~section shall submit with its notice of intent a statement of the~~
19 ~~amount determined under Subsection (b)(1).]~~ The comptroller may
20 request that the taxable entity submit, with each ~~[in the]~~ annual
21 report ~~[for each succeeding privilege period]~~ in which the taxable
22 entity is eligible to take a credit, information relating to the
23 amount determined under Subsection (b)(1). The taxable entity
24 shall submit in the form and content the comptroller requires any
25 information relating to ~~[the assets and liabilities that determine~~
26 ~~the amount of the credit,~~] the amount determined under Subsection
27 (b)(1) ~~[7]~~ or any other matter relevant to the computation of the

1 credit for which the taxable entity is eligible.

2 (d) A credit that a taxable entity is entitled to under this
3 section may [~~does~~] not be conveyed [~~convey~~], [~~and may not be~~]
4 assigned, or transferred[~~, in relation to a transaction in which~~
5 ~~the taxable entity is purchased by another entity~~]. A taxable
6 entity loses the right to claim the credit if the entity changes
7 combined groups after June 30, 2007.

8 (d-1) A taxable entity, other than a combined group, may not
9 claim the credit under this section unless the taxable entity was,
10 on May 1, 2006, subject to the tax imposed by this chapter as this
11 chapter existed on that date. A taxable entity that is a combined
12 group may claim the credit for each member entity that was, on May
13 1, 2006, subject to the tax imposed by this chapter as this chapter
14 existed on that date and shall compute the amount of the credit for
15 that member as provided by this section.

16 (d-2) The amount of credit claimed, including any unused
17 credit carried forward, may not exceed the amount of franchise tax
18 due for the report. Unused credits may not be carried forward to
19 reports originally due on or after September 1, 2027.

20 (e) This section expires September 1, 2027 [~~2026~~].

21 SECTION 24. Section 171.1121(b), Tax Code, as effective
22 January 1, 2008, is amended to read as follows:

23 (b) Except as otherwise provided by this section, a taxable
24 entity shall use the same accounting methods to apportion margin as
25 used in computing margin [~~reportable federal taxable income~~].

26 SECTION 25. Section 171.1532(b), Tax Code, as effective
27 January 1, 2008, is amended to read as follows:

1 (b) The tax covering the regular annual period, other than a
2 regular annual period included on the initial report, is based on
3 the business done by the taxable entity during the period beginning
4 with the day after the last date upon which taxable margin or net
5 taxable earned surplus on a previous report was based and ending
6 with its last accounting period ending date for federal income tax
7 purposes in the year before the year in which the report is
8 originally due.

9 SECTION 26. Section 171.201(a), Tax Code, as effective
10 January 1, 2008, is amended to read as follows:

11 (a) Except as provided by Section 171.2022, a taxable entity
12 on which the franchise tax is imposed shall file an initial report
13 with the comptroller containing:

14 (1) financial information of the taxable entity
15 necessary to compute the tax under this chapter [~~showing the~~
16 ~~financial condition of the taxable entity on the day that is the~~
17 ~~last day of a calendar month and that is nearest to the end of the~~
18 ~~taxable entity's first year of business~~];

19 (2) the name and address of:

20 (A) each officer, director, and manager of the
21 taxable entity;

22 (B) for a limited partnership, each general
23 partner;

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

27 (D) for a trust, each trustee;

1 (3) the name and address of the agent of the taxable
2 entity designated under Section 171.354; and

3 (4) other information required by the comptroller.

4 SECTION 27. Sections 171.203(a), (b), (d), and (e), Tax
5 Code, as effective January 1, 2008, are amended to read as follows:

6 (a) A corporation or limited liability company on which the
7 franchise tax is imposed, regardless of whether the corporation or
8 limited liability company is required to pay any tax, shall file a
9 report with the comptroller containing:

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

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

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

21 (4) the name and address of the agent of the
22 corporation or limited liability company designated under Section
23 171.354; and

24 (5) the address of the corporation's or limited
25 liability company's principal office and principal place of
26 business.

