

By: Williams

S.B. No. 538

A BILL TO BE ENTITLED

AN ACT

relating to franchise tax incentives for corporations conducting certain research and development activities.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter V to read as follows:

SUBCHAPTER V. CREDITS AND BUSINESS LOSS CARRYOVERS FOR CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Sec. 171.921. DEFINITIONS. In this subchapter:

(1) "Advanced computing technology" means the technology used in designing and developing computing hardware and software, including innovations in designing the full spectrum of hardware from hand-held calculators to supercomputers, and peripheral equipment associated with the hardware.

(2) "Advanced materials technology" means the specialized processing and synthesis technology used to create materials with engineered properties, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(3) "Base amount," "basic research payment," and "qualified research expense" have the meanings assigned those terms by Section 41, Internal Revenue Code.

(4) "Biotechnology" means the technology, including products, services, and subtechnologies, involving the functioning

1 of biological systems from the macro level to the molecular and  
2 subatomic levels.

3 (5) "Electronic device technology" means the  
4 technology involving:

5 (A) microelectronics;

6 (B) semiconductors;

7 (C) electronic equipment and instrumentation;

8 (D) radio frequency, microwave, and millimeter  
9 electronics;

10 (E) optical and optic-electrical devices; and

11 (F) data and digital communications and imaging  
12 devices.

13 (6) "Environmental technology" means the technology  
14 used:

15 (A) to assess and prevent threats or damage to  
16 human health or the environment;

17 (B) for environmental cleanup; and

18 (C) to develop alternative energy sources.

19 (7) "Medical device technology" means the technology  
20 involving any medical equipment or product that:

21 (A) is not a pharmaceutical product;

22 (B) has a therapeutic value, diagnostic value, or  
23 both; and

24 (C) is regulated by the federal Food and Drug  
25 Administration.

26 Sec. 171.922. ENTITLEMENT. A corporation is entitled to a  
27 credit in the amount and under the conditions and limitations

1 provided by this subchapter against the tax imposed under this  
2 chapter.

3 Sec. 171.923. AMOUNT OF CREDIT. (a) Subject to Section  
4 171.924, the credit for any privilege period equals 10 percent of  
5 the sum of:

6 (1) the amount by which the qualified research  
7 expenses in this state exceed the base amount for this state; and

8 (2) the basic research payments determined under  
9 Section 41(e)(1)(A), Internal Revenue Code, for this state.

10 (b) If a corporation's accounting year does not correspond  
11 to the privilege period, the base amount and any other amount used  
12 to calculate the credit shall be multiplied by a ratio the numerator  
13 of which is the number of days in the corporation's accounting year  
14 that are also in the privilege period and the denominator of which  
15 is the number of days in the privilege period.

16 Sec. 171.924. EXPENSES AND PAYMENTS IN CERTAIN FIELDS OF  
17 TECHNOLOGY. For the purpose of determining the amount of the credit  
18 under Section 171.923, a corporation may include only those  
19 qualified research expenses and basic research payments in the  
20 following fields:

21 (1) advanced computing technology;

22 (2) advanced materials technology;

23 (3) biotechnology;

24 (4) electronic device technology;

25 (5) environmental technology; and

26 (6) medical device technology.

27 Sec. 171.925. CARRYOVER OF CREDIT. A corporation may carry

1 a credit forward for not more than 15 consecutive privilege  
2 periods.

3 Sec. 171.926. BUSINESS LOSS CARRYOVER. Notwithstanding  
4 Section 171.110(e), a corporation that has a business loss for a  
5 privilege period may carry the loss forward for not more than 15  
6 consecutive privilege periods if:

7 (1) during the privilege period the corporation  
8 incurred or paid qualified research expenses for research conducted  
9 in this state; and

10 (2) the qualified research expenses were in the fields  
11 specified in Section 171.924.

12 Sec. 171.927. SALE OF UNUSED CREDIT OR BUSINESS LOSS.

13 (a) A corporation that has an unused credit under this subchapter  
14 or an unused business loss described by Section 171.926 may apply to  
15 the comptroller to sell the credit or business loss to another  
16 corporation. The acquiring corporation must apply to the  
17 comptroller to purchase an unused credit or an unused business  
18 loss.

19 (b) The comptroller shall review applications under this  
20 section and may not approve the sale or purchase of an unused credit  
21 under this subchapter or an unused business loss described by  
22 Section 171.926 unless the comptroller determines that:

23 (1) the credit or loss is being purchased for money or  
24 financial assistance in an amount equal to at least 75 percent of  
25 its value;

26 (2) there is an agreement between the seller and  
27 purchaser specifying the means and amount of payment or financial

1 assistance; and

2 (3) the payment or financial assistance will be used  
3 to fund expenses incurred in connection with the operation of new or  
4 expanding emerging technology in the fields specified in Section  
5 171.924, including expenses relating to the acquisition and  
6 development of real estate or other fixed assets, materials,  
7 start-up, tenant fit-out, working capital, salaries, and research  
8 and development.

9 Sec. 171.928. RULES. The comptroller shall adopt rules  
10 necessary to implement this subchapter.

11 SECTION 2. This Act takes effect January 1, 2004, and  
12 applies only to:

- 13 (1) a report originally due on or after that date; and  
14 (2) an expense or business loss incurred on or after  
15 that date.