SENATE AMENDMENTS

2nd Printing

By: Geren, Goldman, Frullo, Meyer, Bonnen, et al. H.B. No. 1195

A BILL TO BE ENTITLED

AN ACT

relating to the franchise tax treatment of certain loans and grants made under the federal Coronavirus Aid, Relief, and Economic Security Act.

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

SECTION 1. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.10131 to read as follows:

Sec. 171.10131. PROVISIONS RELATED TO CERTAIN MONEY RECEIVED FOR COVID-19 RELIEF. (a) In this section, "qualifying loan or grant proceeds" means the amount of money that:

(1) is received by a taxable entity in loans or grants:

(A) under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. Section 9001 et seq.), as amended by the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. No. 116-142) and the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260); or

(B) from the restaurant revitalization fund established under Section 5003 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2); and

(2) is not included in the taxable entity's gross income for purposes of federal income taxation under:

(A) Sections 276 and 278 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260); or

(B) Section 9673 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).

(b) Notwithstanding any other law, a taxable entity:

(1) shall exclude from its total revenue, to the extent included under Section 171.1011(c)(1)(A), (c)(2)(A), or (c)(3), qualifying loan or grant proceeds;

(2) may include as a cost of goods sold under Section 171.1012 any expense paid using qualifying loan or grant proceeds to the extent the expense is otherwise includable as a cost of goods sold under that section; and

(3) may include as compensation under Section 171.1013 any expense paid using qualifying loan or grant proceeds to the extent the expense is otherwise includable as compensation under that section.

SECTION 2. This Act applies only to a report originally due on or after January 1, 2021.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2021.

ADOPTED

APR 19 2021

Patsy Spaw
Secretary of the Senate

FLOOR AMENDMENT NO. 1 BY: Kelly Hancock

Amend H.B. No. 1195 (senate committee printing) in SECTION 1 of the bill by striking added Section 171.10131(a), Tax Code (page 1, lines 32 through 48), and substituting the following:

(a) In this section, "qualifying loan or grant proceeds" means the amount of money received by a taxable entity that:

(1) is:

(A) a loan or grant under the Coronavirus Aid, Relief, and Economic Security Act (15 U.S.C. Section 9001 et seq.), as amended by the Paycheck Protection Program Flexibility Act of 2020 (Pub. L. No. 116-142), the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), the American Rescue Plan Act of 2021 (Pub. L. No. 117-2), and the PPP Extension Act of 2021 (Pub. L. No. 117-6);

(B) a shuttered venue operator grant under Section 324 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260), as amended by Section 5005 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2);

(C) microloan program recovery assistance under Section 329 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260); or

(D) a grant from the restaurant revitalization fund established under Section 5003 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2); and

(2) is not included in the taxable entity's gross income for purposes of federal income taxation under:

(A) Section 276 or 278 of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260); or

(B) Section 9672 or 9673 of the American Rescue Plan Act of 2021 (Pub. L. No. 117-2).

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 21, 2021

TO: Honorable Dade Phelan, Speaker of the House, House of Representatives

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1195 by Geren (relating to the franchise tax treatment of certain loans and grants made under the federal Coronavirus Aid, Relief, and Economic Security Act.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1195, As Passed 2nd House : an impact of $0 through the biennium ending August 31, 2023.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($220,900,000) through the 2022-23 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

All Funds, Six-Year Impact:

Fiscal Year	**Probable Revenue (Loss) from *Property Tax Relief Fund* 304**
2021	($4,400,000)
2022	($138,500,000)
2023	($78,000,000)
2024	$0
2025	$0
2026	$0

The first table assumes the bill takes immediate effect. The second table assumes the bill takes effect on September 1, 2021.

Fiscal Year	**Probable Revenue (Loss) from *Property Tax Relief Fund* 304**
2022	($142,900,000)
2023	($78,000,000)
2024	$0
2025	$0
2026	$0

Fiscal Analysis

The bill would amend Chapter 171, Tax Code to provide for exclusion from total revenue of the amounts of certain loan or grant proceeds for purposes of the franchise tax.

