

BILL ANALYSIS

C.S.H.B. 500
By: Hilderbran
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have identified numerous issues that need to be addressed to simplify and improve the administration of the franchise tax. For example, the parties note that many companies that transport aggregate materials enter into contractual agreements with subcontractors under which the subcontractor hauls the materials from the mining operation to the intended destination. The parties express concern that the comptroller of public accounts has determined that the transporting company is required to pay franchise tax on 100 percent of the money collected from its customers, even though the company has given a significant percentage of that money to the subcontractor as payment for the subcontractor's services.

The parties also contend that entities that contract with landmen to perform the same functions, work under the same conditions, and maintain the same hours as actual employees should be allowed, in determining taxable margin, to exclude as compensation or deduct as pass-through payments compensation paid to these contractors. In addition, the parties note that marine transportation operators that deliver goods produced by other businesses are at a competitive disadvantage because they are unable to deduct the cost of transporting those goods from their taxable margin, while other entities that transport their own goods may deduct the cost of transporting their goods. The parties assert that these capital intensive marine operators should be entitled to the same deductions to which other similarly situated capital intensive companies are entitled.

There is also concern that the current method of apportioning revenue of goods and services for franchise tax purposes has resulted in some Texas-based Internet hosting companies being forced to pay much more in taxes than their out-of-state competitors with identical levels of Texas sales because these services are taxed where the Internet hosting servers are located, rather than where the customers actually use the services. The parties assert that this impedes the competitiveness of Texas Internet hosting companies and that the apportionment of a hosting company's revenue should be based on customer location.

C.S.H.B. 500 seeks to address these and other issues to enhance compliance with and fairness of the state's franchise tax system.

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. 500 amends the Tax Code to expand the definition of "retail trade," for purposes of the franchise tax, to include the activities related to an automotive repair shop, classified as Industry Group 753 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget, and rental-purchase agreement activities regulated by the Business & Commerce Code. The bill exempts the total revenue from activities in a trade that rents or

leases tangible personal property as described by Industry Group 735 of the Standard Industrial Classification Manual published by the United States Department of Labor from provisions establishing that a taxable entity is primarily engaged in retail or wholesale trade for purposes of computing the franchise tax rate if, among other conditions, less than 50 percent of the total revenue from activities in retail or wholesale trade comes from the sale of products it produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs.

C.S.H.B. 500 lowers from 70 percent to 65 percent of a taxable entity's total revenue from its entire business the amount used to determine the taxable entity's margin on which its franchise tax liability is based if that amount is the lesser of two alternative calculations of that margin.

C.S.H.B. 500 requires a taxable entity to exclude from its total revenue as flow-through funds that are mandated to be distributed to other entities by a contract or subcontract for the purposes of computing the entity's taxable margin certain subcontracting payments made under a contract or subcontract entered into by the taxable entity, rather than subcontracting payments handled by the taxable entity. The bill includes among such subcontracting payments required to be excluded payments made by the taxable entity to provide services, labor, or materials in connection with the actual or proposed remediation of improvements on real property or the location of the boundaries of real property.

C.S.H.B. 500 requires a taxable entity that is primarily engaged in the business of transporting commonly recognized construction material removed or extracted from the earth to exclude from its total revenue subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on the taxable entity's behalf. The bill requires a taxable entity that is a landlord of commercial property to exclude from its total revenue payments, excluding expenses for interest and depreciation and other expenses, received from a tenant of the property for property taxes and any tax or excise imposed on rents. The bill requires a taxable entity that is primarily engaged in the business of transporting barite to exclude from its total revenue subcontracting payments made by the taxable entity to nonemployee agents for the performance of transportation services on the taxable entity's behalf. The bill requires a taxable entity that is primarily engaged in the business of performing landman services to exclude from its total revenue subcontracting payments made by the taxable entity to nonemployees for the performance of landman services on the taxable entity's behalf. The bill defines "landman services." The bill requires all of these entities to exclude the specified subcontracting payments made by the taxable entity or the tax payments made by a commercial landlord's tenant, as applicable, to the extent those payments are included in the sum of all reportable income on the applicable IRS forms and certain other includable revenue that is used in the computation of the entity's total revenue

