

By: Geren

H.B. No. 2103

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for 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 O-1 to read as follows:

SUBCHAPTER O-1. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

Sec. 171.741. DEFINITIONS. In this subchapter:

(1) "Base amount," "basic research payment," and "qualified research expense" have the meanings assigned those terms by Section 41, Internal Revenue Code, except that all of those payments and expenses must be for research conducted within this state.

(2) "Strategic investment area" means an area that is determined by the comptroller under Section 171.746 that is:

(A) a county within this state with above state average unemployment and below state average per capita income;

(B) an area within this state that is a federally designated urban enterprise community or an urban enhanced enterprise community; or

(C) a defense economic readjustment zone designated under Chapter 2310, Government Code.

Sec. 171.742. ELIGIBILITY. (a) A taxable entity is

1 eligible for a credit against the tax imposed under this chapter in
2 the amount and under the conditions and limitations provided by
3 this subchapter.

4 (b) A taxable entity may claim a credit under Section
5 171.743(d) or take a carryforward credit without regard to whether
6 the strategic investment area in which the entity incurred
7 qualified research expenses or made basic research payments
8 subsequently loses its designation as a strategic investment area.

9 Sec. 171.743. CALCULATION OF CREDIT. (a) The credit for
10 any report equals five percent of the sum of:

11 (1) the excess of qualified research expenses incurred
12 in this state during the period on which the tax is based over the
13 base amount for this state; and

14 (2) the basic research payments determined under
15 Section 41(e)(1)(A), Internal Revenue Code, for this state during
16 the period on which the tax is based.

17 (b) A taxable entity may elect to compute the credit for
18 qualified research expenses incurred in this state in a manner
19 consistent with the alternative incremental credit described in
20 Section 41(c)(4), Internal Revenue Code, only if for the
21 corresponding federal tax period:

22 (1) a federal election was made to compute the federal
23 credit under Section 41(c)(4), Internal Revenue Code;

24 (2) the taxable entity was a member of a consolidated
25 group for which a federal election was made under Section 41(c)(4),
26 Internal Revenue Code; or

27 (3) the taxable entity did not claim the federal

1 credit under Section 41(a)(1), Internal Revenue Code.

2 (c) For purposes of the alternate credit computation method
3 in Subsection (b), the credit percentages applicable to qualified
4 research expenses described in Sections 41(c)(4)(A)(i), (ii), and
5 (iii), Internal Revenue Code, are 0.41 percent, 0.55 percent, and
6 0.69 percent, respectively.

7 (d) In computing the credit under this section, a taxable
8 entity may multiply by two the amount of any qualified research
9 expenses and basic research payments made in a strategic investment
10 area.

11 (e) The burden of establishing entitlement to and the value
12 of the credit is on the taxable entity.

13 (f) For the purposes of this section, "gross receipts" as
14 used in Section 41, Internal Revenue Code, means gross receipts as
15 determined under Section 171.103.

16 Sec. 171.744. LIMITATIONS. The sum of the total credit
17 claimed under this subchapter for a report, including the amount of
18 any carryforward credit under Section 171.745, and the amount of
19 unused credits accrued under Subchapter O before its repeal on
20 January 1, 2008, and claimed on the report as authorized by Section
21 18(d), Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called
22 Session, 2006, may not exceed 50 percent of the amount of franchise
23 tax due for the report before any other applicable tax credits.

24 Sec. 171.745. CARRYFORWARD. If a taxable entity is
25 eligible for a credit that exceeds the limitation under Section
26 171.744, the taxable entity may carry the unused credit forward for
27 not more than 20 consecutive reports. Credits, including credit

1 carryforwards, are considered to be used in the following order:

2 (1) a credit carryforward of unused credits accrued
3 under Subchapter O before its repeal on January 1, 2008, and claimed
4 as authorized by Section 18(d), Chapter 1 (H.B. 3), Acts of the 79th
5 Legislature, 3rd Called Session, 2006;

6 (2) a credit carryforward under this subchapter; and

7 (3) a current year credit.

8 Sec. 171.746. DETERMINATION OF STRATEGIC INVESTMENT AREAS.

9 (a) Not later than September 1 each year, the comptroller shall
10 determine areas that qualify as strategic investment areas using
11 the most recently completed full calendar year data available on
12 that date and, not later than October 1, shall publish a list and
13 map of the designated areas.

14 (b) The designation is effective for the following calendar
15 year for purposes of credits available under this subchapter.

16 Sec. 171.747. BIENNIAL REPORT BY COMPTROLLER. (a) Before
17 the beginning of each regular session of the legislature, the
18 comptroller shall submit to the governor, the lieutenant governor,
19 and the speaker of the house of representatives a report that
20 states:

21 (1) the total amount of expenses and payments incurred
22 by taxable entities that claim a credit under this subchapter;

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

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

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

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

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

9 (3) the geographical distribution of expenses and
10 payments giving rise to a credit authorized by this subchapter;

11 (4) the effect of the credit provided by this
12 subchapter on the amount of research and development performed in
13 this state and employment in research and development in this
14 state; and

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

18 (b) The final report issued prior to the expiration of this
19 subchapter shall include historical information on the credit
20 authorized under this subchapter.

