

CHAPTER 546

H.B. No. 1892

AN ACT

relating to the application and administration of the franchise tax.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 171.0011, Tax Code, is amended to read as follows:

Sec. 171.0011. **ADDITIONAL TAX.** (a) An additional tax is imposed on a corporation that *for any reason becomes* ~~[is subject to the tax imposed under Section 171.001 and that is]~~ 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* ~~[taxing jurisdiction of this state in relation to the tax on net taxable earned surplus].~~

(b) The additional tax is equal to *4.5 percent of* ~~[the rate then in effect under Section 171.002(a)(2) multiplied by]~~ 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* ~~[taxing jurisdiction of this state in relation to the tax on net taxable earned surplus].~~

(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* ~~[delinquent after the 60th day after the date on which the corporation is no longer subject to the taxing jurisdiction of this state in relation to the tax on net taxable earned surplus].~~

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

~~[(e) A deduction authorized under Section 171.110(a)(3) is prorated according to the length of the period on which the tax under this section is imposed.]~~

SECTION 2. Section 171.052, Tax Code, is amended to read as follows:

Sec. 171.052. **CERTAIN CORPORATIONS.** A corporation that is an insurance company, [;] surety, guaranty, or fidelity company now required to pay *or who pays* an annual tax measured by their gross receipts is exempted from the franchise tax.

SECTION 3. Section 171.1032(a), Tax Code, is amended to read as follows:

(a) *Except for the gross receipts of a corporation that are subject to the provisions of Section 171.1061, in* ~~[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* ~~[taxation];~~
- (2) each service performed in this state;
- (3) each rental of property situated in this state;
- (4) each royalty for the use of a patent or copyright in this state; and
- (5) other business done in this state.

SECTION 4. Section 171.1051(a), Tax Code, is amended to read as follows:

(a) *Except for the gross receipts of a corporation that are subject to the provisions of Section 171.1061, in [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; and
- (3) other business.

SECTION 5. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.1061 to read as follows:

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).

SECTION 6. Section 171.109, Tax Code, is amended by amending Subsection (j) and adding Subsection (m) to read as follows:

(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* [~~payable in the current accounting year~~], including retirement, medical, insurance, postretirement, and other similar benefits; and
- (2) deferred investment tax credits.

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

SECTION 7. Section 171.110(a), Tax Code, is amended to read as follows:

(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 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; [~~and~~]

(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).

SECTION 8. Section 171.1121(a), Tax Code, is amended to read as follows:

(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.*

SECTION 9. Section 171.113(e), Tax Code, is amended to read as follows:

(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 ~~[original]~~ due date for the electing corporation's franchise tax report to which the election applies. ~~[No extension of time for filing the election under this section is available.]~~

SECTION 10. Section 171.251, Tax Code, is amended to read as follows:

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 [90] days after the date *notice of forfeiture is mailed* ~~[it is due]~~, a report required by this chapter;

(2) does not pay, within 45 [90] days after the date *notice of forfeiture is mailed* ~~[it is due]~~, a tax imposed by this chapter or does not pay, within those 45 [90] 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.

SECTION 11. Section 171.256(c), Tax Code, is amended to read as follows:

(c) The comptroller shall mail the notice to the corporation *at least* ~~[within]~~ 45 days *before the forfeiture of corporate privileges* ~~[after the day on which the report, tax, or penalty is due]~~. 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.

SECTION 12. The following sections of the Tax Code are repealed:

(1) Section 171.156; and

(2) Section 171.157.

SECTION 13. This Act takes effect January 1, 1994, and applies to a report originally due on or after that date.

SECTION 14. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 1892 on May 27, 1993, by a non-record vote; passed by the Senate, with amendments, on May 25, 1993, by a viva-voce vote.

Approved June 8, 1993.

Effective Jan. 1, 1994.