

By: Hilderbran, Button

H.B. No. 3571

Substitute the following for H.B. No. 3571:

By: Hilderbran

C.S.H.B. No. 3571

A BILL TO BE ENTITLED

AN ACT

1
2 relating to taxes, fees, and other amounts administered or
3 collected by the comptroller of public accounts; lowering a tax
4 rate.

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

6 ARTICLE 1. POWERS AND DUTIES OF COMPTROLLER OF PUBLIC ACCOUNTS

7 REGARDING TAX ADMINISTRATION

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

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

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

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

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

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

24 (2) 25 percent of the rate set in Section 111.060.

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

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

7 (2) 50 percent of the rate set in Section 111.060.

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

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

14 (2) 75 percent of the rate set in Section 111.060.

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

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

19 (e) During the administrative hearing process, a person
20 claiming a refund under Section 111.104 must submit documentation
21 to enable the comptroller to verify the claim for refund. After the
22 expiration of the period in which a person may timely file a reply
23 to a position letter in an administrative hearing, the [The]
24 comptroller may issue a notice of demand that all evidence to
25 support the claim for refund must be produced before the expiration
26 of a specified date in the notice. The specified date in the notice
27 may not be earlier than 180 days after the date of the notice

1 ~~[refund is claimed]~~. The comptroller may not consider evidence
2 produced after the specified date in the notice in an
3 administrative hearing. The limitation provided by this subsection
4 does not apply to a judicial proceeding filed in accordance with
5 Chapter 112.

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

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

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

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

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

22 ~~[(B) issued a finding of fact that is not~~
23 ~~supported by a preponderance of the evidence, or~~

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

27 SECTION 1.04. REPEALER. Section 2003.101(f), Government

1 Code, is repealed.

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

4 ARTICLE 2. STATE AND LOCAL SALES AND USE TAXES

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

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

10 In this section:

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

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

14 (B) is subject to depreciation under:

15 (i) generally accepted accounting
16 principles; or

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

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

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

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

27 (1) is engaged in qualified research; and

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

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

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

12 (2) an evaluation of the effect of the exemption under
13 this section, in combination with the credit authorized by
14 Subchapter M, Chapter 171, on:

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

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

19 (C) economic activity in this state; and

20 (D) state tax revenues.

21 (d) The comptroller may require a person who receives an
22 exemption under this section to complete a form to provide the
23 information necessary for the comptroller to make the evaluation
24 required by Subsection (c)(2). The information provided on the
25 form is confidential and not subject to disclosure under Chapter
26 552, Government Code.

27 (e) The comptroller shall provide the estimates and

1 evaluation required by Subsection (c) as part of the report
2 required by Section 403.014, Government Code.

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

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

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

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

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

25 (b) A provider is entitled to a refund of the tax imposed by
26 this chapter on the sale, lease, or rental or storage, use, or other
27 consumption of tangible personal property if:

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

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

6 (A) the distribution of cable television
7 service;

8 (B) the provision of Internet access service; or

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

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

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

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

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

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

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

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

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

14 (1) "County average weekly wage" means the average
15 weekly wage in a county for all jobs during the most recent four
16 quarterly periods for which data is available, as computed by the
17 Texas Workforce Commission, at the time a data center creates a job
18 used to qualify under this section.

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

22 (A) is located in this state;

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

27 (C) is used by a single qualifying occupant for

1 the processing, storage, and distribution of data;

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

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

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

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

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

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

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

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

26 (A) contracts with a qualifying owner or
27 qualifying operator to place, or cause to be placed, and to use

1 tangible personal property at the qualifying data center; or

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

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

14 (1) electricity;

15 (2) an electrical system;

16 (3) a cooling system;

17 (4) an emergency generator;

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

20 (6) a data storage device;

21 (7) network connectivity equipment;

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

23 (9) a peripheral component or system;

24 (10) software;

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

1 (12) any other item of equipment or system necessary
2 to operate any tangible personal property described by Subdivisions
3 (2)-(11), including a fixture; or

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

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

8 (1) office equipment or supplies;

9 (2) maintenance or janitorial supplies or equipment;

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

12 (4) tangible personal property on which the purchaser
13 has received or has a pending application for a refund under Section
14 151.429;

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

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

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

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

26 (1) a single qualifying occupant:

27 (A) contracts with a qualifying owner or

1 qualifying operator to lease space in which the qualifying occupant
2 will locate a data center; or

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

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

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

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

17 (e) A data center that is eligible under Subsection (d) to
18 be certified by the comptroller as a qualified data center shall
19 apply to the comptroller for certification as a qualifying data
20 center and for issuance of a registration number or numbers by the
21 comptroller. The application must be made on a form prescribed by
22 the comptroller and include the information required by the
23 comptroller. The application must include the name and contact
24 information for the qualifying occupant, and, if applicable, the
25 name and contact information for the qualifying owner and the
26 qualifying operator who will claim the exemption authorized under
27 this section. The application form must include a section for the

1 applicant to certify that the capital investment required by
2 Subsection (d)(2)(B) will be met independently or jointly by the
3 qualifying occupant, qualifying owner, or qualifying operator
4 within the time period prescribed by Subsection (d)(2)(B).

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

8 (1) on the 10th anniversary of that date, if the
9 qualifying occupant, qualifying owner, or qualifying operator
10 independently or jointly makes a capital investment of at least
11 \$150 million but less than \$200 million as provided by Subsection
12 (d)(2)(B); or

13 (2) on the 15th anniversary of that date, if the
14 qualifying occupant, qualifying owner, or qualifying operator
15 independently or jointly makes a capital investment of \$200 million
16 or more as provided by Subsection (d)(2)(B).

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

22 (h) The comptroller shall revoke all registration numbers
23 issued in connection with a qualifying data center that the
24 comptroller determines does not meet the requirements prescribed by
25 Subsection (d). Each person who has the person's registration
26 number revoked by the comptroller is liable for taxes, including
27 penalty and interest from the date of purchase, imposed under this

1 chapter on purchases for which the person claimed an exemption
2 under this section, regardless of whether the purchase occurred
3 before the date the registration number was revoked.

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

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

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

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

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

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

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

21 (1) residential use;

22 (2) use in powering equipment exempt under Section
23 151.318 or 151.3185 by a person processing tangible personal
24 property for sale as tangible personal property, other than
25 preparation or storage of prepared food described by Section
26 151.314(c-2);

27 (3) use in lighting, cooling, and heating in the

1 manufacturing area during the actual manufacturing or processing of
2 tangible personal property for sale as tangible personal property,
3 other than preparation or storage of prepared food described by
4 Section 151.314(c-2);

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

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

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

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

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

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

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

25 (11) [~~10~~] use in timber operations, including
26 pumping for irrigation of timberland.

27 (b) The sale, production, distribution, lease, or rental

1 of, and the use, storage, or other consumption in this state of, gas
2 and electricity sold for the uses listed in Subsection (a), are
3 exempted from the taxes imposed by a municipality under Chapter 321
4 except as provided by Sections 151.359(j) and [Section] 321.105.

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

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

15 Sec. 321.208. STATE EXEMPTIONS APPLICABLE. The exemptions
16 provided by Subchapter H, Chapter 151, apply to the taxes
17 authorized by this chapter, except as provided by Sections
18 151.359(j) and [Section] 151.317(b).

19 (d) Section 323.207, Tax Code, is amended to read as
20 follows:

21 Sec. 323.207. STATE EXEMPTIONS APPLICABLE. The exemptions
22 provided by Subchapter H, Chapter 151, apply to the taxes
23 authorized by this chapter, except as provided by Sections
24 151.359(j) and [Section] 151.317(b).

25 (e) The change in law made by this section does not affect
26 tax liability accruing before the effective date of this article.
27 That liability continues in effect as if this section had not been

1 enacted, and the former law is continued in effect for the
2 collection of taxes due and for civil and criminal enforcement of
3 the liability for those taxes.

4 SECTION 2.04. EFFECTIVE DATE. Except as otherwise provided
5 by this article, this article takes effect September 1, 2013.

6 ARTICLE 3. CIGARS AND TOBACCO PRODUCTS TAX

7 SECTION 3.01. RATE OF TAX. (a) Section 155.0211(b), Tax
8 Code, is amended to read as follows:

9 (b) Except as provided by Subsection (c), the tax rate for:

10 (1) each can or package of a tobacco product other than
11 cigars, chewing tobacco, or smoking tobacco is \$1.22 per ounce and a
12 proportionate rate on all fractional parts of an ounce; and

13 (2) chewing tobacco or smoking tobacco is 80 cents per
14 ounce and a proportionate rate on all fractional parts of an ounce.

