

~~Absent, Excused — Bailey, Harless.~~

~~Absent — Bohae, Davis, J., Flores, Hill, Kolkhorst, Noriega, Pierson.~~

HB 3928 - ADOPTION OF CONFERENCE COMMITTEE REPORT

Representative Keffer submitted the following conference committee report on **HB 3928** :

Austin, Texas, May 25, 2007

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 3928** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Averitt	Chisum
Fraser	Otto
Lucio	Peña
Van de Putte	Keffer
Ogden	

On the part of the senate

On the part of the house

HB 3928, A bill to be entitled 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 other entity other than a limited liability company, more than 50 ~~[80]~~ percent ~~[or more]~~, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity; and

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

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

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

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

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

(C) is a "broker" or "dealer" as defined by the Securities Exchange Act of 1934 at 15 U.S.C. Section 78c; or

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

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

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

(15) "Staff leasing services company" means:

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

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

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

(A) the activities of the group members[+]

[+] are in the same general line, such as manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation, or finance; [✖]

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

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

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

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

(b) "Taxable entity" does not include:

- (1) a sole proprietorship;
- (2) a general partnership;

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

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

- (3) a passive entity as defined by Section 171.0003; or
- (4) an entity that is exempt from taxation under Subchapter B.

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

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

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

(3) an escrow;

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

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

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

- ~~[(C) treated as a partnership for federal income tax purposes;~~
- ~~[(5) a passive investment partnership that is a passive entity and that is:~~
- ~~[(A) formed pursuant to the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes);~~
- ~~[(B) formed pursuant to the limited partnership law of any other state; or~~
- ~~[(C) formed pursuant to the limited partnership laws of any foreign country;~~
- ~~[(6) a passive investment partnership that is a passive entity and is a general partnership;~~
- ~~[(7) a trust that is a passive entity:~~
- ~~[(A) that is taxable as a trust under Section 641, Internal Revenue Code;~~
- ~~[(B) all of the beneficiaries of which are natural persons or charitable entities as defined in Section 501(c)(3), Internal Revenue Code;~~
- ~~[(C) that is not a trust taxable as a business entity pursuant to Treasury Regulation Section 301.7701-4(b); and~~
- ~~[(D) that is organized as a trust and is described in Section 7701(a)(30)(E), Internal Revenue Code;~~
- ~~[(8)] a real estate investment trust (REIT) as defined by Section 856, Internal Revenue Code, and its "qualified REIT subsidiary" entities as defined by Section 856(i)(2), Internal Revenue Code, provided that:~~
- ~~(A) a REIT with any amount of its assets in direct holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate, is a taxable entity; and~~
- ~~(B) a limited partnership or other entity that directly holds the real estate as described in Paragraph (A) is not exempt under this subdivision, without regard to whether a REIT holds an interest in it; [✖]~~
- ~~(5) [(9)] a real estate mortgage investment conduit (REMIC), as defined by Section 860D, Internal Revenue Code;~~
- ~~(6) a nonprofit self-insurance trust created under Chapter 2212, Insurance Code, or a predecessor statute;~~
- ~~(7) a trust qualified under Section 401(a), Internal Revenue Code; or~~
- ~~(8) a trust or other entity that is exempt under Section 501(c)(9), Internal Revenue Code.~~
- ~~(d) An entity that can file as a sole proprietorship for federal tax purposes is not a sole proprietorship for purposes of Subsection (b)(1) and is not exempt under that subsection if the entity is formed in a manner under the statutes of this state, [✖] another state, or a foreign country that limit the liability of the entity.~~
- SECTION 3. Section 171.0003(a), Tax Code, as effective January 1, 2008, is amended to read as follows:
- (a) An entity is a passive entity only if:
- (1) the entity is a general or limited partnership or a trust, other than a business trust;

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

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

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

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

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

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

SECTION 4. Section 171.0004(e), Tax Code, as effective January 1, 2008, is amended to read as follows:

(e) For purposes of this section:

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

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

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

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

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

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

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

(b) The additional tax is equal to the appropriate rate under Section 171.002 of the taxable entity's taxable margin computed on the period beginning on the day after the last day for which the tax imposed on taxable margin or net taxable earned surplus was computed and ending on the date the taxable entity is no longer subject to the tax imposed under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) for a taxable entity for which the total revenue from its entire business is equal to or greater than \$700,000 but less than \$900,000, the taxable entity is entitled to a discount of 20 percent.

