

By: Creighton

S.B. No. 330

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

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

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

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

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

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

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

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

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

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

(v) A taxable entity primarily engaged in the business of
transporting goods by waterways ~~[that does not subtract cost of
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

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

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

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

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

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

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

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

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

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

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

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

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

(1) determining the cost of goods sold for each of its members as provided by Section 171.1012 as if the member were an 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.