

**TAX CODE, TITLE 2
SUBTITLE F. FRANCHISE TAX
CHAPTER 171. FRANCHISE TAX**

SUBCHAPTER A. TAX IMPOSED

Sec. 171.001. TAX IMPOSED.

- (a) A franchise tax is imposed on:
- (1) each corporation that does business in this state or that is chartered in this state; and
 - (2) each limited liability company that does business in this state or that is organized under the laws of this state.
- (b) In this chapter:
- (1) "Banking corporation" means each state, national, domestic, or foreign bank, whether organized under the laws of this state, another state, or another country, or under federal law, including a limited banking association organized under Subtitle A, Title 3, Finance Code, and each bank organized under Section 25(a), Federal Reserve Act (12 U.S.C. Secs. 611-631) (edge corporations), but does not include a bank holding company as that term is defined by Section 2, Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1841).
 - (2) "Beginning date" means:
 - (A) for a corporation chartered in this state, the date on which the corporation's charter takes effect; and
 - (B) for a foreign corporation, the date on which the corporation begins doing business in this state.
 - (3) "Corporation" includes:
 - (A) a limited liability company, as defined under the Texas Limited Liability Company Act;
 - (B) a savings and loan association; and
 - (C) a banking corporation.
 - (4) "Charter" includes a limited liability company's certificate of organization.
 - (5) "Internal Revenue Code" means the Internal Revenue Code of 1986 in effect for the federal tax year beginning on or after January 1, 1996, and before January 1, 1997, and any regulations adopted under that code applicable to that period.
 - (6) "Officer" and "director" include a limited liability company's directors and managers and a limited banking association's directors and managers and participants if there are no directors or managers.
 - (7) "Savings and loan association" means a savings and loan association or savings bank, whether organized under the laws of this state, another state, or another country, or under federal law.
 - (8) "Shareholder" includes a limited liability company's member and a limited banking association's participant.
- (c) The tax imposed under this chapter extends to the limits of the United States Constitution and the federal law adopted under the United States constitution.

Acts 1981, 67th Leg., p. 1691, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 901, Sec. 53(a), eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.01, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 765, Sec. 7, eff. Aug. 30, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 12, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1002, Sec. 1, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1185, Sec. 1, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 184, Sec. 1, eff. Jan. 1, 2000; Acts 2003, 78th Leg., ch. 209, Sec. 31, 32, eff. Oct. 1, 2003.

Sec. 171.0011. ADDITIONAL TAX.

- (a) An additional tax is imposed on a corporation that for any reason becomes no longer subject to the earned surplus component of the tax, without regard to whether the corporation remains subject to the taxable capital component of the tax.
- (b) The additional tax is equal to 4.5 percent of the corporation's net taxable earned surplus computed on the period beginning on the day after the last day for which the tax imposed on net taxable earned surplus was computed under Section 171.1532 and ending on the date the corporation is no longer subject to the earned surplus component of the tax.
- (c) The additional tax imposed and any report required by the comptroller are due on the 60th day after the date the corporation becomes no longer subject to the earned surplus component of the tax.
- (d) Except as otherwise provided by this section, the provisions of this chapter apply to the tax imposed under this section.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.02, eff. Jan. 1, 1992. Amended by Acts 1993, 73rd Leg., ch. 546, Sec. 1, eff. Jan. 1, 1994.

Sec. 171.002. RATES; COMPUTATION OF TAX.

- (a) The rates of the franchise tax are:
 - (1) 0.25 percent per year of privilege period of net taxable capital; and
 - (2) 4.5 percent of net taxable earned surplus.
- (b) The amount of franchise tax on each corporation is computed by adding the following:
 - (1) the amount calculated by applying the tax rate prescribed by Subsection (a)(1) to the corporation's net taxable capital; and
 - (2) the difference between:
 - (A) the amount calculated by applying the tax rate prescribed by Subsection (a)(2) to the corporation's net taxable earned surplus; and
 - (B) the amount determined under Subdivision (1).
- (c) In making a computation under Subsection (b), an amount computed under Subsection (b)(1) or (b)(2) that is zero or less is computed as a zero.
- (d) A corporation 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 corporation is less than \$100; or
 - (2) the amount of the corporation's gross receipts:
 - (A) from its entire business under Section 171.105 is less than \$150,000; and
 - (B) from its entire business under Section 171.1051, including the amount excepted under Section 171.1051(a), is less than \$150,000.

Acts 1981, 67th Leg., p. 1691, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 3, part D, Sec. 1, eff. May 1, 1985; Acts 1987, 70th Leg., 2nd C.S., ch. 5, art. 2, pt. 1, Sec. 1, eff. Jan. 1, 1988; Acts 1987, 70th Leg., 2nd C.S., ch. 5, art. 2, pt. 2, Sec. 1, eff. Jan. 1, 1990; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.031(a), eff. Jan. 1, 1992; Acts 1997, 75th Leg., ch. 1185, Sec. 2, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 394, Sec. 10, eff. Jan. 1, 2000.

Sec. 171.005. RATE OF TAX FOR CORPORATION IN PROCESS OF LIQUIDATION.

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

Acts 1981, 67th Leg., p. 1693, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 31, Sec. 6, eff. Aug. 26, 1985.

SUBCHAPTER B. EXEMPTIONS

Sec. 171.051. APPLICATION FOR EXEMPTION; EFFECTIVE DATE.

- (a) Except as provided by Subsection (c) of this section, a corporation may apply for an exemption under this subchapter by filing with the comptroller, as provided by the rules of the comptroller, evidence of the corporation's qualifications for the exemption.
- (b) If a corporation files the evidence establishing the corporation's qualifications for an exemption within 15 months after the last day of the calendar month in which the corporation's charter or certificate of authority is dated, the exemption is recognized, if it is finally established, as of the date of the charter or certificate.
- (c) The exemption provided by Section 171.063 of this code must be established as provided by that section, but a corporation may apply for and receive other exemptions as provided by this section.
- (d) Neither this section nor Section 171.063 of this code requires a corporation that was granted a franchise tax exemption before September 1, 1975, that was entitled to the exemption on September 1, 1975, and that has held the exemption since that date, to file an additional application, report, letter of exemption, or other evidence of qualification for that exemption.

Acts 1981, 67th Leg., p. 1693, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.052. CERTAIN CORPORATIONS.

An insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in this state now required to pay an annual tax under Chapter 4 or 9, Insurance Code, measured by its gross premium receipts is exempted from the franchise tax. A nonadmitted insurance organization that is required to pay a gross premium receipts tax during a tax year is exempted from the franchise tax for that same tax year. Farm mutuals, local mutual aid associations, and burial associations are not subject to the franchise tax.

Acts 1981, 67th Leg., p. 1693, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 30, Sec. 1, eff. Aug. 26, 1985; Acts 1993, 73rd Leg., ch. 546, Sec. 2, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 1275, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 33, eff. Oct. 1, 2003.

Sec. 171.0525. EXEMPTION--CERTAIN INSURANCE COMPANIES.

Text of section effective April 1, 2005

A corporation that is a farm mutual insurance company, local mutual aid association, or burial association is exempted from the franchise tax.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 23, eff. April 1, 2005.

Sec. 171.0527. EXEMPTION--TITLE INSURANCE COMPANIES AND TITLE INSURANCE AGENTS.

Text of section effective April 1, 2005

- (a) In this section, "title insurance company" and "title insurance agent" have the meanings assigned by Section 2501.003, Insurance Code.
- (b) corporation that is a title insurance company or title insurance agent whose principal activity is the business of title insurance as described by Section 2501.005, Insurance Code, is exempted from the franchise tax.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 24, eff. April 1, 2005.

Sec. 171.053. EXEMPTION--RAILWAY TERMINAL CORPORATION.

A corporation organized as a railway terminal corporation and having no annual net income from its business is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1693, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.055. EXEMPTION--OPEN-END INVESTMENT COMPANY.

An open-end investment company, as defined by the Investment Company Act of 1940 (Section 80a-1 et seq., 15 U.S.C.), that is subject to that Act and that is registered under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1693, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.056. EXEMPTION--CORPORATION WITH BUSINESS INTEREST IN SOLAR ENERGY DEVICES.

A corporation engaged solely in the business of manufacturing, selling, or installing solar energy devices, as defined by Section 171.107 of this code, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1693, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.057. EXEMPTION--NONPROFIT CORPORATION ORGANIZED TO PROMOTE COUNTY, CITY, OR ANOTHER AREA.

A nonprofit corporation organized solely to promote the public interest of a county, city, town, or another area in the state is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1694, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.058. EXEMPTION--NONPROFIT CORPORATION ORGANIZED FOR RELIGIOUS PURPOSES.

A nonprofit corporation organized for the purpose of religious worship is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1694, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.059. EXEMPTION--NONPROFIT CORPORATION ORGANIZED TO PROVIDE BURIAL PLACES.

A nonprofit corporation organized to provide places of burial is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1694, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.060. EXEMPTION--NONPROFIT CORPORATION ORGANIZED FOR AGRICULTURAL PURPOSES.

A nonprofit corporation organized to hold agricultural fairs and encourage agricultural pursuits is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1694, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.061. EXEMPTION--NONPROFIT CORPORATION ORGANIZED FOR

EDUCATIONAL PURPOSES.

A nonprofit corporation organized solely for educational purposes is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1694, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 3, eff. Jan. 1, 1996.

Sec. 171.062. EXEMPTION--NONPROFIT CORPORATION ORGANIZED FOR PUBLIC CHARITY.

A nonprofit corporation organized for purely public charity is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1694, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.063. EXEMPTION-NONPROFIT CORPORATION EXEMPT FROM FEDERAL INCOME TAX.

(a) The following corporations are exempt from the franchise tax:

- (1) a nonprofit corporation exempted from the federal income tax under Section 501(c)(3), (4), (5), (6), (7), (8), (10), or (19), Internal Revenue Code which in the case of a nonprofit hospital means a hospital providing community benefits that include charity care and government-sponsored indigent health care as set forth in Subchapter D, Chapter 311, Health and Safety Code;
- (2) a corporation exempted under Section 501(c)(2) or (25), Internal Revenue Code, if the corporation or corporations for which it holds title to property is either exempt from or not subject to the franchise tax; and
- (3) a corporation exempted from federal income tax under Section 501(c)(16), Internal Revenue Code.

(b) A corporation is entitled to an exemption under this section based on the corporation's exemption from the federal income tax if the corporation files with the comptroller evidence establishing the corporation's exemption.

(c) A corporation's exemption under Subsection (b) of this section is established by furnishing the comptroller with a copy of the Internal Revenue Service's letter of exemption issued to the corporation.

(d) If the Internal Revenue Service has not timely issued to a corporation a letter of exemption, evidence establishing the corporation's provisional exemption under this section is sufficient if the corporation timely files with the comptroller evidence that the corporation has applied in good faith for the federal tax exemption. The evidence must be filed not later than the 15th month after the day that is the last day of a calendar month and that is nearest to the date of the corporation's charter or certificate of authority.

(e) An exemption established under Subsection (c) or (d) of this section is to be recognized, after it is finally established, as of the date of the corporation's charter or certificate of authority.

(f) If a corporation timely files evidence with the comptroller under Subsection (d) of this section that it has applied for a federal tax exemption and if the application is finally denied by the Internal Revenue Service, this chapter does not impose a penalty on the corporation from the date of its charter or certificate of authority to the date of the final denial.

(g) If a corporation's federal tax exemption is withdrawn by the Internal Revenue Service for failure of the corporation to qualify or maintain its qualification for the exemption, the corporation's exemption under this section ends on the effective date of that withdrawal by the Internal Revenue Service. The effective date of the withdrawal is considered the corporation's beginning date for purposes of determining the corporation's privilege periods and for all other purposes of this chapter.

(h) A requirement that a nonprofit hospital provide charity care and community benefits under Subsection (a)(1) may be satisfied by a donation of money to the Texas Healthy Kids Corporation established by Chapter 109, Health and Safety Code, if:

- (1) the money is donated to be used for a purpose described by Section 109.033(c), Health and Safety Code; and
- (2) not more than 10 percent of the charity care required under any provision of Section 311.045, Health and Safety Code, may be satisfied by the donation.

Acts 1981, 67th Leg., p. 1694, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1987, 70th Leg., ch. 324, Sec. 3, eff. Aug. 31, 1987; Acts 1989, 71st Leg., ch. 239, Sec. 1, eff. June 2, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.04, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 781, Sec. 6, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1002, Sec. 4, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 550, Sec. 3, eff. Jan. 1, 1998; Acts 1997, 75th Leg., ch. 1185, Sec. 3, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 1467, Sec. 2.50, 2.51, eff. Jan. 1, 2000.

Sec. 171.064. EXEMPTION--NONPROFIT CORPORATION ORGANIZED FOR CONSERVATION PURPOSES.

A nonprofit corporation organized solely to educate the public about the protection and conservation of fish, game, other wildlife, grasslands, or forests is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1695, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 5, eff. Jan. 1, 1996.

Sec. 171.065. EXEMPTION--NONPROFIT CORPORATION ORGANIZED TO PROVIDE WATER SUPPLY OR SEWER SERVICES.

A nonprofit water supply or sewer service corporation organized in behalf of a city or town under Chapter 67, Water Code, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1695, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.47, eff. Sept. 1, 1999.

Sec. 171.066. EXEMPTION--NONPROFIT CORPORATION INVOLVED WITH CITY NATURAL GAS FACILITY.

A nonprofit corporation organized to construct, acquire, own, lease, or operate a natural gas facility in behalf and for the benefit of a city or residents of a city is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1695, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.067. EXEMPTION--NONPROFIT CORPORATION ORGANIZED TO PROVIDE CONVALESCENT HOMES FOR ELDERLY.

A nonprofit corporation organized to provide a convalescent home or other housing for persons who are at least 62 years old or who are handicapped or disabled is exempted from the franchise tax, whether or not the corporation is organized for purely public charity.

Acts 1981, 67th Leg., p. 1695, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.068. EXEMPTION--NONPROFIT CORPORATION ORGANIZED TO PROVIDE COOPERATIVE HOUSING.

A nonprofit corporation engaged solely in the business of owning residential property for the purpose

of providing cooperative housing for persons is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1695, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.069. EXEMPTION--MARKETING ASSOCIATIONS.

A marketing association incorporated under Chapter 52, Agriculture Code, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1695, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 6, eff. Jan. 1, 1996.

Sec. 171.070. EXEMPTION--LODGES.

A lodge incorporated under Article 1399 et seq., Revised Civil Statutes of Texas, 1925, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.071. EXEMPTION--FARMERS' COOPERATIVE SOCIETY.

A farmers' cooperative society incorporated under Chapter 51, Agriculture Code, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 7, eff. Jan. 1, 1996.

Sec. 171.072. EXEMPTION--HOUSING FINANCE CORPORATION.

A housing finance corporation incorporated under the Texas Housing Finance Corporations Act (Chapter 394, Local Government Code) is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1987, 70th Leg., ch. 149, Sec. 44, eff. Sept. 1, 1987.

Sec. 171.073. EXEMPTION--HOSPITAL LAUNDRY COOPERATIVE ASSOCIATION.

A hospital laundry cooperative association incorporated under Subchapter A, Chapter 301, Health and Safety Code, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(16), eff. Sept. 1, 1991.

Sec. 171.074. EXEMPTION--DEVELOPMENT CORPORATION.

A nonprofit corporation organized under the Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes) is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 1039, ch. 235, art. 7, Sec. 2(a), eff. Sept. 1, 1983.

Sec. 171.075. EXEMPTION--COOPERATIVE ASSOCIATION.

A cooperative association incorporated under Subchapter B, Chapter 301, Health and Safety Code, or under the Cooperative Association Act (Article 1396--50.01, Vernon's Texas Civil Statutes) is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(29), eff. Sept. 1, 1991.

Sec. 171.076. EXEMPTION--COOPERATIVE CREDIT ASSOCIATION.

A cooperative credit association incorporated under Chapter 55, Agriculture Code, an organization organized under 12 U.S.C. Section 2071, or an agricultural credit association regulated by the Farm Credit Administration is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 8, eff. Jan. 1, 1996; Acts 2001, 77th Leg., ch. 1263, Sec. 56, eff. Sept. 1, 2001.

Sec. 171.077. EXEMPTION--CREDIT UNION.

A credit union incorporated under Subtitle D, Title 3, Finance Code, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.93, eff. Sept. 1, 1999.

Sec. 171.079. EXEMPTION--ELECTRIC COOPERATIVE CORPORATION.

An electric cooperative corporation incorporated under Chapter 161, Utilities Code, that is not a participant in a joint powers agency is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1995, 74th Leg., ch. 765, Sec. 2.27, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 18.48, eff. Sept. 1, 1999.

Sec. 171.080. EXEMPTION--TELEPHONE COOPERATIVE CORPORATIONS.

A telephone cooperative corporation incorporated under Chapter 162, Utilities Code, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 18.49, eff. Sept. 1, 1999.

Sec. 171.081. EXEMPTION--CORPORATION EXEMPT BY ANOTHER LAW.

Another statute that exempts a corporation from the franchise tax is not affected by this chapter.

Acts 1981, 67th Leg., p. 1696, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.082. EXEMPTION--CERTAIN HOMEOWNERS' ASSOCIATIONS.

(a) A nonprofit corporation is exempted from the franchise tax if:

- (1) the corporation is organized and operated primarily to obtain, manage, construct, and maintain the property in or of a residential condominium or residential real estate development; and
- (2) the owners of individual lots, residences, or residential units control at least 51 percent of the votes of the corporation and that voting control, however acquired, is not held by:
 - (A) a single individual or family; or
 - (B) one or more developers, declarants, banks, investors, or other similar parties.

(b) For purposes of this section, a condominium project is considered residential if the project is legally restricted for use as residences. A real estate development is considered residential if the property is legally restricted for use as residences.

