

AN ACT

relating to the computation of the franchise tax, including certain exclusions from the tax.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 171.0001(12), Tax Code, is amended to read as follows:

(12) "Retail trade" means:

(A) the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; ~~and~~

(B) apparel rental activities classified as Industry 5999 or 7299 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget;

(C) the activities classified as Industry Group 753 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget;

(D) rental-purchase agreement activities regulated by Chapter 92, Business & Commerce Code;

(E) activities involving the rental or leasing of tools, party and event supplies, and furniture that are classified as Industry 7359 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget;
and

(F) heavy construction equipment rental or leasing activities classified as Industry 7353 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

SECTION 2. Subchapter A, Chapter 171, Tax Code, is amended by adding Sections 171.0022 and 171.0023 to read as follows:

Sec. 171.0022. TEMPORARY PERMISSIVE ALTERNATE RATES FOR 2014. (a) Notwithstanding Section 171.002(a) and subject to Section 171.1016 and Subsection (b) of this section, a taxable entity may elect to pay the tax imposed under this chapter at a rate of 0.975 percent of taxable margin.

(b) Notwithstanding Section 171.002(b) and subject to Section 171.1016, a taxable entity primarily engaged in retail or wholesale trade as defined by Sections 171.002(c) and (c-1) may elect to pay the tax imposed under this chapter at a rate of 0.4875 percent of taxable margin.

(c) This section applies only to a report originally due on or after January 1, 2014, and before January 1, 2015.

(d) This section expires December 31, 2014.

Sec. 171.0023. TEMPORARY PERMISSIVE ALTERNATE RATES FOR 2015. (a) Notwithstanding Section 171.002(a) and subject to Section 171.1016 and Subsections (b) and (d) of this section, a taxable entity may elect to pay the tax imposed under this chapter at a rate of 0.95 percent of taxable margin.

(b) Notwithstanding Section 171.002(b) and subject to Section 171.1016 and Subsection (d) of this section, a taxable entity primarily engaged in retail or wholesale trade as defined by Sections 171.002(c) and (c-1) may elect to pay the tax imposed under this chapter at a rate of 0.475 percent of taxable margin.

(c) This section applies only to a report originally due on

or after January 1, 2015, and before January 1, 2016.

(d) A taxable entity may elect to compute the tax at the rate provided by Subsection (a) or (b), as applicable, on a report specified by Subsection (c) only if the comptroller certifies, on or after September 1, 2014, that probable revenue for the state fiscal biennium ending August 31, 2015, is estimated to exceed probable revenue as stated in the comptroller's Biennial Revenue Estimate for the 2014-2015 fiscal biennium, as adjusted for estimates of revenue and disbursements associated with legislation enacted by the 83rd Legislature, including any contingent appropriations certified before September 1, 2014, by an amount sufficient to offset the loss in probable revenue that will result if taxable entities elect to compute the tax at the rates provided by Subsections (a) and (b). If the comptroller does not make the certification described by this subsection, a taxable entity may not elect to pay the tax at the rate provided by Subsection (a) or (b) and shall pay the tax at the rates provided by Section 171.002.

(e) This section expires December 31, 2015.

SECTION 3. Section 171.006(b), Tax Code, is amended to read as follows:

(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.

SECTION 4. Section 171.052(a), Tax Code, is amended to read as follows:

(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 that is [~~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. A nonadmitted insurance organization that is subject to an occupation tax or any other tax that is imposed for the privilege of doing business in another state or a foreign jurisdiction, including a tax on gross premium receipts, is exempted from the franchise tax.

SECTION 5. Subchapter B, Chapter 171, Tax Code, is amended by adding Section 171.086 to read as follows:

Sec. 171.086. EXEMPTION: POLITICAL SUBDIVISION CORPORATION. A political subdivision corporation formed under Section 304.001, Local Government Code, is exempted from the franchise tax.

