

By: Sanford

H.B. No. 3868

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the appraisal for ad valorem tax purposes of tangible  
3 personal property held for sale at retail and a franchise tax credit  
4 based on the ad valorem taxes paid on such property.

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

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

8 (a) Except as provided by Sections 23.121, [~~23.1241,~~  
9 23.124, 23.1241, 23.1244, and 23.127, the market value of an  
10 inventory is the price for which it would sell as a unit to a  
11 purchaser who would continue the business. An inventory shall  
12 include residential real property which has never been occupied as  
13 a residence and is held for sale in the ordinary course of a trade or  
14 business, provided that the residential real property remains  
15 unoccupied, is not leased or rented, and produces no income.

16 (f) The owner of an inventory other than a dealer's motor  
17 vehicle inventory as that term is defined by Section 23.121, [~~a  
18 dealer's heavy equipment inventory as that term is defined by  
19 Section 23.1241, or~~] a dealer's vessel and outboard motor inventory  
20 as that term is defined by Section 23.124, a dealer's heavy  
21 equipment inventory as that term is defined by Section 23.1241, a  
22 retail inventory as that term is defined by Section 23.1244, or a  
23 retail manufactured housing inventory as that term is defined by  
24 Section 23.127 may elect to have the inventory appraised at its

1 market value as of September 1 of the year preceding the tax year to  
2 which the appraisal applies by filing an application with the chief  
3 appraiser requesting that the inventory be appraised as of  
4 September 1. The application must clearly describe the inventory  
5 to which it applies and be signed by the owner of the inventory. The  
6 application applies to the appraisal of the inventory in each tax  
7 year that begins after the next August 1 following the date the  
8 application is filed with the chief appraiser unless the owner of  
9 the inventory by written notice filed with the chief appraiser  
10 revokes the application or the ownership of the inventory changes.  
11 A notice revoking the application is effective for each tax year  
12 that begins after the next September following the date the notice  
13 of revocation is filed with the chief appraiser.

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

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

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

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

23 (3) "Retail inventory" means all tangible personal  
24 property that a retailer holds for sale in this state during a  
25 12-month period and for which the retailer is not otherwise  
26 entitled to an exemption from taxation. For purposes of this  
27 section, the term does not include:

1           (A) real property; or

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

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

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

12           (6) "Total annual sales" means the total of the sales  
13 price from every sale from a retailer's retail inventory for a  
14 12-month period.

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

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

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

24           (c) For the purpose of the computation of property tax on  
25 the market value of the retail inventory of an owner who was not a  
26 retailer on January 1 of the preceding tax year, the chief appraiser  
27 shall estimate the amount described by Subsection (b)(2). In

1 making the estimate required by this subsection, the chief  
2 appraiser shall use sales data, if available, generated by sales  
3 from the retailer's retail inventory in the preceding tax year.

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

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

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

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

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

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

9           (g) As provided by this subsection, the chief appraiser may  
10 examine the books and records of a retailer. A request made under  
11 this subsection must be made in writing, be delivered personally to  
12 the custodian of the records at a location at which the retailer  
13 conducts business, provide a period of not less than 15 days for the  
14 person to respond to the request, and state that the person to whom  
15 the request is addressed has the right to seek judicial relief from  
16 compliance with the request. In a request made under this section,  
17 the chief appraiser may examine:

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

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

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

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

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

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

8       Sec. 171.701. DEFINITIONS. In this subchapter:

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

10                       (A) is a retailer; and

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

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

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

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

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

27               (2) the amount of the ad valorem taxes the entity would

1 have paid during the period described by Subdivision (1) on the  
2 taxable value of the entity's retail inventory if the taxable value  
3 of that inventory were the amount determined under Section  
4 23.1244(b)(2).

5 (b) A qualified entity is not eligible for a credit under  
6 this subchapter for a year in which the amount described by  
7 Subsection (a)(2) is greater than the amount described by  
8 Subsection (a)(1).

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

13 Sec. 171.704. CARRYFORWARD. (a) If a qualified entity is  
14 eligible for a credit that exceeds the limitation under Section  
15 171.703(c), the entity may carry the unused credit forward for not  
16 more than three consecutive reports.

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

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

27 (b) A qualified entity shall file with a report on which the

1 credit is claimed any information required by the comptroller to  
2 sufficiently demonstrate that the entity is eligible for the  
3 credit.

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

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

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

21 (1) the date of the sale or assignment;  
22 (2) the amount of the credit sold or assigned;  
23 (3) the names and federal tax identification numbers  
24 of the entity that sold or assigned the credit or part of the credit  
25 and the entity to which the credit or part of the credit was sold or  
26 assigned; and

27 (4) the amount of the credit owned by the selling or



1 assigning entity before the sale or assignment, and the amount the  
2 selling or assigning entity retained, if any, after the sale or  
3 assignment.

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

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

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

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

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

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