Acts 1981, 67th Leg., p. 2758, ch. 752, Sec. 4, eff. May 1, 1982. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 9, eff. Jan. 1, 1996.

Sec. 171.083. EXEMPTION--EMERGENCY MEDICAL SERVICE CORPORATION.

A nonprofit corporation that is organized for the sole purpose of and engages exclusively in providing emergency medical services, including rescue and ambulance services, is exempted from the franchise tax.

Acts 1981, 67th Leg., p. 2785, ch. 752, Sec. 14, eff. May 1, 1982.

Sec. 171.084. EXEMPTION--CERTAIN TRADE SHOW PARTICIPANTS.

(a) A corporation is exempted from the franchise tax if:

(1) the only business activity conducted by or on behalf of the corporation in this state is related to the solicitation of orders conducted by representatives of the corporation who:

(A) solicit orders of personal property to be sent outside this state for approval or rejection by the corporation and, if approved, to be filled by shipment or delivery from a point outside this state; or

(B) solicit orders in the name of or for the benefit of a customer or prospective customer of the corporation, if the orders are filled or intended to be filled by the customer or prospective customer of the corporation by making orders to the corporation described by Paragraph (A) of this subdivision; and

(2) the solicitation of orders is conducted on an occasional basis at trade shows:

(A) promoted by wholesale centers;

(B) promoted by nonprofit trade or professional associations for the purpose of facilitating the solicitation of orders from members of the trade or profession; or

(C) held at municipally or county-owned convention centers or meeting facilities.

(b) For purposes of this section, the solicitation of orders is conducted on an occasional basis only if the solicitation is conducted during not more than five periods during the business period of the corporation to which a tax report applies and if no single period during which solicitation is conducted is longer than 120 hours.

(c) In this section, "wholesale center" means a permanent wholesale facility that has permanent tenants and that promotes at least four national or regional trade shows in a calendar year. A tenant leasing space at a wholesale center for a period longer than the period prescribed by Subsection (b) may qualify for the exemption provided by this section only if the tenant solicits orders on an occasional basis at the trade show as prescribed by Subsection (b).

Added by Acts 1987, 70th Leg., ch. 778, Sec. 1, eff. May 1, 1988. Amended by Acts 2003, 78th Leg., ch. 209, Sec. 34, eff. Oct. 1, 2003.

Sec. 171.085. EXEMPTION; RECYCLING OPERATION.

A corporation engaged solely in the business of recycling sludge, as defined by Section 361.003, Solid Waste Disposal Act (Chapter 361, Health and Safety Code), is exempted from the franchise tax.

Added by Acts 1989, 71st Leg., ch. 641, Sec. 3, eff. Sept. 1, 1991. Amended by Acts 1990, 71st Leg., 6th C.S., ch. 10, art. 2, Sec. 33, eff. Sept. 6, 1990.

Sec. 171.086. EXEMPTION: CORPORATIONS FORMED BY THE TEXAS NATIONAL RESEARCH LABORATORY COMMISSION.

A corporation formed by the Texas National Research Laboratory Commission under Section 465.008(g), Government Code, is exempted from the franchise tax.

Added by Acts 1991, 72nd Leg., ch. 582, Sec. 17, eff. Sept. 1, 1991.

Sec. 171.087. EXEMPTION--NONPROFIT CORPORATION ORGANIZED FOR STUDENT LOAN FUNDS OR STUDENT SCHOLARSHIP PURPOSES.

A nonprofit corporation organized solely to provide a student loan fund or student scholarships is exempted from the franchise tax.

Added by Acts 1995, 74th Leg., ch. 1002, Sec. 10, eff. Jan. 1, 1996.

SUBCHAPTER C. DETERMINATION OF TAXABLE CAPITAL AND TAXABLE EARNED SURPLUS; ALLOCATION AND APPORTIONMENT

Sec. 171.101. DETERMINATION OF NET TAXABLE CAPITAL.

(a) Except as provided by Subsections (b) and (c), the net taxable capital of a corporation is computed by:

- (1) adding the corporation's stated capital, as defined by Article 1.02, Texas Business Corporation Act, and the corporation's surplus, to determine the corporation's taxable capital;
- (2) apportioning the corporation's taxable capital to this state as provided by Section 171.106(a) or (c), as applicable, to determine the corporation's apportioned taxable capital; and
- (3) subtracting from the amount computed under Subdivision (2) any other allowable deductions to determine the corporation's net taxable capital.

(b) The net taxable capital of a limited liability company is computed by:

- (1) adding the company's members' contributions, as provided for under the Texas Limited Liability Company Act, and surplus to determine the company's taxable capital;
- (2) apportioning the amount determined under Subdivision (1) to this state in the same manner that the taxable capital of a corporation is apportioned to this state under Section 171.106(a) or (c), as applicable, to determine the company's apportioned taxable capital; and
- (3) subtracting from the amount computed under Subdivision (2) any other allowable deductions, to determine the company's net taxable capital.

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

- (1) determining the association's net worth; and
- (2) apportioning the amount determined under Subdivision (1) to this state in the same manner that the taxable capital of a corporation is apportioned to this state under Section 171.106(a) to determine the association's net taxable capital.

Acts 1981, 67th Leg., p. 1697, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., ch. 901, Sec. 53(b), eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.05, eff. Jan. 1, 1992.

Sec. 171.102. DETERMINATION OF TAXABLE CAPITAL OF CORPORATION IN PROCESS OF LIQUIDATION.

(a) "Corporation in the process of liquidation" means a corporation that:

- (1) adopts and pursues in good faith a plan to marshal the assets of the corporation, to pay or settle with the corporation's creditors and debtors, and to apportion the remaining assets of the corporation among the corporation's stockholders;
 - (2) adopts the plan by a resolution approved by the corporation's board of directors and ratified by a majority of the stockholders of record; and
 - (3) conducts the liquidation in the manner provided by the law of this state to dissolve a corporation.
- (b) The taxable capital of a corporation in the process of liquidation is the difference between the amount of the corporation's stock issued and the amount of the liquidating dividends paid on the stock.
- (c) The president and the secretary of the corporation shall file an affidavit with the comptroller containing information about the amount of liquidating dividends paid and a statement that the corporation is in the process of liquidation. The plan described by Subsection (a) of this section for the corporation's liquidation shall be attached to and be a part of the affidavit.
- (d) This section applies only to the computation of a corporation's taxable capital under Section 171.101 of this code.

Acts 1981, 67th Leg., p. 1697, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1997, 75th Leg., ch. 1185, Sec. 4, eff. Jan. 1, 1998.

Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR TAXABLE CAPITAL.

In apportioning taxable capital, the gross receipts of a corporation from its business done in this state is the sum of the corporation's receipts from:

- (1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation;
- (2) each service performed in this state;
- (3) each rental of property situated in this state;
- (4) the use of a patent, copyright, trademark, franchise, or license in this state;
- (5) each sale of real property located in this state, including royalties from oil, gas, or other mineral interests; and
- (6) other business done in this state.

Acts 1981, 67th Leg., p. 1697, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 15, Sec. 1, eff. Oct. 2, 1984; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.06, eff. Jan. 1, 1992; Acts 1997, 75th Leg., ch. 1185, Sec. 5, eff. Jan. 1, 1998.

Sec. 171.1032. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR TAXABLE EARNED SURPLUS.

- (a) Except for the gross receipts of a corporation that are subject to the provisions of Section 171.1061, in apportioning taxable earned surplus, the gross receipts of a corporation from its business done in this state is the sum of the corporation's receipts from:
- (1) each sale of tangible personal property if the property is delivered or shipped to a buyer in this state regardless of the FOB point or another condition of the sale, and each sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to any tax on, or measured by, net income, without regard to whether the tax is imposed;

- (2) each service performed in this state;
 - (3) each rental of property situated in this state;
 - (4) the use of a patent, copyright, trademark, franchise, or license in this state;
 - (5) each sale of real property located in this state, including royalties from oil, gas, or other mineral interests;
 - (6) each partnership or joint venture to the extent provided by Subsection (c); and
 - (7) other business done in this state.
- (b) A corporation shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included under Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 171.110(k), and dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.
- (c) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part apportioned to this state as though the corporation directly earned the receipts, including receipts from business done with the corporation.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.06, eff. Jan. 1, 1992. Amended by Acts 1993, 73rd Leg., ch. 546, Sec. 3, eff. Jan. 1, 1994; Acts 1997, 75th Leg., ch. 1185, Sec. 6, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 1263, Sec. 57, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 209, Sec. 35, eff. Oct. 1, 2003.

Sec. 171.104. GROSS RECEIPTS FROM BUSINESS DONE IN TEXAS: DEDUCTION FOR FOOD AND MEDICINE RECEIPTS.

A corporation may deduct from its receipts includable under Section 171.103(1) of this code the amount of the corporation's receipts from sales of the following items, if the items are shipped from outside this state and the receipts would be includable under Section 171.103(1) of this code in the absence of this section:

- (1) food that is exempted from the Limited Sales, Excise, and Use Tax Act by Section 151.314(a) of this code; and
- (2) health care supplies that are exempted from the Limited Sales, Excise, and Use Tax Act by Section 151.313 of this code.

Acts 1981, 67th Leg., p. 1697, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.105. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE BUSINESS FOR TAXABLE CAPITAL.

- (a) In apportioning taxable capital, the gross receipts of a corporation from its entire business is the sum of the corporation's receipts from:
- (1) each sale of the corporation's tangible personal property;
 - (2) each service, rental, or royalty; and
 - (3) other business.
- (b) If a corporation sells an investment or capital asset, the corporation's gross receipts from its entire business for taxable capital include only the net gain from the sale.

Acts 1981, 67th Leg., p. 1698, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.07, eff. Jan. 1, 1992.

Sec. 171.1051. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE BUSINESS FOR

TAXABLE EARNED SURPLUS.

- (a) Except for the gross receipts of a corporation that are subject to the provisions of Section 171.1061, in apportioning taxable earned surplus, the gross receipts of a corporation from its entire business is the sum of the corporation's receipts from:
 - (1) each sale of the corporation's tangible personal property;
 - (2) each service, rental, or royalty;
 - (3) each partnership and joint venture as provided by Subsection (d); and
 - (4) other business.
- (b) If a corporation sells an investment or capital asset, the corporation's gross receipts from its entire business for taxable earned surplus includes only the net gain from the sale.
- (c) A corporation shall deduct from its gross receipts computed under Subsection (a) any amount to the extent included in Subsection (a) because of the application of Section 78 or Sections 951-964, Internal Revenue Code, any amount excludable under Section 171.110(k), and dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States.
- (d) A corporation shall include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture of which the corporation is a part.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.07, eff. Jan. 1, 1992. Amended by Acts 1993, 73rd Leg., ch. 546, Sec. 4, eff. Jan. 1, 1994; Acts 2001, 77th Leg., ch. 1263, Sec. 58, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 209, Sec. 36, eff. Oct. 1, 2003.

Sec. 171.106. APPORTIONMENT OF TAXABLE CAPITAL AND TAXABLE EARNED SURPLUS TO THIS STATE.

- (a) Except as provided by Subsections (c) and (d), a corporation's taxable capital is apportioned to this state to determine the amount of the tax imposed under Section 171.002(b)(1) by multiplying the corporation's taxable capital by a fraction, the numerator of which is the corporation's gross receipts from business done in this state, as determined under Section 171.103, and the denominator of which is the corporation's gross receipts from its entire business, as determined under Section 171.105.
- (b) Except as provided by Subsections (c) and (d), a corporation's taxable earned surplus is apportioned to this state to determine the amount of tax imposed under Section 171.002(b)(2) by multiplying the taxable earned surplus by a fraction, the numerator of which is the corporation's gross receipts from business done in this state, as determined under Section 171.1032, and the denominator of which is the corporation's gross receipts from its entire business, as determined under Section 171.1051.
- (c) A corporation's taxable capital or earned surplus that is derived, directly or indirectly, from the sale of management, distribution, or administration services to or on behalf of a regulated investment company, including a corporation that includes trustees or sponsors of employee benefit plans that have accounts in a regulated investment company, is apportioned to this state to determine the amount of the tax imposed under Section 171.002 by multiplying the corporation's total taxable capital or earned surplus from the sale of services to or on behalf of a regulated investment company by a fraction, the numerator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by the investment company shareholders who are commercially domiciled in this state or, if the shareholders are individuals, are residents of this state, and the denominator of which is the average of the sum of shares owned at the beginning of the year and the sum of shares owned at the end of the year by all investment company shareholders. The corporation shall make a separate computation to allocate taxable capital and earned surplus. In this subsection, "regulated investment company" has the meaning assigned by Section 851(a), Internal Revenue Code.

- (d) A corporation's taxable capital or taxable earned surplus that is derived, directly or indirectly, from the sale of management, administration, or investment services to an employee retirement plan is apportioned to this state to determine the amount of the tax imposed under Section 171.002 by multiplying the corporation's total taxable capital or earned surplus from the sale of services to an employee retirement plan company by a fraction, the numerator of which is the average of the sum of beneficiaries domiciled in Texas at the beginning of the year and the sum of beneficiaries domiciled in Texas at the end of the year, and the denominator of which is the average of the sum of all beneficiaries at the beginning of the year and the sum of all beneficiaries at the end of the year. The corporation shall make a separate computation to apportion taxable capital and earned surplus. In this section, "employee retirement plan" means a plan or other arrangement that is qualified under Section 401(a), Internal Revenue Code, or satisfies the requirements of Section 403, Internal Revenue Code, or a government plan described in Section 414(d), Internal Revenue Code. The term does not include an individual retirement account or individual retirement annuity within the meaning of Section 408, Internal Revenue Code.
- (e) On or before January 1, 1998, each entity registered with the State Securities Board under The Securities Act (Article 581, Vernon's Texas Civil Statutes) that provides management, administration, or investment services to an employee retirement plan, must file a report with the comptroller containing such information as the comptroller deems necessary in order to determine the fiscal impact of Subsection (d). The State Securities Board and the Securities Commissioner shall cooperate with the comptroller in obtaining the information. The Securities Commissioner shall impose the penalties provided in The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes) against any entity that the comptroller certifies is delinquent in the filing of the report required by this section.
- (f) On or before September 1, 1998, the comptroller shall issue a report which evaluates the statewide fiscal impact of Subsection (d). If the comptroller determines that implementing Subsection (d) will not have a negative fiscal impact on this state, Subsection (d) shall be effective for reports or returns originally due on or after January 1, 1999. If the comptroller determines that there will be a negative fiscal impact, that subsection shall not be implemented.
- (g) If this Act and another Act of the 75th Legislature, Regular Session, 1997, make the same substantive change from the current law but differ in text, this Act prevails regardless of the relative dates of enactment.
- (h) A banking corporation shall exclude from the numerator of the bank's apportionment factor interest earned on federal funds and interest earned on securities sold under an agreement to repurchase that are held in this state in a correspondent bank that is domiciled in this state. In this subsection, "correspondent" has the meaning assigned by 12 C.F.R. Section 206.2(c).
- (i) Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not receipts from business done in this state.

Acts 1981, 67th Leg., p. 1698, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.07, eff. Jan. 1, 1992; Acts 1997, 75th Leg., ch. 1185, Sec. 7, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 184, Sec. 2, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1263, Sec. 59, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 209, Sec. 37, eff. Oct. 1, 2003.

Sec. 171.1061. ALLOCATION OF CERTAIN TAXABLE EARNED SURPLUS TO THIS STATE.

An item of income included in a corporation's taxable earned surplus, except that portion derived from dividends and interest, that a state, other than this state, or a country, other than the United States, cannot tax because the activities generating that item of income do not have sufficient unitary connection with the corporation's other activities conducted within that state or country under the United States Constitution, is allocated to this state if the corporation's commercial domicile is in this state. Income that can only be allocated to the state of commercial domicile because the income has

insufficient unitary connection with any other state or country shall be allocated to this state or another state or country net of expenses related to that income. A portion of a corporation's taxable earned surplus allocated to this state under this section may not be apportioned under Section 171.110(a)(2).

Added by Acts 1993, 73rd Leg., ch. 546, Sec. 5, eff. Jan. 1, 1994.

Sec. 171.107. DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS STATE.

- (a) In this section, "solar energy device" means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power by collecting and transferring solar-generated energy. The term includes a mechanical or chemical device that has the ability to store solar-generated energy for use in heating or cooling or in the production of power.
- (b) A corporation may deduct from its apportioned taxable capital the amortized cost of a solar energy device or from its apportioned taxable earned surplus 10 percent of the amortized cost of a solar energy device if:
- (1) the device is acquired by the corporation for heating or cooling or for the production of power;
 - (2) the device is used in this state by the corporation; and
 - (3) the cost of the device is amortized in accordance with Subsection (c) of this section.
- (c) The amortization of the cost of a solar energy device must:
- (1) be for a period of at least 60 months;
 - (2) provide for equal monthly amounts;
 - (3) begin on the month in which the device is placed in service in this state; and
 - (4) cover only a period in which the device is in use in this state.
- (d) A corporation that makes a deduction under this section shall file with the comptroller an amortization schedule showing the period in which a deduction is to be made. On the request of the comptroller, the corporation shall file with the comptroller proof of the cost of the solar energy device or proof of the device's operation in this state.
- (e) A corporation may elect to make the deduction authorized by this section either from apportioned taxable capital or apportioned taxable earned surplus for each separate regular annual period. An election for an initial period applies to the second tax period and to the first regular annual period.

Acts 1981, 67th Leg., p. 1698, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.07, eff. Jan. 1, 1992; Acts 1999, 76th Leg., ch. 1467, Sec. 2.59, eff. Jan. 1, 2000.

Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM TAXABLE CAPITAL OR TAXABLE EARNED SURPLUS APPORTIONED TO THIS STATE.

