

BILL ANALYSIS

C.S.H.B. 2391
By: England
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The revised Texas franchise tax was developed to pull in a broader base of businesses to support vital governmental functions in Texas. Under the revised franchise tax, a business is allowed to deduct from its gross revenue the primary costs of production for products and services. A company selling tangible products is allowed to deduct a traditional "cost of goods sold," which includes raw materials and labor used to create a product. Similarly, a service company is allowed to deduct the cost of labor, which is the main economic input of the "service" produced. One industry, however, does not fit into either category as the current margins tax is structured.

Under the current franchise tax, live entertainment event promoters are not allowed to deduct the cost of the entertainment which is the primary cost of their product. Event promoters are contractually obligated to pay a performing artist a fixed fee or a specified percentage of gross ticket revenue. Promoters are unable to deduct the fees paid to the performing artists which form the basis for all of the promoter's ticket revenue.

C.S.H.B. 2391 requires a taxable entity that is a qualified live event promotion company, for purposes of the franchise tax, to exclude from its total revenue a payment made to an artist in connection with the provision of a live entertainment event or live event promotion services. The bill requires a taxable entity that makes a payment to an artist for performing at a live entertainment event in Texas to withhold from the payment an amount equal to the payment multiplied by the maximum franchise tax rate.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTIONS 3 and 4 of this bill.

ANALYSIS

C.S.H.B. 2391 amends the Tax Code, in a provision on determining the total revenue from the entire business for franchise tax purposes, to require a taxable entity that is a qualified live event promotion company to exclude from its total revenue, to a certain extent, a payment made to an artist in connection with the provision of a live entertainment event or live event promotion services. The bill defines "qualified live event promotion company" as a taxable entity that receives at least 60 percent of the entity's annual total revenue from the provision or arrangement for the provision of three or more live event promotion services, maintains a permanent nonresidential office from which the live event promotion services are provided or arranged, employs 10 or more full-time employees during all or part of the period for which taxable margin is calculated, does not provide services for a wedding or carnival, and is not a movie theater.

C.S.H.B. 2391 requires a taxable entity, if it makes a payment to an artist that is also a taxable entity for performing at a live entertainment event in Texas, to withhold from the payment an amount equal to the payment multiplied by the maximum franchise tax rate, as required by rule

of the comptroller of public accounts. The bill requires a taxable entity that withholds an amount in connection with such a payment to remit the amount to the comptroller at the time the taxable entity files the entity's annual franchise tax report. The bill requires the comptroller to refund to the artist any amount by which the amount remitted exceeds the amount of franchise tax owed by the artist. The bill establishes that if a taxable entity fails to withhold a required amount in connection with a payment, the taxable entity and the artist are jointly and severally liable to the comptroller for the amount of franchise tax owed by the artist in connection with the payment. The bill requires the comptroller, if the total amount collected from the taxable entity and the artist exceeds the amount of franchise tax owed by the artist, to refund the excess to the taxable entity up to the amount collected from the taxable entity and to refund any remaining excess to the artist.

C.S.H.B. 2391 establishes that a taxable entity that withholds an amount in connection with a payment and fails to remit all or part of the amount to the comptroller is liable to the comptroller for the amount of franchise tax owed by the artist in connection with the payment and is liable to the artist for an amount equal to the amount by which the amount withheld exceeds the amount remitted to the comptroller in connection with the payment. The bill establishes that the artist is not liable to the comptroller for the amount of the franchise tax owed in connection with payment that exceeds the amount remitted. The bill establishes that a taxable entity is not required to withhold an amount in connection with a payment if the artist provides to the taxable entity a written statement from the comptroller that the artist is not a taxable entity subject to the franchise tax.

C.S.H.B. 2391 requires the comptroller to adopt rules to administer provisions relating to withholding payment to an artist not later than December 1, 2009, and establishes that the provision containing that requirement takes effect September 1, 2009. The bill applies only to a report originally due on or after January 1, 2010.

EFFECTIVE DATE

Except as otherwise provided, January 1, 2010.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2391 adds definitions for "artist," "live entertainment event," "qualified live event promotion company," and "live event promotion services" not included in the original.

C.S.H.B. 2391 requires a taxable entity that is a qualified live event promotion company to exclude a specified amount from its total revenue, whereas the original requires an exclusion by a taxable entity of any type, not just a qualified live event promotion company. The substitute differs from the original by requiring the entity to exclude a payment made to an artist in connection with the provision of a live entertainment event or live event promotion services, whereas the original requires an entity to exclude payments made to a performing artist, entertainment act, touring show or exhibition under a contract to perform at a ticketed event in Texas in which the contract provides that the artist, act, show, or exhibition will receive a guaranteed dollar amount or a percentage of the revenue from ticket sales.

C.S.H.B. 2391 adds provisions not included in the original relating to a withholding by a taxable entity, from a payment made to an artist, of a specified amount for franchise tax payment. The substitute adds provisions not included in the original requiring a remittance to the comptroller of the withheld amount, requiring a refund if the withholding exceeds the amount due, establishing the extent to which the taxable entity or artist has liability for owed tax, and containing other provisions relating to such withholding and tax payment.

C.S.H.B. 2391 adds a provision not in the original granting rulemaking authority to the comptroller of public accounts. The substitute adds a deadline, not in the original, for the adoption of such rules, and differs from the original by making the deadline provision effective September 1, 2009, whereas the rest of the substitute and the entirety of the original take effect January 1, 2010.