

BILL ANALYSIS

C.S.H.B. 1735
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that, under the current franchise tax system, the franchise tax rate for a taxable entity primarily engaged in retail or wholesale trade is 0.5 percent of its taxable margin and one percent for an electric utility. However, if a taxable entity primarily engaged in retail or wholesale trade also provides retail electricity to its customers in any state, the taxable entity will pay the one percent rate for its entire taxable margin, not just the taxable margin on its sale of electricity. Therefore, if a traditional retailer offers electricity for sale to its customers anywhere in the United States, its entire franchise tax rate doubles, even if it provides only a minimal amount of electricity. C.S.H.B. 1735 seeks to encourage traditional retailers to enter the retail electric market in Texas or other states, thus increasing competition and lowering prices.

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. 1735 amends the Tax Code, for purposes of combined franchise tax reporting by taxable entities that are part of an affiliated group engaged in a unitary business, to prohibit a taxable entity that provides retail or wholesale electric utilities from being included as a member of a combined group that includes one or more taxable entities that do not provide retail or wholesale electric utilities if that combined group in the absence of this prohibition would not qualify as a taxable entity primarily engaged in retail or wholesale trade and thus would not be eligible to pay the franchise tax at the rate provided for such an entity solely because one or more members of the combined group provide retail or wholesale electric utilities and would have less than five percent of the combined group's total revenue derived from providing retail or wholesale electric utilities. The bill's provisions apply only to a tax report originally due on or after January 1, 2014.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1735 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. (a) Section 171.1014, Tax	SECTION 1. Section 171.1014, Tax Code,

Code, is amended by adding Subsection (j) to read as follows:

(j)(1) Notwithstanding any other provision of this chapter, a nonqualified affiliate that would, except as otherwise provided by this Subsection (j)(1), be included in a combined group with a qualified affiliate may not be included in such combined group if:

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

(B) 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

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

(2) For purposes of this Section:

(A) a nonqualified affiliate is an individual taxable entity that provides retail or wholesale electric utilities;

(B) a qualified affiliate is an individual taxable entity that does not provide retail or wholesale electric utilities; and

(C) the threshold amount is the total revenue that would be determined under Subsection (c), provided that Subsection (j)(1) does not apply to the determination of total revenue for purposes of this Subsection (j)(2)(C).

(b) This section applies only to a report originally due on or after January 1, 2014.

No equivalent provision.

(See Section 1(b) above.)

SECTION 2. This Act takes effect September 1, 2013.

is amended by adding Subsection (j) to read as follows:

(j) Notwithstanding any other provision of this section, a taxable entity that provides retail or wholesale electric utilities may not be included as a member of a combined group that includes one or more taxable entities that do not provide retail or wholesale electric utilities if that combined group in the absence of this subsection:

(1) would not meet the requirements of Section 171.002(c) solely because one or more members of the combined group provide retail or wholesale electric utilities; and

(2) would have less than five percent of the combined group's total revenue derived from providing retail or wholesale electric utilities.

(See Section 3 below.)

SECTION 2. It is the intent of the legislature that certain taxable entities that are part of an affiliated group and that provide retail or wholesale electric utilities be disqualified as members of certain combined groups for purposes of the franchise tax.

SECTION 3. This Act applies only to a report originally due on or after January 1, 2014.

SECTION 4. Same as introduced version.