86R8818 CJC-D

By:  Clardy H.B. No. 2397

A BILL TO BE ENTITLED

AN ACT

relating to a sales and use tax refund and franchise tax credit for certain businesses that make investments in qualified opportunity zones.

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

SECTION 1.  Subchapter I, Chapter 151, Tax Code, is amended by adding Section 151.4292 to read as follows:

Sec. 151.4292.  TAX REFUNDS FOR BUSINESS IN ECONOMIC OPPORTUNITY ZONE. (a) In this section:

(1)  "Economic opportunity zone" has the meaning assigned by Section 171.9261.

(2)  "Qualifying business entity" means an entity that is eligible to receive a tax credit under Subchapter W, Chapter 171.

(b)  After the qualifying business entity becomes eligible to receive a tax credit under Subchapter W, Chapter 171, and subject to Subsection (c), the entity is eligible for a one-time refund of the sales and use taxes paid by the entity for the purchase of:

(1)  building materials to remodel, rehabilitate, or construct a structure owned or leased by the entity that is located in the economic opportunity zone and that is the basis for the entity's eligibility for the tax credit under Subchapter W, Chapter 171;

(2)  labor to remodel, rehabilitate, or construct a structure owned or leased by the entity that is located in the economic opportunity zone and that is the basis for the entity's eligibility for the tax credit under Subchapter W, Chapter 171; and

(3)  equipment or machinery to be located in, or used in the operation of, a structure owned or leased by the entity that is located in the economic opportunity zone and that is the basis for the entity's eligibility for the tax credit under Subchapter W, Chapter 171.

(c)  The amount of the one-time refund paid to a qualifying business entity under this section may not exceed the lesser of:

(1)  25 percent of the total amount of sales and use taxes paid by the business entity on purchases described by Subsection (b); or

(2)  $50,000.

(d)  A qualifying business entity must apply to the comptroller to receive a refund authorized under this section on a form prescribed by the comptroller.

(e)  The comptroller may adopt rules to implement and administer this section.

SECTION 2.  Chapter 171, Tax Code, is amended by adding Subchapter W to read as follows:

SUBCHAPTER W. TAX CREDIT FOR INVESTMENT IN ECONOMIC OPPORTUNITY ZONE

Sec. 171.9261.  DEFINITIONS. In this subchapter:

(1)  "Economic opportunity zone" means a population census tract that, as of September 1, 2019, was designated as a qualified opportunity zone under Public Law No. 115-97.

(2)  "Qualifying investment" means an investment to:

(A)  remodel, rehabilitate, or construct a structure owned or leased by the entity that is located in an economic opportunity zone; or

(B)  purchase equipment or machinery to be located in, or used in the operation of, a structure owned or leased by the entity that is located in an economic opportunity zone.

Sec. 171.9262.  ELIGIBILITY FOR CREDIT. An entity is eligible to apply for a credit in the amount and under the conditions provided by this subchapter against the tax imposed under this chapter.

Sec. 171.9263.  QUALIFICATION. An entity qualifies for a credit under this subchapter if the entity makes a qualifying investment:

(1)  on or after September 1, 2019; and

(2)  in an amount that is at least $100,000.

Sec. 171.9264.  CERTIFICATION OF ELIGIBILITY. (a) Before claiming, selling, or assigning a credit under this subchapter, the entity that made the qualifying investment must request from the comptroller a certificate of eligibility on a form prescribed by the comptroller. The entity must include with the entity's request information sufficient to allow the comptroller to determine whether the entity has made a qualifying investment under this subchapter. At a minimum, the entity must provide documentation certified by the chief financial officer of the entity demonstrating:

(1)  the total amount of the qualifying investment made by the entity; and

(2)  the date on which the qualifying investment was made.

(b)  The comptroller shall issue a certificate of eligibility to an entity that has made a qualifying investment under this subchapter.

(c)  An entity that sells or assigns a credit under this subchapter to another entity shall provide a copy of the certificate of eligibility to the purchaser or assignee.

Sec. 171.9265.  AMOUNT OF CREDIT; LIMITATIONS. (a) Subject to Subsections (b) and (c), the amount of the credit under this subchapter is equal to 25 percent of the total amount of the qualifying investment.

(b)  An entity may not claim more than one credit under this subchapter.

(c)  The total credit claimed for a report, including the amount of any carryforward under Section 171.9266, may not exceed the amount of franchise tax due for the report after any other applicable tax credits.

(d)  A qualifying investment may be counted only once in determining the amount of the tax credit available, and more than one entity may not claim a credit for the same qualifying investment.

Sec. 171.9266.  CARRYFORWARD. (a) If an entity is eligible for a credit that exceeds the limitation under Section 171.9265(c), the entity may carry the unused credit forward for not more than five consecutive reports.

(b)  A carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation under Section 171.9265(c).

Sec. 171.9267.  APPLICATION FOR CREDIT. (a) An entity must apply for a credit under this subchapter on or with the report for the period for which the credit is claimed.

(b)  An entity shall file with any report on which the credit is claimed a copy of the certificate of eligibility issued by the comptroller under Section 171.9264 and any other information required by the comptroller to sufficiently demonstrate that the entity is eligible for the credit.

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

Sec. 171.9268.  SALE OR ASSIGNMENT OF CREDIT. (a) An entity that makes a qualifying investment may sell or assign all or part of the credit that may be claimed for that investment to one or more entities, and any entity to which all or part of the credit is sold or assigned may sell or assign all or part of the credit to another entity. 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, however, collectively all transfers are subject to the limitations provided by Section 171.9265.

(b)  An entity that sells or assigns a credit under this section and the entity to which the credit is sold or assigned shall 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. The notice must 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)  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.

(d)  Notwithstanding the requirements of this subchapter, a credit earned or purchased by, or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity and claimed under this subchapter in accordance with the provisions of any agreement among the partners, members, or shareholders, provided that the entity that claims the credit must be subject to the tax imposed under this chapter.

Sec. 171.9269.  RULES. The comptroller shall adopt rules necessary to implement and administer this subchapter.

SECTION 3.  Subchapter W, Chapter 171, Tax Code, as added by this Act, applies only to a report originally due on or after the effective date of this Act.

SECTION 4.  This Act takes effect January 1, 2020.