27 (b) The corporation or limited liability company shall file

1 the report once a year on a form prescribed by the comptroller.

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

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

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

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

22 SECTION 28. Section 171.204, Tax Code, as effective January
23 1, 2008, is amended by adding Subsection (c) to read as follows:

24 (c) The comptroller may require any entity to file
25 information as necessary to verify that the entity is not subject to
26 the tax imposed under this chapter.

27 SECTION 29. Subchapter E, Chapter 171, Tax Code, is amended

1 by adding Section 171.2125 to read as follows:

2 Sec. 171.2125. CALCULATING COST OF GOODS OR COMPENSATION IN
3 STAFF LEASING ARRANGEMENTS. In calculating cost of goods sold or
4 compensation, a taxable entity that is a client company of a staff
5 leasing services company shall rely on information provided by the
6 staff leasing services company on a form promulgated by the
7 comptroller or an invoice.

8 SECTION 30. Subchapter E, Chapter 171, Tax Code, is amended
9 by adding Section 171.214 to read as follows:

10 Sec. 171.214. BUSINESS TAX ADVISORY COMMITTEE. (a) The
11 Business Tax Advisory Committee is created. The committee is
12 composed of:

13 (1) two members of the house of representatives,
14 appointed by the speaker of the house of representatives;

15 (2) two members of the senate, appointed by the
16 lieutenant governor; and

17 (3) the following persons appointed by the
18 comptroller:

19 (A) at least five residents of this state who are
20 engaged in a private business, as either an employee or an owner,
21 that is subject to taxation under this chapter; and

22 (B) at least two residents of this state with
23 expertise in state business taxation.

24 (b) The comptroller shall determine the number of residents
25 appointed under Subsection (a)(3).

26 (c) The comptroller is the presiding officer of the advisory
27 committee.

1 (d) The advisory committee shall conduct a biennial study of
2 the effects of the tax imposed under this chapter on businesses in
3 this state. The study must take into consideration:

4 (1) the relative share of the tax paid by industry and
5 by size of business;

6 (2) how the incidence of the tax compares with the
7 economic makeup of this state's business economy;

8 (3) how the tax compares in structure and in amounts
9 paid to the business taxes imposed by other states;

10 (4) the effect of the tax on the economic climate of
11 this state, including the effect on capital investment and job
12 creation;

13 (5) any factors that result in the tax not operating as
14 intended; and

15 (6) any other item presented by the comptroller or by a
16 majority of the committee.

17 (e) The comptroller by rule shall establish procedures for
18 the functions of the advisory committee, including procedures
19 requiring the advisory committee to issue a report on its findings
20 to the speaker of the house of representatives, the lieutenant
21 governor, and the governor not later than the date each regular
22 session of the legislature begins.

23 (f) This section expires January 31, 2013.

24 SECTION 31. Subchapter G, Chapter 171, Tax Code, is amended
25 by adding Sections 171.3015 and 171.3125 to read as follows:

26 Sec. 171.3015. FORFEITURE OF CERTIFICATE OR REGISTRATION OF
27 TAXABLE ENTITY. The comptroller may, for the same reasons and using

1 the same procedures the comptroller uses in relation to the
2 forfeiture of a corporation's charter or certificate of authority,
3 forfeit the certificate or registration of a taxable entity.

4 Sec. 171.3125. REVIVAL OF CERTIFICATE OR REGISTRATION OF
5 TAXABLE ENTITY AFTER FORFEITURE BY SECRETARY OF STATE. (a) The
6 secretary of state may, using the same procedures the secretary
7 uses in relation to the revival of a corporation's charter or
8 certificate, revive the certificate or registration of a taxable
9 entity.

10 (b) The secretary of state may adopt rules to implement this
11 section.

