

By: Deuell, et al.

S.B. No. 859

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.

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

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

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

(2) research and development activities create:

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

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

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

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

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

(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 AND SERVICES USED IN  
11 RESEARCH AND DEVELOPMENT ACTIVITIES. (a) In this section:

12 (1) "Internal Revenue Code" has the meaning assigned  
13 by Section 171.651.

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

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

21 (1) is engaged in qualified research; and

22 (2) will not, as a taxable entity as defined by Section  
23 171.0002 or as a member of a combined group that is a taxable  
24 entity, claim a credit under Subchapter M, Chapter 171, on a  
25 franchise tax report for the period during which the sale, storage,  
26 use, or other consumption occurs.

27 SECTION 3. FRANCHISE TAX CREDIT. Chapter 171, Tax Code, is

1 amended by adding Subchapter M to read as follows:

2 SUBCHAPTER M. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT

3 ACTIVITIES

4 Sec. 171.651. DEFINITIONS. In this subchapter:

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

10 (2) "Qualified research" has the meaning assigned by  
11 Section 41, Internal Revenue Code, except that the research must be  
12 conducted in this state.

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

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

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

21 (a) A taxable entity is not eligible for a credit on a report  
22 against the tax imposed under this chapter for qualified research  
23 expenses incurred during the period on which the report is based if  
24 the taxable entity, or a member of the combined group if the taxable  
25 entity is a combined group, received an exemption under Section  
26 151.3182 during that period.

27 (b) A taxable entity's ineligibility under this section for

1 a credit on a report for the period on which the report is based does  
2 not affect the taxable entity's eligibility to claim a carryforward  
3 of unused credit under Section 171.659 on that report.

4 Sec. 171.654. AMOUNT OF CREDIT. (a) Except as provided by  
5 Subsection (b), the credit for any report equals five percent of the  
6 difference between:

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

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

13 (b) If the taxable entity has no qualified research expenses  
14 in one or more of the three tax periods preceding the period on  
15 which the report is based, the credit for the period on which the  
16 report is based equals 2.5 percent of the qualified research  
17 expenses incurred during that period.

18 (c) 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), the determination of which research expenses are  
22 qualified research expenses for purposes of computing that average  
23 must be made in the same manner as that determination is made for  
24 purposes of Subsection (a)(1). This subsection does not apply to a  
25 credit to which a taxable entity was entitled under Subchapter O, as  
26 that subchapter existed before January 1, 2008.

27 (d) The comptroller may adopt rules for determining which

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

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

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

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

21 (b) A taxable entity that sells or otherwise transfers to  
22 another taxable entity a controlling interest in another taxable  
23 entity or in a separate unit of a taxable entity during a period on  
24 which a report is based may not claim a credit under this subchapter  
25 for qualified research expenses incurred by the transferred taxable  
26 entity or unit during the period if the taxable entity is ineligible  
27 for the credit under Section 171.653 or if the acquiring taxable

1 entity claims a credit under this subchapter for the corresponding  
2 period.

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

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

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

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

23 (e) A taxable entity that makes a sale or other transfer  
24 described by Subsection (b) may not include on a report the amount  
25 of reimbursement otherwise authorized by Subsection (c)(1) to be  
26 included if the reimbursement is for research activities that  
27 occurred during a tax period under this chapter during which that

1 taxable entity received an exemption under Section 151.3182.

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

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

12 Sec. 171.657. BURDEN OF ESTABLISHING CREDIT. The burden of  
13 establishing entitlement to and the value of the credit is on the  
14 taxable entity.

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

20 Sec. 171.659. CARRYFORWARD. If a taxable entity is  
21 eligible for a credit that exceeds the limitation under Section  
22 171.658, the taxable entity may carry the unused credit forward  
23 until all of the credit has been claimed. Credits and credit  
24 carryforwards are considered to be used in the following order:

- 25 (1) a credit carryforward from a previous report; and  
26 (2) a current year credit.

27 Sec. 171.660. ASSIGNMENT PROHIBITED. A taxable entity may

1 not convey, assign, or transfer the credit allowed under this  
2 subchapter to another entity unless all of the assets of the taxable  
3 entity are conveyed, assigned, or transferred in the same  
4 transaction.

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

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

10 SECTION 4. TRANSITION PROVISION. Section 151.3182, Tax  
11 Code, as added by this Act, does not affect tax liability accruing  
12 before the effective date of this Act. That liability continues in  
13 effect as if this Act had not been enacted, and the former law is  
14 continued in effect for the collection of taxes due and for civil  
15 and criminal enforcement of the liability for those taxes.

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

19 SECTION 6. EFFECTIVE DATE. This Act takes effect October 1,  
20 2013.