

TAX CODE

TITLE 2. STATE TAXATION

SUBTITLE F. FRANCHISE TAX

CHAPTER 171. FRANCHISE TAX

SUBCHAPTER A. DEFINITIONS; TAX IMPOSED

Sec. 171.0001. GENERAL DEFINITIONS. In this chapter:

(1) "Affiliated group" means a group of one or more entities in which a controlling interest is owned by a common owner or owners, either corporate or noncorporate, or by one or more of the member entities.

(2) "Assigned employee" has the meaning assigned by Section 91.001, Labor Code.

(3) "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. Sections 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. Section 1841).

(4) "Beginning date" means:

(A) for a taxable entity chartered or organized in this state, the date on which the taxable entity's charter or organization takes effect; and

(B) for any other taxable entity, the date on which the taxable entity begins doing business in this state.

(5) "Charter" includes a limited liability company's certificate of organization, a limited partnership's certificate of limited partnership, and the registration of a limited liability partnership.

(6) "Client company" means:

(A) a person that contracts with a license holder under Chapter 91, Labor Code, and is assigned employees by the license holder under that contract; or

(B) a client of a temporary employment service, as that term is defined by Section 93.001(2), Labor Code, to whom individuals are assigned for a purpose described by that subdivision.

(7) "Combined group" means taxable entities that are part of an affiliated group engaged in a unitary business and that are required to file a group report under Section 171.1014.

(8) "Controlling interest" means:

(A) for a corporation, either more than 50 percent, owned directly or indirectly, of the total combined voting power of all classes of stock of the corporation, or more than 50 percent, owned directly or indirectly, of the beneficial ownership interest in the voting stock of the corporation;

(B) for a partnership, association, trust, or other entity other than a limited liability company, more than 50 percent, owned directly or indirectly, of the capital, profits, or beneficial interest in the partnership, association, trust, or other entity; and

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

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

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

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

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

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

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

(11) "Management company" means a corporation, limited liability company, or other limited liability entity that conducts all or part of the active trade or business of another entity (the "managed entity") in exchange for:

(A) a management fee; and

(B) reimbursement of specified costs incurred in the conduct of the active trade or business of the managed entity, including "wages and cash compensation" as determined under Sections 171.1013(a) and (b).

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

(12) "Retail trade" means the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(13) "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.

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

(14) "Shareholder" includes a limited liability company's member and a limited banking association's participant.

(15) "Staff leasing services company" means:

(A) a business entity that offers staff leasing services, as that term is defined by Section 91.001, Labor Code; or

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

(16) "Total revenue" means the total revenue of a taxable entity as determined under Section 171.1011.

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

(A) the activities of the group members are in the same general line, such as manufacturing, wholesaling, retailing of tangible personal property, insurance, transportation, or finance;

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

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

(18) "Wholesale trade" means the activities described in Division F of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 2, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 1, eff. January 1, 2008.

Sec. 171.0002. DEFINITION OF TAXABLE ENTITY. (a) Except as otherwise provided by this section, "taxable entity" means a partnership, limited liability partnership, corporation, banking

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

(b) "Taxable entity" does not include:

(1) a sole proprietorship;

(2) a general partnership:

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

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

(3) a passive entity as defined by Section 171.0003;

or

(4) an entity that is exempt from taxation under Subchapter B.

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

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

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

(3) an escrow;

(4) a real estate investment trust (REIT) as defined by Section 856, Internal Revenue Code, and its "qualified REIT subsidiary" entities as defined by Section 856(i)(2), Internal Revenue Code, provided that:

(A) a REIT with any amount of its assets in direct

holdings of real estate, other than real estate it occupies for business purposes, as opposed to holding interests in limited partnerships or other entities that directly hold the real estate, is a taxable entity; and

(B) a limited partnership or other entity that directly holds the real estate as described in Paragraph (A) is not exempt under this subdivision, without regard to whether a REIT holds an interest in it;

(5) a real estate mortgage investment conduit (REMIC), as defined by Section 860D, Internal Revenue Code;

(6) a nonprofit self-insurance trust created under Chapter 2212, Insurance Code, or a predecessor statute;

(7) a trust qualified under Section 401(a), Internal Revenue Code; or

(8) a trust or other entity that is exempt under Section 501(c)(9), Internal Revenue Code.

(d) An entity that can file as a sole proprietorship for federal tax purposes is not a sole proprietorship for purposes of Subsection (b)(1) and is not exempt under that subsection if the entity is formed in a manner under the statutes of this state, another state, or a foreign country that limit the liability of the entity.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 2, eff. January 1, 2008.

Sec. 171.0003. DEFINITION OF PASSIVE ENTITY. (a) An entity is a passive entity only if:

(1) the entity is a general or limited partnership or a trust, other than a business trust;

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

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

income from a limited liability company;

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

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

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

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

(a-1) In making the computation under Subsection (a)(3), income described by Subsection (a)(2) may not be treated as income from conducting an active trade or business.

(b) The income described by Subsection (a)(2) does not include:

(1) rent; or

(2) income received by a nonoperator from mineral properties under a joint operating agreement if the nonoperator is a member of an affiliated group and another member of that group is the operator under the same joint operating agreement.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 2, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 3, eff. January 1, 2008.

Sec. 171.0004. DEFINITION OF CONDUCTING ACTIVE TRADE OR BUSINESS. (a) The definition in this section applies only to Section 171.0003.

(b) An entity conducts an active trade or business if:

(1) the activities being carried on by the entity include one or more active operations that form a part of the process of earning income or profit; and

(2) the entity performs active management and

operational functions.

(c) Activities performed by the entity include activities performed by persons outside the entity, including independent contractors, to the extent the persons perform services on behalf of the entity and those services constitute all or part of the entity's trade or business.

(d) An entity conducts an active trade or business if assets, including royalties, patents, trademarks, and other intangible assets, held by the entity are used in the active trade or business of one or more related entities.

(e) For purposes of this section:

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

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

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 2, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 4, eff. January 1, 2008.

Sec. 171.001. TAX IMPOSED. (a) A franchise tax is imposed on each taxable entity that does business in this state or that is chartered or organized in this state.

(b) 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.

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

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 2, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 5, eff. January 1, 2008.

