

By: England, Taylor, Hilderbran, et al.

H.B. No. 2391

Substitute the following for H.B. No. 2391:

By: Hilderbran

C.S.H.B. No. 2391

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax exclusion for contractual flow-through funds paid to certain performing artists.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 171.0001, Tax Code, is amended by adding Subdivisions (1-a), (10-a), (10-b), and (11-b) to read as follows:

(1-a) "Artist" means a natural person or an entity that contracts to perform or entertain at a live entertainment event.

(10-a) "Live entertainment event" means an event that occurs on a specific date to which tickets are sold in advance by a third-party vendor and at which:

(A) a natural person or a group of natural persons, physically present at the venue, performs for the purpose of entertaining a ticket holder who is present at the event;

(B) a traveling circus or animal show performs for the purpose of entertaining a ticket holder who is present at the event; or

(C) a historical, museum-quality artifact is on display in an exhibition.

(10-b) "Live event promotion services" means services related to the promotion, coordination, operation, or management of a live entertainment event. The term includes services related to:

(A) the provision of staff for the live entertainment event; or

1           (B) the scheduling and promotion of an artist  
2 performing or entertaining at the live entertainment event.

3           (11-b) "Qualified live event promotion company" means  
4 a taxable entity that:

5           (A) receives at least 60 percent of the entity's  
6 annual total revenue from the provision or arrangement for the  
7 provision of three or more live event promotion services;

8           (B) maintains a permanent nonresidential office  
9 from which the live event promotion services are provided or  
10 arranged;

11           (C) employs 10 or more full-time employees during  
12 all or part of the period for which taxable margin is calculated;

13           (D) does not provide services for a wedding or  
14 carnival; and

15           (E) is not a movie theater.

16           SECTION 2. Section 171.1011, Tax Code, is amended by adding  
17 Subsection (g-5) to read as follows:

18           (g-5) A taxable entity that is a qualified live event  
19 promotion company shall exclude from its total revenue, to the  
20 extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), a  
21 payment made to an artist in connection with the provision of a live  
22 entertainment event or live event promotion services.

23           SECTION 3. Subchapter D, Chapter 171, Tax Code, is amended  
24 by adding Section 171.155 to read as follows:

25           Sec. 171.155. WITHHOLDING FROM PAYMENT TO ARTIST. (a) A  
26 taxable entity that makes to an artist that is also a taxable entity  
27 a payment for performing at a live entertainment event in this state

1 shall withhold from the payment an amount equal to the payment  
2 multiplied by the maximum franchise tax rate under this chapter, as  
3 required by comptroller rule.

4 (b) A taxable entity that withholds an amount under  
5 Subsection (a) in connection with a payment shall remit the amount  
6 to the comptroller at the time the taxable entity files the entity's  
7 annual report under this chapter.

8 (c) The comptroller shall refund to the artist any amount by  
9 which the amount remitted under Subsection (b) exceeds the amount  
10 of franchise tax owed by the artist.

11 (d) If a taxable entity fails to withhold an amount as  
12 required by Subsection (a) in connection with a payment, the  
13 taxable entity and the artist are jointly and severally liable to  
14 the comptroller for the amount of franchise tax owed by the artist  
15 in connection with the payment. If the total amount collected from  
16 the taxable entity and the artist under this subsection exceeds the  
17 amount of franchise tax owed by the artist, the comptroller shall  
18 refund the excess to the taxable entity up to the amount collected  
19 from the taxable entity under this subsection, and shall refund any  
20 remaining excess to the artist.

21 (e) A taxable entity that withholds an amount under  
22 Subsection (a) in connection with a payment and fails to remit all  
23 or part of the amount to the comptroller is liable to the  
24 comptroller for the amount of franchise tax owed by the artist in  
25 connection with the payment and is liable to the artist for an  
26 amount equal to the amount by which the amount withheld exceeds the  
27 amount remitted to the comptroller in connection with the payment.

1 The artist is not liable to the comptroller for the amount of  
2 franchise tax owed in connection with the payment that exceeds the  
3 amount remitted under Subsection (b).

4 (f) A taxable entity is not required to withhold an amount  
5 under Subsection (a) in connection with a payment if the artist  
6 provides the taxable entity a written statement from the  
7 comptroller that the artist is not a taxable entity subject to the  
8 franchise tax under this chapter.

9 (g) The comptroller shall adopt rules to administer this  
10 section.

11 SECTION 4. Not later than December 1, 2009, the comptroller  
12 of public accounts shall adopt rules under Section 171.155, Tax  
13 Code, as added by this Act.

14 SECTION 5. This Act applies only to a report originally due  
15 on or after January 1, 2010.

16 SECTION 6. (a) Except as provided by Subsection (b) of this  
17 section, this Act takes effect January 1, 2010.

18 (b) Section 4 of this Act takes effect September 1, 2009.