Text of section effective until January 1, 2008

- (a) In this section, "clean coal project" has the meaning assigned by Section 5.001, Water Code.
- (b) A corporation may deduct from its apportioned taxable capital the amortized cost of equipment or from its apportioned taxable earned surplus 10 percent of the amortized cost of equipment:
- (1) that is used in a clean coal project;
 - (2) that is acquired by the corporation for use in generation of electricity, production of process steam, or industrial production;
 - (3) that the corporation uses in this state; and
 - (4) the cost of which is amortized in accordance with Subsection (c).

- (c) The amortization of the cost of capital used in a clean coal project must:
 - (1) be for a period of at least 60 months;
 - (2) provide for equal monthly amounts;
 - (3) begin in the month during which the equipment is placed in service in this state; and
 - (4) cover only a period during which the equipment is used in this state.
- (d) A corporation that makes a deduction under this section shall file with the comptroller an amortization schedule showing the period for which the deduction is to be made. On the request of the comptroller, the corporation shall file with the comptroller proof of the cost of the equipment or proof of the equipment's operation in this state.
- (e) A corporation may elect to make the deduction authorized by this section from apportioned taxable capital or apportioned taxable earned surplus, but not from both, for each separate regular annual period. An election for an initial period applies to the second tax period and to the first regular annual period.

Added by Acts 2005, 79th Leg., ch. 1097, § 4, eff. June 18, 2005.

Sec. 171.109. SURPLUS.

(a) In this chapter:

- (1) "Surplus" means the net assets of a corporation minus its stated capital. For a limited liability company, "surplus" means the net assets of the company minus its members' contributions. Surplus includes unrealized, estimated, or contingent losses or obligations or any writedown of assets other than those listed in Subsection (i) of this section net of appropriate income tax provisions. The definition under this subdivision does not apply to earned surplus.
- (2) "Net assets" means the total assets of a corporation minus its total debts.
- (3) "Debt" means any legally enforceable obligation measured in a certain amount of money which must be performed or paid within an ascertainable period of time or on demand.

Text of subsec. (a-1) effective January 1, 2004

- (a-1) A legally enforceable obligation that requires the return of a like-kind property that was borrowed will be considered debt if it is a liability according to generally accepted accounting principles and if the return must be made within an ascertainable period of time or on demand. The amount that will be considered debt is the fair market value measured on the last day on which the report is based as required by Section 171.153. For purposes of this subsection, "like-kind property" means the same quantity, quality, and nature or character as the property borrowed.
- (b) Except as otherwise provided in this section, a corporation must compute its surplus, assets, and debts according to generally accepted accounting principles. If generally accepted accounting principles are unsettled or do not specify an accounting practice for a particular purpose related to the computation of surplus, assets, or debts, the comptroller by rule may establish rules to specify the applicable accounting practice for that purpose.
- (c) A corporation whose taxable capital is less than \$1 million may report its surplus according to the method used in the corporation's most recent federal income tax return originally due on or before the date on which the corporation's franchise tax report is originally due. In determining if taxable capital is less than \$1 million, the corporation shall apply the methods the corporation used in computing that federal income tax return unless another method is required under this chapter.
- (d) A corporation shall report its surplus based solely on its own financial condition. Consolidated reporting of surplus is prohibited.
- (e) Unless the provisions of Section 171.111 apply due to an election under that section, a corporation may not change the accounting methods used to compute its surplus more often than once every four years without the written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.
- (f) A corporation declaring dividends shall exclude those dividends from its taxable capital, and a

corporation receiving dividends shall include those dividends in its gross receipts and taxable capital as of the earlier of:

- (1) the date the dividends are declared, if the dividends are actually paid within one year after the declaration date; or
- (2) the date the dividends are actually paid.

Text of (g) as amended by Acts 1989, 71st Leg., ch. 801, Sec. 83

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

Text of (g) as amended by Acts 1989, 71st Leg., ch. 1198, Sec. 3

- (g) All oil and gas exploration and production activities by a corporation which is required to or elects to use generally accepted accounting principles to compute surplus must be reported according to the successful efforts or the full cost method of accounting.
- (h) A parent or investor corporation must use the cost method of accounting in reporting and calculating the franchise tax on its investments in subsidiary corporations or other investees. The retained earnings of a subsidiary corporation or other investee before acquisition by the parent or investor corporation may not be excluded from the cost of the subsidiary corporation or investee to the parent or investor corporation and must be included by the parent or investor corporation in calculating its surplus.
- (i) The following accounts may also be excluded from surplus, to the extent they are in conformance with generally accepted accounting principles or the appropriate federal income tax method, whichever is applicable:
- (1) a reserve or allowance for uncollectable accounts; and
 - (2) a contra-asset account for depletion, depreciation, or amortization.
- (j) A corporation may not exclude from surplus:
- (1) liabilities for compensation and other benefits provided to employees, other than wages, that are not debt as of the end of the accounting period on which the taxable capital component is based, including retirement, medical, insurance, postretirement, and other similar benefits; and
 - (2) deferred investment tax credits.
- (k) Notwithstanding any other provision in this chapter, a corporation subject to the tax imposed by this chapter shall use double entry bookkeeping to account for all transactions that affect the computation of that tax.
- (l) The "first in-first out" and "last in-first out" methods of accounting are acceptable methods for computing surplus.
- (m) A corporation may not use the push-down method of accounting in computing or reporting its surplus.
- (n) A corporation must use the equity method of accounting when reporting an investment in a partnership or joint venture.

Added by Acts 1987, 70th Leg., ch. 324, Sec. 1, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 3, Sec. 1, eff. March 2, 1989; Acts 1989, 71st Leg., ch. 801, Sec. 83, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1198, Sec. 3, eff. Jan. 1, 1990; Acts 1991, 72nd Leg., ch. 901, Sec. 53(c), eff. Aug. 26, 1991; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.08, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 546, Sec. 6, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 1002, Sec. 11, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1185, Sec. 8, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 1263, Sec. 60, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 209, Sec. 38, eff. Jan. 1, 2004.

Sec. 171.110. DETERMINATION OF NET TAXABLE EARNED SURPLUS.

- (a) The net taxable earned surplus of a corporation is computed by:
- (1) determining the corporation's reportable federal taxable income, subtracting from that amount

- any amount excludable under Subsection (k), any amount included in reportable federal taxable income under Section 78 or Sections 951-964, Internal Revenue Code, and dividends received from a subsidiary, associate, or affiliated corporation that does not transact a substantial portion of its business or regularly maintain a substantial portion of its assets in the United States, and adding to that amount any compensation of officers or directors, or if a bank, any compensation of directors and executive officers, to the extent excluded in determining federal taxable income to determine the corporation's taxable earned surplus;
- (2) apportioning the corporation's taxable earned surplus to this state as provided by Section 171.106(b) or (c), as applicable, to determine the corporation's apportioned taxable earned surplus;
 - (3) adding the corporation's taxable earned surplus allocated to this state as provided by Section 171.1061; and
 - (4) subtracting from that amount any allowable deductions and any business loss that is carried forward to the tax reporting period and deductible under Subsection (e).
- (b) Except as provided by Subsection (c), a corporation is not required to add the compensation of officers or directors as required by Subsection (a)(1) if the corporation is:
 - (1) a corporation that has not more than 35 shareholders; or
 - (2) an S corporation, as that term is defined by Section 1361, Internal Revenue Code.
 - (c) A subsidiary corporation may not claim the exclusion under Subsection (b) if it has a parent corporation that does not qualify for the exclusion. For purposes of this subsection, a corporation qualifies as a parent if it ultimately controls the subsidiary, even if the control arises through a series or group of other subsidiaries or entities. Control is presumed if a parent corporation directly or indirectly owns, controls, or holds a majority of the outstanding voting stock of a corporation or ownership interests in another entity.
 - (d) A corporation's reportable federal taxable income is the corporation's federal taxable income after Schedule C special deductions and before net operating loss deductions as computed under the Internal Revenue Code, except that an S corporation's reportable federal taxable income is the amount of the income reportable to the Internal Revenue Service as taxable to the corporation's shareholders.
 - (e) For purposes of this section, a business loss is any negative amount after apportionment and allocation. The business loss shall be carried forward to the year succeeding the loss year as a deduction to net taxable earned surplus, then successively to the succeeding four taxable years after the loss year or until the loss is exhausted, whichever occurs first, but for not more than five taxable years after the loss year. Notwithstanding the preceding sentence, a business loss from a tax year that ends before January 1, 1991, may not be used to reduce net taxable earned surplus. A business loss can be carried forward only by the corporation that incurred the loss and cannot be transferred to or claimed by any other entity, including the survivor of a merger if the loss was incurred by the corporation that did not survive the merger.
 - (f) A corporation may use either the "first in-first out" or "last in-first out" method of accounting to compute its net taxable earned surplus, but only to the extent that the corporation used that method on its most recent federal income tax report originally due on or before the date on which the corporation's franchise tax report is originally due.
 - (g) For purposes of this section, an approved Employee Stock Ownership Plan controlling a minority interest and voted through a single trustee shall be considered one shareholder.
 - (h) A corporation shall report its net taxable earned surplus based solely on its own financial condition. Consolidated reporting is prohibited.
 - (i) For purposes of this section, any person designated as an officer is presumed to be an officer if that person:
 - (1) holds an office created by the board of directors or under the corporate charter or bylaws; and
 - (2) has legal authority to bind the corporation with third parties by executing contracts or other

legal documents.

- (j) A corporation may rebut the presumption described in Subsection (i) that a person is an officer if it conclusively shows, through the person's job description or other documentation, that the person does not participate or have authority to participate in significant policy making aspects of the corporate operations.
- (k) Dividends and interest received from federal obligations are not included in earned surplus or gross receipts for earned surplus purposes.
- (l) In this section:
 - (1) "Federal obligations" means:
 - (A) stocks and other direct obligations of, and obligations unconditionally guaranteed by, the United States government and United States government agencies; and
 - (B) direct obligations of a United States government-sponsored agency.
 - (2) "Obligation" means any bond, debenture, security, mortgage-backed security, pass-through certificate, or other evidence of indebtedness of the issuing entity. The term does not include a deposit, a repurchase agreement, a loan, a lease, a participation in a loan or pool of loans, a loan collateralized by an obligation of a United States government agency, or a loan guaranteed by a United States government agency.
 - (3) "United States government" means any department or ministry of the federal government, including a federal reserve bank. The term does not include a state or local government, a commercial enterprise owned wholly or partly by the United States government, or a local governmental entity or commercial enterprise whose obligations are guaranteed by the United States government.
 - (4) "United States government agency" means an instrumentality of the United States government whose obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States government. The term includes the Government National Mortgage Association, the Department of Veterans Affairs, the Federal Housing Administration, the Farmers Home Administration, the Export-Import Bank, the Overseas Private Investment Corporation, the Commodity Credit Corporation, the Small Business Administration, and any successor agency.
 - (5) "United States government-sponsored agency" means an agency originally established or chartered by the United States government to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States government. The term includes the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Farm Credit System, the Federal Home Loan Bank System, the Student Loan Marketing Association, and any successor agency.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.09, eff. Jan. 1, 1992. Amended by Acts 1993, 73rd Leg., ch. 546, Sec. 7, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 1002, Sec. 12, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1185, Sec. 9, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 1467, Sec. 2.60, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1275, Sec. 2, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 209, Sec. 39, 40, eff. Oct. 1, 2003.

Sec. 171.111. TEMPORARY CREDIT ON NET TAXABLE EARNED SURPLUS.

Text of section effective until September 1, 2012

- (a) Not later than March 1, 1992, a corporation 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 net taxable earned surplus. The comptroller may not grant an extension. The corporation 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, 1992, until the corporation revokes the election or this

section expires, whichever is earlier. A corporation may claim the credit for not more than 20 consecutive privilege periods beginning with the first report due under this chapter after January 1, 1992. A corporation 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, as of the end of the corporation's accounting year ending in 1991, that is the difference between the basis used for financial accounting purposes and the basis used for federal income tax purposes of an asset or a liability that at some future date will reverse;
 - (2) apportioning the amount determined under Subdivision (1) to this state in the same manner earned surplus is apportioned under Section 171.106(b) or (c), as applicable, on the first report due on or after January 1, 1992;
 - (3) multiplying the amount determined under Subdivision (2) by five percent; and
 - (4) multiplying the amount determined under Subdivision (3) by the tax rate prescribed by Section 171.002(a)(2).
- (c) In computing the amount under Subsection (b)(1), the corporation may not consider differences that result from deferred investment tax credits, allowances for funds used during construction, or any other timing difference for which a deferred tax liability is not required under generally accepted accounting principles.
- (d) After making the election under Subsection (a) the corporation must, for purposes of computing its taxable capital under this chapter, use the same accounting methods under generally accepted accounting principles to account for the assets and liabilities that determine the amount of the credit that the corporation uses to compute the credit. Notwithstanding Section 171.109(e), if a corporation changes an accounting method for an asset or liability that determines, in whole or in part, the amount of the credit during the period the election is in effect, the election is automatically revoked.
- (e) A corporation 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 corporation submit in the annual report for each succeeding privilege period in which the corporation is eligible to take a credit information relating to the amount determined under Subsection (b)(1). The corporation 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 corporation is eligible.
- (f) A credit allowed under this section may not be carried forward or backward or used to create a business loss carryover under Section 171.110.
- (g) A corporation may not use a credit allowed under this section in connection with the computation of the corporation's tax on net taxable capital.
- (h) In addition to the tax imposed by Section 171.002, an additional tax is imposed on each corporation during each year the corporation takes the credit allowed under this section. The additional tax is equal to 0.2 percent of the corporation's net taxable capital per year of privilege period.
- (i) This section expires September 1, 2012.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.09, eff. Jan. 1, 1992.

Sec. 171.112. GROSS RECEIPTS FOR TAXABLE CAPITAL.

- (a) For purposes of this section, "gross receipts" means all revenues that would be recognized annually under a generally accepted accounting principles method of accounting, without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided in this chapter.

- (b) Except as otherwise provided in this section, a corporation must compute gross receipts in accordance with generally accepted accounting principles. If generally accepted accounting principles are unsettled or do not specify an accounting practice for a particular purpose related to the computation of gross receipts, the comptroller by rule may establish rules to specify the applicable accounting practice.
- (c) A corporation whose taxable capital is less than \$1 million may report its gross receipts according to the method used in the corporation's most recent federal income tax return originally due on or before the date on which the corporation's franchise tax report is originally due. In determining if taxable capital is less than \$1 million, the corporation shall apply the methods the corporation used in computing that federal income tax return unless another method is required under this chapter.
- (d) A corporation shall report its gross receipts based solely on its own financial condition. Consolidated reporting is prohibited.
- (e) Unless the provisions of Section 171.111 apply due to an election under that section, a corporation may not change its accounting methods used to calculate gross receipts more often than once every four years without the express written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.
- (f) Notwithstanding any other provision in this chapter, a corporation subject to the tax imposed by this chapter shall use double entry bookkeeping to account for all transactions that affect the computation of that tax.
- (g) Chapter 141 does not apply to this chapter.
- (h) Except as otherwise provided by this section, a corporation shall use the same accounting methods to apportion its taxable capital as it used to compute its taxable capital.

Added by Acts 1987, 70th Leg., ch. 324, Sec. 2, eff. Aug. 31, 1987. Amended by Acts 1989, 71st Leg., ch. 801, Sec. 84, eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1198, Sec. 4, eff. Jan. 1, 1990; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.10, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 1002, Sec. 13, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1185, Sec. 10, eff. Jan. 1, 1998.

Sec. 171.1121. GROSS RECEIPTS FOR TAXABLE EARNED SURPLUS.

- (a) For purposes of this section, "gross receipts" means all revenues reportable by a corporation on its federal tax return, without deduction for the cost of property sold, materials used, labor performed, or other costs incurred, unless otherwise specifically provided in this chapter. "Gross receipts" does not include revenues that are not included in taxable earned surplus. For example, Schedule C special deductions and any amounts subtracted from reportable federal taxable income under Section 171.110(a)(1) are not included in taxable earned surplus and therefore are not considered gross receipts.
- (b) Except as otherwise provided by this section, a corporation shall use the same accounting methods to apportion taxable earned surplus as used in computing reportable federal taxable income.
- (c) A corporation shall report its gross receipts based solely on its own financial condition. Consolidated reporting is prohibited.
- (d) Unless the provisions of Section 171.111 apply due to an election under that section, a corporation may not change its accounting methods used to calculate gross receipts more often than once every four years without the express written consent of the comptroller. A change in accounting methods is not justified solely because it results in a reduction of tax liability.
- (e) A corporation's share of a partnership's gross receipts that is included in the corporation's federal taxable income must be used in computing the corporation's gross receipts under this section. Unless otherwise provided by this chapter, a corporation may not deduct costs incurred from the corporation's share of a partnership's gross receipts. The gross receipts must be apportioned as though the corporation directly earned them.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.10, eff. Jan. 1, 1992. Amended by Acts 1993, 73rd Leg., ch. 546, Sec. 8, eff. Jan. 1, 1994; Acts 1997, 75th Leg., ch. 1185, Sec. 11, eff. Jan. 1, 1998; Acts 2001, 77th Leg., ch. 1263, Sec. 61, eff. Jan. 1, 2002.

Sec. 171.113. ALTERNATE METHOD OF DETERMINING TAXABLE CAPITAL AND GROSS RECEIPTS FOR CERTAIN CORPORATIONS.

- (a) This section applies only to:
- (1) a corporation organized as a close corporation under Part 12, Texas Business Corporation Act, that has not more than 35 shareholders;
 - (2) a foreign corporation organized under the close corporation law of another state that has not more than 35 shareholders; and
 - (3) an S corporation as that term is defined by Section 1361, Internal Revenue Code of 1986 (26 U.S.C. Section 1361).
- (b) A corporation to which this section applies may elect to compute its surplus, assets, debts, and gross receipts according to the method the corporation uses to report its federal income tax instead of as provided by Sections 171.109(b) and (g) and Section 171.112(b). This section does not affect the application of the other subsections of Sections 171.109 and 171.112 and other provisions of this chapter to a corporation making the election.
- (c) The comptroller may adopt rules as necessary to specify the reporting requirements for corporations to which this section applies.
- (d) This section does not apply to a subsidiary corporation unless it applies to the parent corporation of the subsidiary.
- (e) The election under Subsection (b) becomes effective when written notice of the election is received by the comptroller from the corporation. An election under Subsection (b) must be postmarked not later than the due date for the electing corporation's franchise tax report to which the election applies.

