



HB 3230 - SUPPORT

84th Legislative Session (2015)

HB 3230 would make it possible for nonprofits to sell the tax credits earned on their qualified historic preservation projects, furthering the purpose of the original law.

1. In 2013, **HB 500** created a tax credit against the state franchise tax equivalent to 25% of qualified costs for the certified rehabilitation of a historic property listed on the National Register or contributing to a National Register district, a Recorded Texas Historic Landmark, or contributing to a local district if certified by the Texas Historical Commission (THC).

2. On March 3, 2014, Attorney General Greg Abbott issued **Opinion No. GA-1045** in response to questions from the THC as it began to develop rules and procedures for implementing the new tax credit program. Question 7 asked: *Is it necessary that the owner of the property be subject to the franchise tax, or may a homeowner, **nonprofit corporation, or other non-taxable entity** make use of the credit through its sale or assignment to a taxable entity?*

The Attorney General's response was clear: "There is no provision ... that expressly limits the tax credit to only taxable entities. For these reasons, we conclude that the tax credit created by section 14 [of HB 500] is available to entities that are not subject to the franchise tax. This conclusion does not render the tax credit useless because an entity that is not a taxable entity, though unable to claim the credit against the franchise tax, **could still benefit by selling or assigning the credit to a taxable entity that could.**"

3. On August 22, 2014, the THC filed rules implementing the new historic preservation tax credit which were published in the *Texas Register* on September 5, 2014. These rules narrowed the application of the original statute by tying the qualification of projects for the new state credit to the Internal Revenue Code (IRC) sections on the federal credit, which requires the property owner to be entitled to take depreciation deductions and in essence pay federal income tax. Non-profits would only qualify if the property generated income unrelated to their mission which would be taxable.

4. On March 12, 2015, San Antonio Rep. Justin Rodriguez filed **HB 3230**, which clarifies Section 171.901(4) of the Texas Tax Code by amending it to specifically **exempt non-taxable entities from the narrower federal rules**. It redefines "eligible costs and expenses" by stating that the provisions of the IRC that would otherwise exclude non-taxable entities from taking the credit "do not apply to costs and expenses incurred by

an entity exempt from the [franchise] tax ... and those costs and expenses are eligible costs and expenses if the other provisions of the ... Internal Revenue Code are satisfied.”

5. Support for this bill is very important, as it affirms the availability of a powerful new tool for the preservation of non-profit owned endangered historic places across Texas. It also furthers two goals of the 2010 Statewide Preservation Plan, namely goals #4 (Leverage Economic Development Tools for Preservation) by using preservation projects as an economic engine and #8 (Build Capacity of Preservation Community) by increasing funds available to nonprofit organizations and thereby making them more effective.