

1-1 By: Parker, et al. S.B. No. 5
 1-2 (In the Senate - Filed March 10, 2023; March 13, 2023, read
 1-3 first time and referred to Committee on Finance; March 21, 2023,
 1-4 reported adversely, with favorable Committee Substitute by the
 1-5 following vote: Yeas 16, Nays 0; March 21, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19	X			
1-20	X			
1-21	X			
1-22	X			
1-23	X			
1-24	X			

1-25 COMMITTEE SUBSTITUTE FOR S.B. No. 5 By: Bettencourt

1-26 A BILL TO BE ENTITLED
 1-27 AN ACT

1-28 relating to an exemption from ad valorem taxation of a portion of
 1-29 the appraised value of tangible personal property that is held or
 1-30 used for the production of income and a franchise tax credit for the
 1-31 payment of certain related ad valorem taxes.

1-32 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-33 ARTICLE 1. INCOME-PRODUCING TANGIBLE PERSONAL PROPERTY AD VALOREM
 1-34 TAX EXEMPTION

1-35 SECTION 1.01. Section 11.145, Tax Code, is amended to read
 1-36 as follows:

1-37 Sec. 11.145. INCOME-PRODUCING TANGIBLE PERSONAL PROPERTY
 1-38 [~~HAVING VALUE OF LESS THAN \$2,500~~]. (a) In this section:

1-39 (1) "Related business entity" means a business entity
 1-40 that:

1-41 (A) engages in a common business enterprise with
 1-42 at least one other business entity; and

1-43 (B) owns tangible personal property that:

1-44 (i) is held or used for the production of
 1-45 income as part of the common business enterprise; and

1-46 (ii) is located at the same physical
 1-47 address that tangible personal property owned by at least one other
 1-48 business entity engaged in the common business enterprise is
 1-49 located.

1-50 (2) "Unified business enterprise" means a common
 1-51 business enterprise composed of more than one related business
 1-52 entity.

1-53 (b) Subject to Subsection (f) and except as provided by
 1-54 Subsection (d), a [A] person is entitled to an exemption from
 1-55 taxation by a taxing unit of \$25,000 of the appraised value of the
 1-56 tangible personal property the person owns that is held or used for
 1-57 the production of income and has taxable situs at the same location
 1-58 in the taxing unit [~~if that property has a taxable value of less~~
 1-59 than \$2,500].

1-60 (c) [~~(b)~~] The exemption provided by Subsection (b) [~~(a)~~]

2-1 applies to each separate location in a taxing unit in which a person
2-2 holds or uses tangible personal property for the production of
2-3 income, and, for the purposes of Subsection (b) [~~(a)~~], all property
2-4 that has taxable situs in each separate location in the taxing unit
2-5 is aggregated to determine taxable value.

2-6 (d) A person is entitled to an exemption from taxation by a
2-7 taxing unit of \$25,000 of the appraised value of the tangible
2-8 personal property the person owns that is held or used for the
2-9 production of income, has taxable situs at a location in the taxing
2-10 unit, and is subject to a lease.

2-11 (e) The exemption provided by Subsection (d) applies to each
2-12 separate taxing unit in which a person holds or uses tangible
2-13 personal property for the production of income.

2-14 (f) For the purposes of Subsection (b), if a person is a
2-15 related business entity, all property described by that subsection
2-16 that has taxable situs at the same location in a taxing unit and
2-17 that is owned by the person is aggregated with the property
2-18 described by that subsection that has taxable situs at the same
2-19 location in the taxing unit and that is owned by each other related
2-20 business enterprise that composes the same unified business
2-21 enterprise to determine taxable value for the entity.

2-22 (g) A chief appraiser may investigate a business entity to
2-23 determine whether the entity:

- 2-24 (1) is a related business entity; and
- 2-25 (2) has aggregated tangible personal property as
2-26 provided by Subsection (f).

2-27 SECTION 1.02. Section 22.01, Tax Code, is amended by
2-28 amending Subsections (a), (c-1), and (f) and adding Subsections
2-29 (j-1), (j-2), (j-3), and (n) to read as follows:

2-30 (a) Except as provided by Chapter 24, a person shall render
2-31 for taxation all tangible personal property used for the production
2-32 of income that the person owns or that the person manages and
2-33 controls as a fiduciary on January 1. A rendition statement shall
2-34 contain:

- 2-35 (1) the name and address of the property owner;
- 2-36 (2) a description of the property by type or category;
- 2-37 (3) if the property is inventory, a description of
2-38 each type of inventory and a general estimate of the quantity of
2-39 each type of inventory;
- 2-40 (4) the physical address [~~location~~] or taxable situs
2-41 of the property; and
- 2-42 (5) the property owner's good faith estimate of the
2-43 market value of the property or, at the option of the property
2-44 owner, the historical cost when new and the year of acquisition of
2-45 the property.