15 (b) The change in law made by this section to Section
16 155.0211, Tax Code, does not affect tax liability accruing before
17 the effective date of this article. That liability continues in
18 effect as if this section had not been enacted, and the former law
19 is continued in effect for the collection of taxes due and for civil
20 and criminal enforcement of the liability for those taxes.

21 SECTION 3.02. EFFECTIVE DATE. This article takes effect
22 September 1, 2013.

23 ARTICLE 4. FRANCHISE TAX

24 SECTION 4.01. COMPUTATION OF AND EXCLUSIONS FROM FRANCHISE
25 TAX. (a) Section 171.0001(12), Tax Code, is amended to read as
26 follows:

27 (12) "Retail trade" means:

1 (A) the activities described in Division G of the
2 1987 Standard Industrial Classification Manual published by the
3 federal Office of Management and Budget; ~~and~~

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

8 (C) the activities classified as Industry Group
9 753 of the 1987 Standard Industrial Classification Manual published
10 by the federal Office of Management and Budget; and

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

13 (b) Section 171.002, Tax Code, is amended by adding
14 Subsection (c-2) to read as follows:

15 (c-2) Subsection (c)(2) does not apply to total revenue from
16 activities in a trade that rents or leases tangible personal
17 property as described by Industry Group 735 of the Standard
18 Industrial Classification Manual published by the United States
19 Department of Labor.

20 (c) Section 171.006(b), Tax Code, is amended to read as
21 follows:

22 (b) Beginning in 2010, on January 1 of each even-numbered
23 year, the amounts prescribed by Sections 171.002(d)(2) [~~171.0021~~]
24 ~~171.0021~~] and 171.1013(c) are increased or decreased by an amount
25 equal to the amount prescribed by those sections on December 31 of
26 the preceding year multiplied by the percentage increase or
27 decrease during the preceding state fiscal biennium in the consumer

1 price index and rounded to the nearest \$10,000.

2 (d) Section 171.101(a), Tax Code, is amended to read as
3 follows:

4 (a) The taxable margin of a taxable entity is computed by:

5 (1) determining the taxable entity's margin, which is
6 the lesser of:

7 (A) 65 percent [~~70 percent~~] of the taxable
8 entity's total revenue from its entire business, as determined
9 under Section 171.1011; or

10 (B) an amount computed by:

11 (i) determining the taxable entity's total
12 revenue from its entire business, under Section 171.1011;

13 (ii) subtracting, at the election of the
14 taxable entity, either:

15 (a) cost of goods sold, as determined
16 under Section 171.1012; or

17 (b) compensation, as determined under
18 Section 171.1013; and

19 (iii) subtracting, in addition to any
20 subtractions made under Subparagraph (ii)(a) or (b), compensation,
21 as determined under Section 171.1013, paid to an individual during
22 the period the individual is serving on active duty as a member of
23 the armed forces of the United States if the individual is a
24 resident of this state at the time the individual is ordered to
25 active duty and the cost of training a replacement for the
26 individual;

27 (2) apportioning the taxable entity's margin to this

1 state as provided by Section 171.106 to determine the taxable
2 entity's apportioned margin; and

3 (3) subtracting from the amount computed under
4 Subdivision (2) any other allowable deductions to determine the
5 taxable entity's taxable margin.

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

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

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

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

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

23 (g-8) A taxable entity that is primarily engaged in the
24 business of transporting aggregates shall exclude from its total
25 revenue, to the extent included under Subsection (c)(1)(A),
26 (c)(2)(A), or (c)(3), subcontracting payments made by the taxable
27 entity to nonemployee agents for the performance of delivery

1 services on behalf of the taxable entity. In this subsection,
2 "aggregates" means any commonly recognized construction material
3 removed or extracted from the earth, including dimension stone,
4 crushed and broken limestone, crushed and broken granite, other
5 crushed and broken stone, construction sand and gravel, industrial
6 sand, dirt, soil, cementitious material, and caliche.

7 (g-9) A taxable entity that is a landlord of commercial
8 property shall exclude from its total revenue, to the extent
9 included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3),
10 payments, excluding expenses for interest and depreciation and
11 other expenses not listed in this subsection, received from a
12 tenant of the property for ad valorem taxes and any tax or excise
13 imposed on rents.

