

BILL ANALYSIS

Senate Research Center

S.B. 42
By: Ogden
Finance
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As Filed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

S.B. 42 relates to financing public schools in this state and reducing school property taxes. It decreases the permissible school district maintenance tax rates, provides for restrictions on property valuation and state aid to school districts, reforms the business franchise tax and specifies that the revenue from the tax be deposited to the credit of the foundation school fund, increases the state sales and use tax, provides for an additional sales tax holiday, and expands the exemption to school supplies.

S.B. 42 also increases the motor vehicle and boat sales and use tax, requires that the sales tax collected on the sales of a used vehicle be calculated according to a standard presumption value, provides for a motor fuel tax transfer delay, removes the hotel occupancy tax exemption for hotel stays of 30 days or more, increases the excise taxes on cigarettes and alcohol, increases the mixed beverage gross receipts tax, transfers certain tobacco settlement proceeds into dedicated general revenue accounts, and allows for electronic pull-tab bingo.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 2B.07 (Section 171.213, Tax Code), SECTION 2B.10, SECTION 2E.44 (Section 171.904, Tax Code), SECTION 3A.04 (Section 151.433, Tax Code), and SECTION 3B.07 (Section 152.0412, Tax Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3A.04 (Section 151.433, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. SCHOOL PROPERTY TAX RELIEF

SECTION 1.01. Amends Section 45.003, Education Code, by amending Subsection (d) and adding Subsections (d-1), (d-2), and (e), as follows:

(d) Requires a proposition submitted to authorize the levy of maintenance taxes to include the question of whether the governing board or commissioners court may levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools, at a rate not to exceed the rate state in the proposition, which is prohibited from being more than a certain sum.

(d-1) Requires a proposition submitted to authorize the levy of maintenance taxes, notwithstanding Subsection (d), for the following tax years, to include the question of whether the governing board or commissioners court is authorized to levy, assess, and collect annual ad valorem taxes for the further maintenance of public schools, at a rate not to exceed the rate stated in the proposition, which may not be more than a certain sum.

(d-2) Provides that Subsection (d-1) and this subsection expire January 1, 2009.

(e) Provides that an election held before January 1, 2005, authorizing a maintenance tax at a rate of at least \$1.30 on the \$100 valuation of taxable property in the district is sufficient to authorize a rate of \$1.30 or less for the 2005 tax year. Provides that an

election held before January 1, 2006, authorizing a maintenance tax at a rate of at least \$1.11 on the \$100 valuation of taxable property in the district is sufficient to authorize a rate of \$1.11 or less for the 2006, 2007, and 2008 tax years. Provides that an election held before January 1, 2009, authorizing a maintenance tax at a rate of at least \$1.05 on the \$100 valuation of taxable property in the district is sufficient to authorize a rate of \$1.05 or less for the 2009 and subsequent tax years.

SECTION 1.02. (a) Provides that the changes in law made by this article apply to the maintenance and operations tax rate of a school district beginning with the 2005 tax year.

(b) Provides that, if before the effective date of this article, the governing body of a school district adopted an ad valorem tax rate for the district for the 2005 tax year under the law in effect immediately before the effective date of this article, and the adopted ad valorem tax rate included a rate for maintenance and operations expenses that is greater than the maximum tax rate for the 2005 tax year permitted under this article, certain results ensue.

(c) Requires the tax assessor for the school district, if tax bills for the 2005 tax year were sent by the tax assessor for a school district pursuant to a tax rate invalidated under Subsection (b)(1) of this section, to prepare and mail a new tax bill for the 2005 tax year to each taxpayer of the district in the manner required by Chapter 31, Tax Code. Requires the school district, if a taxpayer pays the taxes for the 2005 tax year pursuant to a tax rate invalidated under Subsection (b)(1) of this section, to refund any difference between the tax paid and the tax due at the rate adopted under Subsection (b)(2) of this section.

(d) Provides that, if this Act is passed by the legislature without receiving a vote of two-thirds of all the members elected to each house, any action taken before the effective date of this article in preparation for the implementation of the changes in law made by this article, including adoption of a maintenance and operations tax rate, by an officer or employee or the governing body of a school district that the officer, employee, or governing body determines is necessary or appropriate and that the officer, employee, or governing body would have been authorized to take had this article been in effect at the time of the action is validated as of the effective date of this article. Provides that any public notice required by Chapter 26, Tax Code, or Chapter 44, Education Code, given before the effective date of this article that includes an additional statement that the tax rate for the school district will be adopted in accordance with the changes in law made by this article is validated as of the effective date of this article.

ARTICLE 2. FRANCHISE TAX

PART A. CORPORATE OWNERSHIP IN PARTNERSHIPS

SECTION 2A.01. Amends Section 113.001, Tax Code, by adding Subsection (c), to provide that any tax, interest, or penalties due to the state under Chapter 171 by a person who is subject to that tax by application of Section 171.001(d-1) are additionally secured by a lien on the person's interest in the partnership doing business in this state whose activities cause the person to be subject to that tax, including a general or limited partnership interest that the person is considered to own under Sections 171.001(e-1) and (f).

SECTION 2A.02. Amends Section 171.001(b), by adding Subdivisions (6-a) and (6-b) to define "partner" and "partnership."