Sec. 171.0011. ADDITIONAL TAX. (a) Except as provided by Section 171.001(c), an additional tax is imposed on a taxable entity that for any reason becomes no longer subject to the tax imposed under this chapter.

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

(c) The additional tax imposed and any report required by the comptroller are due on the 60th day after the date the taxable entity becomes no longer subject to the tax imposed under this chapter.

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

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 37(1), eff. January 1, 2008.

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 2, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 6, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 37(1), eff. January 1, 2008.

Sec. 171.002. RATES; COMPUTATION OF TAX. (a) Subject to Sections 171.003 and 171.1016 and except as provided by Subsection (b), the rate of the franchise tax is one percent of taxable margin.

(b) Subject to Sections 171.003 and 171.1016, the rate of the franchise tax is 0.5 percent of taxable margin for those taxable entities primarily engaged in retail or wholesale trade.

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

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

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

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

(c-1) Subsection (c)(2) does not apply to total revenue from activities in a retail trade described by Major Group 58 of the Standard Industrial Classification Manual published by the federal Office of Management and Budget.

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

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

(2) the amount of the taxable entity's total revenue from its entire business is less than or equal to \$300,000 or the

amount determined under Section 171.006 per 12-month period on which margin is based.

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 2, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 7, eff. January 1, 2008.

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

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

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

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

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

20 percent.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 8, eff. January 1, 2008.

Sec. 171.003. INCREASE IN RATE REQUIRES VOTER APPROVAL.

(a) An increase in a rate provided by Section 171.002(a) or (b) takes effect only if approved by a majority of the registered voters voting in a statewide referendum held on the question of increasing the rate. The referendum must specify the increased rate or rates.

(b) This section does not apply to a decrease in a rate provided by Section 171.002(a) or (b). If a rate is decreased, this section applies to any subsequent increase in that rate.

(c) This section does not apply to any change in the tax imposed by this chapter in relation to:

(1) the manner in which the tax is computed, including the determination of margin and taxable margin and any allowable deductions or credits;

(2) the manner in which the tax is administered or enforced; or

(3) the applicability of the tax to certain entities.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 2, eff. January 1, 2008.

Sec. 171.006. ADJUSTMENT OF ELIGIBILITY FOR NO TAX DUE, DISCOUNTS, AND COMPENSATION DEDUCTION. (a) In this section, "consumer price index" means the average over a state fiscal biennium of the Consumer Price Index for All Urban Consumers (CPI-U), U.S. City Average, published monthly by the United States Bureau of Labor Statistics, or its successor in function.

(b) Beginning in 2010, on January 1 of each even-numbered year, the amounts prescribed by Sections 171.002(d)(2), 171.0021, and 171.1013(c) are increased or decreased by an amount equal to the amount prescribed by those sections on December 31 of the preceding year multiplied by the percentage increase or decrease during the

preceding state fiscal biennium in the consumer price index and rounded to the nearest \$10,000.

(c) The amounts determined under Subsection (b) apply to a report originally due on or after the date the determination is made.

(d) The comptroller shall make the determination required by this section and may adopt rules related to making that determination.

(e) A determination by the comptroller under this section is final and may not be appealed.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 2, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 9, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 10, eff. January 1, 2008.

Sec. 171.1016. E-Z COMPUTATION AND RATE.

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

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

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

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

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

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

adjustment that is not specifically authorized by this section.

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

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 19, eff. January 1, 2008.

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. (a) Except as provided by Subsection (c), 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.

(b) Farm mutuals, local mutual aid associations, and burial associations are not subject to the franchise tax.

(c) An entity is subject to the franchise tax for a tax year in any portion of which the entity is in violation of an order issued by the Texas Department of Insurance under Section 2254.003(b), Insurance Code, that is final after appeal or that is no longer subject to appeal.

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 3, eff. January 1, 2008.

Sec. 171.0525. EXEMPTION--CERTAIN INSURANCE COMPANIES. 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. 171.053. 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 (Subtitle C1, Title 12, 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 1983, 68th Leg., p. 1039, ch. 235, art. 7, Sec. 2(a), eff. Sept. 1, 1983.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 885, Sec. 3.72, eff. April 1, 2009.

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. 171.087. 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.

Sec. 171.088. EXEMPTION--NONCORPORATE ENTITY ELIGIBLE FOR CERTAIN EXEMPTIONS. An entity that is not a corporation but that, because of its activities, would qualify for a specific exemption under this subchapter if it were a corporation, qualifies for the exemption and is exempt from the tax in the same manner and under the same conditions as a corporation.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 4, eff. January 1, 2008.

SUBCHAPTER C. DETERMINATION OF TAXABLE MARGIN; ALLOCATION AND APPORTIONMENT

Sec. 171.101. DETERMINATION OF TAXABLE MARGIN. (a) The taxable margin of a taxable entity is computed by:

(1) determining the taxable entity's margin, which is the lesser of:

(A) 70 percent of the taxable entity's total revenue from its entire business, as determined under Section 171.1011; or

(B) an amount computed by:

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

(ii) subtracting, at the election of the taxable entity, either:

(a) cost of goods sold, as determined under Section 171.1012; or

(b) compensation, as determined under Section 171.1013; and

(iii) subtracting, in addition to any subtractions made under Subparagraph (ii)(a) or (b), compensation, as determined under Section 171.1013, paid to an individual during the period the individual is serving on active duty as a member of the armed forces of the United States if the individual is a resident of this state at the time the individual is ordered to active duty and the cost of training a replacement for the individual;

(2) apportioning the taxable entity's margin to this

state as provided by Section 171.106 to determine the taxable entity's apportioned margin; and

(3) subtracting from the amount computed under Subdivision (2) any other allowable deductions to determine the taxable entity's taxable margin.

(b) Notwithstanding Subsection (a)(1)(B)(ii), a staff leasing services company may subtract only compensation as determined under Section 171.1013.

(c) In making a computation under this section, an amount that is zero or less is computed as a zero.

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

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 11, eff. January 1, 2008.

Sec. 171.1011. DETERMINATION OF TOTAL REVENUE FROM ENTIRE BUSINESS. (a) In this section, a reference to an Internal Revenue Service form includes a variant of the form. For example, a reference to Form 1120 includes Forms 1120-A, 1120-S, and other variants of Form 1120. A reference to an Internal Revenue Service form also includes any subsequent form with a different number or designation that substantially provides the same information as the original form.

