

SUBJECT: Exempting certain CARES Act loans and grants from franchise taxes

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer,
Murphy, Noble, Rodriguez, Shine

0 nays

1 absent — Sanford

WITNESSES: For — Annie Spilman, NFIB; Martin Gutierrez, San Antonio Hispanic Chamber of Commerce; (*Registered, but did not testify*: Scott Stewart, ACEC Texas; TJ Patterson, City of Fort Worth; James LeBas, Independent Bankers Association of Texas, Texas Apartment Association, and Texas Chemical Council; Cathy DeWitt, Jobs for Texas and Texas Association of Staffing; Mireya Zapata, Lumbermen's Association of Texas; Scott Norman, Texas Association of Builders; Glenn Hamer, Texas Association of Business; Wynn Baker, Texas Bankers Association; Jennifer Fagan, Texas Construction Association; Matt Burgin, Texas Food & Fuel Association; Cameron Duncan, Texas Hospital Association; Nilesh Patel, Texas Hotel & Lodging Association; Ryan Skrobarczyk, Texas Nursery & Landscape Association; Lance Lively, Texas Package Stores Association; Daniel Gonzalez and Julia Parenteau, Texas Realtors; Kelsey Streufert, Texas Restaurant Association; Jack Roberts, Texas Society of Certified Public Accountants; Ron Hinkle, Texas Travel Alliance)

Against — None

On — (*Registered, but did not testify*: Karey Barton and Tom Currah, Comptroller of Public Accounts)

BACKGROUND: Tax Code ch. 171 imposes a franchise tax on the taxable margin of certain entities that do business or were formed in the state. There are several ways the taxable margin may be calculated, including by determining:

- 70 percent of an entity's total revenue from its entire business;
- an entity's total revenue minus cost of goods sold;
- an entity's total revenue minus compensation; or
- an entity's total revenue minus \$1 million.

The total revenue of a taxable entity is determined from certain revenues reported for federal income tax purposes, minus statutory exclusions.

DIGEST:

CSHB 1195 would require a taxable entity, for the purpose of computing franchise taxes, to exclude from its total revenue qualifying loan or grant proceeds:

- received under the federal Coronavirus Aid, Relief, and Economic Security Act, as amended by the Paycheck Protection Program Flexibility Act and Consolidated Appropriations Act, 2021; and
- not included in the taxable entity's gross income for purposes of federal income taxation.

A taxable entity also could include as a cost of goods sold or as compensation any expense paid using qualifying loan or grant proceeds to the extent otherwise allowable by state law.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021. The bill would apply only to a report originally due on or after January 1, 2021.

**SUPPORTERS
SAY:**

CSHB 1195 would bring much-needed assurance and certainty to Texas businesses by clarifying that federal loans and grants under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, including Paycheck Protection Program (PPP) loans, were exempt from the state franchise tax. PPP loans and CARES Act funds were an essential part of coronavirus pandemic response and relief for employers that enabled them to keep their doors open and employees on the payroll. Businesses who received relief funds should not face an unexpected franchise tax bill on those funds while they continue to struggle to stay afloat.

The federal government recently clarified that forgiven PPP loans were exempt from being included as income for tax purposes, so this bill would align state and federal policies. The bill could be amended to include other kinds of federal funds received by Texas businesses for pandemic relief.

CRITICS
SAY:

CSHB 1195 should be expanded to include other federal coronavirus relief funds, such as shuttered venue grants, to ensure that the state followed all federal guidance on exempting coronavirus pandemic relief funds from taxation.

NOTES:

According to the fiscal note, the bill would have a direct impact of revenue loss to the Property Tax Relief Fund of \$211.5 million through fiscal 2022-23. The loss would have to be made up with an equal amount of general revenue to fund the Foundation School Program.

The author plans to offer a floor amendment that would expand "qualifying loan or grant proceeds" to include money received by a taxable entity from the Restaurant Revitalization Fund established by the American Rescue Plan Act of 2021.