Added by Acts 1989, 71st Leg., ch. 801, Sec. 82, eff. Aug. 28, 1989. Amended by Acts 1991, 72nd Leg., 1st C.S. ch. 5, Sec. 8.101, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 546, Sec. 9, eff. Jan. 1, 1994.

SUBCHAPTER D. PAYMENT OF TAX

Sec. 171.151. PRIVILEGE PERIOD COVERED BY TAX.

The franchise tax shall be paid for each of the following:

- (1) an initial period beginning on the corporation's beginning date and ending on the day before the first anniversary of the beginning date;
- (2) a second period beginning on the first anniversary of the beginning date and ending on December 31 following that date; and
- (3) after the initial and second periods have expired, a regular annual period beginning each year on January 1 and ending the following December 31.

Acts 1981, 67th Leg., p. 1699, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 31, Sec. 5, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.11, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 1002, Sec. 14, eff. Jan. 1, 1996.

Sec. 171.152. DATE ON WHICH PAYMENT IS DUE.

- (a) Payment of the tax covering the initial period is due within 90 days after the date that the initial period ends or, if applicable, within 91 days after the date of the merger.
- (b) Payment of the tax covering the second period is due on the same date as the tax covering the initial period.
- (c) Payment of the tax covering the regular annual period is due May 15, of each year after the beginning of the regular annual period. However, if the first anniversary of the corporation's beginning date is after October 3 and before January 1, the payment of the tax covering the first regular annual period is due on the same date as the tax covering the initial period.

Acts 1981, 67th Leg., p. 1699, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 10, art. 3, Sec. 1, eff. Sept. 1, 1984; Acts 1985, 69th Leg., ch. 31, Sec. 7, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.12, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 1002, Sec. 15, eff. Jan. 1, 1996.

Sec. 171.153. BUSINESS ON WHICH TAX ON NET TAXABLE CAPITAL IS BASED.

- (a) The tax covering the initial period is reported on the initial report and is based on the business done by the corporation during the period beginning on the corporation's beginning date and:
 - (1) ending on the last accounting period ending date that is at least six months after the beginning date and at least 60 days before the original due date of the initial report; or
 - (2) if there is no such period ending date in Subdivision (1) of this subsection, then ending on the day that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business; or
 - (3) ending on the day after the merger occurs, for the survivor of a merger which occurs after the day on which the tax is based in Subdivision (1) or Subdivision (2), whichever is applicable, of Subsection (a) and before January 1, of the year an initial report is due by the survivor.
- (b) The tax covering the second period is reported on the initial report and is based on the same business on which the tax covering the initial period is based and is to be prorated based on the length of the second period.
- (c) The tax covering the regular annual period is based on the business done by the corporation during its last accounting period that ends in the year before the year in which the tax is due; unless a corporation is the survivor of a merger which occurs between the end of its last accounting period in the year before the report year and January 1 of the report year, in which case the tax will be based on the financial condition of the surviving corporation for the 12-month period ending on the day after the merger. However, if the first anniversary of the corporation's beginning date is after October 3 and before January 1, the tax covering the first regular annual period is based on the same business on which the tax covering the initial period is based and is reported on the initial report.

Acts 1981, 67th Leg., p. 1699, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 10, art. 3, Sec. 2, eff. Sept. 1, 1984; Acts 1985, 69th Leg., ch. 31, Sec. 8, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.13, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 1002, Sec. 16, eff. Jan. 1, 1996.

Sec. 171.1531. CREDIT FOR SURVIVOR OF MERGER.

- (a) "Credit period" means the period from the date of the merger or the date the survivor was required to pay franchise tax, whichever is later, through the end of the privilege period for which tax was actually paid by the nonsurvivors.
- (b) The survivor of a merger is entitled to a credit against the tax computed on its net taxable capital under Section 171.002(b)(1) in the amount of the franchise tax computed on net taxable capital

paid by the nonsurvivors for the credit period, provided the tax computed on net taxable capital paid by the survivor for the credit period is based on the survivor's financial condition after the merger. Only a survivor that is subject to the franchise tax is entitled to the merger credit. The merger credit shall be allocated among survivors based on net taxable capital reported, and as provided by Section 171.153.

- (c) The credit will be limited to the lesser of the amount of tax on net taxable capital paid for the credit period by the survivor or by the nonsurvivors.

Added by Acts 1985, 69th Leg., ch. 31, Sec. 11, eff. Aug. 26, 1985. Amended by Acts 1989, 71st Leg., ch. 801, Sec. 81, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.131, eff. Jan. 1, 1992; Acts 1995, 74th Leg., ch. 1002, Sec. 17, eff. Jan. 1, 1996.

Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE EARNED SURPLUS IS BASED.

- (a) The tax covering the privilege periods included on the initial report, as required by Section 171.153, is based on the business done by the corporation during the period beginning on the corporation's beginning date and:
- (1) ending on the last accounting period ending date that is at least 60 days before the original due date of the initial report; or
 - (2) if there is no such period ending date in Subdivision (1) of this subsection, then ending on the day that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business.
- (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 corporation during the period beginning with the day after the last date upon which 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.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.14, eff. Jan. 1, 1992. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 18, eff. Jan. 1, 1996.

Sec. 171.154. PAYMENT TO COMPTROLLER.

A corporation on which a tax is imposed by this chapter shall pay the tax to the comptroller.

Acts 1981, 67th Leg., p. 1700, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.158. PAYMENT BY FOREIGN CORPORATION BEFORE WITHDRAWAL FROM STATE.

- (a) Except as provided by Subsection (b) of this section, a foreign corporation holding a certificate of authority to do business in this state may withdraw from doing business in this state by filing a certificate of withdrawal with the secretary of state. The secretary of state shall file the certificate of withdrawal as provided by law.
- (b) The foreign corporation may not withdraw from doing business in this state unless it has paid, before filing the certificate of withdrawal, any tax or penalty imposed by this chapter on the corporation.

Acts 1981, 67th Leg., p. 1701, ch. 389, Sec. 1, eff. Jan. 1, 1982.

SUBCHAPTER E. REPORTS AND RECORDS

Sec. 171.201. INITIAL REPORT.

- (a) Except as provided by Section 171.2022, a corporation on which the franchise tax is imposed shall file an initial report with the comptroller containing:
- (1) information showing the financial condition of the corporation on the day that is the last day of a calendar month and that is nearest to the end of the corporation's first year of business;
 - (2) the name and address of each officer and director of the corporation;
 - (3) the name and address of the agent of the corporation designated under Section 171.354; and
 - (4) other information required by the comptroller.
- (b) The corporation shall file the report on or before the date the payment is due under Subsection (a) of Section 171.152.

Acts 1981, 67th Leg., p. 1701, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1985, 69th Leg., ch. 31, Sec. 9, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.15, eff. Jan. 1, 1992.

Sec. 171.202. ANNUAL REPORT.

- (a) Except as provided by Section 171.2022, a corporation on which the franchise tax is imposed shall file an annual report with the comptroller containing:
- (1) financial information of the corporation necessary to compute the tax under this chapter;
 - (2) the name and address of each officer and director of the corporation;
 - (3) the name and address of the agent of the corporation designated under Section 171.354; and
 - (4) other information required by the comptroller.
- (b) The corporation shall file the report before May 16 of each year after the beginning of the regular annual period. The report shall be filed on forms supplied by the comptroller.
- (c) The comptroller shall grant an extension of time to a corporation that is not required by rule to make its tax payments by electronic funds transfer for the filing of a report required by this section to any date on or before the next November 15, if a corporation:
- (1) requests the extension, on or before May 15, on a form provided by the comptroller; and
 - (2) remits with the request:
 - (A) not less than 90 percent of the amount of tax reported as due on the report filed on or before November 15; or
 - (B) 100 percent of the tax reported as due for the previous calendar year on the report due in the previous calendar year and filed on or before May 14.
- (d) In the case of a taxpayer whose previous return was its initial report, the optional payment provided under Subsection (c)(2)(B) or (e)(2)(B) must be equal to the greater of:
- (1) an amount produced by multiplying the net taxable capital, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002(a)(1) that is effective January 1 of the year in which the report is due; or
 - (2) an amount produced by multiplying the net taxable earned surplus, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002(a)(2) that is effective January 1 of the year in which the report is due.
- (e) The comptroller shall grant an extension of time for the filing of a report required by this section by a corporation required by rule to make its tax payments by electronic funds transfer to any date on or before the next August 15, if the corporation:
- (1) requests the extension, on or before May 15, on a form provided by the comptroller; and
 - (2) remits with the request:
 - (A) not less than 90 percent of the amount of tax reported as due on the report filed on or before August 15; or

- (B) 100 percent of the tax reported as due for the previous calendar year on the report due in the previous calendar year and filed on or before May 14.
- (f) The comptroller shall grant an extension of time to a corporation required by rule to make its tax payments by electronic funds transfer for the filing of a report due on or before August 15 to any date on or before the next November 15, if the corporation:
- (1) requests the extension, on or before August 15, on a form provided by the comptroller; and
 - (2) remits with the request the difference between the amount remitted under Subsection (e) and 100 percent of the amount of tax reported as due on the report filed on or before November 15.
- (g) Repealed by Acts 1995, 74th Leg., ch. 1002, Sec. 21, eff. Jan. 1, 1996.
- (h) If the sum of the amounts paid under Subsections (e)(2) and (f)(2) is at least 99 percent of the amount reported as due on the report filed on or before November 15, penalties for underpayment with respect to the amount paid under Subsection (f)(2) are waived.
- (i) If a corporation requesting an extension under Subsection (c) or (e) does not file the report due in the previous calendar year on or before May 14, the corporation may not receive an extension under Subsection (c) or (e) unless the corporation complies with Subsection (c)(2)(A) or (e)(2)(A), as appropriate.

Acts 1981, 67th Leg., p. 1701, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1983, 68th Leg., p. 297, ch. 63, Sec. 2, eff. Aug. 29, 1983; Acts 1984, 68th Leg., 2nd C.S., ch. 10, art. 3, Sec. 3, 4, eff. Sept. 1, 1984; Acts 1985, 69th Leg., ch. 31, Sec. 10, eff. Aug. 26, 1985; Acts 1985, 69th Leg., ch. 37, Sec. 6, 7, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.16, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 486, Sec. 2.03, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 1002, Sec. 21, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1185, Sec. 12, eff. Jan. 1, 1998.

Sec. 171.202. EXEMPTION FROM REPORTING REQUIREMENTS.

A corporation that does not owe any tax under this chapter for any period is not required to file a report under Section 171.201, 171.202, or 171.2021. The exemption applies only to a period for which no tax is due.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.17, eff. Jan. 1, 1992.

Sec. 171.203. PUBLIC INFORMATION REPORT

- (a) A corporation on which the franchise tax is imposed, regardless of whether the corporation is required to pay any tax, shall file a report with the comptroller containing:
- (1) the name of each corporation in which the corporation filing the report owns a 10 percent or greater interest and the percentage owned by the corporation;
 - (2) the name of each corporation that owns a 10 percent or greater interest in the corporation filing the report;
 - (3) the name, title, and mailing address of each person who is an officer or director of the corporation 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 designated under Section 171.354 of this code; and
 - (5) the address of the corporation's principal office and principal place of business.
- (b) The corporation shall file the report once a year on a form prescribed by the comptroller.
- (c) The comptroller shall forward the report to the secretary of state.
- (d) The corporation 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 a related corporation listed in Subsection (a)(1) or (2). An officer or director of the corporation 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 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.
- (f) A public information report that is filed electronically complies with the signature and certification requirements prescribed by Subsection (d).

Acts 1981, 67th Leg., p. 1702, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 19, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 1185, Sec. 13, eff. Jan. 1, 1998; Acts 1999, 76th Leg., ch. 394, Sec. 11, eff. Jan. 1, 2000; Acts 2003, 78th Leg., ch. 209, Sec. 41, eff. Jan. 1, 2004.

Sec. 171.204. INFORMATION REPORT.

- (a) Except as provided by Subsection (b), to determine eligibility for the exemption provided by Section 171.2022, or to determine the amount of the franchise tax or the correctness of a franchise tax report, the comptroller may require an officer of a corporation that may be subject to the tax imposed under this chapter to file an information report with the comptroller stating the amount of the corporation's taxable capital and earned surplus, or any other information the comptroller may request.
- (b) The comptroller may require an officer of a corporation that does not owe any tax because of the application of Section 171.002(d)(2) to file an abbreviated information report with the comptroller stating the amount of the corporation's gross receipts from its entire business. The comptroller may not require a corporation described by this subsection to file an information report that requires the corporation to report or compute its earned surplus or taxable capital.

Acts 1981, 67th Leg., p. 1702, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.18, eff. Jan. 1, 1992; Acts 1999, 76th Leg., ch. 394, Sec. 12, eff. Jan. 1, 2000.

Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY COMPTROLLER.

The comptroller may require a corporation on which the franchise tax is imposed to furnish to the comptroller information from the corporation's books and records that has not been filed previously and that is necessary for the comptroller to determine the amount of the tax.

Acts 1981, 67th Leg., p. 1702, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.206. CONFIDENTIAL INFORMATION.

Except as provided by Section 171.207 of this code, the following information is confidential and may not be made open to public inspection:

- (1) information that is obtained from a record or other instrument that is required by this chapter to be filed with the comptroller; or
- (2) information, including information about the business affairs, operations, profits, losses, or expenditures of a corporation, obtained by an examination of the books and records, officers, or employees of a corporation on which a tax is imposed by this chapter.

Acts 1981, 67th Leg., p. 1702, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.207. INFORMATION NOT CONFIDENTIAL.

The following information is not confidential and shall be made open to public inspection:

- (1) information contained in a document filed under this chapter with a county clerk as notice of a tax lien; and
- (2) information contained in a report required by Section 171.203 of this code.

Acts 1981, 67th Leg., p. 1702, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION.

A person, including a state officer or employee or a shareholder of a corporation, who has access to a report filed under this chapter may not make known in a manner not permitted by law the amount or source of the corporation's income, profits, losses, expenditures, or other information in the report relating to the financial condition of the corporation.

Acts 1981, 67th Leg., p. 1703, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.209. RIGHT OF SHAREHOLDER TO EXAMINE OR RECEIVE REPORTS.

If a person owning at least one share of outstanding stock of a corporation on whom the franchise tax is imposed presents evidence of the ownership to the comptroller, the person is entitled to examine or receive a copy of an initial or annual report that is filed under Section 171.201 or 171.202 of this code and that relates to the corporation.

Acts 1981, 67th Leg., p. 1703, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.210. PERMITTED USE OF CONFIDENTIAL INFORMATION.

- (a) To enforce this chapter, the comptroller or attorney general may use information made confidential by this chapter.
- (b) The comptroller or attorney general may authorize the use of the confidential information in a judicial proceeding in which the state is a party. The comptroller or attorney general may authorize examination of the confidential information by:
 - (1) another state officer of this state;
 - (2) a law enforcement official of this state; or
 - (3) a tax official of another state or an official of the federal government if the other state or the federal government has a reciprocal arrangement with this state.

Acts 1981, 67th Leg., p. 1703, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.211. EXAMINATION OF CORPORATE RECORDS.

To determine the franchise tax liability of a corporation, the comptroller may investigate or examine the records of the corporation.

Acts 1981, 67th Leg., p. 1703, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 109, eff. Sept. 1, 1989.

Sec. 171.212. REPORT OF CHANGES TO FEDERAL INCOME TAX RETURN.

- (a) A corporation must file an amended report under this chapter if:
 - (1) the corporation's net taxable earned surplus is changed as the result of an audit or other

- adjustment by the Internal Revenue Service or another competent authority; or
- (2) the corporation files an amended federal income tax return or other return that changes the corporation's net taxable earned surplus.
- (b) The corporation shall file the amended report under Subsection (a)(1) not later than the 120th day after the date the revenue agent's report or other adjustment is final. For purposes of this subsection, a revenue agent's report or other adjustment is final on the date on which all administrative appeals with the Internal Revenue Service or other competent authority have been exhausted or waived.
- (c) The corporation shall file the amended report under Subsection (a)(2) not later than the 120th day after the date the corporation files the amended federal income tax return or other return. For purposes of this subsection, a corporation is considered to have filed an amended federal income tax return if the corporation is a member of an affiliated group during a period in which an amended consolidated federal income tax report is filed.
- (d) If a corporation fails to comply with this section, the corporation is liable for a penalty of 10 percent of the tax that should have been reported under this section and that had not previously been reported to the comptroller. The penalty prescribed by this subsection is in addition to any other penalty provided by law.

Added by Acts 1997, 75th Leg., ch. 1185, Sec. 14.

SUBCHAPTER F. FORFEITURE OF CORPORATE PRIVILEGES

Sec. 171.251. FORFEITURE OF CORPORATE PRIVILEGES.

The comptroller shall forfeit the corporate privileges of a corporation on which the franchise tax is imposed if the corporation:

- (1) does not file, in accordance with this chapter and within 45 days after the date notice of forfeiture is mailed, a report required by this chapter;
- (2) does not pay, within 45 days after the date notice of forfeiture is mailed, a tax imposed by this chapter or does not pay, within those 45 days, a penalty imposed by this chapter relating to that tax; or
- (3) does not permit the comptroller to examine under Section 171.211 of this code the corporation's records.

Acts 1981, 67th Leg., p. 1703, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 10, art. 3, Sec. 5, eff. Sept. 1, 1984; Acts 1989, 71st Leg., ch. 584, Sec. 110, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.19, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 546, Sec. 10, eff. Jan. 1, 1994.

