

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 29, 2009

TO: Honorable Rene Oliveira, Chair, House Committee on Ways & Means

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3935 by King, Phil (Relating to the classification of certain entities as primarily engaged in retail or wholesale trade for purposes of the franchise tax.), **As Introduced**

No fiscal implication to the State is anticipated.

No known taxable entities currently meeting the first two requirements for being primarily engaged in trade are calculating tax based on 1 percent of taxable margin because the taxable entity offers telecommunication services. In the future, that situation could exist if a taxable entity in trade began to offer telecommunications services, in which case there would be an indeterminate revenue loss to the Property Tax Relief Fund. Any loss to the Property Tax Relief Fund will have to be made up with General Revenue of the same amount to fund property tax relief.

The bill would amend Chapter 171 of the Tax Code (franchise tax) relating to the classification of a taxable entity as primarily engaged in retail or wholesale trade (trade).

Under current law a taxable entity cannot be classified as primarily engaged in trade if the entity provides retail or wholesale utilities, including telecommunications services. The bill would allow a taxable entity meeting the other requirements for classification in trade to have that classification if the taxable entity provides retail or wholesale telecommunication services.

The bill would take effect on January 1, 2010, and apply to a report originally due on or after that date.

Under current law a taxable entity that meets the first two requirements of Section 171.002(c) for being primarily engaged in trade, but that offers telecommunications services, would not be classified in trade and would owe tax based on 1 percent of taxable margin. The bill would allow such a taxable entity to calculate the tax based on 0.5 percent of taxable margin.

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Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, MN, SD, SM