SECTION 6. Sections 171.101(a) and (b), Tax Code, are amended to read as follows:

(a) The taxable margin of a taxable entity is computed by:

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

(A) the amount provided by this paragraph, which is the lesser of:

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

(ii) an amount equal to the taxable entity's total revenue from its entire business as determined under Section 171.1011 minus \$1 million; or

(B) an amount computed by [~~+~~]
[~~(i)~~] determining the taxable entity's
total revenue from its entire business [~~-~~] under Section 171.1011
and [~~+~~

[~~(ii)~~] subtracting the greater of:

(i) \$1 million; or

(ii) an amount equal to the sum of:

(a) [~~-~~] at the election of the taxable

entity, either:

(1) [~~(a)~~] cost of goods sold, as
determined under Section 171.1012; or

(2) [~~(b)~~] compensation, as
determined under Section 171.1013; and

(b) any [~~(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)
[~~(a)(1)(B)(ii)~~], a staff leasing services company may subtract only
the greater of \$1 million as provided by Subsection (a)(1)(B)(i) or
compensation as determined under Section 171.1013.

SECTION 7. Section 171.1011, Tax Code, is amended by
amending Subsection (g-4) and adding Subsections (g-8), (g-10),
(g-11), (u), (v), and (x) to read as follows:

(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. A taxable entity that
provides a pharmacy network shall exclude from its total revenue,
to the extent included under Subsection (c)(1)(A), (c)(2)(A), or
(c)(3), reimbursements, pursuant to contractual agreements, for
payments to pharmacies in the pharmacy network.

(g-8) A taxable entity that is primarily engaged in the
business of transporting aggregates shall exclude from its total
revenue, to the extent included under Subsection (c)(1)(A),
(c)(2)(A), or (c)(3), subcontracting payments made by the taxable
entity to independent contractors for the performance of delivery
services on behalf of the taxable entity. In this subsection,
"aggregates" means any commonly recognized construction material
removed or extracted from the earth, including dimension stone,
crushed and broken limestone, crushed and broken granite, other
crushed and broken stone, construction sand and gravel, industrial
sand, dirt, soil, cementitious material, and caliche.

(g-10) A taxable entity that is primarily engaged in the
business of transporting barite shall exclude from its total
revenue, to the extent included under Subsection (c)(1)(A),
(c)(2)(A), or (c)(3), subcontracting payments made by the taxable
entity to nonemployee agents for the performance of transportation
services on behalf of the taxable entity. For purposes of this

subsection, "barite" means barium sulfate (BaSO₄), a mineral used as a weighing agent in oil and gas exploration.

(g-11) A taxable entity that is primarily engaged in the business of performing landman services shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployees for the performance of landman services on behalf of the taxable entity. In this subsection, "landman services" means:

(1) performing title searches for the purpose of determining ownership of or curing title defects related to oil, gas, or other related mineral or petroleum interests;

(2) negotiating the acquisition or divestiture of mineral rights for the purpose of the exploration, development, or production of oil, gas, or other related mineral or petroleum interests; or

(3) negotiating or managing the negotiation of contracts or other agreements related to the ownership of mineral interests for the exploration, exploitation, disposition, development, or production of oil, gas, or other related mineral or petroleum interests.

(u) A taxable entity shall exclude from its total revenue the actual cost paid by the taxable entity for a vaccine.

(v) A taxable entity primarily engaged in the business of transporting goods by waterways that does not subtract cost of goods sold in computing its taxable margin shall exclude from its total revenue direct costs of providing transportation services by intrastate or interstate waterways to the same extent that a taxable entity that sells in the ordinary course of business real or tangible personal property would be authorized by Section 171.1012 to subtract those costs as costs of goods sold in computing its taxable margin, notwithstanding Section 171.1012(e)(3).

(x) A taxable entity that is registered as a motor carrier under Chapter 643, Transportation Code, shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through revenue derived from taxes and fees.