C.S.H.B. 500 requires a taxable entity that is a physician practice to exclude from its total revenue the actual cost paid by the taxable entity for a vaccine. The bill requires a taxable entity primarily engaged in the business of transporting commodities by waterways that does not subtract cost of goods sold in computing its taxable margin to exclude from its total revenue direct costs of providing inbound and outbound transportation services by intrastate or interstate waterways to the same extent that a taxable entity that sells in the ordinary course of business real or tangible personal property would be authorized to subtract those costs as costs of goods sold in computing its taxable margin. The bill requires a taxable entity primarily engaged in the business of providing services as an agricultural aircraft operation, as defined by federal regulation, to exclude from its total revenue the cost of labor, equipment, fuel, and materials used in providing those services. The bill requires a taxable entity that is registered as a motor carrier to exclude from its total revenue, to the extent included in the computation of the entity's total revenue, flow-through revenue derived from taxes and fees.

C.S.H.B. 500 authorizes a taxable entity that is primarily engaged in the business of harvesting trees for wood to subtract as cost of goods sold the direct costs of acquiring or producing the

timber for the wood, regardless of whether the taxable entity owns the land from which the trees are harvested, the harvested timber, or the wood resulting from the harvested timber. The bill sets out costs that are included as direct costs.

C.S.H.B. 500 lowers the cap on the taxable margin of a combined group from 70 percent to 65 percent of the combined group's total revenue from its entire business. The bill establishes, for purposes of apportioning a taxable entity's margin to Texas, that a receipt from Internet hosting is a receipt from business done in Texas only if the customer to whom the service is provided is located in Texas.

C.S.H.B. 500 repeals provisions relating to the effective dates for successive changes to the maximum amount of a taxable entity's total revenue that would exempt such an entity from franchise tax liability and repeals provisions relating to discounts from tax liability for small businesses with total business revenue at various ranges below \$900,000.

C.S.H.B. 500 repeals the following provisions of the Tax Code:

- Section 171.0021
- Section 171.1016(d)

C.S.H.B. 500 repeals the following provisions:

- Section 1(c), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011
- Section 2, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (d), Section 171.002, Tax Code
- Section 3, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (a), Section 171.0021, Tax Code

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 500 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 171.1011(c), Tax Code, is amended to read as follows:	No equivalent provision.
(c) Except as provided by this section, and subject to Section 171.1014, for the purpose of computing its taxable margin under Section 171.101, the total revenue of a taxable entity is:	
(1) for a taxable entity treated for federal income tax purposes as a corporation, an amount computed by:	No equivalent provision.

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120;

(ii) the amounts reportable as income on lines 4 through 10, Internal Revenue Service Form 1120; and

(iii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Section 171.1015(b); ~~and~~

(B) subtracting:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included in Subsection (c)(1)(A) for the current reporting period or a past reporting period;

(ii) to the extent included in Subsection (c)(1)(A), foreign royalties and foreign dividends, including amounts determined under Section 78 or Sections 951-964, Internal Revenue Code;

(iii) to the extent included in Subsection (c)(1)(A), net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes;

(iv) allowable deductions from Internal Revenue Service Form 1120, Schedule C, to the extent the relating dividend income is included in total revenue;

(v) to the extent included in Subsection (c)(1)(A), items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(vi) to the extent included in Subsection (c)(1)(A), other amounts authorized by this section; and

(C) if the amount computed under Subsections (c)(1)(A) and (c)(1)(B) totals \$20 million or less, subtracting \$1 million;

(2) for a taxable entity treated for federal income tax purposes as a partnership, an amount computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1065;

(ii) the amounts reportable as income on lines 4, 6, and 7, Internal Revenue Service Form 1065;

(iii) the amounts reportable as income on lines 3a and 5 through 11, Internal Revenue Service Form 1065, Schedule K;

(iv) the amounts reportable as income on line 17, Internal Revenue Service Form 8825;

No equivalent provision.

