

BILL ANALYSIS

Senate Research Center
85R12105 BEF-D

C.S.S.B. 17
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Finance
2/28/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Prior to the 84th Legislature, the franchise tax rate was one percent or 0.5 percent of taxable margin, depending on the business type. Last session, the legislature approved H.B. 32 (D. Bonnen/Nelson) reducing franchise tax rates by 25 percent and over 40 percent for businesses using E-Z filing. Current law has three different franchise tax rates, depending on the type of business and amount of revenue:

- 0.75 percent (most businesses)
- 0.375 percent (retail/wholesale businesses)
- 0.331 percent (E-Z rate)

S.B. 17 adds Section 171.004 to the Tax Code, dedicating half of the general revenue-related funds over five percent growth of general revenue-related funds available for certification in the Comptroller's Biennial Revenue Estimate to franchise tax relief. It adds Section 171.004 to the Tax Code, permanently reducing the franchise tax rate according to the amount of available funds. It adds Section 171.004 to the Tax Code, continuing the franchise tax rate reduction using the available general revenue-related funds biennially until the franchise tax is eliminated. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 17 amends current law relating to the decrease of the rates of the franchise tax under certain circumstances and the expiration of that tax.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas comptroller of public accounts in SECTION 2 (Section 171.004, 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 Section 171.003 (Increase in Rate Requires Voter Approval), 171.004, and 171.1016 (E-Z Computation and Rate) and except as provided by Subsection (b), the rate of the franchise tax is 0.75 percent of taxable margin.
- (b) Provides that, subject to Sections 171.003, 171.004, and 171.1016, the franchise tax rate for certain taxable entities is 0.375 percent of taxable margin.

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

- Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) Defines "biennial revenue estimate," "current biennium," and "succeeding biennium."
- (b) Requires the Texas comptroller of public accounts (comptroller), to determine and include with the biennial revenue estimate:

(1) the amount of total general revenue-related funds that would be available for certification for the succeeding biennium assuming a franchise tax rate adjustment under this section does not take effect in that biennium;

(2) the percentage change between the amount of total general revenue-related funds available for certification for the current biennium, as provided by the biennial revenue estimate, and the amount provided by Subdivision (1) for the succeeding biennium;

(3) if the percentage change under Subdivision (2) is greater than five percent, the amount of total general revenue-related funds that would be available for certification for the succeeding biennium assuming the franchise tax rate adjustment under this section takes effect in the succeeding biennium; and

(4) if the percentage change under Subdivision (2) is greater than five percent, the percentage change between the amount of total general revenue-related funds available for certification for the current biennium, as provided by the biennial revenue estimate, and the amount provided by Subdivision (3) for the succeeding biennium.

(c) Sets forth the required formula for the comptroller to determine the amount of revenue available for franchise tax reduction.

(d) Provides that this subsection applies only if the percentage change determined under Subsection (b)(2) is greater than five percent. Requires the comptroller, not later than the last day of a state fiscal biennium, to determine certain rates that, if effective beginning January 1 of the even-numbered year occurring during the succeeding biennium, are estimated to reduce the amount of revenue collected under this chapter for the succeeding biennium, as compared to the amount of revenue that would be collected if the rates in effect remained in effect, by the amount of revenue available for franchise tax reduction determined under Subsection (c). Requires the comptroller, in determining the rates under this subsection, to proportionally reduce certain rates that are in effect on the date the comptroller makes the determination.

(e) Requires the comptroller, not later than the last day of a state fiscal biennium, to adopt the adjusted tax rates determined under Subsection (d), if applicable, publish notice of the adjusted tax rates in the Texas Register, and provide any other notice relating to the adjusted tax rates that the comptroller considers appropriate.

(f) Provides that the tax rates adopted under Subsection (e) apply to a report originally due on or after January 1 of the even-numbered year described by Subsection (d) and are considered for purposes of this chapter to be the rates provided by and imposed under Section 171.002 or 171.1016, as applicable.

(g) Provides that if the percentage change determined under Subsection (b)(2) is not greater than five percent, the franchise tax rates in effect when the biennial revenue estimate is submitted to the governor and legislature remain in effect for the succeeding biennium unless modified by other law.

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

(i) Provides that notwithstanding any other law, if the franchise tax rates are reduced to zero, 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 those rates are reduced to zero.

(j) Authorizes the comptroller to adopt rules related to making the determinations required by this section.

(k) Provides that in the state fiscal year in which the franchise tax rates are reduced to zero, this chapter expires as provided by Section 171.9321 and not later than January 15 of that year the comptroller is required to take certain actions.

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

SECTION 3. Amends Sections 171.1016(b) and (e), Tax Code, as follows:

(b) Provides that the amount of the tax is computed by:

(1) to (2) makes no changes to these subdivisions;

(3) multiplying the amount computed under Subdivision (2) by the rate of 0.331 percent or, if applicable, an adjusted tax rate determined under Section 171.004.

(e) Provides that a reference in this chapter or other law to the rate of the franchise tax means, as appropriate, certain rates including the adjusted rates under Section 171.004.

SECTION 4. Amends Chapter 171, Tax Code, by adding Subchapter Z, as follows:

SUBCHAPTER Z. EXPIRATION

Sec. 171.9321. EXPIRATION. Provides that this chapter expires on December 31 of the year in which the franchise tax rates under Sections 171.002 and 171.1016 are reduced to zero under Section 171.004(d) or (h).

SECTION 5. (a) Provides that after Chapter 171, Tax Code, expires as provided by Subchapter Z, Chapter 171, Tax Code, as added by this Act, Chapter 171 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 and Sections 171.206 (Confidential Information) through 171.210 (Permitted Use of Confidential Information), Tax Code, continue to apply to information described by those sections.

(b) Provides that the expiration of Chapter 171, Tax Code, does not affect the status of a taxable entity that has had certain measures taken against it under that chapter, the ability of certain public officials to take action against a taxable entity for actions that took place before the chapter expired, or the right of a taxable entity to contest certain measures under that chapter.

SECTION 6. Makes application of this Act prospective to January 1, 2020.

SECTION 7. Effective date: September 1, 2017.