

SUBJECT: Apportionment of sales of certain loans and securities under margins tax

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Oliveira, Otto, Bohac, Hartnett, Hilderbran, C. Howard, P. King, Paxton, Taylor, Villarreal

0 nays

1 absent — Peña

WITNESSES: For — Karey Barton, Texas Bankers Association; (*Registered, but did not testify*: Steve Scurlock, Independent Bankers Association of Texas)

Against — None

On — Ed Warren, Comptroller of Public Accounts

BACKGROUND: Under the margins tax, a business must apportion its gross receipts between those that represent business activity in Texas and those that do not. This apportionment is to ensure that the margins tax only applies to business activity that took place in Texas. HB 3928 by Keffer, enacted by the 80th Legislature in 2007, revised the manner in which a taxable entity's revenue from the sale of securities was apportioned in Texas. Under HB 3928, if a loan or security was treated as a seller's "inventory" for federal income tax purposes, the gross proceeds from the sale of a loan or security are to be considered gross receipts for apportionment purposes when calculating a business' margins tax liability.

Financial Accounting Standard (FAS) 115 requires banks to divide their securities portfolios into three categories — trading securities, securities available for sale, and securities held to maturity — and applies different accounting rules to each.

DIGEST: CSHB 4611 would amend the Tax Code, sec. 171.006, to state that if a lending institution categorized a loan or security as "Securities Available for Sale" or "Trading Securities" under Financial Accounting Standard No. 115, the gross proceeds of the sale of that loan or security would be considered gross receipts.

CSHB 4611 would define Financial Accounting Standard No. 115 to mean the standard by that name in effect as of January 1, 2009, not including any changes made after that date. CSHB 4611 also would define security as having the meaning assigned by Sec. 475(c)(2), Internal Revenue Code, and include instruments described by Secs. 475(e)(2)(B), (C), and (D) of that code.

The bill would take effect January 1, 2010.

**SUPPORTERS
SAY:**

CSHB 4611 would return the apportionment rules for certain loans and securities to those that existed before the margins tax was created and which the Legislature never intended to change. Before the margins tax took effect, banks could treat the gross proceeds of the sale of these loans or securities as gross receipts for apportioning margin. But HB 3928 stated that this could be done if these loans and securities were treated as “inventory” for federal income tax purposes. While this change had no effect on broker-dealers or the large banks that had a brokerage arm, a series of administrative decisions have resulted in significant burdens and regulatory issues regarding the sale of these loans and securities for medium-sized banks. To take advantage of these apportionments, these organizations must reform or change their reporting to the IRS. These requirements are onerous and unnecessary as the Legislature never intended to change the apportionment of these loans and securities.

These requirements did not exist prior to the creation of the margins tax, and the Legislature did not intend to make them. While large multi-state banks can comply with the comptroller’s policies and small banks tend not to hold these loans and securities, medium sized banks are suffering significantly as these tax policies force unnecessary administrative burdens on them. CSHB 4611 would change these apportionment rules back to those that banks followed before the creation of the margins tax. Banks would be allowed to use the gross method for apportionment, returning them to a level playing field.

According to the LBB, CSHB 4611 would not have a significant fiscal impact to the state as the bill would conform to the expected scope of the use of gross proceeds from the sale of the loan or security that was anticipated under HB 3928.

OPPONENTS
SAY:

The state is expected to face a massive deficit going into the next biennium and cannot afford any loss of revenue. While many institutions have and will reform to take advantage of the optimal apportionment rules, some would not have and would have continued to pay more under the margins tax as a result.

NOTES:

The committee substitute makes specific mention of and defines “FAS No. 115” and “security” and would limit the applicability of the bill to lending institutions.