

CHAPTER 558

S.B. No. 938

AN ACT

relating to the allocation of bank franchise tax revenue to taxing units.

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

SECTION 1. Article 4366e, Revised Statutes, is amended to read as follows:

Art. 4366e. LOCAL GOVERNMENT CORPORATE BANKING FRANCHISE TAX FUND. (a) The local government corporate banking franchise tax fund is established in the state treasury. The comptroller of public accounts shall keep records of the amount of money deposited to the credit of the fund resulting from franchise tax collections from each bank paying the franchise tax under Chapter 171, Tax Code, for each bank franchise tax reporting period. The *comptroller shall allocate the* franchise tax collected ~~[by the comptroller]~~ from each banking corporation ~~[shall be apportioned]~~ through the fund established by this article *among the principal office and each qualified branch facility of the banking corporation in this state in operation on the preceding January 1 as provided by Section (b) of this article. The comptroller shall apportion the portion of the franchise tax allocated to the principal office or a qualified branch facility among the taxing units in which the [banking corporation's] principal office or qualified branch facility [in this state] is situated according to the percentage relationship that the property tax rate of each taxing unit for the preceding property tax year bears to the total of the property rates imposed for the preceding tax year by all of those taxing units.*

(b) *For purposes of apportioning the franchise tax collected from a banking corporation to taxing units under Section (a) of this article, the franchise tax revenue shall be allocated among the principal office and each qualified branch facility of the banking corporation in proportion to the amount of franchise tax revenue allocated to each office or facility under this article in the preceding year. The amount of franchise tax revenue allocated to a principal office or qualified branch facility in the*

preceding year is the amount of the franchise tax of the banking corporation of which the office or branch was a principal office or qualified branch facility in that year that was apportioned under this article to the taxing units in which the office or branch was located because the office or branch facility was located in those taxing units. If in the preceding year franchise tax was not allocated under this article to the principal office of a banking corporation as the principal office or a qualified branch facility of a banking corporation and the banking corporation does not operate a qualified branch facility in the current year, all the franchise tax of the banking corporation for the current year shall be allocated to the principal office. If in the preceding year franchise tax was not allocated under this article to the principal office of a banking corporation as the principal office or a qualified branch facility of a banking corporation and the banking corporation operates one or more qualified branch facilities in the current year, a portion of the franchise tax of the banking corporation for the current year shall be allocated to each qualified branch facility in an amount equal to the franchise tax allocated to that qualified branch facility in the preceding year, whether as a principal office or as a qualified branch facility, and the remainder, if any, shall be allocated to the principal office. A branch facility of a banking corporation is qualified for an allocation of a portion of the franchise tax of the banking corporation to be apportioned to the taxing units in which the branch facility is located if in the preceding year the branch facility:

- (1) was a qualified branch facility of the same or another banking corporation; or*
- (2) was the principal office of a banking corporation that was subject to the franchise tax in the preceding year that has been converted to a branch facility of the banking corporation for which the franchise tax allocation is being determined in the current year.*

(c) On or before September 30 of each year, the comptroller shall make a report to each taxing unit containing the name, address, and account number of each banking corporation having its principal office or a qualified branch facility in this state within the taxing unit, the total amount of franchise tax remitted to the comptroller by that banking corporation, the amount of bank franchise tax revenue allocated in the preceding year as provided by Section (b) of this article to the principal office and each qualified branch facility of the banking corporation used for purposes of the allocation provided by Section (a) of this article, and the amount of tax remitted by each banking corporation that is apportionable to the taxing unit pursuant to Section (a) of this article. The report by the comptroller shall also state whether any banking corporation has failed to pay franchise tax or has made only a partial payment of the tax.

(d) [(e)] If, within one year from the date that any report required under Section (c) [(b)] of this article is due, a taxing unit determines that the [a banking corporation whose] principal office or qualified branch facility of a banking corporation [in this state is] within the taxing unit on January 1 of the year of the report is not included in the report, the taxing unit shall report the name and address of the banking corporation and the location of the principal office or qualified branch facility to the comptroller before the expiration of the one-year period. On receiving a report from a taxing unit, the comptroller shall send, within 60 days following receipt of the report, a response to the report.

(e) [(d)] The comptroller shall transmit to each taxing unit's treasurer, or to the officer performing the functions of that office, as promptly as feasible the taxing unit's share of banking corporation franchise tax collected by the comptroller, together with the prorated share of any penalty or interest on delinquent taxes that may be collected. Before transmitting the funds, the comptroller shall deduct two percent of the amount allocated to each taxing unit during the period as a charge by the state for its services specified in this section. The amounts deducted shall be deposited by the comptroller in the state treasury to the credit of the comptroller's operating fund. The comptroller may retain in the local government corporate banking franchise tax fund a portion not to exceed five percent of each taxing unit's share of the banking corporation franchise tax. The comptroller may use this retained amount to make refunds of overpayments made to the fund and to redeem dishonored checks and drafts deposited to the credit of the fund.

The legislature may appropriate money in the local government corporate banking franchise tax fund to the comptroller only for the purposes provided by this article. Interest earned on all deposits made with the state treasurer under this article shall be credited to the general revenue fund.

(f) ~~[(e)]~~ If any taxing unit is not satisfied with the supplemental banking corporation report filed by a banking corporation pursuant to Section 171.2021, Tax Code, *with the apportionment of the franchise tax of a banking corporation under Section (a) of this article*, or with the response from the comptroller made pursuant to Section (d) ~~[(e)]~~ of this article, the taxing unit may file a petition for review with the comptroller within 30 days after receipt by the taxing unit of the supplemental banking corporation report, *the report of the franchise tax apportionment*, or the response, as applicable. The petition for review must set forth each specific ground upon which the taxing unit believes the supplemental banking corporation report, *the franchise tax apportionment*, or the response is erroneous or incomplete. If a petition for review is not filed within the 30-day period, *the information set forth in the supplemental banking corporation report*, the franchise tax apportionment ~~[percentages]~~ set forth in the *comptroller's report made under Section (c) of this article*, ~~[supplemental banking corporation report]~~ or any determination set forth in the comptroller's response become final at the expiration of the period.

