86R490 CJC-D

By:  Sanford H.B. No. 3868

A BILL TO BE ENTITLED

AN ACT

relating to the appraisal for ad valorem tax purposes of tangible personal property held for sale at retail and a franchise tax credit based on the ad valorem taxes paid on such property.

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

SECTION 1.  Sections 23.12(a) and (f), Tax Code, are amended to read as follows:

(a)  Except as provided by Sections 23.121, [~~23.1241,~~] 23.124, 23.1241, 23.1244, and 23.127, the market value of an inventory is the price for which it would sell as a unit to a purchaser who would continue the business. An inventory shall include residential real property which has never been occupied as a residence and is held for sale in the ordinary course of a trade or business, provided that the residential real property remains unoccupied, is not leased or rented, and produces no income.

(f)  The owner of an inventory other than a dealer's motor vehicle inventory as that term is defined by Section 23.121, [~~a dealer's heavy equipment inventory as that term is defined by Section 23.1241, or~~] a dealer's vessel and outboard motor inventory as that term is defined by Section 23.124, a dealer's heavy equipment inventory as that term is defined by Section 23.1241, a retail inventory as that term is defined by Section 23.1244, or a retail manufactured housing inventory as that term is defined by Section 23.127 may elect to have the inventory appraised at its market value as of September 1 of the year preceding the tax year to which the appraisal applies by filing an application with the chief appraiser requesting that the inventory be appraised as of September 1. The application must clearly describe the inventory to which it applies and be signed by the owner of the inventory. The application applies to the appraisal of the inventory in each tax year that begins after the next August 1 following the date the application is filed with the chief appraiser unless the owner of the inventory by written notice filed with the chief appraiser revokes the application or the ownership of the inventory changes. A notice revoking the application is effective for each tax year that begins after the next September following the date the notice of revocation is filed with the chief appraiser.

SECTION 2.  Subchapter B, Chapter 23, Tax Code, is amended by adding Section 23.1244 to read as follows:

Sec. 23.1244.  RETAILER'S RETAIL INVENTORY; VALUE. (a) In this section:

(1)  "Chief appraiser" means the chief appraiser for the appraisal district in which a retailer's retail inventory is located.

(2)  "Declaration" means a retailer's retail inventory declaration form adopted by the comptroller under this section.

(3)  "Retail inventory" means all tangible personal property that a retailer holds for sale in this state during a 12-month period and for which the retailer is not otherwise entitled to an exemption from taxation. For purposes of this section, the term does not include:

(A)  real property; or

(B)  inventory that qualifies for appraisal under Section 23.121, 23.124, 23.1241, or 23.127.

(4)  "Retailer" means a person who is engaged in the business in this state of selling retail inventory. For purposes of this section, the term does not include a bank, savings bank, savings and loan association, credit union, or other finance company.

(5)  "Sales price" means the total amount of money paid or to be paid to a retailer for the purchase of an item of retail inventory.

(6)  "Total annual sales" means the total of the sales price from every sale from a retailer's retail inventory for a 12-month period.

(b)  For the purpose of the computation of property tax, the chief appraiser shall determine the market value of a retailer's retail inventory on January 1 to be the average of the following amounts:

(1)  the market value of the retail inventory on that date as determined under Section 23.12; and

(2)  the retailer's total annual sales, less sales at wholesale and sales to other retailers, for the 12-month period corresponding to the preceding tax year, divided by 12.

(c)  For the purpose of the computation of property tax on the market value of the retail inventory of an owner who was not a retailer on January 1 of the preceding tax year, the chief appraiser shall estimate the amount described by Subsection (b)(2). In making the estimate required by this subsection, the chief appraiser shall use sales data, if available, generated by sales from the retailer's retail inventory in the preceding tax year.

(d)  Except for retail inventory, tangible personal property held by a retailer is appraised as provided by the other sections of this code. In the case of a retailer whose sales from the retailer's retail inventory are made predominately to other retailers, the chief appraiser shall appraise the retailer's retail inventory as provided by Section 23.12.

