

BILL ANALYSIS

Senate Research Center

S.B. 861
By: Armbrister
Finance
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As Filed

DIGEST

Currently, there are some questions regarding revisions made to the franchise law in 1991, despite additional revisions addressed by legislation passed in the 1993 and 1995 sessions. This bill addresses these questions by amending several current provisions for technical corrections or clarification. It corrects the wording of some of the provisions, and clarifies provisions that are sufficiently technical to require additional explanation. This bill also makes substantive changes, including the adoption of the federal tax changes effective in calendar 1996. Other substantive changes deal with the apportionment of gross receipts from the use of trademarks, franchises, and licenses in Texas; providing procedures for taxpayers whose earned surplus is changed as a result of an IRS audit or the filing of an amended IRS return; and the criteria that a taxpayer must meet in order to get a penalty- and interest-free extension of an annual franchise tax report.

PURPOSE

As proposed, S.B. 861 clarifies existing franchise tax law; updates existing franchise tax law to conform with federal tax changes; and makes other substantive changes regarding the gross receipts from trademarks, franchises, and licenses; procedures for taxpayers whose earned surplus is changed as a result of an IRS audit or the filing of an amended IRS return, and the criteria that a taxpayer must meet in order to get a penalty- and interest-free extension of an annual franchise tax report.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 171.001(b)(3) and (5), Tax Code, to redefine "corporation" and "Internal Revenue Code." Makes conforming changes.

SECTION 2. Amends Section 171.002(b) and (d), Tax Code, to remove language regarding an exception. Makes a conforming change.

SECTION 3. Amends Section 171.063(c), Tax Code, to provide that a corporation's exemption under Subsection (b) of this section is established, rather than may be established, by furnishing the comptroller with a copy of the Internal Revenue Service's letter of exemption issued to the corporation. Requires, rather than authorizes, the copy of the letter to be filed within a certain deadline.

SECTION 4. Amends Section 171.102, Tax Code, by adding Subsection (d), to provide that this section applies only to the computation of a corporation's taxable capital under Section 171.101.

SECTION 5. Amends Section 171.103, Tax Code, to provide that in apportioning taxable capital, the gross receipts of a corporation from its business done in this state is the sum of the corporation's receipts from the use of a patent, trademark, franchise, or license in this state; and each sale of real property located in this state, including royalties from oil, gas, or other mineral interests. Makes nonsubstantive and conforming changes.

SECTION 6. Amends Section 171.1032(a), Tax Code, to make conforming changes.

SECTION 7. Amends Section 171.106(c), Tax Code, to set forth the derivation of a corporation's taxable capital or earned surplus.

SECTION 8. Amends Section 171.109(d), Tax Code, to provide that consolidated reporting of surplus is prohibited, rather than consolidated reporting of the surplus of related corporations is prohibited.

SECTION 9. Amends Section 171.110, Tax Code, by adding Subsection (h), to require a corporation to report its net taxable earned surplus based solely on its own financial condition. Provides that consolidated reporting is prohibited.

SECTION 10. Amends Section 171.112(d), Tax Code, to make conforming changes.

SECTION 11. Amends Section 171.1121(c), Tax Code, to make conforming changes.

SECTION 12. Amends Section 171.202, Tax Code, by amending Subsections (c)-(e) and adding Subsection (i), to require the comptroller to grant an extension of time to a corporation 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 corporation remits with the request 100 percent of the tax reported as due for the previous calendar year, rather than the tax paid in the previous year, on the report due in the previous calendar year and filed on or before May 14. Sets forth requirements for a taxpayer whose previous return was its initial report. Prohibits a corporation, if the corporation requesting an extension under Subsection (c) or (e) does not file the report due in the previous calendar year on or before May 14, from receiving an extension under Subsection (c) or (e) unless the corporation complies with Subsection (c)(2)(A) or (e)(2)(A), as appropriate. Makes conforming and nonsubstantive changes.

SECTION 13. Amends Section 171.203(d), Tax Code, to require the corporation to 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 a related corporation listed in Subsection (a)(1) or (2). Requires an officer or director of the corporation or another authorized person to sign the report under a certification that all information contained in the report is true and correct to the best of the person's, rather than officer's, knowledge.

SECTION 14. Amends Chapter 171E, Tax Code, by adding Section 171.212, as follows:

Sec. 171.212. REPORT OF CHANGES TO FEDERAL INCOME TAX RETURN. Requires a corporation to file an amended report under this chapter under certain conditions. Sets forth the deadline for the filing of the amended report by the corporation under Section (a)(1). Provides that for the 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. Sets forth the deadline for the filing of the amended report by the corporation under Section (a)(2). Provides that for the purposes of this subsection, a corporation is considered to have filed an amended federal income tax return if the corporation is a member of an affiliated group during a period in which an amended consolidated federal income tax report is filed. Sets forth the penalty if a corporation fails to comply with this section. Provides that the penalty prescribed by this subsection is in addition to any other penalty provided by law.

SECTION 15. (a) Effective date: January 1, 1998. Makes application of this Act prospective.

(b) Provides that Section 171.212, Tax Code, takes effect on the earliest date that it may take effect under Section 39, Article III, Texas Constitution.

SECTION 16. Provides that the legislature intends that each change in law made to the following sections of the Tax Code by this Act be considered as a clarification of existing law and not imply that the existing law may be construed as inconsistent with the law as amended by this Act:

- (1) 171.001(b)(3)
- (2) 171.103(5);
- (3) 171.1032(a)(5);
- (4) 171.106(c);
- (5) 171.109(d);
- (6) 171.110;
- (7) 171.112(d);
- (8) 171.1121(c).

SECTION 17. Emergency clause.