

1 AN ACT

2 relating to a sales and use tax exemption and a franchise tax credit
3 related to certain research and development activities.

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

5 SECTION 1. LEGISLATIVE FINDINGS AND PURPOSES. (a) The
6 legislature finds that:

7 (1) Texas economic activity accounts for more than
8 eight percent of the economic activity in the United States, but
9 accounts for only five percent of research and development spending
10 in the United States;

11 (2) research and development activities create:

12 (A) high-paying jobs that provide substantial
13 benefits to the Texas economy; and

14 (B) new technologies and applications that
15 generate economic efficiency and growth; and

16 (3) private-sector research and development
17 activities create partnerships between private-sector entities and
18 institutions of higher education, and those partnerships expand
19 opportunities for innovation and learning.

20 (b) Based on the findings specified in Subsection (a) of
21 this section, the purposes of this Act are to:

22 (1) make Texas economically competitive in the field
23 of research and development;

24 (2) reduce the tax burden on research and development

1 activities in Texas and encourage new investments in this state;

2 (3) promote the creation of new, highly skilled,
3 high-paying jobs in Texas; and

4 (4) complement this state's manufacturing industries
5 by encouraging innovation and efficiency in applying new
6 technologies and producing new products.

7 SECTION 2. SALES AND USE TAX EXEMPTION. Subchapter H,
8 Chapter 151, Tax Code, is amended by adding Section 151.3182 to read
9 as follows:

10 Sec. 151.3182. CERTAIN PROPERTY USED IN RESEARCH AND
11 DEVELOPMENT ACTIVITIES; REPORTING OF ESTIMATES AND EVALUATION. (a)

12 In this section:

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

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

16 (B) is subject to depreciation under:

17 (i) generally accepted accounting
18 principles; or

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

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

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

25 (b) The sale, storage, or use of depreciable tangible
26 personal property directly used in qualified research is exempted
27 from the taxes imposed by this chapter if the property is sold,

1 leased, or rented to, or stored or used by, a person who:

2 (1) is engaged in qualified research; and

3 (2) will not, as a taxable entity as defined by Section
4 171.0002 or as a member of a combined group that is a taxable
5 entity, claim a credit under Subchapter M, Chapter 171, on a
6 franchise tax report for the period during which the sale, storage,
7 or use occurs.

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

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

14 (2) an evaluation of the effect of the exemption under
15 this section, in combination with the credit authorized by
16 Subchapter M, Chapter 171, that is conducted by an independent
17 researcher at a center for research authorized by Section 1.005,
18 Education Code, on:

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

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

23 (C) economic activity in this state; and

24 (D) state tax revenues.

25 (d) The comptroller shall require a person who receives an
26 exemption under this section to complete a form to provide the
27 information necessary for the comptroller to make the evaluation

1 required by Subsection (c)(2). The information provided on the
2 form is confidential and not subject to disclosure under Chapter
3 552, Government Code.

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

7 (f) This section expires December 31, 2026.

8 SECTION 3. FRANCHISE TAX CREDIT. Chapter 171, Tax Code, is
9 amended by adding Subchapter M to read as follows:

10 SUBCHAPTER M. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT
11 ACTIVITIES

12 Sec. 171.651. DEFINITIONS. In this subchapter:

13 (1) "Internal Revenue Code" means the Internal Revenue
14 Code of 1986 in effect on December 31, 2011, excluding any changes
15 made by federal law after that date, but including any regulations
16 adopted under that code applicable to the tax year to which the
17 provisions of the code in effect on that date applied.

18 (2) "Public or private institution of higher
19 education" means:

20 (A) an institution of higher education, as
21 defined by Section 61.003, Education Code; or

22 (B) a private or independent institution of
23 higher education, as defined by Section 61.003, Education Code.

24 (3) "Qualified research" has the meaning assigned by
25 Section 41, Internal Revenue Code, except that the research must be
26 conducted in this state.

27 (4) "Qualified research expense" has the meaning

1 assigned by Section 41, Internal Revenue Code, except that the
2 expense must be for research conducted in this state.

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

7 Sec. 171.653. INELIGIBILITY FOR CREDIT FOR CERTAIN PERIODS.

8 (a) A taxable entity is not eligible for a credit on a report
9 against the tax imposed under this chapter for qualified research
10 expenses incurred during the period on which the report is based if
11 the taxable entity, or a member of the combined group if the taxable
12 entity is a combined group, received an exemption under Section
13 151.3182 during that period.

14 (b) A taxable entity's ineligibility under this section for
15 a credit on a report for the period on which the report is based does
16 not affect the taxable entity's eligibility to claim a carryforward
17 of unused credit under Section 171.659 on that report.

18 Sec. 171.654. AMOUNT OF CREDIT. (a) Except as provided by
19 Subsections (b), (c), and (d), the credit for any report equals five
20 percent of the difference between:

21 (1) the qualified research expenses incurred during
22 the period on which the report is based, subject to Section 171.655;
23 and

24 (2) 50 percent of the average amount of qualified
25 research expenses incurred during the three tax periods preceding
26 the period on which the report is based, subject to Section 171.655.

27 (b) If the taxable entity contracts with one or more public

1 or private institutions of higher education for the performance of
2 qualified research and the taxable entity has qualified research
3 expenses incurred in this state by the taxable entity under the
4 contract during the period on which the report is based, the credit
5 for the report equals 6.25 percent of the difference between:

6 (1) all qualified research expenses incurred during
7 the period on which the report is based, subject to Section 171.655;
8 and

9 (2) 50 percent of the average amount of all qualified
10 research expenses incurred during the three tax periods preceding
11 the period on which the report is based, subject to Section 171.655.

12 (c) Except as provided by Subsection (d), if the taxable
13 entity has no qualified research expenses in one or more of the
14 three tax periods preceding the period on which the report is based,
15 the credit for the period on which the report is based equals 2.5
16 percent of the qualified research expenses incurred during that
17 period.

18 (d) If the taxable entity contracts with one or more public
19 or private institutions of higher education for the performance of
20 qualified research and the taxable entity has qualified research
21 expenses incurred in this state by the taxable entity under the
22 contract during the period on which the report is based, but has no
23 qualified research expenses in one or more of the three tax periods
24 preceding the period on which the report is based, the credit for
25 the period on which the report is based equals 3.125 percent of all
26 qualified research expenses incurred during that period.

27 (e) Notwithstanding whether the time for claiming a credit

1 under this subchapter has expired for any tax period used in
2 determining the average amount of qualified research expenses under
3 Subsection (a)(2) or (b)(2), the determination of which research
4 expenses are qualified research expenses for purposes of computing
5 that average must be made in the same manner as that determination
6 is made for purposes of Subsection (a)(1) or (b)(1). This
7 subsection does not apply to a credit to which a taxable entity was
8 entitled under Subchapter O, as that subchapter existed before
9 January 1, 2008.

10 (f) The comptroller may adopt rules for determining which
11 research expenses are qualified research expenses for purposes of
12 Subsection (a) or (b) to prevent disparities in those
13 determinations that may result from the taxable entity using
14 different accounting methods for the period on which the report is
15 based, as compared to any preceding tax periods used in determining
16 the average amount of qualified research expenses under Subsection
17 (a)(2) or (b)(2).

18 Sec. 171.655. ATTRIBUTION OF EXPENSES FOLLOWING TRANSFER OF
19 CONTROLLING INTEREST. (a) If a taxable entity acquires a
20 controlling interest in another taxable entity or in a separate
21 unit of another taxable entity during a tax period with respect to
22 which the acquiring taxable entity claims a credit under this
23 subchapter, the amount of the acquiring taxable entity's qualified
24 research expenses equals the sum of:

25 (1) the amount of qualified research expenses incurred
26 by the acquiring taxable entity during the period on which the
27 report is based; and

1 (2) subject to Subsection (d), the amount of qualified
2 research expenses incurred by the acquired taxable entity or unit
3 during the portion of the period on which the report is based that
4 precedes the date of the acquisition.

5 (b) A taxable entity that sells or otherwise transfers to
6 another taxable entity a controlling interest in another taxable
7 entity or in a separate unit of a taxable entity during a period on
8 which a report is based may not claim a credit under this subchapter
9 for qualified research expenses incurred by the transferred taxable
10 entity or unit during the period if the taxable entity is ineligible
11 for the credit under Section 171.653 or if the acquiring taxable
12 entity claims a credit under this subchapter for the corresponding
13 period.

14 (c) If during any of the three tax periods following the tax
15 period in which a sale or other transfer described by Subsection (b)
16 occurs, the taxable entity that sold or otherwise transferred the
17 controlling interest reimburses the acquiring taxable entity for
18 research activities conducted on behalf of the taxable entity that
19 made the sale or other transfer, the amount of the reimbursement is:

20 (1) subject to Subsection (e), included as qualified
21 research expenses incurred by the taxable entity that made the sale
22 or other transfer for the tax period during which the reimbursement
23 was paid; and

24 (2) excluded from the qualified research expenses
25 incurred by the acquiring taxable entity for the tax period during
26 which the reimbursement was paid.

27 (d) An acquiring taxable entity may not include on a report

1 the amount of qualified research expenses otherwise authorized by
2 Subsection (a)(2) to be included if the taxable entity that made the
3 sale or other transfer described by Subsection (b) received an
4 exemption under Section 151.3182 during the portion of the period
5 on which the acquiring taxable entity's report is based that
6 precedes the date of the acquisition.

7 (e) A taxable entity that makes a sale or other transfer
8 described by Subsection (b) may not include on a report the amount
9 of reimbursement otherwise authorized by Subsection (c)(1) to be
10 included if the reimbursement is for research activities that
11 occurred during a tax period under this chapter during which that
12 taxable entity received an exemption under Section 151.3182.