14 (g-10) A taxable entity that is primarily engaged in the
15 business of transporting barite shall exclude from its total
16 revenue, to the extent included under Subsection (c)(1)(A),
17 (c)(2)(A), or (c)(3), subcontracting payments made by the taxable
18 entity to nonemployee agents for the performance of transportation
19 services on behalf of the taxable entity. For purposes of this
20 subsection, "barite" means barium sulfate (BaSO₄), a mineral used
21 as a weighing agent in oil and gas exploration.

22 (g-11) A taxable entity that is primarily engaged in the
23 business of performing landman services shall exclude from its
24 total revenue, to the extent included under Subsection (c)(1)(A),
25 (c)(2)(A), or (c)(3), subcontracting payments made by the taxable
26 entity to nonemployees for the performance of landman services on
27 behalf of the taxable entity. In this subsection, "landman

1 services" means:

2 (1) performing title searches for the purpose of
3 determining ownership of or curing title defects related to oil,
4 gas, or other related mineral or petroleum interests;

5 (2) negotiating the acquisition or divestiture of
6 mineral rights for the purpose of the exploration, development, or
7 production of oil, gas, or other related mineral or petroleum
8 interests; or

9 (3) negotiating or managing the negotiation of
10 contracts or other agreements related to the ownership of mineral
11 interests for the exploration, exploitation, disposition,
12 development, or production of oil, gas, or other related mineral or
13 petroleum interests.

14 (u) A taxable entity that is a physician practice shall
15 exclude from its total revenue the actual cost paid by the taxable
16 entity for a vaccine.

17 (v) A taxable entity primarily engaged in the business of
18 transporting commodities by waterways that does not subtract cost
19 of goods sold in computing its taxable margin shall exclude from its
20 total revenue direct costs of providing inbound and outbound
21 transportation services by intrastate or interstate waterways to
22 the same extent that a taxable entity that sells in the ordinary
23 course of business real or tangible personal property would be
24 authorized by Section 171.1012 to subtract those costs as costs of
25 goods sold in computing its taxable margin.

26 (w-1) A taxable entity primarily engaged in the business of
27 providing services as an agricultural aircraft operation, as

1 defined by 14 C.F.R. Section 137.3, shall exclude from its total
2 revenue the cost of labor, equipment, fuel, and materials used in
3 providing those services.

4 (x) A taxable entity that is registered as a motor carrier
5 under Chapter 643, Transportation Code, shall exclude from its
6 total revenue, to the extent included under Subsection (c)(1)(A),
7 (c)(2)(A), or (c)(3), flow-through revenue derived from taxes and
8 fees.

9 (f) Section 171.1011(p), Tax Code, is amended by amending
10 Subdivision (4-a) and adding Subdivisions (4-b) and (8) to read as
11 follows:

12 (4-a) "Physician practice" means an entity that:

13 (A) is owned entirely by one or more individuals
14 licensed to practice medicine in this state under Subtitle B, Title
15 3, Occupations Code; and

16 (B) offers services, the provision of which is
17 considered practicing medicine as defined by Section
18 151.002(a)(13), Occupations Code.

19 (4-b) "Pro bono services" means the direct provision
20 of legal services to the poor, without an expectation of
21 compensation.

22 (8) "Vaccine" means a preparation or suspension of
23 dead, live attenuated, or live fully virulent viruses or bacteria,
24 or of antigenic proteins derived from them, used to prevent,
25 ameliorate, or treat an infectious disease.

26 (g) Section 171.1012, Tax Code, is amended by adding
27 Subsection (q) to read as follows:

1 (g) Notwithstanding Subsection (i) or any other provision
2 of this section, a taxable entity that is primarily engaged in the
3 business of harvesting trees for wood may subtract as cost of goods
4 sold the direct costs of acquiring or producing the timber for the
5 wood that are specified by this subsection or otherwise described
6 by this section, regardless of whether the taxable entity owns the
7 land from which the trees are harvested, the harvested timber, or
8 the wood resulting from the harvested timber. For purposes of this
9 subsection, direct costs include costs of:

10 (1) moving harvesting equipment;

11 (2) severing timber;

12 (3) transporting timber to and from a mill or
13 designated delivery point;

14 (4) obtaining, using, storing, or maintaining
15 equipment necessary for an activity described by Subdivision (1),
16 (2), or (3); and

17 (5) other supplies, labor, freight, and fuel necessary
18 for an activity described by Subdivision (1), (2), or (3).

