

Ch. 323, § 1

70th LEGISLATURE—REGULAR SESSION

CHAPTER 324

S.B. No. 1170

AN ACT

relating to the determination and reporting of surplus, assets, and liabilities for purposes of the franchise tax and to certain exemptions.

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

SECTION 1. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.109 to read as follows:

1734

Sec. 171.109. SURPLUS. (a) In this chapter:

(1) "Surplus" means the excess of the net assets of a corporation over its stated capital. 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.

(2) "Net assets" means the amount by which the total assets of a corporation exceed 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.

(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 surplus is less than \$1 million as determined by the method used to compute its federal income tax for the year ending during the relevant accounting year may report its surplus according to the method used for that return.

(d) A corporation shall report its surplus based solely on its own financial condition. Consolidated reporting of the surplus of related corporations is prohibited.

(e) A corporation reporting its surplus according to generally accepted accounting principles 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 as of the date the dividends are declared. A corporation receiving dividends shall include those dividends in its gross receipts and taxable capital as of the date the dividends are declared by the corporation declaring the dividends.

(g) All oil and gas exploration and production activities 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.

(i) The following accounts may also be excluded from surplus, to the extent they are recognized under generally accepted accounting principles:

- (1) a reserve or allowance for uncollectable accounts;*
- (2) a contra-asset account for depletion, depreciation, or amortization; and*
- (3) deferred income taxes.*

SECTION 2. Chapter 171, Tax Code, is amended by adding Section 171.112 to read as follows:

Sec. 171.112. GROSS RECEIPTS. (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 calculate gross receipts in accordance with generally accepted accounting principles. If generally

accepted accounting principles do not specify any accounting practice, the comptroller is authorized to promulgate rules to specify a reporting method.

(c) A corporation whose surplus is less than \$1 million as determined by the method used to compute its federal income tax for the year ending during the relevant accounting year may report its gross receipts based upon such method.

(d) A corporation shall report its gross receipts based solely on its own financial condition. Consolidated reporting of related corporations is prohibited.

(e) A corporation reporting its gross receipts based upon generally accepted accounting principles 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.

SECTION 3. Subsection (a), Section 171.063, Tax Code, is amended to read as follows:

(a) A nonprofit corporation exempted from the federal income tax under Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as it existed on January 1, 1975, is exempted from the franchise tax or a corporation exempted under Section 501(c)(2) or (25) of the Internal Revenue Code of 1986, is exempted from the franchise tax, if the corporation or corporations for which it holds title to property is either exempt from or not subject to the franchise tax.

SECTION 4. (a) The change in law made by this Act applies to the computation and reporting of franchise taxes for each regular reporting period beginning on or after May 1, 1988, and for which the tax payments are due on or after March 15, 1988. The change in law made by this Act applies to the computation and reporting of franchise taxes for any initial period that on the effective date of this Act has six months or longer before its expiration and applies to any second period if the change applied to the initial period of the corporation.

(b) The law in effect immediately before the effective date of this Act applies to any reporting period not covered by the change in law made by this Act, and the law is continued in effect for that purpose only, except that the comptroller by rule may provide for the earlier application of the change in law made by this Act to any reporting period in progress on the effective date of this Act.

SECTION 5. 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, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 18, 1987, by the following vote: Yeas 29, Nays 0; and that the Senate concurred in House amendments on June 1, 1987, by a viva-voce vote.

Passed the House, with amendments, on May 30, 1987, by a non-record vote.

Approved June 11, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.