

By: Guillen

H.B. No. 102

A BILL TO BE ENTITLED

AN ACT

relating to exemptions from ad valorem taxes, the sales and use tax, and the franchise tax for certain businesses during an initial period of operation in this 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 B, Chapter 11, Tax Code, is amended by adding Section 11.36 to read as follows:

Sec. 11.36. BUSINESSES DURING INITIAL PERIOD OF OPERATION.

(a) Subject to Subsection (b), a person is entitled to an exemption from taxation by a taxing unit of the real and tangible personal property owned by the person if:

(1) the person meets the requirements of a new business under Section 151.3183;

(2) the property:

(A) is located in a county with a population of 250,000 or less; and

(B) is reasonably necessary for and used by the person in the operation of the new business; and

(3) the exemption is adopted by the governing body of the taxing unit in the manner provided by law for official action by the governing body.

(b) A person is entitled to an exemption under this section

1 until the earliest of:

2 (1) the 10th anniversary of the date on which the
3 person first meets the requirements of a new business under Section
4 151.3183;

5 (2) the date on which the person ceases to meet the
6 requirements of a new business under Section 151.3183; or

7 (3) the date the comptroller revokes the person's
8 sales tax registration number under Section 151.3183(h).

9 (c) An exemption authorized by this section and adopted by
10 the governing body of a taxing unit applies to:

11 (1) the tax year:

12 (A) in which the exemption is adopted by the
13 governing body if officially adopted before April 15; or

14 (B) immediately following the tax year in which
15 the exemption is adopted by the governing body if officially
16 adopted on or after April 15; and

17 (2) each following tax year unless and until repealed
18 in the manner provided by Subsection (d).

19 (d) The governing body of a taxing unit may repeal an
20 exemption adopted under this section in the manner provided by law
21 for official action by the governing body. The repeal of an
22 exemption by a governing body does not affect the entitlement of a
23 person who is receiving the exemption on the date it is repealed to
24 continue to receive the exemption for the period described by
25 Subsection (b).

26 (e) The comptroller by rule shall establish requirements
27 and procedures for determining whether and as of what date a person

1 meets the requirements of a new business under Section 151.3183 for
2 the purpose of this section.

3 (f) In determining whether a person meets the requirements
4 of a new business under Section 151.3183 and the date that those
5 requirements are met, the chief appraiser shall apply the
6 requirements and procedures adopted by the comptroller under
7 Subsection (e).

8 (g) The chief appraiser shall promptly notify the
9 comptroller if the chief appraiser determines that a person
10 receiving an exemption under this section ceases to meet the
11 requirements of a new business under Section 151.3183.

12 SECTION 3. Section 11.42(e), Tax Code, is amended to read as
13 follows:

14 (e) A person who qualifies for an exemption under Section
15 11.131 or 11.36 after January 1 of a tax year may receive the
16 exemption for the applicable portion of that tax year immediately
17 on qualification for the exemption.

18 SECTION 4. Section 11.43(k), Tax Code, is amended to read as
19 follows:

20 (k) A person who qualifies for an exemption authorized by
21 Section 11.13(c) or (d), ~~or~~ 11.132, or 11.36 must apply for the
22 exemption no later than the first anniversary of the date the person
23 qualified for the exemption.

24 SECTION 5. Section 26.1125, Tax Code, is amended to read as
25 follows:

26 Sec. 26.1125. CALCULATION OF TAXES ON RESIDENCE HOMESTEAD
27 OF 100 PERCENT OR TOTALLY DISABLED VETERAN OR PROPERTY OF NEW

1 BUSINESS. (a) If a person qualifies for an exemption under Section
2 11.131 or 11.36 after the beginning of a tax year, the amount of the
3 taxes on the property subject to the exemption [~~residence homestead~~
4 ~~of the person~~] for the tax year is calculated by multiplying the
5 amount of the taxes that otherwise would be imposed on the property
6 [~~residence homestead~~] for the entire year had the person not
7 qualified for the exemption under Section 11.131 or 11.36 by a
8 fraction, the denominator of which is 365 and the numerator of which
9 is the number of days that elapsed before the date the person
10 qualified for the exemption under Section 11.131 or 11.36.

11 (b) If a person qualifies for an exemption under Section
12 11.131 or 11.36 with respect to the property after the amount of the
13 tax due on the property is calculated and the effect of the
14 qualification is to reduce the amount of the tax due on the
15 property, the assessor for each taxing unit shall recalculate the
16 amount of the tax due on the property and correct the tax roll. If
17 the tax bill has been mailed and the tax on the property has not been
18 paid, the assessor shall mail a corrected tax bill to the person in
19 whose name the property is listed on the tax roll or to the person's
20 authorized agent. If the tax on the property has been paid, the tax
21 collector for the taxing unit shall refund to the person who paid
22 the tax the amount by which the payment exceeded the tax due.

23 SECTION 6. Subchapter H, Chapter 151, Tax Code, is amended
24 by adding Section 151.3183 to read as follows:

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

27 (1) "Internal Revenue Code" means the Internal Revenue

1 Code of 1986 in effect on December 31, 2016, excluding any changes
2 made by federal law after that date, but including any regulations
3 adopted under that code applicable to the tax year to which the
4 provisions of the code in effect on that date applied.

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

7 (A) new to and located in this state;

8 (B) permanent and full-time; and

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

11 (b) The sale to or storage, use, or other consumption by a
12 new business of a taxable item that will be directly used or
13 consumed by the business is exempted from the taxes imposed by this
14 chapter.

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

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

19 (2) is first located and begins doing business in this
20 state on or after January 1, 2018, regardless of whether the
21 business is chartered or organized in this state or outside this
22 state;

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

26 (4) is primarily engaged in:

27 (A) a manufacturing activity described in

1 categories 2011-3999 of the 1987 Standard Industrial
2 Classification Manual published by the United States Department of
3 Labor; or

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

6 (5) creates, on or after January 1, 2018, and not later
7 than the 30th day after the date the business first locates in this
8 state, at least one qualifying job.

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

12 (e) Subject to Subsection (f), a person may apply to the
13 comptroller for issuance of a registration number by the
14 comptroller. The application must be made on a form prescribed by
15 the comptroller and include the information required by the
16 comptroller to establish that the person is a new business as
17 described by Subsection (c).

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

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

27 (h) The comptroller shall revoke and may not reinstate a

1 registration number issued to a person if the person ceases to meet
2 a requirement prescribed by Subsection (c). The comptroller shall
3 promptly notify the chief appraiser of each appraisal district in
4 which a person whose registration number is revoked owns property
5 that the registration number has been revoked. A person whose
6 registration number is revoked is liable for payment of the taxes
7 imposed under this chapter on the sales price of each taxable item
8 for which the person claimed an exemption under this section on or
9 after the date the registration number was revoked.

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

12 (1) qualification of a person for an exemption under
13 this section;

14 (2) issuance and revocation of a registration number
15 issued under this section; and

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

20 SECTION 7. Section 171.0001(4), Tax Code, as effective
21 until January 1, 2020, is amended to read as follows:

22 (4) "Beginning date" means:

23 (A) except as provided by Paragraph (B) or (C):

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

27 (ii) for any other taxable entity, the date

1 on which the taxable entity begins doing business in this state;
2 [~~or~~]

3 (B) for a taxable entity that qualifies as a new
4 veteran-owned business as defined by Section 171.0005, the earlier
5 of:

6 (i) the fifth anniversary of the date on
7 which the taxable entity begins doing business in this state; or

8 (ii) the date the taxable entity ceases to
9 qualify as a new veteran-owned business as defined by Section
10 171.0005; or

11 (C) for a taxable entity that meets the
12 requirements of a new business under Section 151.3183, the earlier
13 of:

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

16 (ii) the date the taxable entity ceases to
17 comply with the requirements of a new business under Section
18 151.3183.

19 SECTION 8. Section 171.0001(4), Tax Code, as effective
20 January 1, 2020, is amended to read as follows:

21 (4) "Beginning date" means:

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

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

26 (ii) [~~(B)~~] for any other taxable entity,
27 the date on which the taxable entity begins doing business in this

1 state; or

2 (B) for a taxable entity that meets the
3 requirements of a new business under Section 151.3183, the earlier
4 of:

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

7 (ii) the date the taxable entity ceases to
8 comply with the requirements of a new business under Section
9 151.3183.

10 SECTION 9. Section 171.001, Tax Code, is amended by adding
11 Subsection (e) to read as follows:

12 (e) Notwithstanding Subsection (a), the tax imposed under
13 this chapter is not imposed on a taxable entity that meets the
14 requirements of a new business under Section 151.3183 until the
15 earlier of:

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

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

20 SECTION 10. Section 171.063(g), Tax Code, as effective
21 until January 1, 2020, is amended to read as follows:

22 (g) If a corporation's federal tax exemption is withdrawn by
23 the Internal Revenue Service for failure of the corporation to
24 qualify or maintain its qualification for the exemption, the
25 corporation's exemption under this section ends on the effective
26 date of that withdrawal by the Internal Revenue Service. The
27 effective date of the withdrawal is considered the corporation's

1 beginning date for purposes of determining the corporation's
2 privilege periods and for all other purposes of this chapter,
3 except that if the corporation would have been subject to Section
4 171.001(d) or (e) in the absence of the federal tax exemption, and
5 the effective date of the withdrawal is a date earlier than the date
6 the corporation would have become subject to the franchise tax as
7 provided by Section 171.001(d) or (e), as applicable, the date the
8 corporation would have become subject to the franchise tax under
9 Section 171.001(d) or (e) [~~that section~~] is considered the
10 corporation's beginning date for those purposes.

11 SECTION 11. Section 171.063(g), Tax Code, as effective
12 January 1, 2020, is amended to read as follows:

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

1 SECTION 12. Section 171.204, Tax Code, is amended by adding
2 Subsection (e) to read as follows:

3 (e) The comptroller may require a taxable entity on which
4 the tax imposed under this chapter is not imposed solely because of
5 the application of Section 171.001(e) to file an information report
6 stating the taxable entity's beginning date as determined under
7 Section 171.0001 and any other information the comptroller
8 determines necessary. The comptroller may not require the taxable
9 entity to report or compute its margin.

10 SECTION 13. Not later than December 1, 2017, the
11 comptroller of public accounts shall adopt rules as required by
12 Section 151.3183(i), Tax Code, as added by this Act.

13 SECTION 14. Section 11.36, Tax Code, as added by this Act,
14 and Sections 11.42, 11.43, and 26.1125, Tax Code, as amended by this
15 Act, apply only to ad valorem taxes imposed for a tax year that
16 begins on or after January 1, 2018.

17 SECTION 15. (a) Except as provided by Subsection (b) of
18 this section or as otherwise provided by this Act, this Act takes
19 effect September 1, 2017.

20 (b) Sections 2, 3, 4, and 5 of this Act take effect January
21 1, 2018, but only if the constitutional amendment authorizing the
22 governing bodies of certain political subdivisions to exempt from
23 ad valorem taxation the real and tangible personal property of
24 businesses during an initial period of operation in this state is
25 approved by the voters. If that amendment is not approved by the
26 voters, Sections 2, 3, 4, and 5 of this Act have no effect.