(b) In this section, a reference to an amount reportable as income on a line number on an Internal Revenue Service form is the amount entered to the extent the amount entered complies with federal income tax law and includes the corresponding amount

entered on a variant of the form, or a subsequent form, with a different line number to the extent the amount entered complies with federal income tax law.

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

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

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120;

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

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

(B) subtracting:

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

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

(iii) to the extent included in Subsection (c)(1)(A), net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes;

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

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

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

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

(A) adding:

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

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

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

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

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

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

(B) subtracting:

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

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

(iii) to the extent included in Subsection (c)(2)(A), net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes;

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

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

(3) for a taxable entity other than a taxable entity

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

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

(e) A taxable entity that owns an interest in a passive entity shall exclude from the taxable entity's total revenue the taxable entity's share of the net income of the passive entity, but only to the extent the net income of the passive entity was generated by the margin of any other taxable entity.

(f) A taxable entity shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through funds that are mandated by law or fiduciary duty to be distributed to other entities, including taxes collected from a third party by the taxable entity and remitted by the taxable entity to a taxing authority.

(g) A taxable entity shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), only the following flow-through funds that are mandated by contract to be distributed to other entities:

(1) sales commissions to nonemployees, including split-fee real estate commissions;

(2) the tax basis as determined under the Internal Revenue Code of securities underwritten; and

(3) subcontracting payments handled by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, or repair of improvements on real property or the location of the boundaries of real property.

(g-1) A taxable entity that is a lending institution shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), proceeds from the principal repayment of loans.

(g-2) A taxable entity shall exclude from its total revenue,

to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), the tax basis as determined under the Internal Revenue Code of securities and loans sold.

(g-3) A taxable entity that provides legal services shall exclude from its total revenue:

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

(A) damages due the claimant;

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

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

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

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

(3) \$500 per pro bono services case handled by the attorney, but only if the attorney maintains records of the pro bono services for auditing purposes in accordance with the manner in which those services are reported to the State Bar of Texas.

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

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

(i) Except as provided by Subsection (g), a payment made

under an ordinary contract for the provision of services in the regular course of business may not be excluded.

(j) Any amount excluded under this section may not be included in the determination of cost of goods sold under Section 171.1012 or the determination of compensation under Section 171.1013.

(k) A taxable entity that is a staff leasing services company shall exclude from its total revenue payments received from a client company for wages, payroll taxes on those wages, employee benefits, and workers' compensation benefits for the assigned employees of the client company.

(1) For purposes of Subsection (g)(1):

(1) "Sales commission" means:

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

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

(2) "Principal" means a person who:

(A) manufactures, produces, imports, distributes, or acts as an independent agent for the distribution of a product for sale;

(B) uses a sales representative to solicit orders for the product; and

(C) compensates the sales representative wholly or partly by sales commission.

(m) A taxable entity shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), dividends and interest received from federal obligations.

(m-1) A taxable entity that is a management company shall exclude from its total revenue reimbursements of specified costs incurred in its conduct of the active trade or business of a managed entity, including "wages and cash compensation" as determined under Sections 171.1013(a) and (b).

(n) Except as provided by Subsection (o), a taxable entity that is a health care provider shall exclude from its total revenue:

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

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

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

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

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

(n-1) The comptroller shall adopt rules governing:

(1) the computation of the actual cost to a health care provider of any uncompensated care provided under Subsection (n)(2); and

(2) the audit requirements related to the computation of those costs.

(o) A health care provider that is a health care institution shall exclude from its total revenue 50 percent of the amounts described by Subsection (n).

(p) 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) "Health care institution" means:

(A) an ambulatory surgical center;

(B) an assisted living facility licensed under Chapter 247, Health and Safety Code;

(C) an emergency medical services provider;

(D) a home and community support services agency;

(E) a hospice;

(F) a hospital;

(G) a hospital system;

(H) an intermediate care facility for the mentally retarded or a home and community-based services waiver program for persons with mental retardation adopted in accordance with Section 1915(c) of the federal Social Security Act (42 U.S.C. Section 1396n);

(I) a birthing center;

(J) a nursing home;

(K) an end stage renal disease facility licensed under Section 251.011, Health and Safety Code; or

(L) a pharmacy.

(3) "Health care provider" means a taxable entity that participates in the Medicaid program, Medicare program, Children's Health Insurance Program (CHIP), state workers' compensation program, or TRICARE military health system as a provider of health care services.

(4) "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.

(4-a) "Pro bono services" means the direct provision of legal services to the poor, without an expectation of compensation.

(4-b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 37(2), eff. January 1, 2008.

(5) "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.

(6) "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.

(7) "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.

(q) A taxable entity shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), all revenue received that is directly derived from the operation of a facility that is:

(1) located on property owned or leased by the federal government; and

(2) managed or operated primarily to house members of the armed forces of the United States.

(r) A taxable entity shall exclude, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), total revenue received from oil or gas produced, during the dates certified by the comptroller pursuant to Subsection (s), from:

(1) an oil well designated by the Railroad Commission of Texas or similar authority of another state whose production averages less than 10 barrels a day over a 90-day period; and

(2) a gas well designated by the Railroad Commission of Texas or similar authority of another state whose production averages less than 250 mcf a day over a 90-day period.

(s) The comptroller shall certify dates during which the monthly average closing price of West Texas Intermediate crude oil is below \$40 per barrel and the average closing price of gas is below \$5 per MMBtu, as recorded on the New York Mercantile Exchange (NYMEX).

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 12, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 13, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 37(2), eff. January 1, 2008.

Sec. 171.1012. DETERMINATION OF COST OF GOODS SOLD.

(a) In this section:

(1) "Goods" means real or tangible personal property sold in the ordinary course of business of a taxable entity.

(2) "Production" includes construction, installation, manufacture, development, mining, extraction, improvement, creation, raising, or growth.

(3)(A) "Tangible personal property" means:

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

(ii) films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, for which, as costs are incurred in producing the property, it is intended or is reasonably

likely that any medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and

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

(B) "Tangible personal property" does not include:

- (i) intangible property; or
- (ii) services.