12 SECTION 32. Section 171.309, Tax Code, is amended to read as
13 follows:

14 Sec. 171.309. FORFEITURE BY SECRETARY OF STATE. The
15 secretary of state may forfeit the charter, ~~[or]~~ certificate, or
16 registration of a taxable entity ~~[of authority of a corporation]~~
17 if:

18 (1) the secretary receives the comptroller's
19 certification under Section 171.302 ~~[of this code]~~; and

20 (2) the taxable entity ~~[corporation]~~ does not revive
21 its forfeited ~~[corporate]~~ privileges within 120 days after the date
22 that the ~~[corporate]~~ privileges were forfeited~~[, and~~

23 ~~[(3) the corporation does not have assets from which a~~
24 ~~judgment for any tax, penalty, or court costs imposed by this~~
25 ~~chapter may be satisfied].~~

26 SECTION 33. Section 17, Chapter 1, Acts of the 79th
27 Legislature, 3rd Called Session, 2006, is amended to read as

1 follows:

2 Sec. 17. ~~[(a) The repeal of Section 171.111, Tax Code, by~~
3 ~~this Act does not affect a credit that accrued under that section~~
4 ~~before the effective date of this Act.~~

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

14 SECTION 34. Sections 18(b) through (f), Chapter 1, Acts of
15 the 79th Legislature, 3rd Called Session, 2006, are amended to read
16 as follows:

17 (b) This section does not affect a credit authorized by a
18 provision listed in Subsection (a) of this section that was
19 established ~~[accrued]~~ under Chapter 171, Tax Code, before the
20 effective date of this Act or a credit that continues to accrue
21 under Section 19 of this Act.

22 (c) A corporation that has any unused credits established
23 ~~[accrued]~~ before the effective date of this Act under a provision
24 other than Subchapter O, P, or Q, Chapter 171, Tax Code, may claim
25 those unused credits on or with the tax report for the period in
26 which the credits were established ~~[accrued]~~, and the former law
27 under which the corporation established ~~[accrued]~~ the credits is

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

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

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

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

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

19 SECTION 35. (a) Section 22, Chapter 1, Acts of the 79th
20 Legislature, 3rd Called Session, 2006, is amended by amending
21 Subsection (b) and adding Subsections (b-1), (b-2), and (g) to read
22 as follows:

23 (b) For an entity becoming subject to the franchise tax
24 under this Act:

25 (1) margin or gross receipts occurring before June 1,
26 2006, may not be considered for purposes of determining taxable
27 margin or for apportionment purposes; and

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

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

7 (i) beginning on the later of:

8 (a) June 1, 2006; or

9 (b) the date the entity was organized
10 in this state or, if a foreign entity, the date it began doing
11 business in this state; and

12 (ii) ending on the date that accounting
13 period ends in 2007;

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

16 (i) beginning on the date that accounting
17 period begins; and

18 (ii) ending on the date that accounting
19 period ends in 2007; and

20 (C) if the entity has an accounting period that
21 ends on December 31, 2007, or if the entity does not have an
22 accounting period that ends in 2007:

23 (i) beginning on the later of:

24 (a) January 1, 2007; or

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

(ii) ending on December 31, 2007 ~~[, and~~

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

~~[(A) beginning on the later of:~~

~~[(i) January 1, 2007; or~~

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

~~[(B) ending on the date the entity became no longer subject to the franchise tax].~~

(b-1) This subsection applies to an entity that:

(1) is not doing business in this state on January 1, 2008;

(2) would be subject to the franchise tax as amended by this Act if it were doing business in this state on or after January 1, 2008, but would not have been subject to the franchise tax as it existed before being amended by this Act; and

(3) was doing business in this state at any time after June 30, 2007, and before January 1, 2008.

