

BILL ANALYSIS

Senate Research Center
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S.B. 813
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Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Historic Tax Credit was enacted by the legislature in 2013 and is administered by the Texas Historical Commission and the Comptroller of Public Accounts of the State of Texas. The Texas Historic Tax Credit is worth 25 percent of eligible rehabilitation costs and is available for buildings that are designated historic under state or federal law. In 2015, the legislature amended the law to allow this tax credit to also be used by private sector non-profit organizations.

The Texas Historic Tax Credit can be taken against either of two state business taxes: the franchise tax or the insurance premium tax. Because it is found in the same chapter as the franchise tax, there is concern that if the franchise tax is ever repealed this tax credit would be swept away with it. S.B. 813 simply provides long-term protection in law by replicating key provisions from the tax credit into the Insurance Code.

As proposed, S.B. 813 amends current law relating to the insurance premium tax credit for the certified rehabilitation of certified historic structures.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Historical Commission and the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Section 231.0010, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 3, Insurance Code, by adding Chapter 231, as follows:

CHAPTER 231. PREMIUM TAX CREDIT FOR CERTIFIED REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

Sec. 231.0001. DEFINITIONS. Defines "certified historic structure," "certified rehabilitation," "commission," "eligible costs and expenses," "federal tax-exempt organization," and "state premium tax liability."

Sec. 231.0002. ELIGIBILITY FOR CREDIT. Provides that an entity is eligible to apply for a credit against state premium tax liability in the amount and under the conditions provided by this chapter.

Sec. 231.0003. QUALIFICATION. Provides that an entity is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure as provided by this chapter under certain circumstances.

Sec. 231.0004. CERTIFICATION OF ELIGIBILITY. (a) Requires that the entity that incurred the eligible costs and expenses in the rehabilitation of a certified historic structure, before claiming, selling, or assigning a credit under this chapter, request from the Texas Historical Commission (THC) a certificate of eligibility on which THC certifies that the work performed meets the definition of a certified rehabilitation. Requires that the entity include with the entity's request certain information.

(b) Requires that THC issue a certificate of eligibility to an entity that has incurred eligible costs and expenses as provided by this chapter. Requires that the certificate:

(1) confirm that the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; and

(2) specify the date the certified historic structure was first placed in service after the rehabilitation.

(c) Requires that the entity forward the certificate of eligibility and certain documentation to the Comptroller of Public Accounts of the State of Texas (comptroller) to claim the credit.

(d) Authorizes the comptroller, for purposes of approving the credit under Subsection (c), to rely on the audited cost report provided by the entity that requested the credit.

(e) Requires that an entity that sells or assigns a credit under this chapter to another entity provide a copy of the certificate of eligibility, together with the audited cost report, to the purchaser or assignee.

Sec. 231.0005. AMOUNT OF CREDIT; LIMITATIONS. (a) Prohibits the total amount of the credit under this chapter with respect to the rehabilitation of a single certified historic structure authorized to be claimed from exceeding 25 percent of the total eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

(b) Prohibits the total credit authorized to be claimed on a tax report, including the amount of any carryforward under Section 231.0006, from exceeding the amount of state premium tax liability due for the report after any other applicable credits.

(c) Authorizes eligible costs and expenses to be counted only once in determining the amount of the credit available, and prohibits more than one entity from claiming a credit for the same eligible costs and expenses.

Sec. 231.0006. CARRYFORWARD. (a) Authorizes the entity, if an entity is eligible for a credit that exceeds the limitation under Section 231.0005(b), to carry the unused credit forward for not more than five consecutive tax 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 231.0005(b).

Sec. 231.0007. APPLICATION FOR CREDIT. (a) Requires that an entity apply for a credit under this chapter on or with the tax report for the period for which the credit is claimed.

(b) Requires that an entity file with any tax report on which the credit is claimed a copy of the certificate of eligibility issued by THC under Section 231.0004 and any other information required by the comptroller to sufficiently 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 entity.

Sec. 231.0008. SALE OR ASSIGNMENT OF CREDIT. (a) Authorizes an entity that incurs eligible costs and expenses to sell or assign all or part of the credit authorized to be claimed for those costs and expenses to one or more entities, and any entity to which all

or part of the credit is sold or assigned is authorized 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 chapter, however, collectively all transfers are subject to the maximum total limits provided by Section 231.0005.

(b) Requires that an entity that sells or assigns a credit under this section and the entity to which the credit is sold or assigned 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 that the notice include certain information.

(c) Provides that the sale or assignment of a credit in accordance with this section does not extend the period for which a credit is authorized to be carried forward and does not increase the total amount of the credit authorized to be claimed. Prohibits another entity, after an entity claims a credit under this chapter for eligible costs and expenses, from using the same costs and expenses as the basis for claiming a credit under this chapter or Subchapter S (Tax Credit for Certified Rehabilitation of Certified Historic Structures), Chapter 171 (Franchise Tax), Tax Code.

(d) Authorizes a certain credit, notwithstanding the requirements of this chapter, to be allocated to the partners, members, or shareholders of that entity and claimed under this chapter in accordance with the provisions of any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure, provided that the entity that claims the credit must be subject to the tax imposed under certain chapters.

Sec. 231.0009. RETALIATORY TAX. Exempts an entity that claims a credit under this chapter from paying any additional retaliatory tax levied under Chapter 281 (Retaliatory Provisions) as a result of the credit.

Sec. 231.0010. RULES. Requires THC and the comptroller to adopt rules necessary to implement this chapter.

SECTION 2. Amends Section 171.908(c), Tax Code, to prohibit another entity, after an entity claims a credit under Subchapter S of this code for eligible costs and expenses, from using the same costs and expenses as the basis for claiming a credit under Subchapter S of this code or Chapter 231, Insurance Code.

SECTION 3. (a) Repealer: Section 171.908(e) (relating to certain credits against a premium tax), Tax Code.

(b) Provides that the repeal of Section 171.908(e), Tax Code, by this section does not affect a credit that accrued under Subchapter S, Chapter 171, Tax Code, before the effective date of this Act. Provides that the provisions of Subchapter S, as they existed immediately before the effective date of this Act are continued in effect for purposes of determining the amount of the credit an entity is authorized to claim and the manner in which the entity is authorized to claim, sell, or assign the credit or claim any carryforward of the credit.

SECTION 4. Provides that Chapter 231, Insurance Code, as added by this Act, applies only to a report originally due on or after January 1, 2022.

SECTION 5. Effective date: January 1, 2022.