13 Sec. 171.656. COMBINED REPORTING. (a) A credit under this
14 subchapter for qualified research expenses incurred by a member of
15 a combined group must be claimed on the combined report required by
16 Section 171.1014 for the group, and the combined group is the
17 taxable entity for purposes of this subchapter.

18 (b) An upper tier entity that includes the total revenue of
19 a lower tier entity for purposes of computing its taxable margin as
20 authorized by Section 171.1015 may claim the credit under this
21 subchapter for qualified research expenses incurred by the lower
22 tier entity to the extent of the upper tier entity's ownership
23 interest in the lower tier entity.

24 Sec. 171.657. BURDEN OF ESTABLISHING CREDIT. The burden of
25 establishing entitlement to and the value of the credit is on the
26 taxable entity.

27 Sec. 171.658. LIMITATIONS. The total credit claimed under

1 this subchapter for a report, including the amount of any
2 carryforward credit under Section 171.659, may not exceed 50
3 percent of the amount of franchise tax due for the report before any
4 other applicable tax credits.

5 Sec. 171.659. CARRYFORWARD. If a taxable entity is
6 eligible for a credit that exceeds the limitation under Section
7 171.658, the taxable entity may carry the unused credit forward for
8 not more than 20 consecutive reports. Credits, including credit
9 carryforwards, are considered to be used in the following order:

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

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

15 (3) a current year credit.

16 Sec. 171.660. ASSIGNMENT PROHIBITED. A taxable entity may
17 not convey, assign, or transfer the credit allowed under this
18 subchapter to another entity unless all of the assets of the taxable
19 entity are conveyed, assigned, or transferred in the same
20 transaction.

21 Sec. 171.661. APPLICATION FOR CREDIT. A taxable entity
22 must apply for a credit under this subchapter on or with the tax
23 report for the period for which the credit is claimed.

24 Sec. 171.662. RULES. The comptroller shall adopt rules and
25 forms necessary to implement this subchapter.

26 Sec. 171.663. REPORTING OF ESTIMATES AND COLLECTION OF
27 INFORMATION. (a) Before the beginning of each regular session of

1 the legislature, the comptroller shall submit to the legislature
2 and the governor estimates of:

3 (1) the total number of taxable entities that applied
4 credits under this subchapter against the tax imposed under this
5 chapter;

6 (2) the total amount of those credits; and

7 (3) the total amount of unused credits carried
8 forward.

9 (b) The comptroller may require a taxable entity that claims
10 a credit under this subchapter to complete a form to provide the
11 information necessary for the comptroller to make the evaluations
12 required by Section 151.3182. The information provided on the form
13 is confidential and not subject to disclosure under Chapter 552,
14 Government Code.

15 (c) The comptroller shall provide the estimates required by
16 this section as part of the report required by Section 403.014,
17 Government Code.

18 Sec. 171.664. DEPOSIT OF CERTAIN REVENUE. Notwithstanding
19 any other law, for each fiscal year, the comptroller must deposit to
20 the credit of the property tax relief fund an amount of revenue
21 received from the tax imposed under this chapter sufficient to
22 offset any decrease in deposits to that fund that results from the
23 implementation of this subchapter.

24 Sec. 171.665. EXPIRATION. (a) This subchapter expires
25 December 31, 2026.

26 (b) The expiration of this subchapter does not affect the
27 carryforward of a credit under Section 171.659 or a credit

1 authorized under this subchapter established before the date this
2 subchapter expires.

3 SECTION 4. INITIAL REPORTING OF INFORMATION. The
4 comptroller of public accounts shall submit the initial estimates
5 required by Sections 151.3182(c)(1) and 171.663, Tax Code, as added
6 by this Act, before the 84th Regular Legislative Session commences
7 in January 2015. Notwithstanding Section 151.3182(c)(2), Tax Code,
8 as added by this Act, the comptroller is not required to submit the
9 initial evaluation required by that section until January 2017, but
10 shall submit that evaluation before the 85th Regular Legislative
11 Session commences.

12 SECTION 5. TRANSITION PROVISION. Section 151.3182, Tax
13 Code, as added by this Act, does not affect tax liability accruing
14 before the effective date of this Act. That liability continues in
15 effect as if this Act had not been enacted, and the former law is
16 continued in effect for the collection of taxes due and for civil
17 and criminal enforcement of the liability for those taxes.

18 SECTION 6. APPLICABILITY. Subchapter M, Chapter 171, Tax
19 Code, as added by this Act, applies only to a report originally due
20 on or after the effective date of this Act.

21 SECTION 7. EFFECTIVE DATE. This Act takes effect January 1,
22 2014.

President of the Senate

Speaker of the House

I certify that H.B. No. 800 was passed by the House on May 2, 2013, by the following vote: Yeas 146, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 800 was passed by the Senate on May 21, 2013, by the following vote: Yeas 27, Nays 4.

Secretary of the Senate

APPROVED: _____

Date

Governor