(v) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(vi) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Section 171.1015(b); ~~and~~

(B) subtracting:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included in Subsection (c)(2)(A) for the current reporting period or a past reporting period;

(ii) to the extent included in Subsection (c)(2)(A), foreign royalties and foreign dividends, including amounts determined under Section 78 or Sections 951-964, Internal Revenue Code;

(iii) to the extent included in Subsection (c)(2)(A), net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes;

(iv) to the extent included in Subsection (c)(2)(A), items of income attributable to an entity that is a disregarded entity for federal income tax purposes; and

(v) to the extent included in Subsection (c)(2)(A), other amounts authorized by this section; and

(C) if the amount computed under Subsections (c)(2)(A) and (c)(2)(B) totals \$20 million or less, subtracting \$1 million;

or

(3) for a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation or partnership, an amount determined in a manner substantially equivalent to the amount for Subdivision (1) or (2), including the subtraction of \$1 million as provided by Subdivision (1)(C) or (2)(C), determined by rules that the comptroller shall adopt.

No equivalent provision.

SECTION 2. Section 171.002(d), Tax Code, is amended to read as follows:

(d) A taxable entity is not required to pay any tax and is not considered to owe any tax for a period if[:

~~[(1)]~~ the amount of tax computed for the taxable entity is less than \$1,000~~]; or~~

~~[(2) the amount of the taxable entity's total revenue from its entire business is less than~~

No equivalent provision.

~~or equal to \$1 million or the amount determined under Section 171.006 per 12-month period on which margin is based].~~

No equivalent provision.

SECTION 1. Section 171.0001(12), Tax Code, is amended to read as follows:

(12) "Retail trade" means:

(A) the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; ~~and~~

(B) apparel rental activities classified as Industry 5999 or 7299 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget;

(C) the activities classified as Industry Group 753 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; and

(D) rental-purchase agreement activities regulated by Chapter 92, Business & Commerce Code.

No equivalent provision.

SECTION 2. Section 171.002, Tax Code, is amended by adding Subsection (c-2) to read as follows:

(c-2) Subsection (c)(2) does not apply to total revenue from activities in a trade that rents or leases tangible personal property as described by Industry Group 735 of the Standard Industrial Classification Manual published by the United States Department of Labor.

SECTION 3. Section 171.006, Tax Code, is amended by amending Subsection (b) and adding Subsection (g) to read as follows:

(b) Beginning in 2010, on January 1 of each even-numbered year, the amounts prescribed by Sections 171.1011(c)(1)(C), 171.1011(c)(2)(C), 171.1011(c)(3) [171.002(d)(2), 171.0024], and 171.1013(c) are increased or decreased by an amount equal to the amount prescribed by those sections on December 31 of the preceding year multiplied by the percentage increase or decrease during the preceding state fiscal biennium in the consumer price index and rounded to the nearest \$10,000.

SECTION 3. Section 171.006(b), Tax Code, is amended to read as follows:

(b) Beginning in 2010, on January 1 of each even-numbered year, the amounts prescribed by Sections 171.002(d)(2) [171.0024], and 171.1013(c) are increased or decreased by an amount equal to the amount prescribed by those sections on December 31 of the preceding year multiplied by the percentage increase or decrease during the preceding state fiscal biennium in the consumer price index and rounded to the nearest \$10,000.

(g) A receipt from Internet hosting described by Section 151.108(a) is a receipt from business done in this state only if the customer to whom the service is provided is located in this state.

SECTION 4. Section 171.1011, Tax Code, is amended by amending Subsection (g) and adding Subsection (g-8) to read as follows:

(g) A taxable entity shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), only the following flow-through funds that are mandated by contract to be distributed to other entities:

- (1) sales commissions to nonemployees, including split-fee real estate commissions;
- (2) the tax basis as determined under the Internal Revenue Code of securities underwritten; ~~and~~
- (3) subcontracting payments handled by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, or repair of improvements on real property or the location of the boundaries of real property; and

(4) subcontracting payments made to individuals for services related to the acquisition or management of petroleum interests or the performance of title or contract functions related to the exploration, exploitation, or disposition of petroleum or mineral interests.