(b-2) An entity to which Subsection (b-1) applies shall, for the privilege of doing business in this state at any time after June 30, 2007, and before January 1, 2008, file a final report and pay an additional tax equal to the appropriate rate under Section 171.002,

1 Tax Code, as amended by this Act, of the entity's taxable margin
2 based on the period:

3 (1) beginning on the later of:

4 (A) January 1, 2007; or

5 (B) the date the entity was organized in this
6 state or, if a foreign entity, the date it began doing business in
7 this state; and

8 (2) ending on the date the entity became no longer
9 subject to the tax.

10 (g) Except as provided by Subsections (b-1) and (b-2) of
11 this section, an entity becoming subject to the franchise tax under
12 this Act that is part of a combined group report shall, for purposes
13 of determining margin and apportionment, include its activity for
14 the same period used by the combined group.

15 (b) This section takes effect immediately if this Act
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this section takes effect September 1, 2007.

20 SECTION 36. Sections 23(b) and (f), Chapter 1, Acts of the
21 79th Legislature, 3rd Called Session, 2006, are amended to read as
22 follows:

23 (b) The information report required under this section must
24 contain the same information that an entity required to file the
25 report would have submitted in its report due to the comptroller in
26 2006 under Chapter 171, Tax Code, if the changes made by this Act to
27 Chapter 171, Tax Code, had been in effect January 1, 2006. The

1 information report shall also contain the total of maintenance and
2 operations school property taxes paid by the entity to school
3 districts in Texas in the 2005 [~~2006, and 2007~~] tax year [~~years~~].
4 The comptroller shall provide the forms and instructions to the
5 entities required to file a report under this section.

6 (f) The comptroller:

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

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

12 (3) shall provide those forms and instructions to
13 those entities on or after November 15, 2006, but before December 2,
14 2006;

15 (4) shall require the entities to submit their
16 information reports on or before February 15, 2007 [~~and February~~
17 ~~15, 2008~~];

18 (5) may not grant any extensions for filing the
19 information reports; and

20 (6) shall report to the governor, the lieutenant
21 governor, and the members of the legislature, on or before April 1,
22 2007, [~~and April 1, 2008,~~] the results of the information reports,
23 stating the amount of revenue generated by the tax under Chapter
24 171, Tax Code, [~~in each year,~~] the amount that would have been
25 generated from the entities submitting information reports under
26 this section if the changes made by this Act to Chapter 171, Tax
27 Code, had been in effect January 1, 2006, and the school maintenance

1 and operations property taxes paid by the entities in the 2005 [~~7~~
2 ~~2006, and 2007~~] tax year [~~years~~].

3 SECTION 37. The following provisions of the Tax Code are
4 repealed:

5 (1) Section 171.0011(e), as effective January 1, 2008;

6 (2) Section 171.1011(p)(4-b), as effective January 1,
7 2008;

8 (3) Section 171.1014(g), as effective January 1, 2008;
9 and

10 (4) Section 171.2035, as effective January 1, 2008.

11 SECTION 38. This Act applies only to a report originally due
12 on or after the effective date of this Act.

13 SECTION 39. The taxation method provided by Section
14 171.002, Tax Code, as amended by this Act, and the taxation method
15 provided by Section 171.1016, Tax Code, as added by this Act, are
16 not severable, and neither provision would have been enacted
17 without the other. If the taxation method provided by Section
18 171.002, Tax Code, as amended by this Act, is held invalid, the
19 taxation method provided by Section 171.1016, Tax Code, as added by
20 this Act, is also invalid.

21 SECTION 40. Except as otherwise provided by this Act, this
22 Act takes effect January 1, 2008.

President of the Senate

Speaker of the House

I certify that H.B. No. 3928 was passed by the House on May 2, 2007, by the following vote: Yeas 138, Nays 3, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 3928 on May 23, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 3928 on May 26, 2007, by the following vote: Yeas 136, Nays 5, 3 present, not voting.

Chief Clerk of the House

H.B. No. 3928

I certify that H.B. No. 3928 was passed by the Senate, with amendments, on May 18, 2007, by the following vote: Yeas 28, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 3928 on May 26, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor