

By: Brimer

S.B. No. 1254

A BILL TO BE ENTITLED

1 AN ACT

2 relating to extending the terms and conditions under which an
3 enterprise project may continue to receive franchise tax credit for
4 job creation and capital investment.

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

6 SECTION 1. Subchapter P, Section 171.751, Tax Code, is
7 amended to read as follows:

8 Sec. 171.751. DEFINITIONS. In this subchapter:

9 (1) "Agricultural processing" means an establishment
10 primarily engaged in activities described in categories 0724,
11 2011-2099, 2211, 2231, 2824, 2833, 2834, 2835, 2836, 2841,
12 3111-3199, 3262, or 3952, in product classes 28692 or 28698 of
13 category 2869, or in product classes 28992 or 28994 of category 2899
14 of the 1987 Standard Industrial Classification Manual published by
15 the federal Office of Management and Budget.

16 (2) "Central administrative offices" means an
17 establishment primarily engaged in performing management or
18 support services for other establishments of the same enterprise.
19 An enterprise consists of all establishments having more than 50
20 percent common direct or indirect ownership.

21 (3) "County average weekly wage" means the average
22 weekly wage for all covered employment in the county as computed by
23 the Texas Workforce Commission.

24 (4) "Data processing" means an establishment

1 primarily engaged in activities described in categories 7371-7379
2 of the 1987 Standard Industrial Classification Manual published by
3 the federal Office of Management and Budget.

4 (5) "Distribution" means an establishment primarily
5 engaged in activities described in categories 5012-5199 of the 1987
6 Standard Industrial Classification Manual published by the federal
7 Office of Management and Budget.

8 (6) "Group health benefit plan" means:

9 (A) a health plan provided by a health
10 maintenance organization established under Chapter 843, Insurance
11 Code;

12 (B) a health benefit plan approved by the
13 commissioner of insurance; or

14 (C) a self-funded or self-insured employee
15 welfare benefit plan that provides health benefits and is
16 established in accordance with the Employee Retirement Income
17 Security Act of 1974 (29 U.S.C. Section 1001 et seq.), as amended.

18 (7) "Manufacturing" means an establishment primarily
19 engaged in activities described in categories 2011-3999 of the 1987
20 Standard Industrial Classification Manual published by the federal
21 Office of Management and Budget.

22 (8) "Qualified business" means an establishment
23 primarily engaged in agricultural processing, central
24 administrative offices, distribution, data processing,
25 manufacturing, research and development, ~~or~~ warehousing or which
26 has been designated as an enterprise project under Chapter 2303,
27 Government Code, without regard to whether the enterprise project

1 is located in an enterprise zone.

2 (9) "Qualifying job" means a new permanent full-time
3 job that:

4 (A) is located in:

5 (i) a strategic investment area; ~~[or]~~

6 (ii) a county within this state with a
7 population of less than 50,000, if the job is created by a business
8 primarily engaged in agricultural processing; or

9 (iii) an enterprise project, without regard
10 to whether the enterprise project is located in an enterprise zone
11 regardless of whether the job meets the qualifications prescribed
12 by Paragraphs (B)-(F), if the job is created by a qualified business
13 that has been designated as an enterprise project;;

14 (B) requires at least 1,600 hours of work a year;

15 (C) pays at least 110 percent of the county
16 average weekly wage for the county where the job is located;

17 (D) is covered by a group health benefit plan for
18 which the business pays at least 80 percent of the premiums or other
19 charges assessed under the plan for the employee;

20 (E) is not transferred from one area in this
21 state to another area in this state; and

22 (F) is not created to replace a previous
23 employee.

24 (10) "Research and development" means an
25 establishment primarily engaged in activities described in
26 category 8731 of the 1987 Standard Industrial Classification Manual
27 published by the federal Office of Management and Budget.

1 (11) "Strategic investment area" has the meaning
2 assigned that term by Section 171.721.

3 (12) "Warehousing" means an establishment primarily
4 engaged in activities described in categories 4221-4226 of the 1987
5 Standard Industrial Classification Manual published by the federal
6 Office of Management and Budget.

7 (13) "Defense readjustment project" means:

8 (A) a person designated by the Texas Department
9 of Economic Development as a defense readjustment project under
10 Chapter 2310, Government Code, on or after September 1, 2001, but
11 before September 1, 2003; and

12 (B) a person designated by the Texas Economic
13 Development Bank as a defense readjustment project under Chapter
14 2310, Government Code, on or after September 1, 2003.

15 (14) "Enterprise project" means[+]

16 ~~[(A) a person designated by the Texas Department~~
17 ~~of Economic Development as an enterprise project under Chapter~~
18 ~~2303, Government Code, on or after September 1, 2001, but before~~
19 ~~September 1, 2003; and~~

20 ~~[(B)]~~ a person designated as an enterprise
21 project under Chapter 2303, Government Code~~[, on or after September~~
22 ~~1, 2003]~~.

