

By: Huffman

S.B. No. 2152

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), (i), (j), (j-1), and (k) to read as follows:

(h) In this subsection and Subsection (i) of this section, "transfer" includes a sale. Notwithstanding Subsections (e) and (f) 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 all or part of the expired credits to another taxpayer of this state. The taxpayer to whom a credit is transferred may apply the credit only as provided by Subsections (j) and (j-1) of this section. To be eligible to transfer all or part of 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) the number on the certificate of transfer;

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

3           (3) the date of the transfer;

4           (4) the total amount of credits transferred;

5           (5) the tax identification numbers of the corporation  
6 and the taxpayer to which the credit was transferred;

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

9           (7) any other information the comptroller requires.

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

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

27           (2) the comptroller or Texas Workforce Commission, as

1 appropriate:

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

5 (B) shall recover from the taxpayer the amount of  
6 the credit the taxpayer claims on a report using any means  
7 authorized by law.

8 (j) Subject to Subsection (j-1) of this section, a taxpayer  
9 to which a credit is transferred under Subsection (h) of this  
10 section may apply the credit against:

11 (1) the taxes due under Chapters 151, 152, 154, 155,  
12 156, 158, 160, 162, 171, 181, 182, 183, 191, 201, and 202, Tax Code;

13 (2) the occupation taxes due under Title 3, Insurance  
14 Code; and

15 (3) a contribution due under Subtitle A, Title 4,  
16 Labor Code.

17 (j-1) A taxpayer to which a credit is transferred under  
18 Subsection (h) of this section may apply the credit only:

19 (1) on or with a franchise tax report covering a period  
20 for which the transferring corporation would have been entitled to  
21 apply the transferred credit under Subsection (e) or (f) of this  
22 section, as appropriate, in the absence of a limitation on the  
23 amount of the credit for that period; and

24 (2) in relation to occupation taxes imposed under  
25 Title 3, Insurance Code, or other taxes and contributions paid to  
26 this state, during a period for which the transferring corporation  
27 would have been entitled to apply the transferred credit under

1 Subsection (e) or (f) of this section, as appropriate, in the  
2 absence of a limitation on the amount of the credit for that period.

3 (k) A taxpayer to which an unused tax credit is transferred  
4 under Subsection (h) of this section may not apply the credit after  
5 August 31, 2019.

6 SECTION 2. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2017.