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

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

Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR NO TAX DUE, DISCOUNTS, ~~EXEMPTION~~ AND COMPENSATION DEDUCTION.

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

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

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

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

SECTION 12. Section 171.1011, Tax Code, as effective January 1, 2008, is amended by amending Subsections (b), (c), (d), (e), (g-3), (h), (n), and (o) and adding Subsections (g-4) and (t) to read as follows:

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

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

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

(A) adding:

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

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

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

(B) subtracting:

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

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

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

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

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

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

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

(A) adding:

(i) the amount reportable as income ~~[entered]~~ on line 1c, Internal Revenue Service Form 1065;

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

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

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

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

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

(B) subtracting:

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

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

(iii) to the extent included in Subsection (c)(2)(A), net distributive income from a taxable entity ~~[partnerships and from trusts and limited liability companies]~~ treated as a partnership or ~~[partnerships for federal income tax purposes and net distributive income from limited liability companies and corporations treated]~~ as an S corporation ~~[corporations]~~ for federal income tax purposes;

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

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

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

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

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

(g-3) A taxable entity that provides legal services shall exclude from its total revenue [~~, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3):~~]:

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

(A) damages due the claimant;

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

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

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

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

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

(g-4) A taxable entity that is a pharmacy cooperative shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through funds from rebates from pharmacy wholesalers that are distributed to the pharmacy cooperative's shareholders.

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

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

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

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

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

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

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

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

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

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

(1) "Sales commission" means:

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

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

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

(A) "Tangible personal property" means:

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

(ii) films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, [by the creator of the property] for which, as costs are incurred in producing the property, it is intended or is reasonably likely that any ~~[tangible]~~ medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and

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

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

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

- (1) labor costs;
- (2) cost of materials that are an integral part of specific property produced;
- (3) cost of materials that are consumed in the ordinary course of performing production activities;
- (4) handling costs, including costs attributable to processing, assembling, repackaging, and inbound transportation costs;
- (5) storage costs, including the costs of carrying, storing, or warehousing property, subject to Subsection (e);
- (6) depreciation, depletion, and amortization, reported on the federal income tax return on which the report under this chapter is based, to the extent associated with and necessary for the production of goods, including recovery described by Section 197, Internal Revenue Code;
- (7) the cost of renting or leasing equipment, facilities, or real property directly used for the production of the goods, including pollution control equipment and intangible drilling and dry hole costs;
- (8) the cost of repairing and maintaining equipment, facilities, or real property directly used for the production of the goods, including pollution control devices;
- (9) costs attributable to research, experimental, engineering, and design activities directly related to the production of the goods, including all research or experimental expenditures described by Section 174, Internal Revenue Code;
- (10) geological and geophysical costs incurred to identify and locate property that has the potential to produce minerals;
- (11) taxes paid in relation to acquiring or producing any material, or taxes paid in relation to services that are a direct cost of production;
- (12) the cost of producing or acquiring electricity sold; and
- (13) a contribution to a partnership in which the taxable entity owns an interest that is used to fund activities, the costs of which would otherwise be treated as cost of goods sold of the partnership, but only to the extent that those costs are related to goods distributed to the taxable entity as goods-in-kind in the ordinary course of production activities rather than being sold.

