LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 11, 2017

TO: Honorable Dennis Bonnen, Chair, House Committee on Ways & Means

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB1621** by Bohac (Relating to the transfer of certain unused franchise tax credits.), **As Introduced**

Estimated Two-year Net Impact to General Revenue Related Funds for HB1621, As Introduced: a negative impact of ($59,891,000) through the biennium ending August 31, 2019.

Additionally, the bill will have a direct impact of a revenue loss to the Property Tax Relief Fund of ($2,245,000) for the 2018-19 biennium. Any loss to the Property Tax Relief Fund must be made up with an equal amount of General Revenue to fund the Foundation School Program.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2018	($19,612,000)
2019	($40,279,000)
2020	($408,000)
2021	($408,000)
2022	($408,000)

All Funds, Five-Year Impact:

Fiscal Year	Probable (Cost) from *General Revenue Fund* 1	Probable Revenue (Loss) from *General Revenue Fund* 1	Probable Revenue (Loss) from *State Highway Fund* 6	Probable Revenue (Loss) from *Property Tax Relief Fund* 304
2018	($1,788,000)	($17,824,000)	($1,917,000)	($683,000)
2019	($408,000)	($39,871,000)	($4,925,000)	($1,562,000)
2020	($408,000)	$0	($1,045,000)	$0
2021	($408,000)	$0	$0	$0
2022	($408,000)	$0	$0	$0

Fiscal Year	Probable Revenue (Loss) from *Economic Stabilization Fund* 599	Probable Revenue (Loss) from *Various General Revenue Dedicated Accounts*	Change in Number of State Employees from FY 2017
2018	$0	($76,000)	5.0
2019	($525,000)	($166,000)	5.0
2020	($1,045,000)	$0	5.0
2021	$0	$0	5.0
2022	$0	$0	5.0

Fiscal Analysis

The bill would amend Section 18, Chapter 1 (HB 3), Acts of the 79th Legislature, 3rd Called Session (2006), related to the franchise tax, to address unused tax credits which have expired. The bill would add a subsection affecting franchise tax credits for capital investment or jobs creation that were established under the law prior to the changes made by HB 3. Under current law the credits earned under prior law can be applied to franchise tax liability until they are exhausted, until they would have expired under the prior law's provisions, or until December 31, 2016.

The bill would provide that corporations that had unused franchise tax credits before January 1, 2008 that expired under current law may transfer the right to the expired credits to another taxpayer of this state. The bill would provide that "transfer" includes a sale. To be eligible to transfer credits a corporation would be required to obtain a certificate of transfer from the Comptroller and notify the Comptroller within 30 days after the date of the transfer on a form prescribed by the Comptroller. The form would be required to include information on the amount of credits and the taxpayer to which the credits were transferred and other information required by the Comptroller.

A transferee of a credit would obtain the credit with the same rights and privileges as the transferor had when the credit was originally established.

A taxpayer to whom a credit is transferred could apply the credit only as provided by the bill against the taxes due under state taxes listed in the bill.

The bill would provide that a transferred credit could only be applied on or with a franchise tax report covering a period for which the transferring corporation would have been entitled to apply the transferred credit in the absence of a limitation on the amount of credit for that period. A similar provision applies to use of a transferred credit on other state taxes listed in the bill.

The bill would provide that a taxpayer to whom an unused tax credit is transferred may not apply the credit after August 31, 2019.

The bill would take effect immediately upon enactment, assuming it received the requisite two-thirds majority votes in both houses of the Legislature. Otherwise, it would take effect September 1, 2017.

Methodology

The estimated fiscal impact of the bill is based on information from the Comptroller's franchise tax data files on tax credits. Because the bill's provisions require filing a franchise tax report that would amend an existing report the tax credits included in the estimate are ones that expired during the period from 2013 to 2016.

The fiscal impact of the bill was estimated by proportionally allocating reduced tax collections across funds potentially affected by the bill. Reductions in oil and natural gas production tax revenues in one fiscal year affect transfers to the State Highway and Economic Stabilization Funds in the following year.

The administrative cost estimate includes a one-time technology cost of $1,380,000 and the funds necessary to hire five auditor IIIs to implement this bill. The Comptroller's Office estimates there are several hundred entities with unused franchise tax credits. Franchise tax auditors perform approximately 55 audits a year. It is anticipated that the verification and audit processes will be difficult due to the age of the records, the amount of information required to be provided on the certificate, and the difficulty in verifying the credit, particularly if the investment credit or the qualifying entity is sold. The additional FTEs will be needed after the filing deadline of August 2019 because of the four-year statute of limitations on audits and refunds. Moreover, there is no provision in the bill that precludes entities from filing amended reports after the 2019 deadline.

Technology

There would be a one-time technology cost of $1,380,000 in fiscal 2018 for an estimated 9200 hours for programming at least 15 tax systems and filing options. Currently, the majority of these taxes do not have an option on the tax returns to take a credit, requiring changes to all these systems. Major changes would need to be made to the data entry, edit, and processing system in order to process the paper returns. A new credit tracking option would need to be developed in the tax system in order to validate and/or deny credits. Reports would need to be changed to assist the Enforcement and Audit Divisions as well as changes to the comprehensive audit transaction system.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 304 Comptroller of Public Accounts

LBB Staff: UP, KK, SD, LCO