

By: Metcalf

H.B. No. 2331

A BILL TO BE ENTITLED

AN ACT

relating to the computation of the franchise tax.

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

SECTION 1. 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 computed by determining the taxable entity's total revenue from its entire business, as determined under Section 171.1011, and subtracting an amount equal to the sum of:

(A) \$1 million;

(B) cost of goods sold, as determined under Section 171.1012; and

(C) compensation, as determined under Section 171.1013 ~~[the lesser of:~~

~~[(A) the amount provided by this paragraph, which is the lesser of:~~

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

~~[(ii) an amount equal to the taxable entity's total revenue from its entire business as determined under Section 171.1011 minus \$1 million, or~~

~~[(B) an amount computed by determining the taxable~~

1 ~~entity's total revenue from its entire business under Section~~  
2 ~~171.1011 and subtracting the greater of:~~

3 ~~[(i) \$1 million; or~~

4 ~~[(ii) an amount equal to the sum of:~~

5 ~~[(a) at the election of the taxable~~  
6 ~~entity, either:~~

7 ~~[(1) cost of goods sold, as~~  
8 ~~determined under Section 171.1012; or~~

9 ~~[(2) compensation, as determined~~  
10 ~~under Section 171.1013; and~~

11 ~~[(b) any compensation, as determined~~  
12 ~~under Section 171.1013, paid to an individual during the period the~~  
13 ~~individual is serving on active duty as a member of the armed forces~~  
14 ~~of the United States if the individual is a resident of this state~~  
15 ~~at the time the individual is ordered to active duty and the cost of~~  
16 ~~training a replacement for the individual];~~

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

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

23 SECTION 2. Section 171.1011(v), Tax Code, is amended to  
24 read as follows:

25 (v) A taxable entity primarily engaged in the business of  
26 transporting goods by waterways [~~that does not subtract cost of~~  
27 ~~goods sold in computing its taxable margin]~~ shall exclude from its

1 total revenue direct costs of providing transportation services by  
2 intrastate or interstate waterways to the same extent that a  
3 taxable entity that sells in the ordinary course of business real or  
4 tangible personal property is ~~[would be]~~ authorized by Section  
5 171.1012 to subtract those costs as costs of goods sold in computing  
6 its taxable margin, notwithstanding Section 171.1012(e)(3).

7 SECTION 3. Sections 171.1012(b), (k), (o), and (t), Tax  
8 Code, are amended to read as follows:

9 (b) Subject to Section 171.1014, a taxable entity shall  
10 determine the amount of ~~[that elects to subtract]~~ cost of goods sold  
11 as provided by this section for the purpose of computing its taxable  
12 margin ~~[shall determine the amount of that cost of goods sold as~~  
13 ~~provided by this section]~~.

14 (k) Notwithstanding any other provision of this section, a  
15 ~~[if the]~~ taxable entity that is a lending institution and that  
16 offers loans to the public ~~[and elects to subtract cost of goods~~  
17 ~~sold, the entity]~~, other than an entity primarily engaged in an  
18 activity described by category 5932 of the 1987 Standard Industrial  
19 Classification Manual published by the federal Office of Management  
20 and Budget, may subtract as a cost of goods sold an amount equal to  
21 interest expense. For purposes of this subsection, an entity  
22 engaged in lending to unrelated parties solely for agricultural  
23 production offers loans to the public.

24 (o) The cost of goods sold for ~~[if]~~ a taxable entity,  
25 including a taxable entity with respect to which cost of goods sold  
26 is determined pursuant to Section 171.1014(e)(1), whose principal  
27 business activity is film or television production or broadcasting

1 or the distribution of tangible personal property described by  
2 Subsection (a)(3)(A)(ii), or any combination of these activities,  
3 ~~[elects to subtract cost of goods sold, the cost of goods sold for~~  
4 ~~the taxable entity]~~ shall be the costs described in this section in  
5 relation to the property and include depreciation, amortization,  
6 and other expenses directly related to the acquisition, production,  
7 or use of the property, including expenses for the right to  
8 broadcast or use the property.

9 (t) The cost of goods sold for ~~[If]~~ a taxable entity that is  
10 a movie theater ~~[elects to subtract cost of goods sold, the cost of~~  
11 ~~goods sold for the taxable entity]~~ shall be the costs described by  
12 this section in relation to the acquisition, production,  
13 exhibition, or use of a film or motion picture, including expenses  
14 for the right to use the film or motion picture.