(g) A taxable entity that is allowed a subtraction by this section for a cost of goods sold and that is subject to Section 263A, 460, or 471, Internal Revenue Code, may ~~shall~~ capitalize that cost in the same manner and to the same extent that the taxable entity capitalized that cost on its federal income tax return or may expense those costs ~~[is required or allowed to capitalize the cost under federal law and regulations]~~, except for costs excluded under Subsection (e), or in accordance with Subsections (c), (d), and (f). If the taxable entity elects to capitalize costs, it must capitalize each cost allowed under this section that it capitalized on its federal income tax return. If the taxable entity later elects to begin expensing a

cost that may be allowed under this section as a cost of goods sold, the entity may not deduct any cost in ending inventory from a previous report. If the taxable entity elects to expense a cost of goods sold that may be allowed under this section, a cost incurred before the first day of the period on which the report is based may not be subtracted as a cost of goods sold. If the taxable entity elects to expense a cost of goods sold and later elects to capitalize that cost of goods sold, a cost expensed on a previous report may not be capitalized.

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

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

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

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

(a) Except as otherwise provided by this section, "wages and cash compensation" means the amount entered in the Medicare wages and tips box of Internal Revenue Service Form W-2 or any subsequent form with a different number or designation that substantially provides the same information. The term also includes, to the extent not included above:

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

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

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

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

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

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

(2) the cost of all benefits, to the extent deductible for federal income tax purposes, the taxable entity provides to its officers, directors, owners, partners, and employees, including workers' compensation benefits, health care, employer contributions made to employees' health savings accounts, and retirement [to the extent deductible for federal income tax purposes].

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

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

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

(c) Notwithstanding the actual amount of wages and cash compensation paid by a taxable entity to its officers, directors, owners, partners, and employees, a taxable entity may not include more than \$300,000, or the amount determined under Section 171.006, per 12-month period on which margin is based, for any person in the amount of wages and cash compensation it determines under this section [Section 171.101]. If a person is paid by more than one entity of a combined group, the combined group may not subtract in relation to that person a total of more than \$300,000, or the amount determined under Section 171.006, per 12-month period on which margin is based.

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

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

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

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

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

(1) determining the compensation for each of its members as provided by Section 171.1013 as if each member were an individual taxable entity, subject to the limitation prescribed by Section 171.1013(c);

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

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

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

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

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

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

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

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

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

(e) The comptroller shall adopt rules to administer this section.

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

Sec. 171.1016. E-Z COMPUTATION AND RATE. (a) Notwithstanding any other provision of this chapter, a taxable entity whose total revenue from its entire business is not more than \$10 million may elect to pay the tax imposed under this chapter in the amount computed and at the rate provided by this section rather than in the amount computed and at the tax rate provided by Section 171.002.

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

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

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

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

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

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

(e) A reference in this chapter or other law to the rate of the franchise tax means, as appropriate, the rate under Section 171.002 or, for a taxable entity that elects to pay the tax as provided by this section, the rate under this section.

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

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

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

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

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

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

(b) In apportioning margin, receipts derived from transactions between individual members of a combined group that are excluded under Section 171.1014(c)(3) may not be included in the receipts of the taxable entity from its business done in this state as determined under Section 171.103, except that receipts ultimately derived from the sale of tangible personal property between individual members of a combined group where one member party to the transaction does not have nexus in this state shall be included in the receipts of the taxable entity from its business done in this state as determined under Section 171.103 to the extent that the member of the combined group that does not have nexus in this state resells the tangible personal property without substantial modification to a purchaser in this state. "Receipts ultimately derived from the sale" means the amount paid for the tangible personal property by the third party purchaser.

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

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

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

Sec. 171.111. TEMPORARY CREDIT ON TAXABLE MARGIN. (a) On the first report originally due under this chapter on or after January 1, 2008, [Not later than March 1, 2007,] a taxable entity must [may] notify the comptroller in writing of its intent to [preserve its right to] take a credit in an amount allowed by this section on the tax due on taxable margin. The taxable entity may thereafter elect to claim the credit for the current year and future year at or before the original due date of any report due after January 1, 2008 [2007], until the taxable entity revokes the election or this section expires, whichever is earlier. A taxable entity may claim the credit for not more than 20 consecutive privilege periods beginning with the first report originally due under this chapter on or after January 1, 2008 [2007]. A taxable entity may make only one election under this section and the election may not be conveyed, assigned, or transferred to another entity.

