

## **BILL ANALYSIS**

Senate Research Center

H.B. 500  
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Finance  
5/9/2013  
Engrossed

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

H.B. 500 amends current law relating to the computation of the franchise tax, including certain exclusions from the tax.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the comptroller of public accounts of the State of Texas (comptroller) in SECTION 9 (Section 171.1012, Tax Code) and SECTION 18 (Sections 171.772, 171.781, and 171.830, Tax Code), of this bill.

Rulemaking authority is expressly granted to the Texas Historical Commission and the comptroller in SECTION 19 (Section 171.909, Tax Code) of this bill.

Rulemaking authority previously granted to the comptroller is rescinded in SECTION 21 (Section 171.103, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. (a) Amends Section 111.064, Tax Code, by adding Subsection (g), to provide that for a refund of an amount paid under Chapter 171 that is claimed after December 31, 2015, and granted for a report period due on or after January 1, 2000, the rate of interest is the rate set in Section 111.060 (Interest on Delinquent Tax).

(b) Provides that this section takes effect January 1, 2016.

SECTION 2. Amends Section 171.0001(12), Tax Code, to redefine "retail trade."

SECTION 3. Amends Section 171.002, Tax Code, by amending Subsection (a) and adding Subsection (c-2), as follows:

(a) Provides that subject to Sections 171.003 (Increase in Rate Requires Voter Approval) and 171.1016 (E-Z Computation and Rate) and except as provided by Subsection (b), the rate of the franchise tax is:

(1) one percent of taxable margin; or

(2) for a taxable entity that elects to subtract compensation under Section 171.1013 (Determination of Compensation) for the purpose of computing its taxable margin, 0.95 percent of taxable margin.

(c-2) Provides that Subsection (c)(2) (relating to providing that a taxable entity is primarily engaged in retail or wholesale trade only under certain conditions) does not apply to total revenue from activities in a trade that rents or leases tangible personal property as described by Industry Group 735 of the Standard Industrial Classification Manual published by the United States Department of Labor.

SECTION 4. Amends Section 171.006(b), Tax Code, as follows:

(b) Provides that beginning in 2010, on January 1 of each even-numbered year, the amounts prescribed by Sections 171.002(d)(2) (relating to providing that a taxable entity is not required to pay any tax and is not considered to owe any tax for a period if the amount of the taxable entity's total revenue from its entire business is less than or equal to \$1 million or the amount determined under Section 171.006 per 12-month period on which margin is based) and 171.1013(c) (relating to prohibiting a taxable entity, notwithstanding the actual amount of wages and cash compensation paid by a taxable entity to its officers, directors, owners, partners, and employees, from including more than \$300,000, or the amount determined under Section 171.006, per 12-month period on which margin is based, for any person in the amount of wages and cash compensation it determines under this section), rather than Sections 171.002(d)(2), 171.0021 (Discounts from Tax Liability for Small Businesses), and 171.1013(c), are increased or decreased by an amount equal to the amount prescribed by those sections on December 31 of the preceding year multiplied by the percentage increase or decrease during the preceding state fiscal biennium in the consumer price index and rounded to the nearest \$10,000.

SECTION 5. Amends Section 171.052(a), Tax Code, as follows:

(a) Provides that except as provided by Subsection (c) (relating to providing that an entity is subject to the franchise tax for a tax year in any portion of which the entity is in violation of an order issued by the Texas Department of Insurance that is final after appeal or that is no longer subject to appeal), an insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in this state that is required to pay an annual tax, rather than providing that an insurance organization, title insurance company, or title insurance agent authorized to engage in insurance business in this state now required to pay an annual tax under Chapter 4 (Taxes and Fees) or 9 (Texas Title Insurance Act [repealed]), Insurance Code, measured by its gross premium receipts is exempted from the franchise tax. Provides that a nonadmitted insurance organization that is subject to an occupation tax or any other tax that is imposed for the privilege of doing business in another state or a foreign jurisdiction, including a tax on gross premium receipts, is exempted from the franchise tax.

SECTION 6. Amends Sections 171.101(a) and (b), Tax Code, as follows:

(a) Provides that the taxable margin of a taxable entity is computed by:

(1) determining the taxable entity's margin, which is the lesser of:

(A) the amount provided by this paragraph, which is the lesser of:

(i) 70 percent of the taxable entity's total revenue from its entire business, as determined under Section 171.1011; or

(ii) an amount equal to the taxable entity's total revenue from its entire business as determined under Section 171.1011 minus \$1 million; or

(B) an amount computed by determining the taxable entity's total revenue from its entire business under Section 171.1011 and subtracting the greater of:

(i) \$1 million; or

(ii) an amount equal to:

(a) at the election of the taxable entity, either cost of goods sold, as determined under Section 171.1012 or compensation, as determined under Section 171.1013; and

(b) any compensation, as determined under Section 171.1013, paid to an individual during the period the individual is serving on active duty as a member of the armed forces of the United States if the individual is a resident of this state at the time the individual is ordered to active duty and the cost of training a replacement for the individual; and

(2)-(3) Makes no change to these subdivisions.

