

## **BILL ANALYSIS**

Senate Research Center  
88R19503 RDS-F

C.S.S.B. 5  
By: Parker et al.  
Finance  
3/20/2023  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

C.S.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 per situs, with reasonable restrictions set forth. All businesses in Texas would therefore see a reduction of their ad valorem taxation paid for income producing tangible personal property.

C.S.S.B. 5 defines the terms "related business entity" and "unified business enterprise" for the purposes of the bill. This bill requires that anyone entitled to a tax exemption of their tangible personal property and is owned by a unified business composed of other businesses taking advantage of the aforementioned exemption is subject to an investigation by the chief appraiser. This investigation will determine if the entity is a related business entity and has aggregated personal property under the aforementioned tax exemption. The bill also mandates that a person's rendition statement claiming the exemption must include their business' physical address. The bill also requires that companies disclose if they are a related business entity on their tax rendition form.

C.S.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.

The total amount of credits that may be awarded under this subchapter in a state fiscal year is limited to \$525 million. The comptroller would be responsible for allocating the amount of credits available on a pro rata basis.

C.S.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 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 Section 11.145, Tax Code, as follows:

Sec. 11.145. New heading: INCOME-PRODUCING TANGIBLE PROPERTY. (a) Defines "related business entity" and "unified business enterprise."

(b) Provides that a person, subject to Subsection (f) and except as provided by Subsection (d), is entitled to an exemption from taxation by a taxing unit of \$25,000 of the appraised value of the tangible personal property the person owns that is held or used for the production of income and has taxable situs at the same

location in the taxing unit, rather than if that property has a taxable value of less than \$2,500.

(c) Provides that the exemption provided by Subsection (b), rather than Subsection (a), applies to each separate location in a taxing unit in which a person holds or uses tangible personal property for the production of income, and, for the purposes of Subsection (b), all property that has taxable situs in each separate location in the taxing unit is aggregated to determine taxable value. Makes a conforming change.

(d) Provides that a person is entitled to an exemption from taxation by a taxing unit of \$25,000 of the appraised value of the tangible personal property the person owns that is held or used for the production of income, has taxable situs at a location in the taxing unit, and is subject to a lease.

(e) Provides that the exemption provided by Subsection (d) applies to each separate taxing unit in which a person holds or uses tangible personal property for the production of income.

(f) Provides that all property described by Subsection (b) that has taxable situs at the same location in a taxing unit and that is owned by a person, for the purposes of that subsection, if the person is a related business entity, is aggregated with the property described by that subsection that has taxable situs at the same location in the taxing unit and that is owned by each other related business enterprise that composes the same unified business enterprise to determine taxable value for the entity.

(g) Authorizes a chief appraiser to investigate a business entity to determine whether the entity:

(1) is a related business entity; and

(2) has aggregated tangible personal property as provided by Subsection (f).

SECTION 1.02. Amends Section 22.01, Tax Code, by amending Subsections (a), (c-1), and (f) and adding Subsections (j-1), (j-2), (j-3), and (n), as follows:

(a) Requires that a rendition statement contain:

(1)-(3) makes no changes to these subdivisions;

(4) the physical address, rather than physical location, or taxable situs of the property; and

(5) makes no changes to this subdivision.

(c-1) Defines "related business entity" and "unified business enterprise." Makes nonsubstantive changes.

(f) Makes a conforming change to this subsection.

(j-1) Provides that a person, notwithstanding Subsections (a) and (b) (relating to requiring a person render for taxation any other taxable property that the person owns or manages and controls as a fiduciary on January 1 when required by the chief appraiser), 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 and as applicable:

(1) the aggregate market value of the property that has taxable situs in the same location in at least one taxing unit that participates in the appraisal district is greater than the amount exempted under Section 11.145(b); or

(2) 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(d).

(j-2) Requires a person required to render property for taxation under Subsection (j-1) 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.

(j-3) Requires a person who elects not to render property for taxation as authorized by Subsection (j-1) to file a rendition statement or property report that includes a certification that the person reasonably believes that the value of the property is not more than the amount exempted under Section 11.145(b) or (d), as applicable. Provides that the election takes effect beginning with the tax year following the tax year in which the rendition statement or property report is filed and continues in effect until the ownership of the person changes. Requires a person described by Subsection (j-1), notwithstanding that subsection, to render property for taxation if required by the chief appraiser.