(g-8) A taxable entity that is primarily engaged in the business of transporting aggregates shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on behalf of the taxable entity. In this subsection, "aggregates" means any commonly recognized construction material removed or extracted from the earth, including dimension stone, crushed and broken

SECTION 9. Section 171.106, Tax Code, is amended by adding Subsection (g) to read as follows:

(g) A receipt from Internet hosting as defined by Section 151.108(a) is a receipt from business done in this state only if the customer to whom the service is provided is located in this state.

SECTION 5. Section 171.1011, Tax Code, is amended by amending Subsection (g) and adding Subsections (g-8), (g-9), (g-10), (g-11), (u), (v), (w-1), and (x) to read as follows:

(g) A taxable entity shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), only the following flow-through funds that are mandated by contract or subcontract to be distributed to other entities:

- (1) sales commissions to nonemployees, including split-fee real estate commissions;
- (2) the tax basis as determined under the Internal Revenue Code of securities underwritten; and
- (3) subcontracting payments made under a contract or subcontract entered into ~~handled~~ by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, remediation, or repair of improvements on real property or the location of the boundaries of real property.

(g-8) A taxable entity that is primarily engaged in the business of transporting aggregates shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on behalf of the taxable entity. In this subsection, "aggregates" means any commonly recognized construction material removed or extracted from the earth, including dimension stone, crushed and broken

limestone, crushed and broken granite, other crushed and broken stone, construction sand and gravel, industrial sand, dirt, soil, cementitious material, and caliche.

No equivalent provision.

No equivalent provision.

No equivalent provision.

No equivalent provision.

limestone, crushed and broken granite, other crushed and broken stone, construction sand and gravel, industrial sand, dirt, soil, cementitious material, and caliche.

(g-9) A taxable entity that is a landlord of commercial property shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (2)(A), or (3), payments, excluding expenses for interest and depreciation and other expenses not listed in this subsection, received from a tenant of the property for ad valorem taxes and any tax or excise imposed on rents.

(g-10) A taxable entity that is primarily engaged in the business of transporting barite shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of transportation services on behalf of the taxable entity. For purposes of this subsection, "barite" means barium sulfate (BaSO₄), a mineral used as a weighing agent in oil and gas exploration.

(g-11) A taxable entity that is primarily engaged in the business of performing landman services shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployees for the performance of landman services on behalf of the taxable entity. In this subsection, "landman services" means:

(1) performing title searches for the purpose of determining ownership of or curing title defects related to oil, gas, or other related mineral or petroleum interests;
(2) negotiating the acquisition or divestiture of mineral rights for the purpose of the exploration, development, or production of oil, gas, or other related mineral or petroleum interests; or

(3) negotiating or managing the negotiation of contracts or other agreements related to the ownership of mineral interests for the exploration, exploitation, disposition, development, or production of oil, gas, or other related mineral or petroleum interests.

(u) A taxable entity that is a physician practice shall exclude from its total revenue the actual cost paid by the taxable entity for a vaccine.

No equivalent provision.

No equivalent provision.

No equivalent provision.

SECTION 5. Section 171.1014, Tax Code, is amended by amending Subsection (c) and adding Subsections (j) and (k) to read as follows:

(c) For purposes of Section 171.101, a combined group shall determine its total revenue by:

(1) determining the total revenue of each of its members as provided by Section 171.1011 as if the member were an individual taxable entity, except that only one member of the combined group may subtract \$1 million under Section 171.1011(c)(1)(C), (c)(2)(C), or (c)(3);

(2) adding the total revenues of the members determined under Subdivision (1) together; and

(3) subtracting, to the extent included under Section 171.1011(c)(1)(A), (c)(2)(A), or (c)(3), items of total revenue received from a member of the combined group.