Makes nonsubstantive changes.

(b) Authorizes a staff leasing services company, notwithstanding Subsection (a)(1)(B)(ii)(a), rather than Subsection (a)(1)(B)(ii), to subtract only the greater of \$1 million as provided by Subsection (a)(1)(B)(i) or compensation as determined under Section 171.1013.

SECTION 7. Amends Section 171.1011, Tax Code, by amending Subsections (g) and (g-4) and adding Subsections (g-8), (g-9), (g-10), (g-11), (u), (v), (w-1), (x), and (y), as follows:

(g) Requires a taxable entity to exclude from its total revenue, to the extent included under Subsection (c)(1)(A) (relating to providing that the total revenue of a taxable entity for a taxable entity treated for federal income tax purposes as a corporation, an amount computed by adding certain amounts), (c)(2)(A) (relating to providing that the total revenue of a taxable entity for a taxable entity treated for federal income tax purposes as a partnership, an amount computed by adding certain amounts), or (c)(3) (relating to providing that the total revenue of a taxable entity for a taxable entity other than a taxable entity treated for federal income tax purposes as a corporation or partnership, an amount determined in a manner substantially equivalent to the amount for Subdivision (1) or (2) determined by rules that the comptroller is required to adopt), only the following flow-through funds that are mandated by contract or subcontract to be distributed to other entities:

(1)-(2) Makes no change to these subdivisions; and

(3) subcontracting payments made under a contract or subcontract entered into by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, remediation, or repair of improvements on real property or the location of the boundaries of real property.

(g-4) Requires a taxable entity that provides a pharmacy network to exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through funds from rebates from pharmacy wholesalers that are distributed to pharmacies in the pharmacy network and flow-through funds from reimbursements for payments to pharmacies in the pharmacy network.

(g-8) Requires a taxable entity that is primarily engaged in the business of transporting aggregates to exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on behalf of the taxable entity. Defines "aggregates" in this subsection.

(g-9) Requires a taxable entity that is a landlord of commercial property to exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (2)(A), or (3), payments, excluding expenses for interest and depreciation and other expenses not listed in this subsection, received from a tenant of the property for ad valorem taxes and any tax or excise imposed on rents.

(g-10) Requires a taxable entity that is primarily engaged in the business of transporting barite to exclude from its total revenue, to the extent included under Subsection (c)(1)(A),

(c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of transportation services on behalf of the taxable entity. Defines "barite" for purposes of this subsection.

(g-11) Requires a taxable entity that is primarily engaged in the business of performing landman services to exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployees for the performance of landman services on behalf of the taxable entity. Defines "landman services" in this subsection.

(u) Requires a taxable entity to exclude from its total revenue the actual cost paid by the taxable entity for a vaccine.

(v) Requires a taxable entity primarily engaged in the business of transporting commodities by waterways that does not subtract cost of goods sold in computing its taxable margin to exclude from its total revenue direct costs of providing inbound and outbound transportation services by intrastate or interstate waterways to the same extent that a taxable entity that sells in the ordinary course of business real or tangible personal property would be authorized by Section 171.1012 to subtract those costs as costs of goods sold in computing its taxable margin.

(w-1) Requires a taxable entity primarily engaged in the business of providing services as an agricultural aircraft operation, as defined by 14 C.F.R. Section 137.3, to exclude from its total revenue the cost of labor, equipment, fuel, and materials used in providing those services.

(x) Requires a taxable entity that is registered as a motor carrier under Chapter 643 (Motor Carrier Registration), Transportation Code, to exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through revenue derived from taxes and fees.

(y) Requires a taxable entity to exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3) but not subtracted as a cost of goods sold on the report or on a previous report, the depreciation used to calculate gain or loss on the disposition of real property held primarily for the production of rental income.

SECTION 8. Amends Section 171.1011(p), Tax Code, by adding Subdivision (8), to define "vaccine."

SECTION 9. Amends Section 171.1012, Tax Code, by amending Subsection (f) and adding Subsections (k-2), (k-3), (p), (q), (r), and (s), as follows:

(f) Authorizes a taxable entity to subtract as a cost of goods sold indirect or administrative overhead costs, including all mixed service costs, such as security services, legal services, data processing services, accounting services, personnel operations, and general financial planning and financial management costs, that it can demonstrate are allocable to the acquisition or production of goods, except that the amount subtracted is prohibited from exceeding 5.5 percent, rather than four percent, of the taxable entity's total indirect or administrative overhead costs, including all mixed service costs.

(k-2) Provides that this subsection applies only to a pipeline entity:

(1) that owns or leases and operates the pipeline by which the product is transported for others and only to that portion of the product to which the entity does not own title; and

(2) that is primarily engaged in gathering, storing, transporting, or processing crude oil, including finished petroleum products, natural gas, condensate, and

natural gas liquids, except for a refinery installation that manufactures finished petroleum products from crude oil.