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

(1) determining the amount of the business loss carryforwards of the taxable entity under Section 171.110(e), as that section applied to annual reports originally due before January 1, 2008, that were not exhausted on a report originally due under this chapter before January 1, 2008[as of the end of the taxable entity's accounting year ending in 2006, of the difference between (i) the taxable entity's deductible temporary differences and net operating loss carryforwards, net of related valuation allowance amounts, shown on the taxable entity's books and records on the last day of its taxable year ending in 2006, and (ii) the taxable entity's taxable temporary differences as shown on those books

~~and records on that date. The amount of other net deferred tax items may be less than zero. For the purpose of computing the amount of the taxable entity's other net deferred tax items, any credit carryforward allowed under this chapter shall be excluded from the amount of deductible temporary differences to the extent such credit carryforward amount, net of any related valuation allowance amount, is otherwise included in the taxable entity's deductible temporary differences, net of related valuation allowance amounts, shown on the taxable entity's books and records on the last day of the taxable entity's taxable year ending in 2006;~~

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

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

~~(A) 2.25 [40] percent for reports originally due on or after January 1, 2008, and before January 1, 2018; and~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) the name and address of:

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

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

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

(D) for a trust, each trustee;

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

(4) other information required by the comptroller.

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

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

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

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

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

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

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

(b) The corporation or limited liability company shall file the report once a year on a form prescribed by the comptroller.

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

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

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

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

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

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

SECTION 29. Subchapter E, Chapter 171, Tax Code, is amended by adding Section 171.2125 to read as follows:

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

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

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

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

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

(3) the following persons appointed by the comptroller:

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

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

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

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

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

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

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

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

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

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

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

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

(f) This section expires January 31, 2013.

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

Sec. 171.3015. FORFEITURE OF CERTIFICATE OR REGISTRATION OF TAXABLE ENTITY. The comptroller may, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of a corporation's charter or certificate of authority, forfeit the certificate or registration of a taxable entity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) A corporation that has any unused credits established ~~[accrued]~~ before the effective date of this Act under Subchapter P, Chapter 171, Tax Code, may claim those unused credits on or with the tax report for the period in which the credit was established ~~[accrued]~~. However, if the corporation was allowed to carry forward unused credits under that subchapter, the corporation may continue to apply those credits on or with each consecutive report until the earlier of the

date the credit would have expired under the terms of Subchapter P, Chapter 171, Tax Code, had it continued in existence, or December 31, 2012, and the former law under which the corporation established ~~accrued~~ the credits is continued in effect for purposes of determining the amount of the credits the corporation may claim and the manner in which the corporation may claim the credits.

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

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

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

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

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

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

(i) beginning on the later of:

(a) June 1, 2006; or

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

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

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

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

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

and

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

(i) beginning on the later of:

(a) January 1, 2007; or

(b) the date the entity was organized in the state or, if a foreign entity, the date it began doing 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, Tax Code, as amended by this Act, of the entity's taxable margin based on the period:

(1) beginning on the later of:

(A) January 1, 2007; or

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

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

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

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

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

(b) The information report required under this section must contain the same information that an entity required to file the report would have submitted in its report due to the comptroller in 2006 under Chapter 171, Tax Code, if the changes made by this Act to Chapter 171, Tax Code, had been in effect January 1, 2006. The information report shall also contain the total of maintenance and

operations school property taxes paid by the entity to school districts in Texas in the 2005 [~~2006, and 2007~~] tax year [years]. The comptroller shall provide the forms and instructions to the entities required to file a report under this section.

