

By: King of Parker

H.B. No. 2485

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the inclusion of gas and electric transmission and
3 distribution costs in the cost of goods sold for purposes of the
4 franchise tax.

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

6 SECTION 1. Sections 171.1012(c) and (e), Tax Code, are
7 amended to read as follows:

8 (c) The cost of goods sold includes all direct costs of
9 acquiring or producing the goods, including:

10 (1) labor costs;

11 (2) cost of materials that are an integral part of
12 specific property produced;

13 (3) cost of materials that are consumed in the
14 ordinary course of performing production activities;

15 (4) handling costs, including costs attributable to
16 processing, assembling, repackaging, and inbound transportation
17 costs;

18 (5) storage costs, including the costs of carrying,
19 storing, or warehousing property, subject to Subsection (e);

20 (6) depreciation, depletion, and
21 amortization, reported on the federal income tax return on which
22 the report under this chapter is based, to the extent associated
23 with and necessary for the production of goods, including recovery
24 described by Section 197, Internal Revenue Code;

1 (7) the cost of renting or leasing equipment,
2 facilities, or real property directly used for the production of
3 the goods, including pollution control equipment and intangible
4 drilling and dry hole costs;

5 (8) the cost of repairing and maintaining equipment,
6 facilities, or real property directly used for the production of
7 the goods, including pollution control devices;

8 (9) costs attributable to research, experimental,
9 engineering, and design activities directly related to the
10 production of the goods, including all research or experimental
11 expenditures described by Section 174, Internal Revenue Code;

12 (10) geological and geophysical costs incurred to
13 identify and locate property that has the potential to produce
14 minerals;

15 (11) taxes paid in relation to acquiring or producing
16 any material, or taxes paid in relation to services that are a
17 direct cost of production;

18 (12) the cost of producing or acquiring electricity
19 sold;

20 (12-a) transmission or distribution costs relating to:

21 (A) electricity sold by an electric utility,
22 retail electric provider, or power marketer, as those terms are
23 defined by Section 31.002, Utilities Code; or

24 (B) natural gas sold by a gas utility, as that
25 term is defined by Section 101.003 or 121.001, Utilities Code; and

26 (13) a contribution to a partnership in which the
27 taxable entity owns an interest that is used to fund activities, the

1 costs of which would otherwise be treated as cost of goods sold of
2 the partnership, but only to the extent that those costs are related
3 to goods distributed to the taxable entity as goods-in-kind in the
4 ordinary course of production activities rather than being sold.

5 (e) The cost of goods sold does not include the following
6 costs in relation to the taxable entity's goods:

7 (1) the cost of renting or leasing equipment,
8 facilities, or real property that is not used for the production of
9 the goods;

10 (2) selling costs, including employee expenses
11 related to sales;

12 (3) distribution costs, including outbound
13 transportation costs, but not including transmission or
14 distribution costs described by Subsection (c)(12-a);

15 (4) advertising costs;

16 (5) idle facility expense;

17 (6) rehandling costs;

18 (7) bidding costs, which are the costs incurred in the
19 solicitation of contracts ultimately awarded to the taxable entity;

20 (8) unsuccessful bidding costs, which are the costs
21 incurred in the solicitation of contracts not awarded to the
22 taxable entity;

23 (9) interest, including interest on debt incurred or
24 continued during the production period to finance the production of
25 the goods;

26 (10) income taxes, including local, state, federal,
27 and foreign income taxes, and franchise taxes that are assessed on

1 the taxable entity based on income;

2 (11) strike expenses, including costs associated with
3 hiring employees to replace striking personnel, but not including
4 the wages of the replacement personnel, costs of security, and
5 legal fees associated with settling strikes;

6 (12) officers' compensation;

7 (13) costs of operation of a facility that is:

8 (A) located on property owned or leased by the
9 federal government; and

10 (B) managed or operated primarily to house
11 members of the armed forces of the United States; and

12 (14) any compensation paid to an undocumented worker
13 used for the production of goods. As used in this subdivision:

14 (A) "undocumented worker" means a person who is
15 not lawfully entitled to be present and employed in the United
16 States; and

17 (B) "goods" includes the husbandry of animals,
18 the growing and harvesting of crops, and the severance of timber
19 from realty.

20 SECTION 2. This Act applies only to a report originally due
21 on or after the effective date of this Act.

22 SECTION 3. This Act takes effect January 1, 2010.