Authorizes a pipeline entity providing services for others related to the product that the pipeline does not own and to which this subsection applies, notwithstanding Subsection (e)(3) (relating to providing that the cost of goods sold does not include certain costs in relation to the taxable entity's goods, such as distribution costs, including outbound transportation costs) or (i) (relating to authorizing a taxable entity to make a subtraction under this section in relation to the cost of goods sold only if that entity owns the goods), to subtract as a cost of goods sold its depreciation, operations, and maintenance costs allowed by this section related to the services provided.

(k-3) Defines "processing" for purposes of Subsection (k-2).

(p) Provides that notwithstanding Subsection (e)(2) (relating to providing that the cost of goods sold does not include certain costs in relation to the taxable entity's goods, such as selling costs, including employee expenses related to sales) or any other provision of this section, the cost of goods sold includes 20 percent of the costs attributable to the acceptance of credit cards and debit cards as a means of payment.

(q) Authorizes a taxable entity that is primarily engaged in the business of harvesting trees for wood, notwithstanding Subsection (i) or any other provision of this section, to subtract as cost of goods sold the direct costs of acquiring or producing the timber for the wood that are specified by this subsection or otherwise described by this section, regardless of whether the taxable entity owns the land from which the trees are harvested, the harvested timber, or the wood resulting from the harvested timber. Provides that for purposes of this subsection, direct costs include costs of:

- (1) moving harvesting equipment;
- (2) severing timber;
- (3) transporting timber to and from a mill or designated delivery point;
- (4) obtaining, using, storing, or maintaining equipment necessary for an activity described by Subdivision (1), (2), or (3); and
- (5) other supplies, labor, freight, and fuel necessary for an activity described by Subdivision (1), (2), or (3).

(r) Authorizes a taxable entity that has total revenue from its entire business of less than \$5 million and that elects to subtract cost of goods sold for the purpose of computing its taxable margin to elect to determine the amount of that cost of goods sold in accordance with this subsection. Provides that a taxable entity making the election authorized by this subsection is not subject to the provisions of this section relating to the computation of the amount of cost of goods sold other than this subsection and Subsection (s). Requires the taxable entity to determine the amount of cost of goods sold as follows:

- (1) for a taxable entity treated for federal income tax purposes as a corporation, the cost of goods sold is the amount reportable as cost of goods sold on line 2, Internal Revenue Service Form 1120;
- (2) for a taxable entity treated for federal income tax purposes as a partnership, the cost of goods sold is the amount reportable as cost of goods sold on line 2, Internal Revenue Service Form 1065;
- (3) for a taxable entity treated for federal income tax purposes as an S corporation, the cost of goods sold is the amount reportable as cost of goods sold on line 2, Internal Revenue Service Form 1120S; or

(4) for any other taxable entity, the cost of goods sold is an amount determined in a manner substantially equivalent to the amount for Subdivision (1), (2), or (3) determined by rules the comptroller of public accounts of the state of Texas (comptroller) is required to adopt.

(s) Requires a combined group that has total revenue from its entire business of less than \$5 million and that elects to subtract cost of goods sold for the purpose of computing its taxable margin to make the election to compute the amount of that cost of goods sold under Subsection (r), or to compute that amount under the other provisions of this section, for all of its members.

SECTION 10. (a) Amends Section 171.1012, Tax Code, by adding Subsection (t), to require that the cost of goods sold for the taxable entity be the costs described by this section in relation to the acquisition, production, exhibition, or use of a film or motion picture, including expenses for the right to use the film or motion picture if a taxable entity that is a movie theater elects to subtract cost of goods sold.

(b) Provides that Section 171.1012(t), Tax Code, as added by this section, is a clarification of existing law and does not imply that existing law is authorized to be construed as inconsistent with the law as amended by this section.

(c) Provides that this section takes effect September 1, 2013.

SECTION 11. Amends Section 171.1013(a), Tax Code, to redefine "wages and cash compensation."

SECTION 12. Amends Section 171.1014, Tax Code, by amending Subsections (d) and (d-1) and adding Subsection (j), as follows:

(d) Requires a combined group, for purposes of Section 171.101, to make an election to subtract either cost of goods sold or compensation that applies to all of its members, or \$1 million. Prohibits the taxable margin of the combined group, regardless of the election, from exceeding the amount provided by Section 171.101(a)(1)(A) for the combined group, rather than 70 percent of the combined group's total revenue from its entire business, as provided by Section 171.101(a)(1)(A).

(d-1) Authorizes a member of a combined group that does not elect to compute the amount of cost of goods sold as provided by Section 171.1012(r), if applicable, to claim as cost of goods sold those costs that qualify under Section 171.1012 if the goods for which the costs are incurred are owned by another member of the combined group.

(j) Prohibits a taxable entity that provides retail or wholesale electric utilities, notwithstanding any other provision of this section, from being included as a member of a combined group that includes one or more taxable entities that do not provide retail or wholesale electric utilities if that combined group in the absence of this subsection:

(1) would not meet the requirements of Section 171.002(c) (relating to providing that a taxable entity is primarily engaged in retail or wholesale trade if certain conditions are met) solely because one or more members of the combined group provide retail or wholesale electric utilities; and

(2) would have less than five percent of the combined group's total revenue derived from providing retail or wholesale electric utilities.

SECTION 13. Amends Section 171.106, Tax Code, by adding Subsection (g), to provide that a receipt from Internet hosting as defined by Section 151.108(a) (defining "Internet hosting") is a receipt from business done in this state only if the customer to whom the service is provided is located in this state.

SECTION 14. Amends Section 171.106, Tax Code, by adding Subsection (h), as follows:

(h) Requires a taxable entity that is a broadcaster to include in the numerator of the broadcaster's apportionment factor receipts arising from a broadcast or other distribution of film by any means only if the legal domicile of the broadcaster's customer is in this state. Provides that this subsection applies only to receipts that are licensing income from distributing film programming. Defines "broadcaster," "customer," "film programming," and "programming" in this subsection.

SECTION 15. (a) Amends Subchapter C, Chapter 171, Tax Code, by adding Section 171.109, as follows:

**Sec. 171.109. DEDUCTION OF RELOCATION COSTS BY CERTAIN TAXABLE ENTITIES FROM MARGIN APPORTIONED TO THIS STATE.**

(a) Defines "relocation costs" in this section.

(b) Authorizes a taxable entity, subject to Subsection (c), to deduct from its apportioned margin relocation costs incurred in relocating the taxable entity's main office or other principal place of business to this state from another state if the taxable entity:

(1) did not do business in this state before relocating the taxable entity's main office or other principal place of business to this state; and

(2) is not a member of an affiliated group engaged in a unitary business, another member of which is doing business in this state on the date the taxable entity relocates the taxable entity's main office or other principal place of business to this state.

(c) Requires a taxable entity to take the deduction authorized by Subsection (b) on the report based on the taxable entity's initial period described by Section 171.151(1) (relation to requiring that the franchise tax be paid for an initial period beginning on the taxable entity's beginning date and ending on the day before the first anniversary of the beginning date).

(d) Requires a taxable entity that takes a deduction authorized by this section, on the comptroller's request, to file with the comptroller proof of the deducted relocation costs.

(b) Provides that the change in law made by this section applies only to a taxable entity that relocates the taxable entity's main office or other principal place of business to this state on or after the effective date of this section.

(c) Effective date, this section: September 1, 2013.

SECTION 16. Amends Subchapter D, Chapter 171, Tax Code, by adding Section 171.159, as follows:

**Sec. 171.159. RETAILER RECEIPT SHOWING TAX.** (a) Requires a taxable entity that is a retailer subject to Chapter 151 (Limited Sales, Excise, and Use Tax) to include on any receipt for an item subject to taxation under Chapter 151 an additional notation showing the amount of taxes the customer is paying for the purpose of reimbursement of the tax under this chapter.

(b) Authorizes the taxable entity, for purposes of this section, to estimate the amount of tax the customer is paying under this chapter based on the tax rate to which the taxable entity is subject.

SECTION 17. Amends Subchapter E, Chapter 171, Tax Code, by adding Section 171.216, as follows:

Sec. 171.216. BIENNIAL REPORT. Requires the comptroller, not later than January 1 of each odd-numbered year, to submit to the legislature and the governor a report prepared by an independent researcher from a research center established under Section 1.005 (Education Research Centers; Sharing Student Information), Education Code, or a tier one research university, on tax relief, including tax credits and exemptions, provided to taxable entities through changes to the tax imposed under this chapter enacted by the 83rd Legislature, Regular Session, 2013, for economic development purposes, as determined by the comptroller. Requires that the report include:

(1) an estimate of:

(A) the total number of taxable entities that received tax relief during the preceding two calendar years as a result of those changes; and

(B) the total amount of the tax relief described by Paragraph (A); and

(2) an evaluation of the effects of the tax relief on this state, including the effects on employment in this state, other economic activity in this state, and state tax revenues.

SECTION 18. Amends Chapter 171, Tax Code, effective January 1, 2016, by adding Subchapters P-1 and Q-2, as follows:

#### SUBCHAPTER P-1. TAX CREDITS FOR CERTAIN JOB CREATION ACTIVITIES

Sec. 171.771. DEFINITIONS. Defines "agricultural processing," "central administrative offices," "data processing," "distribution," "group health benefit plan," "manufacturing," "qualified business," "qualifying job," "research and development," and "warehousing" in this subchapter.

Sec. 171.772. BIENNIAL ADJUSTMENT OF WAGE FOR QUALIFYING JOB. (a) Defines "consumer price index" in this section.

(b) Provides that beginning in 2016, on January 1 of each even-numbered year, the wage amount prescribed by Section 171.771(8) is increased or decreased by an amount equal to the amount prescribed by that section on December 31 of the preceding year multiplied by the percentage increase or decrease during the preceding state fiscal biennium in the consumer price index and rounded to the nearest dollar.

(c) Provides that the amount determined under Subsection (b) applies to a report originally due on or after the date the determination is made.

(d) Requires the comptroller to make the determination required by this section and authorizes the comptroller to adopt rules related to making that determination.

(e) Provides that a determination by the comptroller under this section is final and is prohibited from being appealed.

