

By: Capriglione

H.B. No. 2223

A BILL TO BE ENTITLED

AN ACT

relating to the temporary exemption of certain tangible personal property related to virtual currency mines from sales and use taxes.

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

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.360 to read as follows:

Sec. 151.360. PROPERTY USED IN CERTAIN VIRTUAL CURRENCY MINES; TEMPORARY EXEMPTION. (a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, on the date a virtual currency mine creates a job used to qualify under this section.

(2) "Permanent job" means an employment position that will exist for at least five years after the date the job is created.

(3) "Qualifying job" means a full-time, permanent job that pays at least 120 percent of the county average weekly wage in the county in which the job is based. The term includes a new employment position staffed by a third-party employer if a written contract exists between the third-party employer and a qualifying owner, qualifying operator, or qualifying occupant that provides that the employment position is permanently assigned to an

1 associated qualifying virtual currency mine.

2 (4) "Qualifying occupant" means a person who:

3 (A) contracts with a qualifying owner or  
4 qualifying operator to place, or cause to be placed, and to use  
5 tangible personal property at the qualifying virtual currency mine;  
6 or

7 (B) in the case of a qualifying occupant who is  
8 also the qualifying owner and the qualifying operator, places or  
9 causes to be placed and uses tangible personal property at the  
10 qualifying virtual currency mine.

11 (5) "Qualifying operator" means a person who controls  
12 access to a qualifying virtual currency mine, regardless of whether  
13 that person owns each item of tangible personal property located at  
14 the qualifying virtual currency mine. A qualifying operator may  
15 also be the qualifying owner.

16 (6) "Qualifying owner" means a person who owns the  
17 building in which a qualifying virtual currency mine is located. A  
18 qualifying owner may also be the qualifying operator.

19 (7) "Qualifying virtual currency mine" means a virtual  
20 currency mine that meets the qualifications prescribed by  
21 Subsection (d).

22 (8) "Virtual currency" has the meaning assigned by  
23 Section 12.001, Business & Commerce Code.

24 (9) "Virtual currency mine" means at least 5,000  
25 square feet of space on a single parcel of land that is:

26 (A) located in this state; and

27 (B) specifically constructed or refurbished and

1 actually used primarily to house servers and related equipment and  
2 support staff for the purpose of validating virtual currency  
3 transactions.

4 (b) Except as otherwise provided by this section, tangible  
5 personal property that is necessary and essential to the operation  
6 of a qualifying virtual currency mine is exempted from the taxes  
7 imposed by this chapter if the tangible personal property is  
8 purchased for installation at, incorporation into, or in the case  
9 of electricity, use in a qualifying virtual currency mine by a  
10 qualifying owner, qualifying operator, or qualifying occupant, and  
11 the tangible personal property is:

- 12 (1) electricity;
- 13 (2) an electrical system;
- 14 (3) a cooling system;
- 15 (4) an emergency generator;
- 16 (5) an electrical substation;
- 17 (6) on-site power generation; or
- 18 (7) a mechanical, electrical, or plumbing system that  
19 is necessary to operate any systems related to virtual currency  
20 mining.

21 (c) The exemption provided by this section does not apply  
22 to:

- 23 (1) office equipment or supplies;
- 24 (2) maintenance or janitorial supplies or equipment;
- 25 (3) equipment or supplies used primarily in sales  
26 activities or transportation activities;
- 27 (4) tangible personal property on which the purchaser

1 has received or has a pending application for a refund under Section  
2 151.429;

3 (5) tangible personal property not otherwise exempted  
4 under Subsection (b) that is incorporated into real estate or into  
5 an improvement of real estate;

6 (6) tangible personal property that is rented or  
7 leased for a term of one year or less;

8 (7) equipment used for the purpose of validating  
9 virtual currency transactions; or

10 (8) notwithstanding Section 151.3111, a taxable  
11 service that is performed on tangible personal property exempted  
12 under this section.

13 (d) Subject to Subsection (j), a virtual currency mine may  
14 be certified by the comptroller as a qualifying virtual currency  
15 mine for purposes of this section if, on or after September 1, 2023:

16 (1) a single qualifying occupant:

17 (A) contracts with a qualifying owner or  
18 qualifying operator to lease space in which the qualifying occupant  
19 will locate a virtual currency mine; or

20 (B) if the qualifying occupant is also the  
21 qualifying operator and the qualifying owner, occupies a space that  
22 was not previously used as a virtual currency mine in which the  
23 qualifying occupant will locate a virtual currency mine;

24 (2) the qualifying owner, qualifying operator, or  
25 qualifying occupant, independently or jointly:

26 (A) creates at least 20 qualifying jobs in the  
27 county in which the virtual currency mine is located, not including

1 jobs moved from one county in this state to another county in this  
2 state; and

