LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 22, 2009

TO: Honorable Rene Oliveira, Chair, House Committee on Ways & Means

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2790** by Homer (Relating to franchise tax incentives for recycling.), **As Introduced**

The bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of $12,865,000 for the 2010-11 biennium. Any loss to the Property Tax Relief Fund will have to be made up with General Revenue of the same amount to fund property tax relief.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	$0
2011	$0
2012	$0
2013	$0
2014	$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from *Property Tax Relief Fund* 304
2010	($5,986,000)
2011	($6,879,000)
2012	($7,806,000)
2013	($8,750,000)
2014	($9,706,000)

Fiscal Analysis

The bill would amend Chapter 171 of the Tax Code, regarding the franchise tax, to authorize incentives for recycling.

The bill would add definitions of the terms "recycled product" and "solid waste" by reference to provisions in the Health and Safety Code. The bill would provide an exclusion from total revenue for franchise tax purposes for any revenue received from the sale of recycled products by a taxable entity. To be eligible for the exclusion, a taxable entity could not be primarily engaged in the business of manufacturing and selling recycled products. In addition, an eligible taxable entity would have to demonstrate to the Comptroller that the recycled products were manufactured using waste that the entity otherwise would have disposed of as solid waste.

The bill would allow an eligible taxable entity to exclude receipts from the sale of recycled products manufactured by the entity from its apportionment calculation. If a taxable entity chose to exclude such receipts, it would have to exclude them from both Texas gross receipts and gross receipts everywhere. To be eligible for the exclusion, a taxable entity could not be primarily engaged in the business of manufacturing and selling recycled products. In addition, an eligible taxable entity would have to demonstrate to the Comptroller that the recycled products were manufactured using waste that the entity otherwise would have disposed of as solid waste.

The bill would establish a credit for capital expenditures for certain recycling equipment, defined as equipment necessary to assist an entity in recycling waste and used primarily for that purpose. To be eligible for the credit, a taxable entity could not be primarily engaged in the business of manufacturing and selling recycled products. In addition, an eligible taxable entity would have to demonstrate to the Comptroller that the recycling equipment was used to recycle waste that the entity otherwise would have disposed of as solid waste. The credit would be equal to the lesser of $50,000 or the total amount of capital expenditure made during the period. The credit would be claimed in five equal installments over five consecutive reports.

The bill would take effect on January 1, 2010, and it would apply to a report due on or after that date. For purposes of claiming the credit, the bill would apply to a qualifying expenditure made on or after January 1, 2008.

Methodology

The provisions that would permit a taxable entity to exclude sales of recycled manufactured products for Texas gross receipts and its total gross receipts for taxable margin purposes would not systematically change the apportionment factor and would have no significant fiscal impact.

The bill would allow the exclusion from total revenue of amounts derived from the sale of recycled products by eligible taxable entities. Information from the Texas Commission on Environmental Quality (TCEQ) on recycling activity in Texas and franchise tax data on industries most involved in recycling provided the base data for the estimate. An adjustment was made for the requirements applicable to eligible entities.

The tax benefit of a credit for recycling equipment was estimated using data from TCEQ and data on franchise tax investment credits earned in industries most involved in recycling. An adjustment was made for the requirements applicable to eligible entities. The credit was allocated over a five-year period, in accordance with the bill's provisions. This part of the bill would have no fiscal impact in 2010 because the accounting year on which the 2010 tax report is based would be concluded before the bill's effective date.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: JOB, MN, SD, SM