BILL ANALYSIS

C.S.H.B. 3571
By: Hilderbran
Ways & Means
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties identify a number of issues relating to taxes, fees, and other amounts administered or collected by the comptroller of public accounts. These include an imbalance between the interest rate that the state charges a taxpayer for underpaid or delinquent taxes versus the interest rate paid by the state on tax refunds to a taxpayer for overpaid taxes; concerns over the time frame of certain actions relating to a tax refund hearing and the comptroller's authority to change findings of fact and conclusions of law made by the administrative law judge hearing a tax case in the tax division of the State Office of Administrative Hearings; and various issues relating to the computation and administration of the franchise tax.

The parties also make cases for the benefits resulting from certain tax exemptions and credits granted in relation to technology, such as a sales and use tax exemption for property used in research and development activities and communication services, a temporary sales and use tax exemption for property used in connection with data centers, and a franchise tax credit for qualified research expenses.

C.S.H.B. 3571 seeks to augment the state's economic competitiveness and enhance compliance with and fairness of the state's franchise tax system by addressing these issues and others and providing for certain tax exemptions and credits.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the comptroller of public accounts in SECTIONS 2.03 and 4.02 of this bill.

ANALYSIS

Article 1. Powers and Duties of Comptroller of Public Accounts Regarding Tax Administration

C.S.H.B. 3571 amends the Tax Code to set the rate of interest on a tax refund claimed after August 31, 2016, and granted for a tax report period due on or after January 1, 2011, at the rate of interest charged on a delinquent state tax. The bill sets the interest rate on tax refunds claimed and granted for certain periods as follows, if the rate is greater than the annual rate of interest earned on deposits in the state treasury during the month of December in the preceding calendar year, as determined by the comptroller of public accounts:

- for a refund claimed after August 31, 2013, and before September 1, 2014, and granted for a report period due on or after January 1, 2008, 25 percent of the interest rate charged on a delinquent state tax;
- for a refund claimed after August 31, 2014, and before September 1, 2015, and granted for a report period due on or after January 1, 2009, 50 percent of the interest rate charged on a delinquent state tax; and

- for a refund claimed after August 31, 2015, and before September 1, 2016, and granted for a report period due on or after January 1, 2010, 75 percent of the interest rate charged on a delinquent state tax.

C.S.H.B. 3571 establishes that, with respect to the administrative hearing process for a person claiming a tax refund in which the person is required to submit documentation to enable the comptroller to verify the claim, the comptroller's authority to issue a notice of demand that all evidence to support the refund claim be produced by a specified deadline applies after the period for filing a reply to a position letter in an administrative hearing has expired. The bill changes the earliest possible deadline for the production of evidence as specified in the comptroller's notice of demand from 180 days after the date the refund is claimed to 180 days after the date of the notice. The bill limits the applicability of these provisions to a claim for a refund that is pending on or after the effective date of this article, without regard to whether the taxes that are the subject of the claim were due before, on, or after that date.

C.S.H.B. 3571 amends the Government Code to remove the comptroller's conditional authority to change a fact or conclusion of law made by an administrative law judge in the tax division of the State Office of Administrative Hearings, or to vacate or modify an order issued by a judge, in a contested case hearing involving the collection, receipt, administration, and enforcement of certain taxes, fees, and other amounts. The bill instead prohibits the comptroller from changing such a fact or conclusion of law or vacating or modifying such an order.

Article 2. State and Local Sales and Use Taxes

C.S.H.B. 3571 amends the Tax Code to exempt from the sales and use tax the sale, storage, or use of depreciable tangible personal property directly used in qualified research if the property is sold, leased, or rented to, or stored or used by a person who is engaged in qualified research and will not, as a taxable entity or as a member of a combined group that is a taxable entity, claim a tax credit for research and development (R&D) activities on a franchise tax report for the period during which the sale, storage, or use occurs. The bill defines "depreciable tangible personal property" as tangible personal property that has a useful life of more than one year and is subject to depreciation under generally accepted accounting principles or the federal Internal Revenue Code.

C.S.H.B. 3571 requires the comptroller, before the beginning of each regular session of the legislature, to submit to the legislature and the governor estimates of both the total number of persons who received such exemptions from the sales and use tax and the total amount of those exemptions and an evaluation of the effect of those exemptions in combination with the R&D tax credit authorized by the bill's provisions on the amount of qualified research performed in Texas, on R&D employment in Texas, on economic activity in Texas, and on state tax revenues. The bill authorizes the comptroller to require a person who receives such an exemption to complete a form to provide the information necessary for the comptroller to make that evaluation. The bill establishes that the information provided on the form is confidential and not subject to disclosure under the state public information law. The bill requires the comptroller to provide the estimates and evaluation as part of the comptroller's biennial report to the legislature and the governor on the effect of certain tax provisions. The bill requires the comptroller to submit the initial estimates before the start of the 84th Regular Legislative Session and to submit the initial evaluation before the start of the 85th Regular Legislative Session. These provisions take effect January 1, 2014.

C.S.H.B. 3571 entitles a provider of cable television service, Internet access service, or telecommunications services to a refund of the sales and use tax imposed on the sale, lease, or rental or storage, use, or other consumption of tangible personal property if the property is sold, leased, or rented to or stored, used, or consumed by a such a provider, or a subsidiary of such a provider and is directly used or consumed by the provider or subsidiary in or during the distribution of cable television service, the provision of Internet access service, or the

transmission, conveyance, routing, or reception of telecommunications services. The bill renders property directly used or consumed in or during the provision, creation, or production of a data processing service or information service ineligible for a refund.

C.S.H.B. 3571 sets the amount of the refund for a calendar year at either the amount of the tax paid by the provider or subsidiary during the calendar year on property eligible for a refund, if the total amount of tax paid by all providers and subsidiaries that are eligible for a refund is not more than $50 million for the calendar year, or at a prorated share of $50 million, if the total amount of tax paid by all eligible providers and subsidiaries is more than $50 million for the calendar year. The bill makes the refund inapplicable to local sales and use taxes.

C.S.H.B. 3571 exempts from the sales and use tax tangible personal property that is necessary and essential to the operation of a qualified data center if the tangible personal property is purchased for installation at, incorporation into, or, in the case of personal property that is electricity, used in a qualifying data center by a qualifying owner, qualifying operator, or qualifying occupant. The bill sets out what qualifies as tangible personal property for purposes of the exemption and the equipment and tangible personal property to which the exemption does not apply. The bill authorizes a data center to be certified by the comptroller as a qualifying data center if, on or after September 1, 2013, a single qualifying occupant either contracts with a qualifying owner or qualifying operator to lease space in which the occupant will locate a data center or occupies a space that was not previously used as a data center in which the occupant will locate a data center, in the case of a qualifying occupant who also is the qualifying operator and the qualifying owner, and if the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently, creates at least 20 qualifying jobs in the county in which the data center is located, not including jobs moved from one Texas county to another Texas county, and makes or agrees to make a capital investment of at least $150 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center.

C.S.H.B. 3571 requires a data center that is eligible to be certified by the comptroller as a qualified data center to apply to the comptroller for certification as a qualifying data center and for issuance of a registration number or numbers by the comptroller and sets out requirements for the application form. The bill sets the exemption to begin on the date the data center is certified by the comptroller as a qualifying data center and to expire on the 10th anniversary or 15th anniversary of that date, depending on the amount of the capital investment made by the qualifying occupant, owner, or operator. The bill requires each person who is eligible to claim an exemption to hold a registration number issued by the comptroller and requires the registration number to be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption. The bill requires the comptroller to revoke all registration numbers issued in connection with a qualifying data center that the comptroller determines does not meet the eligibility requirements for certification and establishes the tax liability of each person who has the person's registration number revoked by the comptroller.

C.S.H.B. 3571 requires the comptroller to adopt rules consistent with and necessary to implement this tax exemption and sets out required categories of rules. The bill makes the exemption inapplicable to sales and use taxes imposed by a municipality, certain transportation-related special purpose taxing authorities, or a county.

C.S.H.B. 3571 exempts gas and electricity from the sales and use tax when sold for use directly by a data center that is certified by the comptroller as a qualifying data center in the processing, storage, and distribution of data. The bill defines "county average weekly wage," "data center," "permanent job," "qualifying job," "qualifying operator," "qualifying owner," and "qualifying occupant."

Article 3. Cigars and Tobacco Products Tax

C.S.H.B. 3571 amends the Tax Code to set the rate of the tobacco products tax imposed on chewing tobacco or smoking tobacco at 80 cents per ounce and a proportionate rate on all fractional parts of an ounce, rather than the rate of $1.22 per ounce and a proportionate rate on all fractional parts of an ounce applicable to each can or package of a tobacco product other than cigars.

Article 4. Franchise Tax

C.S.H.B. 3571 amends the Tax Code to expand the definition of "retail trade," for purposes of the franchise tax, to include activities related to an automotive repair shop, classified as Industry Group 753 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget, and rental-purchase agreement activities.

C.S.H.B. 3571 exempts the total revenue from activities in a trade that rents or leases tangible personal property as described by Industry Group 735 of the Standard Industrial Classification Manual published by the U.S. Department of Labor from provisions establishing that a taxable entity is primarily engaged in retail or wholesale trade for purposes of computing the franchise tax rate if, among other conditions, less than 50 percent of the total revenue from activities in retail or wholesale trade comes from the sale of products it produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs.

C.S.H.B. 3571 lowers from 70 percent to 65 percent of a taxable entity's total revenue from its entire business the amount used to determine the taxable entity's margin on which its franchise tax liability is based if that amount is the lesser of two alternative calculations of that margin.

C.S.H.B. 3571 requires a taxable entity to exclude from its total revenue as flow-through funds that are mandated to be distributed to other entities by a contract or subcontract for the purposes of computing the entity's taxable margin certain subcontracting payments made under a contract or subcontract entered into by the taxable entity, rather than subcontracting payments handled by the taxable entity. The bill adds to the required exclusion of such subcontracting payments those payments made by the taxable entity to provide services, labor, or materials in connection with the actual or proposed remediation of improvements on real property or the location of the boundaries of real property.

C.S.H.B. 3571 requires a taxable entity that is primarily engaged in the business of transporting aggregates, or commonly recognized construction material removed or extracted from the earth, to exclude from its total revenue subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on the taxable entity's behalf. The bill requires a taxable entity that is a landlord of commercial property to exclude from its total revenue payments, excluding expenses for interest and depreciation and other expenses, received from a tenant of the property for property taxes and any tax or excise imposed on rents. The bill requires a taxable entity that is primarily engaged in the business of transporting barite to exclude from its total revenue subcontracting payments made by the taxable entity to nonemployee agents for the performance of transportation services on the taxable entity's behalf. The bill requires a taxable entity that is primarily engaged in the business of performing landman services to exclude from its total revenue subcontracting payments made by the taxable entity to nonemployees for the performance of landman services on the taxable entity's behalf. The bill defines "landman services." The bill requires all of these entities to exclude the specified subcontracting payments made by the taxable entity or the tax payments made by a commercial landlord's tenant, as applicable, to the extent those payments are included in the sum of all reportable income on the applicable IRS forms and certain other includable revenue that is used in the computation of the entity's total revenue.

C.S.H.B. 3571 requires a taxable entity that is a physician practice to exclude from its total

revenue the actual cost paid by the taxable entity for a vaccine. The bill requires a taxable entity primarily engaged in the business of transporting commodities by waterways that does not subtract cost of goods sold in computing its taxable margin to exclude from its total revenue direct costs of providing inbound and outbound transportation services by intrastate or interstate waterways to the same extent that a taxable entity that sells in the ordinary course of business real or tangible personal property would be authorized to subtract those costs as costs of goods sold in computing its taxable margin. The bill requires a taxable entity primarily engaged in the business of providing services as an agricultural aircraft operation, as defined by federal regulation, to exclude from its total revenue the cost of labor, equipment, fuel, and materials used in providing those services. The bill requires a taxable entity that is registered as a motor carrier to exclude from its total revenue, to the extent included in the computation of the entity's total revenue, flow-through revenue derived from taxes and fees.

C.S.H.B. 3571 authorizes a taxable entity that is primarily engaged in the business of harvesting trees for wood to subtract as cost of goods sold the direct costs of acquiring or producing the timber for the wood, regardless of whether the taxable entity owns the land from which the trees are harvested, the harvested timber, or the wood resulting from the harvested timber. The bill sets out costs that are included as direct costs.

C.S.H.B. 3571 lowers the cap on the taxable margin of a combined group from 70 percent to 65 percent of the combined group's total revenue from its entire business. The bill establishes, for purposes of apportioning a taxable entity's margin to Texas, that a receipt from Internet hosting is a receipt from business done in Texas only if the customer to whom the service is provided is located in Texas.

C.S.H.B. 3571 repeals provisions relating to the effective dates for successive changes to the maximum amount of a taxable entity's total revenue that would exempt such an entity from franchise tax liability and repeals provisions relating to discounts from tax liability for small businesses with total business revenue at various ranges below $900,000.

C.S.H.B. 3571 makes a taxable entity eligible for a credit against the franchise tax for any tax report in an amount equal to five percent of the difference between the qualified research expenses, as defined by the federal Internal Revenue Code, incurred by the entity for research conducted in Texas during the period on which the report is based and 50 percent of the average amount of qualified research expenses incurred during the three tax periods preceding the period on which the report is based. The bill provides for an alternate calculation of the amount of that R&D tax credit under the following circumstances:

- If the taxable entity contracts with one or more public or private institutions of higher education for the performance of qualified research and the taxable entity incurred qualified research expenses in Texas under the contract during the period on which the report is based, the amount of the credit for that report is 6.25 percent of the difference between all qualified research expenses incurred during the period on which the report is based and 50 percent of the average amount of all qualified research expenses incurred during the three tax periods preceding the period on which the report is based.
- If the taxable entity has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, the amount of the credit for that report is 2.5 percent of the qualified research expenses incurred during that period.
- If the taxable entity contracts with one or more public or private institutions of higher education for the performance of qualified research and the taxable entity incurred qualified research expenses in Texas under the contract during the period on which the report is based but has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, the amount of the credit is 3.125 percent of all qualified research expenses incurred during that period.

C.S.H.B. 3571 makes a taxable entity ineligible for a franchise tax credit on a tax report for qualified research expenses incurred during the period on which the report is based if the entity, or a member of the combined group if the taxable entity is a combined group, received a sales and use tax exemption for the sale, storage, or use of depreciable tangible personal property used directly in qualified research under the bill's provisions during that period but establishes that such ineligibility does not affect the taxable entity's eligibility to claim a carryforward of unused credit on that report.

C.S.H.B. 3571 requires the determination of which research expenses are qualified research expenses for purposes of computing the average amount of those expenses to be made in the same manner as such a determination for purposes of computing the expenses incurred during the period on which a tax report is based. The bill exempts from this requirement a credit to which a taxable entity was entitled under prior law relating to a credit for R&D activities as those provisions existed before January 1, 2008. The bill authorizes the comptroller to adopt rules for determining which research expenses are qualified research expenses to prevent disparities in those determinations that may result from the taxable entity using different accounting methods for the period on which the report is based, as compared to any preceding tax periods used in determining the average amount of qualified research expenses.

C.S.H.B. 3571 sets out provisions relating to the attribution of a taxable entity's qualified research expenses if the taxable entity acquires a controlling interest in another taxable entity or in a separate unit of another taxable entity during a tax period with respect to which the acquiring taxable entity claims a franchise tax credit and sets out provisions relating to the transferring or selling entity's eligibility to claim a credit for qualified research expenses for a period during which the transfer or sale occurs.

C.S.H.B. 3571 requires a franchise tax credit for qualified research expenses incurred by a member of a combined group to be claimed on the combined report required for the group and establishes that the combined group is the taxable entity for purposes of the R&D tax credit. The bill authorizes an upper tier entity that includes the total revenue of a lower tier entity for purposes of computing its taxable margin to claim such a credit for qualified research expenses incurred by the lower tier entity to the extent of the upper tier entity's ownership interest in the lower tier entity.

C.S.H.B. 3571 places the burden of establishing entitlement to and the value of the credit on the taxable entity and limits the total credit claimed for a report, including the amount of any carryforward credit, to 50 percent of the amount of franchise tax due for the report before any other applicable tax credits. The bill authorizes a taxable entity that is eligible for a credit that exceeds the limit to carry the unused credit forward until all of the credit has been claimed.

C.S.H.B. 3571 prohibits a taxable entity from conveying, assigning, or transferring the franchise tax credit to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction and requires a taxable entity to apply for the credit on or with the report for the period for which the credit is claimed. The bill requires the comptroller to adopt rules and forms necessary to implement the R&D tax credit.

C.S.H.B. 3571 requires the comptroller, before the beginning of each regular session of the legislature, to submit to the legislature and the governor estimates of the total number of taxable entities that applied credits for the applicable R&D activities against the franchise tax, the total amount of those credits, and the total amount of unused credits carried forward, with the initial estimates to be submitted before the start of the 84th Regular Legislative Session in January 2015. The bill authorizes the comptroller to require a taxable entity that claims a franchise tax credit for R&D activities to complete a form to provide the information necessary for the comptroller to make the evaluations relating to the effect of the sales and use tax exemptions for depreciable tangible personal property used directly in qualified research in combination with the R&D franchise tax credit. The bill specifies that the information provided on the form is

confidential and not subject to disclosure under the state public information law. The bill requires the comptroller to provide the estimates as part of the comptroller's biennial report to the legislature and the governor on the effect of certain tax provisions.

C.S.H.B. 3571 amends Section 18, Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006, to authorize a corporation that has certain unused and unexpired franchise tax credits for certain job creation activities or for certain capital investments that were carried forward under repealed provisions governing those credits to transfer those credits to another Texas taxpayer. The bill clarifies that such a transfer includes a sale. The bill requires the corporation, in order to be eligible to transfer the credits, to obtain a certificate of transfer of credit from the comptroller for the amount of the credits to be transferred and, not later than the 30th day after the date of the transfer, to submit to the comptroller a notice of the transfer in a form prescribed by the comptroller. The bill requires the notice to be accompanied by a copy of the certificate of transfer issued by the comptroller and to specify the number on the certificate of transfer; the amount of the corporation's unused, unexpired credits preceding the transfer; the date of the transfer; the amount of credits transferred; the tax identification numbers of the corporation and the taxpayer to which the credits were transferred; the corporation's remaining amount of unused, unexpired credits after the transfer; and any other information the comptroller requires.

C.S.H.B. 3571 limits the transfer of a credit to a credit that was first reported on a report originally due before January 1, 2008, and excludes from such transfer credits for enterprise projects for certain capital investments and credits created under a written agreement between a taxpayer and the Texas Department of Economic Development or its successor entered into before June 1, 2006. The bill establishes that the transferee of a credit obtains the credit subject to the same rights and privileges as the transferor and that the transfer of a credit does not extend or lessen the period during which the credit may be claimed. If a corporation transfers a credit that the corporation was not entitled to claim at the time of the transfer, the bill authorizes the taxpayer to which the credit was transferred to pursue any remedy authorized by law against the corporation, but not against the comptroller or the state, and prohibits the comptroller from allowing the taxpayer to which the credit was transferred to apply the credit on a report or, alternatively, requires the comptroller to recover from the taxpayer the amount of the credit the taxpayer claims on a report using any means authorized by law.

Repealed Law

C.S.H.B. 3571 repeals Section 2003.101(f), Government Code.

Effective January 1, 2014, C.S.H.B. 3571 repeals the following provisions of the Tax Code:

- Section 171.0021
- Section 171.1016(d)

Effective January 1, 2014, C.S.H.B. 3571 repeals the following provisions:

- Section 1(c), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011
- Section 2, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (d), Section 171.002, Tax Code
- Section 3, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (a), Section 171.0021, Tax Code

EFFECTIVE DATE

Except as otherwise provided, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3571 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 111.002(b), Tax Code, is amended to read as follows: (b) A person who does not comply with a rule made under this section forfeits to the state an amount of not less than $50 [~~$25~~] nor more than $500. Each day on which a failure to comply occurs or continues is a separate violation.	No equivalent provision.
SECTION 2. Section 111.004(d), Tax Code, is amended to read as follows: (d) The comptroller's authority to examine books, records, and papers under this chapter extends to all books, records, papers, and other objects, regardless of electronic or physical form, which the comptroller determines are necessary for conducting a complete examination under this title.	No equivalent provision.
SECTION 3. Section 151.319(f), Tax Code, is amended to read as follows: (f) In this section, "newspaper" means a publication that is printed on newsprint, the average sales price of which for each copy over a 30-day period does not exceed $3.00 [~~$1.50~~], and that is printed and distributed at a daily, weekly, or other short interval for the dissemination of news of a general character and of a general interest. "Newspaper" does not include a magazine, handbill, circular, flyer, sales catalog, or similar printed item unless the printed item is printed for distribution as a part of a newspaper and is actually distributed as a part of a newspaper. For the purposes of this section, an advertisement is news of a general character and of a general interest. Notwithstanding any other provision of this subsection, "newspaper" includes: (1) a publication containing articles and	No equivalent provision.

essays of general interest by various writers and advertisements that is produced for the operator of a licensed and certified carrier of persons and distributed by the operator to its customers during their travel on the carrier; and

(2) a publication for the dissemination of news of a general character and of a general interest that is printed on newsprint and distributed to the general public free of charge at a daily, weekly, or other short interval.

SECTION 4. Section 151.333(b), Tax Code, is amended to read as follows:

(b) This section applies only to the following energy-efficient products:

(1) an air conditioner the sales price of which does not exceed $6,000;

(2) a clothes washer;

(3) a ceiling fan;

(4) a dehumidifier;

(5) a dishwasher;

(6) an incandescent, [~~or~~] fluorescent, or light-emitting diode lightbulb;

(7) a programmable thermostat; and

(8) a refrigerator the sales price of which does not exceed $2,500 [~~$2,000~~].

No equivalent provision.

SECTION 5. Section 152.022, Tax Code, is amended by adding Subsection (c) to read as follows:

(c) The tax imposed by this section does not apply to a motor vehicle purchased at retail sale in a foreign country and used on the public highways of this state by an active duty member of the United States armed forces residing in this state on military orders.

No equivalent provision.

SECTION 6. Section 152.023, Tax Code, is amended by adding Subsection (d) to read as follows:

(d) The tax imposed by this section does not apply to a motor vehicle described by Subsection (a) that:

(1) is brought into this state by an active duty member of the United States armed forces residing in this state on military orders; and

(2) was purchased, leased, or otherwise acquired in a foreign country by the active duty member while serving on active duty.

No equivalent provision.

SECTION 7. Section 156.101, Tax Code, is amended to read as follows:

Sec. 156.101. EXCEPTION--PERMANENT RESIDENT. This chapter does not impose a tax on an individual [~~a person~~] who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period.

No equivalent provision.

No equivalent provision.

ARTICLE 1. POWERS AND DUTIES OF COMPTROLLER OF PUBLIC ACCOUNTS REGARDING TAX ADMINISTRATION

SECTION 1.01. INTEREST ON REFUND. Section 111.064, Tax Code, is amended by amending Subsections (c) and (c-1) and adding Subsections (c-2), (c-3), and (c-4) to read as follows:

(c) The rate of interest on [~~For~~] a refund is the rate set in Section 111.060 if the refund is claimed:

(1) [~~claimed~~] before September 1, 2005, and granted for a report period due on or after January 1, 2000; or

(2) after August 31, 2016, and granted for a report period due on or after January 1, 2011[~~, the rate of interest is the rate set in Section 111.060~~].

(c-1) For a refund claimed after August 31, 2013, and before September 1, 2014, and granted for a report period due on or after January 1, 2008, the rate of interest is the greater of:

(1) the annual rate of interest earned on deposits in the state treasury during the month of December in the preceding calendar year, as determined by the comptroller; or

(2) 25 percent of the rate set in Section 111.060.

(c-2) For a refund claimed after August 31, 2014, and before September 1, 2015, and granted for a report period due on or after January 1, 2009, the rate of interest is the greater of:

(1) the annual rate of interest earned on deposits in the state treasury during the month of December in the preceding calendar year, as determined by the comptroller; or

(2) 50 percent of the rate set in Section 111.060.

(c-3) For a refund claimed after August 31, 2015, and before September 1, 2016, and granted for a report period due on or after January 1, 2010, the rate of interest is the greater of:

(1) the annual rate of interest earned on deposits in the state treasury during the month of December in the preceding calendar year, as determined by the comptroller; or

(2) 75 percent of the rate set in Section 111.060.

(c-4) A refund, without regard to the date claimed, for a report period due before January 1, 2000, does not accrue interest.

No equivalent provision.

SECTION 1.02. TAX REFUND: HEARING. (a) Section 111.105(e), Tax Code, is amended to read as follows:

(e) During the administrative hearing process, a person claiming a refund under Section 111.104 must submit documentation to enable the comptroller to verify the claim for refund. After the expiration of the period in which a person may timely file a reply to a position letter in an administrative hearing, the [~~The~~] comptroller may issue a notice of demand that all evidence to support the claim for refund must be produced before the expiration of a specified date in the notice. The specified date in the notice may not be earlier than 180 days after the date of the notice [~~refund is claimed~~]. The comptroller may not consider evidence produced after the specified date in the notice in an administrative hearing. The limitation provided by this subsection does not apply to a judicial proceeding filed in accordance with Chapter 112.

(b) Section 111.105(e), Tax Code, as amended by this section, applies only to a claim for a refund that is pending on or after the effective date of this article, without regard to whether the taxes that are the subject of the claim were due before, on, or after that date.

No equivalent provision.

SECTION 1.03. STATE OFFICE OF ADMINISTRATIVE HEARINGS. Section 2003.101(e), Government Code, is amended to read as follows:

(e) Notwithstanding Section 2001.058, the comptroller may not change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge [~~only if the comptroller:~~

[~~(1) determines that the administrative law judge:~~

[~~(A) did not properly apply or interpret applicable law, then existing comptroller rules or policies, or prior administrative decisions; or~~

[~~(B) issued a finding of fact that is not supported by a preponderance of the evidence;~~

~~or~~

[~~(2) determines that a comptroller policy or a prior administrative decision on which the administrative law judge relied is incorrect~~].

No equivalent provision.

SECTION 1.04. REPEALER. Section 2003.101(f), Government Code, is repealed.

No equivalent provision.

SECTION 1.05. EFFECTIVE DATE. This article takes effect September 1, 2013.

No equivalent provision.

ARTICLE 2. STATE AND LOCAL SALES AND USE TAXES

SECTION 2.01. SALES AND USE TAX EXEMPTION: RESEARCH AND DEVELOPMENT. (a) Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3182 to read as follows:

Sec. 151.3182. CERTAIN PROPERTY USED IN RESEARCH AND DEVELOPMENT ACTIVITIES; REPORTING OF ESTIMATES AND EVALUATION. (a) In this section:

(1) "Depreciable tangible personal property" means tangible personal property that:

(A) has a useful life that exceeds one year; and

(B) is subject to depreciation under:

(i) generally accepted accounting principles; or

(ii) Section 167 or 168, Internal Revenue Code.

(2) "Internal Revenue Code" has the meaning assigned by Section 171.651.

(3) "Qualified research" has the meaning assigned by Section 41, Internal Revenue Code.

(b) The sale, storage, or use of depreciable tangible personal property directly used in qualified research is exempted from the taxes imposed by this chapter if the property is sold, leased, or rented to, or stored or used by, a person who:

(1) is engaged in qualified research; and

(2) will not, as a taxable entity as defined by Section 171.0002 or as a member of a combined group that is a taxable entity, claim a credit under Subchapter M, Chapter 171, on a franchise tax report for the period during which the sale, storage, or use occurs.

(c) Before the beginning of each regular session of the legislature, the comptroller shall submit to the legislature and the governor:

(1) an estimate of the total number of persons who received exemptions under this section and an estimate of the total amount of those exemptions; and

(2) an evaluation of the effect of the exemption under this section, in combination with the

credit authorized by Subchapter M, Chapter 171, on:

(A) the amount of qualified research performed in this state;

(B) employment in research and development in this state;

(C) economic activity in this state; and

(D) state tax revenues.

(d) The comptroller may require a person who receives an exemption under this section to complete a form to provide the information necessary for the comptroller to make the evaluation required by Subsection (c)(2). The information provided on the form is confidential and not subject to disclosure under Chapter 552, Government Code.

(e) The comptroller shall provide the estimates and evaluation required by Subsection (c) as part of the report required by Section 403.014, Government Code.

(b) The comptroller of public accounts shall submit the initial estimates required by Section 151.3182(c)(1), Tax Code, as added by this section, before the 84th Regular Legislative Session commences in January 2015. Notwithstanding Section 151.3182(c)(2), Tax Code, as added by this section, the comptroller is not required to submit the initial evaluation required by that section until January 2017, but shall submit that evaluation before the 85th Regular Legislative Session commences.

(c) Section 151.3182, Tax Code, as added by this section, does not affect tax liability accruing before the effective date of this section. That liability continues in effect as if this section had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

(d) This section takes effect January 1, 2014.

No equivalent provision.

SECTION 2.02. SALES AND USE TAX EXEMPTION: COMMUNICATION SERVICES. (a) Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3186 to read as follows:

Sec. 151.3186. PROPERTY USED IN CABLE TELEVISION, INTERNET ACCESS, OR TELECOMMUNICATIONS SERVICES. (a) In this section, "provider" means a provider of cable television service, Internet access service, or telecommunications services.

(b) A provider is entitled to a refund of the tax imposed by this chapter on the sale, lease, or

rental or storage, use, or other consumption of tangible personal property if:

(1) the property is sold, leased, or rented to or stored, used, or consumed by a provider or a subsidiary of a provider; and

(2) the property is directly used or consumed by the provider or subsidiary described by Subdivision (1) in or during:

(A) the distribution of cable television service;

(B) the provision of Internet access service; or

(C) the transmission, conveyance, routing, or reception of telecommunications services.

(c) Notwithstanding Subsection (b), property directly used or consumed in or during the provision, creation, or production of a data processing service or information service is not eligible for a refund under this section.

(d) The amount of the refund to which a provider or subsidiary, as described by Subsection (b)(1), is entitled under this section for a calendar year is equal to:

(1) the amount of the tax paid by the provider or subsidiary during the calendar year on property eligible for a refund under this section, if the total amount of tax paid by all providers and subsidiaries described by Subsection (b)(1) that are eligible for a refund under this section is not more than $50 million for the calendar year; or

(2) a pro rata share of $50 million, if the total amount of tax paid by all providers and subsidiaries described by Subsection (b)(1) that are eligible for a refund under this section is more than $50 million for the calendar year.

(e) The refund provided by this section does not apply to the taxes imposed under Subtitle C, Title 3.

(b) The change in law made by this section does not affect tax liability accruing before the effective date of this article. That liability continues in effect as if this section had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

No equivalent provision.

SECTION 2.03. TEMPORARY SALES AND USE TAX EXEMPTION: DATA CENTERS. (a) Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.359 to read as follows:

Sec. 151.359. PROPERTY USED IN CERTAIN DATA CENTERS; TEMPORARY EXEMPTION. (a) In this section:

(1) "County average weekly wage" means the average weekly wage in a county for all jobs

during the most recent four quarterly periods for which data is available, as computed by the Texas Workforce Commission, at the time a data center creates a job used to qualify under this section.

(2) "Data center" means at least 100,000 square feet of space in a single building or portion of a single building, which space:

(A) is located in this state;

(B) is specifically constructed or refurbished and actually used primarily to house servers and related equipment and support staff for the processing, storage, and distribution of data;

(C) is used by a single qualifying occupant for the processing, storage, and distribution of data;

(D) is not used primarily by a telecommunications provider to place tangible personal property that is used to deliver telecommunications services; and

(E) has an uninterruptible power source, a generator backup power, a sophisticated fire suppression and prevention system, and enhanced physical security that includes restricted access, video surveillance, and electronic systems.

(3) "Permanent job" means an employment position that will exist for at least five years after the date the job is created.

(4) "Qualifying data center" means a data center that meets the qualifications prescribed by Subsection (d).

(5) "Qualifying job" means a full-time, permanent job that pays at least 120 percent of the county average weekly wage in the county in which the job is based.

(6) "Qualifying operator" means a person who controls access to a qualifying data center, regardless of whether that person owns each item of tangible personal property located at the qualifying data center. A qualifying operator may also be the qualifying owner.

(7) "Qualifying owner" means a person who owns the building in which a qualifying data center is located. A qualifying owner may also be the qualifying operator.

(8) "Qualifying occupant" means a person who:

(A) contracts with a qualifying owner or qualifying operator to place, or cause to be placed, and to use tangible personal property at the qualifying data center; or

(B) in the case of a qualifying occupant who is also the qualifying owner and the qualifying operator, places or causes to be placed, and uses tangible personal property at the qualifying data center.

(b) Except as otherwise provided by this section, tangible personal property that is necessary and essential to the operation of a qualified data center is exempted from the taxes imposed by this chapter if the tangible personal property is purchased for installation at or incorporation into, or in the case of Subdivision (1), used in a qualifying data center by a qualifying owner, qualifying operator, or qualifying occupant, and the tangible personal property is:

(1) electricity;

(2) an electrical system;

(3) a cooling system;

(4) an emergency generator;

(5) hardware or a distributed mainframe computer or server;

(6) a data storage device;

(7) network connectivity equipment;

(8) a rack, cabinet, and raised floor system;

(9) a peripheral component or system;

(10) software;

(11) a mechanical, electrical, or plumbing system that is necessary to operate any tangible personal property described by Subdivisions (2)-(10);

(12) any other item of equipment or system necessary to operate any tangible personal property described by Subdivisions (2)-(11), including a fixture; or

(13) a component part of any tangible personal property described by Subdivisions (2)-(10).

(c) The exemption provided by this section does not apply to:

(1) office equipment or supplies;

(2) maintenance or janitorial supplies or equipment;

(3) equipment or supplies used primarily in sales activities or transportation activities;

(4) tangible personal property on which the purchaser has received or has a pending application for a refund under Section 151.429;

(5) tangible personal property not otherwise exempted under Subsection (b) that is incorporated into real estate or into an improvement of real estate;

(6) tangible personal property that is rented or leased for a term of one year or less; or

(7) notwithstanding Section 151.3111, a taxable service that is performed on tangible personal property exempted under this section.

(d) A data center may be certified by the comptroller as a qualifying data center for purposes of this section if, on or after September 1, 2013:

(1) a single qualifying occupant:

(A) contracts with a qualifying owner or qualifying operator to lease space in which the qualifying occupant will locate a data center; or

(B) occupies a space that was not previously used as a data center in which the qualifying occupant will locate a data center, in the case of a qualifying occupant who is also the qualifying operator and the qualifying owner; and

(2) the qualifying owner, qualifying operator, or qualifying occupant, jointly or independently:

(A) creates at least 20 qualifying jobs in the county in which the data center is located, not including jobs moved from one county in this state to another county in this state; and

(B) makes or agrees to make a capital investment, on or after September 1, 2013, of at least $150 million in that particular data center over a five-year period beginning on the date the data center is certified by the comptroller as a qualifying data center.

(e) A data center that is eligible under Subsection (d) to be certified by the comptroller as a qualified data center shall apply to the comptroller for certification as a qualifying data center and for issuance of a registration number or numbers by the comptroller. The application must be made on a form prescribed by the comptroller and include the information required by the comptroller. The application must include the name and contact information for the qualifying occupant, and, if applicable, the name and contact information for the qualifying owner and the qualifying operator who will claim the exemption authorized under this section. The application form must include a section for the applicant to certify that the capital investment required by Subsection (d)(2)(B) will be met independently or jointly by the qualifying occupant, qualifying owner, or qualifying operator within the time period prescribed by Subsection (d)(2)(B).

(f) The exemption provided by this section begins on the date the data center is certified by the comptroller as a qualifying data center and expires:

(1) on the 10th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator independently or jointly makes a capital investment of at least $150 million but less than $200 million as provided by Subsection (d)(2)(B); or

(2) on the 15th anniversary of that date, if the qualifying occupant, qualifying owner, or qualifying operator independently or jointly

makes a capital investment of $200 million or more as provided by Subsection (d)(2)(B).

(g) Each person who is eligible to claim an exemption authorized by this section must hold a registration number issued by the comptroller. The registration number must be stated on the exemption certificate provided by the purchaser to the seller of tangible personal property eligible for the exemption.

(h) The comptroller shall revoke all registration numbers issued in connection with a qualifying data center that the comptroller determines does not meet the requirements prescribed by Subsection (d). Each person who has the person's registration number revoked by the comptroller is liable for taxes, including penalty and interest from the date of purchase, imposed under this chapter on purchases for which the person claimed an exemption under this section, regardless of whether the purchase occurred before the date the registration number was revoked.

(i) The comptroller shall adopt rules consistent with and necessary to implement this section, including rules relating to:

(1) a qualifying data center, qualifying owner, qualifying operator, and qualifying occupant;

(2) issuance and revocation of a registration number required under this section; and

(3) reporting and other procedures necessary to ensure that a qualifying data center, qualifying owner, qualifying operator, and qualifying occupant comply with this section and remain entitled to the exemption authorized by this section.

(j) The exemption in this section does not apply to the taxes imposed under Chapters 321, 322, or 323.

(b) Sections 151.317(a), (b), and (d), Tax Code, are amended to read as follows:

(a) Subject to Sections 151.359 and [~~Section~~] 151.1551 and Subsection (d) of this section, gas and electricity are exempted from the taxes imposed by this chapter when sold for:

(1) residential use;

(2) use in powering equipment exempt under Section 151.318 or 151.3185 by a person processing tangible personal property for sale as tangible personal property, other than preparation or storage of prepared food described by Section 151.314(c-2);

(3) use in lighting, cooling, and heating in the manufacturing area during the actual manufacturing or processing of tangible personal property for sale as tangible personal

property, other than preparation or storage of prepared food described by Section 151.314(c-2);

(4) use directly in exploring for, producing, or transporting, a material extracted from the earth;

(5) use in agriculture, including dairy or poultry operations and pumping for farm or ranch irrigation;

(6) use directly in electrical processes, such as electroplating, electrolysis, and cathodic protection;

(7) use directly in the off-wing processing, overhaul, or repair of a jet turbine engine or its parts for a certificated or licensed carrier of persons or property;

(8) use directly in providing, under contracts with or on behalf of the United States government or foreign governments, defense or national security-related electronics, classified intelligence data processing and handling systems, or defense-related platform modifications or upgrades;

(9) use directly by a data center that is certified by the comptroller as a qualifying data center under Section 151.359 in the processing, storage, and distribution of data;

(10) a direct or indirect use, consumption, or loss of electricity by an electric utility engaged in the purchase of electricity for resale; or

(11) [~~(10)~~] use in timber operations, including pumping for irrigation of timberland.

(b) The sale, production, distribution, lease, or rental of, and the use, storage, or other consumption in this state of, gas and electricity sold for the uses listed in Subsection (a), are exempted from the taxes imposed by a municipality under Chapter 321 except as provided by Sections 151.359(j) and [~~Section~~] 321.105.

(d) To qualify for the exemptions in Subsections (a)(2)-(9) [~~(8)~~], the gas or electricity must be sold to the person using the gas or electricity in the exempt manner. For purposes of this subsection, the use of gas or electricity in an exempt manner by an independent contractor engaged by the purchaser of the gas or electricity to perform one or more of the exempt activities identified in Subsections (a)(2)-(9) [~~(8)~~] is considered use by the purchaser of the gas or electricity.

(c) Section 321.208, Tax Code, is amended to read as follows:

Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions provided by

	Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) and [~~Section~~] 151.317(b). (d) Section 323.207, Tax Code, is amended to read as follows: Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions provided by Subchapter H, Chapter 151, apply to the taxes authorized by this chapter, except as provided by Sections 151.359(j) and [~~Section~~] 151.317(b). (e) The change in law made by this section does not affect tax liability accruing before the effective date of this article. That liability continues in effect as if this section had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.
No equivalent provision.	SECTION 2.04. EFFECTIVE DATE. Except as otherwise provided by this article, this article takes effect September 1, 2013.
No equivalent provision.	ARTICLE 3. CIGARS AND TOBACCO PRODUCTS TAX SECTION 3.01. RATE OF TAX. (a) Section 155.0211(b), Tax Code, is amended to read as follows: (b) Except as provided by Subsection (c), the tax rate for: (1) each can or package of a tobacco product other than cigars, chewing tobacco, or smoking tobacco is $1.22 per ounce and a proportionate rate on all fractional parts of an ounce; and (2) chewing tobacco or smoking tobacco is 80 cents per ounce and a proportionate rate on all fractional parts of an ounce. (b) The change in law made by this section to Section 155.0211, Tax Code, does not affect tax liability accruing before the effective date of this article. That liability continues in effect as if this section had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.
No equivalent provision.	SECTION 3.02. EFFECTIVE DATE. This article takes effect September 1, 2013. ARTICLE 4. FRANCHISE TAX

SECTION 8. Section 171.0001(12), Tax Code, is amended to read as follows:

(12) "Retail trade" means:
(A) the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; [~~and~~]
(B) apparel rental activities classified as Industry 5999 or 7299 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; and

(C) rental-purchase agreement activities regulated by Chapter 92, Business & Commerce Code.

No equivalent provision.

SECTION 4.01. COMPUTATION OF AND EXCLUSIONS FROM FRANCHISE TAX. (a) Section 171.0001(12), Tax Code, is amended to read as follows:
(12) "Retail trade" means:
(A) the activities described in Division G of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; [~~and~~]

(B) apparel rental activities classified as Industry 5999 or 7299 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget;

(C) the activities classified as Industry Group 753 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget; and
(D) rental-purchase agreement activities regulated by Chapter 92, Business & Commerce Code.

(b) Section 171.002, Tax Code, is amended by adding Subsection (c-2) to read as follows:
(c-2) Subsection (c)(2) does not apply to total revenue from activities in a trade that rents or leases tangible personal property as described by Industry Group 735 of the Standard Industrial Classification Manual published by the United States Department of Labor.
(c) Section 171.006(b), Tax Code, is amended to read as follows:
(b) Beginning in 2010, on January 1 of each even-numbered year, the amounts prescribed by Sections 171.002(d)(2) [~~, 171.0021,~~] and 171.1013(c) are increased or decreased by an amount equal to the amount prescribed by those sections on December 31 of the preceding year multiplied by the percentage increase or decrease during the preceding state fiscal biennium in the consumer price index and rounded to the nearest $10,000.
(d) Section 171.101(a), Tax Code, is amended to read as follows:
(a) The taxable margin of a taxable entity is computed by:
(1) determining the taxable entity's margin, which is the lesser of:
(A) 65 percent [~~70 percent~~] of the taxable entity's total revenue from its entire business, as determined under Section 171.1011; or
(B) an amount computed by:
(i) determining the taxable entity's total revenue from its entire business, under Section

171.1011;
(ii) subtracting, at the election of the taxable entity, either:
(a) cost of goods sold, as determined under Section 171.1012; or
(b) compensation, as determined under Section 171.1013; and
(iii) subtracting, in addition to any subtractions made under Subparagraph (ii)(a) or (b), compensation, as determined under Section 171.1013, paid to an individual during the period the individual is serving on active duty as a member of the armed forces of the United States if the individual is a resident of this state at the time the individual is ordered to active duty and the cost of training a replacement for the individual;
(2) apportioning the taxable entity's margin to this state as provided by Section 171.106 to determine the taxable entity's apportioned margin; and
(3) subtracting from the amount computed under Subdivision (2) any other allowable deductions to determine the taxable entity's taxable margin.

SECTION 9. Section 171.1011, Tax Code, is amended by amending Subsection (g) and adding Subsection (g-8) to read as follows:

(e) Section 171.1011, Tax Code, is amended by amending Subsection (g) and adding Subsections (g-8), (g-9), (g-10), (g-11), (u), (v), (w-1), and (x) to read as follows:

(g) A taxable entity shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), only the following flow-through funds that are mandated by contract to be distributed to other entities:

(1) sales commissions to nonemployees, including split-fee real estate commissions;

(2) the tax basis as determined under the Internal Revenue Code of securities underwritten; [~~and~~]

(3) subcontracting payments handled by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, or repair of improvements on real property or the location of the boundaries of real property; and

(4) subcontracting payments made to individuals for services related to the acquisition or management of petroleum interests or the performance of title or contract functions related to the exploration, exploitation, or disposition

(g) A taxable entity shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), only the following flow-through funds that are mandated by contract or subcontract to be distributed to other entities:

(1) sales commissions to nonemployees, including split-fee real estate commissions;

(2) the tax basis as determined under the Internal Revenue Code of securities underwritten; and

(3) subcontracting payments made under a contract or subcontract entered into [~~handled~~] by the taxable entity to provide services, labor, or materials in connection with the actual or proposed design, construction, remodeling, remediation, or repair of improvements on real property or the location of the boundaries of real property.

of petroleum or mineral interests. (g-8) Subsection (g)(3) includes subcontracting payments handled by the taxable entity for the hauling or installing of base, sand, gravel, or aggregate in connection with the construction, remodeling, or repair of improvements on real property.	(g-8) A taxable entity that is primarily engaged in the business of transporting aggregates shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of delivery services on behalf of the taxable entity. In this subsection, "aggregates" means any commonly recognized construction material removed or extracted from the earth, including dimension stone, crushed and broken limestone, crushed and broken granite, other crushed and broken stone, construction sand and gravel, industrial sand, dirt, soil, cementitious material, and caliche.
No equivalent provision.	(g-9) A taxable entity that is a landlord of commercial property shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), payments, excluding expenses for interest and depreciation and other expenses not listed in this subsection, received from a tenant of the property for ad valorem taxes and any tax or excise imposed on rents.
No equivalent provision.	(g-10) A taxable entity that is primarily engaged in the business of transporting barite shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployee agents for the performance of transportation services on behalf of the taxable entity. For purposes of this subsection, "barite" means barium sulfate (BaSO4), a mineral used as a weighing agent in oil and gas exploration.
No equivalent provision.	(g-11) A taxable entity that is primarily engaged in the business of performing landman services shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), subcontracting payments made by the taxable entity to nonemployees for the performance of landman services on behalf of the taxable entity. In this subsection, "landman services" means: (1) performing title searches for the purpose of

	determining ownership of or curing title defects related to oil, gas, or other related mineral or petroleum interests; (2) negotiating the acquisition or divestiture of mineral rights for the purpose of the exploration, development, or production of oil, gas, or other related mineral or petroleum interests; or (3) negotiating or managing the negotiation of contracts or other agreements related to the ownership of mineral interests for the exploration, exploitation, disposition, development, or production of oil, gas, or other related mineral or petroleum interests.
No equivalent provision.	(u) A taxable entity that is a physician practice shall exclude from its total revenue the actual cost paid by the taxable entity for a vaccine.
No equivalent provision.	(v) A taxable entity primarily engaged in the business of transporting commodities by waterways that does not subtract cost of goods sold in computing its taxable margin shall exclude from its total revenue direct costs of providing inbound and outbound transportation services by intrastate or interstate waterways to the same extent that a taxable entity that sells in the ordinary course of business real or tangible personal property would be authorized by Section 171.1012 to subtract those costs as costs of goods sold in computing its taxable margin.
No equivalent provision.	(w-1) A taxable entity primarily engaged in the business of providing services as an agricultural aircraft operation, as defined by 14 C.F.R. Section 137.3, shall exclude from its total revenue the cost of labor, equipment, fuel, and materials used in providing those services.
No equivalent provision.	(x) A taxable entity that is registered as a motor carrier under Chapter 643, Transportation Code, shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3), flow-through revenue derived from taxes and fees.
No equivalent provision.	(f) Section 171.1011(p), Tax Code, is amended by amending Subdivision (4-a) and adding Subdivisions (4-b) and (8) to read as follows: (4-a) "Physician practice" means an entity that: (A) is owned entirely by one or more individuals licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code; and

	(B) offers services, the provision of which is considered practicing medicine as defined by Section 151.002(a)(13), Occupations Code.
No equivalent provision.	(4-b) "Pro bono services" means the direct provision of legal services to the poor, without an expectation of compensation.
No equivalent provision.	(8) "Vaccine" means a preparation or suspension of dead, live attenuated, or live fully virulent viruses or bacteria, or of antigenic proteins derived from them, used to prevent, ameliorate, or treat an infectious disease.
No equivalent provision.	(g) Section 171.1012, Tax Code, is amended by adding Subsection (q) to read as follows: (q) Notwithstanding Subsection (i) or any other provision of this section, a taxable entity that is primarily engaged in the business of harvesting trees for wood may subtract as cost of goods sold the direct costs of acquiring or producing the timber for the wood that are specified by this subsection or otherwise described by this section, regardless of whether the taxable entity owns the land from which the trees are harvested, the harvested timber, or the wood resulting from the harvested timber. For purposes of this subsection, direct costs include costs of: (1) moving harvesting equipment; (2) severing timber; (3) transporting timber to and from a mill or designated delivery point; (4) obtaining, using, storing, or maintaining equipment necessary for an activity described by Subdivision (1), (2), or (3); and (5) other supplies, labor, freight, and fuel necessary for an activity described by Subdivision (1), (2), or (3).
No equivalent provision.	(h) Section 171.1014(d), Tax Code, is amended to read as follows: (d) For purposes of Section 171.101, a combined group shall make an election to subtract either cost of goods sold or compensation that applies to all of its members. Regardless of the election, the taxable margin of the combined group may not exceed 65 percent [~~70 percent~~] of the combined group's total revenue from its entire business, as provided by Section 171.101(a)(1)(A).
No equivalent provision.	(i) Section 171.106, Tax Code, is amended by adding Subsection (g) to read as follows: (g) A receipt from Internet hosting as defined

	by Section 151.108(a) is a receipt from business done in this state only if the customer to whom the service is provided is located in this state.
No equivalent provision.	(j) Sections 171.0021 and 171.1016(d), Tax Code, are repealed.
No equivalent provision.	(k) Section 1(c), Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.01, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, is repealed. (l) Section 2, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.02, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (d), Section 171.002, Tax Code, is repealed. (m) Section 3, Chapter 286 (H.B. 4765), Acts of the 81st Legislature, Regular Session, 2009, as amended by Section 37.03, Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called Session, 2011, and which amended former Subsection (a), Section 171.0021, Tax Code, is repealed. (n) This section applies only to a report originally due on or after the effective date of this section.
SECTION 10. Section 181.002, Tax Code, is amended to read as follows: Sec. 181.002. RATE OF TAX. The rate of the tax imposed by this chapter is <u>$0.035</u> [~~$0.0275~~] for each 100 pounds or fraction of 100 pounds of taxable cement.	No equivalent provision.
SECTION 11. Section 191.086, Tax Code, is amended to read as follows: Sec. 191.086. PENALTY. A person who violates this subchapter forfeits and shall pay to the state a penalty of not less than <u>$50</u> [~~$25~~] nor more than $500. A separate offense is committed each day on which a violation occurs.	No equivalent provision.
SECTION 12. Section 203.003, Tax Code, is amended to read as follows: Sec. 203.003. RATE OF TAX. The tax imposed by this chapter is at the rate of <u>$1</u> [~~$1.03~~] a long ton or fraction of a long ton of sulphur produced in this state.	No equivalent provision.

SECTION 13. Section 321.209(b), Tax Code, is amended to read as follows:
(b) The taxpayer must give the comptroller notice of the contract or bid on which an exemption is to be claimed within 45 [~~60~~] days after the effective date of the tax imposed under Section 321.101(a) in the municipality.

No equivalent provision.

No equivalent provision.

SECTION 4.02. FRANCHISE TAX CREDIT: RESEARCH AND DEVELOPMENT. (a) Chapter 171, Tax Code, is amended by adding Subchapter M to read as follows:
SUBCHAPTER M. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES

No equivalent provision.

Sec. 171.651. DEFINITIONS. In this subchapter:
(1) "Internal Revenue Code" means the Internal Revenue Code of 1986 in effect on December 31, 2011, excluding any changes made by federal law after that date, but including any regulations adopted under that code applicable to the tax year to which the provisions of the code in effect on that date applied.
(2) "Public or private institution of higher education" means:
(A) an institution of higher education, as defined by Section 61.003, Education Code; or
(B) a private or independent institution of higher education, as defined by Section 61.003, Education Code.
(3) "Qualified research" has the meaning assigned by Section 41, Internal Revenue Code, except that the research must be conducted in this state.
(4) "Qualified research expense" has the meaning assigned by Section 41, Internal Revenue Code, except that the expense must be for research conducted in this state.

Sec. 171.652. ELIGIBILITY FOR CREDIT. A taxable entity is eligible for a credit against the tax imposed under this chapter in the amount and under the conditions and limitations provided by this subchapter.

Sec. 171.653. INELIGIBILITY FOR CREDIT FOR CERTAIN PERIODS. (a) A taxable entity is not eligible for a credit on a report against the tax imposed under this chapter for qualified research expenses incurred during the period on which the report is based if the taxable entity, or a member of the combined group if the taxable

	entity is a combined group, received an exemption under Section 151.3182 during that period. (b) A taxable entity's ineligibility under this section for a credit on a report for the period on which the report is based does not affect the taxable entity's eligibility to claim a carryforward of unused credit under Section 171.659 on that report.
No equivalent provision.	Sec. 171.654. AMOUNT OF CREDIT. (a) Except as provided by Subsections (b), (c), and (d), the credit for any report equals five percent of the difference between: (1) the qualified research expenses incurred during the period on which the report is based, subject to Section 171.655; and (2) 50 percent of the average amount of qualified research expenses incurred during the three tax periods preceding the period on which the report is based, subject to Section 171.655. (b) If the taxable entity contracts with one or more public or private institutions of higher education for the performance of qualified research and the taxable entity has qualified research expenses incurred in this state by the taxable entity under the contract during the period on which the report is based, the credit for the report equals 6.25 percent of the difference between: (1) all qualified research expenses incurred during the period on which the report is based, subject to Section 171.655; and (2) 50 percent of the average amount of all qualified research expenses incurred during the three tax periods preceding the period on which the report is based, subject to Section 171.655. (c) Except as provided by Subsection (d), if the taxable entity has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, the credit for the period on which the report is based equals 2.5 percent of the qualified research expenses incurred during that period. (d) If the taxable entity contracts with one or more public or private institutions of higher education for the performance of qualified research and the taxable entity has qualified research expenses incurred in this state by the taxable entity under the contract during the period on which the report is based, but has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, the credit for the

	period on which the report is based equals 3.125 percent of all qualified research expenses incurred during that period. (e) Notwithstanding whether the time for claiming a credit under this subchapter has expired for any tax period used in determining the average amount of qualified research expenses under Subsection (a)(2) or (b)(2), the determination of which research expenses are qualified research expenses for purposes of computing that average must be made in the same manner as that determination is made for purposes of Subsection (a)(1) or (b)(1). This subsection does not apply to a credit to which a taxable entity was entitled under Subchapter O, as that subchapter existed before January 1, 2008. (f) The comptroller may adopt rules for determining which research expenses are qualified research expenses for purposes of Subsection (a) or (b) to prevent disparities in those determinations that may result from the taxable entity using different accounting methods for the period on which the report is based, as compared to any preceding tax periods used in determining the average amount of qualified research expenses under Subsection (a)(2) or (b)(2).
No equivalent provision.	Sec. 171.655. ATTRIBUTION OF EXPENSES FOLLOWING TRANSFER OF CONTROLLING INTEREST. (a) If a taxable entity acquires a controlling interest in another taxable entity or in a separate unit of another taxable entity during a tax period with respect to which the acquiring taxable entity claims a credit under this subchapter, the amount of the acquiring taxable entity's qualified research expenses equals the sum of: (1) the amount of qualified research expenses incurred by the acquiring taxable entity during the period on which the report is based; and (2) subject to Subsection (d), the amount of qualified research expenses incurred by the acquired taxable entity or unit during the portion of the period on which the report is based that precedes the date of the acquisition. (b) A taxable entity that sells or otherwise transfers to another taxable entity a controlling interest in another taxable entity or in a separate unit of a taxable entity during a period on which a report is based may not claim a credit under this subchapter for qualified research expenses incurred by the transferred taxable entity or unit during the period if the taxable entity is

	ineligible for the credit under Section 171.653 or if the acquiring taxable entity claims a credit under this subchapter for the corresponding period. (c) If during any of the three tax periods following the tax period in which a sale or other transfer described by Subsection (b) occurs, the taxable entity that sold or otherwise transferred the controlling interest reimburses the acquiring taxable entity for research activities conducted on behalf of the taxable entity that made the sale or other transfer, the amount of the reimbursement is: (1) subject to Subsection (e), included as qualified research expenses incurred by the taxable entity that made the sale or other transfer for the tax period during which the reimbursement was paid; and (2) excluded from the qualified research expenses incurred by the acquiring taxable entity for the tax period during which the reimbursement was paid. (d) An acquiring taxable entity may not include on a report the amount of qualified research expenses otherwise authorized by Subsection (a)(2) to be included if the taxable entity that made the sale or other transfer described by Subsection (b) received an exemption under Section 151.3182 during the portion of the period on which the acquiring taxable entity's report is based that precedes the date of the acquisition. (e) A taxable entity that makes a sale or other transfer described by Subsection (b) may not include on a report the amount of reimbursement otherwise authorized by Subsection (c)(1) to be included if the reimbursement is for research activities that occurred during a tax period under this chapter during which that taxable entity received an exemption under Section 151.3182.
No equivalent provision.	Sec. 171.656. COMBINED REPORTING. (a) A credit under this subchapter for qualified research expenses incurred by a member of a combined group must be claimed on the combined report required by Section 171.1014 for the group, and the combined group is the taxable entity for purposes of this subchapter. (b) An upper tier entity that includes the total revenue of a lower tier entity for purposes of computing its taxable margin as authorized by Section 171.1015 may claim the credit under this subchapter for qualified research expenses incurred by the lower tier entity to the extent of

	the upper tier entity's ownership interest in the lower tier entity.
No equivalent provision.	Sec. 171.657. BURDEN OF ESTABLISHING CREDIT. The burden of establishing entitlement to and the value of the credit is on the taxable entity.
No equivalent provision.	Sec. 171.658. LIMITATIONS. The total credit claimed under this subchapter for a report, including the amount of any carryforward credit under Section 171.659, may not exceed 50 percent of the amount of franchise tax due for the report before any other applicable tax credits.
No equivalent provision.	Sec. 171.659. CARRYFORWARD. If a taxable entity is eligible for a credit that exceeds the limitation under Section 171.658, the taxable entity may carry the unused credit forward until all of the credit has been claimed. Credits and credit carryforwards are considered to be used in the following order: (1) a credit carryforward from a previous report; and (2) a current year credit.
No equivalent provision.	Sec. 171.660. ASSIGNMENT PROHIBITED. A taxable entity may not convey, assign, or transfer the credit allowed under this subchapter to another entity unless all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.
No equivalent provision.	Sec. 171.661. APPLICATION FOR CREDIT. A taxable entity must apply for a credit under this subchapter on or with the tax report for the period for which the credit is claimed.
No equivalent provision.	Sec. 171.662. RULES. The comptroller shall adopt rules and forms necessary to implement this subchapter.
No equivalent provision.	Sec. 171.663. REPORTING OF ESTIMATES AND COLLECTION OF INFORMATION. (a) Before the beginning of each regular session of the legislature, the comptroller shall submit to the legislature and the governor estimates of: (1) the total number of taxable entities that applied credits under this subchapter against the tax imposed under this chapter; (2) the total amount of those credits; and (3) the total amount of unused credits carried forward. (b) The comptroller may require a taxable entity

	that claims a credit under this subchapter to complete a form to provide the information necessary for the comptroller to make the evaluations required by Section 151.3182. The information provided on the form is confidential and not subject to disclosure under Chapter 552, Government Code. (c) The comptroller shall provide the estimates required by this section as part of the report required by Section 403.014, Government Code.
No equivalent provision.	(b) The comptroller of public accounts shall submit the initial estimates required by Section 171.663, Tax Code, as added by this section, before the 84th Regular Legislative Session commences in January 2015.
No equivalent provision.	(c) Subchapter M, Chapter 171, Tax Code, as added by this section, applies only to a report originally due on or after the effective date of this section.
No equivalent provision.	SECTION 4.03. TRANSFER OF CERTAIN FRANCHISE TAX CREDITS. (a) Section 18, Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called Session, 2006, is amended by adding Subsections (h) and (i) to read as follows: (h) In this subsection and Subsection (i) of this section, "transfer" includes a sale. Notwithstanding Subsections (e) and (f) of this section, a corporation that has unused, unexpired credits carried forward under former Subchapter P or Q, Chapter 171, Tax Code, may transfer the credits to another taxpayer of this state. To be eligible to transfer the credits, the corporation must obtain a certificate of transfer of credit from the comptroller of public accounts for the amount of the credits to be transferred. Not later than the 30th day after the date of the transfer, the corporation must submit to the comptroller a notice of the transfer in a form prescribed by the comptroller. The notice must be accompanied by a copy of the certificate of transfer issued by the comptroller and specify: (1) the number on the certificate of transfer; (2) the amount of the corporation's unused, unexpired credits preceding the transfer; (3) the date of the transfer; (4) the amount of credits transferred; (5) the tax identification numbers of the corporation and the taxpayer to which the credits were transferred;

	(6) the corporation's remaining amount of unused, unexpired credits after the transfer; and (7) any other information the comptroller requires. (i) The transfer of a credit under Subsection (h) of this section is limited to a credit that was first reported on a report originally due before January 1, 2008, and does not include credits authorized under former Subchapter Q-1, Chapter 171, Tax Code, or credits that were created under the terms of a written agreement between a taxpayer and the Texas Department of Economic Development or its successor that was entered into before June 1, 2006, and which credits continue to accrue under the terms provided by Section 19 of this Act. The transferee of a credit under this section obtains the credit subject to the same rights and privileges as the transferor. The transfer of a credit under Subsection (h) of this section does not extend or lessen the period during which the credit may be claimed. If a corporation transfers a credit that the corporation was not entitled to claim at the time of the transfer: (1) the taxpayer to which the credit was transferred may pursue any remedy authorized by law against the corporation and may not pursue any remedy against the comptroller of public accounts or this state; and (2) the comptroller: (A) may not allow the taxpayer to which the credit was transferred to apply the credit on a report; or (B) shall recover from the taxpayer the amount of the credit the taxpayer claims on a report using any means authorized by law. (b) This section applies only to a credit transferred on or after the effective date of this section. (c) This section takes effect September 1, 2013.
No equivalent provision.	SECTION 4.04. EFFECTIVE DATE. Except as otherwise provided by this article, this article takes effect January 1, 2014.
	ARTICLE 5. EFFECTIVE DATE
SECTION 14. This Act takes effect January 1, 2014.	SECTION 5.01. EFFECTIVE DATE. Except as otherwise provided by this Act, this Act takes effect September 1, 2013.