

## **BILL ANALYSIS**

Senate Research Center  
81R10113 JE-F

S.B. 1221  
By: Shapiro  
Finance  
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As Filed

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

The revised franchise tax already excludes pass-through funds from gross income for subcontractor payments handled by a general contractor, for attorneys holding claimant's funds, and for funds mandated by law or fiduciary duty. Tenant funds held by landlords of commercial real estate should be treated no differently.

Commercial pass-through payments provide no financial benefit to the landlord. Therefore, these payments should not be considered income for purposes of the revised franchise tax. They are simply collected as a courtesy and held in escrow to cover the tenants' pro rata share of real estate taxes, insurance, and common area maintenance fees. Funds that are remitted to insurance companies and other service providers are considered income to those entities and are taxable as such. Therefore, taxing the landlord on those same funds is double taxation. In addition, taxing the landlord on funds used to pay real estate taxes to the country tax assessor/collector is the same thing as taxing "tax dollars," not income. Commercial landlords do not benefit from property tax reductions because their leases are structured in a way that requires them to pass 100 percent of the property tax savings through to the tenants.

As proposed, S.B. 1221 provides that tenant funds held by landlords of commercial real estate are to be treated as pass-through funds and therefore are required to be deducted from the landlord's gross receipts.

### **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, to require a taxable entity to exclude from its total revenue, to the extent included under Subsection (c)(1)(A) (relating to amounts added to computing total revenue for a taxable entity), (c)(2)(A) (relating to amounts added for a taxable entity treated for federal income tax purposes as a partnership, or (c)(3) (relating to a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation or partnership), only certain flow-through funds that are mandated by contract to be distributed to other entities, including payments received by a landlord of commercial real property from a tenant of the property to reimburse the landlord for ad valorem taxes, franchise taxes, any tax or excise imposed on rents, general or special assessments or other taxes, operating expenses, including property and other insurance expenses, utilities, maintenance expenses, management expenses, and similar amounts generally expended for commercial real property.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: January 1, 2010.