3 (B) makes or agrees to make a capital investment  
4 of at least \$100 million in that particular virtual currency mine  
5 over a three-year period beginning on the date the virtual currency  
6 mine is certified by the comptroller as a qualifying virtual  
7 currency mine; and

8 (3) the virtual currency mine is subject to an  
9 agreement to participate in a flexible load category for a period of  
10 at least 10 years, including:

11 (A) a large flexible load category developed by  
12 the independent organization certified under Section 39.151,  
13 Utilities Code, for the ERCOT power region; or

14 (B) a market notice issued for the ERCOT power  
15 region that allows large flexible loads to self-select and  
16 guarantee power curtailment when the reserve capacity on the ERCOT  
17 grid reaches 3,000 megawatts of physical responsive capacity.

18 (e) A virtual currency mine that is eligible under  
19 Subsection (d) to be certified by the comptroller as a qualified  
20 virtual currency mine shall apply to the comptroller for  
21 certification and for issuance of a registration number or numbers  
22 by the comptroller. The application must be made on a form  
23 prescribed by the comptroller and include the information required  
24 by the comptroller. The application must include the name and  
25 contact information for the qualifying occupant and, if applicable,  
26 the name and contact information for the qualifying owner and the  
27 qualifying operator who will claim the exemption authorized under

1 this section. The application form must include a section for the  
2 applicant to certify that the capital investment required by  
3 Subsection (d)(2)(B) will be met independently or jointly by the  
4 qualifying occupant, qualifying owner, or qualifying operator  
5 within the time period prescribed by Subsection (d).

6 (f) The exemption provided by this section begins on the  
7 date the virtual currency mine is certified by the comptroller as a  
8 qualifying virtual currency mine and expires:

9 (1) on the 10th anniversary of that date, if the  
10 qualifying occupant, qualifying owner, or qualifying operator  
11 independently or jointly makes a capital investment of at least  
12 \$100 million but less than \$150 million as provided by Subsection  
13 (d)(2)(B); or

14 (2) on the 15th anniversary of that date, if the  
15 qualifying occupant, qualifying owner, or qualifying operator  
16 independently or jointly makes a capital investment of \$150 million  
17 or more as provided by Subsection (d)(2)(B).

18 (g) Each person who is eligible to claim an exemption  
19 authorized by this section must hold a registration number issued  
20 by the comptroller. The registration number must be stated on the  
21 exemption certificate provided by the purchaser to the seller of  
22 tangible personal property eligible for the exemption.

23 (h) The comptroller shall revoke all registration numbers  
24 issued in connection with a qualifying virtual currency mine on the  
25 date:

26 (1) the comptroller determines that the virtual  
27 currency mine does not meet the requirements prescribed by

1 Subsection (d);

2 (2) the virtual currency mine fails to cooperate with  
3 an emergency response request from the independent organization  
4 certified under Section 39.151, Utilities Code, for the ERCOT power  
5 region; or

6 (3) the virtual currency mine's emergency demand  
7 response contract lapses and is not renewed.

8 (i) Each person who has the person's registration number  
9 revoked by the comptroller under Subsection (h) is liable for  
10 taxes, including penalty and interest from the date of purchase,  
11 imposed under this chapter on purchases for which the person  
12 claimed an exemption under this section, regardless of whether the  
13 purchase occurred before the date the registration number was  
14 revoked.

15 (j) The comptroller may not certify more than 12 qualifying  
16 virtual currency mines in a state fiscal year. If more than 12  
17 virtual currency mines apply for certification under this section  
18 in a state fiscal year, the comptroller shall give priority to those  
19 applicants that create the most qualifying jobs in the county in  
20 which the virtual currency mine that is the subject of the  
21 application is located.

22 (k) The comptroller shall adopt rules consistent with and  
23 necessary to implement this section, including rules relating to:

24 (1) a qualifying virtual currency mine, qualifying  
25 owner, qualifying operator, and qualifying occupant;

26 (2) certification of a qualifying virtual currency  
27 mine, including the process for prioritizing applicants for

1 certification under Subsection (j);

2 (3) issuance and revocation of a registration number  
3 required under this section; and

4 (4) reporting and other procedures necessary to ensure  
5 that a qualifying virtual currency mine, qualifying owner,  
6 qualifying operator, and qualifying occupant comply with this  
7 section and remain entitled to the exemption authorized by this  
8 section.

9 SECTION 2. The change in law made by this Act does not  
10 affect tax liability accruing before the effective date of this  
11 Act. That liability continues in effect as if this Act had not been  
12 enacted, and the former law is continued in effect for the  
13 collection of taxes due and for civil and criminal enforcement of  
14 the liability for those taxes.

15 SECTION 3. This Act takes effect September 1, 2023.