

BILL ANALYSIS

Senate Research Center
83R6531 TJB-F

S.B. 868
By: Eltife
Finance
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Tax Code provides two methods for determining a taxable entity's taxable margin. Section 171.101 (Determination of Taxable Margin) states that taxable margin is the lesser of 70 percent of total revenue as determined under Section 171.1011 (Determination of Total Revenue From Entire Business) or an amount computed by determining total revenue under Section 171.1011 and then subtracting certain items, including compensation.

Section 171.1013 states that compensation is the amount entered in the Medicare wages and tips box of IRS Form W-2. The Texas Administrative Code further clarifies that compensation does not include payments reportable on IRS Form 1099.

While state law generally does not allow a taxable entity to deduct from its total revenue any pass-through payments made to subcontractors, Section 171.1011(g), Tax Code, establishes exclusions from total revenue for certain flow-through payments, including sales commissions to nonemployees; tax basis of securities underwritten; and subcontracting payments for services, labor, or materials used for design, construction, remodeling, or repair of real property.

The Tax Code contains no provision that allows for any other payments or costs associated with subcontractors to be deducted from an entity's total taxable revenue. It is important to note that a corporation is permitted to deduct all costs associated with the use of subcontractors on its federal income tax return.

Payments to landmen acting as subcontractors are not deductible from total revenue either as compensation or as pass-through payments. The proposed amendment to current law adds payments to subcontractors who provide landman services to the list of flow-through payments that are to be excluded from taxable income for purposes of computing an entity's taxable margin.

As proposed, S.B. 868 amends current law relating to the exclusion of certain flow-through payments related to petroleum and mineral interests in determining total revenue for purposes of the franchise tax.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

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

(g) Requires a taxable entity to exclude from its total revenue, to the extent included under Subsection (c)(1)(A) (relating to determining taxable margin for a corporation), (c)(2)(A) (relating to determining taxable margin for a partnership), or (c)(3) (relating to determining the taxable margin for a taxable entity other than a corporation or partnership), only certain flow-through funds, including subcontracting payments made to individuals for services related to the acquisition or management of petroleum interests

or the performance of title or contract functions related to the exploration, exploitation, or disposition of petroleum or mineral interests. Makes nonsubstantive changes.

SECTION 2. Provides that this Act applies only to a report originally due on or after the effective date of this Act.

SECTION 3. Effective date: January 1, 2014.