Sec. 171.773. ELIGIBILITY. Provides that a taxable entity is eligible for a credit against the tax imposed under this chapter if the taxable entity is a qualified business and creates a minimum of 10 qualifying jobs.

Sec. 171.774. AMOUNT OF CREDIT. Authorizes a taxable entity to establish a credit equal to 25 percent of the total wages paid by the taxable entity for each qualifying job during each of the first 12 months of employment of the person hired to perform the job that occur during the period on which the report is based.

Sec. 171.775. LENGTH OF CREDIT. Requires that the credit established be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based on the period during which the qualifying jobs were created.

Sec. 171.776. LIMITATIONS. (a) Prohibits the total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.777, from exceeding 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) Prohibits the total credit claimed under this subchapter and Subchapter Q-2 for a report, including the amount of any carryforward credits, from exceeding the amount of franchise tax due for the report after any other applicable credits.

Sec. 171.777. CARRYFORWARD. (a) Authorizes the taxable entity to carry the unused credit forward for not more than five consecutive reports if a taxable entity is eligible for a credit that exceeds the limitations under Section 171.776.

(b) Provides that a carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of a limitation under Section 171.776. Provides that a carryforward is added to the next year's installment of the credit in determining the limitation for that year. Provides that a credit carryforward from a previous report is considered to be used before the current year installment.

Sec. 171.778. CERTIFICATION OF ELIGIBILITY. (a) Requires the taxable entity, for the initial and each succeeding report on which a credit is claimed under this subchapter, to file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the taxable entity is eligible for the credit.

(b) Provides that the burden of establishing entitlement to and the value of the credit is on the taxable entity.

(c) Provides that a credit expires under this subchapter and the taxable entity is prohibited from taking any remaining installment of the credit if in one of the five years in which the installment of a credit accrues, the taxable entity fails to maintain the minimum number of qualifying jobs required to be created by Section 171.773.

(d) Authorizes the taxable entity, notwithstanding Subsection (c), to take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.777.

Sec. 171.779. ASSIGNMENT PROHIBITED. Prohibits a taxable entity from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

Sec. 171.780. BIENNIAL REPORT BY COMPTROLLER. (a) Requires the comptroller, before the beginning of each regular session of the legislature, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total number of jobs created by taxable entities that claim a credit under this subchapter and the average and median annual wage of those jobs;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits including:

(A) the total amount of franchise tax due by taxable entities claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by taxable entities claiming a credit under this subchapter; and

(C) the percentage of tax credits that were awarded to taxable entities with fewer than 100 employees;

(3) the two-digit standard industrial classification of businesses claiming a credit under this subchapter;

(4) the geographical distribution of the credits claimed under this subchapter; and

(5) the effect of the credit provided under this subchapter on employment, personal income, and capital investment in this state and on state tax revenues.

(b) Requires that the final report issued before the expiration of this subchapter include historical information on the credit authorized under this subchapter.

(c) Prohibits the comptroller from including in the report information that is confidential by law.

(d) Authorizes the comptroller, for purposes of this section, to require a taxable entity that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the taxable entity's job creation in this state and any other information necessary to complete the report required under this section.

(e) Requires the comptroller to provide notice to the members of the legislature that the report required under this section is available on request.

Sec. 171.781. **COMPTROLLER POWERS AND DUTIES.** Requires the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.782. **EXPIRATION.** (a) Provides that this subchapter expires December 31, 2025.

(b) Provides that the expiration of this subchapter does not affect the carryforward of a credit under Section 171.777 or those credits for which a taxable entity is eligible before the date this subchapter expires.

## SUBCHAPTER Q-2. TAX CREDITS FOR CERTAIN CAPITAL INVESTMENTS

Sec. 171.821. **DEFINITIONS.** Defines "agricultural processing," "qualified business," and "qualified capital investment" in this subchapter.

Sec. 171.822. **ELIGIBILITY.** (a) Provides that a qualified business is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

(b) Requires a qualified business, to qualify for the credit authorized under this subchapter, to:

(1) pay an annual wage of at least the amount required for a qualifying job as defined by Section 171.771 for the period on which the report is based;

(2) offer health benefits coverage to all full-time employees at the location with respect to which the credit is claimed through a group health benefit plan, as defined by Section 171.771, for which the business pays at least 80 percent of the premiums or other charges assessed under the plan for the employees; and

(3) make a minimum \$500,000 qualified capital investment.

Sec. 171.823. AMOUNT OF CREDIT. Authorizes a taxable entity to establish a credit equal to 7.5 percent of the qualified capital investment during the period on which the report is based.

Sec. 171.824. LENGTH OF CREDIT. Requires that the credit established be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based on the period during which the qualified capital investment was made.

Sec. 171.825. LIMITATIONS. (a) Prohibits the total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.826, from exceeding 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.

(b) Prohibits the total credit claimed under this subchapter and Subchapter P-1 for a report, including the amount of any carryforward credits, from exceeding the amount of franchise tax due for the report after any other applicable tax credits.

Sec. 171.826. CARRYFORWARD. (a) Authorizes the taxable entity to carry the unused credit forward for not more than five consecutive reports if a taxable entity is eligible for a credit from an installment that exceeds the limitation under Section 171.825.