Sec. 171.252. EFFECTS OF FORFEITURE.

If the corporate privileges of a corporation are forfeited under this subchapter:

- (1) the corporation shall be denied the right to sue or defend in a court of this state; and
- (2) each director or officer of the corporation is liable for a debt of the corporation as provided by Section 171.255 of this code.

Acts 1981, 67th Leg., p. 1704, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.253. SUIT ON CAUSE OF ACTION ARISING BEFORE FORFEITURE.

In a suit against a corporation on a cause of action arising before the forfeiture of the corporate privileges of the corporation, affirmative relief may not be granted to the corporation unless its corporate privileges are revived under this chapter.

Acts 1981, 67th Leg., p. 1704, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.254. EXCEPTION TO FORFEITURE.

The forfeiture of the corporate privileges of a corporation does not apply to the privilege to defend in a suit to forfeit the corporation's charter or certificate of authority.

Acts 1981, 67th Leg., p. 1704, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.255. LIABILITY OF DIRECTOR AND OFFICERS.

- (a) If the corporate privileges of a corporation are forfeited for the failure to file a report or pay a tax or penalty, each director or officer of the corporation is liable for each debt of the corporation that is created or incurred in this state after the date on which the report, tax, or penalty is due and before the corporate privileges are revived. The liability includes liability for any tax or penalty imposed by this chapter on the corporation that becomes due and payable after the date of the forfeiture.
- (b) The liability of a director or officer is in the same manner and to the same extent as if the director or officer were a partner and the corporation were a partnership.
- (c) A director or officer is not liable for a debt of the corporation if the director or officer shows that the debt was created or incurred:
 - (1) over the director's objection; or
 - (2) without the director's knowledge and that the exercise of reasonable diligence to become acquainted with the affairs of the corporation would not have revealed the intention to create the debt.
- (d) If a corporation's charter or certificate of authority and its corporate privileges are forfeited and revived under this chapter, the liability under this section of a director or officer of the corporation is not affected by the revival of the charter or certificate and the corporate privileges.

Acts 1981, 67th Leg., p. 1704, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.256. NOTICE OF FORFEITURE.

- (a) If the comptroller proposes to forfeit the corporate privileges of a corporation, the comptroller shall notify the corporation that the forfeiture will occur without a judicial proceeding unless the corporation:
 - (1) files, within the time established by Section 171.251 of this code, the report to which that section refers; or
 - (2) pays, within the time established by Section 171.251 of this code, the delinquent tax and penalty to which that section refers.
- (b) The notice shall be written or printed and shall be verified by the seal of the comptroller's office.
- (c) The comptroller shall mail the notice to the corporation at least 45 days before the forfeiture of corporate privileges. The notice shall be addressed to the corporation and mailed to the address named in the corporation's charter as its principal place of business or to another known place of business of the corporation.
- (d) The comptroller shall keep at the comptroller's office a record of the date on which the notice is mailed. For the purposes of this chapter, the notice and the record of the mailing date constitute legal and sufficient notice of the forfeiture.

Acts 1981, 67th Leg., p. 1704, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1993, 73rd Leg.,

ch. 546, Sec. 11, eff. Jan. 1, 1994.

Sec. 171.257. JUDICIAL PROCEEDING NOT REQUIRED FOR FORFEITURE.

The forfeiture of the corporate privileges of a corporation is effected by the comptroller without a judicial proceeding.

Acts 1981, 67th Leg., p. 1705, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.258. REVIVAL OF CORPORATE PRIVILEGES.

The comptroller shall revive the corporate privileges of a corporation if the corporation, before the forfeiture of its charter or certificate of authority, pays any tax, penalty, or interest due under this chapter.

Acts 1981, 67th Leg., p. 1705, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.259. BANKING CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS.

- (a) Except as provided by Subsection (b), this subchapter does not apply to a banking corporation that is organized under the laws of this state or under federal law and has its main office in this state.
- (b) The banking commissioner shall appoint a conservator under Subtitle A, Title 3, Finance Code, to pay the franchise tax of a banking corporation that is organized under the laws of this state and that the commissioner certifies as being delinquent in the payment of the corporation's franchise tax.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 3, part B, Sec. 5, eff. May 1, 1985. Amended by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.20, eff. Jan. 1, 1992; Acts 1999, 76th Leg., ch. 184, Sec. 3, eff. Jan. 1, 2000.

Sec. 171.260. SAVINGS AND LOAN ASSOCIATION.

- (a) Except as provided by Subsection (b), this subchapter does not apply to a savings and loan association that is organized under the laws of this state or under federal law and has its main office in this state.
- (b) The savings and loan commissioner shall appoint a conservator under Subtitle B or C, Title 3, Finance Code, to pay the franchise tax of a savings and loan association that is organized under the laws of this state and that the commissioner certifies as being delinquent in the payment of the association's franchise tax.

Added by Acts 1999, 76th Leg., ch. 184, Sec. 4, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 62, eff. Jan. 1, 2002.

SUBCHAPTER G. FORFEITURE OF CHARTER OR CERTIFICATE OF AUTHORITY

Sec. 171.301. GROUNDS FOR FORFEITURE OF CHARTER OR CERTIFICATE OF AUTHORITY.

It is a ground for the forfeiture of a corporation's charter or certificate of authority if:

- (1) the corporate privileges of the corporation are forfeited under this chapter and the corporation does not pay, within 120 days after the date the corporate privileges are forfeited, the amount necessary for the corporation to revive under this chapter its corporate privileges; or

(2) the corporation does not permit the comptroller to examine the corporation's records under Section 171.211 of this code.

Acts 1981, 67th Leg., p. 1705, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1989, 71st Leg., ch. 584, Sec. 111, eff. Sept. 1, 1989.

Sec. 171.302. CERTIFICATION BY COMPTROLLER.

After the 120th day after the date that the corporate privileges of a corporation are forfeited under this chapter, the comptroller shall certify the name of the corporation to the attorney general and the secretary of state.

Acts 1981, 67th Leg., p. 1705, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.303. SUIT FOR JUDICIAL FORFEITURE.

On receipt of the comptroller's certification, the attorney general shall bring suit to forfeit the charter or certificate of authority of the corporation if a ground exists for the forfeiture of the charter or certificate.

Acts 1981, 67th Leg., p. 1705, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.304. RECORD OF JUDICIAL FORFEITURE.

- (a) If a district court forfeits a corporation's charter or certificate of authority under this chapter, the clerk of the court shall promptly mail to the secretary of state a certified copy of the court's judgment. On receipt of the copy of the judgment, the secretary of state shall inscribe on the corporation's record at the secretary's office the words "Judgment of Forfeiture" and the date of the judgment.
- (b) If an appeal of the judgment is perfected, the clerk of the court shall promptly certify to the secretary of state that the appeal has been perfected. On receipt of the certification, the secretary of state shall inscribe on the corporation's record at the secretary's office the word "Appealed" and the date on which the appeal was perfected.
- (c) If final disposition of an appeal is made, the clerk of the court making the disposition shall promptly certify to the secretary of state the type of disposition made and the date of the disposition. On receipt of the certification, the secretary of state shall inscribe on the corporation's record at the secretary's office a brief note of the type of final disposition made and the date of the disposition.

Acts 1981, 67th Leg., p. 1705, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.305. REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY AFTER JUDICIAL FORFEITURE.

A corporation whose charter or certificate of authority is judicially forfeited under this chapter is entitled to have its charter or certificate revived and to have its corporate privileges revived if:

- (1) the corporation files each report that is required by this chapter and that is delinquent;
- (2) the corporation pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the suit under Section 171.306 of this code to set aside forfeiture is filed; and
- (3) the forfeiture of the corporation's charter or certificate is set aside in a suit under Section 171.306 of this code.

Acts 1981, 67th Leg., p. 1706, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.306. SUIT TO SET ASIDE JUDICIAL FORFEITURE.

If a corporation's charter or certificate of authority is judicially forfeited under this chapter, a stockholder, director, or officer of the corporation at the time of the forfeiture of the charter or certificate or of the corporate privileges of the corporation may bring suit in a district court of Travis County in the name of the corporation to set aside the forfeiture of the charter or certificate. The suit must be in the nature of a bill of review. The secretary of state and attorney general must be made defendants in the suit.

Acts 1981, 67th Leg., p. 1706, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.307. RECORD OF SUIT TO SET ASIDE JUDICIAL FORFEITURE.

If a court under this chapter sets aside the forfeiture of a corporation's charter or certificate of authority, the secretary of state shall inscribe on the corporation's record in the secretary's office the words "Charter Revived by Court Order" or "Certificate Revived by Court Order," a citation to the suit, and the date of the court's judgment.

Acts 1981, 67th Leg., p. 1706, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.308. CORPORATE PRIVILEGES AFTER JUDICIAL FORFEITURE IS SET ASIDE.

If a court under this chapter sets aside the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation and shall inscribe on the corporation's record in the comptroller's office a note of the revival.

Acts 1981, 67th Leg., p. 1706, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.309. FORFEITURE BY SECRETARY OF STATE.

The secretary of state may forfeit the charter or certificate of authority of a corporation if:

- (1) the secretary receives the comptroller's certification under Section 171.302 of this code;
- (2) the 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.

Acts 1981, 67th Leg., p. 1707, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 10, art. 3, Sec. 6, eff. Sept. 1, 1984.

Sec. 171.310 JUDICIAL PROCEEDING NOT REQUIRED FOR FORFEITURE BY SECRETARY OF STATE.

The forfeiture by the secretary of state of a corporation's charter or certificate of authority under this chapter is effected without a judicial proceeding.

Acts 1981, 67th Leg., p. 1707, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.311. RECORD OF FORFEITURE BY SECRETARY OF STATE.

The secretary of state shall effect a forfeiture of a corporation's charter or certificate of authority under this chapter by inscribing on the corporation's record in the secretary's office the words "Charter Forfeited" or "Certificate Forfeited," the date on which this inscription is made, and a citation to this chapter as authority for the forfeiture.

Acts 1981, 67th Leg., p. 1707, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.312. REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY AFTER FORFEITURE BY SECRETARY OF STATE.

A corporation whose charter or certificate of authority is forfeited under this chapter by the secretary of state is entitled to have its charter or certificate revived and to have its corporate privileges revived if:

- (1) the corporation files each report that is required by this chapter and that is delinquent;
- (2) the corporation pays the tax, penalty, and interest that is imposed by this chapter and that is due at the time the request under Section 171.313 of this code to set aside forfeiture is made; and
- (3) the forfeiture of the corporation's charter or certificate is set aside in a proceeding under Section 171.313 of this code.

Acts 1981, 67th Leg., p. 1707, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.313. PROCEEDING TO SET ASIDE FORFEITURE BY SECRETARY OF STATE.

- (a) If a corporation's charter or certificate of authority is forfeited under this chapter by the secretary of state, a stockholder, director, or officer of the corporation at the time of the forfeiture of the charter or certificate or of the corporate privileges of the corporation may request in the name of the corporation that the secretary of state set aside the forfeiture of the charter or certificate.
- (b) If a request is made, the secretary of state shall determine if each delinquent report has been filed and any delinquent tax, penalty, or interest has been paid. If each report has been filed and the tax, penalty, or interest has been paid, the secretary shall set aside the forfeiture of the corporation's charter or certificate of authority.

Acts 1981, 67th Leg., p. 1707, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.314. CORPORATE PRIVILEGES AFTER FORFEITURE BY SECRETARY OF STATE IS SET ASIDE.

If the secretary of state sets aside under this chapter the forfeiture of a corporation's charter or certificate of authority, the comptroller shall revive the corporate privileges of the corporation.

Acts 1981, 67th Leg., p. 1708, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.315. USE OF CORPORATE NAME AFTER REVIVAL OF CHARTER OR CERTIFICATE OF AUTHORITY.

If a corporation's charter or certificate of authority is forfeited under this chapter by the secretary of state and if the corporation requests the secretary to set aside the forfeiture under Section 171.313 of this code, the corporation shall determine from the secretary whether the corporation's name is available for use. If the name is not available, the corporation shall amend its charter or certificate to change its name.

Acts 1981, 67th Leg., p. 1708, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.316. BANKING CORPORATIONS.

This subchapter does not apply to a banking corporation that is organized under the laws of this state or under federal law and has its main office in this state.

Added by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 3, part B, Sec. 6, eff. May 1, 1985. Amended by Acts 1999, 76th Leg., ch. 184, Sec. 5, eff. Jan. 1, 2000.

Sec. 171.317. SAVINGS AND LOAN ASSOCIATIONS.

This subchapter does not apply to a savings and loan association that is organized under the laws of this state or under federal law and has its main office in this state.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.21, eff. Jan. 1, 1992. Amended by Acts 1999, 76th Leg., ch. 184, Sec. 6, eff. Jan. 1, 2000.

SUBCHAPTER H. ENFORCEMENT

Sec. 171.351. VENUE OF SUIT TO ENFORCE CHAPTER.

Venue of a civil suit against a corporation to enforce this chapter is either in a county where the corporation's principal office is located according to its charter or certificate of authority or in Travis County.

Acts 1981, 67th Leg., p. 1708, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.352. AUTHORITY TO RESTRAIN OR ENJOIN.

To enforce this chapter, a court may restrain or enjoin a violation of this chapter.

Acts 1981, 67th Leg., p. 1708, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.353. APPOINTMENT OF RECEIVER.

If a court forfeits a corporation's charter or certificate of authority, the court may appoint a receiver for the corporation and may administer the receivership under the laws relating to receiverships.

Acts 1981, 67th Leg., p. 1708, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.354. AGENT FOR SERVICE OF PROCESS.

Each corporation on which a tax is imposed by this chapter shall designate a resident of this state as the corporation's agent for the service of process.

Acts 1981, 67th Leg., p. 1708, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.355. SERVICE OF PROCESS ON SECRETARY OF STATE.

(a) Legal process may be served on a domestic corporation by serving it on the secretary of state if the process relates to the forfeiture of the corporation's charter or to the collection of a tax or penalty imposed by this chapter and:

- (1) if the local agent of the corporation or if the officers named in the corporation's charter or annual report on file with the secretary of state do not reside or cannot be located in the county in which the corporation's principal office, as stated in the charter, is located; or
- (2) if the principal office of the corporation is not maintained or cannot be located in the county in which the charter states that the office is located.

(b) Complete and valid service of process is made on a corporation through the secretary of state by delivering duplicate copies of the process to the secretary of state or the assistant secretary of state.

(c) On receipt of legal process under this section, the secretary of state promptly shall forward to the corporation by registered mail a copy of the process. The copy of the process shall be mailed to

the address named in the corporation's charter as its principal place of business or to another place of business of the corporation as shown by the records in the secretary of state's office.

- (d) The failure of the secretary of state to mail a copy of legal process to a corporation does not affect the validity of the service of process. It is competent and sufficient proof of the service of process that the secretary of state certifies under the state seal the receipt of the process.
- (e) The secretary of state shall keep a record of each legal process served on the secretary under this section showing the date and time of the receipt of the process and the secretary's action on the process.
- (f) This section is cumulative of other laws relating to service of process.

Acts 1981, 67th Leg., p. 1708, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1993, 73rd Leg., ch. 300, Sec. 38, eff. Aug. 30, 1993.

Sec. 171.361. PENALTY FOR DISCLOSURE OF INFORMATION ON REPORT.

- (a) A person commits an offense if the person violates Section 171.208 of this code prohibiting the disclosure of information on a report filed under this chapter.
- (b) An offense under this section is punishable by a fine of not more than \$1,000, confinement in jail for not more than one year, or both.

Acts 1981, 67th Leg., p. 1710, ch. 389, Sec. 1, eff. Jan. 1, 1982.

Sec. 171.362. PENALTY FOR FAILURE TO PAY TAX OR FILE REPORT.

- (a) If a corporation on which a tax is imposed by this chapter fails to pay the tax when it is due and payable or fails to file a report required by this chapter when it is due, the corporation is liable for a penalty of five percent of the amount of the tax due.
- (b) If the tax is not paid or the report is not filed within 30 days after the due date, a penalty of an additional five percent of the tax due is imposed.
- (c) The minimum penalty under this section is \$1.
- (d) If a corporation electing to remit under Paragraph (A) of Subdivision (2) of Subsection (c) of Section 171.202 of this code remits less than the amount required, the penalties imposed by this section and the interest imposed under Section 111.060 of this code are assessed against the difference between the amount required to be remitted under Paragraph (A) of Subdivision (2) of Subsection (c) of Section 171.202 and the amount actually remitted on or before May 15.
- (e) If a corporation remits the entire amount required by Subsection (c) of Section 171.202 of this code, no penalties will be imposed against the amount remitted on or before November 15.

Acts 1981, 67th Leg., p. 1710, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 10, art. 3, Sec. 7, eff. Sept. 1, 1984; Acts 1985, 69th Leg., ch. 37, Sec. 8, eff. Aug. 26, 1985; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.22, eff. Jan. 1, 1992.

Sec. 171.363. WILFUL AND FRAUDULENT ACTS.

- (a) A corporation commits an offense if the corporation is subject to the provisions of this chapter and the corporation willfully:
 - (1) fails to file a report;
 - (2) fails to keep books and records as required by this chapter;
 - (3) files a fraudulent report;
 - (4) violates any rule of the comptroller for the administration and enforcement of the provisions of this chapter; or
 - (5) attempts in any other manner to evade or defeat any tax imposed by this chapter or the payment of the tax.

- (b) A person commits an offense if the person is an accountant or an agent for or an officer or employee of a corporation and the person knowingly enters or provides false information on any report, return, or other document filed by the corporation under this chapter.
- (c) A person who commits an offense under this section may also, in addition to the punishment provided by this section, be liable for a penalty under this chapter.
- (d) An offense under this section is a felony of the third degree.
- (e) A person whose commercial domicile or whose residence is in this state may be prosecuted under this section only in the county in which the person's commercial domicile or residence is located unless the person asserts a right to be prosecuted in another county.
- (f) A prosecution for a violation of this section must be commenced before the fifth anniversary of the date of the violation.