19 (h) Section 171.1014(d), Tax Code, is amended to read as
20 follows:

21 (d) For purposes of Section 171.101, a combined group shall
22 make an election to subtract either cost of goods sold or
23 compensation that applies to all of its members. Regardless of the
24 election, the taxable margin of the combined group may not exceed 65
25 percent [~~70 percent~~] of the combined group's total revenue from its
26 entire business, as provided by Section 171.101(a)(1)(A).

27 (i) Section 171.106, Tax Code, is amended by adding

1 Subsection (g) to read as follows:

2 (g) A receipt from Internet hosting as defined by Section
3 151.108(a) is a receipt from business done in this state only if the
4 customer to whom the service is provided is located in this state.

5 (j) Sections 171.0021 and 171.1016(d), Tax Code, are
6 repealed.

7 (k) Section 1(c), Chapter 286 (H.B. 4765), Acts of the 81st
8 Legislature, Regular Session, 2009, as amended by Section 37.01,
9 Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called
10 Session, 2011, is repealed.

11 (l) Section 2, Chapter 286 (H.B. 4765), Acts of the 81st
12 Legislature, Regular Session, 2009, as amended by Section 37.02,
13 Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called
14 Session, 2011, and which amended former Subsection (d), Section
15 171.002, Tax Code, is repealed.

16 (m) Section 3, Chapter 286 (H.B. 4765), Acts of the 81st
17 Legislature, Regular Session, 2009, as amended by Section 37.03,
18 Chapter 4 (S.B. 1), Acts of the 82nd Legislature, 1st Called
19 Session, 2011, and which amended former Subsection (a), Section
20 171.0021, Tax Code, is repealed.

21 (n) This section applies only to a report originally due on
22 or after the effective date of this section.

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

1 SUBCHAPTER M. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT

2 ACTIVITIES

3 Sec. 171.651. DEFINITIONS. In this subchapter:

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

9 (2) "Public or private institution of higher
10 education" means:

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

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

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

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

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

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

26 (a) A taxable entity is not eligible for a credit on a report
27 against the tax imposed under this chapter for qualified research

1 expenses incurred during the period on which the report is based if
2 the taxable entity, or a member of the combined group if the taxable
3 entity is a combined group, received an exemption under Section
4 151.3182 during that period.

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

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

12 (1) the qualified research expenses incurred during
13 the period on which the report is based, subject to Section 171.655;
14 and

15 (2) 50 percent of the average amount of qualified
16 research expenses incurred during the three tax periods preceding
17 the period on which the report is based, subject to Section 171.655.

18 (b) 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, the credit
23 for the report equals 6.25 percent of the difference between:

24 (1) all qualified research expenses incurred during
25 the period on which the report is based, subject to Section 171.655;
26 and

27 (2) 50 percent of the average amount of all qualified

1 research expenses incurred during the three tax periods preceding
2 the period on which the report is based, subject to Section 171.655.

3 (c) Except as provided by Subsection (d), if the taxable
4 entity has no qualified research expenses in one or more of the
5 three tax periods preceding the period on which the report is based,
6 the credit for the period on which the report is based equals 2.5
7 percent of the qualified research expenses incurred during that
8 period.

9 (d) If the taxable entity contracts with one or more public
10 or private institutions of higher education for the performance of
11 qualified research and the taxable entity has qualified research
12 expenses incurred in this state by the taxable entity under the
13 contract during the period on which the report is based, but has no
14 qualified research expenses in one or more of the three tax periods
15 preceding the period on which the report is based, the credit for
16 the period on which the report is based equals 3.125 percent of all
17 qualified research expenses incurred during that period.

18 (e) Notwithstanding whether the time for claiming a credit
19 under this subchapter has expired for any tax period used in
20 determining the average amount of qualified research expenses under
21 Subsection (a)(2) or (b)(2), the determination of which research
22 expenses are qualified research expenses for purposes of computing
23 that average must be made in the same manner as that determination
24 is made for purposes of Subsection (a)(1) or (b)(1). This
25 subsection does not apply to a credit to which a taxable entity was
26 entitled under Subchapter O, as that subchapter existed before
27 January 1, 2008.

