

BILL ANALYSIS

Senate Research Center

S.B. 938
By: Campbell et al.
Finance
5/27/2021
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The primary goal of S.B. 938 is to encourage and support entrepreneurship among Texas veterans. S.B. 938 amends the Tax Code to exempt a veteran-owned business from the franchise tax during the first five years of operation and it will also exempt a veteran-owned business from state business registration fees during the initial start up of the business.

Current law exempts a range of enterprises from the Texas franchise tax—the state's primary business tax. These organizations include charities, homeowners associations, educational organizations, and religious organizations. The exemptions are total and permanent, meaning that a qualifying entity owes no franchise tax to the state. However, there are no current franchise tax exemptions or deductions related to veterans.

(Original Author's/Sponsor's Statement of Intent)

S.B. 938 amends current law relating to an exemption from the franchise tax and certain filing fees for certain businesses owned by veterans during an initial period of operation in the state.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 4 (Section 171.0005, Tax Code) of this bill.

Rulemaking authority previously granted to the Comptroller of Public Accounts of the State of Texas is rescinded, effective January 1, 2026, in SECTION 9 (Section 171.0005, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 12, Business Organizations Code, by adding Section 12.005, as follows:

Sec. 12.005. FEE WAIVER FOR NEW VETERAN-OWNED BUSINESS. Requires the secretary of state to waive all fees imposed under Subchapter D (Filing Fees), Chapter 4 (Filings), for an entity that is a new veteran-owned business as defined by Section 171.0005, Tax Code, until the earlier of the fifth anniversary of the date on which the entity was formed or the date the entity ceases to qualify as a new veteran-owned business as defined by Section 171.0005, Tax Code.

SECTION 2. Amends Section 171.0001(4), Tax Code, as follows:

(4) Defines, for Chapter 171 (Franchise Tax), "beginning date" to mean:

(A) except as provided by Paragraph (B):

(i) and (ii) creates these subparagraphs from existing text and makes a nonsubstantive change; or

(B) for a taxable entity that qualifies as a new veteran-owned business as defined by Section 171.0005, the earlier of the fifth anniversary of the date on which the taxable entity begins doing business in this state or the date the taxable entity ceases to qualify as a new veteran-owned business as defined by Section 171.0005.

SECTION 3. Amends Section 171.0001(4), Tax Code, effective January 1, 2026, to define "beginning date" to mean, for a taxable entity chartered or organized in Texas, the date on which the taxable entity's charter or organization takes effect, and, for any other taxable entity, the date on which the taxable entity begins doing business in Texas.

SECTION 4. Amends Subchapter A, Chapter 171, Tax Code, by adding Section 171.0005, as follows:

Sec. 171.0005. DEFINITION OF NEW VETERAN-OWNED BUSINESS. (a) Provides that a taxable entity is a new veteran-owned business only if the taxable entity is a new business in which each owner is a natural person who:

(1) served in and was honorably discharged from a branch of the United States armed forces; and

(2) provides verification to the Comptroller of Public Accounts of the State of Texas (comptroller) of the person's service and discharge required by Subdivision (1).

(b) Requires the Texas Veterans Commission (TVC) to provide to a person who meets the requirements of Subsection (a)(1) written verification of that status in a form required by the comptroller. Requires the comptroller to adopt rules prescribing the form and content of the verification and the manner in which the verification may be provided to the comptroller.

(c) Provides that for purposes of Subsection (a), a new business is a taxable entity that is chartered or organized or otherwise formed in Texas, and first begins doing business in Texas on or after January 1, 2022.

SECTION 5. Amends Section 171.001, Tax Code, by adding Subsection (d), as follows:

(d) Provides that, notwithstanding Subsection (a) (relating to the imposition of a franchise tax on each taxable entity that does business or that is chartered or organized in Texas), the tax imposed under this chapter is not imposed on a taxable entity that qualifies as a new veteran-owned business as defined by Section 171.0005 until the earlier of the fifth anniversary of the date on which the taxable entity begins doing business in Texas or the date the taxable entity ceases to qualify as a new veteran-owned business as defined by Section 171.0005.

SECTION 6. Amends Section 171.063(g), Tax Code, to provide that the effective date of withdrawal is considered the corporation's beginning date for purposes of determining the corporation's privilege periods and for all other purposes of Chapter 171, except that if a corporation would have been subject to Section 171.001(d) in the absence of a federal tax exemption, and the effective date of the withdrawal of that tax exemption is a date earlier than the date the corporation would have become subject to the franchise tax as provided by Section 171.001(d), the date the corporation would have become subject to the franchise tax under that section is considered the corporation's beginning date for those purposes.

SECTION 7. Amends Section 171.063(g), Tax Code, effective January 1, 2026, to delete the exception created in SECTION 6 under Section 171.063(g), Tax Code, as amended by this Act.

SECTION 8. Amends Section 171.204, Tax Code, by adding Subsection (d), as follows:

(d) Authorizes the comptroller to require a taxable entity on which the tax imposed under this chapter is not imposed solely because of the application of Section 171.001(d) to file an information report stating the taxable entity's beginning date as determined under Section 171.0001(4)(B) and any other information the comptroller determines necessary. Prohibits the comptroller from requiring the taxable entity to report or compute its margin.

SECTION 9. (1) Repealer, effective January 1, 2026: Section 12.005 (Fee Waiver for New Veteran-Owned Business), Business Organizations Code.

(2) Repealer, effective January 1, 2026: Section 171.0005 (Definition of New Veteran-Owned Business), Tax Code.

(3) Repealer, effective January 1, 2026: Section 171.001(d) (relating to the dates for imposition of a franchise tax on a veteran-owned business), Tax Code.

(4) Repealer, effective January 1, 2026: Section 171.204(d) (relating to required information reports by a veteran-owned business), Tax Code.

SECTION 10. Provides that the changes in law made by this Act that take effect January 1, 2026, do not apply to a business that first qualifies before that date as a new veteran-owned business as defined by Section 171.0005, Tax Code, as that section exists immediately before that date. Provides that a business that first qualifies before January 1, 2026, as a new veteran-owned business is governed by the law in effect immediately before that date, and that law is continued in effect for that purpose.

SECTION 11. Provides that the agency is required to implement this Act only if the legislature appropriates money specifically for that purpose. Provides that if the legislature does not appropriate money specifically for that purpose, TVC is authorized, but is not required, to implement this Act using other appropriations available for the purpose.

SECTION 12. Effective date, except as otherwise provided by this Act: January 1, 2022.