Added by Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.23, eff. Jan. 1, 1992. Amended by Acts 1995, 74th Leg., ch. 1002, Sec. 20, eff. Jan. 1, 1996.

SUBCHAPTER I. DISPOSITION OF REVENUE

Sec. 171.401. REVENUE DEPOSITED IN GENERAL REVENUE FUND.

The revenue from the tax imposed by this chapter on corporations shall be deposited to the credit of the general revenue fund.

Acts 1981, 67th Leg., p. 1710, ch. 389, Sec. 1, eff. Jan. 1, 1982. Amended by Acts 1984, 68th Leg., 2nd C.S., ch. 31, art. 3, part B, Sec. 7, eff. May 1, 1985; Acts 1987, 70th Leg., 2nd C.S., ch. 5, art. 2, pt. 1, Sec. 2, eff. Jan. 1, 1988; Acts 1991, 72nd Leg., 1st C.S., ch. 5, Sec. 8.231, eff. Jan. 1, 1992.

SUBCHAPTER J. REFUNDS

Sec. 171.501. REFUND FOR JOB CREATION IN ENTERPRISE ZONE.

- (a) A corporation that has been certified a qualified business as provided by Chapter 2303, Government Code, may apply for and be granted a refund of franchise tax paid with an initial or annual report if the governing body certifies to the comptroller that the business has created 10 or more new jobs held by qualified employees during the calendar year that contains the end of the accounting period on which the report is based.
- (b) Only qualified businesses that have been certified as eligible for a refund under this section by the governing body to the comptroller are entitled to the refund.
- (c) Repealed by Acts 2003, 78th Leg., ch. 814, Sec. 6.01(10).
- (d) The amount of a refund under this section is the lesser of \$5,000 or 25 percent of the amount of franchise tax due for any one privilege period before any other applicable credits. For purposes of this subsection, the initial and second periods are considered to be the same privilege period.
- (e) In this section:
 - (1) "Enterprise zone" and "qualified employee" have the meanings assigned to those terms by Section 2303.003, Government Code.
 - (2) "Governing body" means the governing body of a municipality or county that applied to have the project or activity of a qualified business designated as an enterprise project under Section 2303.405, Government Code.
 - (3) "New job" has the meaning assigned "permanent new job" by Section 2303.401, Government

Code.

- (4) "Qualified business" means a person that is certified as a qualified business under Section 2303.402, Government Code.

Added by Acts 1989, 71st Leg., ch. 1106, Sec. 25, eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 268, Sec. 44, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.59, 5.95(22), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1467, Sec. 2.61, eff. Jan. 1, 2000; Acts 2001, 77th Leg., ch. 1263, Sec. 63, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 814, Sec. 3.58, 3.59, 6.01(10), eff. Sept. 1, 2003.

SUBCHAPTER L. TAX CREDIT FOR WAGES PAID TO TEXAS DEPARTMENT OF CRIMINAL JUSTICE WORK PROGRAM PARTICIPANTS OR FORMER PARTICIPANTS

Sec. 171.651. DEFINITIONS.

In this subchapter:

- (1) "Department" means the Texas Department of Criminal Justice.
(2) "Work program participant" has the meaning assigned by Section 497.001(b), Government Code.

Added by Acts 1993, 73rd Leg., ch. 737, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.109, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1188, Sec. 1.46, eff. Sept. 1, 1999.

Sec. 171.652. CREDIT.

A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

Added by Acts 1993, 73rd Leg., ch. 737, Sec. 1, eff. Aug. 30, 1993.

Sec. 171.653. CREDIT FOR WAGES PAID TO WORK PROGRAM PARTICIPANT.

- (a) The amount of the credit for wages paid by a corporation to a work program participant is equal to 10 percent of that portion of the wages paid that the department apportions to the state as reimbursement for the cost of the participant's confinement.
(b) A corporation is eligible for the credit under this section only if it receives before the due date of its franchise tax report for the privilege period for which the credit is claimed a written certification from the department stating the amount of the wages that the corporation paid to a work program participant during the privilege period and the amount of those wages that the department apportioned to the state as reimbursement for the cost of the participant's confinement.
(c) A corporation is eligible for the credit under this section only if the work program participant for whom it is paid has been continuously employed for not less than six months.

Added by Acts 1993, 73rd Leg., ch. 737, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.110, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1188, Sec. 1.47, eff. Sept. 1, 1999.

Sec. 171.654. CREDIT FOR WAGES PAID TO EMPLOYEE WHO WAS WORK PROGRAM PARTICIPANT.

- (a) The amount of the credit for wages paid by a corporation to an employee who was employed by the corporation when the employee was a work program participant is equal to 10 percent of that portion of the wages paid that, were the employee still a participant, the department would apportion to the state as reimbursement for the cost of the participant's confinement.

- (b) A corporation is eligible for the credit under this section only if:
- (1) the employee who was formerly a work program participant was continuously employed for not less than six months while a participant and has been continuously employed by the corporation for at least one year after the date that the employee was released from prison or department supervision;
 - (2) the nature of the employment is substantially similar to the employment the employee had with the corporation when the employee was a work program participant or the employment requires more skills or provides greater opportunities for the employee;
 - (3) the corporation has provided the department a statement of the amount of wages paid the employee during the accounting period on which the credit is computed; and
 - (4) the corporation receives before the due date of its franchise tax report for the privilege period for which the credit is claimed a written certification from the department stating the amount of the wages that, were the employee still a work program participant, the department would have apportioned to the state as reimbursement for the cost of the participant's confinement.
- (c) A corporation may claim a credit under this section only for:
- (1) wages paid an employee after the employee has been employed by the corporation for more than one year after the date of the employee's release from prison or supervision; and
 - (2) wages paid the employee for not longer than one year.

Added by Acts 1993, 73rd Leg., ch. 737, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 321, Sec. 1.111, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1188, Sec. 1.48, eff. Sept. 1, 1999.

Sec. 171.655. LIMITATION.

The credit claimed for each privilege period may not exceed 50 percent of the amount of franchise tax due for the privilege period before any other applicable tax credits.

Added by Acts 1993, 73rd Leg., ch. 737, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 64, eff. Jan. 1, 2002.

Sec. 171.656. APPLICATION FOR CREDIT.

- (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.
- (b) The comptroller shall promulgate a form for the application for the credit. A corporation must use this form in applying for the credit.

Added by Acts 1993, 73rd Leg., ch. 737, Sec. 1, eff. Aug. 30, 1993.

Sec. 171.657. PERIOD FOR WHICH CREDIT MAY BE CLAIMED.

A corporation may claim a credit under this subchapter for wages paid during an accounting period only against the tax owed for the corresponding privilege period.

Added by Acts 1993, 73rd Leg., ch. 737, Sec. 1, eff. Aug. 30, 1993.

**SUBCHAPTER M. TAX CREDIT FOR WAGES PAID TO CERTAIN
CHILDREN COMMITTED TO TEXAS YOUTH COMMISSION**

Sec. 171.681. DEFINITIONS.

In this subchapter:

- (1) "Commission" means the Texas Youth Commission.
- (2) "Eligible child" means a person who:
 - (A) is committed to the commission under Title 3, Family Code, other than a commitment under a determinate sentence under Section 54.04(d)(3), 54.04(m), or 54.05(f), Family Code; and
 - (B) resides at a facility of the commission.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 97, eff. Jan. 1, 1996.

Sec. 171.682. CREDIT.

A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 97, eff. Jan. 1, 1996.

Sec. 171.683. CREDIT FOR WAGES PAID TO ELIGIBLE CHILD.

- (a) The amount of the credit for wages paid by a corporation to an eligible child is equal to 10 percent of that portion of the wages the corporation paid to the eligible child or the commission for the benefit of the child.
- (b) A corporation is eligible for the credit under this section only if it files, on or before the due date of its franchise tax report for the privilege period for which the credit is claimed, a written certification issued by the commission stating the amount of the wages that the corporation paid to an eligible child or to the commission for the benefit of the child during:
 - (1) the privilege period; and
 - (2) not more than six months of the preceding privilege period for wages for which a credit has not previously been claimed.
- (c) A corporation is eligible for the credit under this section only if the eligible child to whom or for whose benefit it pays wages has been continuously employed by the corporation for not less than six months.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 97, eff. Jan. 1, 1996.

Sec. 171.684. CREDIT FOR WAGES PAID TO EMPLOYEE WHO WAS AN ELIGIBLE CHILD.

- (a) The amount of the credit for wages paid by a corporation to an employee who was first employed by the corporation when the employee was an eligible child is equal to 10 percent of the wages paid the employee.
- (b) A corporation is eligible for the credit under this section only if:
 - (1) the employee who was formerly an eligible child was continuously employed for not less than six months while an eligible child and has been continuously employed by the corporation for at least one year after the date that the employee was released from commitment to the commission or released under supervision by the commission; and
 - (2) the nature of the employment is substantially similar to the employment the employee had with the corporation when the employee was an eligible child or the employment requires more skills or provides greater opportunities for the employee.
- (c) A corporation may claim a credit under this section only for:
 - (1) wages paid an employee after the employee has been employed by the corporation for more than one year after the earlier of the date of the employee's release from commitment to the commission or release under supervision by the commission; and
 - (2) wages paid the employee for not longer than one year.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 97, eff. Jan. 1, 1996.

Sec. 171.685. LIMITATION.

The total credits claimed under this subchapter for a privilege period may not exceed 50 percent of the amount of franchise tax due for the privilege period before any other applicable tax credits.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 97, eff. Jan. 1, 1996. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 65, eff. Jan. 1, 2002.

Sec. 171.686. APPLICATION FOR CREDIT.

- (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.
- (b) The comptroller shall promulgate a form for the application for the credit. A corporation must use this form in applying for the credit.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 97, eff. Jan. 1, 1996.

Sec. 171.687. PERIOD FOR WHICH CREDIT MAY BE CLAIMED.

A corporation may claim a credit under this subchapter for wages paid during an accounting period only against the tax owed for the corresponding privilege period.

Added by Acts 1995, 74th Leg., ch. 262, Sec. 97, eff. Jan. 1, 1996.

**SUBCHAPTER N. TAX CREDIT FOR ESTABLISHING DAY-CARE CENTER
OR PURCHASING CHILD-CARE SERVICES**

Sec. 171.701. DEFINITIONS.

In this subchapter:

- (1) "Day-care center" has the meaning assigned by Section 42.002, Human Resources Code.
- (2) "Family home" has the meaning assigned by Section 42.002, Human Resources Code.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 13, eff. Jan. 1, 2000.

Sec. 171.702. CREDIT.

A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 13, eff. Jan. 1, 2000.

Sec. 171.703. CREDIT FOR DAY-CARE CENTER AND PURCHASED CHILD CARE.

- (a) A corporation may claim a credit under this subchapter only for a qualifying expenditure relating to:
 - (1) the establishment and operation of a day-care center primarily to provide care for the children of employees of the corporation or of the corporation and one or more other entities sharing the costs of establishing and operating the center; or
 - (2) the purchase of child-care services that are actually provided to children of employees of the corporation at a:
 - (A) day-care center; or

- (B) family home that is registered or listed with the Department of Protective and Regulatory Services under Chapter 42, Human Resources Code.
- (b) A qualifying expenditure includes an expenditure for:
- (1) planning the day-care center;
 - (2) preparing a site to be used for the day-care center;
 - (3) constructing the day-care center;
 - (4) renovating or remodeling a structure to be used for the day-care center;
 - (5) purchasing equipment necessary in the use of the day-care center and installed for permanent use in or immediately adjacent to the day-care center, including kitchen appliances and other food preparation equipment;
 - (6) expanding the day-care center;
 - (7) maintaining and operating the day-care center, including paying direct administration and staff costs; or
 - (8) purchasing all or part of child-care services that are actually provided to children of employees of the corporation at a day-care center or registered or listed family home.
- (c) The amount of the credit is equal to the lesser of:
- (1) \$50,000;
 - (2) 50 percent of the corporation's qualifying expenditures; or
 - (3) the amount of the limitation provided by Section 171.705(b).
- (d) If a corporation shares in the cost of establishing and operating a day-care center, the corporation is entitled to a credit for the qualifying expenditures made by that corporation, subject to the limitation prescribed by Subsection (c).

Added by Acts 1999, 76th Leg., ch. 394, Sec. 13, eff. Jan. 1, 2000.

Sec. 171.704. APPLICATION FOR CREDIT.

- (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.
- (b) If the corporation is claiming a credit for a qualifying expenditure for purchasing child-care services, the corporation must maintain proof that the services were actually provided to children of employees of the corporation at a day-care center or registered or listed family home.
- (c) The comptroller shall adopt a form for the application for the credit. A corporation must use this form in applying for the credit.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 13, eff. Jan. 1, 2000.

Sec. 171.705. PERIOD FOR WHICH CREDIT MAY BE CLAIMED.

- (a) A corporation may claim a credit under this subchapter for qualifying expenditures made during an accounting period only against the tax owed for the corresponding reporting period.
- (b) A corporation may not claim a credit in an amount that exceeds 90 percent of the amount of tax due for the report before any other applicable credits.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 13, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 66, eff. Jan. 1, 2002.

Sec. 171.706. ASSIGNMENT PROHIBITED.

A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 13, eff. Jan. 1, 2000.

Sec. 171.707. BIENNIAL REPORT BY COMPTROLLER.

- (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:
- (1) the total amount of qualifying expenditures incurred by corporations that claim a credit under this subchapter;
 - (2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:
 - (A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;
 - (B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;
 - (C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and
 - (D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;
 - (3) the geographical distribution of qualifying expenditures giving rise to a credit authorized by this subchapter;
 - (4) the impact of the credit provided by this subchapter on promoting economic development in this state; and
 - (5) the impact of the credit provided under this subchapter on state tax revenues.
- (b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.
- (c) The comptroller may not include in the report information that is confidential by law.
- (d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's qualifying expenditures and any other information necessary to complete the report required under this section.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 13, eff. Jan. 1, 2000.

SUBCHAPTER O. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Sec. 171.721. DEFINITIONS.

Text of section effective until December 31, 2009

In this subchapter:

- (1) "Base amount," "basic research payment," and "qualified research expense" have the meanings assigned those terms by Section 41, Internal Revenue Code, except that all such payments and expenses must be for research conducted within this state.

Text of subd. (2) as amended by Acts 2001, 77th Leg., ch. 1134,

Sec. 1.14, effective until January 1, 2005

- (2) "Strategic investment area" means an area that is determined by the comptroller under Section 171.726 that is:
- (A) a county within this state with above state average unemployment and below state average per capita income;

- (B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or
- (C) a county within this state that has a spaceport, as defined by Section 4D, Development Corporation Act of 1979 (Article 5190.6, Vernon's Texas Civil Statutes), as added by Chapter 1537, Acts of the 76th Legislature, Regular Session, 1999, within its boundaries.

Text of subd. (2) effective January 1, 2005

- (2) "Strategic investment area" means an area that is determined by the comptroller under Section 171.726 that is:
 - (A) a county within this state with above state average unemployment and below state average per capita income;
 - (B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or
 - (C) a defense economic readjustment zone designated under Chapter 2310, Government Code.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.14, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1134, Sec. 2.12, eff. Jan. 1, 2005; Acts 2001, 77th Leg., ch. 1446, Sec. 1, eff. Jan. 1, 2002.

Sec. 171.722. ELIGIBILITY.

Text of section effective until December 31, 2009

- (a) A corporation is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.
- (b) A corporation may claim a credit under Section 171.723(d) or take a carryforward credit without regard to whether the strategic investment area in which it made qualified research expenses and basic research payments subsequently loses its designation as a strategic investment area.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000.

Sec. 171.723. CALCULATION OF CREDIT.

Text of section effective until December 31, 2009

- (a) The credit for any report equals five percent of the sum of:
 - (1) the excess of qualified research expenses incurred in this state during the period upon which the tax is based over the base amount for this state; and
 - (2) the basic research payments determined under Section 41(e)(1)(A), Internal Revenue Code, for this state during the period upon which the tax is based.
- (b) A corporation may elect to compute the credit for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4), Internal Revenue Code, only if for the corresponding federal tax period:
 - (1) a federal election was made to compute the federal credit under Section 41(c)(4), Internal Revenue Code;
 - (2) the corporation was a member of a consolidated group for which a federal election was made under Section 41(c)(4), Internal Revenue Code; or
 - (3) the corporation did not claim the federal credit under Section 41(a)(1), Internal Revenue Code.
- (c) For purposes of the alternate credit computation method in Subsection (b), the credit percentages applicable to qualified research expenses described in Sections 41(c)(4)(A)(i), (ii), and (iii), Internal Revenue Code, are 0.41 percent, 0.55 percent, and 0.69 percent, respectively.
- (d) In computing the credit under this section, a corporation may multiply by two the amount of any qualified research expenses and basic research payments made in a strategic investment area.
- (e) The burden of establishing entitlement to and the value of the credit is on the corporation.
- (f) For the purposes of this section, "gross receipts" as used in Section 41, Internal Revenue Code,

means gross receipts as determined under Section 171.1032.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000.

Sec. 171.724. LIMITATIONS.

Text of section effective until December 31, 2009

- (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.725, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.
- (b) The total credit claimed under this subchapter and Subchapters P and Q for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable credits.
- (c) A corporation that establishes its eligibility for a credit under this subchapter is not eligible to establish a credit under Subchapter P.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000.

Sec. 171.725. CARRYFORWARD.

Text of section effective until December 31, 2009

If a corporation is eligible for a credit that exceeds the limitation under Section 171.724(a) or (b), the corporation may carry the unused credit forward for not more than 20 consecutive reports. A credit carryforward from a previous report is considered to be utilized before the current year credit.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000.

Sec. 171.726. DETERMINATION OF STRATEGIC INVESTMENT AREAS.

Text of section effective until December 31, 2009

- (a) Not later than September 1 each year, the comptroller shall determine areas that qualify as strategic investment areas using the most recently completed full calendar year data available on that date and, not later than October 1, shall publish a list and map of the designated areas.
- (b) The designation is effective for the following calendar year for purposes of credits available under this subchapter.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000.

Sec. 171.727. BIENNIAL REPORT BY COMPTROLLER.

Text of section effective until December 31, 2009

- (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:
 - (1) the total amount of expenses and payments incurred by corporations that claim a credit under this subchapter;
 - (2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:
 - (A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;
 - (B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;
 - (C) the percentage of tax credits that were awarded to corporations with fewer than 100

- employees; and
- (D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;
- (3) the geographical distribution of expenses and payments giving rise to a credit authorized by this subchapter;
- (4) the impact of the credit provided by this subchapter on the amount of research and development performed in this state and employment in research and development in this state; and
- (5) the impact of the credit provided under this subchapter on employment, capital investment, and personal income in this state and on state tax revenues.
- (b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.
- (c) The comptroller may not include in the report information that is confidential by law.
- (d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's research expenses and payments in this state and any other information necessary to complete the report required under this section.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000.

Sec. 171.728. COMPTROLLER POWERS AND DUTIES.

Text of section effective until December 31, 2009

The comptroller shall adopt rules and forms necessary to implement this subchapter.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000.

Sec. 171.729. EXPIRATION.

Text of section effective until December 31, 2009

- (a) This subchapter expires December 31, 2009.
- (b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.725 for those credits to which a corporation is eligible before the date this subchapter expires.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 14, eff. Jan. 1, 2000.

Sec. 171.731. ASSIGNMENT PROHIBITED.

A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 42, eff. Oct. 1, 2003.

SUBCHAPTER P. TAX CREDITS FOR CERTAIN JOB CREATION ACTIVITIES

Sec. 171.751. DEFINITIONS.

Text of section effective until December 31, 2009

In this subchapter:

- (1) "Agricultural processing" means an establishment primarily engaged in activities described in

categories 0724, 2011-2099, 2211, 2231, 2824, 2833, 2834, 2835, 2836, 2841, 3111-3199, 3262, or 3952, in product classes 28692 or 28698 of category 2869, or in product classes 28992 or 28994 of category 2899 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

- (2) "Central administrative offices" means an establishment primarily engaged in performing management or support services for other establishments of the same enterprise. An enterprise consists of all establishments having more than 50 percent common direct or indirect ownership.
- (3) "County average weekly wage" means the average weekly wage for all covered employment in the county as computed by the Texas Workforce Commission.
- (4) "Data processing" means an establishment primarily engaged in activities described in categories 7371-7379 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.
- (5) "Distribution" means an establishment primarily engaged in activities described in categories 5012-5199 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.
- (6) "Group health benefit plan" means:
 - (A) a health plan provided by a health maintenance organization established under Chapter 843, Insurance Code;
 - (B) a health benefit plan approved by the commissioner of insurance ;or
 - (C) a self-funded or self-insured employee welfare benefit plan that provides health benefits and is established in accordance with the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.), as amended.
- (7) "Manufacturing" means an establishment primarily engaged in activities described in categories 2011-3999 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.
- (8) "Qualified business" means an establishment primarily engaged in agricultural processing, central administrative offices, distribution, data processing, manufacturing, research and development, or warehousing.

Text of subd. (9) effective until January 1, 2005

- (9) "Qualifying job" means a new permanent full-time job that:
 - (A) is located in:
 - (i) a strategic investment area;
 - (ii) a county within this state with a population of less than 50,000, if the job is created by a business primarily engaged in agricultural processing; or
 - (iii) an enterprise zone or a readjustment zone, regardless of whether the job meets the qualifications prescribed by Paragraphs (B)-(F), if the job is created by a qualified business that has been designated as an enterprise project or defense readjustment project, respectively;
 - (B) requires at least 1,600 hours of work a year;
 - (C) pays at least 110 percent of the county average weekly wage for the county where the job is located;
 - (D) is covered by a group health benefit plan for which the business pays at least 80 percent of the premiums or other charges assessed under the plan for the employee;
 - (E) is not transferred from one area in this state to another area in this state; and
 - (F) is not created to replace a previous employee.

Text of subd. (9) effective January 1, 2005

- (9) "Qualifying job" means a new permanent full-time job that:
 - (A) is located in:
 - (i) a strategic investment area; or
 - (ii) a county within this state with a population of less than 50,000, if the job is created by a

- business primarily engaged in agricultural processing;
- (B) requires at least 1,600 hours of work a year;
- (C) pays at least 110 percent of the county average weekly wage for the county where the job is located;
- (D) is covered by a group health benefit plan for which the business pays at least 80 percent of the premiums or other charges assessed under the plan for the employee;
- (E) is not transferred from one area in this state to another area in this state; and
- (F) is not created to replace a previous employee.
- (10) "Research and development" means an establishment primarily engaged in activities described in category 8731 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.
- (11) "Strategic investment area" has the meaning assigned that term by Section 171.721.
- (12) "Warehousing" means an establishment primarily engaged in activities described in categories 4221-4226 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.
- (13) "Defense readjustment project" means:
 - (A) a person designated by the Texas Department of Economic Development as a defense readjustment project under Chapter 2310, Government Code, on or after September 1, 2001, but before September 1, 2003; and
 - (B) a person designated by the Texas Economic Development Bank as a defense readjustment project under Chapter 2310, Government Code, on or after September 1, 2003.
- (14) "Enterprise project" means:
 - (A) a person designated by the Texas Department of Economic Development as an enterprise project under Chapter 2303, Government Code, on or after September 1, 2001, but before September 1, 2003; and
 - (B) a person designated by the Texas Economic Development Bank as an enterprise project under Chapter 2303, Government Code, on or after September 1, 2003.
- (15) "Enterprise zone" has the meaning assigned that term by Section 2303.003, Government Code.
- (16) "Readjustment zone" has the meaning assigned that term by Section 2310.001, Government Code.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 882, Sec. 1, eff. Jan. 1, 2002; Acts 2001, 77th Leg., ch. 1134, Sec. 1.08, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1134, Sec. 2.06, 2.13, eff. Jan. 1, 2005; Acts 2003, 78th Leg., ch. 209, Sec. 43, eff. Oct. 1, 2003; Acts 2003, 78th Leg., ch. 814, Sec. 3.60, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.552, eff. Sept. 1, 2003.

Sec. 171.7515. "QUALIFIED BUSINESS".

Text of section effective until January 1, 2005

- (a) In addition to the meaning assigned by Section 171.751(8), "qualified business" also means a corporation that has been designated as an enterprise project or as a defense readjustment project and is certified by the Texas Department of Economic Development as a qualified business under Section 2303.402 or 2310.302, Government Code.
- (b) This section expires January 1, 2005.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 44, eff. Oct. 1, 2003.

Sec. 171.752. ELIGIBILITY.

Text of section effective until December 31, 2009

- (a) A corporation is eligible for a credit against the tax imposed under this chapter if the corporation:

- (1) is a qualified business as defined in Section 171.751;
- (2) creates a minimum of 10 qualifying jobs; and
- (3) pays an average weekly wage, for the year in which credits are claimed, of at least 110 percent of the county average weekly wage for the county where the qualifying jobs are located.

Text of subsec. (b) effective until January 1, 2005

- (b) A corporation may claim a credit or take a carryforward credit without regard to whether the strategic investment area, enterprise zone, or readjustment zone in which it created the qualifying jobs subsequently loses its designation as a strategic investment area, enterprise zone, or readjustment zone, if applicable.

Text of subsec. (b) effective January 1, 2005

- (b) A corporation may claim a credit or take a carryforward credit without regard to whether the strategic investment area in which it created the qualifying jobs subsequently loses its designation as a strategic investment area, if applicable.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.09, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1134, Sec. 2.07, eff. Jan. 1, 2005.

Sec. 171.753. CALCULATION OF CREDIT.

A corporation may establish a credit equal to five percent of the total wages and salaries paid by the corporation for qualifying jobs during the period upon which the tax is based, on each of five consecutive reports beginning with the report based on the period during which the qualifying jobs were created.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 67, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 209, Sec. 45, eff. Oct. 1, 2003.

Sec. 171.7541. LENGTH OF CREDIT.

Text of section effective until January 1, 2005

Notwithstanding Section 171.753, a corporation that has been designated as an enterprise project or as a defense readjustment project on or after September 1, 2001, may, beginning on the date the project is designated, establish a credit equal to 25 percent of the total wages and salaries paid by the corporation for qualifying jobs. Subject to Section 171.755, the corporation may claim the entire credit earned on a report originally due on or after September 1, 2003, and before January 1, 2005. This section expires January 1, 2005.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 46, eff. Oct. 1, 2003.

Sec. 171.755. LIMITATIONS.

Text of section effective until December 31, 2009

- (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.756, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.
- (b) The total credit claimed under this subchapter and Subchapters O and Q for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable credits.
- (c) A corporation that establishes its eligibility for a credit under this subchapter is not eligible to establish a credit under Subchapter O.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000.

Sec. 171.756. CARRYFORWARD.

Text of section effective until December 31, 2009

- (a) If a corporation is eligible for a credit that exceeds the limitations under Section 171.755(a) or (b), the corporation may carry the unused credit forward for not more than five consecutive reports.
- (b) A carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the tax limitation under Section 171.755. A carryforward is added to the next year's credit in determining the tax limitation for that year. A credit carryforward from a previous report is considered to be utilized before the current year credit.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 69, eff. Jan. 1, 2002.

Sec. 171.757. CERTIFICATION OF ELIGIBILITY.

Text of section effective until December 31, 2009

- (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the corporation shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with Section 171.752.
- (b) The burden of establishing entitlement to and the value of the credit is on the corporation.
- (c), (d) Repealed by Acts 2001, 77th Leg., ch. 1263, Sec. 84(2), eff. January 1, 2002.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 84(2), eff. Jan. 1, 2002.

Sec. 171.758. ASSIGNMENT PROHIBITED.

Text of section effective until December 31, 2009

A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000.

Sec. 171.759. BIENNIAL REPORT BY COMPTROLLER.

Text of section effective until December 31, 2009

- (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:
 - (1) the total number of jobs created by corporations that claim a credit under this subchapter and the average and median annual wage of those jobs;
 - (2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:
 - (A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;
 - (B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter; and
 - (C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees;
 - (3) a breakdown of the two-digit standard industrial classification of businesses claiming a credit under this subchapter;
 - (4) the geographical distribution of the credits claimed under this subchapter; and

- (5) the impact of the credit provided under this subchapter on employment, personal income, and capital investment in this state and on state tax revenues.
- (b) The final report issued prior to the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.
- (c) The comptroller may not include in the report information that is confidential by law.
- (d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's job creation in this state and any other information necessary to complete the report required under this section.
- (e) The comptroller shall provide notice to the members of the legislature that the report required under this section is available on request.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000.

Sec. 171.760. COMPTROLLER POWERS AND DUTIES.

Text of section effective until December 31, 2009

The comptroller shall adopt rules and forms necessary to implement this subchapter.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000.

Sec. 171.761. EXPIRATION.

Text of section effective until December 31, 2009

- (a) This subchapter expires December 31, 2009.
- (b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.756 or those credits for which a corporation is eligible before the date this subchapter expires.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 15, eff. Jan. 1, 2000.

SUBCHAPTER Q. TAX CREDITS FOR CERTAIN CAPITAL INVESTMENTS

Sec. 171.801. DEFINITIONS.

Text of section effective until December 31, 2009

In this subchapter:

- (1) "Agricultural processing," "central administrative offices," "county average weekly wage," "data processing," "distribution," "manufacturing," "qualified business," "research and development," and "warehousing" have the meanings assigned those terms by Section 171.751.

Text of subd. (2) effective until January 1, 2005

- (2) "Qualified capital investment" means tangible personal property first placed in service in a strategic investment area, first placed in service in a county with a population of less than 50,000 by a corporation primarily engaged in agricultural processing, or first placed in service in an enterprise zone or defense readjustment zone by a qualified business that has been designated as an enterprise project or readjustment project, respectively, and that is described in Section 1245(a), Internal Revenue Code, such as engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization. The term does not include real property or buildings and their structural components. Property that is leased under a capitalized lease is considered a "qualified capital investment," but property that is leased under an operating lease is not considered a "qualified capital investment." "Property expensed under Section 179, Internal

Revenue Code, is not considered a "qualified capital investment."

Text of subd. (2) effective January 1, 2005

- (2) "Qualified capital investment" means tangible personal property first placed in service in a strategic investment area, or first placed in service in a county with a population of less than 50,000 by a corporation primarily engaged in agricultural processing, and that is described in Section 1245(a), Internal Revenue Code, such as engines, machinery, tools, and implements used in a trade or business or held for investment and subject to an allowance for depreciation, cost recovery under the accelerated cost recovery system, or amortization. The term does not include real property or buildings and their structural components. Property that is leased under a capitalized lease is considered a "qualified capital investment," but property that is leased under an operating lease is not considered a "qualified capital investment." Property expensed under Section 179, Internal Revenue Code, is not considered a "qualified capital investment."
- (3) "Strategic investment area" has the meaning assigned that term by Section 171.721.
- (4) "Defense readjustment project," "enterprise project," "enterprise zone," and "readjustment zone" have the meanings assigned by Section 171.751.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.11, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1134, Sec. 2.09, eff. Jan. 1, 2005.

Sec. 171.8015. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN SERVICE IN AN ENTERPRISE ZONE.

For purposes of determining whether an investment is a "qualified capital investment" under Section 171.801, "tangible personal property first placed in service in an enterprise zone" includes tangible personal property:

- (1) purchased by a qualified business for placement in an incomplete improvement that is under active construction or other physical preparation;
- (2) identified by a purchase order, invoice, billing, sales slip, or contract; and
- (3) physically present at the enterprise zone and in use by the qualified business not later than September 30, 2005.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 95, eff. Oct. 1, 2003.

Sec. 171.802. ELIGIBILITY.

Text of section effective until December 31, 2009

- (a) A qualified business is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.
- (b) To qualify for the credit authorized under this subchapter, a qualified business must:
 - (1) pay an average weekly wage, at the location with respect to which the credit is claimed, that is at least 110 percent of the county average weekly wage;
 - (2) offer coverage to all full-time employees at the location with respect to which the credit is claimed by a group health benefit plan, as defined by Section 171.751, for which the business pays at least 80 percent of the premiums or other charges assessed under the plan for the employees; and
 - (3) make a minimum \$500,000 qualified capital investment.

Text of subsec. (c) effective from September 1, 2003 until January 1, 2005

- (c) A corporation may claim a credit or take a carryforward credit without regard to whether the strategic investment area, enterprise zone, or readjustment zone in which it made the qualified capital investment subsequently loses its designation as a strategic investment area, enterprise zone, or readjustment zone, if applicable.

Text of subsec. (c) effective January 1, 2005

- (c) A corporation may claim a credit or take a carryforward credit without regard to whether the strategic investment area in which it made the qualified capital investment subsequently loses its designation as a strategic investment area, if applicable.
- (d) A corporation that has been designated as an enterprise project or as a defense readjustment project and is certified by the Texas Department of Economic Development as a qualified business under Section 2303.402 or 2310.302, Government Code, may qualify for the credit provided by this subchapter, regardless of whether the corporation meets the qualifications prescribed by Subsection (b). This subsection expires January 1, 2005.
- (e) A corporation may claim a credit or take a carryforward credit for a qualified capital investment made on or after January 1, 2003, without regard to whether the county in which it makes the qualified capital investment has lost its designation as a strategic investment area if:
 - (1) the corporation committed to the investment in that county before January 2003;
 - (2) at the time the corporation made the commitment, the county was designated as a strategic investment area;
 - (3) the total investment is at least \$100 million;
 - (4) the county has a population of less than 15,700; and
 - (5) the corporation made a qualified capital investment in the county in each of the two years preceding the year in which the corporation made the qualified capital investment under this subsection.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.12, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1134, Sec. 2.10, eff. Jan. 1, 2005; Acts 2003, 78th Leg., ch. 209, Sec. 47, eff. Oct. 1, 2003.

Sec. 171.803. CALCULATION OF CREDIT.

- (a) Except as provided by Subsection (b), a corporation may establish a credit equal to 7.5 percent of the qualified capital investment during the period upon which the tax is based.
- (b) A corporation that has been designated as an enterprise project or as a defense readjustment project on or after September 1, 2001, may, beginning on the date the project is designated, establish a credit equal to 7.5 percent of the qualified capital investment. This subsection expires January 1, 2005.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000. Amended by Acts 2003, 78th Leg., ch. 209, Sec. 48, eff. Oct. 1, 2003.

Sec. 171.804. LENGTH OF CREDIT.

Text of section effective from September 1, 2003 until January 1, 2005

- (a) Except as provided by Subsection (b), the credit established shall be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon the period during which the qualified capital investment was made.
- (b) Subject to Section 171.805, a corporation that has been designated as an enterprise project or as a defense readjustment project may claim the entire credit earned on a report originally due on or after September 1, 2003, and before January 1, 2006.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.13, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 209, Sec. 49, eff. Oct. 1, 2003.

For text of section effective January 1, 2005, see Sec. 171.804, post.

Sec. 171.804. LENGTH OF CREDIT.

Text of section effective from January 1, 2005 until December 31, 2009

The credit established shall be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon the period during which the qualified capital investment was made.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.13, eff. Sept. 1, 2003; Acts 2001, 77th Leg., ch. 1134, Sec. 2.11, eff. Jan. 1, 2005. For text of section effective from September 1, 2003 until January 1, 2005, see Sec. 171.804, ante.

Sec. 171.805. LIMITATIONS.