2-46 (c-1) In this section:

- 2-47 (1) "Related business entity" and "unified business
2-48 enterprise" have the meanings assigned by Section 11.145.
- 2-49 (2) "Secured party" has the meaning assigned by
2-50 Section 9.102, Business & Commerce Code.
- 2-51 (3) [~~(2)~~] "Security interest" has the meaning
2-52 assigned by Section 1.201, Business & Commerce Code.

2-53 (f) Notwithstanding Subsections (a) and (b), a rendition
2-54 statement of a person who owns tangible personal property used for
2-55 the production of income located in the appraisal district that, in
2-56 the owner's opinion, has an aggregate value of less than \$20,000 is
2-57 required to contain only:

- 2-58 (1) the name and address of the property owner;
- 2-59 (2) a general description of the property by type or
2-60 category; and
- 2-61 (3) the physical address [~~location~~] or taxable situs
2-62 of the property.

2-63 (j-1) Notwithstanding Subsections (a) and (b), a person is
2-64 required to render tangible personal property the person owns that
2-65 is held or used for the production of income only if, in the
2-66 person's opinion and as applicable:

- 2-67 (1) the aggregate market value of the property that
2-68 has taxable situs in the same location in at least one taxing unit
2-69 that participates in the appraisal district is greater than the

3-1 amount exempted under Section 11.145(b); or
 3-2 (2) the aggregate market value of the property in at
 3-3 least one taxing unit that participates in the appraisal district
 3-4 is greater than the amount exempted under Section 11.145(d).

3-5 (j-2) A person required to render property for taxation
 3-6 under Subsection (j-1) must render all tangible personal property
 3-7 the person owns that is held or used for the production of income
 3-8 and has taxable situs in the appraisal district. This subsection
 3-9 does not apply to property exempt from taxation under a provision of
 3-10 law other than Section 11.145.

3-11 (j-3) A person who elects not to render property for
 3-12 taxation as authorized by Subsection (j-1) must file a rendition
 3-13 statement or property report that includes a certification that the
 3-14 person reasonably believes that the value of the property is not
 3-15 more than the amount exempted under Section 11.145(b) or (d), as
 3-16 applicable. The election takes effect beginning with the tax year
 3-17 following the tax year in which the rendition statement or property
 3-18 report is filed and continues in effect until the ownership of the
 3-19 person changes. Notwithstanding Subsection (j-1), a person
 3-20 described by that subsection must render property for taxation if
 3-21 required by the chief appraiser.

3-22 (n) A rendition statement of a related business entity must
 3-23 contain the information required by Subsection (a) or (f), as
 3-24 applicable, stated for each related business entity that composes
 3-25 the unified business enterprise of which the related business
 3-26 entity that is the subject of the rendition is a part.

3-27 SECTION 1.03. Section 22.24(c), Tax Code, is amended to
 3-28 read as follows:

3-29 (c) The comptroller may prescribe or approve different
 3-30 forms for different kinds of property but shall ensure that each
 3-31 form requires a property owner to furnish the information necessary
 3-32 to identify the property and to determine its ownership,
 3-33 taxability, and situs. Each form must include a box that the
 3-34 property owner may check to permit the property owner to affirm that
 3-35 the information contained in the most recent rendition statement
 3-36 filed by the property owner in a prior tax year is accurate with
 3-37 respect to the current tax year in accordance with Section
 3-38 22.01(l). Each form must include a box that a property owner that is
 3-39 a related business entity, as defined by Section 11.145, must check
 3-40 to identify the owner as a related business entity. Each form must
 3-41 include a box that a property owner who elects not to render the
 3-42 property for taxation as authorized by Section 22.01(j-1) must
 3-43 check to certify that the owner reasonably believes that the value
 3-44 of the property is not more than the amount exempted under Section
 3-45 11.145(b) or (d), as applicable. A form may not require but may
 3-46 permit a property owner to furnish information not specifically
 3-47 required by this chapter to be reported. In addition, a form
 3-48 prescribed or approved under this subsection must contain the
 3-49 following statement in bold type: "If you make a false statement on
 3-50 this form, you could be found guilty of a Class A misdemeanor or a
 3-51 state jail felony under Section 37.10, Penal Code."

3-52 SECTION 1.04. Section 403.302, Government Code, is amended
 3-53 by adding Subsection (b-1) to read as follows:

3-54 (b-1) The comptroller shall exclude from the samples used to
 3-55 conduct the study tangible personal property a person owns that is
 3-56 held or used for the production of income and is the subject of a
 3-57 rendition statement or property report filed by the person as
 3-58 authorized by Section 22.01(j-3), Tax Code.

