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Commercial Real Estate Industry Applauds Bill to Exempt Pass-Through Payments from Taxable Revenue

(AUSTIN-March 3, 2009) – Senator Florence Shapiro (R-Plano) filed legislation Monday that would exclude certain commercial lease expenses, called pass-through payments, from the state’s revised franchise tax that went into effect in 2007. The senate bill ([SB 1221](#)) would amend the tax code to exempt from total revenue the payments a landlord of commercial real property receives from a tenant for property taxes, franchise taxes, insurance premiums, and operating expenses. Such payments are typically “passed through” to the taxing authorities or vendors providing the services and are not income to the landlord.

“We applaud Senator Shapiro for taking the lead on fixing this oversight in the revised business franchise tax,” said Macey Davis, EVP of Government Affairs for the Real Estate Council of Dallas and chair of the [Real Estate Councils of Texas](#).

The state tax on businesses, called the Texas franchise tax, is often referred to as the margin tax because the tax amount is based on a company’s gross margin. Under the revised franchise tax that was crafted in 2007, pass-through payments are included in a commercial landlord’s total taxable revenue.

Commercial pass-through payments include payments for the tenant’s pro rata share of real estate taxes, insurance premiums, and the operating expenses for the common areas of the property. These payments are not income to the landlord, but rather are collected by the landlord and then *passed through* to the county tax assessor/collector, the insurance company, and other service providers.

“It is fundamentally unfair to categorize the payments we pass through from our tenants to other entities as revenue because they are expenses and landlords do not profit by administering these funds,” says Will Mundinger of the Archon Group and chair of statewide legislative affairs for the Real Estate Council of Dallas.

A companion bill is expected to be filed in the House later this week.

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