

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 15, 2009

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

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

IN RE: HB4269 by Howard, Charlie (Relating to the definition of passive entity for purposes of the franchise tax.), **As Introduced**

The bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of \$29,926,000 for the 2010-11 biennium. 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.

General Revenue-Related Funds, Five-Year Impact:

| Fiscal Year | Probable Net Positive/(Negative) Impact to General Revenue Related Funds |
|-------------|--|
| 2010 | \$0 |
| 2011 | \$0 |
| 2012 | \$0 |
| 2013 | \$0 |
| 2014 | \$0 |

All Funds, Five-Year Impact:

| Fiscal Year | Probable Revenue Gain/(Loss) from <i>Property Tax Relief Fund</i> 304 |
|-------------|---|
| 2010 | (\$14,778,000) |
| 2011 | (\$15,148,000) |
| 2012 | (\$15,678,000) |
| 2013 | (\$16,305,000) |
| 2014 | (\$16,958,000) |

Fiscal Analysis

The bill would amend Chapter 171 of the Tax Code, regarding the franchise tax, relating to the requirements for an entity to be a passive entity.

Under current law to be considered a passive entity it must receive at least 90 percent of its federal gross income from specified passive sources and no more than 10 percent from conducting an active trade or business. This bill would change the calculation for one of the sources of passive income—gains from the sale of real property. Gains under current law are net gains. Under this bill's provisions only positive gains would count toward meeting the 90 percent income requirement. The bill would delete the requirement related to not more than 10 percent of income coming from conducting an active trade or business.

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

Methodology

The bill would allow additional taxable entities to qualify as passive entities and owe no tax for a period. The fiscal impact of the bill was estimated using data from the 2008 franchise tax reports from passive entities and taxable entities in the real estate industry.

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