(b) Subject to Section 171.1014, a taxable entity that elects to subtract cost of goods sold for the purpose of computing its taxable margin shall determine the amount of that cost of goods sold as provided by this section.

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

- (1) labor costs;
- (2) cost of materials that are an integral part of specific property produced;
- (3) cost of materials that are consumed in the ordinary course of performing production activities;
- (4) handling costs, including costs attributable to processing, assembling, repackaging, and inbound transportation costs;
- (5) storage costs, including the costs of carrying, storing, or warehousing property, subject to Subsection (e);
- (6) depreciation, depletion, and amortization, reported on the federal income tax return on which the report under this chapter is based, to the extent associated with and necessary for the production of goods, including recovery described by Section 197, Internal Revenue Code;
- (7) the cost of renting or leasing equipment, facilities, or real property directly used for the production of the goods, including pollution control equipment and intangible drilling and dry hole costs;
- (8) the cost of repairing and maintaining equipment, facilities, or real property directly used for the production of the goods, including pollution control devices;

(9) costs attributable to research, experimental, engineering, and design activities directly related to the production of the goods, including all research or experimental expenditures described by Section 174, Internal Revenue Code;

(10) geological and geophysical costs incurred to identify and locate property that has the potential to produce minerals;

(11) taxes paid in relation to acquiring or producing any material, or taxes paid in relation to services that are a direct cost of production;

(12) the cost of producing or acquiring electricity sold; and

(13) a contribution to a partnership in which the taxable entity owns an interest that is used to fund activities, the costs of which would otherwise be treated as cost of goods sold of the partnership, but only to the extent that those costs are related to goods distributed to the taxable entity as goods-in-kind in the ordinary course of production activities rather than being sold.

(d) In addition to the amounts includable under Subsection (c), the cost of goods sold includes the following costs in relation to the taxable entity's goods:

(1) deterioration of the goods;

(2) obsolescence of the goods;

(3) spoilage and abandonment, including the costs of rework labor, reclamation, and scrap;

(4) if the property is held for future production, preproduction direct costs allocable to the property, including costs of purchasing the goods and of storage and handling the goods, as provided by Subsections (c)(4) and (c)(5);

(5) postproduction direct costs allocable to the property, including storage and handling costs, as provided by Subsections (c)(4) and (c)(5);

(6) the cost of insurance on a plant or a facility, machinery, equipment, or materials directly used in the production of the goods;

(7) the cost of insurance on the produced goods;

(8) the cost of utilities, including electricity, gas,

and water, directly used in the production of the goods;

(9) the costs of quality control, including replacement of defective components pursuant to standard warranty policies, inspection directly allocable to the production of the goods, and repairs and maintenance of goods; and

(10) licensing or franchise costs, including fees incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right directly associated with the goods produced.

(e) The cost of goods sold does not include the following costs in relation to the taxable entity's goods:

(1) the cost of renting or leasing equipment, facilities, or real property that is not used for the production of the goods;

(2) selling costs, including employee expenses related to sales;

(3) distribution costs, including outbound transportation costs;

(4) advertising costs;

(5) idle facility expense;

(6) rehandling costs;

(7) bidding costs, which are the costs incurred in the solicitation of contracts ultimately awarded to the taxable entity;

(8) unsuccessful bidding costs, which are the costs incurred in the solicitation of contracts not awarded to the taxable entity;

(9) interest, including interest on debt incurred or continued during the production period to finance the production of the goods;

(10) income taxes, including local, state, federal, and foreign income taxes, and franchise taxes that are assessed on the taxable entity based on income;

(11) strike expenses, including costs associated with hiring employees to replace striking personnel, but not including the wages of the replacement personnel, costs of security, and legal fees associated with settling strikes;

(12) officers' compensation;

(13) costs of operation of a facility that is:

(A) located on property owned or leased by the federal government; and

(B) managed or operated primarily to house members of the armed forces of the United States; and

(14) any compensation paid to an undocumented worker used for the production of goods. As used in this subdivision:

(A) "undocumented worker" means a person who is not lawfully entitled to be present and employed in the United States; and

(B) "goods" includes the husbandry of animals, the growing and harvesting of crops, and the severance of timber from realty.

(f) A taxable entity may subtract as a cost of goods sold indirect or administrative overhead costs, including all mixed service costs, such as security services, legal services, data processing services, accounting services, personnel operations, and general financial planning and financial management costs, that it can demonstrate are allocable to the acquisition or production of goods, except that the amount subtracted may not exceed four percent of the taxable entity's total indirect or administrative overhead costs, including all mixed service costs. Any costs excluded under Subsection (e) may not be subtracted under this subsection.

(g) A taxable entity that is allowed a subtraction by this section for a cost of goods sold and that is subject to Section 263A, 460, or 471, Internal Revenue Code, may capitalize that cost in the same manner and to the same extent that the taxable entity capitalized that cost on its federal income tax return or may expense those costs, except for costs excluded under Subsection (e), or in accordance with Subsections (c), (d), and (f). If the taxable entity elects to capitalize costs, it must capitalize each cost allowed under this section that it capitalized on its federal income tax return. If the taxable entity later elects to begin expensing a cost that may be allowed under this section as a cost of goods sold, the entity may not deduct any cost in ending inventory from a previous report. If the taxable entity elects to expense a

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

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

(i) A taxable entity may make a subtraction under this section in relation to the cost of goods sold only if that entity owns the goods. The determination of whether a taxable entity is an owner is based on all of the facts and circumstances, including the various benefits and burdens of ownership vested with the taxable entity. A taxable entity furnishing labor or materials to a project for the construction, improvement, remodeling, repair, or industrial maintenance (as the term "maintenance" is defined in 34 T.A.C. Section 3.357) of real property is considered to be an owner of that labor or materials and may include the costs, as allowed by this section, in the computation of cost of goods sold. Solely for purposes of this section, a taxable entity shall be treated as the owner of goods being manufactured or produced by the entity under a contract with the federal government, including any subcontracts that support a contract with the federal government, notwithstanding that the Federal Acquisition Regulation may require that title or risk of loss with respect to those goods be transferred to the federal government before the manufacture or production of those goods is complete.

