

By: Howard of Fort Bend

H.B. No. 1358

Substitute the following for H.B. No. 1358:

By: Otto

C.S.H.B. No. 1358

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the exclusion of certain flow-through funds by  
3 qualified courier and logistics companies in determining total  
4 revenue for purposes of the franchise tax.

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

6 SECTION 1. Section 171.1011, Tax Code, is amended by adding  
7 Subsection (g-7) to read as follows:

8 (g-7) A taxable entity that is a qualified courier and  
9 logistics company shall exclude from its total revenue, to the  
10 extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3),  
11 subcontracting payments made by the taxable entity to nonemployee  
12 agents for the performance of delivery services on behalf of the  
13 taxable entity. For purposes of this subsection, "qualified  
14 courier and logistics company" means a taxable entity that:

15 (1) receives at least 80 percent of the taxable  
16 entity's annual total revenue from its entire business from a  
17 combination of at least two of the following courier and logistics  
18 services:

19 (A) expedited same-day delivery of an envelope,  
20 package, parcel, roll of architectural drawings, box, or pallet;

21 (B) temporary storage and delivery of the  
22 property of another entity, including an envelope, package, parcel,  
23 roll of architectural drawings, box, or pallet; and

24 (C) brokerage of same-day or expedited courier

1 and logistics services to be completed by a person or entity under a  
2 contract that includes a contractual obligation by the taxable  
3 entity to make payments to the person or entity for those services;

4 (2) during the period on which margin is based, is  
5 registered as a motor carrier under Chapter 643, Transportation  
6 Code, and if the taxable entity operates on an interstate basis, is  
7 registered as a motor carrier or broker under the unified carrier  
8 registration system, as defined by Section 643.001, Transportation  
9 Code, during that period;

10 (3) maintains an automobile liability insurance  
11 policy covering individuals operating vehicles owned, hired, or  
12 otherwise used in the taxable entity's business, with a combined  
13 single limit for each occurrence of at least \$1 million;

14 (4) maintains at least \$25,000 of cargo insurance;

15 (5) maintains a permanent nonresidential office from  
16 which the courier and logistics services are provided or arranged;

17 (6) has at least five full-time employees during the  
18 period on which margin is based;

19 (7) is not doing business as a livery service, floral  
20 delivery service, motor coach service, taxicab service, building  
21 supply delivery service, water supply service, fuel or energy  
22 supply service, restaurant supply service, commercial moving and  
23 storage company, or overnight delivery service; and

24 (8) is not delivering items that the taxable entity or  
25 an affiliated entity sold.

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

1 SECTION 3. This Act takes effect January 1, 2012.