23 (15) "Enterprise zone" has the meaning assigned that
24 term by Section 2303.003, Government Code.

25 (16) "Readjustment zone" has the meaning assigned that
26 term by Section 2310.001, Government Code.

27 SECTION 2. Section 171.752, Tax Code, is amended to read as

1 follows:

2 Sec. 171.752. ELIGIBILITY.

3 (a) A corporation is eligible for a credit against the tax
4 imposed under this chapter if the corporation:

5 (1) is a qualified business as defined in Section
6 171.751;

7 (2) creates a minimum of 10 qualifying jobs; and

8 (3) pays an average weekly wage, for the year in which
9 credits are claimed, of at least 110 percent of the county average
10 weekly wage for the county where the qualifying jobs are located.

11 (b) A corporation may claim a credit or take a carryforward
12 credit without regard to whether the strategic investment area in
13 which it created the qualifying jobs subsequently loses its
14 designation as a strategic investment area, if applicable.

15 SECTION 3. Section 171.7541, Tax Code, is amended to read as
16 follows:

17 Sec. 171.7541. LENGTH OF CREDIT.

18 Notwithstanding Section 171.753, a corporation that has been
19 designated as an enterprise project or as a defense readjustment
20 project on or after September 1, 2001, may, beginning on the date
21 the project is designated, establish a credit equal to 25 percent of
22 the total wages and salaries paid by the corporation for qualifying
23 jobs. Subject to Section 171.755, the corporation may claim the
24 entire credit earned on a report originally due on or after
25 September 1, 2003~~[, and before January 1, 2005]~~.

26 SECTION 4. Subchapter Q, Section 171.801, Tax Code, is
27 amended to read as follows:

1 (2) "Qualified capital investment" means tangible personal
2 property first placed in service in a strategic investment area, or
3 first placed in service in a county with the population of less than
4 50,000 by a corporation primarily engaged in agricultural
5 processing, or first placed in service in an enterprise project,
6 regardless of whether the enterprise project is located in an
7 enterprise zone, and that is described in Section 1245(a), Internal
8 Revenue Code, such as engines, machinery, tools, and implements
9 used in a trade or business or held for investment and subject to an
10 allowance for depreciation, cost recovery under the accelerated
11 cost recovery system, or amortization. The term does not include
12 real property or buildings and their structural components.
13 Property that is leased under a capitalized lease is considered a
14 "qualified capital investment," but property that is leased under
15 an operating lease is not considered a "qualified capital
16 investment." Property expensed under Section 179, Internal Revenue
17 Code, is not considered a "qualified capital investment."

18 SECTION 5. Section 171.8015, Tax Code, is amended to read as
19 follows:

20 Sec. 171.8015. TANGIBLE PERSONAL PROPERTY FIRST PLACED IN
21 SERVICE IN AN ENTERPRISE PROJECT [~~ZONE~~]. For purposes of
22 determining whether an investment is a "qualified capital
23 investment" under Section 171.801, "tangible personal property
24 first placed in service in an enterprise project [~~zone~~]" includes
25 tangible personal property: (1) purchased by a qualified business
26 for placement in an incomplete improvement that is under active
27 construction or other physical preparation; (2) identified by a

1 purchase order, invoice, billing, sales slip, or contract; and (3)
2 physically present at the enterprise project [~~zone~~] and in use by
3 the qualified business at the time the credit is taken [~~not later~~
4 ~~than September 30, 2005~~].

5 SECTION 6. Section 171.802, Tax Code, is amended to read as
6 follows:

7 Sec. 171.802. ELIGIBILITY.

8 Text of section effective until December 31, 2009

9 (a) A qualified business is eligible for a credit against
10 the tax imposed under this chapter in the amount and under the
11 conditions and limitations provided by this subchapter.

12 (b) To qualify for the credit authorized under this
13 subchapter, a qualified business must:

14 (1) pay an average weekly wage, at the location with
15 respect to which the credit is claimed, that is at least 110 percent
16 of the county average weekly wage;

17 (2) offer coverage to all full-time employees at the
18 location with respect to which the credit is claimed by a group
19 health benefit plan, as defined by Section 171.751, for which the
20 business pays at least 80 percent of the premiums or other charges
21 assessed under the plan for the employees; and

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

24 Text of subsec. (c) effective from September 1, 2003 until January
25 1, 2005

26 (c) A corporation may claim a credit or take a carryforward
27 credit without regard to whether the strategic investment area,

1 enterprise zone, or readjustment zone in which it made the
2 qualified capital investment subsequently loses its designation as
3 a strategic investment area, enterprise zone, or readjustment zone,
4 if applicable.

