

BILL ANALYSIS

C.S.H.B. 2766
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Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law allows an entity to exclude from its total revenue, for franchise tax purposes, certain flow-through payments mandated by contract to be distributed to other entities, including payments relating to improvements on real property or the location of the boundaries of real property. Interested parties note that the comptroller of public accounts has interpreted this provision as allowing an entity to exclude subcontracting payments only when the entity has a contract in place that states that a specific portion of the work will be subcontracted. Typically, the parties assert, contracts in the industry do not initially delineate which portions of a project will be completed through the use of subcontractors and which will not.

The interested parties maintain that a change in current law is necessary to allow certain subcontracting payments to be excluded when funds are mandated by law or contract to be paid to subcontractors making improvements to real property, absent a requirement that a prime contract explicitly require a contractor to use subcontractors. The parties emphasize that such changes would allow similarly situated taxpayers to be treated fairly. C.S.H.B. 2766 seeks to clarify current law relating to the exclusion of certain flow-through funds in determining total revenue for purposes of the franchise tax.

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. 2766 amends the Tax Code to require 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 for the franchise tax, 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.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2766 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

SECTION 1. Section 171.1011(g), Tax Code, is amended 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 under subcontracts 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.

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

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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 171.1011(g), Tax Code, is amended 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.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.