3-59 SECTION 1.05. This article applies only to ad valorem taxes
 3-60 imposed for a tax year that begins on or after the effective date of
 3-61 this article.

3-62 SECTION 1.06. This article takes effect January 1, 2024,
 3-63 but only if the constitutional amendment proposed by the 88th
 3-64 Legislature, Regular Session, 2023, to authorize the legislature to
 3-65 exempt from ad valorem taxation a portion of the market value of
 3-66 tangible personal property that is held or used for the production
 3-67 of income is approved by the voters. If that amendment is not
 3-68 approved by the voters, this article has no effect.

3-69 ARTICLE 2. FRANCHISE TAX CREDIT FOR INVENTORY AD VALOREM TAX

LIABILITY

SECTION 2.01. Chapter 171, Tax Code, is amended by adding Subchapter N to read as follows:

SUBCHAPTER N. TAX CREDIT FOR INVENTORY TAX LIABILITY

Sec. 171.701. DEFINITION. In this subchapter, "inventory" means:

(1) a finished good held for sale, resale, lease, or rental, including:

(A) a dealer's motor vehicle inventory, as defined by Section 23.121;

(B) a dealer's vessel and outboard motor inventory, as defined by Section 23.124;

(C) a dealer's heavy equipment inventory, as defined by Section 23.1241; or

(D) retail manufactured housing inventory, as defined by Section 23.127; or

(2) a raw or finished material held to be incorporated into or attached to tangible personal property to create a finished good.

Sec. 171.702. ELIGIBILITY FOR CREDIT. A taxable entity is entitled to apply for a credit against the tax imposed under this chapter in the amount and under the conditions provided by this subchapter.

Sec. 171.703. AMOUNT OF CREDIT; LIMITATIONS. (a) Subject to Subsections (b) and (c), the amount of a taxable entity's credit for a report 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) The total amount of credits that may be awarded under this subchapter for a calendar year may not exceed \$525 million.

(c) The comptroller by rule shall prescribe procedures by which the comptroller will allocate credits under this subchapter. The procedures must 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 shall:

(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) 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), a taxable entity may 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) For purposes of calculating the amount of the credit under this subchapter in connection with the 2023 ad valorem tax year, a taxable entity may 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. For purposes of this subsection, "good

5-1 faith" means honesty in fact and intention and requires the absence
5-2 of an intent to mislead or deceive. This subsection expires January
5-3 1, 2026.

5-4 Sec. 171.704. APPLICATION FOR CREDIT. (a) A taxable entity
5-5 must apply for the credit under this subchapter on or with the
5-6 originally filed report for the period for which the credit is
5-7 claimed.

5-8 (b) The comptroller shall prescribe the form and method for
5-9 applying for a credit under this subchapter. A taxable entity must
5-10 use the form in applying for the credit and submit the form with the
5-11 report for the period for which the credit is claimed using the
5-12 comptroller's Internet website.

5-13 (c) The comptroller may require the taxable entity to
5-14 include any other information the comptroller determines is
5-15 necessary to demonstrate:

5-16 (1) whether the entity is eligible for the credit; and

5-17 (2) the amount of the credit.

5-18 (d) The burden of establishing eligibility for and the
5-19 amount of the credit is on the taxable entity.

5-20 (e) The comptroller may request permission to examine the
5-21 books and records of a taxable entity as necessary to determine
5-22 whether the entity is entitled to a credit under this subchapter and
5-23 the amount of the credit. The comptroller may disallow the credit
5-24 if the taxable entity refuses to allow the comptroller to examine
5-25 the books and records.

5-26 Sec. 171.705. ADMINISTRATION OF CREDIT; REFUND. The
5-27 comptroller may require a taxable entity that applies for a credit
5-28 under this subchapter to submit with the report a payment for all or
5-29 part of the taxes to which the credit applies. As soon as
5-30 practicable after determining the amount of the credit under
5-31 Section 171.703, the comptroller shall issue a warrant for any
5-32 portion of the credit for which payment was made.

5-33 Sec. 171.706. SALE, ASSIGNMENT, OR CARRYFORWARD
5-34 PROHIBITED. A taxable entity that receives a credit under this
5-35 subchapter may not sell, assign, or carry forward any part of the
5-36 credit.

5-37 Sec. 171.707. RULES. The comptroller shall adopt rules as
5-38 necessary to implement and administer this subchapter.

5-39 SECTION 2.02. Subchapter N, Chapter 171, Tax Code, as added
5-40 by this article, applies only to a report originally due on or after
5-41 the effective date of this article.

5-42 SECTION 2.03. This article takes effect January 1, 2024.

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