

By: Martinez Fischer

H.B. No. 246

A BILL TO BE ENTITLED

AN ACT

relating to franchise tax credits for creating quality jobs for veterans.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapters P and Q to read as follows:

SUBCHAPTER P. TAX CREDITS FOR CERTAIN

VETERAN JOB CREATION ACTIVITIES

Sec. 171.701. DEFINITIONS. In this subchapter:

(1) "Agricultural processing" means an establishment primarily engaged in activities described in categories 0724, 2011-2099, 2211, 2231, 2824, 2833, 2834, 2835, 2836, 2841, 3111-3199, 3262, or 3952, in product classes 28692 or 28698 of category 2869, or in product classes 28992 or 28994 of category 2899 of the 1987 Standard Industrial Classification Manual published by the United States Department of Labor.

(2) "Central administrative offices" means an establishment primarily engaged in performing management or support services for other establishments of the same enterprise. An enterprise consists of all establishments having more than 50 percent common direct or indirect ownership.

(3) "Data processing" means an establishment primarily engaged in activities described in categories 7371-7379 of the 1987 Standard Industrial Classification Manual published by

1 the United States Department of Labor.

2 (4) "Distribution" means an establishment primarily
3 engaged in activities described in categories 5012-5199 of the 1987
4 Standard Industrial Classification Manual published by the United
5 States Department of Labor.

6 (5) "Group health benefit plan" means:

7 (A) a health plan provided by a health
8 maintenance organization established under Chapter 843, Insurance
9 Code;

10 (B) a health benefit plan approved by the
11 commissioner of insurance; or

12 (C) a self-funded or self-insured employee
13 welfare benefit plan that provides health benefits and is
14 established in accordance with the Employee Retirement Income
15 Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

16 (6) "Manufacturing" means an establishment primarily
17 engaged in activities described in categories 2011-3999 of the 1987
18 Standard Industrial Classification Manual published by the United
19 States Department of Labor.

20 (7) "Qualified business" means an establishment
21 primarily engaged in agricultural processing, central
22 administrative offices, distribution, data processing,
23 manufacturing, research and development, or warehousing.

24 (8) "Qualifying job" means a new permanent full-time
25 job that:

26 (A) pays an annual wage of at least \$50,000,
27 subject to Section 171.772;

1 (B) is covered by a group health benefit plan for
2 which the business pays at least 80 percent of the premiums or other
3 charges assessed under the plan for the employee; and

4 (C) is not created to replace a previous
5 employee.

6 (9) "Research and development" means an establishment
7 primarily engaged in activities described in category 8731 of the
8 1987 Standard Industrial Classification Manual published by the
9 United States Department of Labor.

10 (10) "Veteran" means a person who:

11 (A) has served in:

12 (i) the army, navy, air force, coast guard,
13 or marine corps of the United States or the United States Public
14 Health Service under 42 U.S.C. Section 201 et seq., as amended;

15 (ii) the Texas military forces as defined
16 by Section 437.001; or

17 (iii) an auxiliary service of one of those
18 branches of the armed forces; and

19 (B) has been honorably discharged from the branch
20 of the service in which the person served.

21 (10) "Warehousing" means an establishment primarily
22 engaged in activities described in categories 4221-4226 of the 1987
23 Standard Industrial Classification Manual published by the United
24 States Department of Labor.

25 Sec. 171.702. BIENNIAL ADJUSTMENT OF WAGE FOR QUALIFYING
26 JOB. (a) In this section, "consumer price index" means the average
27 over a state fiscal biennium of the Consumer Price Index for All

1 Urban Consumers (CPI-U), U.S. City Average, published monthly by
2 the United States Bureau of Labor Statistics, or its successor in
3 function.

4 (b) Beginning in 2016, on January 1 of each even-numbered
5 year, the wage amount prescribed by Section 171.771(8) is increased
6 or decreased by an amount equal to the amount prescribed by that
7 section on December 31 of the preceding year multiplied by the
8 percentage increase or decrease during the preceding state fiscal
9 biennium in the consumer price index and rounded to the nearest
10 dollar.

11 (c) The amount determined under Subsection (b) applies to a
12 report originally due on or after the date the determination is
13 made.

14 (d) The comptroller shall make the determination required
15 by this section and may adopt rules related to making that
16 determination.

17 (e) A determination by the comptroller under this section is
18 final and may not be appealed.

19 Sec. 171.703. ELIGIBILITY. A taxable entity is eligible
20 for a credit against the tax imposed under this chapter if the
21 taxable entity:

22 (1) is a qualified business; and

23 (2) creates a minimum of 10 qualifying jobs.

24 Sec. 171.704. AMOUNT OF CREDIT. A taxable entity may
25 establish a credit equal to 25 percent of the total wages paid by
26 the taxable entity for each qualifying job filled by a veteran
27 during each of the first 12 months of employment of the person hired

1 to perform the job that occur during the period on which the report
2 is based.

3 Sec. 171.705. LENGTH OF CREDIT. The credit established
4 shall be claimed in five equal installments of one-fifth the credit
5 amount over the five consecutive reports beginning with the report
6 based on the period during which the qualifying jobs were created.

7 Sec. 171.706. LIMITATIONS. (a) The total credit claimed
8 under this subchapter for a report, including the amount of any
9 carryforward credit under Section 171.707, may not exceed 50
10 percent of the amount of franchise tax due for the report before any
11 other applicable tax credits.

12 (b) The total credit claimed under this subchapter and
13 Subchapter Q for a report, including the amount of any carryforward
14 credits, may not exceed the amount of franchise tax due for the
15 report after any other applicable credits.

16 Sec. 171.707. CARRYFORWARD. (a) If a taxable entity is
17 eligible for a credit that exceeds the limitations under Section
18 171.706, the taxable entity may carry the unused credit forward for
19 not more than five consecutive reports.

20 (b) A carryforward is considered the remaining portion of an
21 installment that cannot be claimed in the current year because of a
22 limitation under Section 171.706. A carryforward is added to the
23 next year's installment of the credit in determining the limitation
24 for that year. A credit carryforward from a previous report is
25 considered to be used before the current year installment.

26 Sec. 171.708. CERTIFICATION OF ELIGIBILITY. (a) For the
27 initial and each succeeding report on which a credit is claimed

1 under this subchapter, the taxable entity shall file with its
2 report, on a form provided by the comptroller, information that
3 sufficiently demonstrates that the taxable entity is eligible for
4 the credit.

5 (b) The burden of establishing entitlement to and the value
6 of the credit is on the taxable entity.

7 (c) A credit expires under this subchapter and the taxable
8 entity may not take any remaining installment of the credit if in
9 one of the five years in which the installment of a credit accrues,
10 the taxable entity fails to maintain the minimum number of
11 qualifying jobs required to be created by Section 171.703.

12 (d) Notwithstanding Subsection (c), the taxable entity may
13 take the portion of an installment that accrued in a previous year
14 and was carried forward to the extent permitted under Section
15 171.707.

16 Sec. 171.709. ASSIGNMENT PROHIBITED. A taxable entity may
17 not convey, assign, or transfer the credit allowed under this
18 subchapter to another entity unless all of the assets of the taxable
19 entity are conveyed, assigned, or transferred in the same
20 transaction.

21 Sec. 171.710. BIENNIAL REPORT BY COMPTROLLER. (a) Before
22 the beginning of each regular session of the legislature, the
23 comptroller shall submit to the governor, the lieutenant governor,
24 and the speaker of the house of representatives a report that
25 states:

26 (1) the total number of jobs created by taxable
27 entities that claim a credit under this subchapter and the average

1 and median annual wage of those jobs;

2 (2) the total amount of credits applied against the
3 tax under this chapter and the amount of unused credits including:

4 (A) the total amount of franchise tax due by
5 taxable entities claiming a credit under this subchapter before and
6 after the application of the credit;

7 (B) the average percentage reduction in
8 franchise tax due by taxable entities claiming a credit under this
9 subchapter; and

10 (C) the percentage of tax credits that were
11 awarded to taxable entities with fewer than 100 employees;

12 (3) the two-digit standard industrial classification
13 of businesses claiming a credit under this subchapter;

14 (4) the geographical distribution of the credits
15 claimed under this subchapter; and

16 (5) the effect of the credit provided under this
17 subchapter on employment, personal income, and capital investment
18 in this state and on state tax revenues.