(j) Notwithstanding any other provision of this chapter and except as provided by Subsection (k), a nonqualified affiliate that would, except as otherwise provided by this subsection, be included in a combined group with a qualified affiliate may not be

(v) A taxable entity primarily engaged in the business of transporting commodities by waterways that does not subtract cost of goods sold in computing its taxable margin shall exclude from its total revenue direct costs of providing inbound and outbound transportation services by intrastate or interstate waterways to the same extent that a taxable entity that sells in the ordinary course of business real or tangible personal property would be authorized by Section 171.1012 to subtract those costs as costs of goods sold in computing its taxable margin.

(w-1) A taxable entity primarily engaged in the business of providing services as an agricultural aircraft operation, as defined by 14 C.F.R. Section 137.3, shall exclude from its total revenue the cost of labor, equipment, fuel, and materials used in providing those services.

(x) A taxable entity that is registered as a motor carrier under Chapter 643, Transportation Code, shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through revenue derived from taxes and fees.

No equivalent provision.

No equivalent provision.

No equivalent provision.

included in such combined group if:

(1) more than 50 percent of the threshold amount is from activities in retail or wholesale trade;

(2) less than 50 percent of the threshold amount is from the sale of products produced by any entity that is included in an affiliated group with such qualified affiliate; and

(3) less than 5 percent of the threshold amount is from providing retail or wholesale electric utilities.

(k) For purposes of Subsection (j):

(1) "nonqualified affiliate" means an individual taxable entity that provides retail or wholesale electric utilities;

(2) "qualified affiliate" means an individual taxable entity that does not provide retail or wholesale electric utilities; and

(3) "threshold amount" means the total revenue determined under Subsection (c), provided that Subsection (j) has no effect on the determination of total revenue.

No equivalent provision.

SECTION 6. Section 171.1015(d), Tax Code, is amended to read as follows:

(d) Section 171.002(d) does not apply to an upper tier entity if, before the attribution of any total revenue by a lower tier entity to an upper tier entity under this section, the lower tier entity does not meet the criteria of Section 171.002(d) [~~171.002(d)(1) or (d)(2)~~].

No equivalent provision.

SECTION 7. Sections 171.1016(a) and (b), Tax Code, are amended to read as follows:

(a) Notwithstanding any other provision of this chapter, a taxable entity whose total revenue from its entire business is not more than \$20 [~~\$10~~] million may elect to pay the tax imposed under this chapter in the amount computed and at the rate provided by this section rather than in the amount computed and at the tax rate provided by Section 171.002.

(b) The amount of the tax for which a taxable entity that elects to pay the tax as provided by this section is liable is computed by:

(1) determining the taxable entity's total revenue from its entire business, as determined under Section 171.1011;

(2) apportioning the amount computed

No equivalent provision.

under Subdivision (1) to this state, as provided by Section 171.106, to determine the taxable entity's apportioned total revenue; and

(3) multiplying the amount computed under Subdivision (2) by the rate of 0.48 [~~0.575~~] percent.

SECTION 8. (a) Section 1(c), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, is repealed.

(b) This section takes effect September 1, 2013.

SECTION 9. (a) Section 2, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (d), Section 171.002, Tax Code, is repealed.

(b) This section takes effect September 1, 2013.

SECTION 10. (a) Section 3, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (a), Section 171.0021, Tax Code, is repealed.

(b) This section takes effect September 1, 2013.

SECTION 11. (a) The comptroller of public accounts shall conduct a comprehensive study of alternative methods of taxing business entities that would generate approximately the same revenue as the franchise tax.

(b) In conducting the study, the comptroller shall assume that:

(1) the alternative method of tax is imposed on all taxable entities subject to the current franchise tax; and

(2) the alternative method of tax is imposed

SECTION 11. Section 1(c), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, is repealed.

SECTION 12. Section 2, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (d), Section 171.002, Tax Code, is repealed.

