

By: Hilderbran, et al.

H.B. No. 500

Substitute the following for H.B. No. 500:

By: Hilderbran

C.S.H.B. No. 500

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the computation of the franchise tax, including certain
3 exclusions from the tax.

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

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

7 (12) "Retail trade" means:

8 (A) the activities described in Division G of the
9 1987 Standard Industrial Classification Manual published by the
10 federal Office of Management and Budget; ~~and~~

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

15 (C) the activities classified as Industry Group
16 753 of the 1987 Standard Industrial Classification Manual published
17 by the federal Office of Management and Budget; and

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

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

22 (c-2) Subsection (c)(2) does not apply to total revenue from
23 activities in a trade that rents or leases tangible personal
24 property as described by Industry Group 735 of the Standard

1 Industrial Classification Manual published by the United States
2 Department of Labor.

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

5 (b) Beginning in 2010, on January 1 of each even-numbered
6 year, the amounts prescribed by Sections 171.002(d)(2) [~~7~~
7 ~~171.0021,~~] and 171.1013(c) are increased or decreased by an amount
8 equal to the amount prescribed by those sections on December 31 of
9 the preceding year multiplied by the percentage increase or
10 decrease during the preceding state fiscal biennium in the consumer
11 price index and rounded to the nearest \$10,000.

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

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

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

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

20 (B) an amount computed by:

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

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

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

27 (b) compensation, as determined under

1 Section 171.1013; and

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

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

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

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

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

23 (1) sales commissions to nonemployees, including
24 split-fee real estate commissions;

25 (2) the tax basis as determined under the Internal
26 Revenue Code of securities underwritten; and

27 (3) subcontracting payments made under a contract or

1 subcontract entered into [~~handled~~] by the taxable entity to provide
2 services, labor, or materials in connection with the actual or
3 proposed design, construction, remodeling, remediation, or repair
4 of improvements on real property or the location of the boundaries
5 of real property.

6 (g-8) A taxable entity that is primarily engaged in the
7 business of transporting aggregates shall exclude from its total
8 revenue, to the extent included under Subsection (c)(1)(A),
9 (c)(2)(A), or (c)(3), subcontracting payments made by the taxable
10 entity to nonemployee agents for the performance of delivery
11 services on behalf of the taxable entity. In this subsection,
12 "aggregates" means any commonly recognized construction material
13 removed or extracted from the earth, including dimension stone,
14 crushed and broken limestone, crushed and broken granite, other
15 crushed and broken stone, construction sand and gravel, industrial
16 sand, dirt, soil, cementitious material, and caliche.

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

24 (g-10) A taxable entity that is primarily engaged in the
25 business of transporting barite shall exclude from its total
26 revenue, to the extent included under Subsection (c)(1)(A),
27 (c)(2)(A), or (c)(3), subcontracting payments made by the taxable

1 entity to nonemployee agents for the performance of transportation
2 services on behalf of the taxable entity. For purposes of this
3 subsection, "barite" means barium sulfate (BaSO4), a mineral used
4 as a weighing agent in oil and gas exploration.

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

12 (1) performing title searches for the purpose of
13 determining ownership of or curing title defects related to oil,
14 gas, or other related mineral or petroleum interests;

15 (2) negotiating the acquisition or divestiture of
16 mineral rights for the purpose of the exploration, development, or
17 production of oil, gas, or other related mineral or petroleum
18 interests; or

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

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

27 (v) A taxable entity primarily engaged in the business of

1 transporting commodities by waterways that does not subtract cost
2 of goods sold in computing its taxable margin shall exclude from its
3 total revenue direct costs of providing inbound and outbound
4 transportation services by intrastate or interstate waterways to
5 the same extent that a taxable entity that sells in the ordinary
6 course of business real or tangible personal property would be
7 authorized by Section 171.1012 to subtract those costs as costs of
8 goods sold in computing its taxable margin.

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

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

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

22 (4-a) "Physician practice" means an entity that:

23 (A) is owned entirely by one or more individuals
24 licensed to practice medicine in this state under Subtitle B, Title
25 3, Occupations Code; and

26 (B) offers services, the provision of which is
27 considered practicing medicine as defined by Section

1 151.002(a)(13), Occupations Code.

2 (4-b) "Pro bono services" means the direct provision
3 of legal services to the poor, without an expectation of
4 compensation.

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

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

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

20 (1) moving harvesting equipment;

21 (2) severing timber;

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

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

27 (5) other supplies, labor, freight, and fuel necessary

1 for an activity described by Subdivision (1), (2), or (3).

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

4 (d) For purposes of Section 171.101, a combined group shall
5 make an election to subtract either cost of goods sold or
6 compensation that applies to all of its members. Regardless of the
7 election, the taxable margin of the combined group may not exceed 65
8 percent [~~70 percent~~] of the combined group's total revenue from its
9 entire business, as provided by Section 171.101(a)(1)(A).

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

12 (g) A receipt from Internet hosting as defined by Section
13 151.108(a) is a receipt from business done in this state only if the
14 customer to whom the service is provided is located in this state.

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

17 SECTION 11. Section 1(c), Chapter 286 (H.B. 4765), Acts of
18 the 81st Legislature, Regular Session, 2009, as amended by Section
19 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called
20 Session, 2011, is repealed.

21 SECTION 12. Section 2, Chapter 286 (H.B. 4765), Acts of the
22 81st Legislature, Regular Session, 2009, as amended by Section
23 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called
24 Session, 2011, and which amended former Subsection (d), Section
25 171.002, Tax Code, is repealed.

26 SECTION 13. Section 3, Chapter 286 (H.B. 4765), Acts of the
27 81st Legislature, Regular Session, 2009, as amended by Section

1 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called
2 Session, 2011, and which amended former Subsection (a), Section
3 171.0021, Tax Code, is repealed.

4 SECTION 14. This Act applies only to a report originally due
5 on or after the effective date of this Act.

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