(j) A taxable entity may not make a subtraction under this section for cost of goods sold to the extent the cost of goods sold was funded by partner contributions and deducted under Subsection (c)(13).

(k) Notwithstanding any other provision of this section, if the taxable entity is a lending institution that offers loans to the

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

(k-1) Notwithstanding any other provision of this section, the following taxable entities may subtract as a cost of goods sold the costs otherwise allowed by this section in relation to tangible personal property that the entity rents or leases in the ordinary course of business of the entity:

(1) a motor vehicle rental or leasing company that remits a tax on gross receipts imposed under Section 152.026;

(2) a heavy construction equipment rental or leasing company; and

(3) a railcar rolling stock rental or leasing company.

(l) Notwithstanding any other provision of this section, a payment made by one member of an affiliated group to another member of that affiliated group not included in the combined group may be subtracted as a cost of goods sold only if it is a transaction made at arm's length.

(m) In this section, "arm's length" means the standard of conduct under which entities that are not related parties and that have substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(n) In this section, "related party" means a person, corporation, or other entity, including an entity that is treated as a pass-through or disregarded entity for purposes of federal taxation, whether the person, corporation, or entity is subject to the tax under this chapter or not, in which one person, corporation, or entity, or set of related persons, corporations, or entities, directly or indirectly owns or controls a controlling interest in another entity.

(o) If a taxable entity, including a taxable entity with respect to which cost of goods sold is determined pursuant to

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 14, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 15, eff. January 1, 2008.

Sec. 171.1013. DETERMINATION OF COMPENSATION. (a) Except as otherwise provided by this section, "wages and cash compensation" means the amount entered in the Medicare wages and tips box of Internal Revenue Service Form W-2 or any subsequent form with a different number or designation that substantially provides the same information. The term also includes, to the extent not included above:

(1) net distributive income from a taxable entity treated as a partnership for federal income tax purposes, but only if the person receiving the distribution is a natural person;

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

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

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

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

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

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

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

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

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

(c) Notwithstanding the actual amount of wages and cash compensation paid by a taxable entity to its officers, directors, owners, partners, and employees, a taxable entity may not include more than \$300,000, or the amount determined under Section 171.006, per 12-month period on which margin is based, for any person in the

amount of wages and cash compensation it determines under this section. If a person is paid by more than one entity of a combined group, the combined group may not subtract in relation to that person a total of more than \$300,000, or the amount determined under Section 171.006, per 12-month period on which margin is based.

(c-1) Subject to Section 171.1014, a taxable entity that elects to subtract compensation for the purpose of computing its taxable margin under Section 171.101 may not subtract any wages or cash compensation paid to an undocumented worker. As used in this section "undocumented worker" means a person who is not lawfully entitled to be present and employed in the United States.

(d) A taxable entity that is a staff leasing services company:

(1) may not include as wages or cash compensation payments described by Section 171.1011(k); and

(2) shall determine compensation as provided by this section only for the taxable entity's own employees that are not assigned employees.

(e) Subject to the other provisions of this section, in determining compensation, a taxable entity that is a client company that contracts with a staff leasing services company for assigned employees:

(1) shall include payments made to the staff leasing services company for wages and benefits for the assigned employees as if the assigned employees were actual employees of the entity;

(2) may not include an administrative fee charged by the staff leasing services company for the provision of the assigned employees; and

(3) may not include any other amount in relation to the assigned employees, including payroll taxes.

(f) A taxable entity that is a management company:

(1) may not include as wages or cash compensation any amounts reimbursed by a managed entity; and

(2) shall determine compensation as provided by this section for only those wage and compensation payments that are not reimbursed by a managed entity.

(g) A taxable entity that is a managed entity shall include

reimbursements made to the management company for wages and compensation as if the reimbursed amounts had been paid to employees of the managed entity.

(h) Subject to Section 171.1014, a taxable entity that elects to subtract compensation for the purpose of computing its taxable margin under Section 171.101 may not include as wages or cash compensation amounts paid to an employee whose primary employment is directly associated with the operation of a facility that is:

(1) located on property owned or leased by the federal government; and

(2) managed or operated primarily to house members of the armed forces of the United States.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 16, eff. January 1, 2008.

Sec. 171.1014. COMBINED REPORTING; AFFILIATED GROUP ENGAGED IN UNITARY BUSINESS. (a) Taxable entities that are part of an affiliated group engaged in a unitary business shall file a combined group report in lieu of individual reports based on the combined group's business. The combined group may not include a taxable entity that conducts business outside the United States if 80 percent or more of the taxable entity's property and payroll, as determined by factoring under Chapter 141, are assigned to locations outside the United States. In applying Chapter 141, if either the property factor or the payroll factor is zero, the denominator is one. The combined group may not include a taxable entity that conducts business outside the United States and has no property or payroll if 80 percent or more of the taxable entity's gross receipts, as determined under Sections 171.103, 171.105, and 171.1055, are assigned to locations outside the United States.

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

(c) For purposes of Section 171.101, a combined group shall determine its total revenue by:

(1) determining the total revenue of each of its members as provided by Section 171.1011 as if the member were an individual taxable entity;

(2) adding the total revenues of the members determined under Subdivision (1) together; and

(3) subtracting, to the extent included under Section 171.1011(c)(1)(A), (c)(2)(A), or (c)(3), items of total revenue received from a member of the combined group.

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

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

(e) For purposes of Section 171.101, a combined group that elects to subtract costs of goods sold shall determine that amount by:

(1) determining the cost of goods sold for each of its members as provided by Section 171.1012 as if the member were an individual taxable entity;

(2) adding the amounts of cost of goods sold determined under Subdivision (1) together; and

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

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

(1) determining the compensation for each of its members as provided by Section 171.1013 as if each member were an

individual taxable entity, subject to the limitation prescribed by Section 171.1013(c);

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

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

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 37(3), eff. January 1, 2008.

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

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 17, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 37(3), eff. January 1, 2008.

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

(b) In addition to the tax it is required to pay under this chapter on its own taxable margin, a taxable entity that is an upper tier entity may include, for purposes of calculating its own taxable margin, the total revenue of a lower tier entity if the

lower tier entity submits a report to the comptroller showing the amount of total revenue that each upper tier entity that owns it should include within the upper tier entity's own taxable margin calculation, according to the ownership interest of the upper tier entity.