21 (c) The comptroller may not include in the report
22 information that is confidential by law.

23 (d) For purposes of this section, the comptroller may
24 require a taxable entity that claims a credit under this subchapter
25 to submit information, on a form provided by the comptroller, on the
26 location of the taxable entity's research expenses and payments in
27 this state and any other information necessary to complete the

1 report required by this section.

2 Sec. 171.748. COMPTROLLER POWERS AND DUTIES. The
3 comptroller shall adopt rules and forms necessary to implement this
4 subchapter.

5 Sec. 171.749. ASSIGNMENT PROHIBITED. A taxable entity may
6 not convey, assign, or transfer the credit allowed under this
7 subchapter to another entity unless all of the assets of the taxable
8 entity are conveyed, assigned, or transferred in the same
9 transaction.

10 Sec. 171.750. EXPIRATION. (a) This subchapter expires
11 December 31, 2013.

12 (b) The expiration of this subchapter does not affect the
13 carryforward of a credit under Section 171.745 that was accrued
14 before the date this subchapter expires.

15 SECTION 2. Section 403.030(a), Government Code, as
16 effective April 1, 2009, is amended to read as follows:

17 (a) For purposes of evaluating the effect on economic
18 development in this state, the comptroller, before each regular
19 session of the legislature, shall collect and make available
20 information that:

21 (1) lists the strategies in the General Appropriations
22 Act identified as meeting the statewide priority goal or service
23 category of economic development, if any, of each state agency and
24 institution of higher education, as defined by Section 61.003,
25 Education Code, including:

26 (A) legislative appropriations or actual
27 expenditures, as applicable, for each strategy;

1 (B) the method of financing of each strategy; and

2 (C) outcome measures associated with each
3 appropriate strategy that are listed in the General Appropriations
4 Act or the Automated Budget and Evaluation System of Texas (ABEST);

5 (2) lists all investments financed with money from the
6 Texas growth fund created by Section 70, Article XVI, Texas
7 Constitution;

8 (3) contains a summary of the information reported
9 under Subchapter D, Chapter 502, Local Government Code, by each
10 corporation created under Chapter 504 or 505, Local Government
11 Code, and a copy of the report submitted by each of the 10
12 corporations with the largest total revenue in the most recent
13 fiscal year ending before the date the information compiled under
14 this section is made available;

15 (4) contains a summary of the report required by
16 Section 403.014 and information on the effect on revenues of
17 ~~[allocation or]~~ apportionment under Section ~~[Sections]~~ 171.106
18 ~~[and 171.1061]~~, Tax Code;

19 (5) contains a summary of reports the comptroller is
20 required to submit by other law to evaluate the effectiveness of Tax
21 Code provisions, including a report ~~[reports]~~ required by Section
22 171.747 ~~[Sections 171.707, 171.727, 171.759, and 171.809]~~, Tax
23 Code; and

24 (6) to the extent practicable, contains information on
25 employment, capital investment, and personal income relating to:

26 (A) at least two tax provisions described by
27 Section 403.014; and

1 (B) changes in school district property tax law
2 or Tax Code provisions enacted by the most recent legislature.

3 SECTION 3. Section 228.153(a)(1), Insurance Code, as
4 effective April 1, 2009, is amended to read as follows:

5 (1) "Strategic investment area" means an area of this
6 state that qualifies as a strategic investment area under
7 Subchapter O-1 [Θ], Chapter 171, Tax Code, or, after the date that
8 subchapter expires, an area that qualified as a strategic
9 investment area under that subchapter immediately before that date.

10 SECTION 4. Section 313.051(a), Tax Code, is amended to read
11 as follows:

12 (a) This subchapter applies only to a school district that
13 has territory in:

14 (1) a strategic investment area, as defined by Section
15 171.741 [~~171.721~~]; or

16 (2) a county:

17 (A) that has a population of less than 50,000;

18 (B) that is not partially or wholly located in a
19 metropolitan statistical area; and

20 (C) in which, from 1990 to 2000, according to the
21 federal decennial census, the population:

22 (i) remained the same;

23 (ii) decreased; or

24 (iii) increased, but at a rate of not more
25 than three percent per annum.

26 SECTION 5. (a) This Act applies only to a report originally
27 due on or after the effective date of this Act.

1 (b) The change in law made by this Act does not affect the
2 obligation for or the payment, computation, and collection of the
3 franchise tax for a report originally due before the effective date
4 of this Act. The obligation for and the payment, computation, and
5 collection of the franchise tax for a report originally due before
6 the effective date of this Act is governed by the law in effect on
7 the date the report was originally due and that law is continued in
8 effect for those purposes.

9 SECTION 6. This Act takes effect January 1, 2010.