

By: Cortez

H.B. No. 2943

A BILL TO BE ENTITLED

AN ACT

relating to a sales and use tax exemption and a franchise tax credit related to certain research and development activities of entities in the aerospace industry.

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

SECTION 1. Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3182 to read as follows:

Sec. 151.3182. CERTAIN PROPERTY AND SERVICES USED IN RESEARCH AND DEVELOPMENT ACTIVITIES. (a) In this section:

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

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

(3) "Qualified research" and "qualified service" have the meanings assigned by Section 41, Internal Revenue Code.

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

(1) is primarily engaged in a business involved in the aerospace industry;

(2) performs qualified research in the territory of a

1 defense base development authority; and

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

7 SECTION 2. Chapter 171, Tax Code, is amended by adding
8 Subchapter M to read as follows:

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

11 Sec. 171.651. DEFINITIONS. In this subchapter:

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

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

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

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

26 Sec. 171.652. ELIGIBILITY FOR CREDIT. A taxable entity is
27 eligible for a credit against the tax imposed under this chapter in

1 the amount and under the conditions and limitations provided by
2 this subchapter if the entity:

3 (1) is primarily engaged in a business involved in the
4 aerospace industry; and

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

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 Subsection (b), the credit for any report equals five percent of the
20 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 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.

(c) 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), 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). 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.

(d) The comptroller may adopt rules for determining which research expenses are qualified research expenses for purposes of Subsection (a) 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).

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

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

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

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

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

27 (2) excluded from the qualified research expenses

1 incurred by the acquiring taxable entity for the tax period during
2 which the reimbursement was paid.

3 (d) An acquiring taxable entity may not include on a report
4 the amount of qualified research expenses otherwise authorized by
5 Subsection (a)(2) to be included if the taxable entity that made the
6 sale or other transfer described by Subsection (b) received an
7 exemption under Section 151.3182 during the portion of the period
8 on which the acquiring taxable entity's report is based that
9 precedes the date of the acquisition.

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

16 Sec. 171.656. COMBINED REPORTING. (a) A credit under this
17 subchapter for qualified research expenses incurred by a member of
18 a combined group must be claimed on the combined report required by
19 Section 171.1014 for the group.

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

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

1 taxable entity.

2 Sec. 171.658. LIMITATIONS. The total credit claimed under
3 this subchapter for a report, including the amount of any
4 carryforward credit under Section 171.659, may not exceed 50
5 percent of the amount of franchise tax due for the report before any
6 other applicable tax credits.

7 Sec. 171.659. CARRYFORWARD. If a taxable entity is
8 eligible for a credit that exceeds the limitation under Section
9 171.658, the taxable entity may carry the unused credit forward
10 until all of the credit has been claimed. Credits and credit
11 carryforwards are considered to be used in the following order:

12 (1) a credit carryforward from a previous report; and

13 (2) a current year credit.

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

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

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

24 SECTION 3. Section 151.3182, Tax Code, as added by this Act,
25 does not affect tax liability accruing before the effective date of
26 this Act. That liability continues in effect as if this Act had not
27 been enacted, and the former law is continued in effect for the

1 collection of taxes due and for civil and criminal enforcement of
2 the liability for those taxes.

3 SECTION 4. Subchapter M, Chapter 171, Tax Code, as added by
4 this Act, applies only to a report originally due on or after
5 January 1, 2014.

6 SECTION 5. This Act takes effect October 1, 2013.