19 (b) The final report issued before the expiration of this
20 subchapter must include historical information on the credit
21 authorized under this subchapter.

22 (c) The comptroller may not include in the report
23 information that is confidential by law.

24 (d) For purposes of this section, the comptroller may
25 require a taxable entity that claims a credit under this subchapter
26 to submit information, on a form provided by the comptroller, on the
27 location of the taxable entity's job creation in this state and any

1 other information necessary to complete the report required under
2 this section.

3 (e) The comptroller shall provide notice to the members of
4 the legislature that the report required under this section is
5 available on request.

6 Sec. 171.711. COMPTROLLER POWERS AND DUTIES. The
7 comptroller shall adopt rules and forms necessary to implement this
8 subchapter.

9 Sec. 171.712. EXPIRATION. (a) This subchapter expires
10 December 31, 2025.

11 (b) The expiration of this subchapter does not affect the
12 carryforward of a credit under Section 171.707 or those credits for
13 which a taxable entity is eligible before the date this subchapter
14 expires.

15 SUBCHAPTER Q. TAX CREDITS FOR CERTAIN CAPITAL INVESTMENTS IN
16 VETERAN JOB CREATION

17 Sec. 171.801. DEFINITIONS. In this subchapter:

18 (1) "Agricultural processing" and "qualified
19 business" have the meanings assigned those terms by Section
20 171.771.

21 (2) "Qualified capital investment" means tangible
22 personal property first placed in service in this state by a taxable
23 entity primarily engaged in agricultural processing, and that is
24 described in Section 1245(a), Internal Revenue Code, such as
25 engines, machinery, tools, and implements used in a trade or
26 business or held for investment and subject to an allowance for
27 depreciation, cost recovery under the accelerated cost recovery

1 system, or amortization. The term does not include real property or
2 buildings and their structural components. Property that is leased
3 under a capitalized lease is considered a "qualified capital
4 investment," but property that is leased under an operating lease
5 is not considered a "qualified capital investment." Property
6 expensed under Section 179, Internal Revenue Code, is not
7 considered a "qualified capital investment."

8 Sec. 171.802. ELIGIBILITY. (a) A qualified business is
9 eligible for a credit against the tax imposed under this chapter in
10 the amount and under the conditions and limitations provided by
11 this subchapter.

12 (b) To qualify for the credit authorized under this
13 subchapter, a qualified business must:

14 (1) pay an annual wage of at least the amount required
15 for a qualifying job to a veteran as defined by Section 171.701 for
16 the period on which the report is based;

17 (2) offer health benefits coverage to all full-time
18 employees at the location with respect to which the credit is
19 claimed through a group health benefit plan, as defined by Section
20 171.701, for which the business pays at least 80 percent of the
21 premiums or other charges assessed under the plan for the
22 employees; and

23 (3) make a minimum \$500,000 qualified capital
24 investment.

25 Sec. 171.803. AMOUNT OF CREDIT. A taxable entity may
26 establish a credit equal to 7.5 percent of the qualified capital
27 investment during the period on which the report is based.

1 Sec. 171.804. LENGTH OF CREDIT. The credit established
2 shall be claimed in five equal installments of one-fifth the credit
3 amount over the five consecutive reports beginning with the report
4 based on the period during which the qualified capital investment
5 was made.

6 Sec. 171.805. LIMITATIONS. (a) The total credit claimed
7 under this subchapter for a report, including the amount of any
8 carryforward credit under Section 171.806, may not exceed 50
9 percent of the amount of franchise tax due for the report before any
10 other applicable tax credits.

11 (b) The total credit claimed under this subchapter and
12 Subchapter P for a report, including the amount of any carryforward
13 credits, may not exceed the amount of franchise tax due for the
14 report after any other applicable tax credits.

15 Sec. 171.826. CARRYFORWARD. (a) If a taxable entity is
16 eligible for a credit from an installment that exceeds the
17 limitation under Section 171.805, the taxable entity may carry the
18 unused credit forward for not more than five consecutive reports.