(f) The comptroller:

- (1) shall identify the entities described by Subsection (d) of this section;
- (2) shall prepare all forms and instructions required for those entities to file their information reports as required by this section;
- (3) shall provide those forms and instructions to those entities on or after November 15, 2006, but before December 2, 2006;
- (4) shall require the entities to submit their information reports on or before February 15, 2007 [~~and February 15, 2008~~];
- (5) may not grant any extensions for filing the information reports; and
- (6) shall report to the governor, the lieutenant governor, and the members of the legislature, on or before April 1, 2007, [~~and April 1, 2008,~~] the results of the information reports, stating the amount of revenue generated by the tax under Chapter 171, Tax Code, [~~in each year,~~] the amount that would have been generated from the entities submitting information reports under this section if the changes made by this Act to Chapter 171, Tax Code, had been in effect January 1, 2006, and the school maintenance and operations property taxes paid by the entities in the 2005 [~~2006, and 2007~~] tax year [years].

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

- (1) Section 171.0011(e), as effective January 1, 2008;
- (2) Section 171.1011(p)(4-b), as effective January 1, 2008;
- (3) Section 171.1014(g), as effective January 1, 2008; and
- (4) Section 171.2035, as effective January 1, 2008.

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

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

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

HB 3928 - STATEMENT OF LEGISLATIVE INTENT

REPRESENTATIVE SMITHEE: Mr. Keffer, not only did the senate take out the Sprint amendment, which the house overwhelmingly passed, but they also inserted their own language, didn't they?

REPRESENTATIVE KEFFER: Yes, they did.

SMITHEE: Well, actually, I said their own language, I think it was the telephone industry's language.

KEFFER: You're right, that's exactly the way it was.

SMITHEE: Which instead of prohibiting the charging of that tax, expressly allowed the charging of that tax to the consumer.

KEFFER: That's certainly the way we could construe that, because they were setting up what you could do if you were going to pass that through, yes sir.

SMITHEE: Now why in the world they would do that, I have no idea, but I told you at the time, that my main concern, that I would love to go back to the house language, because I thought it protected the consumer, but at the very least, what I wanted to do was get that language out of the bill that would permit these companies to charge that, because that was never legislative intent, is that correct?

KEFFER: That is correct, yes.

SMITHEE: And so I appreciate you working with me, you asked for me to be on the conference committee, you went to conference, and you had agreed, and Senator Ogden had agreed, originally, that we could go back to the house language, but there came up a problem that some of the telephone industry was threatening to work against the bill if that stayed in there. Is that correct?

KEFFER: Yes, sir. That's correct.

SMITHEE: And you, and Senator Ogden, and both expressed concern that if they killed the bill, that it could jeopardize the small business tax, increasing the small business exemption, and some other things that are probably good.

KEFFER: Yes, sir.

SMITHEE: Now to me that's despicable that an industry would jeopardize an important piece of legislation just for their own personal benefit, and I know you agree with that.

KEFFER: I do agree.

SMITHEE: And in fact, after several of those telephone companies had assured me, and given me their word they would not charge this tax to their consumers, over the next couple of years, isn't it true that one of the companies actually came to you or a staff member, and said they were going to do it whether we prohibited them from doing it or not, because they didn't think we could stop them.

KEFFER: They were going to go through with it, and I think there's a case in another state, where they've been sued and going through to try and see what they can do as far as a pass-through there, yes.

SMITHEE: Well, you know, we've been very charitable to some of these phone companies over the last two sessions, and I think that some of them look at this process with an arrogance of basically thinking that they're the ones that make the decisions and we're just here to carry them out. I'm in a position where we got the language out that I found so offensive, but I still think we let our constituents down by getting back to where we are, but I just want to make sure, for legislative intent, as you know, the attorney general presently filed a lawsuit.

KEFFER: That's right.

SMITHEE: And there are some cases that hold that one of the rules of legislative construction, when we're doing legislative history, that if the legislature deletes a provision from a pending bill, that can be construed in some instances as intent that it not become law. So my specific question to you as the author of this bill, is whether the removal of the house amendment regarding the basic prohibition of charging that tax is an intent on your part to allow these companies to charge that tax to the consumer?

KEFFER: I want to be very, very clear that that is not my intent.

SMITHEE: And is it true that the reason that language came out was primarily because of these companies' despicable attempts to try to kill the legislation if it was left in, and it is not an intent by anybody to allow them to charge this charge to consumers?