SECTION 2A.03. Amends Section 171.001, Tax Code, by adding Subsections (d-1), (e-1), (f), and (g), as follows:

(d-1) Defines a corporation that "does business in this state."

(e-1) Provides that, for purposes of Subsection (d-1), a partner who owns an interest in an upper tier partnership is considered to be both a partner in the upper tier partnership and a partner in each lower tier partnership.

(f) Provides that, for purposes of Subsection (d-1)(3), a limited partner is considered to hold a controlling interest if any related party owns a controlling interest, directly or indirectly, in the partnership. Defines "controlling interest" and "related party."

(g) Provides that if a corporate partner subject to tax under Subsection (d-1) asserts in a refund claim or a redetermination hearing that the tax imposed under this chapter violates the United States Constitution or federal law because of the application of Subsection (d-1), the franchise tax is imposed on the partnership doing business in this state for the privilege periods for which the assertion is made and the franchise tax liability of the partnership is required to be calculated as provided by Sections 171.101(d) and 171.110(d-3).

SECTION 2A.04. Amends Section 171.101, Tax Code, by adding Subsection (d), as follows:

(d) Provides that, for purposes of Section 171.001(g), net taxable capital for a partnership, to the extent the partnership is owned directly or indirectly by a corporation, is computed by making certain calculations.

SECTION 2A.05. Amends Section 171.1032(c), Tax Code, to require a corporation to include in its gross receipts computed under Subsection (a) the corporation's share of the gross receipts of each partnership and joint venture in which the corporation directly or indirectly owns an interest, rather than of which the corporation is a part, apportioned to this state as though the corporation directly earned the receipts. Provides that a corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed and apportioned to this state as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned. Makes conforming changes.

SECTION 2A.06. Amends Section 171.1051(d), Tax Code, to provide that a corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed and apportioned to this state as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned. Makes conforming changes.

SECTION 2A.07. Amends Section 171.110, Tax Code, by adding Subsections (d-2) and (d-3), as follows:

(d-2) Requires a corporation, in computing net taxable earned surplus, to include the corporation's share of a partnership's items of income or loss, without regard to whether the partnership is taxed as a corporation for federal income tax purposes.

(d-3) Provides that, for purposes of Section 171.001(g), reportable federal taxable income for a partnership is the partnership's income as an entity, to the extent that the partnership is owned directly or indirectly by a corporation, as determined under rules adopted by the comptroller of public accounts (comptroller) using principles similar to the standards applies to a corporation.

SECTION 2A.08. Amends Section 171.1121, Tax Code, by adding Subsection (f), to provide that a corporation that owns an interest in an upper tier partnership is considered to be a partner in both the upper tier partnership and each lower tier partnership, and the corporation's share of the gross receipts of each partnership of which it is a partner is computed and apportioned to this state as though the corporation directly earned the receipts at the partnership tier at which the receipts were originally earned.

SECTION 2A.09. Effective date, this part: November 1, 2005, and applies to reports originally due on or after that date.

PART B. APPLICATION TO PARTNERSHIPS

SECTION 2B.01. (a) Provides that this part takes effect only if a court enters a final judgment that the tax imposed under Chapter 171, Tax Code, violates the United States Constitution or federal law because of the application of Section 171.001(d-1), Tax Code.

(b) Provides that this part takes effect on the earlier of the date that the final judgment under Subsection (a) of this section is upheld on appeal without any possibility of further appeal or is not appealed and is no longer subject to appeal, and applies to a report originally due on or after that date.

SECTION 2B.02. Amends Section 113.001, Tax Code, by adding Subsection (c-1), to provide that any tax, interest, or penalties due to the state under Chapter 171 by a person who is subject to that tax by application of Sections 171.001(a)(3)-(5) are additionally secured by a lien on the person's interest in the partnership doing business in this state whose activities cause the person to be subject to that tax.

SECTION 2B.03. Amends Section 171.001(a), Tax Code, to set forth the entities that a franchise tax is imposed on.

SECTION 2B.04. Amends Section 171.001(b)(3), Tax Code, to redefine "corporation."

SECTION 2B.05. Amends Section 171.101, Tax Code, by adding Subsection (d-1), to provide that net taxable capital for a partnership, to the extent the partnership is owned directly or indirectly by a corporation, is computed by making certain calculations.

SECTION 2B.06. Amends Section 171.110, Tax Code, by adding Subsection (d-4), to provide that federal taxable income for a partnership is the partnership's income as an entity, to the extent that the partnership is owned directly or indirectly by a corporation, as determined under rules adopted by the comptroller using principles similar to the standards applied to a corporation.

SECTION 2B.07. Amends Subchapter E, Chapter 171, Tax Code, by adding Section 171.213, as follows:

Sec. 171.213. REGISTRATION OF LIMITED PARTNERSHIPS. (a) Requires each limited partnership doing business in this state to file with the comptroller of public accounts (comptroller) a disclosure that identifies each of its limited partners that own at least a 20 percent interest in the partnership.

(b) Authorizes the comptroller to adopt rules to implement this section.