SECTION 13. Section 3, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (a), Section 171.0021, Tax Code, is repealed.

No equivalent provision.

on all taxable entities at the same rate.
(c) The comptroller of public accounts shall submit a report to the legislature regarding the results of the study conducted under this section not later than January 1, 2015.

No equivalent provision.

SECTION 4. Section 171.101(a), Tax Code, is amended to read as follows:

(a) The taxable margin of a taxable entity is computed by:

(1) determining the taxable entity's margin, which is the lesser of:

(A) 65 percent [~~70 percent~~] of the taxable entity's total revenue from its entire business, as determined under Section 171.1011; or

(B) an amount computed by:

(i) determining the taxable entity's total revenue from its entire business, under Section 171.1011;

(ii) subtracting, at the election of the taxable entity, either:

(a) cost of goods sold, as determined under Section 171.1012; or

(b) compensation, as determined under Section 171.1013; and

(iii) subtracting, in addition to any subtractions made under Subparagraph (ii)(a) or (b), compensation, as determined under Section 171.1013, paid to an individual during the period the individual is serving on active duty as a member of the armed forces of the United States if the individual is a resident of this state at the time the individual is ordered to active duty and the cost of training a replacement for the individual;

(2) apportioning the taxable entity's margin to this state as provided by Section 171.106 to determine the taxable entity's apportioned margin; and

(3) subtracting from the amount computed under Subdivision (2) any other allowable deductions to determine the taxable entity's taxable margin.

No equivalent provision.

SECTION 6. Section 171.1011(p), Tax Code, is amended by amending Subdivision (4-a) and adding Subdivisions (4-b) and (8) to read as follows:

(4-a) "Physician practice" means an entity that:

(A) is owned entirely by one or more

individuals licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code; and

(B) offers services, the provision of which is considered practicing medicine as defined by Section 151.002(a)(13), Occupations Code.

(4-b) "Pro bono services" means the direct provision of legal services to the poor, without an expectation of compensation.

(8) "Vaccine" means a preparation or suspension of dead, live attenuated, or live fully virulent viruses or bacteria, or of antigenic proteins derived from them, used to prevent, ameliorate, or treat an infectious disease.

No equivalent provision.

SECTION 7. Section 171.1012, Tax Code, is amended by adding Subsection (q) to read as follows:

(q) Notwithstanding Subsection (i) or any other provision of this section, a taxable entity that is primarily engaged in the business of harvesting trees for wood may subtract as cost of goods sold the direct costs of acquiring or producing the timber for the wood that are specified by this subsection or otherwise described by this section, regardless of whether the taxable entity owns the land from which the trees are harvested, the harvested timber, or the wood resulting from the harvested timber. For purposes of this subsection, direct costs include costs of:

(1) moving harvesting equipment;

(2) severing timber;

(3) transporting timber to and from a mill or designated delivery point;

(4) obtaining, using, storing, or maintaining equipment necessary for an activity described by Subdivision (1), (2), or (3); and

(5) other supplies, labor, freight, and fuel necessary for an activity described by Subdivision (1), (2), or (3).

No equivalent provision.

SECTION 8. Section 171.1014(d), Tax Code, is amended to read as follows:

(d) For purposes of Section 171.101, a combined group shall make an election to subtract either cost of goods sold or compensation that applies to all of its members. Regardless of the election, the

taxable margin of the combined group may not exceed 65 percent [~~70 percent~~] of the combined group's total revenue from its entire business, as provided by Section 171.101(a)(1)(A).

SECTION 12. Sections 171.0021, 171.1016(d), and 171.204(b), Tax Code, are repealed.

SECTION 10. Sections 171.0021 and 171.1016(d), Tax Code, are repealed.

SECTION 13. This Act applies only to a report originally due on or after January 1, 2014.

SECTION 14. Substantially the same as introduced.

SECTION 14. Except as otherwise provided by this Act, this Act takes effect January 1, 2014.

SECTION 15. This Act takes effect January 1, 2014.