(g) ~~[(f)]~~ If a petition for review is filed within the 30-day period, the comptroller shall consider the petition. All affected taxing units and the banking corporation, if the amount of the total franchise tax is questioned, should be joined in the review proceeding and given written notice by the comptroller of the filing of the petition for review. If a taxing unit or banking corporation involved in a review proceeding requests, the comptroller shall grant an oral hearing and give all parties to the proceeding written notice of the time and place of the hearing as required by the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(h) ~~[(g)]~~ A taxing unit that is dissatisfied in whole or in part with a comptroller's decision upon a petition for review may file a motion for rehearing before the decision becomes final. The motion for rehearing must set forth in writing each specific ground upon which the taxing unit believes the decision of the comptroller is erroneous. If the comptroller denies the motion for rehearing, the adopting taxing unit may bring suit against the comptroller and all affected taxing units on the grounds set forth in the petition for review by filing a petition in a district court of Travis County within 30 days of the date that the denial of the motion for rehearing was issued. Only the issues set forth in the motion for rehearing may be raised in the suit. The attorney general shall represent the comptroller in the suit. Failure to bring an action within the time specified in this section waives any objection to the apportionment of the banking corporation's franchise tax among taxing units, and in that event the apportionment is presumed to be in accordance with this section.

(i) ~~[(h)]~~ All money distributed to taxing units under this article may be used only by the taxing unit and must be used only for public purposes.

(1) The money distributed under this article to a city must be used only for:

(A) the payment of salaries and benefits of city law enforcement officers having a duty to enforce or engaged in the enforcement of state law;

(B) the payment of salaries and benefits to city fire fighters having a duty to protect or engaged in the protection of state or county property, including public roadways and the rights-of-way for public roadways;

(C) the purchase of law enforcement and fire-fighting equipment reasonably related to the services provided to the state under Subdivisions (A) and (B) of this section;

(D) the acquisition of rights-of-way for and the construction and maintenance of city streets that provide access to and departure from the state highway system;

(E) the provision of health protection services, including the removal and disposition of hazardous and solid wastes and disease prevention services; and

(F) the protection of the public safety through the promulgation and enforcement of building codes.

- (2) The money distributed under this article to a school district must be used only for:
- (A) the payment of salaries and benefits of employees of the school district, including both teachers and other employees; and
 - (B) maintenance of schools and school district property.
- (3) The money distributed under this article to a county must be used only for:
- (A) the payment of salaries and benefits of county law enforcement personnel having a duty to enforce or engaged in the enforcement of state law; and
 - (B) the acquisition of rights-of-way for and the construction and maintenance of county roads and highways that provide access to and departure from the state highway system.
- (4) The money distributed to other taxing units under this article must be used only for public purposes and to promote the general health, safety, and welfare of citizens of this state.

(j) ~~(i)~~ In this article:

- (1) "Taxing~~ing~~ unit" has the meaning given that term by Section 1.04(12), Tax Code.
- (2) "Qualified branch facility" means a branch facility qualified for allocation of a portion of the franchise tax of a banking corporation as provided by Section (b) of this article to be apportioned to the taxing units in which the branch facility is located under Section (a) of this article.

SECTION 2. Subsection (a), Section 171.2021, Tax Code, is amended to read as follows:

(a) At the time that a banking corporation files its annual report or its initial report under this chapter, the corporation shall file with the comptroller a supplemental report showing:

- (1) the name of each taxing unit in which the banking corporation's principal office and each qualified branch facility in this state was situated as of the preceding January 1;
- (2) the property tax rate adopted by each of the taxing units listed pursuant to Subdivision (1) of this subsection for the preceding tax year;
- (3) for the principal office and each qualified branch facility of the banking corporation in this state, the percentage relationship that ~~each of~~ the ~~taxing units~~ property tax rate of each taxing unit in which the office or facility is situated for the preceding tax year bears to the total of the preceding year's property tax rates of all taxing units listed pursuant to Subdivision (1) of this subsection in which the office or facility is situated; ~~and~~
- (4) for the principal office and each qualified branch facility of the banking corporation in this state, the amount of bank franchise tax revenue allocated to the office or branch in the preceding year as provided by Section (b), Article 4366e, Revised Statutes; and
- (5) the apportionment of the banking corporation's total franchise tax liability among the taxing units listed pursuant to Subdivision (1) of this subsection, the apportionment to be determined as provided by Article 4366e, Revised Statutes ~~[using the percentage relationship computed in accordance with Subdivision (3) of this subsection].~~

SECTION 3. Subsection (c), Section 171.2021, Tax Code, is amended by adding Subdivision (3) to read as follows:

(3) "Qualified branch facility" has the meaning assigned by Section (j), Article 4366e, Revised Statutes.

SECTION 4. This Act takes effect January 1, 1988, and applies to a report made under section 171.2021, Tax Code, or to the apportionment of banking corporation franchise tax revenue made under Article 4366e, Revised Statutes, on and after that date.

SECTION 5. The importance of this legislation and the crowded condition of the alendars in both houses create an emergency and an imperative public necessity that the

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constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on May 7, 1987, by a viva-voce vote. Passed the House on May 22, 1987, by a non-record vote.

Approved June 18, 1987.

Effective Jan. 1, 1988.