(b) Provides that a carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of a limitation under Section 171.825. Provides that a carryforward is added to the next year's installment of the credit in determining the limitation for that year. Provides that a credit carryforward from a previous report is considered to be used before the current year installment.

Sec. 171.827. CERTIFICATION OF ELIGIBILITY. (a) Requires the taxable entity, for the initial and each succeeding report on which a credit is claimed under this subchapter, to file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the taxable entity is eligible for the credit.

(b) Provides that the burden of establishing entitlement to and the value of the credit is on the taxable entity.

(c) Provides that a credit expires under this subchapter and prohibits the taxable entity from taking any remaining installment of the credit if in one of the five years in which the installment of a credit accrues, the taxable entity:

(1) disposes of the qualified capital investment;

(2) takes the qualified capital investment out of service;

(3) moves the qualified capital investment out of this state; or

(4) fails to pay the annual wage required for a qualifying job under Section 171.771 for the period covered by the report on which the taxable entity would otherwise claim the credit.

(d) Authorizes the taxable entity, notwithstanding Subsection (c), to take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.826.

Sec. 171.828. **ASSIGNMENT PROHIBITED.** Prohibits a taxable entity from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

Sec. 171.829. **BIENNIAL REPORT BY COMPTROLLER.** (a) Requires the comptroller, before the beginning of each regular session of the legislature, to submit to the governor, the lieutenant governor, and the speaker of the house of representatives a report that states:

(1) the total amount of qualified capital investments made by taxable entities that claim a credit under this subchapter and the average and median wages paid by those taxable entities;

(2) the total amount of credits applied against the tax under this chapter and the amount of unused credits, including:

(A) the total amount of franchise tax due by taxable entities claiming a credit under this subchapter before and after the application of the credit;

(B) the average percentage reduction in franchise tax due by taxable entities claiming a credit under this subchapter;

(C) the percentage of tax credits that were awarded to taxable entities with fewer than 100 employees; and

(D) the two-digit standard industrial classification of taxable entities claiming a credit under this subchapter;

(3) the geographical distribution of the qualified capital investments on which tax credit claims are made under this subchapter; and

(4) the effect of the credit provided under this subchapter on employment, personal income, and capital investment in this state and on state tax revenues.

(b) Requires that the final report issued before the expiration of this subchapter include historical information on the credit authorized under this subchapter.

(c) Prohibits the comptroller from including in the report information that is confidential by law.

(d) Authorizes the comptroller, for purposes of this section, from requiring a taxable entity that claims a credit under this subchapter to submit information, on a form provided by the comptroller, on the location of the taxable entity's capital investment in this state and any other information necessary to complete the report required under this section.

(e) Requires the comptroller to provide notice to the members of the legislature that the report required under this section is available on request.

Sec. 171.830. **COMPTROLLER POWERS AND DUTIES.** Requires the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.831. EXPIRATION. (a) Provides that this subchapter expires December 31, 2025.

(b) Provides that the expiration of this subchapter does not affect the carryforward of a credit under Section 171.826 or those credits for which a taxable entity is eligible before the date this subchapter expires.

SECTION 19. Amends Chapter 171, Tax Code, by adding Subchapter S, as follows:

SUBCHAPTER S. TAX CREDIT FOR CERTIFIED REHABILITATION OF CERTIFIED  
HISTORIC STRUCTURES

Sec. 171.901. DEFINITIONS. Defines "certified historic structure," "certified rehabilitation," "commission," and "eligible costs and expenses" in this subchapter.

Sec. 171.902. ELIGIBILITY FOR CREDIT. Provides that an entity is eligible to apply for a credit in the amount and under the conditions and limitations provided by this subchapter against the tax imposed under this chapter.

Sec. 171.903. QUALIFICATION. Provides that an entity is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure as provided by this subchapter if:

- (1) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;
- (2) the entity has an ownership interest in the certified historic structure in the year during which the structure is placed in service after the rehabilitation; and
- (3) the total amount of the eligible costs and expenses incurred exceeds \$5,000.

Sec. 171.904. CERTIFICATION OF ELIGIBILITY. (a) Requires the entity that incurred the eligible costs and expenses in the rehabilitation of a certified historic structure, before claiming, selling, or assigning a credit under this subchapter, to request from the Texas Historical Commission (THC) a certificate of eligibility on which THC certifies that the work performed meets the definition of a certified rehabilitation. Requires the entity to include with the entity's request:

- (1) information on the property that is sufficient for THC to determine whether the property meets the definition of a certified historic structure; and
- (2) information on the rehabilitation, and photographs before and after work is performed, sufficient for THC to determine whether the rehabilitation meets the United States secretary of the interior's Standards for Rehabilitation as defined in 36 C.F.R. Section 67.7.

(b) Requires THC to issue a certificate of eligibility to an entity that has incurred eligible costs and expenses as provided by this subchapter. Requires that the certificate:

- (1) confirm that the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; and
- (2) specify the date the certified historic structure was first placed in service after the rehabilitation.

