

By: Sanford

H.B. No. 3866

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit based on the ad valorem taxes paid by a taxable entity on certain inventory.

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

SECTION 1. 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" 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.

(3) "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:

1           (A) a bank, savings bank, savings and loan  
2 association, credit union, or other finance company; or

3           (B) a person who was not engaged in the business  
4 in this state of selling retail inventory on January 1 of the  
5 preceding tax year.

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

9           (5) "Total annual sales" means the total of the sales  
10 price from every sale from a retailer's retail inventory for a  
11 12-month period, other than a sale at wholesale or a sale to another  
12 retailer.

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

17           Sec. 171.703. AMOUNT OF CREDIT; LIMITATIONS. (a) Subject  
18 to Subsection (c), the total amount of the credit under this  
19 subchapter is equal to the difference between the following  
20 amounts:

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

25           (2) the amount of the ad valorem taxes the entity would  
26 have paid during the period described by Subdivision (1) on the  
27 taxable value of the entity's retail inventory if the taxable value

1 of that inventory were an amount determined by dividing the  
2 entity's total annual sales, as reported to the comptroller under  
3 Section 171.705, by 12.

4 (b) The comptroller may request assistance from the chief  
5 appraiser of the appraisal district in which a qualified entity's  
6 retail inventory is located to determine the amount described by  
7 Subsection (a)(2). The chief appraiser shall provide the requested  
8 assistance.

9 (c) A qualified entity is not eligible for a credit under  
10 this subchapter for a year in which the amount described by  
11 Subsection (a)(2) is greater than the amount described by  
12 Subsection (a)(1).

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

17 Sec. 171.704. CARRYFORWARD. (a) If a qualified entity is  
18 eligible for a credit that exceeds the limitation under Section  
19 171.703(d), the entity may carry the unused credit forward for not  
20 more than three consecutive reports.

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

27 Sec. 171.705. APPLICATION FOR CREDIT. (a) A qualified

1 entity must apply for a credit under this subchapter on or with the  
2 report for the period for which the credit is claimed.

3 (b) The comptroller shall promulgate a form for the  
4 application for the credit. A qualified entity must use the form in  
5 applying for the credit. The application must require the entity to  
6 state the entity's total annual sales for the 12-month period for  
7 which the credit is claimed. The comptroller may require the entity  
8 to include any other information the comptroller determines is  
9 necessary to demonstrate that the entity is eligible for the  
10 credit.

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

13 (d) The comptroller may request permission to examine the  
14 books and records of a qualified entity in the manner provided by  
15 this subsection. A request made under this subsection must be made  
16 in writing, be delivered personally to the custodian of the records  
17 at a location at which the entity conducts business, provide a  
18 period of not less than 15 days for the person to respond to the  
19 request, and state that the person to whom the request is addressed  
20 has the right to seek judicial relief from compliance with the  
21 request. In a request made under this subsection, the comptroller  
22 may examine:

23 (1) documentation appropriate to allow the  
24 comptroller to determine if the entity is eligible for the credit;  
25 and

26 (2) sales records to substantiate information  
27 included in the entity's application for the credit.

1       Sec. 171.706. SALE OR ASSIGNMENT OF CREDIT. (a) A  
2 qualified entity that earns a credit under this subchapter may sell  
3 or assign all or part of the credit, and any entity to which all or  
4 part of the credit is sold or assigned may sell or assign all or part  
5 of the credit to another entity. There is no limit on the total  
6 number of transactions for the sale or assignment of all or part of  
7 the total credit authorized under this subchapter, however,  
8 collectively all transferred and retained credits claimed for a  
9 period are subject to the limitation under Section 171.703(d).

10       (b) An entity that sells or assigns a credit under this  
11 section and the entity to which the credit is sold or assigned shall  
12 jointly submit written notice of the sale or assignment to the  
13 comptroller on a form promulgated by the comptroller not later than  
14 the 30th day after the date of the sale or assignment. The notice  
15 must include:

16               (1) the date of the sale or assignment;  
17               (2) the amount of the credit sold or assigned;  
18               (3) the names and federal tax identification numbers  
19 of the entity that sold or assigned the credit or part of the credit  
20 and the entity to which the credit or part of the credit was sold or  
21 assigned; and

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

26       (c) The sale or assignment of a credit in accordance with  
27 this section does not extend the period for which a credit may be

1 carried forward and does not increase the total amount of the credit  
2 that may be claimed.

3 Sec. 171.707. RULES. The comptroller shall adopt rules  
4 necessary to implement and administer this subchapter.

5 SECTION 2. Subchapter N, Chapter 171, Tax Code, as added by  
6 this Act, applies only to a report originally due on or after the  
7 effective date of this Act.

8 SECTION 3. This Act takes effect January 1, 2020.