

By: Menendez

H.B. No. 2390

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for certain research and development activities by taxable entities in the aerospace industry.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter R to read as follows:

SUBCHAPTER R. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT
ACTIVITIES

Sec. 171.851. DEFINITIONS. In this subchapter:

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

(2) "Defense base development authority" means an authority established under Chapter 379B, Local Government Code, or Subtitle B, Title 4, Special District Local Laws Code.

Sec. 171.852. ELIGIBILITY. 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 if the entity:

(1) is primarily engaged in a business involved in the

aerospace industry; and

(2) performs qualified research in the territory of a defense base development authority.

Sec. 171.853. CALCULATION OF CREDIT. (a) The credit for any report equals five percent of the sum of:

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

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

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

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

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

(3) the taxable entity did not claim the federal credit under Section 41(a)(1), Internal Revenue Code.

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

1 0.69 percent, respectively.

2 (d) The burden of establishing entitlement to and the value
3 of the credit is on the taxable entity.

4 (e) For the purposes of this section, "gross receipts" as
5 used in Section 41, Internal Revenue Code, means gross receipts as
6 determined under Section 171.103.

7 Sec. 171.854. LIMITATIONS. The sum of the total credit
8 claimed under this subchapter for a report, including the amount of
9 any carryforward credit under Section 171.855, and the amount of
10 unused credits accrued under Subchapter O before its repeal on
11 January 1, 2008, and claimed on the report as authorized by Section
12 18(d), Chapter 1 (H.B. 3), Acts of the 79th Legislature, 3rd Called
13 Session, 2006, may not exceed 50 percent of the amount of franchise
14 tax due for the report before any other applicable tax credits.

15 Sec. 171.855. CARRYFORWARD. If a taxable entity is
16 eligible for a credit that exceeds the limitation under Section
17 171.854, the taxable entity may carry the unused credit forward for
18 not more than 20 consecutive reports. Credits, including credit
19 carryforwards, are considered to be used in the following order:

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

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

25 (3) a current year credit.

26 Sec. 171.856. BIENNIAL REPORT BY COMPTROLLER. (a) Before
27 the beginning of each regular session of the legislature, the

1 comptroller shall submit to the governor, the lieutenant governor,
2 and the speaker of the house of representatives a report that
3 states:

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

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

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

11 (B) the average percentage reduction in
12 franchise tax due by taxable entities claiming a credit under this
13 subchapter;

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

16 (D) the two-digit standard industrial
17 classification of taxable entities claiming a credit under this
18 subchapter;

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

21 (4) the effect of the credit provided by this
22 subchapter on the amount of research and development performed in
23 this state and employment in research and development in this
24 state; and

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

1 (b) The final report issued prior to the expiration of this
2 subchapter shall include historical information on the credit
3 authorized under this subchapter.

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

6 (d) For purposes of this section, the comptroller may
7 require a taxable entity that claims a credit under this subchapter
8 to submit information, on a form provided by the comptroller, on the
9 location of the taxable entity's research expenses and payments in
10 this state and any other information necessary to complete the
11 report required by this section.

12 Sec. 171.857. COMPTROLLER POWERS AND DUTIES. The
13 comptroller shall adopt rules and forms necessary to implement this
14 subchapter.

15 Sec. 171.858. ASSIGNMENT PROHIBITED. A taxable entity may
16 not convey, assign, or transfer the credit allowed under this
17 subchapter to another entity unless all of the assets of the taxable
18 entity are conveyed, assigned, or transferred in the same
19 transaction.

20 Sec. 171.859. EXPIRATION. (a) This subchapter expires
21 December 31, 2023.

22 (b) The expiration of this subchapter does not affect the
23 carryforward of a credit under Section 171.855 that was accrued
24 before the date this subchapter expires.

25 SECTION 2. (a) This Act applies only to a report originally
26 due on or after the effective date of this Act.

27 (b) The change in law made by this Act does not affect the

1 obligation for or the payment, computation, and collection of the
2 franchise tax for a report originally due before the effective date
3 of this Act. The obligation for and the payment, computation, and
4 collection of the franchise tax for a report originally due before
5 the effective date of this Act is governed by the law in effect on
6 the date the report was originally due, and that law is continued in
7 effect for those purposes.

8 SECTION 3. This Act takes effect January 1, 2014.