(c) Requires the entity to forward the certificate of eligibility and the following documentation to the comptroller to claim the tax credit:

(1) an audited cost report issued by a certified public accountant, as defined by Section 901.002 (General Definitions), Occupations Code, that itemizes the eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure by the entity;

(2) the date the certified historic structure was first placed in service after the rehabilitation and evidence of that placement in service; and

(3) an attestation of the total eligible costs and expenses incurred by the entity on the rehabilitation of the certified historic structure.

(d) Authorizes the comptroller, for purposes of approving the tax credit under Subsection (c), to rely on the audited cost report provided by the entity that requested the tax credit.

(e) Requires an entity that sells or assigns a credit under this subchapter to another entity to provide a copy of the certificate of eligibility, together with the audited cost report, to the purchaser or assignee.

Sec. 171.905. AMOUNT OF CREDIT; LIMITATIONS. (a) Prohibits the total amount of the credit under this subchapter with respect to the rehabilitation of a single certified historic structure that is authorized to be claimed from exceeding 25 percent of the total eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

(b) Prohibits the total credit claimed for a report, including the amount of any carryforward under Section 171.906, from exceeding the amount of franchise tax due for the report after any other applicable tax credits.

(c) Authorizes that eligible costs and expenses only be counted once in determining the amount of the tax credit available, and more than one entity is prohibited from claiming a credit for the same eligible costs and expenses.

Sec. 171.906. CARRYFORWARD. (a) Authorizes the entity to carry the unused credit forward for not more than five consecutive reports if an entity is eligible for a credit that exceeds the limitation under Section 171.905(b).

(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 171.905(b).

Sec. 171.907. APPLICATION FOR CREDIT. (a) Requires an entity to apply for a credit under this subchapter on or with the report for the period for which the credit is claimed.

(b) Requires an entity to file with any report on which the credit is claimed a copy of the certificate of eligibility issued by THC under Section 171.904 and any other information required by the comptroller to sufficiently demonstrate that the entity is eligible for the credit.

(c) Provides that the burden of establishing eligibility for and the value of the credit is on the entity.

Sec. 171.908. SALE OR ASSIGNMENT OF CREDIT. (a) Authorizes an entity that incurs eligible costs and expenses to sell or assign all or part of the credit that may be claimed for those costs and expenses to one or more entities, and authorizes any entity to which all or part of the credit is sold or assigned to sell or assign all or part of the credit to another entity. Provides that there is no limit on the total number of transactions for the sale or assignment of all or part of the total credit authorized under this subchapter,

however, collectively all transfers are subject to the maximum total limits provided by Section 171.905.

(b) Requires an entity that sells or assigns a credit under this section and the entity to which the credit is sold or assigned to jointly submit written notice of the sale or assignment to the comptroller on a form promulgated by the comptroller not later than the 30th day after the date of the sale or assignment. Requires that the notice include:

(1) the date of the sale or assignment;

(2) the amount of the credit sold or assigned;

(3) the names and federal tax identification numbers of the entity that sold or assigned the credit or part of the credit and the entity to which the credit or part of the credit was sold or assigned; and

(4) the amount of the credit owned by the selling or assigning entity before the sale or assignment, and the amount the selling or assigning entity retained, if any, after the sale or assignment.

(c) Provides that the sale or assignment of a credit in accordance with this section does not extend the period for which a credit is authorized to be carried forward and does not increase the total amount of the credit that is authorized to be claimed. Prohibits another entity from using the same costs and expenses as the basis for claiming a credit after an entity claims a credit for eligible costs and expenses.

(d) Authorizes that a credit earned or purchased by, or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity, notwithstanding the requirements of this subchapter, be allocated to the partners, members, or shareholders of that entity and claimed under this subchapter in accordance with the provisions of any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure, provided that the entity that claims the credit must be subject to the tax imposed under this chapter.

Sec. 171.909. RULES. Requires THC and the comptroller to adopt rules necessary to implement this subchapter.

SECTION 20. (a) Amends Chapter 325, Government Code, by adding Section 325.025, as follows:

Sec. 325.025. EVALUATION OF EXEMPTIONS FROM FRANCHISE TAX.

(a) Requires THC to periodically evaluate each exemption provided by Chapter 171, Tax Code, from the tax imposed under that chapter to consider whether retaining the exemption is in the public's best interest.

(b) Requires THC, at each regular legislative session, to present to the governor and the legislature a report on the evaluation and recommendations it makes under Subsection (a).

(c) Requires THC to conduct the evaluation required by Subsection (a) according to a schedule that THC adopts. Requires that the schedule provide for THC to evaluate each tax exemption at an interval not to exceed six years. Requires THC to provide the schedule to the governor and the legislature.

(d) Provides that the evaluation described by this section does not apply to a tax exemption that is:

(1) explicitly provided by the constitution of this state; or

(2) related to an item or service that this state is unable to tax under the United States Constitution or federal law.

(b) Requires the Sunset Advisory Commission to adopt a schedule for evaluating exemptions from the tax imposed under Chapter 171, Tax Code, as provided by Section 325.025, Government Code, as added by this section, on or before January 1, 2014.