SECTION 2B.08. Amends Subchapter F, Chapter 171, Tax Code, by adding Section 171.2515, as follows:

Sec. 171.2515. FORFEITURE OF RIGHT OF PARTNERSHIP TO TRANSACT BUSINESS IN THIS STATE. (a) Authorizes the comptroller, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of the corporate privileges of a corporation, to forfeit the right of a partnership subject to a tax imposed by this chapter to transact business in this state.

(b) Provides that the provisions of this subchapter, including Section 171.255, that apply to the forfeiture of corporate privileges apply to the forfeiture of a partnership's right to transact business in this state.

SECTION 2B.09. Repealer: Sections 113.001(c) (Tax Liability Secured By Lien), 171.001(d-1), (e-1), (f), (g) (Tax Imposed), 171.101(d) (Determination of Net Taxable Capital), 171.1032(c) (relating to a corporation's computation of its gross receipts), 171.1051(d) (relating to a corporation's computation of its gross receipts), 171.110(d-2)-(d-3) (Determination of Net Taxable Earned Surplus), and 171.1121(f) (Gross Receipts for Taxable Earned Surplus), Tax Code.

SECTION 2B.10. (a) Prohibits income or losses and related gross receipts occurring before one year before the effective date of this part, for a partnership becoming subject to the franchise tax under this part, from being considered for purposes of the earned surplus component or for apportionment purposes for the taxable capital component.

(b) Requires the comptroller to adopt rules relating to establishing the applicable reporting periods for partnerships becoming subject to the franchise tax under this part.

PART C. ADD-BACK OF CERTAIN PAYMENTS

SECTION 2C.01. Amends Subchapter C, Chapter 171, Tax Code, by adding Section 171.1001, as follows:

Sec. 171.1001. DEFINITIONS. Defines "arm's length," "control" or "controlling interest," "interest payment," "management fee," "related party," "royalty payment," and "valid business purpose."

SECTION 2C.02. Amends Section 171.103, Tax Code, to delete existing text relating to the sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to taxation.

SECTION 2C.03. Amends Section 171.1032(a), Tax Code, to delete existing text relating to the sale of tangible personal property shipped from this state to a purchaser in another state in which the seller is not subject to any tax on, or measured by, net income, without regard to whether the tax is imposed.

SECTION 2C.04. Amends Subchapter C, Chapter 171, Tax Code, by adding Sections 171.1101-171.1103, as follows:

Sec. 171.1101. ADD-BACK OF PAYMENTS TO RELATED PARTY. Requires an entity subject to the tax under this chapter, except as provided by Section 171.1102, to add back to reportable federal taxable income any royalty payments, interest payments, and management fees made to a related party during the period on which the earned surplus is based to the extent deducted in computing reportable federal taxable income.

Sec. 171.1102. SAFE HARBORS FOR CERTAIN PAYMENTS AND FEES. (a) Provides that an entity subject to the tax under this chapter is not required to add back royalty payments to a related party to a certain extent.

(b) Provides that an entity subject to the tax under this chapter is not required to add back interest payments to a related party to a certain extent.

(c) Authorizes an entity subject to the tax under this chapter to deduct payments for royalty, interest, or management fees received from a related party if the payments are included in the income of the related party and a tax on the income is paid to this state, another state or states, or both this state and another state or states, each of which has a tax rate equal to or greater than the rate under Section 171.002(a)(2).

(d) Provides that an entity subject to the tax under this chapter is not required to add back a management fee paid to a related party to the extent that the transaction was done for a valid business purpose and the fee was paid at arm's length.

Sec. 171.1103. ADJUSTMENT TO INCOME AND EXPENSES BY COMPTROLLER. (a) Authorizes the comptroller to distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among two or more organizations, trades, or businesses, whether or not incorporated, whether or not organized in the United States, and whether or not affiliated, if certain conditions are satisfied.

(b) Requires the comptroller to consider the administrative and judicial interpretations of Section 482, Internal Revenue Code, in administering this section.

PART D. TRANSITIONAL PROVISIONS FOR PARTS A, B, AND C

SECTION 2D.01. (a) Provides that subject to other provisions of this section, Parts A, B, and C of this article apply to reports originally due on or after the effective date of those parts.

(b) Sets forth certain provisions applicable to a corporation becoming subject to the franchise tax under this article.

SECTION 2D.02. Provides that Parts A, B, and C of this article take effect, except as provided by those parts, November 1, 2005, and apply to reports originally due on or after that date.

PART E. REVISED FRANCHISE TAX

SECTION 2E.01. Provides that this part takes effect as provided by Section 2E.49 of this part.

SECTION 2E.02. Amends Section 171.001, Tax Code, as follows:

Sec. 171.001. TAX IMPOSED. (a) Sets forth the entities on which a franchise tax is imposed. Makes conforming changes.

(b) Redefines "beginning date," "charter," and "Internal Revenue Code." Makes conforming changes.

(c) Makes no changes to this subsection.

(d) Requires the comptroller, on or before November 1 of each even-numbered year, to submit proposed legislation to update the definition of "Internal Revenue Code" in Subsection (b) to certain officials.

SECTION 2E.03. Amends Sections 171.0011(a), (b), and (c), Tax Code, as follows:

(a) Makes conforming changes.

(b) Provides that the additional tax is equal to 4.25, rather than 4.5, percent of the taxable entity's, rather than corporation's, net taxable earned surplus computed under this subsection. Makes conforming changes.

(c) Makes a conforming change.

SECTION 2E.04. Amends Subchapter A, Chapter 171, Tax Code, by adding Section 171.0013, as follows:

Sec. 171.0013. TAXABLE ENTITY. (a) Defines "taxable entity."

(b) Defines "taxable entity."

(c) Sets forth the conditions under which an entity is a passive entity.

(d) Sets forth, for purposes of Subsection (c), the conditions under which an entity is engaged in the active conduct of a trade or business.

(e) Provides that, for purposes of Subsection (d)(1), activities performed by an entity include activities performed by persons outside the entity, including independent contractors, to the extent the persons perform the activities on behalf of the entity and those activities constitute all or part of the entity's trade or business.

SECTION 2E.05. Amends Sections 171.002(a), (b), and (d), as follows:

- (a) Sets forth the rates of the franchise tax and makes a conforming change.
- (b) Makes conforming changes.
- (d) Provides that a taxable entity is not required to pay any tax and is not considered to owe any tax for a period if certain conditions are satisfied. Makes conforming changes.

SECTION 2E.06. Amends Subchapter B, Chapter 171, Tax Code, by adding Section 171.088, as follows:

Sec. 171.088. EXEMPTION--NONCORPORATE TAXABLE ENTITY ELIGIBLE FOR CERTAIN EXEMPTIONS. Provides that a taxable entity that is not a corporation but that, because of its activities, would qualify for a specific exemption under this subchapter if it were a corporation qualifies for the exemption and is exempt from the tax in the same manner and under the same conditions as a corporation.

SECTION 2E.07. Amends Section 171.101, Tax Code, to provide that the net taxable capital of a taxable entity, rather than corporation, is computed by certain methods. Deletes existing text relating to certain computation methods for net taxable capital of a corporation. Makes conforming changes.

SECTION 2E.08. Amends Section 171.103, Tax Code, as follows:

Sec. 171.103. (a) Creates this subsection from existing text. Makes conforming changes. Deletes existing text relating to sale of tangible property that is shipped from this state.

(b) Provides that if related parties which are wholly owned subsidiaries of the same ultimate parent have collectively as of May 1, 2005, made an investment of at least \$100 million in a new manufacturing capital improvement project located in this state for which the total capital investment for real and personal property will be in excess of \$400 million and tangible personal property is sold from one related party to another and ultimately resold to an unrelated party in the normal course of business in the form or condition in which it is acquired or as an attachment to other tangible personal property, then the buyer or purchaser for purposes of Subsection (a)(1) is deemed to be the first unrelated purchaser to whom the tangible personal property is resold.

SECTION 2E.09. Amends Section 171.1032, Tax Code, as follows:

Sec. 171.1032. (a) Makes conforming changes.

(b) Makes conforming changes. Deletes Subsection (c) relating to a certain requirement for a corporation to include gross receipts.

(d) Provides that if related parties which are wholly owned subsidiaries of the same ultimate parent have collectively as of May 1, 2005, made an investment of at least \$100 million in a new manufacturing capital improvement project located in this state for which the total capital investment for real and personal property will be in excess of \$400 million and tangible personal property is sold from one related party to another and ultimately resold to an unrelated party in the normal course of business in the form or condition in which it is acquired or as an attachment to other tangible personal property, then the buyer or purchaser for purposes of Subsection (a)(1) is deemed to be the first unrelated purchaser to whom the tangible personal property is resold.

SECTION 2E.10. Amends Section 171.104, Tax Code, to make conforming changes.

SECTION 2E.11. Amends Section 171.105, Tax Code, to make conforming changes.

SECTION 2E.12 Amends Section 171.1051, Tax Code, to make conforming changes.

SECTION 2E.13. Amends Sections 171.106(a)-(d), Tax Code, to make conforming changes.

SECTION 2E.14. Amends Section 171.1061, Tax Code, to make conforming changes.

SECTION 2E.15. Amends Sections 171.107(b), (d), and (e), to make conforming and nonsubstantive changes.

SECTION 2E.16. Amends Sections 171.108(b), (d), and (e), Tax Code, as added by Section 4, H.B. No. 2201, Acts of the 79th Legislature, Regular Session, 2005, to make conforming changes.

SECTION 2E.17. Amends Section 171.109, Tax Code, by amending Subsections (a), (b)-(f), (h), (j), (k), (m), and (n), by reenacting and amending Subsection (g), as amended by Chapters 801 and 1198, Acts of the 71st Legislature, Regular Session, 1989, and by adding Subsection (a-2) and (o), as follows:

(a) Redefines "surplus" and defines "taxable capital." Makes conforming changes.

(a-2) Defines "distribution."

(b)-(e) Makes conforming changes.

(f) Requires a taxable entity making a distribution, rather than corporation declaring dividends, to exclude the distribution, rather than those dividends, from its taxable capital, and a taxable entity receiving a distribution, rather than dividends, to include the distribution, rather than those dividends, in its gross receipts and taxable capital as of the earlier of a certain date.

(g), (h), (j), (k), (m), and (n) Makes conforming changes.

(o) Requires that notwithstanding any other subsection in this section, there be excluded from the taxable capital of a parent or investor taxable entity the direct or indirect investment by that parent or investor taxable entity in the capital of one or more other taxable entities in which that parent or investor taxable entity has a "controlling interest" as that term is defined in Section 171.1001.

SECTION 2E.18. Amends Section 171.110, Tax Code, as follows:

Sec. 171.110 (a) Sets forth the manner in which the net taxable earned surplus of a taxable entity is computed. Deletes existing Subsections (b) and (c) relating to the requirement to add the compensation to certain persons and the qualification of a parent subsidiary.

(d) Provides that reportable federal taxable income for a partnership is the partnership's income as an entity as determined under rules adopted by the comptroller using principles similar to the standards applied to a corporation. Provide that reportable federal income for an entity other than a corporation or partnership is determined under rules adopted by the comptroller using principles similar to the standards applied to a corporation. Makes a conforming change.

(d-1) Authorizes a real estate investment trust to, in determining its reportable federal taxable income for purposes of this section, deduct dividends paid to shareholders. Provides that in this subsection, a real estate investment trust is an entity that complies with Sections 856-860, Internal Revenue Code.

(e) and (f) Makes conforming changes. Deletes existing Subsection (g) relating to an approved Employee Stock Ownership Plan.

(h) Makes a conforming change. Deletes existing Subsections (i) and (j) relating to any person designated to be an officer being presumed to be an officer if that person meets certain criteria and the authority of a corporation to rebut a certain presumption.

(k) Makes no changes to this subsection.

(l) Makes no changes to this subsection.

(m) Provides that for purposes of this section, compensation for a taxable entity is the amount the taxable entity entered as total payments in Part 1, line 1, of the federal Internal Revenue Service Form 940 or 940-EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return, and guaranteed payments to partners, during the period on which earned surplus is based, except under certain circumstances.

(n) Defines "assigned employee," "client company," and "staff leasing services company."

SECTION 2E.19. Amends Sections 171.112(b)-(f) and (h), Tax Code, to make conforming changes.

SECTION 2E.20. Amends 171.1121, Tax Code, to make conforming changes.

SECTION 2E.21. Amends Section 171.113, Tax Code, as follows:

Sec. 171.113. New heading: ALTERNATE METHOD OF DETERMINING TAXABLE CAPITAL AND GROSS RECEIPTS FOR CERTAIN TAXABLE ENTITIES. Provides that this section applies to certain entities, including a taxable entity other than a corporation that has 35 or fewer owners. Makes conforming changes.

SECTION 2E.22. Amends Section 171.151, Tax Code, to make conforming changes.

SECTION 2E.23. Amends Section 171.152(c), Tax Code, to make a conforming change.

SECTION 2E.24. Amends Sections 171.153(a) and (c), Tax Code, to make conforming changes.

SECTION 2E.25. Amends Section 171.1532, Tax Code, to make conforming changes.

SECTION 2E.26. Amends Section 171.154, Tax Code, to make a conforming change.

SECTION 2E.27. Amends Section 171.201, Tax Code, to set forth the information contained in the initial report.

SECTION 2E.28. Amends Sections 171.202(a)-(c), (e), (f), and (i), Tax Code, to make conforming changes.

SECTION 2E.29. Amends Section 171.2022, Tax Code, to make conforming changes.

SECTION 2E.30. Amends Section 171.204, Tax Code, to make conforming changes.

SECTION 2E.31. Amends Section 171.205, Tax Code, to make conforming changes.

SECTION 2E.32. Amends Section 171.206, Tax Code, to provide that certain information is confidential and is prohibited from being made to open to public inspection.

SECTION 2E.33. Amends Section 171.208, Tax Code, to provide that an owner, rather than shareholder, who has access to a certain report is prohibited from making known in a manner not permitted by law the amount or source of the taxable entity's income, profits, losses, expenditures, or other information in the report relating to the financial condition of the taxable entity. Makes conforming changes.

SECTION 2E.34. Amends Section 171.209, Tax Code, to make conforming changes.

SECTION 2E.35. Amends Section 171.211, Tax Code, to make conforming changes.

SECTION 2E.36. Amends the heading to Subchapter F, Chapter 171, Tax Code, to read as follows:

SUBCHAPTER F. FORFEITURE OF CORPORATE AND BUSINESS PRIVILEGES

SECTION 2E.37. Amends Subchapter F, Chapter 171, Tax Code, by adding Section 171.2516, as follows:

Sec. 171.2516. **FORFEITURE OF RIGHT OF PARTNERSHIP TO TRANSACT BUSINESS IN THIS STATE.** (a) Authorizes the comptroller of public accounts (comptroller) to, for the same reasons and using the same procedures the comptroller uses in relation to the forfeiture of the corporate privileges of a corporation, forfeit the right of a partnership subject to a tax imposed by this chapter to transact business in this state.

(b) Provides that the provisions of this subchapter, including Section 171.255 (Liability of Director and Officers, that apply to the forfeiture of corporate privileges apply to the forfeiture of a partnership's right to transact business in this state.

SECTION 2E.38. Amends Section 171.351, Tax Code, to make conforming changes.

SECTION 2E.39. Amends Section 171.353, Tax Code, to make conforming changes.

SECTION 2E.40. Amends Section 171.354, Tax Code, to make conforming changes.

SECTION 2E.41. Amends Section 171.362(a), (d), and (e), Tax Code, to make conforming changes.

SECTION 2E.42. Amends Sections 171.363(a) and (b), Tax Code, to make conforming changes.

SECTION 2E.43. Amends Section 171.401, Tax Code, as follows:

Sec. 171.401. New heading: **REVENUE DEPOSITED IN FOUNDATION SCHOOL FUND.** Makes conforming changes.

SECTION 2E.44. Amends Chapter 171, Tax Code, by adding Subchapter V, as follows:

SUBCHAPTER V. TAX CREDIT FOR CERTAIN PHYSICIANS

Sec. 171.901. **DEFINITIONS.** Defines "physician."

Sec. 171.902. **QUALIFICATION.** (a) Entitles certain persons that participate in the Medicaid program or the Children's Health Insurance Program (CHIP) as providers of health care services to a credit in the amount provided by Subsection (b) against the taxes imposed under this chapter for the period on which earned surplus is based.

(b) Provides that the amount of credit is equal to 20 percent of the total amount of payments certain persons received from payments under the Medicaid's or CHIP during the period on which earned surplus is based that can be verified, if necessary.

Sec. 171.903. **LIMITATIONS.** Sets forth limitations on the amount of a credit certain persons may receive.

Sec. 171.904. RULES. Requires the comptroller to adopt rules to implement this subchapter. Requires the Health and Human Services Commission (HHSC) to assist the comptroller in the formulation and adoption of the rules.

SECTION 2E.45. Amends Chapter 171, Tax Code, by adding Subchapter W, as follows:

SUBCHAPTER W. APPLICATION OF REFUNDS AND CREDITS TO NONCORPORATE
TAXABLE ENTITIES

Sec 171.921. APPLICATION OF REFUNDS AND CREDITS TO NONCORPORATE TAXABLE ENTITIES. Provides that a taxable entity that is not a corporation but that, because of its activities, would qualify for a specific refund or credit under this chapter if it were a corporation qualifies for the refund or credit in the same manner and under the same conditions as a corporation.

SECTION 2E.46. Repealer: Sections 113.001(c) and (c-1) (Tax Liability Secured by Lien); Sections 171.001(d-1), (e-1), and (f)-(g) (Tax Imposed); Sections 171.110(d-2), (d-3), and (d-4), (Determination of Net Taxable Earned Surplus); Section 171.1121(f) (Gross Receipts for taxable Earned Surplus); Section 171.213 (unknown); and Section 171.2515 (unknown), Tax Code.

SECTION 2E.47. Provides that if a credit under Chapter 171, Tax Code, as amended by this part, is found by a court in a final judgment upheld on appeal or no longer subject to appeal to be unconstitutional, the credit is disallowed for all entities on or after the date the final judgment was entered by the court and an entity is not entitled to and is prohibited from applying for the credit on or after that date for any reporting period beginning before, on, or after that date.

SECTION 2E.48. (a) Provides that this section applies to a suit brought by an entity subject to the tax under Chapter 171, Tax Code, as amended by this part, contending that the imposition of the tax on the entity is unconstitutional.

(b) Requires the suit to be brought in a district court in Travis County.

(c) Authorizes the judgment of the district court to be reviewed only by direct appeal to the supreme court filed on or before the 15th day after the date the district court enters its judgment. Requires the district court to try the suit and the supreme court to hear any appeal relating to the suit as expeditiously as possible.

SECTION 2E.49. (a) Provides that this part applies to reports originally due on or after the effective date of this part, subject to other provisions of this section.

(b) Provides that certain entities that meet certain criteria are subject to the franchise tax under this part.

(c) Provides that for purposes of this part, an existing partnership is considered as continuing if it is not terminated.

(d) Provides that a partnership is considered terminated only if no part of any business, financial operation, or venture of the partnership continues to be carried on by any of its partners in a partnership.

(e) Provides that for a merger or consolidation of two or more partnerships, the resulting partnership is, for purposes of this part, considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership.

(f) Provides that for a division of a partnership into two or more partnerships, the resulting partnerships, other than any resulting partnership the members of which had an interest of 50 percent or less in the and profits of the prior partnership, are for purposes of this part, considered a continuation of the prior partnership.

ARTICLE 3. SALES AND USE TAXES

PART A. STATE SALES AND USE TAX

SECTION 3A.01. Amends Section 151.0031, Tax Code, as follows:

Sec. 151.0031. Defines "computer program."

SECTION 3A.02. Amends section 151.051(b), Tax Code, to make a nonsubstantive change.

SECTION 3A.03. Amends Section 151.0101(a), Tax Code, to redefine "taxable services."

SECTION 3A.04 (a) Amends Subchapter I, Chapter 151, Tax Code, by adding Section 151.433, as follows:

Sec. 151.433. TAX REIMBURSEMENT FOR FINANCIAL ASSISTANCE AND FOOD STAMP RECIPIENTS. (a) Provides that this section applies to a person who meets certain criteria.

(b) Requires the comptroller and the executive commissioner of HHSC by joint rule to establish a program to reimburse a person to which this section applies 30 percent of the estimated tax the person will pay under this chapter during a state fiscal year.

(c) Requires the comptroller by rule, not later than August 15 of each year, using available statistical data, to estimate the amount of taxes a person to which this section applies will pay under this chapter during the next state fiscal year. Requires the comptroller, in estimating that amount, to consider certain matters.

(d) Requires the comptroller, based on the estimations made under Subsection (c), to develop and adopt a table specifying by income bracket and number of dependents certain amounts.

(e) Requires the comptroller to provide the table to the executive commissioner of HHSC as soon as possible after the date the table is adopted. Requires the executive commissioner, using the table, to provide to each person to which this section applies reimbursement in a certain form of payment.

(f) Requires the reimbursement provided under Subsection (e) to be made available to the person using the electronic benefits transfer systems through which the person is receiving the financial or nutritional assistance. Provides that except as provided by Subsection (g), the amount of the monthly reimbursement is equal to one-twelfth of the amount determined under Subsection (d)(2).

(g) Prohibits the total amount of reimbursements provided under this section from exceeding \$75 million each state fiscal year, notwithstanding any other law. Requires the comptroller and the executive commissioner of HHSC to take any necessary and certain action to ensure that this limit is not exceeded.

(h) Entitles a person described by Subsection (a)(2) to reimbursement provided under this section to the same extent the person would be entitled to that reimbursement if a sanction were not applied against the person under Section 31.0032 (Payment of Assistance for Performance), Human Resources Code.

(b) Amends Subchapter B, Chapter 31, Human Resources Code, as follows:

Sec. 31.0321. EXCLUSION OF CERTAIN TAX REIMBURSEMENTS. Prohibits HHSC from considering any reimbursement of estimated taxes to which a person may be entitled under Section 151.433, Tax Code, in determining certain factors.

(c) Amends Chapter 33, Human Resources Code, by adding Section 33.028, as follows:

Sec. 33.028. EXCLUSION OF CERTAIN TAX REIMBURSEMENTS. Prohibits HHSC from considering any reimbursement of estimated taxes to which a person may be entitled under Section 151.433, Tax Code, in determining whether the person meets the household income and resource requirements for eligibility for food stamps.

(d) Authorizes delay of this section's implementation until any necessary federal waivers or authorizations are obtained.

SECTION 3A.05. Provides that there are exempted from the taxes imposed by Chapter 151, Tax Code, as amended by this act, the receipts from the sale, use, storage, rental or other consumption in this state of services that became subject to the taxes because of the terms of this part and that are subject of a written contract or bid entered into on or before July 1, 2005. Provides that the exemption provided by this section expires July 1, 2007.

SECTION 3A.06. Makes application of this part prospective.

SECTION 3A.07. (a) Effective date, this part: September 1, 2005, or the first day of the first month following the 91st day after adjournment, except as otherwise provided by this part.

(b) Effective date of Section 151.051(b), Tax Code, as amended by this part: October 1, 2005, or the first day of the first month following the 91st day after adjournment, except as otherwise provided by this part.

PART B. MOTOR VEHICLE SALES AND USE TAX

SECTION 3B.01. Amends Section 152.002, Tax Code, by adding Subsection (f), to provide that the total consideration of a used motor vehicle is the amount on which the tax is computed as provided by Section 152.0412, notwithstanding Subsection (a).

SECTION 3B.02. Amends Section 152.021(b), Tax Code, to increase the sales tax rate on motor vehicle retail sales from 6.25 percent to 6.75 percent.

SECTION 3B.03. Amends Section 152.022(b), Tax Code, to increase the use tax rate on motor vehicles retail sales brought back into this state from 6/26 percent to 6.75 percent.

SECTION 3B.04. Amends Section 152.026(b), Tax Code, to make a conforming change.

SECTION 3B.05. Amends Section 152.028(b), Tax Code, to increase the use tax rate on motor vehicles brought back into this state from 6.25 percent to 6.75 percent.

SECTION 3B.06. Amends Section 152.041(a), Tax Code, to make a conforming change.

SECTION 3B.07. Amends Subchapter C, Chapter 152, Tax Code, by adding Section 152.0412, as follows:

Sec. 152.0412. STANDARD PRESUMPTIVE VALUE; USE BY TAX ASSESSOR-COLLECTOR. (a) Defines "standard presumptive value."

(b) Requires a county tax assessor-collector to compute the tax on the amount paid for a motor vehicle if the amount paid that is subject to the tax imposed by this chapter is equal to or greater than the standard presumptive value of the vehicle.

(c) Requires a county tax assessor-collector to compute the tax on the standard presumptive value of a motor vehicle, if the amount paid for a motor vehicle subject to the tax imposed by the chapter is less than the standard presumptive value, unless the purchaser establishes the retail value of the vehicle as provided by Subsection (d).

(d) Sets forth requirements for a county tax assessor-collector in computing the tax imposed by this chapter on the retail value of a motor vehicle.

(e) Requires certain motor vehicle dealers to provide a certified appraisal of the retail value of a motor vehicle. Requires the comptroller by rule to establish a fee that a dealer may charge for providing the certified appraisal. Requires the county tax assessor-collector to retain a copy of a certified appraisal received under this section for a period prescribed by the comptroller.

(f) Requires TxDOT to maintain information on the standard presumptive value of motor vehicles as part of TxDOT's registration and title system. Requires TxDOT to update the information at least quarterly each calendar year.

(g) Provides that this section does not apply to a transaction described by Section 152.024 or 152.025.

SECTION 3B.08. Sets forth specific actions required of TxDOT for proper implementation of Section 152.0412, Tax Code, as added by this part, to be completed by November 1, 2005.

SECTION 3B.09. (a) Effective date, this part: September 1, 2005, or the first day of the first month following the 91st day after adjournment, except as provided by Subsection (b).

(b) Provides that Section 152.0412, Tax Code, as added by this part, takes effect November 1, 2005.

PART C. BOAT AND BOAT MOTOR SALES AND USE TAX

SECTION 3C.01. Amends Section 160.021(b), Tax Code, to increase the retail sales tax on boats and boat motors from 6.25 percent to 6.75 percent.

SECTION 3C.02. Amends Section 160.022(b), Tax Code, to increase the use tax on boats and boat motors from 6.25 percent to 6.75 percent.

SECTION 3C.03. Effective date, this part: September 1, 2005, or the first day of the first month following the 91st day after adjournment.

ARTICLE 4. TAX ON TOBACCO PRODUCTS AND ALCOHOL

PART A. CIGARETTE AND TOBACCO PRODUCTS

SECTION 4A.01. Amends Section 154.021(b), Tax Code to increase the tax rate per thousand on cigarettes weighing three pounds or less from \$20.50 to \$50.50.

SECTION 4A.01A. Amends Section 154.021(b), Tax Code, effective September 1, 2007, to increase the tax rate per thousand on cigarettes weighing three pounds or less from \$20.50 to \$70.50.

SECTION 4A.02. Amends Section 155.021(b), Tax Code, to increase the tax rate on cigars, as follows:

- from one cent to 1.14 cents per 10 or fraction of 10 on cigars weighing three pounds or less per thousand;
- from \$7.50 to \$8.52 per thousand on specific cigars;
- from \$11 to \$12.50 per thousand on specific cigars; and
- from \$15 to \$17.04 per thousand on specific cigars.

SECTION 4A.03. Amends Section 155.0211(b), Tax Code, to increase the tax rate for tobacco products other than cigars from 35.213 percent to 40 percent of the manufacturer's list price.

SECTION 4A.04. Effective date, this part: September 1, 2005, or the first day of the first month following the 91st day after adjournment, except as otherwise provided by this part.

PART B. ALCOHOL TAXES

SECTION 4B.01. Amends Section 201.03, Alcoholic Beverage Code, to increase the tax imposed on the first sale of distilled spirits from \$2.40 to \$2.88 per gallon. Increases the minimum tax imposed from five to six cents per package of distilled spirits containing two ounces or less. Increases the minimum tax imposed on each package of distilled spirits containing less than one-half pint but more than two ounces from 12.2 to 14.64 cents.

SECTION 4B.02. Amends Section 201.04, Alcoholic Beverage Code, to increase the tax imposed on the first sale of vinous liquor (that does not contain over 14 percent alcohol by volume) from 20.4 to 24.48 cents per gallon. Increases the tax imposed on vinous liquor containing more than 14 percent alcohol by volume from 40.8 to 48.96 cents per gallon. Increases the tax imposed on artificially carbonated and natural sparkling vinous liquor from 51.6 to 61.92 cents per gallon.

SECTION 4B.03. Amends Section 201.42, Alcoholic Beverage Code, to increase the tax imposed on the first sale of ale and malt liquor from 19.8 to 23.76 cents per gallon.

SECTION 4B.04. Amends Section 203.01, Alcoholic Beverage Code, to increase the tax imposed on the first sale of beer from \$6 to \$7.20 per barrel.

SECTION 4B.05. Amends Section 183.021, Tax Code, to increase the tax imposed on mixed beverages from 14 to 16.8 percent.

SECTION 4B.06. Effective date, this part: September 1, 2005, or the first day of the first month following the 91st day after adjournment.

ARTICLE 5. STATEWIDE REFERENDUM

SECTION 5.01. Requires the voters to be permitted to vote in a referendum on the imposition of the franchise tax on all business entities, other than sole proprietorships, at a specific rate to provide for an additional 19-cent reduction in the property tax rate, beginning in tax year 2006. Requires the vote to be held at the general election on November 8, 2005, and sets forth required language for the ballot.

SECTION 5.02. Requires notice of the election to be given in the same manner that notice of proposed constitutional amendments is given. Requires returns of the votes cast on the proposition to be prepared and canvassed in the same manner as the returns on the proposed constitutional amendments.

SECTION 5.03. Provides that it is the intent of the legislature that, although a referendum on matters of statewide importance is rarely conducted, the will of the people in relation to this particular issue should be honored. Makes application of Part E, Article 2, contingent upon approval of the proposition by the voters. Provides that if the proposition is approved by the voters, Part E, Article 2 takes effect January 1, 2007.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Effective date: September 1, 2005, or the first day of the first month following the 91st day after adjournment, unless otherwise specified by a section, part, or article of this bill.