

By: Miles

S.B. No. 358

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for entities that establish a grocery store or healthy corner store in a food desert.

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

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

SUBCHAPTER N-1. TAX CREDIT FOR ESTABLISHMENT OF FOOD STORE IN FOOD
DESERT

Sec. 171.721. DEFINITIONS. In this subchapter:

(1) "Corner store" means a store that has fewer than 2,000 square feet of retail space.

(2) "Department" means the Texas Department of Housing and Community Affairs.

(3) "Food desert" means a geographic area in this state determined by the department to be an area that:

(A) has limited access to healthy food retailers and is located in a low-income or high-poverty area; or

(B) otherwise has serious healthy food access limitations.

(4) "Grocery store" means a store that has at least:

(A) 66 percent of the store's retail space reserved for the sale of food products;

(B) 50 percent of the store's food retail space reserved for the sale of non-prepared foods or foods intended for

1 home preparation and consumption; and

2 (C) 30 percent of the store's food retail space
3 reserved for the sale of perishable foods, including dairy
4 products, fresh produce, fresh meats, poultry, and fish, and frozen
5 foods.

6 (5) "Healthy corner store" means a corner store that:

7 (A) offers a wide variety of fresh produce for
8 sale; and

9 (B) allocates at least 20 percent of the store's
10 retail space to fresh produce and other perishable foods, including
11 dairy products.

12 (6) "Supplemental nutrition assistance program" means
13 the nutritional assistance program operated under Chapter 33, Human
14 Resources Code, and formerly referred to as the food stamp program.

15 (7) "WIC program" means the federal special
16 supplemental nutrition program for women, infants, and children
17 authorized by 42 U.S.C. Section 1786.

18 Sec. 171.722. ENTITLEMENT TO CREDIT. A taxable entity is
19 entitled to a credit in the amount and under the conditions provided
20 by this subchapter against the tax imposed under this chapter.

21 Sec. 171.723. QUALIFICATION. A taxable entity qualifies
22 for a credit under this subchapter if, on or after January 1, 2022,
23 the taxable entity opens a grocery store or healthy corner store:

24 (1) located in a food desert;

25 (2) located in a low or moderate income area, as
26 determined by the United States Department of Housing and Urban
27 Development, or that serves a customer base living in a low or

1 moderate income area;

2 (3) that begins accepting benefits under the WIC
3 program and the supplemental nutrition assistance program not later
4 than the 90th day after the date the store opens; and

5 (4) that is open year-round.

6 Sec. 171.724. CERTIFICATION OF ELIGIBILITY. (a) Before
7 claiming a credit under this subchapter, a taxable entity must
8 request from the department a certificate of eligibility on which
9 the department certifies that the taxable entity qualifies for a
10 credit under Section 171.723. The taxable entity must include with
11 the taxable entity's request information required by the department
12 to determine whether the taxable entity meets the requirements of
13 Section 171.723.

14 (b) The department shall issue a certificate of eligibility
15 to a taxable entity that qualifies for a credit under Section
16 171.723.

17 (c) The taxable entity must forward the certificate of
18 eligibility and the following documentation to the comptroller to
19 claim the credit:

20 (1) an audited cost report issued by a certified
21 public accountant, as defined by Section 901.002, Occupations Code,
22 that itemizes the taxable entity's expenditures to which Section
23 171.725 applies;

24 (2) the date the grocery store or healthy corner store
25 first opened for business and evidence of that opening; and

26 (3) an attestation of the total amount of the taxable
27 entity's expenditures to which Section 171.725 applies.

1 (d) For purposes of approving a credit under this
2 subchapter, the comptroller may rely on the audited cost report
3 provided by the taxable entity applying for the credit.

4 Sec. 171.725. AMOUNT OF CREDIT. (a) A taxable entity may
5 claim a credit for each store described by Section 171.723 equal to
6 five percent of the amount the taxable entity spends to establish
7 the store during the earliest 12-month period:

8 (1) in which the taxable entity makes an expenditure
9 to which this section applies; and

10 (2) that includes the date the store opens for
11 business.

12 (b) Subsection (a) applies to amounts spent to:

13 (1) purchase or lease the land or building for the
14 store;

15 (2) construct or remodel the store; and

16 (3) furnish and equip the store.

17 (c) Subsection (a) does not apply to amounts spent to
18 acquire inventory for the store.

19 Sec. 171.726. LIMITATIONS. (a) The total credit a taxable
20 entity may claim under this subchapter for a report, including the
21 amount of any credit carryforward under Section 171.728, may not
22 exceed 50 percent of the amount of franchise tax due after applying
23 all other applicable credits.

24 (b) A taxable entity may not convey, assign, or transfer a
25 credit under this subchapter to another entity unless all of the
26 assets of the taxable entity are conveyed, assigned, or transferred
27 in the same transaction.

1 Sec. 171.727. PERIOD FOR WHICH CREDIT MAY BE CLAIMED.

2 Subject to Section 171.728, a taxable entity may claim a credit
3 under this subchapter on a report only for an expenditure made
4 during the period on which the report is based.

5 Sec. 171.728. CARRYFORWARD. (a) If a taxable entity is
6 eligible for a credit that exceeds the limitation under Section
7 171.726(a), the taxable entity may carry the unused credit forward
8 for not more than five consecutive reports.

9 (b) Credits, including credit carryforwards, are considered
10 to be used in the following order:

11 (1) a credit carryforward under this subchapter; and

12 (2) a current year credit.

13 Sec. 171.729. APPLICATION FOR CREDIT. A taxable entity
14 must apply for a credit under this subchapter on or with the report
15 for the period for which the credit is claimed. The comptroller may
16 promulgate an application form for the credit under this
17 subchapter.

18 Sec. 171.730. RULES. (a) The department may adopt rules
19 governing the requirements to qualify for a credit under Section
20 171.723, including rules governing the stores that qualify as
21 grocery stores or healthy corner stores and the areas that qualify
22 as food deserts.

23 (b) The comptroller may adopt any rules necessary to
24 administer this subchapter other than rules described by Subsection
25 (a).

26 SECTION 2. This Act applies only to a report originally due
27 on or after the effective date of this Act.

1 SECTION 3. This Act takes effect January 1, 2022.