

By: Guillen

H.B. No. 79

A BILL TO BE ENTITLED

AN ACT

relating to exemptions from the sales and use tax and the franchise tax for certain businesses during an initial period of operation in the state.

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

SECTION 1. This Act may be cited as the Texas Open for Business Act.

SECTION 2. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3183 to read as follows:

Sec. 151.3183. TAXABLE ITEMS USED BY CERTAIN NEW BUSINESSES DURING INITIAL PERIOD OF OPERATION. (a) In this section:

(1) "Internal Revenue Code" means the Internal Revenue Code of 1986 in effect on December 31, 2014, excluding any changes made by federal law after that date, but including any regulations adopted under that code applicable to the tax year to which the provisions of the code in effect on that date applied.

(2) "Qualifying job" means an employment position that is:

(A) new to and located in the state;

(B) permanent and full-time; and

(C) held by an employee for at least 10 months during each 12-month period.

(b) The sale to or storage, use, or other consumption by a new business of a taxable item that will be directly used or

1 consumed by the business is exempted from the taxes imposed by this  
2 chapter.

3 (c) A person is a new business for purposes of this section  
4 if the person is a business that:

5 (1) is primarily located in a county with a population  
6 of 250,000 or less;

7 (2) is first located and begins doing business in this  
8 state on or after January 1, 2016, regardless of whether the  
9 business is chartered or organized in this state or outside this  
10 state;

11 (3) is not substantially similar in operation and in  
12 ownership to another business located in this state during any part  
13 of the preceding five years;

14 (4) is primarily engaged in:

15 (A) a manufacturing activity described in  
16 categories 2011-3999 of the 1987 Standard Industrial  
17 Classification Manual published by the United States Department of  
18 Labor; or

19 (B) qualified research, as defined by Section 41,  
20 Internal Revenue Code; and

21 (5) creates, on or after January 1, 2016, and not later  
22 than the 30th day after the date the business first locates in this  
23 state, at least one qualifying job.

24 (d) To claim an exemption under this section, a registration  
25 number issued by the comptroller must be stated on the exemption  
26 certificate provided by the purchaser of the item.

27 (e) Subject to Subsection (f), a person may apply to the

1 comptroller for issuance of a registration number by the  
2 comptroller. The application must be made on a form prescribed by  
3 the comptroller and include the information required by the  
4 comptroller to establish that the person is a new business as  
5 described by Subsection (c).

6 (f) A person who meets the requirements of a new business as  
7 described by Subsection (c) must apply for a registration number  
8 not later than the first anniversary of the date the person begins  
9 doing business in this state. The comptroller shall deny an  
10 application received after that date.

11 (g) A registration number issued under this section expires  
12 on the 10th anniversary of the date of issuance, unless revoked at  
13 an earlier time by the comptroller as provided by Subsection (h).  
14 The registration number may not be renewed.

15 (h) The comptroller shall revoke and may not reinstate a  
16 registration number issued to a person if the person ceases to meet  
17 a requirement prescribed by Subsection (c). A person whose  
18 registration number is revoked is liable for payment of the taxes  
19 imposed under this chapter on the sales price of each taxable item  
20 for which the person claimed an exemption under this section on or  
21 after the date the registration number was revoked.

22 (i) The comptroller shall adopt rules necessary to  
23 implement this section, including rules relating to the:

24 (1) qualification of a person for an exemption under  
25 this section;

26 (2) issuance and revocation of a registration number  
27 issued under this section; and

1           (3) reporting and other procedures necessary to ensure  
2 that a person to whom a registration number is issued under this  
3 section complies with this section and remains entitled to the  
4 exemption authorized by this section.

5           SECTION 3. Section 171.0001(4), Tax Code, is amended to  
6 read as follows:

7           (4) "Beginning date" means:

8           (A) except as provided by Paragraph (B):

9                   (i) for a taxable entity chartered or  
10 organized in this state, the date on which the taxable entity's  
11 charter or organization takes effect; and

12                   (ii) [~~B~~] for any other taxable entity,  
13 the date on which the taxable entity begins doing business in this  
14 state; or

15                   (B) for a taxable entity that meets the  
16 requirements of a new business under Section 151.3183, the earlier  
17 of:

18                           (i) the 10th anniversary of the date on  
19 which the taxable entity begins doing business in this state; or

20                           (ii) the date the taxable entity ceases to  
21 comply with the requirements of a new business under Section  
22 151.3183.

23           SECTION 4. Section 171.001, Tax Code, is amended by adding  
24 Subsection (d) to read as follows:

25           (d) Notwithstanding Subsection (a), the tax imposed under  
26 this chapter is not imposed on a taxable entity that meets the  
27 requirements of a new business under Section 151.3183 until the

1 earlier of:

2 (1) the 10th anniversary of the date on which the  
3 taxable entity begins doing business in this state; or

4 (2) the date the taxable entity ceases to comply with  
5 the requirements of a new business under Section 151.3183.

6 SECTION 5. Section 171.063(g), Tax Code, is amended to read  
7 as follows:

8 (g) If a corporation's federal tax exemption is withdrawn by  
9 the Internal Revenue Service for failure of the corporation to  
10 qualify or maintain its qualification for the exemption, the  
11 corporation's exemption under this section ends on the effective  
12 date of that withdrawal by the Internal Revenue Service. The  
13 effective date of the withdrawal is considered the corporation's  
14 beginning date for purposes of determining the corporation's  
15 privilege periods and for all other purposes of this chapter,  
16 except that if the corporation would have been subject to Section  
17 171.001(d) in the absence of the federal tax exemption, and the  
18 effective date of the withdrawal is a date earlier than the date the  
19 corporation would have become subject to the franchise tax as  
20 provided by Section 171.001(d), the date the corporation would have  
21 become subject to the franchise tax under that section is  
22 considered the corporation's beginning date for those purposes.

23 SECTION 6. Section 171.204, Tax Code, is amended by adding  
24 Subsection (d) to read as follows:

25 (d) The comptroller may require a taxable entity on which  
26 the tax imposed under this chapter is not imposed solely because of  
27 the application of Section 171.001(d) to file an information report

1 stating the taxable entity's beginning date as determined under  
2 Section 171.0001(4)(B). The comptroller may require the report to  
3 include other information the comptroller determines necessary,  
4 except that the comptroller may not require the taxable entity to  
5 report or compute its margin.

6 SECTION 7. Not later than December 1, 2015, the comptroller  
7 of public accounts shall adopt rules as provided by Section  
8 151.3183(i), Tax Code, as added by this Act.

9 SECTION 8. This Act takes effect September 1, 2015.