

## BILL ANALYSIS

Senate Research Center

H.B. 32  
By: Bonnen, Dennis et al. (Nelson)  
Finance  
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Engrossed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 32 reduces the franchise tax rate on businesses by 25 percent.

The franchise tax is computed at a rate of one percent taxable margin for most taxpayers and 0.5 percent of taxable margin for retailers and wholesalers. H.B. 500, 83rd Legislature, Regular Session, 2013, included provisions reducing the tax rate to 0.95 percent for most taxpayers and 0.475 percent for retailers and wholesalers. However, these provisions expire on December 31, 2015.

H.B. 32 reduces the franchise tax rate to 0.75 percent for most taxpayers and 0.375 percent for retailers and wholesalers. Additionally, these rate reductions are permanent.

H.B. 32 also sets a tax rate of 0.331 percent for taxable entities electing the EZ computation; the rate under current law is 0.575 percent. The bill provides that a taxable entity could elect the EZ computation if its total revenue were no more than \$20 million; under current law the amount is no more than \$10 million.

H.B. 32 also provides for instances when the tax rate may be further reduced. Beginning in 2018, on January 1 of each even-numbered year for which the most recent certification estimate of the comptroller of public accounts of the State of Texas (comptroller) projects state tax collections not dedicated by the constitution to exceed the limit on appropriations for the current biennium as provided by the constitution, the tax rates for calculating franchise tax liability would be reduced from the rates in effect on December 31 of the previous year. The amount of the rate reduction would be 0.15 for the rate applicable to taxable entities not primarily engaged in retail or wholesale trade; 0.075 for taxable entities primarily engaged in retail and wholesale trade; and 0.0662 for taxable entities electing the EZ calculation.

H.B. 32 provides for lowering the tax rates used in determining franchise tax liability if the comptroller makes a transfer of any unencumbered balance of positive general revenues from a preceding biennium to the Economic Stabilization Fund (ESF). The comptroller would identify an amount of money equal to 25 percent of those unencumbered general revenues that are not transferred to the ESF. The comptroller would estimate the amount of franchise revenue for the current biennium that would be received at current franchise tax rates. The comptroller would subtract from that estimated amount the amount of money identified from the unencumbered general revenues. If the result were greater than zero, the comptroller would determine rates for the franchise tax that if applied beginning January 1 of the current state biennium would generate the amount of revenue resulting from the subtraction.

H.B. 32 provides that in the state fiscal year in which the subtraction results in an amount equal to zero or less, the franchise tax expires. The expiration of the franchise tax would not affect audits, deficiencies, redeterminations, and refunds of any tax due or collected until barred by limitations.

Finally, H.B. 32 requires the comptroller to conduct a study on the franchise tax and what further reductions in the tax may be made.

H.B. 32 amends current law relating to the computation and rates of the franchise tax, decreasing tax rates, and amending provisions subject to a criminal penalty.

## **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 2 (Section 171.004, Tax Code) and SECTION 3 (Section 171.007, Tax Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 171.002(a) and (b), Tax Code as follows:

(a) Provides that subject to certain sections, including Sections 171.004 and 171.007, and except as provided by Subsection (b), the rate of the franchise tax is 0.75 percent, rather than one percent, of taxable margin.

(b) Provides that subject to certain sections, including Sections 171.004 and 171.007, the rate of the franchise tax is 0.375 percent, rather than 0.5 percent, of taxable margin for those taxable entities primarily engaged in retail or wholesale trade.

SECTION 2. Amends Subchapter A, Chapter 171, Tax Code, by adding Section 171.004, as follows:

Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) Provides that, beginning in 2018, on January 1 of each even-numbered year for which the most recent certification estimate of the comptroller of public accounts of the State of Texas (comptroller) projects state tax collections not dedicated by the constitution will exceed the limit on appropriations in effect for the current biennium under Section 22(a) (requiring that in no biennium may the rate of growth of appropriations from state tax revenues not dedicated by this constitution exceed the estimated rate of growth of the state's economy), Article VIII, Texas Constitution:

(1) the rate of the franchise tax under Section 171.002(a) is adjusted by subtracting 0.15 from the rate in effect on December 31 of the previous year;

(2) the rate of the franchise tax under Section 171.002(b) is adjusted by subtracting 0.075 from the rate in effect on December 31 of the previous year; and

(3) the rate of the franchise tax under Section 171.1016(b)(3) (providing that 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 multiplying the amount computed under Subdivision (2) by the rate of 0.575 percent) is adjusted by subtracting 0.0662 from the rate in effect on December 31 of the previous year.

(b) Provides that the tax rates determined under Subsection (a) apply to a report originally due on or after the date the determination is made.

(c) Provides that, notwithstanding Subsection (a), if an adjustment otherwise required by Subsection (a) would reduce a rate of the franchise tax to less than zero, the rate is instead reduced to zero.

(d) Provides that, notwithstanding any other law, if the rates of the franchise tax are reduced to zero under Subsection (a) or (c), a taxable entity does not owe any tax and is not required to file a report that would otherwise be originally due on or after the date the rates are reduced to zero.

(e) Requires the comptroller to make the determination required by Subsection (a) and authorizes the comptroller to adopt rules related to making that determination.

Requires the comptroller to publish the franchise tax rates determined under this section in the Texas Register and on the comptroller's Internet website not later than January 15 of each year.

(f) Provides that a determination by the comptroller under this section is final and may not be appealed.

SECTION 3. Amends Subchapter A, Chapter 171, Tax Code, by adding Section 171.007, as follows:

Sec. 171.007. COMPTROLLER TAX RATE ADJUSTMENT. (a) Requires the comptroller, on the date the comptroller makes the transfer of any unencumbered positive balance of general revenues from a preceding biennium to the economic stabilization fund as described by Section 49-g(b) (requiring the comptroller to, not later than the 90th day of each biennium, transfer to the economic stabilization fund one-half of any unencumbered positive balance of general revenues on the last day of the preceding biennium), Article III, Texas Constitution, to:

(1) identify an amount of money equal to 25 percent of those unencumbered general revenues that are not transferred under that subsection;

(2) estimate the amount of revenue attributable to the tax imposed under this chapter that would be received by the comptroller during the current state fiscal biennium if the tax were imposed at the rates under Sections 171.002(a) and (b) and Section 171.1016 (E-Z Computation and Rate) in effect on the date the estimate is made; and

(3) subtract the amount of money identified under Subdivision (1) from the amount of revenue estimated under Subdivision (2).

(b) Requires the comptroller, if the amount of money determined under Subsection (a)(3) is greater than zero, to determine the rates for purposes of Sections 171.002(a) and (b) and Section 171.1016 that, if applied beginning January 1 of the current state fiscal biennium, are estimated to generate the amount of money determined by the comptroller under Subsection (a)(3) for that biennium. Provides that in determining the rates under this subsection, the comptroller shall proportionally reduce the rates under Sections 171.002(a) and (b) and Section 171.1016 that are in effect on the date the comptroller makes the determination.

(c) Requires the comptroller, not later than December 15 of each odd-numbered year, to:

(1) adopt the adjusted tax rates determined under Subsection (b);

(2) publish notice of the adjusted tax rates in the Texas Register; and

(3) provide any other notice relating to the adjusted tax rates that the comptroller considers appropriate.

(d) Provides that the adjusted tax rates adopted by the comptroller under this section apply to a report originally due on or after January 1 of the even-numbered year following the date the rates are adopted.

(e) Provides that in the state fiscal year in which the amount of money determined under Subsection (a)(3) is zero or less:

(1) this chapter expires as provided by Section 171.975; and

(2) not later than December 15 of that year the comptroller is required to:

(A) publish notice in the Texas Register that an entity previously subject to the tax imposed under this chapter is no longer required to file a report or pay the tax; and

(B) provide any other notice relating to the expiration of the tax that the comptroller considers appropriate.

(f) Provides that an action taken by the comptroller under this section is final and may not be appealed.

(g) Requires the comptroller to adopt rules to implement this section.

SECTION 4. Amends Sections 171.1016(a), (b), and (e), Tax Code, as follows:

(a) Authorizes a taxable entity whose total revenue from its entire business is not more than \$20 million, rather than \$10 million, notwithstanding any other provision of this chapter, to 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 (Rates; Computation of Tax).

(b) Provides that, subject to Section 171.004, 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 multiplying the amount computed under Subdivision (2) by the rate of 0.331 percent, rather than 0.575 percent, or, if applicable, the adjusted tax rate adopted by the comptroller under Section 171.007.

(e) Provides that a reference in this chapter or other law to the rate of the franchise tax means, as appropriate:

(1) 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; or

(2) the adjusted rates under Section 171.007.

SECTION 5. Amends Chapter 171, Tax Code, by adding Subchapter Z as follows:

#### SUBCHAPTER Z. EXPIRATION

Sec. 171.975. EXPIRATION. Provides that this chapter expires on December 31 of the year in which the amount of money determined by the comptroller under Section 171.007(a)(3) is zero or less.

SECTION 6. (a) Provides that Chapter 171, Tax Code, and Subtitle B, Title 2, Tax Code, continue to apply to audits, deficiencies, redeterminations, and refunds of any tax due or collected under Chapter 171 until barred by limitations.

(b) Provides that the expiration of Chapter 171, Tax Code, does not affect:

(1) the status of a taxable entity that has had its corporate privileges, certificate of authority, certificate of organization, certificate of limited partnership, corporate charter, or registration revoked, suit filed against it, or a receiver appointed under Subchapter F, G, or H of that chapter;

(2) the ability of the comptroller of public accounts, secretary of state, or attorney general to take action against a taxable entity under Subchapter F, G, or H of that chapter for actions that took place before the chapter expired; or

(3) the right of a taxable entity to contest a forfeiture, revocation, lawsuit, or appointment of a receiver under Subchapter F, G, or H of that chapter.

SECTION 7. Requires the comptroller to study and report to the legislature on the impact of this Act on the rate of the franchise tax and what further reductions in the rate of that tax may be made following a review of existing exemptions and credits from the franchise tax. Requires the comptroller to provide the report to the legislature not later than December 31, 2016.

SECTION 8. Provides that this Act applies only to a report originally due on or after the effective date of this Act.

SECTION 9. Effective date: January 1, 2016.