19 (b) A carryforward is considered the remaining portion of an
20 installment that cannot be claimed in the current year because of a
21 limitation under Section 171.805. A carryforward is added to the
22 next year's installment of the credit in determining the limitation
23 for that year. A credit carryforward from a previous report is
24 considered to be used before the current year installment.

25 Sec. 171.807. CERTIFICATION OF ELIGIBILITY. (a) For the
26 initial and each succeeding report on which a credit is claimed
27 under this subchapter, the taxable entity shall file with its

1 report, on a form provided by the comptroller, information that
2 sufficiently demonstrates that the taxable entity is eligible for
3 the credit.

4 (b) The burden of establishing entitlement to and the value
5 of the credit is on the taxable entity.

6 (c) A credit expires under this subchapter and the taxable
7 entity may not take any remaining installment of the credit if in
8 one of the five years in which the installment of a credit accrues,
9 the taxable entity:

- 10 (1) disposes of the qualified capital investment;
11 (2) takes the qualified capital investment out of
12 service;
13 (3) moves the qualified capital investment out of this
14 state; or
15 (4) fails to pay the annual wage required for a
16 qualifying job under Section 171.701 for the period covered by the
17 report on which the taxable entity would otherwise claim the
18 credit.

19 (d) Notwithstanding Subsection (c), the taxable entity may
20 take the portion of an installment that accrued in a previous year
21 and was carried forward to the extent permitted under Section
22 171.806.

23 Sec. 171.808. ASSIGNMENT PROHIBITED. A taxable entity may
24 not convey, assign, or transfer the credit allowed under this
25 subchapter to another entity unless all of the assets of the taxable
26 entity are conveyed, assigned, or transferred in the same
27 transaction.

1 Sec. 171.809. BIENNIAL REPORT BY COMPTROLLER. (a) Before
2 the beginning of each regular session of the legislature, the
3 comptroller shall submit to the governor, the lieutenant governor,
4 and the speaker of the house of representatives a report that
5 states:

6 (1) the total amount of qualified capital investments
7 made by taxable entities that claim a credit under this subchapter
8 and the average and median wages paid by those taxable entities;

9 (2) the total amount of credits applied against the
10 tax under this chapter and the amount of unused credits, including:

11 (A) the total amount of franchise tax due by
12 taxable entities claiming a credit under this subchapter before and
13 after the application of the credit;

14 (B) the average percentage reduction in
15 franchise tax due by taxable entities claiming a credit under this
16 subchapter;

17 (C) the percentage of tax credits that were
18 awarded to taxable entities with fewer than 100 employees; and

19 (D) the two-digit standard industrial
20 classification of taxable entities claiming a credit under this
21 subchapter;

22 (3) the geographical distribution of the qualified
23 capital investments on which tax credit claims are made under this
24 subchapter; and

25 (4) the effect of the credit provided under this
26 subchapter on employment, personal income, and capital investment
27 in this state and on state tax revenues.

1 (b) The final report issued before the expiration of this
2 subchapter must include historical information on the credit
3 authorized under this subchapter.

4 (c) The comptroller may not include in the report
5 information that is confidential by law.

6 (d) For purposes of this section, the comptroller may
7 require a taxable entity that claims a credit under this subchapter
8 to submit information, on a form provided by the comptroller, on the
9 location of the taxable entity's capital investment in this state
10 and any other information necessary to complete the report required
11 under this section.

12 (e) The comptroller shall provide notice to the members of
13 the legislature that the report required under this section is
14 available on request.

15 Sec. 171.810. COMPTROLLER POWERS AND DUTIES. The
16 comptroller shall adopt rules and forms necessary to implement this
17 subchapter.

18 Sec. 171.811. EXPIRATION. (a) This subchapter expires
19 December 31, 2025.

20 (b) The expiration of this subchapter does not affect the
21 carryforward of a credit under Section 171.806 or those credits for
22 which a taxable entity is eligible before the date this subchapter
23 expires.

24 SECTION 2. This Act applies only to a report originally due
25 on or after the effective date of this Act.

26 SECTION 32. This Act takes effect January 1, 2016.