Added Section 171.10131 would provide that total revenue does not include an amount of money that:

(1) is received in loans or grants under the federal Coronavirus Aid, Relief, and Economic Security Act, as amended by the Paycheck Protection Program Flexibility Act of 2020, the Consolidated Appropriations Act, 2021, the American Rescue Plan Act of 2021, or the PPP Extension Act of 2021, or is a shuttered venue operator grant, microloan program recovery assistance, or a restaurant revitalization grant under the Consolidated Appropriations Act, 2021 or the American Rescue Plan Act of 2021 as applicable, and

(2) is excluded from gross income for purposes of federal income taxation by Sections 276 and 278 of the Consolidated Appropriations Act, 2021 or Sections 9672 or 9673 of the American Rescue Plan Act of 2021.

Expenses paid with such qualifying loan or grant proceeds would be allowed in the determination of cost of goods sold or of compensation for subtraction from total revenue in the determination of taxable margin, if otherwise includable as cost of goods sold or compensation. The bill would only apply to reports originally due on or after January 1, 2021.

The bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2021.

Methodology

The federal Consolidated Appropriations Act, 2021 and the American Rescue Plan Act of 2021 provide for exclusion of certain loans and other financial assistance from gross income for purposes of federal income taxation, including forgiven Paycheck Protection Program (PPP) loans, emergency Economic Injury Disaster Loans (EIDL) and targeted EIDL advances, small business loan payments made on behalf of borrowers pursuant to Section 1112(c), CARES Act, grants for shuttered venue operators, microloan recovery assistance, and restaurant revitalization grants. Those exclusions do not apply for purposes of the Texas franchise tax, because the state tax is tied to the Internal Revenue Code as it existed in 2007.

Data from the U.S. Small Business Administration (SBA) on amounts by recipient of PPP loans approved in 2020 was combined with comptroller franchise tax report data to estimate amounts of loan forgiveness that would be deemed revenue of taxable entities in the calculation of margin subject to apportionment to the state, and multiplied by a weighted average franchise tax rate. Amounts associated with the small business loan assumptions by SBA, the EIDL grants and advances, shuttered venue operator grants, microloan recovery assistance, and the restaurant revitalization grants were estimated proportionally, based on the amounts appropriated for those purposes relative to appropriations for PPP loans. It is assumed that PPP loans granted in 2020 would be forgiven in 2021, affecting franchise tax liabilities for reports originally due in 2022. The exclusion from revenue of the value of loan payments made by the SBA in 2020 pursuant to Section 1112, CARES Act are assumed to affect franchise tax reports in fiscal year 2021 if the bill receives immediate effect, otherwise the effects would occur with respect to amended reports filed in fiscal year 2022.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

April 7, 2021

TO: Honorable Jane Nelson, Chair, House Committee on Finance

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1195 by Geren (Relating to the franchise tax treatment of certain loans and grants made under the federal Coronavirus Aid, Relief, and Economic Security Act.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1195, As Engrossed : an impact of $0 through the biennium ending August 31, 2023.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($215,600,000) through the 2022-23 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

All Funds, Six-Year Impact:

Fiscal Year	**Probable Revenue (Loss) from *Property Tax Relief Fund* 304**
2021	($4,400,000)
2022	($138,500,000)
2023	($72,700,000)
2024	$0
2025	$0
2026	$0

The first table assumes the bill takes immediate effect. The second table assumes the bill takes effect on September 1, 2021.

Fiscal Year	**Probable Revenue (Loss) from *Property Tax Relief Fund* 304**
2022	($142,900,000)
2023	($72,700,000)
2024	$0
2025	$0
2026	$0

Fiscal Analysis

The bill would amend Chapter 171 of the Tax Code to provide for exclusion from total revenue of the amounts of certain loan or grant proceeds for purposes of the franchise tax.

Added Section 171.10131 would provide that total revenue does not include an amount of money that:

(1) is received in loans or grants under the federal Coronavirus Aid, Relief, and Economic Security Act, as amended by the Paycheck Protection Program Flexibility Act of 2020 and the Consolidated Appropriations Act, 2021, or from the restaurant revitalization fund established under Section 5003 of the American Rescue Plan Act of 2021 and

(2) is excluded from gross income for purposes of federal income taxation by Sections 276 and 278 of the Consolidated Appropriations Act, 2021 or Section 9673 of the American Rescue Plan Act of 2021.

