

By: Homer

H.B. No. 394

A BILL TO BE ENTITLED

AN ACT

relating to franchise tax incentives for recycling.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 171, Tax Code, is amended by adding Section 171.1045 to read as follows:

Sec. 171.1045. GROSS RECEIPTS: DEDUCTION FOR RECYCLED PRODUCTS. (a) In this section:

(1) "Recycled product" has the meaning assigned by Section 361.421, Health and Safety Code.

(2) "Solid waste" has the meaning assigned by Section 361.003, Health and Safety Code.

(b) A corporation may exclude from its receipts includable under Sections 171.103(1), 171.1032(a)(1), 171.105(a)(1), and 171.1051(a)(1) the amount of the corporation's receipts from sales of recycled products manufactured by the corporation. A corporation that chooses to exclude receipts as provided by this section shall exclude those receipts from each computation of gross receipts required by this chapter.

(c) A corporation is entitled to exclude receipts under this section only if:

(1) the corporation is not primarily engaged in the business of manufacturing and selling recycled products; and

(2) the corporation demonstrates to the comptroller that the recycled products were manufactured using waste that the

1 corporation would otherwise have disposed of as solid waste.

2 SECTION 2. Section 171.110, Tax Code, is amended by
3 amending Subsection (a) and adding Subsection (m) to read as
4 follows:

5 (a) The net taxable earned surplus of a corporation is
6 computed by:

7 (1) determining the corporation's reportable federal
8 taxable income, subtracting from that amount any amount excludable
9 under Subsection (k), any amount included in reportable federal
10 taxable income under Section 78 or Sections 951-964, Internal
11 Revenue Code, any amount derived from the sale of recycled products
12 manufactured by the corporation, and dividends received from a
13 subsidiary, associate, or affiliated corporation that does not
14 transact a substantial portion of its business or regularly
15 maintain a substantial portion of its assets in the United States,
16 and adding to that amount any compensation of officers or
17 directors, or if a bank, any compensation of directors and
18 executive officers, to the extent excluded in determining federal
19 taxable income to determine the corporation's taxable earned
20 surplus;

21 (2) apportioning the corporation's taxable earned
22 surplus to this state as provided by Section 171.106(b) or (c), as
23 applicable, to determine the corporation's apportioned taxable
24 earned surplus;

25 (3) adding the corporation's taxable earned surplus
26 allocated to this state as provided by Section 171.1061; and

27 (4) subtracting from that amount any allowable

1 deductions and any business loss that is carried forward to the tax
2 reporting period and deductible under Subsection (e).

3 (m) A corporation is entitled to subtract amounts derived
4 from the sale of recycled products under this section only if:

5 (1) the corporation is not primarily engaged in the
6 business of manufacturing and selling recycled products; and

7 (2) the corporation demonstrates to the comptroller
8 that the recycled products were manufactured using waste that the
9 corporation would otherwise have disposed of as solid waste.

10 SECTION 3. Section 171.110(1), Tax Code, is amended by
11 adding Subdivisions (6) and (7) to read as follows:

12 (6) "Recycled product" has the meaning assigned by
13 Section 361.421, Health and Safety Code.

14 (7) "Solid waste" has the meaning assigned by Section
15 361.003, Health and Safety Code.

16 SECTION 4. Chapter 171, Tax Code, is amended by adding
17 Subchapter W to read as follows:

18 SUBCHAPTER W. TAX CREDIT FOR CAPITAL EXPENDITURES FOR CERTAIN
19 RECYCLING EQUIPMENT

20 Sec. 171.951. DEFINITIONS. In this subchapter:

21 (1) "Recycling equipment" means equipment necessary
22 to assist a corporation in recycling waste and used predominantly
23 for that purpose.

24 (2) "Solid waste" has the meaning assigned by Section
25 361.003, Health and Safety Code.

26 Sec. 171.952. ELIGIBILITY. A corporation is eligible for a
27 credit against the tax imposed under this chapter in the amount and

1 under the conditions and limitations provided by this subchapter.

2 Sec. 171.953. CREDIT FOR CAPITAL EXPENDITURE FOR RECYCLING
3 EQUIPMENT. (a) A corporation may claim a credit under this
4 subchapter only for a capital expenditure made toward purchasing
5 recycling equipment.

6 (b) A corporation is entitled to a credit under this section
7 only if:

8 (1) the corporation is not primarily engaged in the
9 business of manufacturing and selling recycled products; and

10 (2) the corporation demonstrates to the comptroller
11 that the recycling equipment was used to recycle waste that the
12 corporation would otherwise have disposed of as solid waste.

13 Sec. 171.954. AMOUNTS; LIMITATIONS. (a) The amount of the
14 credit is equal to the lesser of:

15 (1) the total amount of the capital expenditure made
16 during the reporting period; or

17 (2) \$50,000.

18 (b) The corporation may claim the credit only in five equal
19 installments of one-fifth the credit amount over five consecutive
20 reports beginning with the report based on the period during which
21 the capital expenditure was made.

22 Sec. 171.955. APPLICATION FOR CREDIT. (a) A corporation
23 must apply for a credit under this subchapter on or with the tax
24 report for the period for which the credit is claimed.

25 (b) The comptroller shall adopt a form for the application
26 for the credit. A corporation must use this form in applying for
27 the credit.

1 Sec. 171.956. ASSIGNMENT PROHIBITED. A corporation may not
2 convey, assign, or transfer the credit allowed under this
3 subchapter to another entity unless all of the assets of the
4 corporation are conveyed, assigned, or transferred in the same
5 transaction.

6 SECTION 5. (a) This Act applies only to a report
7 originally due on or after the effective date of this Act.

8 (b) A corporation may claim a credit under Subchapter W,
9 Chapter 171, Tax Code, as added by this Act, only for an expenditure
10 made on or after the effective date of this Act.

11 SECTION 6. This Act takes effect January 1, 2006.