

BILL ANALYSIS

Senate Research Center
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S.B. 412
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The inventory tax is levied on the value of a company's inventory, and thus is especially harmful to large retail stores and other businesses that store large amounts of merchandise. It is a regressive tax in that, when a retail store's sales are lower and thus there is more inventory on the shelves, they are taxed at a higher rate than they are during periods when sales are high and there is less unsold inventory on the shelves. Inventory taxes are highly distortionary, because they force companies to make decisions about production that are not entirely based on economic principles but rather on how to pay the least amount of tax on goods produced. The tax is extremely difficult to fairly enforce because it is based on a single snapshot of a retailer's inventory on a certain date each year, which may or may not be indicative of the retailer's actual average inventory throughout the entire year.

This unnecessary burden creates strong incentives for retailers to locate their inventory outside of Texas and instead place it in states where they can avoid these harmful taxes. The tax is outdated in that Texas is one of a small and shrinking number of remaining states (fewer than 10) that levy an inventory tax. The State of Indiana recently phased out its property tax on inventory, and in doing so found that for every drop in its inventory tax, inventories held in that state increased.

Under S.B. 412, a business would pay the same amount to the cities/counties/school districts that it pays under the current inventory tax structure. No constitutional amendment is needed. The business would then render an alternative value that is similar to the alternate valuation system used for autos and heavy machinery. The new method defines the taxable market value of a retailer's retail inventory on January 1st as the total annual sales, less sales at wholesale and sales to retailers, for the 12-month period corresponding to the preceding tax year, divided by 12.

The state would then provide a franchise tax credit for the difference between the taxes paid and the taxes that would have been paid under the alternate valuation method. Smaller companies that do not pay franchise tax and therefore determine they do not have need for the credit would be authorized to sell or assign their margin tax credits to larger companies that do pay the franchise tax, so that all businesses will benefit. This will result in tax savings for all retail businesses, and ultimately lead to additional growth in the state.

As proposed, S.B. 412 amends current law relating to a franchise tax credit based on the ad valorem taxes paid by a taxable entity on certain inventory.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas in SECTION 1 (Section 171.707, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 171, Tax Code, by adding Subchapter N, as follows:

SUBCHAPTER N. TAX CREDIT FOR BUSINESS AD VALOREM TAX PAYMENTS ON
INVENTORY

Sec. 171.701. DEFINITIONS. Defines "qualified entity," "retail inventory," "retailer," "sales price," and "total annual sale."

Sec. 171.702. ELIGIBILITY FOR CREDIT. Provides that a qualified entity is eligible to apply for a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Sec. 171.703. AMOUNT OF CREDIT; LIMITATIONS. (a) Provides that, subject to Subsection (c), the total amount of the credit under this subchapter is equal to the difference between the following amounts:

(1) the amount of the ad valorem taxes paid by the qualified entity during the period on which a report is based that are derived from the taxable value of the entity's retail inventory; and

(2) the amount of the ad valorem taxes the entity would have paid during the period described by Subdivision (1) on the taxable value of the entity's retail inventory if the taxable value of the inventory were an amount determined by dividing the entity's total annual sales, as reported to the comptroller of public accounts of the State of Texas (comptroller) under Section 171.705, by 12.

(b) Authorizes the comptroller to request assistance from the chief appraiser of the appraisal district in which a qualified entity's retail inventory is located to determine the amount described by Subsection (a)(2). Requires the chief appraiser to provide the requested assistance.

(c) Provides that a qualified entity is not eligible for a credit under this subchapter for a year in which the amount described by Subsection (a)(2) is greater than the amount described by Subsection (a)(1).

(d) Prohibits the total credit claimed for a report, including the amount of any carryforward under Section 171.704, from exceeding the amount of franchise tax due for the report after all other applicable tax credits.

Sec. 171.704. CARRYFORWARD. (a) Authorizes a qualified entity, if the entity is eligible for a credit that exceeds the limitations under Section 171.703(d), to carry the unused credit forward for not more than three consecutive reports.

(b) Provides that a carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation under Section 171.703(d). Provides that a carryforward is added to the next year's credit in determining the limitations for that year. Provides that a credit carryforward from a previous report is considered to be used before the current year credit.

Sec. 171.705. APPLICATION FOR CREDIT. (a) Requires a qualified entity to apply for a credit under this subchapter on or with the report for the period for which the credit is claimed.

(b) Requires the comptroller to promulgate a form for the application of the credit. Requires a qualified entity to use the form in applying for the credit. Requires the application to require the entity to state the entity's total annual sales for the 12-month period for which the credit is claimed. Authorizes the comptroller to require the entity to include any other information the comptroller determines is necessary to demonstrate that the entity is eligible for the credit.

(c) Provides that the burden of establishing eligibility for and the value of the credit is on the qualified entity.

(d) Authorizes the comptroller to request permission to examine the books and records of a qualified entity in the manner provided by this subsection. Requires a request made under this subsection to be made in writing, be delivered personally to the custodian of the records at a location at which the entity conducts business, provide a period of not less than 15 days for the person to respond to the request, and state that the person to whom the request is addressed has the right to seek judicial relief from compliance with the request. Authorizes, in a request made under this subsection, the comptroller to examine documentation appropriate to allow the comptroller to determine if the entity is eligible for the credit and sales records to substantiate information included in the entity's application for the credit.

Sec. 171.706. SALE OR ASSIGNMENT OF CREDIT. (a) Authorizes a qualified entity that earns a credit under this subchapter to sell or assign all or part of the credit, and authorizes any entity to which all or part of the credit is sold or assigned to sell or assign all or part of the credit to another entity. Provides that there is no limit on the total number of transactions for the sale or assignment of all or part of the total credit authorized under this subchapter, but provides that, collectively all transferred and retained credits claimed for a period are subject to the limitation under Section 171.703(d).

(b) Requires an entity that sells or assigns a credit under this section and the entity to which the credit is sold or assigned to jointly submit written notice of the sale or assignment to the comptroller on a form promulgated by the comptroller not later than the 30th day after the date of the sale or assignment. Requires the notice to include:

(1) the date of the sale or assignment;

(2) the amount of the credit sold or assigned;

(3) the names and federal tax identification numbers of the entity that sold or assigned the credit or part of the credit and the entity to which the credit or part of the credit was sold or assigned; and

(4) the amount of the credit owned by the selling or assigning entity before the sale or assignment, and the amount the selling or assigning entity retained, if any, after the sale or assignment.

(c) Provides that the sale or assignment of a credit in accordance with this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed.

Sec. 171.707. RULES. Requires the comptroller to adopt rules necessary to implement and administer this subchapter.

SECTION 2. Makes application of Subchapter N, Chapter 171, Tax Code, as added by this Act, prospective.

SECTION 3. Effective date: January 1, 2020.