Expenses paid with such qualifying loan or grant proceeds would be allowed in the determination of cost of goods sold or of compensation for subtraction from total revenue in the determination of taxable margin, if otherwise includable as cost of goods sold or compensation.

The bill would only apply to reports originally due on or after January 1, 2021. The bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2021.

Methodology

The federal Consolidated Appropriations Act, 2021 provides for exclusion of certain loans and other financial assistance from gross income for purposes of federal income taxation, including forgiven Paycheck Protection Program (PPP) loans, emergency Economic Injury Disaster Loans (EIDL) and targeted EIDL advances, small business loan payments made on behalf of borrowers pursuant to Section 1112(c), CARES Act, and grants for shuttered venue operators. Those exclusions do not apply for purposes of the Texas franchise tax, because the state tax is tied to the Internal Revenue Code as it existed in 2007.

Data from the U.S. Small Business Administration (SBA) on amounts by recipient of PPP loans approved in 2020 was combined with comptroller franchise tax report data to estimate amounts of loan forgiveness that would be deemed revenue of taxable entities in the calculation of margin subject to apportionment to the state, and multiplied by a weighted average franchise tax rate. Amounts associated with the small business loan assumptions by SBA, the EIDL grants and advances, and the restaurant revitalization grants were estimated proportionally, based on the amounts appropriated for those purposes relative to appropriations for PPP loans. It is assumed that PPP loans granted in 2020 would be forgiven in 2021, affecting franchise tax liabilities for reports originally due in 2022. The exclusion from revenue of the value of loan payments made by the SBA in 2020 pursuant to Section 1112, CARES Act are assumed to affect franchise tax reports in fiscal 2021 if the bill receives immediate effect, otherwise the effects would be occur with respect to amended reports filed in fiscal 2022.

NOTE: Section 324, Consolidated Appropriations Act, 2021 is not an amendment of the CARES Act; consequently, a shuttered venue grant would not be a qualifying loan or grant under Subdivision (a) (1) (A) of Section 171.10131 as added by this bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 20, 2021

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB1195** by Geren (relating to the franchise tax treatment of certain loans and grants made under the federal Coronavirus Aid, Relief, and Economic Security Act.), **Committee Report 1st House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1195, Committee Report 1st House, Substituted : an impact of $0 through the biennium ending August 31, 2023.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($211,500,000) through the end of the 2022-23 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

All Funds, Six-Year Impact:

Fiscal Year	**Probable Revenue (Loss) from** ***Property Tax Relief Fund*** **304**
2021	($4,400,000)
2022	($134,400,000)
2023	($72,700,000)
2024	$0
2025	$0
2026	$0

The first table assumes the bill takes immediate effect. The second table assumes the bill takes effect on September 1, 2021.

Fiscal Year	**Probable Revenue (Loss) from** ***Property Tax Relief Fund*** **304**
2022	($138,800,000)
2023	($72,700,000)
2024	$0
2025	$0
2026	$0

Fiscal Analysis

The bill would amend Chapter 171 of the Tax Code to provide for exclusion from total revenue of the amounts of certain loan or grant proceeds for purposes of the franchise tax.

Added Section 171.10131 would provide that total revenue does not include an amount of money that:

(1) is received in loans or grants under the federal Coronavirus Aid, Relief, and Economic Security Act, as amended by the Paycheck Protection Program Flexibility Act of 2020 and the Consolidated Appropriations Act, 2021, and

(2) is excluded from gross income for purposes of federal income taxation by Sections 276 and 278 of the Consolidated Appropriations Act, 2021.

Expenses paid with such qualifying loan or grant proceeds would be allowed in the determination of cost of goods sold or of compensation for subtraction from total revenue in the determination of taxable margin, if otherwise includable as cost of goods sold or compensation.

The bill would only apply to reports originally due on or after January 1, 2021. The bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2021.

Methodology

The federal Consolidated Appropriations Act, 2021 provides for exclusion of certain loans and other financial assistance from gross income for purposes of federal income taxation, including forgiven Paycheck Protection Program (PPP) loans, emergency EIDL grants and targeted EIDL advances, small business loan payments made on behalf of borrowers pursuant to Section 1112(c), CARES Act, and grants for shuttered venue operators. Those exclusions do not apply for purposes of the Texas franchise tax, because the state tax is tied to the Internal Revenue Code as it existed in 2007.

Data from the U.S. Small Business Administration (SBA) on amounts by recipient of PPP loans approved in 2020 was combined with comptroller franchise tax report data to estimate amounts of loan forgiveness that would be deemed revenue of taxable entities in the calculation of margin subject to apportionment to the state, multiplied by a weighted average franchise tax rate. Amounts associated with the small business loan assumptions by SBA and the EIDL grants and advances were estimated proportionally, based on the amounts appropriated for those purposes relative to appropriations for PPP loans. It is assumed that PPP loans granted in 2020 would be forgiven in 2021, affecting franchise tax liabilities for reports originally due in 2022. The exclusion from revenue of the value of loan payments made by the Small Business Administration in 2020 pursuant to Section 1112, CARES Act are assumed to affect franchise tax reports in fiscal 2021 if the bill receives immediate effect, otherwise the effects would be occur with respect to amended reports filed in fiscal 2022.

NOTE: Section 324, Consolidated Appropriations Act, 2021 is not an amendment of the CARES Act; consequently, a shuttered venue grant would not be a qualifying loan or grant under Subdivision (a) (1) of Section 171.10131 as added by this bill.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JMc, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 87TH LEGISLATIVE REGULAR SESSION

March 14, 2021

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB1195** by Geren (Relating to the forgiveness of a loan made under the Paycheck Protection Program for franchise tax purposes.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1195, As Introduced : an impact of $0 through the biennium ending August 31, 2023.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($133,500,000) for the 2022-23 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

General Revenue-Related Funds, Five- Year Impact:

Fiscal Year	**Probable Net Positive/(Negative) Impact to *General Revenue Related Funds***
2022	$0
2023	$0
2024	$0
2025	$0
2026	$0

All Funds, Five-Year Impact:

Fiscal Year	**Probable Revenue (Loss) from *Property Tax Relief Fund* 304**
2022	($133,500,000)
2023	$0
2024	$0
2025	$0
2026	$0

Fiscal Analysis

The bill would amend Chapter 171, Tax Code to provide for exclusion from total revenue of the amounts of certain forgiven loans for purposes of the franchise tax.

Section 171.1011 would be amended by adding Subsection (y) to provide that total revenue does not include any amount of loan forgiven under the federal Paycheck Protection Program. Qualifying expenses paid with such loan proceeds would be allowed in the determination of cost of goods sold or of compensation for subtraction from total revenue in the determination of taxable margin.

The provisions of the bill would only apply to reports originally due on or after January 1, 2021. The bill would take effect September 1, 2021.

Methodology

Federal law enacted in 2020 provides for exclusion of the value of forgiven Paycheck Protection Program (PPP) loans from gross income for purposes of the Internal Revenue Code. That exclusion does not apply for purposes of the Texas franchise tax, because the state tax is tied to the Internal Revenue Code as it existed in 2007.

Data from the U.S. Small Business Administration on amounts by recipient of Paycheck Protection Program loans approved in 2020 was combined with comptroller franchise tax report data to estimate amounts of loan forgiveness that would be deemed revenue of taxable entities in the calculation of margin subject to apportionment to the state, multiplied by a weighted average franchise tax rate. It is assumed that PPP loans granted in 2020 would be forgiven in 2021, affecting franchise tax liabilities for reports originally due in 2022.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts
LBB Staff: JMc, KK, SD

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

87TH LEGISLATIVE REGULAR SESSION

March 20, 2021

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB1195** by Geren (relating to the franchise tax treatment of certain loans and grants made under the federal Coronavirus Aid, Relief, and Economic Security Act.), **Committee Report 1st House, Substituted**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: JMc, KK

LEGISLATIVE BUDGET BOARD
Austin, Texas

TAX/FEE EQUITY NOTE

87TH LEGISLATIVE REGULAR SESSION

March 20, 2021

TO: Honorable Morgan Meyer, Chair, House Committee on Ways & Means

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: **HB1195** by Geren (Relating to the forgiveness of a loan made under the Paycheck Protection Program for franchise tax purposes.), **As Introduced**

No statistically significant impact on the overall distribution of a state tax or fee burden among individuals and businesses is anticipated from the provisions of this bill.

Source Agencies:

LBB Staff: JMc, KK