BILL ANALYSIS

C.S.H.B. 2145
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that current law governing the franchise tax does not specify how to properly characterize fees paid by cable system operators to motion picture and television producers for video content provided by such producers. Franchise tax is imposed on an entity's taxable margin, but because a business's taxable margin may not be entirely attributable to business done in Texas, receipts of income must be apportioned between Texas and other jurisdictions. An entity's taxable margin is multiplied by a fraction, the numerator of which consists of receipts from business done in Texas, and the denominator of which consists of all receipts from business anywhere, including Texas. Texas-sourced receipts include the use of a patent, copyright, trademark, franchise, or license in this state.

In a recent Texas Supreme Court ruling, the meaning of "license" was at issue: if the revenue from an entity's licensing certain data to licensees who were domiciled outside of Texas was characterized as the sale of intangible data, receipts from the sale of that data were not allocated to Texas, and if the revenue from such licensing was characterized as the use of a license in Texas, receipts from such use was allocated to Texas. The ruling explained that although a license may be part of a grant of intellectual property, the underlying intellectual property itself determines the characterization and treatment of the receipt, not the fact that the transfer was effected through a license. Therefore, where the owner of an intangible asset uses a license to convey limited rights to its intellectual property, the revenue produced is not from the use of a license in Texas but from the use of the underlying intellectual property itself. Consequently, when determining an entity's franchise tax, receipts from the sales of intangibles generally are Texas receipts only if the legal domicile of the payor is in Texas.

C.S.H.B. 2145 seeks to clarify the apportionment of certain receipts of a broadcaster under the franchise tax in response to a recent Texas Supreme Court ruling.

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. 2145 amends the Tax Code to require a taxable entity that is a broadcaster, for purposes of apportioning to this state the taxable margin on which the broadcaster's franchise tax liability is based, to include in the numerator of the broadcaster's apportionment factor receipts that are licensing income from distributing film programming and that arise from a broadcast or other distribution of film programming by any means only if the legal domicile of the broadcaster's customer is in Texas.

EFFECTIVE DATE

January 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2145 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 171.106, Tax Code, is amended by adding Subsection (g) to read as follows: (g) A taxable entity that is a broadcaster shall include in the numerator of the broadcaster's apportionment factor receipts arising from or relating to a broadcast or other distribution of film or radio programming by any means only if the legal domicile of the broadcaster's customer is in this state. Receipts to which this subsection apply include licensing income from distributing film or radio programming. In this subsection: (1) "Broadcaster" means a taxable entity, not including a cable service provider or a direct broadcast satellite service, that is a: (A) television or radio station licensed by the Federal Communications Commission; (B) television or radio broadcast network; (C) cable television network; or (D) television distribution company. (2) "Customer" means a person, including a license holder, that has a direct connection or contractual relationship with a broadcaster under which the broadcaster derives revenue. (3) "Film programming" means all or part of a live or recorded performance, event, or production intended to be distributed for visual and auditory perception by an audience. (4) "Programming" includes news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works. (5) "Radio programming" means all or part of a live or recorded performance, event, or production intended to be distributed for auditory perception by an audience.	SECTION 1. Section 171.106, Tax Code, is amended by adding Subsection (g) to read as follows: (g) A taxable entity that is a broadcaster shall include in the numerator of the broadcaster's apportionment factor receipts arising from a broadcast or other distribution of film programming by any means only if the legal domicile of the broadcaster's customer is in this state. This subsection applies only to receipts that are licensing income from distributing film programming. In this subsection: (1) "Broadcaster" means a taxable entity, not including a cable service provider or a direct broadcast satellite service, that is a: (A) television station licensed by the Federal Communications Commission; (B) television broadcast network; (C) cable television network; or (D) television distribution company. (2) "Customer" means a person, including a licensee, that has a direct connection or contractual relationship with a broadcaster under which the broadcaster derives revenue. (3) "Film programming" means all or part of a live or recorded performance, event, or production intended to be distributed for visual and auditory perception by an audience. (4) "Programming" includes news, entertainment, sporting events, plays, stories, or other literary, commercial, educational, or artistic works.
SECTION 2. This Act applies only to a report originally due on or after the effective	SECTION 2. Same as introduced version.

date of this Act.

SECTION 3. This Act takes effect January 1, 2014.

SECTION 3. This Act takes effect January 1, 2015.