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

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

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 18, eff. January 1, 2008.

Sec. 171.103. DETERMINATION OF GROSS RECEIPTS FROM BUSINESS DONE IN THIS STATE FOR MARGIN. (a) Subject to Section 171.1055, in apportioning margin, the gross receipts of a taxable entity from its business done in this state is the sum of the taxable entity'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;

(2) each service performed in this state, except that receipts derived from servicing loans secured by real property are in this state if the real property is located 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.

(b) A combined group shall include in its gross receipts computed under Subsection (a) the gross receipts of each taxable entity that is a member of the combined group and that has a nexus with this state for the purpose of taxation.

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

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

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

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

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 20, eff. January 1, 2008.

Sec. 171.105. DETERMINATION OF GROSS RECEIPTS FROM ENTIRE BUSINESS FOR MARGIN. (a) Subject to Section 171.1055, in apportioning margin, the gross receipts of a taxable entity from its entire business is the sum of the taxable entity's receipts from:

(1) each sale of the taxable entity's tangible

personal property;

(2) each service, rental, or royalty; and

(3) other business.

(b) If a taxable entity sells an investment or capital asset, the taxable entity's gross receipts from its entire business for taxable margin includes only the net gain from the sale.

(c) A combined group shall include in its gross receipts computed under Subsection (a) the gross receipts of each taxable entity that is a member of the combined group, without regard to whether that entity has a nexus with this state for the purpose of taxation.

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Sec. 171.1055. EXCLUSION OF CERTAIN RECEIPTS FOR MARGIN APPORTIONMENT. (a) In apportioning margin, receipts excluded from total revenue by a taxable entity under Section 171.1011 may not be included in either the receipts of the taxable entity from its business done in this state as determined under Section 171.103 or the receipts of the taxable entity from its entire business done as determined under Section 171.105.

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

substantial modification to a purchaser in this state. "Receipts ultimately derived from the sale" means the amount paid for the tangible personal property by the third party purchaser.

(c) In apportioning margin, receipts derived from transactions between individual members of a combined group that are excluded under Section 171.1014(c)(3) may not be included in the receipts of the taxable entity from its entire business done as determined under Section 171.105.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 21, eff. January 1, 2008.

Sec. 171.106. APPORTIONMENT OF MARGIN TO THIS STATE. (a) Except as provided by this section, a taxable entity's margin is apportioned to this state to determine the amount of tax imposed under Section 171.002 by multiplying the margin by a fraction, the numerator of which is the taxable entity's gross receipts from business done in this state, as determined under Section 171.103, and the denominator of which is the taxable entity's gross receipts from its entire business, as determined under Section 171.105.

(b) A taxable entity's margin 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 taxable entity 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 taxable entity's total margin 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. In this subsection, "regulated investment company" has the meaning assigned by Section 851(a), Internal Revenue Code.

(c) A taxable entity's margin 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 taxable entity's total margin 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. 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.

(d) 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).

(e) Receipts from services that a defense readjustment project performs in a defense economic readjustment zone are not receipts from business done in this state.

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

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 22, eff. January 1, 2008.

Sec. 171.107. DEDUCTION OF COST OF SOLAR ENERGY DEVICE FROM MARGIN 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 taxable entity may deduct from its apportioned margin 10 percent of the amortized cost of a solar energy device if:

(1) the device is acquired by the taxable entity for heating or cooling or for the production of power;

(2) the device is used in this state by the taxable entity; and

(3) the cost of the device is amortized in accordance with Subsection (c).

(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 or conform to federal depreciation schedules;

(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 taxable entity 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 taxable entity shall file with the comptroller proof of the cost of the solar energy device or proof of the device's operation 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 1999, 76th Leg., ch. 1467, Sec. 2.59, eff. Jan. 1, 2000.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Sec. 171.108. DEDUCTION OF COST OF CLEAN COAL PROJECT FROM MARGIN APPORTIONED TO THIS STATE. (a) In this section, "clean coal project" has the meaning assigned by Section 5.001, Water Code.

(b) A taxable entity may deduct from its apportioned margin 10 percent of the amortized cost of equipment:

- (1) that is used in a clean coal project;
- (2) that is acquired by the taxable entity for use in generation of electricity, production of process steam, or industrial production;
- (3) that the taxable entity 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 taxable entity 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 taxable entity shall file with the comptroller proof of the cost of the equipment or proof of the equipment's operation in this state.

Added by Acts 2005, 79th Leg., Ch. 1097, Sec. 4, eff. June 18, 2005.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

For expiration of this section, see Subsection (e).

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

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

(1) determining the amount of the business loss carryforwards of the taxable entity under Section 171.110(e), as that section applied to annual reports originally due before January 1, 2008, that were not exhausted on a report originally due under this chapter before January 1, 2008;

(2) multiplying the amount determined under Subdivision (1) by:

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

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

(3) multiplying the amount determined under

Subdivision (2) by 4.5 percent.

(c) The comptroller may request that the taxable entity submit, with each annual report in which the taxable entity is eligible to take a credit, information relating to the amount determined under Subsection (b)(1). The taxable entity shall submit in the form and content the comptroller requires any information relating to the amount determined under Subsection (b)(1) or any other matter relevant to the computation of the credit for which the taxable entity is eligible.

(d) A credit that a taxable entity is entitled to under this section may not be conveyed, assigned, or transferred. A taxable entity loses the right to claim the credit if the entity changes combined groups after June 30, 2007.

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

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

(e) This section expires September 1, 2027.

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 23, eff. January 1, 2008.

Sec. 171.1121. GROSS RECEIPTS FOR MARGIN. (a) For purposes of this section, "gross receipts" means all revenues reportable by a taxable entity 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.

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

(c) A taxable entity 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.

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 5, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 24, eff. January 1, 2008.

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 taxable entity'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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 6, eff. January 1, 2008.

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 taxable entity'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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 6, eff. January 1, 2008.

Sec. 171.1532. BUSINESS ON WHICH TAX ON NET TAXABLE MARGIN IS BASED. (a) The tax covering the privilege periods included on the initial report is based on the business done by the taxable entity during the period beginning on the taxable entity'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), then ending on the day that is the last day of a calendar month and that is nearest to the end of the taxable

entity's first year of business.