(e)  A retailer is presumed to be an owner of retail inventory on January 1 if, in the 12-month period ending on December 31 of the preceding year, the retailer sold an item of retail inventory to a person other than a retailer.  The presumption is not rebutted by the fact that a retailer has no item of retail inventory physically on hand for sale from the retailer's retail inventory on January 1.

(f)  The comptroller by rule shall adopt a retailer's retail inventory declaration form. Not later than April 15 of each year, or, in the case of a retailer who was not in business on January 1, not later than 30 days after commencement of business, each retailer shall file a declaration with the chief appraiser for each location at which the retailer's retail inventory to be appraised as provided by this section is located. The declaration is in addition to the rendition statement or property report filed by the retailer when rendering the retailer's retail inventory under Chapter 22. The declaration is sufficient to comply with this subsection if it sets forth:

(1)  the name and business address of each location at which the retailer's retail inventory to be appraised as provided by this section is located;

(2)  a statement that the retailer is the owner of retail inventory; and

(3)  the retailer's total annual sales, less sales at wholesale and sales to other retailers, for the 12-month period corresponding to the preceding tax year.

(g)  As provided by this subsection, the chief appraiser may examine the books and records of a retailer. A request made under this subsection must be made in writing, be delivered personally to the custodian of the records at a location at which the retailer 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. In a request made under this section, the chief appraiser may examine:

(1)  documentation appropriate to allow the chief appraiser to ascertain the applicability of this section to the person; and

(2)  sales records to substantiate information set forth in the declaration filed by the retailer.

(h)  A retailer who fails to timely file a declaration under Subsection (f) in a tax year waives any right to have the retailer's retail inventory appraised as provided by this section in that tax year, and the chief appraiser shall appraise the retailer's retail inventory as provided by Section 23.12.

(i)  Section 23.123 applies to a declaration filed under this section in the same manner in which that section applies to a declaration filed as required by Section 23.121.

SECTION 3.  Chapter 171, Tax Code, is amended by adding Subchapter N to read as follows:

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

Sec. 171.701.  DEFINITIONS. In this subchapter:

(1)  "Qualified entity" means a taxable entity that:

(A)  is a retailer; and

(B)  pays ad valorem taxes on retail inventory owned by the entity and located in this state.

(2)  "Retail inventory" and "retailer" have the meanings assigned by Section 23.1244.

Sec. 171.702.  ELIGIBILITY FOR CREDIT. 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) Subject to Subsection (b), 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 that inventory were the amount determined under Section 23.1244(b)(2).

(b)  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).

(c)  The total credit claimed for a report, including the amount of any carryforward under Section 171.704, may not exceed the amount of franchise tax due for the report after all other applicable tax credits.

Sec. 171.704.  CARRYFORWARD. (a) If a qualified entity is eligible for a credit that exceeds the limitation under Section 171.703(c), the entity may carry the unused credit forward for not more than three 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 171.703(c). A carryforward is added to the next year's installment of the credit in determining the limitation for that year. A credit carryforward from a previous report is considered to be used before the current year installment.

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

(b)  A qualified entity shall file with a report on which the credit is claimed any 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 qualified entity.

Sec. 171.706.  SALE OR ASSIGNMENT OF CREDIT. (a) A qualified entity that earns a credit under this subchapter may sell or assign all or part of the credit, 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 transferred and retained credits claimed for a period are subject to the limitation under Section 171.703(c).

(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.

Sec. 171.707.  RULES. The comptroller shall adopt rules necessary to implement this subchapter.

SECTION 4.  The legislature finds that, because of the many different types of retail inventory and the differences in the period of time that items comprising different types of retail inventory are held for sale by retailers before being sold to purchasers, it is difficult to establish a method that reliably determines the market value of such inventory. Accordingly, the legislature has enacted Section 23.1244, Tax Code, to specify a fair and accurate method for determining the appraised value of retail inventory that recognizes the unique characteristics of different types of retail inventory that may affect its value.

SECTION 5.  Section 23.1244, Tax Code, as added by this Act, applies only to an ad valorem tax year that begins on or after the effective date of this Act.

SECTION 6.  Subchapter N, Chapter 171, Tax Code, as added by this Act, applies only to a report originally due on or after January 1, 2021.

SECTION 7.  This Act takes effect January 1, 2020.