(n) Requires that a rendition statement of a related business entity contain the information required by Subsection (a) or (f), as applicable, stated for each related business entity that composes the unified business enterprise of which the related business entity that is the subject of the rendition is a part.

SECTION 1.03. Amends Section 22.24(c), Tax Code, as follows:

(c) Requires that each form include a box that a property owner that is a related business entity, as defined by Section 11.145, is required to check to identify the owner as a related business entity. Requires that each form include a box that a property owner who elects not to render the property for taxation as authorized by Section 22.01(j-1) is required to check to certify that the owner reasonably believes that the value of the property is not more than the amount exempted under Section 11.145(b) or (d), as applicable.

SECTION 1.04. Amends Section 403.302, Government Code, by adding Subsection (b-1), as follows:

(b-1) Requires the Comptroller of Public Accounts of the State of Texas (comptroller) to exclude from the samples used to conduct the study tangible personal property a person owns that is held or used for the production of income and is the subject of a rendition statement or property report filed by the person as authorized by Section 22.01(j-3), Tax Code.

SECTION 1.05. Makes application of this article prospective.

SECTION 1.06. 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 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 apply for a credit against the tax imposed under Chapter 171 (Franchise Tax) in the amount and under the conditions provided by this subchapter.

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 the lesser of:

(1) the total franchise tax due for the report after applying all other applicable credits; or

(2) 20 percent of the aggregate amount of ad valorem taxes imposed by each taxing unit during the ad valorem tax year preceding the year in which the report is originally due on property owned by the taxable entity that were derived from the taxable value of inventory owned by the taxable entity and located in this state

(b) Prohibits the total amount of credits that is authorized to be awarded under this subchapter for a calendar year from exceeding \$525 million.

(c) Requires the comptroller by rule to prescribe procedures by which the comptroller will allocate credits under this subchapter. Requires that the procedures provide that if the total amount of credits for which taxable entities apply under Subsection (a) exceeds the limit under Subsection (b) for a calendar year, the comptroller is required to:

(1) for each taxable entity that applied for the credit, reduce the amount under Subsection (a)(2) to a pro rata share of \$525 million based on the amount of ad valorem taxes described by Subsection (a)(2) imposed on property of the taxable entity and on property of all taxable entities that applied for the credit;

(2) after making the reductions under Subdivision (1), determine the amount by which each taxable entity's pro rata share under Subdivision (1) exceeds the amount provided by Subsection (a)(1) for the taxable entity, if any, and the sum of those amounts for all taxable entities; and

(3) allocate the sum determined under Subdivision (2) to other taxable entities that applied for the credit on a pro rata basis to partly or wholly restore the amount reduced under Subdivision (1).

(d) Authorizes a taxable entity, for purposes of calculating the aggregate amount of ad valorem taxes imposed on property owned by the taxable entity that were derived from the taxable value of inventory under Subsection (a)(2), to consider the amount of an exemption to which the taxable entity is entitled under Section 11.145 to apply to tangible personal property other than inventory owned by the taxable entity before applying the exemption to inventory owned by the taxable entity.

(e) Authorizes a taxable entity, for purposes of calculating the amount of the credit under this subchapter in connection with the 2023 ad valorem tax year, to make a good faith estimate of the portion of the ad valorem taxes imposed on the taxable entity's property that were derived from inventory owned by the taxable entity and located in this state. Defines "good faith." Provides that this subsection expires January 1, 2026.

Sec. 171.704. APPLICATION FOR CREDIT. (a) Requires a taxable entity to apply for the credit under this subchapter on or with the originally filed 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 and submit the form with the report for the period for which the credit is claimed using the comptroller's Internet website.

(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. 171.705. ADMINISTRATION OF CREDIT; REFUND. Authorizes the comptroller to require a taxable entity that applies for a credit under this subchapter to submit with the report a payment for all or part of the taxes to which the credit applies. Requires the comptroller, as soon as practicable after determining the amount of the credit under Section 171.703, to issue a warrant for any portion of the credit for which payment was made.

Sec. 171.706. SALE, ASSIGNMENT, OR CARRYFORWARD PROHIBITED. Prohibits a taxable entity that receives a credit under this subchapter from selling, assigning, or carrying forward 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.