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

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 6, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 25, eff. January 1, 2008.

Sec. 171.154. PAYMENT TO COMPTROLLER. A taxable entity 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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 6, eff. January 1, 2008.

Sec. 171.158. PAYMENT BY FOREIGN TAXABLE ENTITY BEFORE WITHDRAWAL FROM STATE. (a) Except as provided by Subsection (b), a foreign taxable entity holding a registration or 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 taxable entity 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 taxable entity.

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 6, eff. January 1, 2008.

SUBCHAPTER E. REPORTS AND RECORDS

Sec. 171.201. INITIAL REPORT. (a) Except as provided by Section 171.2022, a taxable entity on which the franchise tax is imposed shall file an initial report with the comptroller containing:

(1) financial information of the taxable entity necessary to compute the tax under this chapter;

(2) the name and address of:

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

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

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

(D) for a trust, each trustee;

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

(4) other information required by the comptroller.

(b) The taxable entity shall file the report on or before the date the payment is due under Section 171.152(a).

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 26, eff. January 1, 2008.

Sec. 171.202. ANNUAL REPORT. (a) Except as provided by Section 171.2022, a taxable entity on which the franchise tax is

imposed shall file an annual report with the comptroller containing:

(1) financial information of the taxable entity necessary to compute the tax under this chapter;

(2) the name and address of each officer and director of the taxable entity;

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

(4) other information required by the comptroller.

(b) The taxable entity 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 taxable entity 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 taxable entity:

(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 an amount produced by multiplying the taxable margin, as reported on the initial report filed on or before May 14, by the rate of tax in Section 171.002 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 taxable entity required by rule to make its tax payments by electronic funds transfer to any date on or before the next August 15, if the taxable entity:

(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 taxable entity 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 taxable entity:

(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.

(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 taxable entity 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 taxable entity may not receive an extension under Subsection (c) or (e) unless the taxable entity 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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Sec. 171.2022. EXEMPTION FROM REPORTING REQUIREMENTS. A taxable entity that does not owe any tax under this chapter for any period is not required to file a report under Section 171.201 or 171.202. 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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Sec. 171.203. PUBLIC INFORMATION REPORT. (a) A corporation or limited liability company on which the franchise tax is imposed, regardless of whether the corporation or limited liability company is required to pay any tax, shall file a report with the comptroller containing:

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

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

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

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

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

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

(c) The comptroller shall forward the report to the secretary of state.

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

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

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

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

(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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 27, eff. January 1,

2008.

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 a taxable entity that may be subject to the tax imposed under this chapter to file an information report with the comptroller stating the amount of the taxable entity's margin, or any other information the comptroller may request that is necessary to make a determination under this subsection.

(b) The comptroller may require a taxable entity 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 taxable entity's total revenue from its entire business. The comptroller may not require a taxable entity described by this subsection to file an information report that requires the taxable entity to report or compute its margin.

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

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 28, eff. January 1, 2008.

Sec. 171.205. ADDITIONAL INFORMATION REQUIRED BY COMPTROLLER. The comptroller may require a taxable entity on which the franchise tax is imposed to furnish to the comptroller information from the taxable entity'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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Sec. 171.206. CONFIDENTIAL INFORMATION. Except as provided by Section 171.207, 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, cost of goods sold, compensation, or expenditures of a taxable entity, obtained by an examination of the books and records, officers, partners, trustees, agents, or employees of a taxable entity on which a tax is imposed by this chapter.

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

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 or 171.2035.

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Sec. 171.208. PROHIBITION OF DISCLOSURE OF INFORMATION. A person, including a state officer or employee or an owner of a taxable entity, 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 taxable entity's income, profits, losses, expenditures, cost of goods sold, compensation, or other information in the report relating to the financial condition of the taxable entity.

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

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

If an owner of a taxable entity 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 and that relates to the taxable entity.

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Sec. 171.211. EXAMINATION OF RECORDS. To determine the franchise tax liability of a taxable entity, the comptroller may investigate or examine the records of the taxable entity.

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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

Sec. 171.212. REPORT OF CHANGES TO FEDERAL INCOME TAX RETURN. (a) A taxable entity must file an amended report under this chapter if:

(1) the taxable entity's taxable margin is changed as the result of an audit or other adjustment by the Internal Revenue Service or another competent authority; or

(2) the taxable entity files an amended federal income tax return or other return that changes the taxable entity's taxable margin.

(b) The taxable entity 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 taxable entity shall file the amended report under Subsection (a)(2) not later than the 120th day after the date the taxable entity files the amended federal income tax return or other return. For purposes of this subsection, a taxable entity is considered to have filed an amended federal income tax return if the taxable entity is a member of an affiliated group during a period in which an amended consolidated federal income tax report is filed.

(d) If a taxable entity fails to comply with this section, the taxable entity 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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 7, eff. January 1, 2008.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 29, eff. January 1, 2008.

For expiration of this section, see Subsection (f).

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

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

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

(3) the following persons appointed by the comptroller:

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

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

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

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

(d) The advisory committee shall conduct a biennial study of

the effects of the tax imposed under this chapter on businesses in this state. The study must take into consideration:

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

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

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

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

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

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

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

(f) This section expires January 31, 2013.

Added by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 30, eff. January 1, 2008.

SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS 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. 171.2515. FORFEITURE OF RIGHT OF TAXABLE ENTITY TO
TRANSACT BUSINESS IN THIS STATE. (a) The comptroller may, for the
same reasons and using the same procedures the comptroller uses in
relation to the forfeiture of the corporate privileges of a
corporation, forfeit the right of a taxable entity to transact
business in this state.

(b) The provisions of this subchapter, including Section
171.255, that apply to the forfeiture of corporate privileges apply
to the forfeiture of a taxable entity's right to transact business
in this state.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 9, eff. January
1, 2008.

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 mortgage lending 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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 921, Sec. 6.067, eff. September 1, 2007.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 31, eff. January 1, 2008.

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, certificate, or registration of a taxable entity if:

(1) the secretary receives the comptroller's certification under Section 171.302; and

(2) the taxable entity does not revive its forfeited privileges within 120 days after the date that the privileges were forfeited.

