

## **BILL ANALYSIS**

Senate Research Center  
84R197 TJB-D

S.B. 138  
By: Perry  
Finance  
1/22/2015  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The franchise tax was revised last decade to base computation of the tax on a taxable entity's gross margin. In the time since, interested parties have indicated that the tax burden for many businesses has increased, the tax is more complicated to calculate than the previous method of computation, and the tax has faced litigation for some equity issues as a result of restructuring. S.B. 138 seeks to phase out the franchise tax over the next four years by cutting the rates of the tax by 25 percent each year until the tax is eliminated.

As proposed, S.B. 138 amends current law relating to the phaseout and repeal of the franchise tax, and lowers the rates of the tax.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. (a) Amends Sections 171.002(a) and (b), Tax Code, effective January 1, 2016, as follows:

(a) Provides that, subject to Sections 171.003 (Increase in Rate Requires Voter Approval) 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, rather than one percent, of taxable margin.

(b) Provides that, subject to Sections 171.003 and 171.1016 the rate of the franchise tax is 0.38 percent, rather than 0.5 percent, of taxable margin for those taxable entities primarily engaged in retail or wholesale trade.

(b) Provides that this section applies only to a report originally due on or after January 1, 2016.

SECTION 2. (a) Amends Sections 171.002(a) and (b), Tax Code, effective January 1, 2017, as follows:

(a) Provides that, subject to Sections 171.003 and 171.1016 and except as provided by Subsection (b), the rate of the franchise tax is to 0.5 percent, rather than one percent, of taxable margin.

(b) Provides that, subject to Sections 171.003 and 171.1016, the rate of the franchise tax is 0.25 percent, rather than 0.5 percent, of taxable margin for those taxable entities primarily engaged in retail or wholesale trade.

(b) Provides that this section applies only to a report originally due on or after January 1, 2017.

SECTION 3. (a) Amends Sections 171.002(a) and (b), Tax Code, effective January 1, 2018, as follows:

(a) Provides that, subject to Sections 171.003 and 171.1016 and except as provided by Subsection (b), the rate of the franchise tax is 0.25 percent, rather than one percent, of taxable margin.

(b) Provides that, subject to Sections 171.003 and 171.1016, the rate of the franchise tax is 0.13 percent, rather than 0.5 percent, of taxable margin for those taxable entities primarily engaged in retail or wholesale trade.

(b) Provides that this section applies only to a report originally due on or after January 1, 2018.

SECTION 4. (a) Amends Section 171.1016(b), Tax Code, effective January 1, 2016, as follows:

(b) Provides that the amount of the tax for which a taxable entity that elects to pay the tax as provided by this section is liable is computed by:

(1) and (2) Makes no change to these subdivisions; and

(3) multiplying the amount computed under Subdivision (2) by the rate of 0.43 percent, rather than 0.575 percent.

(b) Provides that this section applies only to a report originally due on or after January 1, 2016.

SECTION 5. (a) Amends Section 171.1016(b), Tax Code, effective January 1, 2017, as follows:

(b) Provides that the amount of the tax for which a taxable entity that elects to pay the tax as provided by this section is liable is computed by:

(1) and (2) Makes no change to these subdivisions; and

(3) multiplying the amount computed under Subdivision (2) by the rate of 0.29 percent, rather than 0.575 percent.

(b) Provides that this section applies only to a report originally due on or after January 1, 2017.

SECTION 6. (a) Amends Section 171.1016(b), Tax Code, Effective January 1, 2018, as follows:

(b) Provides that the amount of the tax for which a taxable entity that elects to pay the tax as provided by this section is liable is computed by:

(1) and (2) Makes no change to these subdivisions; and

(3) multiplying the amount computed under Subdivision (2) by the rate of 0.14 percent, rather than 0.575 percent.

(b) Provides that this section applies only to a report originally due on or after January 1, 2018.

SECTION 7. Amends Section 171.362(f), Tax Code, as follows:

(f) Requires that, in addition to any other penalty authorized by this section, a taxable entity that owes a tax for a reporting period and fails to file a report for the reporting period as required by this chapter pay a penalty of \$50. Provides that the penalty provided by this subsection is assessed without regard to whether the taxable entity subsequently files the report. Deletes text providing that the penalty provided by this subsection is

assessed without regard to whether any taxes were due from the taxable entity for the reporting period under the required report. Makes a nonsubstantive change.

**SECTION 8. (a) Repealer: Chapter 171 (Franchise Tax), Tax Code.**

(b) Requires that a taxable entity that is subject to the franchise tax imposed under Chapter 171, Tax Code, on December 31, 2018, file a final franchise tax return and pay a transitional tax as required by this subsection on or before May 15, 2019. Provides that the transitional tax is equal to the tax the taxable entity would have paid in 2019 under Chapter 171, Tax Code, if Chapter 171, Tax Code, had not been repealed. Provides that the provisions of Chapter 171, Tax Code, relating to the computation and payment of the franchise tax remain in effect after the repeal of Chapter 171, Tax Code, by this section for the purposes of computing and paying the transitional tax required by this subsection.

(c) Provides that Chapter 171, Tax Code, 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, including the tax due as provided by Subsection (b) of this section, until barred by limitations.

(d) Provides that the repeal 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, suit filed against it, or a receiver appointed under Subchapter F, G, or H of that chapter;

(2) the ability of the comptroller, secretary of state, or attorney general to take action against a taxable entity under Subchapter F (Forfeiture of Corporate and Business Privileges), G (Forfeiture of Charter or Certificate of Authority), or H (Enforcement) of that chapter for actions that took place before the repeal; or

(3) the right of a taxable entity to contest a forfeiture, revocation, lawsuit, or appointment of a receiver under Subchapter F, G, or H of that chapter.

(e) Effective date, this section: January 1, 2019.

**SECTION 9.** Provides that except as otherwise provided by this Act, this Act applies only to a report originally due on or after the effective date of this Act.

**SECTION 10.** Effective date: January 1, 2016, except as otherwise provided by this Act.