

## **BILL ANALYSIS**

Senate Research Center  
83R2685 TJB-D

S.B. 594  
By: Deuell  
Finance  
4/23/2013  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The purpose of this bill will be to exempt the first million dollars of gross revenue for those entities subject to the franchise (margins) tax.

In simple terms, under current law, an entity subject to the franchise tax calculates gross revenues and subtracts either compensation, cost of goods sold, or 30 percent of total revenue to yield the taxable margin. As an example, Company A grosses \$1 million, deducts \$600,000 in cost of goods sold, leaving \$400,000 of taxable margin. Under normal circumstances the business would have to pay a one percent tax on that \$400,000—a \$4,000 check. Company A is saved from that because the law doesn't make anyone pay tax if they gross \$1 million or less. Company A, then, owes nothing.

Unfortunately, Company B grosses \$1,000,001. The business is \$1 above the threshold so the small business exemption does not apply. Company B has to pay tax on all the taxable margin, writing a tax check for \$4,000. That \$1 of extra business costs Company B \$4,000.

As proposed, S.B. 594 amends current law relating to exempting the first \$1 million from total revenue for purposes of the franchise tax.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the comptroller of public accounts of the State of Texas is modified in SECTION 1 (Section 171.1011, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 171.1011(c), Tax Code, as follows:

(c) Provides that except as provided by this section, and subject to Section 171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business), for the purpose of computing its taxable margin under Section 171.101 (Determination of Taxable Margin), the total revenue of a taxable entity is:

(1) for a taxable entity treated for federal income tax purposes as a corporation, an amount computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1120;

(ii) the amounts reportable as income on lines 4 through 10, Internal Revenue Service Form 1120; and

(iii) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Section 171.1015(b) (relating to authorizing a taxable upper tier entity to include the

total revenue of a lower tier entity under certain circumstances for purposes of calculating its own taxable margin); and

(B) subtracting:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included in Subsection (c)(1)(A) for the current reporting period or a past reporting period;

(ii) to the extent included in Subsection (c)(1)(A), foreign royalties and foreign dividends, including amounts determined under Section 78 or Sections 951-964, Internal Revenue Code;

(iii) to the extent included in Subsection (c)(1)(A), net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes;

(iv) allowable deductions from Internal Revenue Service Form 1120, Schedule C, to the extent the relating dividend income is included in total revenue;

(v) to the extent included in Subsection (c)(1)(A), items of income attributable to an entity that is a disregarded entity for federal income tax purposes;

(vi) to the extent included in Subsection (c)(1)(A), other amounts authorized by this section; and

(vii) \$1 million;

(2) for a taxable entity treated for federal income tax purposes as a partnership, an amount computed by:

(A) adding:

(i) the amount reportable as income on line 1c, Internal Revenue Service Form 1065;

(ii) the amounts reportable as income on lines 4, 6, and 7, Internal Revenue Service Form 1065;

(iii) the amounts reportable as income on lines 3a and 5 through 11, Internal Revenue Service Form 1065, Schedule K;

(iv) the amounts reportable as income on line 17, Internal Revenue Service Form 8825;

(v) the amounts reportable as income on line 11, plus line 2 or line 45, Internal Revenue Service Form 1040, Schedule F; and

(vi) any total revenue reported by a lower tier entity as includable in the taxable entity's total revenue under Section 171.1015(b); and

(B) subtracting:

(i) bad debt expensed for federal income tax purposes that corresponds to items of gross receipts included in Subsection (c)(2)(A) for the current reporting period or a past reporting period;

(ii) to the extent included in Subsection (c)(2)(A), foreign royalties and foreign dividends, including amounts determined under Section 78 or Sections 951-964, Internal Revenue Code;

(iii) to the extent included in Subsection (c)(2)(A), net distributive income from a taxable entity treated as a partnership or as an S corporation for federal income tax purposes;

(iv) to the extent included in Subsection (c)(2)(A), items of income attributable to an entity that is a disregarded entity for federal income tax purposes;

(v) to the extent included in Subsection (c)(2)(A), other amounts authorized by this section; and

(vi) \$1 million; or

(3) for a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation or partnership, an amount determined in a manner substantially equivalent to the amount for Subdivision (1) or (2), including the subtraction of \$1 million as provided by Subdivision (1)(B)(vii) or (2)(B)(vi), determined by rules that the comptroller of public accounts of the State of Texas (comptroller) shall adopt.

SECTION 2. Amends Section 171.002(d), Tax Code, to provide that a taxable entity is not required to pay any tax and is not considered to owe any tax for a period if the amount of tax computed for the taxable entity is less than \$1,000.

SECTION 3. Amends Section 171.006(b), Tax Code, to provide that beginning in 2010, on January 1 of each even-numbered year, the amounts prescribed by Sections 171.1011(c)(1)(B)(vii), 171.1011(c)(2)(B)(vi), 171.1011(c)(3), and 171.1013(c) (relating to prohibiting a tax entity from including more than \$300,000 or another certain amount, per a certain time period, for any person in the amount of wages and cash compensation it determines under this section), rather than Sections 171.002(d)(2), 171.0021, and 171.1013(c), are increased or decreased by an amount equal to the amount prescribed by those sections on December 31 of the preceding year multiplied by the percentage increase or decrease during the preceding state fiscal biennium in the consumer price index and rounded to the nearest \$10,000.

SECTION 4. Amends Section 171.1014(c), Tax Code, to require a combined group of taxable entities that are part of an affiliated group engaged in a unitary business, for purposes of Section 171.101, to determine its total revenue by determining the total revenue of each of its members as provided by Section 171.1011 as if the member were an individual taxable entity, except that only one member of the combined group may subtract \$1 million under Section 171.1011(c)(1)(B)(vii), (c)(2)(B)(vi), or (c)(3).

SECTION 5. Amends Section 171.1015(d), Tax Code, to provide that Section 171.002(d) does not apply to an upper tier entity if, before the attribution of any total revenue by a lower tier entity to an upper tier entity under this section, the lower tier entity does not meet the criteria of Section 171.002(d)(1), rather than of Section 171.002(d)(1) or (d)(2).

SECTION 6. (a) Repealer: Section 1(c) (relating to the section's expiration date), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011.

(b) Effective date, this section: September 1, 2013.

SECTION 7. (a) Repealer: Section 2 (relating to the amending of Section 171.002(d), Tax Code, the section's effective date, and the section's application), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.02, Chapter 4 (S.B. 1), Acts

of the 82nd Legislature, 1st Called Session, 2011, and which amended former Section 171.002(d), Tax Code.

(b) Effective date, this section: September 1, 2013.

SECTION 8. (a) Repealer: Section 3 (relating to the amending of Section 171.0021(a), Tax Code, the section's effective date, and the section's application), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Section 171.0021(d), Tax Code.

(b) Effective date, this section: September 1, 2013.

SECTION 9. Repealers: Sections 171.0021 (Discounts from Tax Liability for Small Businesses), 171.1016(d) (relating to Section 171.0021's application to taxable entities), and 171.204(b) (relating to authorizing the comptroller to require a taxable entity, under certain conditions, to file an abbreviated information report including certain information and prohibiting the comptroller from requiring a taxable entity described by the subsection to file an information report that requires the taxable entity to report or compute its margin), Tax Code.

SECTION 10. Provides that this Act applies only to a report originally due on or after January 1, 2014.

SECTION 11. Effective date, except as otherwise provided by this Act: January 1, 2014.