KEFFER: No one in this house, I feel, would ever, well, I'll say as author of this bill, it is not my intent, and yes, there was a great concern that that might happen.

SMITHEE: Okay, well I hope that this legislative intent can be used to some extent by the attorney general in this suit, because I think it would be a very unanimous view of this house, that they shouldn't be doing this to our constituents. So thank you, Mr. Keffer.

REMARKS ORDERED PRINTED

Representative Vo moved to print remarks between Representative Smithee and Representative Keffer.

The motion prevailed.

Representative Keffer moved to adopt the conference committee report on **HB 3928**.

A record vote was requested.

The motion to adopt the conference committee report on **HB 3928** prevailed by (Record 1900): 136 Yeas, 5 Nays, 3 Present, not voting.

Yeas — Allen; Alonzo; Anchia; Anderson; Aycock; Berman; Bohac; Bolton; Bonnen; Branch; Brown, B.; Brown, F.; Burnam; Callegari; Castro; Chavez; Chisum; Christian; Cohen; Coleman; Cook, B.; Cook, R.; Corte; Crabb; Creighton; Crownover; Darby; Davis, J.; Davis, Y.; Delisi; Deshotel; Driver; Dukes; Dunnam; Eiland; Eissler; Elkins; England; Escobar; Farabee; Farias; Flores; Flynn; Frost; Gallego; Garcia; Gattis; Geren; Giddings; Gonzales; Gonzalez Toureilles; Goolsby; Guillen; Haggerty; Hamilton; Hancock; Hardcastle; Hartnett; Heflin; Hernandez; Hilderbran; Hill; Hochberg; Hodge; Homer; Hopson; Howard, C.; Howard, D.; Hughes; Isett; Jackson; Jones; Keffer; King, P.; King, T.; Kolkhorst; Krusee; Kuempel; Latham; Laubenberg; Lucio; Macias; Madden; Martinez; Martinez Fischer; McCall; McClendon; McReynolds; Menendez; Merritt; Miles; Miller; Moreno; Morrison; Mowery; Murphy; Naishtat; Noriega; O'Day; Oliveira; Olivo; Orr; Ortiz; Otto; Parker; Patrick; Peña; Phillips; Pickett; Pitts; Puente; Quintanilla; Raymond; Riddle;

Ritter; Rodriguez; Rose; Smith, T.; Smith, W.; Solomons; Strama; Straus; Swinford; Talton; Taylor; Thompson; Truitt; Van Arsdale; Vaught; Veasey; Villarreal; Vo; West; Woolley; Zedler; Zerwas.

Nays — Farrar; Harper-Brown; Herrero; Leibowitz; Mallory Caraway.

Present, not voting — Mr. Speaker; Smithee; Turner(C).

Absent, Excused — Bailey; Harless.

Absent — Dutton; King, S.; Paxton; Pierson.

STATEMENTS OF VOTE

I was shown voting no on Record No. 1900. I intended to vote yes.

Harper-Brown

When Record No. 1900 was taken, my vote failed to register. I would have voted yes.

S. King

~~HB 1060 - ADOPTION OF CONFERENCE COMMITTEE REPORT~~

Representative Parker submitted the following conference committee report on **HB 1060** :

Austin, Texas, May 22, 2007

The Honorable David Dewhurst
President of the Senate

The Honorable Tom Craddick
Speaker of the House of Representatives

Sirs: We, your conference committee, appointed to adjust the differences between the senate and the house of representatives on **HB 1060** have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Harris
Brimer
Lucio
Watson

Parker
D. Howard
McClendon
Kolkhorst
Zerwas

On the part of the senate

On the part of the house

HB 1060, A bill to be entitled An Act relating to the use of electronically readable information from a driver's license or personal identification certificate by hospitals.

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

SECTION 1. Section 521.126, Transportation Code, is amended by amending Subsection (b) and adding Subsections (i), (j), and (k) to read as follows:

(b) Except as provided by Subsections (d), (e), ~~(g)~~, (i), and (j), a person commits an offense if the person: