

SUBJECT: Franchise tax on revenue earned by out-of-state banks in Texas

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 10 ayes — Oliveira, McCall, Bonnen, Y. Davis, Heflin, Hilbert, Keffer, T. King, Ramsay, Sadler

0 nays

1 absent — Craddick

WITNESSES: For — Dale Craymer, Texas Taxpayers and Research Association

Against — None

On — Catherine Ghiglieri, Texas Department of Banking

BACKGROUND: In 1995, the Texas Legislature enacted an “opt out” bill to prohibit interstate branch banking in Texas. Specifically, no Texas bank could merge with an out-of-state bank or establish a branch in another state. Likewise, no out-of-state bank could establish a branch in Texas or acquire a Texas bank. Unlike other corporations, all banking corporations and savings and loan associations operating in Texas had to be domiciled in Texas, that is, organized under Texas law with headquarters in the state.

The “opt out” bill was permitted under the federal Riegle-Neal Interstate Banking and Branching Efficiency Act (Riegle-Neal) of 1994. All state “opt out” legislation had to be enacted before June 1, 1997. However, the federal Comptroller of the Currency (OCC) ruled that the Texas “opt out” law did not meet the requirements of Riegle-Neal, and thus the state could not prohibit the merger of state and out-of-state banks. Specifically, the OCC concluded that Texas law did not apply equally to all out-of-state banks because Sec. 92.401et seq., Finance Code specifically allowed state savings banks from other states to merge with Texas state savings banks. The state ultimately lost a court challenge to the OCC decision. Beginning in May 1998, the Texas Banking Commission began accepting applications to engage in interstate branching.

The franchise tax is imposed on each corporation that does business in this state. Sec. 171.1031, Tax Code, provides that interest and dividends received by a banking corporation or a savings and loan association are gross receipts for the purposes of franchise tax calculation if the company has its commercial domicile in this state.

Before the advent of interstate branch banking, all banks doing business in Texas were domiciled here. Now that banks have been allowed to merge with out-of-state banks and out-of-state banks have been allowed to branch into Texas, a growing number of banking corporations doing business here are not paying franchise taxes on revenues earned in Texas.

DIGEST:

HB 2067 would expand the definitions of a banking corporation and a savings and loan association to include any bank organized under the laws of this state, another state, another country, or under federal law. The bill would repeal sec. 171.1031, Tax Code, which apportions taxable capital and earned surplus of banks and savings and loans and applies only to institutions domiciled in Texas. The bill also would make conforming changes to sec. 171.106, Tax Code, governing the calculation of franchise taxes.

The bill would require the banking commissioner to appoint a conservator to pay the delinquent franchise tax of a banking corporation or savings and loan association organized under Texas law. The bill otherwise would continue to exempt banking corporations and savings and loan associations domiciled in Texas from the forfeiture of corporate privileges provisions of the Tax Code (subchapter F, sec. 171.251, et seq.) for delinquent franchise tax, as well as from the forfeiture of charter or certificate of authority provisions of the Tax Code (subchapter G, sec. 171.301, et seq.) for delinquent franchise tax.

The bill would take effect January 1, 2000.

**SUPPORTERS
SAY:**

HB 2066 simply would require all banks and savings and loans doing business in this state to pay their fair share of franchise taxes. It would revise the law to recognize the new situation in Texas in which interstate banking is allowed and out-of-state banks no longer need to establish a Texas domicile. Banks domiciled in other states now have an unfair competitive advantage over banks domiciled here because current law allows them to avoid paying taxes in this state. As the fiscal note points out, the net positive impact of enacting this bill would be \$5.8 million in fiscal 2000-01.

HB 2067 would level the playing field not only among financial institutions but among all corporations. Other corporations with headquarters out-of-state still pay Texas franchise taxes on interest and income earned here. Out-of-state banks should be treated no differently.

As more out-of-state banks have purchased smaller, in-state banks, franchise revenue available from the important segment of the economy has declined. This bill would end this trend.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The companion measure, SB 1065 by Fraser, was reported favorably by the Senate Finance Committee on March 25.