1 (f) The comptroller may adopt rules for determining which
2 research expenses are qualified research expenses for purposes of
3 Subsection (a) or (b) to prevent disparities in those
4 determinations that may result from the taxable entity using
5 different accounting methods for the period on which the report is
6 based, as compared to any preceding tax periods used in determining
7 the average amount of qualified research expenses under Subsection
8 (a)(2) or (b)(2).

9 Sec. 171.655. ATTRIBUTION OF EXPENSES FOLLOWING TRANSFER OF
10 CONTROLLING INTEREST. (a) If a taxable entity acquires a
11 controlling interest in another taxable entity or in a separate
12 unit of another taxable entity during a tax period with respect to
13 which the acquiring taxable entity claims a credit under this
14 subchapter, the amount of the acquiring taxable entity's qualified
15 research expenses equals the sum of:

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

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

23 (b) A taxable entity that sells or otherwise transfers to
24 another taxable entity a controlling interest in another taxable
25 entity or in a separate unit of a taxable entity during a period on
26 which a report is based may not claim a credit under this subchapter
27 for qualified research expenses incurred by the transferred taxable

1 entity or unit during the period if the taxable entity is ineligible
2 for the credit under Section 171.653 or if the acquiring taxable
3 entity claims a credit under this subchapter for the corresponding
4 period.

5 (c) If during any of the three tax periods following the tax
6 period in which a sale or other transfer described by Subsection (b)
7 occurs, the taxable entity that sold or otherwise transferred the
8 controlling interest reimburses the acquiring taxable entity for
9 research activities conducted on behalf of the taxable entity that
10 made the sale or other transfer, the amount of the reimbursement is:

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

15 (2) excluded from the qualified research expenses
16 incurred by the acquiring taxable entity for the tax period during
17 which the reimbursement was paid.

18 (d) An acquiring taxable entity may not include on a report
19 the amount of qualified research expenses otherwise authorized by
20 Subsection (a)(2) to be included if the taxable entity that made the
21 sale or other transfer described by Subsection (b) received an
22 exemption under Section 151.3182 during the portion of the period
23 on which the acquiring taxable entity's report is based that
24 precedes the date of the acquisition.

25 (e) A taxable entity that makes a sale or other transfer
26 described by Subsection (b) may not include on a report the amount
27 of reimbursement otherwise authorized by Subsection (c)(1) to be

1 included if the reimbursement is for research activities that
2 occurred during a tax period under this chapter during which that
3 taxable entity received an exemption under Section 151.3182.

4 Sec. 171.656. COMBINED REPORTING. (a) A credit under this
5 subchapter for qualified research expenses incurred by a member of
6 a combined group must be claimed on the combined report required by
7 Section 171.1014 for the group, and the combined group is the
8 taxable entity for purposes of this subchapter.

9 (b) An upper tier entity that includes the total revenue of
10 a lower tier entity for purposes of computing its taxable margin as
11 authorized by Section 171.1015 may claim the credit under this
12 subchapter for qualified research expenses incurred by the lower
13 tier entity to the extent of the upper tier entity's ownership
14 interest in the lower tier entity.

15 Sec. 171.657. BURDEN OF ESTABLISHING CREDIT. The burden of
16 establishing entitlement to and the value of the credit is on the
17 taxable entity.

18 Sec. 171.658. LIMITATIONS. The total credit claimed under
19 this subchapter for a report, including the amount of any
20 carryforward credit under Section 171.659, may not exceed 50
21 percent of the amount of franchise tax due for the report before any
22 other applicable tax credits.

23 Sec. 171.659. CARRYFORWARD. If a taxable entity is
24 eligible for a credit that exceeds the limitation under Section
25 171.658, the taxable entity may carry the unused credit forward
26 until all of the credit has been claimed. Credits and credit
27 carryforwards are considered to be used in the following order:

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

2 (2) a current year credit.

3 Sec. 171.660. ASSIGNMENT PROHIBITED. A taxable entity may
4 not convey, assign, or transfer the credit allowed under this
5 subchapter to another entity unless all of the assets of the taxable
6 entity are conveyed, assigned, or transferred in the same
7 transaction.