15 SECTION 4. Sections 171.1013(b), (b-1), (c-1), and (h), Tax  
16 Code, are amended to read as follows:

17 (b) Subject to Section 171.1014, ~~[a taxable entity that~~  
18 ~~elects to subtract compensation]~~ for the purpose of computing its  
19 taxable margin under Section 171.101 a taxable entity shall ~~[may]~~  
20 subtract an amount of compensation equal to:

21 (1) subject to the limitation in Subsection (c), all  
22 wages and cash compensation paid by the taxable entity to its  
23 officers, directors, owners, partners, and employees; and

24 (2) the cost of all benefits, to the extent deductible  
25 for federal income tax purposes, the taxable entity provides to its  
26 officers, directors, owners, partners, and employees, including  
27 workers' compensation benefits, health care, employer

1 contributions made to employees' health savings accounts, and  
2 retirement.

3 (b-1) This subsection applies to a taxable entity that is a  
4 small employer, as that term is defined by Section 1501.002,  
5 Insurance Code, and that has not provided health care benefits to  
6 any of its employees in the calendar year preceding the beginning  
7 date of its reporting period. Subject to Section 171.1014, [~~a  
8 taxable entity to which this subsection applies that elects to  
9 subtract compensation~~] for the purpose of computing its taxable  
10 margin under Section 171.101 a taxable entity to which this  
11 subsection applies may subtract health care benefits as provided  
12 under Subsection (b) and may also subtract:

13 (1) for the first 12-month period on which margin is  
14 based and in which the taxable entity provides health care benefits  
15 to all of its employees, an additional amount equal to 50 percent of  
16 the cost of health care benefits provided to its employees for that  
17 period; and

18 (2) for the second 12-month period on which margin is  
19 based and in which the taxable entity provides health care benefits  
20 to all of its employees, an additional amount equal to 25 percent of  
21 the cost of health care benefits provided to its employees for that  
22 period.

23 (c-1) Subject to Section 171.1014, [~~a taxable entity that  
24 elects to subtract compensation~~] for the purpose of computing its  
25 taxable margin under Section 171.101 a taxable entity may not  
26 subtract as compensation any wages or cash compensation paid to an  
27 undocumented worker. As used in this section "undocumented worker"

1 means a person who is not lawfully entitled to be present and  
2 employed in the United States.

3 (h) Subject to Section 171.1014, [~~a taxable entity that~~  
4 ~~elects to subtract compensation~~] for the purpose of computing its  
5 taxable margin under Section 171.101 a taxable entity may not  
6 include as wages or cash compensation amounts paid to an employee  
7 whose primary employment is directly associated with the operation  
8 of a facility that is:

9 (1) located on property owned or leased by the federal  
10 government; and

11 (2) managed or operated primarily to house members of  
12 the armed forces of the United States.

13 SECTION 5. Sections 171.1014(d), (e), and (f), Tax Code,  
14 are amended to read as follows:

15 (d) For purposes of Section 171.101, a combined group shall  
16 [~~make an election to~~] subtract the sum of [~~either~~] cost of goods  
17 sold, as determined under Subsection (e), [~~or~~] compensation, as  
18 determined under Subsection (f), and [~~that applies to all of its~~  
19 ~~members, or~~] \$1 million. [~~Regardless of the election, the taxable~~  
20 ~~margin of the combined group may not exceed the amount provided by~~  
21 ~~Section 171.101(a)(1)(A) for the combined group.~~]

22 (e) For purposes of Section 171.101, a combined group shall  
23 determine cost [~~that elects to subtract costs~~] of goods sold [~~shall~~  
24 ~~determine that amount~~] by:

25 (1) determining the cost of goods sold for each of its  
26 members as provided by Section 171.1012 as if the member were an  
27 individual taxable entity;

1           (2) adding the amounts of cost of goods sold  
2 determined under Subdivision (1) together; and

3           (3) subtracting from the amount determined under  
4 Subdivision (2) any cost of goods sold amounts paid from one member  
5 of the combined group to another member of the combined group, but  
6 only to the extent the corresponding item of total revenue was  
7 subtracted under Subsection (c)(3).

8           (f) For purposes of Section 171.101, a combined group shall  
9 determine the amount of compensation [~~that elects~~] to subtract  
10 [~~compensation shall determine that amount~~] by:

11           (1) determining the compensation for each of its  
12 members as provided by Section 171.1013 as if each member were an  
13 individual taxable entity, subject to the limitation prescribed by  
14 Section 171.1013(c);

15           (2) adding the amounts of compensation determined  
16 under Subdivision (1) together; and

17           (3) subtracting from the amount determined under  
18 Subdivision (2) any compensation amounts paid from one member of  
19 the combined group to another member of the combined group, but only  
20 to the extent the corresponding item of total revenue was  
21 subtracted under Subsection (c)(3).

22           SECTION 6. Sections 171.101(b) and (d), Tax Code, are  
23 repealed.

24           SECTION 7. This Act applies only to a report originally due  
25 on or after the effective date of this Act.

26           SECTION 8. This Act takes effect January 1, 2016.