Text of section effective until December 31, 2009

- (a) The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.806, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.
- (b) The total credit claimed under this subchapter and Subchapters O and P for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report after any other applicable tax credits.
- (c) Repealed by Acts 2001, 77th Leg., ch. 1134, Sec. 1.15, eff. Sept. 1, 2001.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1134, Sec. 1.15, eff. Sept. 1, 2001.

Sec. 171.806. CARRYFORWARD.

Text of section effective until December 31, 2009

- (a) If a corporation is eligible for a credit from an installment that exceeds the limitation under Section 171.805(a) or (b), the corporation may carry the unused credit forward for not more than five consecutive reports.
- (b) A carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of the tax limitation under Section 171.805. A carryforward is added to the next year's installment of the credit in determining the tax limitation for that year. A credit carryforward from a previous report is considered to be utilized before the current year installment.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000.

Sec. 171.807. CERTIFICATION OF ELIGIBILITY.

Text of section effective until December 31, 2009

- (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the corporation shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with Section 171.802.
- (b) The burden of establishing entitlement to and the value of the credit is on the qualified business.
- (c) A credit expires under this subchapter and the corporation may not take any remaining installment of the credit if in one of the five years in which the installment of a credit accrues, the qualified business:
 - (1) disposes of the qualified capital investment;
 - (2) takes the qualified capital investment out of service;
 - (3) moves the qualified capital investment out of this state; or
 - (4) fails to pay an average weekly wage as required by Section 171.802.
- (d) Notwithstanding Subsection (c), the corporation may take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.806.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000.

Sec. 171.808. ASSIGNMENT PROHIBITED.

Text of section effective until December 31, 2009

A corporation may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000.

Sec. 171.809. BIENNIAL REPORT BY COMPTROLLER.

Text of section effective until December 31, 2009

- (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:
- (1) the total amount of qualified capital investments made by corporations that claim a credit under this subchapter and the average and median wages paid by those corporations;
 - (2) the total amount of credits applied against the tax under this chapter and the amount of unused credits, including:
 - (A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;
 - (B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;
 - (C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and
 - (D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;
 - (3) the geographical distribution of the qualified capital investments on which tax credit claims are made under this subchapter; and
 - (4) the impact of the credit provided under this subchapter on employment, capital investment, personal income, and state tax revenues.
- (b) The final report issued before the expiration of this subchapter shall include historical information on the credit authorized under this subchapter.
- (c) The comptroller may not include in the report information that is confidential by law.
- (d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the corporation's capital investment in this state and any other information necessary to complete the report required under this section.
- (e) The comptroller shall provide notice to the members of the legislature that the report required under this section is available on request.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000.

Sec. 171.810. COMPTROLLER POWERS AND DUTIES.

Text of section effective until December 31, 2009

The comptroller shall adopt rules and forms necessary to implement this subchapter.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000.

Sec. 171.811. EXPIRATION.

Text of section effective until December 31, 2009

- (a) This subchapter expires December 31, 2009.
- (b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.806 or those credits for which a corporation is eligible before the date this subchapter expires.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 16, eff. Jan. 1, 2000.

**SUBCHAPTER R. TAX CREDIT FOR CONTRIBUTIONS TO
BEFORE AND AFTER SCHOOL PROGRAMS**

Sec. 171.831. DEFINITION.

In this subchapter, "school-age child care" means care provided before or after school and during the summer and holidays for children who are at least five years of age but younger than 14 years of age.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 17, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 70, eff. Jan. 1, 2002.

Sec. 171.832. CREDIT.

A corporation that meets the eligibility requirements under this subchapter is entitled to a credit in the amount allowed by this subchapter against the tax imposed under this chapter.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 17, eff. Jan. 1, 2000.

Sec. 171.833. EXPENDITURES ELIGIBLE FOR CREDIT.

- (a) A corporation may claim a credit under this subchapter only for a qualifying expenditure relating to the operation of a school-age child care program that is operated by:
 - (1) a nonprofit organization licensed under Chapter 42, Human Resources Code;
 - (2) a nonprofit, accredited educational facility or by another nonprofit entity under contract with the educational facility, if the Texas Education Agency or Southern Association of Colleges and Schools has approved the curriculum content of the program operated under the contract; or
 - (3) a county or municipality, if the governing body of the county or municipality annually adopts standards of care by order or ordinance that include minimum child-to-staff ratios, staff qualifications, facility, health, and safety standards, and mechanisms for monitoring and enforcing the standards.
- (b) A qualifying expenditure includes an expenditure for:
 - (1) constructing, renovating, or remodeling a facility or structure to be used by the program;
 - (2) purchasing necessary equipment, supplies, or food to be used in the program; or
 - (3) operating the program, including administrative and staff costs.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 17, eff. Jan. 1, 2000.

Sec. 171.834. AMOUNT; LIMITATIONS.

- (a) The amount of the credit is equal to 30 percent of a corporation's qualifying expenditures.
- (b) A corporation may claim a credit under this subchapter for a qualifying expenditure during an accounting period only against the tax owed for the corresponding reporting period.
- (c) A corporation may not claim a credit in an amount that exceeds 50 percent of the amount of

franchise tax due, before applying any other credits, for the reporting period.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 17, eff. Jan. 1, 2000. Amended by Acts 2001, 77th Leg., ch. 1263, Sec. 71, eff. Jan. 1, 2002.

Sec. 171.835. APPLICATION FOR CREDIT.

- (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.
- (b) The comptroller shall adopt a form for the application for the credit. A corporation must use this form in applying for the credit.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 17, eff. Jan. 1, 2000.

Sec. 171.836. ASSIGNMENT PROHIBITED.

A corporation may not convey, assign, or transfer a credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Added by Acts 1999, 76th Leg., ch. 394, Sec. 17, eff. Jan. 1, 2000.

Sec. 171.837. BIENNIAL REPORT BY COMPTROLLER.

- (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report stating:
 - (1) the total amount of qualifying expenditures incurred by corporations that claim a credit under this subchapter;
 - (2) the total amount of credits applied against the tax under this chapter and the amount of unused credits, including:
 - (A) the total amount of franchise tax due by corporations claiming a credit under this subchapter before and after the application of the credit;
 - (B) the average percentage reduction in franchise tax due by corporations claiming a credit under this subchapter;
 - (C) the percentage of tax credits that were awarded to corporations with fewer than 100 employees; and
 - (D) the two-digit standard industrial classification of corporations claiming a credit under this subchapter;
 - (3) the geographical distribution of qualifying expenditures giving rise to a credit authorized by this subchapter;
 - (4) the impact of the credit authorized by this subchapter on promoting economic development in this state; and
 - (5) the impact of the credit authorized by this chapter on state tax revenues.
- (b) The final report issued before the expiration of this subchapter must include historical information on the credit authorized by this subchapter.
- (c) The comptroller may not include in the report information that is confidential by law.
- (d) For purposes of this section, the comptroller may require a corporation that claims a credit under this subchapter to submit:
 - (1) information, on a form provided by the comptroller, on the location of the corporation's qualifying expenditures; and
 - (2) any other information the comptroller considers necessary.

Added by Acts 2001, 77th Leg., ch. 1158, Sec. 92, eff. June 15, 2001.

SUBCHAPTER S. CREDITS LIMITATION

Sec. 171.851. LIMITATION.

The total credits claimed under this chapter for a report, including the amount of any carryforward credits, may not exceed the amount of franchise tax due for the report.

Added by Acts 2001, 77th Leg., ch. 1263, Sec. 72, eff. Jan. 1, 2002.

SUBCHAPTER T. TAX CREDIT FOR WAGES PAID TO PERSONS WITH CERTAIN DISABILITIES

Sec. 171.871. ENTITLEMENT TO CREDIT.

A corporation is entitled to a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Added by Acts 2001, 77th Leg., ch. 1219, Sec. 1, eff. Jan. 1, 2002. Renumbered from V.T.C.A., Tax Code Sec. 171.851 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(123), eff. Sept. 1, 2003.

Sec. 171.872. QUALIFICATION.

A corporation qualifies for a credit under this subchapter for each employee:

- (1) originally hired for a position located or based in this state on or after January 1, 2002;
- (2) who, at the time of being hired, is an individual eligible under 42 U.S.C. Section 1382, as amended, for supplemental security income benefits on the basis of disability or blindness or is a recipient of social security disability insurance benefits; and
- (3) who:
 - (A) remains continuously employed with the corporation in a position located or based in this state for at least six months;
 - (B) earns at least the minimum wage;
 - (C) works an average of at least 20 hours a week; and
 - (D) receives the same benefits as the employer's other workers.

Added by Acts 2001, 77th Leg., ch. 1219, Sec. 1, eff. Jan. 1, 2002. Renumbered from V.T.C.A., Tax Code Sec. 171.852 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(123), eff. Sept. 1, 2003.

Sec. 171.873. AMOUNT; LIMITATIONS.

- (a) The amount of the credit is 10 percent of the wages paid by the corporation for each qualified employee.
- (b) A corporation may claim the credit only for wages paid the qualified employee:
 - (1) for a position located or based in this state; and
 - (2) during the first two years of employment.
- (c) The credit claimed for each privilege period may not exceed 50 percent of the amount of franchise tax due, before any other applicable tax credits, for the privilege period.

Added by Acts 2001, 77th Leg., ch. 1219, Sec. 1, eff. Jan. 1, 2002. Amended by Acts 2003, 78th Leg.,

ch. 209, Sec. 50, eff. Jan. 1, 2004. Renumbered from V.T.C.A., Tax Code Sec. 171.853 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(123), eff. Sept. 1, 2003.

Sec. 171.874. APPLICATION FOR CREDIT.

- (a) A corporation must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.
- (b) The comptroller shall promulgate a form for the application for the credit. A corporation must use the form in applying for the credit.

Added by Acts 2001, 77th Leg., ch. 1219, Sec. 1, eff. Jan. 1, 2002. Renumbered from V.T.C.A., Tax Code Sec. 171.854 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(123), eff. Sept. 1, 2003.

Sec. 171.875. PERIOD FOR WHICH CREDIT MAY BE CLAIMED.

A corporation may claim a credit under this subchapter for wages paid during an accounting period only against the tax owed for the corresponding privilege period.

Added by Acts 2001, 77th Leg., ch. 1219, Sec. 1, eff. Jan. 1, 2002. Renumbered from V.T.C.A., Tax Code Sec. 171.855 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(123), eff. Sept. 1, 2003.

Sec. 171.876. RULES.

The comptroller shall adopt rules necessary to implement this subchapter.

Added by Acts 2001, 77th Leg., ch. 1219, Sec. 1, eff. Jan. 1, 2002. Renumbered from V.T.C.A., Tax Code Sec. 171.856 by Acts 2003, 78th Leg., ch. 1275, Sec. 2(123), eff. Sept. 1, 2003.

SUBCHAPTER U. TAX CREDIT FOR TITLE INSURANCE HOLDING COMPANIES

Subchapter U, Tax Credit for Title Insurance Holding Companies, consisting of Secs. 171.891 to 171.894, was added by Acts 2003, 78th Leg., ch. 209, Sec. 51.

For another Subchapter U, Tax Credit for Certain Premium Taxes, consisting of Secs. 171.891 to 171.894, added by Acts 2003, 78th Leg., ch. 1274, Sec. 25, see Sec. 171.891 et seq., post.

Sec. 171.891. APPLICABILITY OF DEFINITIONS.

In this subchapter:

- (1) "Control" has the meaning described by Sections 823.005 and 823.151, Insurance Code.
- (2) "Controlled insurer," "domestic insurer," and "holding company" have the meanings assigned by Section 823.002, Insurance Code.
- (3) "Title insurance," "title insurance agent," and "title insurance company" have the meanings assigned by Article 9.02, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 51, eff. Oct. 1, 2003.

Subchapter U, Tax Credit for Title Insurance Holding Companies, consisting of Secs. 171.891 to 171.894, was added by Acts 2003, 78th Leg., ch. 209, Sec. 51.

For another Subchapter U, Tax Credit for Certain Premium Taxes, consisting of Secs. 171.891 to 171.894, added by Acts 2003, 78th Leg., ch. 1274, Sec. 25, see Sec. 171.891 et seq., post.

Sec. 171.892. ELIGIBILITY.

A corporation is entitled to a credit as provided by this subchapter against the tax imposed under this chapter if the corporation:

- (1) is a title insurance holding company subject to Chapter 823, Insurance Code; and
- (2) controls one or more domestic title insurance companies that are subject to the tax on premiums imposed under Article 9.59, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 51, eff. Oct. 1, 2003.

Subchapter U, Tax Credit for Title Insurance Holding Companies, consisting of Secs. 171.891 to 171.894, was added by Acts 2003, 78th Leg., ch. 209, Sec. 51.

For another Subchapter U, Tax Credit for Certain Premium Taxes, consisting of Secs. 171.891 to 171.894, added by Acts 2003, 78th Leg., ch. 1274, Sec. 25, see Sec. 171.891 et seq., post.

Sec. 171.893. AMOUNT; LIMITATIONS.

- (a) The amount of the credit for each controlled domestic title insurance company is computed by multiplying the amount of tax on premiums paid by that company in the most recent calendar year ending before the franchise tax report is due by the percentage of ownership of the title insurance holding company in the controlled domestic title insurance company. The percentage of ownership of a controlled domestic title insurance company is determined as of the accounting year-end on which the report is based.
- (b) A claim for a credit is subject to the following limitations:
 - (1) if the total amount of the credit for all controlled title insurance companies exceeds the franchise tax due, the credit is an amount equal to the franchise tax due;
 - (2) no portion of a credit may be applied to another year's franchise tax report; and
 - (3) a corporation may not take credit for the same tax on premiums more than once.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 51, eff. Oct. 1, 2003.

Subchapter U, Tax Credit for Title Insurance Holding Companies, consisting of Secs. 171.891 to 171.894, was added by Acts 2003, 78th Leg., ch. 209, Sec. 51.

For another Subchapter U, Tax Credit for Certain Premium Taxes, consisting of Secs. 171.891 to 171.894, added by Acts 2003, 78th Leg., ch. 1274, Sec. 25, see Sec. 171.891 et seq., post.

Sec. 171.894. EFFECT ON OTHER TAXES.

This subchapter does not exempt a title insurance holding company, a title insurance company, or a title insurance agent from paying a tax imposed by this code, except that a title insurance company or a title insurance agent whose principal activity is the business of title insurance is exempt from a tax imposed by this chapter.

Added by Acts 2003, 78th Leg., ch. 209, Sec. 51, eff. Oct. 1, 2003.

Subchapter U, Tax Credit for Certain Premium Taxes, consisting of Secs. 171.891 to 171.894, was added by Acts 2003, 78th Leg., ch. 1274, Sec. 25.

For another Subchapter U, Tax Credit for Title Insurance Holding Companies, consisting of Secs. 171.891 to 171.894, added by Acts 2003, 78th Leg., ch. 209, Sec. 51, see Sec. 171.891 et seq., ante.

Sec. 171.891. APPLICABILITY OF DEFINITIONS.

Text of section effective April 1, 2005

In this subchapter:

- (1) "Control" has the meaning described by Sections 823.005 and 823.151, Insurance Code.
- (2) "Controlled insurer," "domestic insurer," and "holding company" have the meanings assigned by Section 823.002, Insurance Code.
- (3) "Title insurance," "title insurance agent," and "title insurance company" have the meanings assigned by Section 2501.003, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 25, eff. April 1, 2005.

Subchapter U, Tax Credit for Certain Premium Taxes, consisting of Secs. 171.891 to 171.894, was added by Acts 2003, 78th Leg., ch. 1274, Sec. 25.

For another Subchapter U, Tax Credit for Title Insurance Holding Companies, consisting of Secs. 171.891 to 171.894, added by Acts 2003, 78th Leg., ch. 209, Sec. 51, see Sec. 171.891 et seq., ante.

Sec. 171.892. ELIGIBILITY.

Text of section effective April 1, 2005

A corporation is entitled to a credit as provided by this subchapter against the tax imposed under this chapter if the corporation:

- (1) is a title insurance holding company subject to Chapter 823, Insurance Code; and
- (2) controls one or more domestic title insurance companies that are subject to the tax on premiums imposed under Chapter 223, Insurance Code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 25, eff. April 1, 2005.

Subchapter U, Tax Credit for Certain Premium Taxes, consisting of Secs. 171.891 to 171.894, was added by Acts 2003, 78th Leg., ch. 1274, Sec. 25.

For another Subchapter U, Tax Credit for Title Insurance Holding Companies, consisting of Secs. 171.891 to 171.894, added by Acts 2003, 78th Leg., ch. 209, Sec. 51, see Sec. 171.891 et seq., ante.

Sec. 171.893. AMOUNT; LIMITATIONS.

Text of section effective April 1, 2005

- (a) The amount of the credit for each controlled domestic title insurance company is computed by multiplying the amount of tax on premiums paid by that company in the most recent calendar year ending before the franchise tax report is due by the percentage ownership of the title insurance holding company in the controlled domestic title insurance company. The percentage of ownership of a controlled domestic title insurance company is determined as of the accounting year-end on

which the report is based.

- (b) The total credit claimed under this subchapter may not exceed the amount of tax due for the report.
- (c) A corporation may not carry a credit forward or backward to apply the credit to another year's report.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 25, eff. April 1, 2005.

Subchapter U, Tax Credit for Certain Premium Taxes, consisting of Secs. 171.891 to 171.894, was added by Acts 2003, 78th Leg., ch. 1274, Sec. 25.

For another Subchapter U, Tax Credit for Title Insurance Holding Companies, consisting of Secs. 171.891 to 171.894, added by Acts 2003, 78th Leg., ch. 209, Sec. 51, see Sec. 171.891 et seq., ante.

Sec. 171.894. EFFECT ON OTHER TAXES.

Text of section effective April 1, 2005

This subchapter does not exempt a title insurance holding company, title insurance company, or title insurance agent from another tax imposed under this code.

Added by Acts 2003, 78th Leg., ch. 1274, Sec. 25, eff. April 1, 2005.