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

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

13 Sec. 171.663. REPORTING OF ESTIMATES AND COLLECTION OF
14 INFORMATION. (a) Before the beginning of each regular session of
15 the legislature, the comptroller shall submit to the legislature
16 and the governor estimates of:

17 (1) the total number of taxable entities that applied
18 credits under this subchapter against the tax imposed under this
19 chapter;

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

21 (3) the total amount of unused credits carried
22 forward.

23 (b) The comptroller may require a taxable entity that claims
24 a credit under this subchapter to complete a form to provide the
25 information necessary for the comptroller to make the evaluations
26 required by Section 151.3182. The information provided on the form
27 is confidential and not subject to disclosure under Chapter 552,

1 Government Code.

2 (c) The comptroller shall provide the estimates required by
3 this section as part of the report required by Section 403.014,
4 Government Code.

5 (b) The comptroller of public accounts shall submit the
6 initial estimates required by Section 171.663, Tax Code, as added
7 by this section, before the 84th Regular Legislative Session
8 commences in January 2015.

9 (c) Subchapter M, Chapter 171, Tax Code, as added by this
10 section, applies only to a report originally due on or after the
11 effective date of this section.

12 SECTION 4.03. TRANSFER OF CERTAIN FRANCHISE TAX CREDITS.

13 (a) Section 18, Chapter 1 (H.B. 3), Acts of the 79th Legislature,
14 3rd Called Session, 2006, is amended by adding Subsections (h) and
15 (i) to read as follows:

16 (h) In this subsection and Subsection (i) of this section,
17 "transfer" includes a sale. Notwithstanding Subsections (e) and
18 (f) of this section, a corporation that has unused, unexpired
19 credits carried forward under former Subchapter P or Q, Chapter
20 171, Tax Code, may transfer the credits to another taxpayer of this
21 state. To be eligible to transfer the credits, the corporation must
22 obtain a certificate of transfer of credit from the comptroller of
23 public accounts for the amount of the credits to be transferred.
24 Not later than the 30th day after the date of the transfer, the
25 corporation must submit to the comptroller a notice of the transfer
26 in a form prescribed by the comptroller. The notice must be
27 accompanied by a copy of the certificate of transfer issued by the

1 comptroller and specify:

2 (1) the number on the certificate of transfer;

3 (2) the amount of the corporation's unused, unexpired
4 credits preceding the transfer;

5 (3) the date of the transfer;

6 (4) the amount of credits transferred;

7 (5) the tax identification numbers of the corporation
8 and the taxpayer to which the credits were transferred;

9 (6) the corporation's remaining amount of unused,
10 unexpired credits after the transfer; and

11 (7) any other information the comptroller requires.

12 (i) The transfer of a credit under Subsection (h) of this
13 section is limited to a credit that was first reported on a report
14 originally due before January 1, 2008, and does not include credits
15 authorized under former Subchapter Q-1, Chapter 171, Tax Code, or
16 credits that were created under the terms of a written agreement
17 between a taxpayer and the Texas Department of Economic Development
18 or its successor that was entered into before June 1, 2006, and
19 which credits continue to accrue under the terms provided by
20 Section 19 of this Act. The transferee of a credit under this
21 section obtains the credit subject to the same rights and
22 privileges as the transferor. The transfer of a credit under
23 Subsection (h) of this section does not extend or lessen the period
24 during which the credit may be claimed. If a corporation transfers a
25 credit that the corporation was not entitled to claim at the time of
26 the transfer:

27 (1) the taxpayer to which the credit was transferred

1 may pursue any remedy authorized by law against the corporation and
2 may not pursue any remedy against the comptroller of public
3 accounts or this state; and

4 (2) the comptroller:

5 (A) may not allow the taxpayer to which the
6 credit was transferred to apply the credit on a report; or

7 (B) shall recover from the taxpayer the amount of
8 the credit the taxpayer claims on a report using any means
9 authorized by law.

10 (b) This section applies only to a credit transferred on or
11 after the effective date of this section.

12 (c) This section takes effect September 1, 2013.

13 SECTION 4.04. EFFECTIVE DATE. Except as otherwise provided
14 by this article, this article takes effect January 1, 2014.

15 ARTICLE 5. EFFECTIVE DATE

16 SECTION 5.01. EFFECTIVE DATE. Except as otherwise provided
17 by this Act, this Act takes effect September 1, 2013.