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.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 32, eff. January 1, 2008.

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

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1282, Sec. 31, eff. January 1, 2008.

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 taxable entity to enforce this chapter is either in a county where the taxable entity'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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 10, eff. January 1, 2008.

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 taxable entity's charter or certificate of authority, the court may appoint a receiver for the taxable entity 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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 11, eff. January 1, 2008.

Sec. 171.354. AGENT FOR SERVICE OF PROCESS. Each taxable entity on which a tax is imposed by this chapter shall designate a resident of this state as the taxable entity's agent for the service of process.

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

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 12, eff. January 1, 2008.

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 deputy

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.

Amended by:

Acts 2005, 79th Leg., Ch. 41, Sec. 4, eff. September 1, 2005.

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 taxable entity 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 taxable entity 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 taxable entity electing to remit under Section 171.202(c)(2)(A) remits less than the amount required, the penalties imposed by this section and the interest imposed under Section 111.060 are assessed against the difference between the amount required to be remitted under Section 171.202(c)(2)(A) and the amount actually remitted on or before May 15.

(e) If a taxable entity remits the entire amount required by Section 171.202(c), 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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 13, eff. January 1, 2008.

Sec. 171.363. WILFUL AND FRAUDULENT ACTS. (a) A taxable entity commits an offense if the taxable entity is subject to the provisions of this chapter and the taxable entity wilfully:

- (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 taxable entity and the person knowingly enters or provides false information on any report, return, or other document filed by the taxable entity 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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 14, eff. January 1, 2008.

SUBCHAPTER I. DISPOSITION OF REVENUE

Sec. 171.401. REVENUE DEPOSITED IN GENERAL REVENUE FUND.

The revenue from the tax imposed by this chapter 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.

Amended by:

Acts 2006, 79th Leg., 3rd C.S., Ch. 1, Sec. 15, eff. January 1, 2008.

Sec. 171.4011. ALLOCATION OF CERTAIN REVENUE TO PROPERTY TAX RELIEF FUND. (a) Notwithstanding Section 171.401, beginning with the state fiscal year that begins September 1, 2007, the comptroller shall, for each state fiscal year, deposit to the credit of the property tax relief fund under Section 403.109, Government Code, an amount of revenue calculated by:

(1) determining the revenue derived from the tax imposed by this chapter as it applied during that applicable state fiscal year; and

(2) subtracting the revenue the comptroller estimates that the tax imposed by this chapter, as it existed on August 31, 2007, would have generated if it had been in effect for that applicable state fiscal year.

(b) If the amount under Subsection (a) is less than zero, the comptroller shall consider the amount to be zero.

Added by Acts 2006, 79th Leg., 3rd C.S., Ch. 3, Sec. 2(a), eff. September 1, 2007.

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 Q-1. TAX CREDITS FOR ENTERPRISE PROJECTS FOR CERTAIN CAPITAL INVESTMENTS

For expiration of this subchapter, see Section 171.825.

Sec. 171.815. DEFINITIONS. In this subchapter:

(1) "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, but before January 1, 2005.

(2) "Enterprise zone" has the meaning assigned by Section 2303.003, Government Code.

(3) "Qualified business" means a person certified as a qualified business under Section 2303.402, Government Code.

(4) "Qualified capital investment" means tangible personal property that is first placed in service in an enterprise zone by a qualified business that has been designated as an enterprise project 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. Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.816. 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 171.815, "tangible personal property first placed in service in an enterprise zone" includes tangible personal property:

(1) purchased by an enterprise project for placement in an improvement that was 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 project's qualified business site, as defined by Section 2303.003, Government Code, and in use by the enterprise project on the original due date of the report on which the credit is taken.

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.817. ELIGIBILITY. (a) Subject to Subsection (b),

an enterprise project 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 if the enterprise project is a qualified business.

(b) An enterprise project is not eligible for a credit under this subchapter if the enterprise project claimed a credit under Subchapter Q before the repeal of that subchapter on January 1, 2008.

(c) An enterprise project that is eligible for a credit under this subchapter may claim a credit or take a carryforward credit without regard to whether the enterprise zone in which it made the qualified capital investment subsequently loses its designation as an enterprise zone.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.818. CALCULATION OF CREDIT. (a) An enterprise project that is eligible for a credit under this subchapter may, on or after the later of January 1, 2008, or the date the project was designated, establish a credit equal to 7.5 percent of the qualified capital investment made on or after January 1, 2005, and before January 1, 2007.

(b) The enterprise project may claim the entire credit earned on a report originally due on or after January 1, 2008, and before January 1, 2009, subject to Section 171.819.

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.819. LIMITATIONS. The total credit claimed under

this subchapter for a report, including the amount of any carryforward credit under Section 171.820, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.820. CARRYFORWARD. If an enterprise project is eligible for a credit that exceeds the limitation under Section 171.819, the enterprise project may carry the unused credit forward for not more than five consecutive reports.

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.821. CERTIFICATION OF ELIGIBILITY. (a) For the initial and each succeeding report in which a credit is claimed under this subchapter, the enterprise project shall file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the enterprise project is eligible for the credit.

(b) The burden of establishing entitlement to and the value of the credit is on the enterprise project.

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.822. ASSIGNMENT PROHIBITED. An enterprise project may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the enterprise project are conveyed, assigned, or transferred in the same transaction.

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.823. 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 qualified capital investments made by enterprise projects that claim a credit under this subchapter and the average and median wages paid by those enterprise projects;

(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 enterprise projects claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by enterprise projects claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to enterprise projects with fewer than 100 employees; and

(D) the two-digit standard industrial classification of enterprise projects 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 must 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 an enterprise project that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the enterprise project'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 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.824. COMPTROLLER POWERS AND DUTIES. The comptroller shall adopt rules and forms necessary to implement this subchapter.

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.

Sec. 171.825. EXPIRATION. (a) This subchapter expires December 31, 2009.

(b) The expiration of this subchapter does not affect the carryforward of a credit under Section 171.820 or those credits for which an enterprise project is eligible before the date this subchapter expires.

Added by Acts 2007, 80th Leg., R.S., Ch. 1114, Sec. 16(b), eff. January 1, 2008.