

BILL ANALYSIS

Senate Research Center
88R17159 RDS-F

S.B. 5
By: Parker et al.
Finance
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 5 will provide for an increase to the business personal property exemption from a \$2,500 de minimis exemption to a \$25,000 universal exemption. All businesses in Texas would therefore see a reduction of their ad valorem taxation paid for income-producing tangible personal property.

S.B. 5 will also provide eligible taxable entities a credit equal to 20% of the amount of ad valorem taxes paid during the period on which the report is based, that are derived from the taxable value of the inventory owned by the entity and located in Texas, but not to exceed 20% of the amount of franchise tax due after other applicable credits have been applied.

The total amount of credits that may be awarded under this subchapter in a state fiscal year is limited to \$400 million. If a taxable entity is eligible for a credit that exceeds the limitation, it may carry the unused credit forward for up to five consecutive reports. However, a carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation. The comptroller would be responsible for allocating the amount of credits available on a first-come, first-served basis, based on the date the entity applies for the credit.

As proposed, S.B. 5 amends current law relating to an exemption from ad valorem taxation of a portion of the appraised value of tangible personal property a person owns that is held or used for the production of income and a franchise tax credit for the payment of certain related ad valorem taxes.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 2.01 (Sections 171.703 and 171.707, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. INCOME-PRODUCING TANGIBLE PERSONAL PROPERTY AD VALOREM TAX EXEMPTION

SECTION 1.01. Amends the heading to Section 11.145, Tax Code, to read as follows:

Sec. 11.145. INCOME-PRODUCING TANGIBLE PERSONAL PROPERTY.

SECTION 1.02. Amends Section 11.145(a), Tax Code, as follows:

(a) Provides that a person is entitled to an exemption from taxation of \$25,000 of the appraised value of tangible personal property the person owns that is held or used for the production of income. Deletes existing text providing that a person is entitled to an exemption from taxation of the tangible personal property the person owns that is held or used for the production of income if that property has a taxable value of less than \$2,500.

SECTION 1.03. Amends Section 22.01, Tax Code, by adding Subsection (j-1), as follows:

(j-1) Provides that a person is required to render tangible personal property the person owns that is held or used for the production of income only if, in the person's opinion, the aggregate market value of the property in at least one taxing unit that participates in the appraisal district is greater than the amount exempted under Section 11.145(a). Requires a person required to render property for taxation under this subsection to render all tangible personal property the person owns that is held or used for the production of income and has taxable situs in the appraisal district. Provides that this subsection does not apply to property exempt from taxation under a provision of law other than Section 11.145.

SECTION 1.04. Makes application of this article prospective.

SECTION 1.05. Effective date, this article: January 1, 2024, contingent upon approval by the voters of the constitutional amendment proposed by the 88th Legislature, Regular Session, 2023, to authorize the legislature to exempt from ad valorem taxation a portion of the market value of tangible personal property a person owns that is held or used for the production of income.

ARTICLE 2. FRANCHISE TAX CREDIT FOR INVENTORY AD VALOREM TAX LIABILITY

SECTION 2.01. Amends Chapter 171, Tax Code, by adding Subchapter N, as follows:

SUBCHAPTER N. TAX CREDIT FOR INVENTORY TAX LIABILITY

Sec. 171.701. DEFINITION. Defines "inventory."

Sec. 171.702. ELIGIBILITY FOR CREDIT. Provides that a taxable entity is entitled to a credit in the amount and under the conditions provided by this subchapter against the tax imposed under Chapter 171 (Franchise Tax).

Sec. 171.703. AMOUNT OF CREDIT; LIMITATIONS. (a) Provides that the amount of a taxable entity's credit for a report, subject to Subsections (b) and (c), is equal to 20 percent of the amount of ad valorem taxes paid by the entity during the period on which the report is based that are derived from the taxable value of the inventory owned by the entity and located in this state.

(b) Prohibits the total credit claimed on a report, including the amount of any carryforward under Section 171.704, from exceeding 20 percent of the amount of franchise tax due for the report after applying all other applicable credits.

(c) Prohibits the total amount of credits that is authorized to be awarded under Subsection (a) in a state fiscal year from exceeding \$400 million.

(d) Requires the Comptroller of Public Accounts of the State of Texas (comptroller) by rule to prescribe procedures by which the comptroller will allocate the amount of credits available under Subsection (c). Requires that the procedures provide that credits are allocated to taxable entities on a first-come, first-served basis, based on the date the entity applies for the credit.

Sec. 171.704. CARRYFORWARD. (a) Authorizes a taxable entity, if the entity is eligible for a credit that exceeds the limitation under Section 171.703(b), to carry the unused credit forward for not more than five consecutive 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 171.703(b).

(c) Provides that credits, including a carryforward, are considered to be used in the following order:

(1) a carryforward under this subchapter; and

(2) a current year credit.

Sec. 171.705. APPLICATION FOR CREDIT. (a) Requires a taxable entity to apply for the credit under this subchapter on or with the report for the period for which the credit is claimed.

(b) Requires the comptroller to prescribe the form and method for applying for a credit under this subchapter. Requires a taxable entity to use the form in applying for the credit.

(c) Authorizes the comptroller to require the taxable entity to include any other information the comptroller determines is necessary to demonstrate:

(1) whether the entity is eligible for the credit; and

(2) the amount of the credit.

(d) Provides that the burden of establishing eligibility for and the amount of the credit is on the taxable entity.

(e) Authorizes the comptroller to request permission to examine the books and records of a taxable entity as necessary to determine whether the entity is entitled to a credit under this subchapter and the amount of the credit. Authorizes the comptroller to disallow the credit if the taxable entity refuses to allow the comptroller to examine the books and records.

Sec. 171.706. SALE OR ASSIGNMENT PROHIBITED. Prohibits a taxable entity that earns a credit under this subchapter from selling or assigning any part of the credit.

Sec. 171.707. RULES. Requires the comptroller to adopt rules as necessary to implement and administer this subchapter.

SECTION 2.02. Makes application of Subchapter N, Chapter 171, Tax Code, as added by this article, prospective.

SECTION 2.03. Effective date, this article: January 1, 2024.