

BILL ANALYSIS

H.B. 2390
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Economic & Small Business Development
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Recent legislation eliminated research and development tax credits for businesses in Texas, subsequently raising concerns that the lack of such a tax credit has made it difficult for Texas to attract new aerospace industry activity to defense bases that have been closed under the U.S. Department of Defense's realignment and closure of military bases. H.B. 2390 seeks to reinstate a research and development tax credit tailored to aerospace industry companies as a financial incentive for companies in that industry to invest in research and development activities at former military bases in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 of this bill.

ANALYSIS

H.B. 2390 amends the Tax Code to make a taxable entity eligible for a credit against the franchise tax in the amount and under the conditions and limitations provided by the bill's provisions if the entity is primarily engaged in a business involved in the aerospace industry and performs qualified research in the territory of a defense base development authority. The bill sets the amount of such credit for any tax report at five percent of the sum of the excess of qualified research expenses incurred in Texas during the period on which the tax is based over the base amount for Texas and the basic research payments for Texas determined under the federal Internal Revenue Code during the period on which the tax is based. The bill authorizes a taxable entity to elect to compute the credit for qualified research expenses incurred in Texas in a manner consistent with the alternative incremental credit described by the federal Internal Revenue Code, but only under certain circumstances, and sets out the credit percentages applicable to qualified research expenses for purposes of the alternative credit computation method. The bill places the burden of establishing entitlement to and the value of the credit on the taxable entity.

H.B. 2390 caps the sum of the total credit claimed for a report, including the amount of any carryforward credit and the amount of unused credits accrued under statutory provisions relating to a credit for research and development activities as those provisions existed before January 1, 2008, and claimed on the report as authorized by Section 18(d), Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006, at 50 percent of the amount of franchise tax due for the report before any other applicable tax credits. The bill authorizes a taxable entity eligible for the credit that exceeds the cap to carry forward the unused credit for a maximum of 20 consecutive reports and establishes the order in which credits, including credit carryforwards, are considered to be used.

H.B. 2390 requires the comptroller of public accounts, 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 certain information relating to the franchise tax

credit and requires the final report issued prior to the expiration of the credit to include historical information on the credit. The bill prohibits the comptroller from including in the report information that is confidential by law. The bill authorizes the comptroller to require a taxable entity that claims a credit to submit information, on a form provided by the comptroller, on the location of the taxable entity's research expenses and payments in Texas and any other information necessary to complete the report. The bill requires the comptroller to adopt rules and forms necessary to implement the bill's provisions.

H.B. 2390 prohibits a taxable entity from conveying, assigning, or transferring the credit to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction. The bill's provisions expire December 31, 2023, without affecting the carryforward of a credit that was accrued before the expiration date.

EFFECTIVE DATE

January 1, 2014.