

By: Sanford

H.B. No. 2545

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the determination of cost of goods sold for purposes of
3 computing the franchise tax.

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

5 SECTION 1. Section 171.101(a), Tax Code, is amended to read
6 as follows:

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

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

10 (A) the amount provided by this paragraph, which
11 is the lesser of:

12 (i) 70 percent of the taxable entity's total
13 revenue from its entire business, as determined under Section
14 171.1011; or

15 (ii) an amount equal to the taxable entity's
16 total revenue from its entire business as determined under Section
17 171.1011 minus \$1 million; or

18 (B) an amount computed by determining the taxable
19 entity's total revenue from its entire business under Section
20 171.1011 and subtracting the greater of:

21 (i) \$1 million; or

22 (ii) an amount equal to the sum of:

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

1 (1) cost of goods sold, as
2 determined under Section [171.1012](#) or 171.10121; or

3 (2) compensation, as determined
4 under Section [171.1013](#); and

5 (b) any compensation, as determined
6 under Section [171.1013](#), paid to an individual during the period the
7 individual is serving on active duty as a member of the armed forces
8 of the United States if the individual is a resident of this state
9 at the time the individual is ordered to active duty and the cost of
10 training a replacement for the individual;

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

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

17 SECTION 2. Section [171.1011\(v\)](#), Tax Code, is amended to
18 read as follows:

19 (v) A taxable entity primarily engaged in the business of
20 transporting goods by waterways that does not subtract cost of
21 goods sold in computing its taxable margin shall exclude from its
22 total revenue direct costs of providing transportation services by
23 intrastate or interstate waterways to the same extent that a
24 taxable entity that sells in the ordinary course of business real or
25 tangible personal property would be authorized by Section [171.1012](#)
26 or 171.10121 to subtract those costs as costs of goods sold in
27 computing its taxable margin, notwithstanding Section

1 171.1012(e)(3).

2 SECTION 3. Subchapter C, Chapter 171, Tax Code, is amended
3 by adding Section 171.10121 to read as follows:

4 Sec. 171.10121. ALTERNATIVE DETERMINATION OF COST OF GOODS
5 SOLD. In lieu of determining cost of goods sold as provided by
6 Section 171.1012 and subject to Section 171.1014, a taxable entity
7 that elects to subtract cost of goods sold for the purpose of
8 computing its taxable margin may determine the amount of that cost
9 of goods sold as follows:

10 (1) for a taxable entity treated for federal income
11 tax purposes as a corporation, the cost of goods sold is the amount
12 reportable as cost of goods sold on line 2, Internal Revenue Service
13 Form 1120;

14 (2) for a taxable entity treated for federal income
15 tax purposes as a partnership, the cost of goods sold is the amount
16 reportable as cost of goods sold on line 2, Internal Revenue Service
17 Form 1065;

18 (3) for a taxable entity treated for federal income
19 tax purposes as an S corporation, the cost of goods sold is the
20 amount reportable as cost of goods sold on line 2, Internal Revenue
21 Service Form 1120S; or

22 (4) for any other taxable entity, the cost of goods
23 sold is an amount determined in a manner substantially equivalent
24 to the amount for Subdivision (1), (2), or (3) determined by rules
25 the comptroller shall adopt.

26 SECTION 4. Section 171.1014, Tax Code, is amended by
27 amending Subsection (e) and adding Subsection (e-1) to read as

1 follows:

2 (e) For purposes of Section 171.101, a combined group that
3 elects to subtract costs of goods sold shall determine that amount
4 by:

5 (1) determining the cost of goods sold for each of its
6 members as provided by Section 171.1012 or 171.10121 as if the
7 member were an individual taxable entity;

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

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

15 (e-1) For purposes of Subsection (e), each member of a
16 combined group may elect to determine its cost of goods sold under
17 either Section 171.1012 or 171.10121.

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

20 SECTION 6. This Act takes effect January 1, 2018.