SECTION 21. Repealers: Sections 171.0021 (Discounts from Tax Liability for Small Businesses), 171.1016(d) (relating to providing that Section 171.0021 applies to a taxable entity that elects to pay the tax as provided by this section), and 171.103(c) (relating to requiring that a combined group include certain gross receipts in a report filed under Section 171.201 or 171.202, for each member of the combined group that does not have nexus with this state for the purpose of taxation) and (d) (relating to authorizing that the information required by Subsection (c) be used for informational purposes only and requiring the comptroller to adopt rules as necessary to enforce the Subsection (c) reporting requirement), Tax Code.

SECTION 22. (a) Amends Section 18, Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006, by adding Subsections (h) and (i), as follows:

(h) Defines "transfer" in this subsection and Subsection (i) of this section. Authorizes a corporation that has unused, unexpired credits carried forward under former Subchapter P or Q, Chapter 171, Tax Code, notwithstanding Subsections (e) (relating to authorizing a corporation that has any unused credits accrued before the effective date of this Act under Subchapter F, Chapter 171, tax Code, to claim those unused credits on or with the tax report for the period in which the credit was accrued) and (f) (relating to authorizing a corporation that has any unused credits accrued before the effective date of this Act under Subchapter Q, Chapter 171, Tax Code, to claim those unused credits on or with the tax report for the period in which the credit was accrued) of this section, to transfer the credits to another taxpayer of this state. Requires the corporation, to be eligible to transfer the credits, to obtain a certificate of transfer of credit from the comptroller for the amount of the credits to be transferred. Requires the corporation, not later than the 30th day after the date of the transfer, to submit to the comptroller a notice of the transfer in a form prescribed by the comptroller. Requires that the notice be accompanied by a copy of the certificate of transfer issued by the comptroller and specify:

(1) the number on the certificate of transfer;

(2) the amount of the corporation's unused, unexpired credits preceding the transfer;

(3) the date of the transfer;

(4) the amount of credits transferred;

(5) the tax identification numbers of the corporation and the taxpayer to which the credits were transferred;

(6) the corporation's remaining amount of unused, unexpired credits after the transfer; and

(7) any other information the comptroller requires.

(i) Provides that the transfer of a credit under Subsection (h) of this section is limited to a credit that was first reported on a report originally due before January 1, 2008, and does not include credits authorized under former Subchapter Q-1, Chapter 171, Tax Code, or credits that were created under the terms of a written agreement between a taxpayer and the Texas Department of Economic Development or its successor that was entered into before June 1, 2006, and which credits continue to accrue under the terms provided by Section 19 of this Act. Provides that the transferee of a credit under this section obtains the credit subject to the same rights and privileges as the transferor. Provides that the transfer of a credit under Subsection (h) of this section does not extend or lessen the period during which the credit is authorized to be claimed. Provides that if a corporation transfers a credit that the corporation was not entitled to claim at the time of the transfer:

(1) the taxpayer to which the credit was transferred is authorized to pursue any remedy authorized by law against the corporation and is prohibited from pursuing any remedy against the comptroller or this state; and

(2) the comptroller is prohibited from allowing the taxpayer to which the credit was transferred to apply the credit on a report or to recover from the taxpayer the amount of the credit the taxpayer claims on a report using any means authorized by law.

(b) Provides that this section applies only to a credit transferred on or after the effective date of this section.

(c) Effective date, this section: September 1, 2013.

SECTION 23. Repealer: Section 1(c) (relating to providing that this section expires December 31, 2011, if Section 1 takes effect), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011.

SECTION 24. Repealer: Section 2 (relating to providing that a taxable entity is not required to pay any tax and is not considered to owe any tax for a period under certain conditions and providing that this section takes effect January 1, 2012), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Section 171.002(d), Tax Code.

SECTION 25. Repealer: Section 3 (relating to entitling a taxable entity to a discount of the tax imposed under this chapter that the taxable entity is required to pay after determining its taxable margin under Section 171.101, applying the appropriate rate of the tax under Section 171.002(a) or (b), and subtracting any other allowable credits; providing that Section 3 takes effect January 1, 2012; and providing that Section 3 applies only to a report originally due on or after the effective date of this section), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Section 171.0021(a), Tax Code.

SECTION 26. Provides that this Act applies only to a report originally due on or after the effective date of this Act.

SECTION 27. Effective date, Section 171.1011(y), Tax Code, as added by this Act: January 1, 2016.

SECTION 28. Effective date, Section 14 of this Act: January 1, 2015.

SECTION 29. Amends Section 171.1011(n), Tax Code, to require a taxable entity that is a health care provider, rather than requiring that a taxable entity that is a health care provider,

except as provided by Subsection (c), to exclude certain payments and costs from its total revenue.

SECTION 30. Repealer: Section 171.1011(o) (relating to requiring a health care provider that is a health care institution to exclude from its total revenue 50 percent of the amounts described by Subsection (n)), Tax Code.

SECTION 31. Provides that this Act applies only to a report originally due on or after the effective date of this Act.

SECTION 32. Effective date: January 1, 2015.

SECTION 33. Effective date, except as otherwise provided by this Act: January 1, 2014.