

## **BILL ANALYSIS**

C.S.H.B. 28  
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Ways & Means  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties contend that the franchise tax generates insufficient revenue for the state given the burdens it imposes on businesses in Texas. C.S.H.B. 28 seeks to address concerns about those burdens by providing for the reduction or elimination of the franchise tax, as applicable, under certain circumstances.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 2 of this bill.

### **ANALYSIS**

C.S.H.B. 28 amends the Tax Code to require the comptroller of public accounts, as soon as practical after September 1, but before December 15, of each odd-numbered year, to determine the ending balance of general revenue related funds available for certification for the preceding state fiscal biennium and the franchise tax rates that, if applied beginning January 1 of the next year, are estimated to yield an amount of revenue for the state fiscal biennium in which the determination is made equal to the lesser of the ending balance of general revenue related funds available for certification for the preceding state fiscal biennium or \$3.5 billion. The bill requires the comptroller, not later than December 15 of each odd-numbered year, to take the following actions: determine the adjusted franchise tax rates, which are the rates in effect on the date the comptroller makes the determination regarding the rates estimated to yield that amount less the determined tax rate; and with certain exceptions adopt the adjusted tax rates, publish notice of the adjusted rates in the Texas Register, and provide any other notice relating to the adjusted rates that the comptroller considers appropriate.

C.S.H.B. 28 requires the comptroller, in determining the adjusted tax rates, to ensure that the adjusted rates reflect proportional reductions to the franchise tax rates in effect at the time the determinations are made. The bill establishes that the adjusted tax rates apply to a report originally due on or after January 1 of the even-numbered year following the date the rates are adopted and are considered to be the rates provided by and imposed under applicable provisions relating to the franchise tax. The bill provides for the expiration of the franchise tax on December 31 of a given year if in that state fiscal year the adjusted franchise tax rates are less than 15 percent of the franchise tax rates in effect on September 1, 2017, and requires the comptroller, not later than December 15 of that year, to publish notice in the Texas Register that an entity previously subject to the franchise tax is not required to file or pay the tax in connection with a report that would otherwise be originally due on or after January 1 of the next year and to

provide any other notice relating to the expiration of the tax that the comptroller considers appropriate. The bill makes an action taken by the comptroller under the bill's provisions final and unappealable and requires the comptroller to adopt rules to implement the bill's provisions relating to adjustment of the franchise tax rates. The bill provides for the applicability of the adjusted tax rates under the bill to the computation of the taxable margin for the franchise tax under the standard formula and the E-Z computation formula.

C.S.H.B. 28 establishes that provisions relating to the franchise tax and statutory provisions relating to state taxation enforcement and collection continue to apply after the expiration of the franchise tax to audits, deficiencies, redeterminations, and refunds of any franchise tax due or collected until barred by limitations and that certain provisions related to confidentiality continue to apply to information under those provisions. The bill, with regard to the expiration of the tax, expressly does not affect the status of a taxable entity that has had certain sanctions imposed against it, a suit filed against it, or a receiver appointed for it; the ability of the comptroller, secretary of state, or attorney general to take action against a taxable entity under the forfeiture or enforcement provisions of the franchise tax for actions that took place before the expiration; or the right of a taxable entity to contest a forfeiture, revocation, lawsuit, or appointment of a receiver, all with regard to certain provisions of the franchise tax. The bill applies only to a franchise tax report originally due on or after January 1, 2020.

### **EFFECTIVE DATE**

September 1, 2019.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 28 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### **INTRODUCED**

SECTION 1. Sections 171.002(a) and (b), Tax Code, are amended.

SECTION 2. Subchapter A, Chapter 171, Tax Code, is amended by adding Section 171.004 to read as follows:

Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) As soon as practical after September 1, but before December 15, of each odd-numbered year, the comptroller shall determine:

(1) the ending balance of general revenue related funds available for certification for the preceding state fiscal biennium; and

(2) the tax rates for purposes of Sections 171.002(a) and (b) and Section 171.1016 that, if applied beginning January 1 of the next year, are estimated to yield an amount of revenue for the state fiscal biennium in which the determination is made equal to the lesser of:

(A) the ending cash balance determined

#### **HOUSE COMMITTEE SUBSTITUTE**

SECTION 1. Same as introduced version.

SECTION 2. Subchapter A, Chapter 171, Tax Code, is amended by adding Section 171.004 to read as follows:

Sec. 171.004. ADJUSTMENT OF TAX RATES. (a) As soon as practical after September 1, but before December 15, of each odd-numbered year, the comptroller shall determine:

(1) the ending balance of general revenue related funds available for certification for the preceding state fiscal biennium; and

(2) the tax rates for purposes of Sections 171.002(a) and (b) and Section 171.1016 that, if applied beginning January 1 of the next year, are estimated to yield an amount of revenue for the state fiscal biennium in which the determination is made equal to the lesser of:

(A) the ending balance determined under

under Subdivision (1); or  
(B) \$3.5 billion.  
(b) Not later than December 15 of each odd-numbered year, the comptroller shall:  
(1) determine the adjusted tax rates, which are the tax rates under Sections 171.002(a) and (b) and Section 171.1016 in effect on the date the comptroller makes the determination under Subsection (a)(2) less the tax rates determined under Subsection (a)(2); and  
(2) except as provided by Subsection (e):  
(A) adopt the adjusted tax rates determined under Subdivision (1);  
(B) publish notice of the adjusted tax rates in the Texas Register; and  
(C) provide any other notice relating to the adjusted tax rates that the comptroller considers appropriate.  
(c) In determining the tax rates under Subsection (a)(2) and the adjusted tax rates under Subsection (b)(1), the comptroller shall ensure that the adjusted tax rates reflect proportional reductions to the tax rates in effect under Sections 171.002(a) and (b) and Section 171.1016 at the time the determinations are made.  
(d) The adjusted tax rates adopted under Subsection (b):  
(1) apply to a report originally due on or after January 1 of the even-numbered year following the date the rates are adopted; and  
(2) are considered for purposes of this chapter to be the rates provided by and imposed under Section 171.002 or 171.1016, as applicable.  
(e) In the state fiscal year in which the adjusted tax rates determined under Subsection (b)(1) are less than 15 percent of the tax rates under Sections 171.002(a) and (b) and Section 171.1016 in effect on September 1, 2017:  
(1) this chapter expires on December 31 of that year; and  
(2) not later than December 15 of that year the comptroller shall:  
(A) publish notice in the Texas Register that an entity previously subject to the tax imposed under this chapter is not required to file or pay the tax in connection with a report that would otherwise be originally due on or after January 1 of the next year; and  
(B) provide any other notice relating to the expiration of the tax that the comptroller

Subdivision (1); or  
(B) \$3.5 billion.  
(b) Not later than December 15 of each odd-numbered year, the comptroller shall:  
(1) determine the adjusted tax rates, which are the tax rates under Sections 171.002(a) and (b) and Section 171.1016 in effect on the date the comptroller makes the determination under Subsection (a)(2) less the tax rates determined under Subsection (a)(2); and  
(2) except as provided by Subsection (e):  
(A) adopt the adjusted tax rates determined under Subdivision (1);  
(B) publish notice of the adjusted tax rates in the Texas Register; and  
(C) provide any other notice relating to the adjusted tax rates that the comptroller considers appropriate.  
(c) In determining the tax rates under Subsection (a)(2) and the adjusted tax rates under Subsection (b)(1), the comptroller shall ensure that the adjusted tax rates reflect proportional reductions to the tax rates in effect under Sections 171.002(a) and (b) and Section 171.1016 at the time the determinations are made.  
(d) The adjusted tax rates adopted under Subsection (b):  
(1) apply to a report originally due on or after January 1 of the even-numbered year following the date the rates are adopted; and  
(2) are considered for purposes of this chapter to be the rates provided by and imposed under Section 171.002 or 171.1016, as applicable.  
(e) In the state fiscal year in which the adjusted tax rates determined under Subsection (b)(1) are less than 15 percent of the tax rates under Sections 171.002(a) and (b) and Section 171.1016 in effect on September 1, 2017:  
(1) this chapter expires on December 31 of that year; and  
(2) not later than December 15 of that year the comptroller shall:  
(A) publish notice in the Texas Register that an entity previously subject to the tax imposed under this chapter is not required to file or pay the tax in connection with a report that would otherwise be originally due on or after January 1 of the next year; and  
(B) provide any other notice relating to the expiration of the tax that the comptroller

considers appropriate.

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

(g) The comptroller shall adopt rules to implement this section.

SECTION 3. Sections 171.1016(b) and (e), Tax Code, are amended.

SECTION 4. Chapter 171, Tax Code, is amended.

SECTION 5. (a) After Chapter 171, Tax Code, expires as provided by Subchapter Z, Chapter 171, Tax Code, as added by this Act:

(1) the provisions of former Chapter 171 and the provisions of Subtitle B, Title 2, Tax Code, continue to apply to audits, deficiencies, redeterminations, and refunds of any tax due or collected under former Chapter 171 until barred by limitations; and

(2) former Sections 171.206 through 171.210, Tax Code, continue to apply to information described by those sections.

(b) 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, a suit filed against it, or a receiver appointed under former 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 former 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 former Subchapter F, G, or H of that chapter.

SECTION 6. This Act applies only to a report originally due on or after January 1, 2018.

considers appropriate.

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

(g) The comptroller shall adopt rules to implement this section.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. This Act applies only to a report originally due on or after January 1, 2020.

SECTION 7. This Act takes effect  
September 1, 2017.

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September 1, 2019.