

By: Hinojosa

H.B. No. 864

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit pilot program for taxable entities that contribute to an employee dependent care flexible spending account.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter P to read as follows:

SUBCHAPTER P. TAX CREDIT PILOT PROGRAM FOR EMPLOYER CONTRIBUTIONS  
TO DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS

Sec. 171.801. DEFINITION. In this subchapter, "dependent care flexible spending account" means a pretax benefit account used to pay eligible dependent care services as authorized by the Internal Revenue Code of 1986, as effective on January 1, 2021.

Sec. 171.802. ENTITLEMENT TO CREDIT. A taxable entity is entitled to a credit in the amount and under the conditions provided by this subchapter against the tax imposed under this chapter.

Sec. 171.803. QUALIFICATION. (a) Subject to Subsection (b), a taxable entity qualifies for a credit under this subchapter if the taxable entity:

(1) has an average of not more than 500 employees during the period on which the report is based; and

(2) contributes to the dependent care flexible spending account of each employee of the taxable entity who maintains an account and receives from the taxable entity an annual

1 salary or wage of not more than \$65,000.

2 (b) A combined group qualifies for a credit under this  
3 subchapter in connection with any member of the combined group that  
4 satisfies the requirements of Subsection (a).

5 Sec. 171.804. AMOUNT OF CREDIT; LIMITATIONS. (a) Subject  
6 to Subsection (b), the amount of the credit for a report in  
7 connection with each employee described by Section 171.803(a)(2) is  
8 equal to the lesser of:

9 (1) 50 percent of the contributions made by the  
10 taxable entity to the employee's dependent care flexible spending  
11 account, excluding any portion of a contribution returned to the  
12 taxable entity; or

13 (2) \$2,500.

14 (b) The total amount of the credit for each report is equal  
15 to the lesser of:

16 (1) the total of the credits allowed under Subsection  
17 (a) for the reporting period for all employees; or

18 (2) the amount of franchise tax due after applying all  
19 other applicable credits.

20 Sec. 171.805. APPLICATION FOR CREDIT. (a) A taxable entity  
21 must apply for a credit under this subchapter on or with the tax  
22 report for the period for which the credit is claimed.

23 (b) The comptroller shall promulgate a form for the  
24 application for the credit. A taxable entity must use the form in  
25 applying for the credit.

26 Sec. 171.806. PERIOD FOR WHICH CREDIT MAY BE CLAIMED. A  
27 taxable entity may claim a credit under this subchapter for a report

1 only in connection with contributions made during the accounting  
2 period on which the report is based.

3 Sec. 171.807. DEPOSIT OF CERTAIN REVENUE. Notwithstanding  
4 any other law, for each state fiscal year, the comptroller shall  
5 deposit to the credit of the property tax relief fund an amount of  
6 revenue received from the tax imposed under this chapter sufficient  
7 to offset any decrease in deposits to that fund for the state fiscal  
8 year that results from the implementation of this subchapter.

9 Sec. 171.808. EXPIRATION. This subchapter expires December  
10 31, 2023.

11 SECTION 2. (a) Not later than September 1, 2024, the  
12 comptroller shall prepare and deliver to the governor, the  
13 lieutenant governor, the speaker of the house of representatives,  
14 and the presiding officer of each legislative standing committee  
15 with primary jurisdiction over taxation a report that evaluates the  
16 effect of the pilot program established under Subchapter P, Chapter  
17 171, Tax Code, as added by this Act, on employer contributions to  
18 employees' dependent care flexible spending accounts for which  
19 credits are granted under the pilot program. The report must  
20 include a recommendation regarding whether the credit allowed under  
21 the pilot program should be reestablished.

22 (b) A taxable entity that claims a credit under Subchapter  
23 P, Chapter 171, Tax Code, as added by this Act, shall provide to the  
24 comptroller information the comptroller requests to prepare the  
25 report described by Subsection (a) of this section.

26 SECTION 3. A taxable entity may claim the credit under  
27 Subchapter P, Chapter 171, Tax Code, as added by this Act, only for

1 contributions made on or after September 1, 2021, and before  
2 January 1, 2024, and only on a franchise tax report originally due  
3 under Chapter 171, Tax Code, on or after January 1, 2022, and before  
4 January 1, 2025, notwithstanding the expiration of Subchapter P,  
5 Chapter 171, Tax Code, as added by this Act.

6 SECTION 4. This Act takes effect September 1, 2021.