SECTION 8. Section 171.1011(p), Tax Code, is amended by adding Subdivision (8) to read as follows:

(8) "Vaccine" means a preparation or suspension of dead, live attenuated, or live fully virulent viruses or bacteria, or of antigenic proteins derived from them, used to prevent, ameliorate, or treat an infectious disease.

SECTION 9. Section 171.1012, Tax Code, is amended by adding Subsections (k-2) and (k-3) to read as follows:

(k-2) This subsection applies only to a pipeline entity: (1) that owns or leases and operates the pipeline by which the product is transported for others and only to that portion of the product to which the entity does not own title; and (2) that is primarily engaged in gathering, storing, transporting, or processing crude oil, including finished petroleum products, natural gas, condensate, and natural gas liquids, except for a refinery installation that manufactures finished petroleum products from crude oil. Notwithstanding Subsection (e)(3) or (i), a pipeline entity providing services for others related to the product that the pipeline does not own and to which this subsection applies may subtract as a cost of goods sold its depreciation, operations, and maintenance costs allowed by this section related to the services provided.

(k-3) For purposes of Subsection (k-2), "processing" means

the physical or mechanical removal, separation, or treatment of crude oil, including finished petroleum products, natural gas, condensate, and natural gas liquids after those materials are produced from the earth. The term does not include the chemical or biological transformation of those materials.

SECTION 10. (a) Section 171.1012, Tax Code, is amended by adding Subsection (t) to read as follows:

(t) If a taxable entity that is a movie theater elects to subtract cost of goods sold, the cost of goods sold for the taxable entity shall be the costs described by this section in relation to the acquisition, production, exhibition, or use of a film or motion picture, including expenses for the right to use the film or motion picture.

(b) Section 171.1012(t), Tax Code, as added by this section, is a clarification of existing law and does not imply that existing law may be construed as inconsistent with the law as amended by this section.

(c) This section takes effect September 1, 2013.

SECTION 11. Section 171.1014, Tax Code, is amended by amending Subsection (d) and adding Subsection (j) to read as follows:

(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, or \$1 million. Regardless of the election, the taxable margin of the combined group may not exceed the amount [~~70 percent of the combined group's total revenue from its entire business, as~~] provided by Section 171.101(a)(1)(A) for the combined group.

(j) Notwithstanding any other provision of this section, a taxable entity that provides retail or wholesale electric utilities may not be included as a member of a combined group that includes one or more taxable entities that do not provide retail or wholesale electric utilities if that combined group in the absence of this subsection:

(1) would not meet the requirements of Section 171.002(c) solely because one or more members of the combined group provide retail or wholesale electric utilities; and

(2) would have less than five percent of the combined group's total revenue derived from providing retail or wholesale electric utilities.

SECTION 12. Section 171.106, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) A receipt from Internet hosting as defined by Section 151.108(a) is a receipt from business done in this state only if the customer to whom the service is provided is located in this state.

SECTION 13. (a) Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.109 to read as follows:

Sec. 171.109. DEDUCTION OF RELOCATION COSTS BY CERTAIN TAXABLE ENTITIES FROM MARGIN APPORTIONED TO THIS STATE. (a) In this section, "relocation costs" means the costs incurred by a taxable entity to relocate the taxable entity's main office or other principal place of business from one location to another. The term includes:

(1) costs of relocating computers and peripherals, other business supplies, furniture, and inventory; and

(2) any other costs related to the relocation that are allowable deductions for federal income tax purposes.

(b) Subject to Subsection (c), a taxable entity may deduct from its apportioned margin relocation costs incurred in relocating the taxable entity's main office or other principal place of

business to this state from another state if the taxable entity:

(1) did not do business in this state before relocating the taxable entity's main office or other principal place of business to this state; and

(2) is not a member of an affiliated group engaged in a unitary business, another member of which is doing business in this state on the date the taxable entity relocates the taxable entity's main office or other principal place of business to this state.

(c) A taxable entity must take the deduction authorized by Subsection (b) on the report based on the taxable entity's initial period described by Section 171.151(1).

