

By: Bohac

H.B. No. 3354

A BILL TO BE ENTITLED

AN ACT

relating to the transfer of certain unused franchise tax credits.

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

SECTION 1. Section 18, Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006, is amended by adding Subsections (h-1), (i-1), (j), and (k) to read as follows:

(h-1) In this subsection and Subsection (i-1) of this section, "transfer" includes a sale. Notwithstanding Subsections (e) and (f) of this section and subject to Subsection (k) of this section, a corporation that had unused credits before January 1, 2008, under former Subchapter P or Q, Chapter 171, Tax Code, that expired under the terms of one of those former subchapters or under Subsection (e) or (f) of this section, may transfer the right to the expired credits to another taxpayer of this state. A transferred credit is considered to be newly established by the taxpayer to which the credit is transferred on the date the transfer is complete. To be eligible to transfer the credits, the corporation must obtain a certificate of transfer of credit from the comptroller for the amount of the credits to be transferred. Not later than the 30th day after the date of the transfer, the corporation must submit to the comptroller a notice of the transfer in a form prescribed by the comptroller. The notice must be accompanied by a copy of the certificate of transfer issued by the comptroller and specify:

1 (1) the number on the certificate of transfer;

2 (2) the amount of the corporation's unused credits
3 preceding the transfer;

4 (3) the date of the transfer;

5 (4) the amount of credits transferred;

6 (5) the tax identification numbers of the corporation
7 and the taxpayer to which the credits were transferred;

8 (6) the corporation's remaining amount of unused
9 credits after the transfer; and

10 (7) any other information the comptroller requires.

11 (i-1) The transfer of a credit under Subsection (h-1) of
12 this section is limited to an unused credit for which the
13 corporation was eligible before January 1, 2008, and does not
14 include credits authorized under former Subchapter Q-1, Chapter
15 171, Tax Code, or credits that were created under the terms of a
16 written agreement between a taxpayer and the Texas Department of
17 Economic Development or its successor that was entered into before
18 June 1, 2006, and that continue to accrue under the terms provided
19 by Section 19 of this Act. The transferee of a credit under this
20 section obtains the credit subject to the same rights and
21 privileges as the transferor had on the date the credit was
22 originally established. The transfer of a credit under Subsection
23 (h-1) of this section does not extend or lessen the period during
24 which the credit may be claimed after the credit is newly
25 established by the taxpayer to which the credit is transferred as
26 provided by that subsection. If a corporation transfers a credit
27 that the corporation was not entitled to transfer at the time of the

1 transfer:

2 (1) the taxpayer to which the credit was transferred
3 may pursue any remedy authorized by law against the corporation and
4 may not pursue any remedy against the comptroller or this state; and

5 (2) the comptroller:

6 (A) may not allow the taxpayer to which the
7 credit was transferred to apply the credit on a report for a tax
8 listed in Subsection (j) of this section; or

9 (B) shall recover from the taxpayer the amount of
10 the credit the taxpayer claims on a report using any means
11 authorized by law.

12 (j) A taxpayer to which a credit is transferred under
13 Subsection (h-1) of this section may apply the credit against:

14 (1) the taxes due under Chapters 151, 152, 154, 155,
15 156, 158, 160, 161, 162, 171, 181, 182, 183, 191, 201, 202, and 203,
16 Tax Code; and

17 (2) a contribution due under Subtitle A, Title 4,
18 Labor Code.

19 (k) A corporation may not transfer an unused tax credit
20 under Subsection (h-1) of this section after August 31, 2017.

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

23 SECTION 3. This Act takes effect September 1, 2015.