

BILL ANALYSIS

C.S.H.B. 1358
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

For purposes of calculating the franchise tax, many businesses are allowed to exclude flow-through funds that they are required by contract to pass through to another entity from their total revenue. Examples of flow-through funds that a business may deduct from its total business revenue include sales commissions paid by a real estate company to nonemployee agents; subcontracting payments made by a general contractor to independent contractors for various design, construction, remodeling, and repair services; and payments made by a destination management company to its independent non-employee agents.

Most courier and logistics companies operating in Texas today contract with independent driver agents to perform their same-day, expedited delivery services. While a significant percentage of every dollar these entities collect from their customers is passed along to their nonemployee drivers as compensation under the terms of the applicable contract, these companies are not expressly permitted to exclude these flow-through funds from their total revenue in calculating their franchise tax liability. As a result, these entities are paying the franchise tax based on an artificially inflated revenue amount.

C.S.H.B. 1358 seeks to address this matter by requiring a qualified courier and logistics company to exclude flow-through funds from its total revenue and establishing specific criteria for attaining qualified courier and logistics company status.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1358 amends the Tax Code to require, for the purposes of determining the taxable margin of a business subject to the franchise tax, a taxable entity that is a qualified courier and logistics company to exclude from its total revenue, under certain conditions, subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on behalf of the taxable entity. The bill defines "qualified courier and logistics company" to mean a taxable entity that receives at least 80 percent of its annual total revenue from its entire business from a combination of at least two of three specified courier and logistics services; is registered as a motor carrier under state law during the period on which margin is based and, if operating on an interstate basis, is registered as a motor carrier or broker under the unified carrier registration system as defined in state law during that period; maintains a specified level of automobile liability insurance coverage for individuals operating vehicles owned, hired, or otherwise used in the entity's business and maintains at least \$25,000 of cargo insurance; maintains a permanent nonresidential office from which the services are provided or arranged; has at least five full-time employees during the period on which margin is based; is not doing business as a livery, floral delivery, motor coach, taxicab, building supply delivery, water supply, fuel or energy supply, restaurant supply service, commercial moving and storage

company, or overnight delivery service; and is not delivering items that the entity or an affiliate sold.

EFFECTIVE DATE

January 1, 2012.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1358 differs from the original with regard to the conditions establishing a taxable entity included within the meaning of "qualified courier and logistics company" by specifying, for the condition that the entity be registered as a motor carrier and, if the entity operates on an interstate basis, as a motor carrier or broker under the unified carrier registration system, that such registration is during the period on which margin is based, whereas the original specifies that such registration is during all or part of that period; by omitting the specification included in the original, for the condition that the entity have at least five full-time employees during the period on which the margin is based, that the entity have those employees during all or part of that period; by omitting the condition included in the original that the entity not own in its entire business more than 20 percent of the equipment, other than office equipment, used to directly provide courier and logistics services; and, for the condition that the entity not be doing certain types of business, including business as an overnight delivery service, whereas such business is not included in the original.