(d) On the comptroller's request, a taxable entity that takes a deduction authorized by this section shall file with the comptroller proof of the deducted relocation costs.

(b) The change in law made by this section applies only to a taxable entity that relocates the taxable entity's main office or other principal place of business to this state on or after the effective date of this section.

(c) This section takes effect September 1, 2013.

SECTION 14. (a) Chapter 171, Tax Code, is amended by adding Subchapter S to read as follows:

SUBCHAPTER S. TAX CREDIT FOR CERTIFIED REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

Sec. 171.901. DEFINITIONS. In this subchapter:

(1) "Certified historic structure" means a property in this state that is:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under Section 442.006, Government Code, or as a state archeological landmark under Chapter 191, Natural Resources Code; or

(C) certified by the commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a local district certified by the United States Department of the Interior in accordance with 36 C.F.R. Section 67.9.

(2) "Certified rehabilitation" means the rehabilitation of a certified historic structure that the commission has certified as meeting the United States secretary of the interior's Standards for Rehabilitation as defined in 36 C.F.R. Section 67.7.

(3) "Commission" means the Texas Historical Commission.

(4) "Eligible costs and expenses" means qualified rehabilitation expenditures as defined by Section 47(c)(2), Internal Revenue Code.

Sec. 171.902. ELIGIBILITY FOR CREDIT. An entity is eligible to apply for a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Sec. 171.903. QUALIFICATION. An entity is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure as provided by this subchapter if:

(1) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;

(2) the entity has an ownership interest in the

certified historic structure in the year during which the structure is placed in service after the rehabilitation; and

(3) the total amount of the eligible costs and expenses incurred exceeds \$5,000.

Sec. 171.904. CERTIFICATION OF ELIGIBILITY. (a) Before claiming, selling, or assigning a credit under this subchapter, the entity that incurred the eligible costs and expenses in the rehabilitation of a certified historic structure must request from the commission a certificate of eligibility on which the commission certifies that the work performed meets the definition of a certified rehabilitation. The entity must include with the entity's request:

(1) information on the property that is sufficient for the commission to determine whether the property meets the definition of a certified historic structure; and

(2) information on the rehabilitation, and photographs before and after work is performed, sufficient for the commission to determine whether the rehabilitation meets the United States secretary of the interior's Standards for Rehabilitation as defined in 36 C.F.R. Section 67.7.

(b) The commission shall issue a certificate of eligibility to an entity that has incurred eligible costs and expenses as provided by this subchapter. The certificate must:

(1) confirm that:

(A) the property to which the eligible costs and expenses relate is a certified historic structure; and

(B) the rehabilitation qualifies as a certified rehabilitation; and

(2) specify the date the certified historic structure was first placed in service after the rehabilitation.

(c) The entity must forward the certificate of eligibility and the following documentation to the comptroller to claim the tax credit:

(1) an audited cost report issued by a certified public accountant, as defined by Section 901.002, Occupations Code, that itemizes the eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure by the entity;

(2) the date the certified historic structure was first placed in service after the rehabilitation and evidence of that placement in service; and

(3) an attestation of the total eligible costs and expenses incurred by the entity on the rehabilitation of the certified historic structure.

(d) For purposes of approving the tax credit under Subsection (c), the comptroller may rely on the audited cost report provided by the entity that requested the tax credit.

(e) An entity that sells or assigns a credit under this subchapter to another entity shall provide a copy of the certificate of eligibility, together with the audited cost report, to the purchaser or assignee.

Sec. 171.905. AMOUNT OF CREDIT; LIMITATIONS. (a) The total amount of the credit under this subchapter with respect to the rehabilitation of a single certified historic structure that may be claimed may not exceed 25 percent of the total eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

(b) The total credit claimed for a report, including the amount of any carryforward under Section 171.906, may not exceed the amount of franchise tax due for the report after any other

applicable tax credits.