5 Text of subsec. (c) effective January 1, 2005

6 (c) A corporation may claim a credit or take a carryforward
7 credit without regard to whether the strategic investment area or
8 enterprise zone in which it made the qualified capital investment
9 subsequently loses its designation as a strategic investment area
10 or enterprise zone, if applicable.

11 (d) A corporation that has been designated as an enterprise
12 project or as a defense readjustment project and is certified by the
13 Texas Department of Economic Development as a qualified business
14 under Section 2303.402 or 2310.302, Government Code, may qualify
15 for the credit provided by this subchapter, regardless of whether
16 the corporation meets the qualifications prescribed by Subsection
17 (b). [~~This subsection expires January 1, 2005.~~]

18 (e) A corporation may claim a credit or take a carryforward
19 credit for a qualified capital investment made on or after January
20 1, 2003, without regard to whether the county in which it makes the
21 qualified capital investment has lost its designation as a
22 strategic investment area if:

23 (1) the corporation committed to the investment in
24 that county before January 2003;

25 (2) at the time the corporation made the commitment,
26 the county was designated as a strategic investment area;

27 (3) the total investment is at least \$100 million;

1 (4) the county has a population of less than 15,700;
2 and

3 (5) the corporation made a qualified capital
4 investment in the county in each of the two years preceding the year
5 in which the corporation made the qualified capital investment
6 under this subsection.

7 SECTION 7. Section 171.803, Tax Code, is amended to read as
8 follows:

9 Sec. 171.803. CALCULATION OF CREDIT. (a) Except as
10 provided by Subsection (b), a corporation may establish a credit
11 equal to 7.5 percent of the qualified capital investment during the
12 period upon which the tax is based.

13 (b) A corporation that has been designated as an enterprise
14 project without regard to whether the enterprise project is located
15 in an enterprise zone or as a defense readjustment project on or
16 after September 1, 2001, may, beginning on the date the project is
17 designated, establish a credit equal to 7.5 percent of the
18 qualified capital investment. [~~This subsection expires January 1,~~
19 ~~2005.~~]

20 SECTION 8. Section 171.804, Tax Code, is amended to read as
21 follows:

22 Sec. 171.804. LENGTH OF CREDIT. (a) The credit established
23 shall be claimed in five equal installments of one-fifth the credit
24 amount over the five consecutive reports beginning with the report
25 based upon the period during which the qualified capital investment
26 was made.

27 (b) Subject to Section 171.805, a corporation that has been

1 designated as an enterprise project without regard to whether the
2 enterprise project is located in an enterprise zone or as a defense
3 readjustment project may claim the entire credit earned on a report
4 originally due on or after September 1, 2003.

5 SECTION 9. Section 2303.504, Government Code, is amended to
6 read as follows:

7 Sec. 2303.504. STATE TAX REFUNDS AND CREDITS; REPORT.

8 [~~Text of section effective until September 1, 2005~~]

9 (a) Subject to Section 2303.516, an enterprise project is
10 entitled to:

11 (1) a refund of state taxes under Section 151.429, Tax
12 Code; and

13 (2) a franchise tax credit under Subchapter P or Q,
14 Chapter 171, Tax Code.

15 (b) At the time of receipt of any tax benefit available as a
16 result of participating in the enterprise zone program, including a
17 state sales and use tax refund or franchise tax credit, three
18 percent of the amount of the tax benefit shall be transferred to the
19 Texas economic development bank fund under Subchapter B, Chapter
20 489, to defray the cost of administering this chapter.

21 (c) Not later than the 60th day after the last day of each
22 fiscal year, the comptroller shall report to the bank the statewide
23 total of actual jobs created, actual jobs retained, and the tax
24 refunds and credits made under this section during that fiscal
25 year.

26 [~~Sec. 2303.504. STATE TAX REFUNDS; REPORT.~~]

27 [~~Text of section effective September 1, 2005~~]

1 ~~[(a) Subject to Section 2303.516, an enterprise project is~~
2 ~~entitled to a refund of state taxes under Section 151.429, Tax Code.~~

3 ~~[(b) At the time of receipt of any tax benefit available as a~~
4 ~~result of participating in the enterprise zone program, including a~~
5 ~~state sales and use tax refund or franchise tax credit, three~~
6 ~~percent of the amount of the tax benefit shall be transferred to the~~
7 ~~Texas economic development bank fund under Subchapter B, Chapter~~
8 ~~489, to defray the cost of administering this chapter.~~

9 ~~[(c) Not later than the 60th day after the last day of each~~
10 ~~fiscal year, the comptroller shall report to the bank the statewide~~
11 ~~total of actual jobs created, actual jobs retained, and the tax~~
12 ~~refunds made under this section during that fiscal year.]~~

13 SECTION 10. This Act applies to any enterprise project
14 whose designation is in effect as of the effective date of this Act
15 or which becomes designated thereafter. Enterprise projects whose
16 designations have expired are governed by prior law.

17 SECTION 11. This takes effect January 1, 2005.