(c) Eligible costs and expenses may only be counted once in determining the amount of the tax credit available, and more than one entity may not claim a credit for the same eligible costs and expenses.

Sec. 171.906. CARRYFORWARD. (a) If an entity is eligible for a credit that exceeds the limitation under Section 171.905(b), the entity may carry the unused credit forward for not more than five consecutive reports.

(b) A carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation under Section 171.905(b).

Sec. 171.907. APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this subchapter on or with the report for the period for which the credit is claimed.

(b) An entity shall file with any report on which the credit is claimed a copy of the certificate of eligibility issued by the commission under Section 171.904 and any other information required by the comptroller to sufficiently demonstrate that the entity is eligible for the credit.

(c) The burden of establishing eligibility for and the value of the credit is on the entity.

Sec. 171.908. SALE OR ASSIGNMENT OF CREDIT. (a) An entity that incurs eligible costs and expenses may sell or assign all or part of the credit that may be claimed for those costs and expenses to one or more entities, and any entity to which all or part of the credit is sold or assigned may sell or assign all or part of the credit to another entity. There is no limit on the total number of transactions for the sale or assignment of all or part of the total credit authorized under this subchapter, however, collectively all transfers are subject to the maximum total limits provided by Section 171.905.

(b) An entity that sells or assigns a credit under this section and the entity to which the credit is sold or assigned shall jointly submit written notice of the sale or assignment to the comptroller on a form promulgated by the comptroller not later than the 30th day after the date of the sale or assignment. The notice must include:

- (1) the date of the sale or assignment;
- (2) the amount of the credit sold or assigned;
- (3) the names and federal tax identification numbers

of the entity that sold or assigned the credit or part of the credit and the entity to which the credit or part of the credit was sold or assigned; and

(4) the amount of the credit owned by the selling or assigning entity before the sale or assignment, and the amount the selling or assigning entity retained, if any, after the sale or assignment.

(c) The sale or assignment of a credit in accordance with this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed. After an entity claims a credit for eligible costs and expenses, another entity may not use the same costs and expenses as the basis for claiming a credit.

(d) Notwithstanding the requirements of this subchapter, a credit earned or purchased by, or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity and claimed under this subchapter in accordance with the provisions of any agreement among the partners, members, or

shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure, provided that the entity that claims the credit must be subject to the tax imposed under this chapter.

Sec. 171.909. RULES. The commission and the comptroller shall adopt rules necessary to implement this subchapter.

(b) This section takes effect January 1, 2015.

SECTION 15. Sections 171.0021, 171.1016(d), and 171.103(c) and (d), Tax Code, are repealed.

SECTION 16. Section 1(c), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, is repealed.

SECTION 17. Section 2, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (d), Section 171.002, Tax Code, is repealed.

SECTION 18. Section 3, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (a), Section 171.0021, Tax Code, is repealed.

SECTION 19. This Act applies only to a report originally due on or after the effective date of this Act.

SECTION 20. Except as otherwise provided by this Act, this Act takes effect January 1, 2014.

President of the Senate

Speaker of the House

I certify that H.B. No. 500 was passed by the House on May 8, 2013, by the following vote: Yeas 117, Nays 24, 7 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 500 on May 24, 2013, and requested the appointment of a conference committee to consider the differences between the two houses; that the House adopted the conference committee report on H.B. No. 500 on May 26, 2013, by the following vote: Yeas 131, Nays 14, 1 present, not voting; and that the House adopted H.C.R. No. 221 authorizing certain corrections in H.B. No. 500 on May 27, 2013, by the following vote: Yeas 145, Nays 3, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 500 was passed by the Senate, with amendments, on May 21, 2013, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; that the Senate adopted the conference committee report on H.B. No. 500 on May 26, 2013, by the following vote: Yeas 27, Nays 4; and that the Senate adopted H.C.R. No. 221 authorizing certain corrections in H.B. No. 500 on May 27, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor