By:  Longoria H.B. No. 4425

A BILL TO BE ENTITLED

AN ACT

relating to the exemption for depreciable tangible personal property used in qualified research from the sales and use tax and the tax credit for certain research and development credit activities for franchise tax purposes.

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

SECTION 1.  Section 151.3182, Tax Code, is amended by amending Subsections (a) and (b) to read as follows:

(a)  In this section:

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

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

(B)  is subject to depreciation under:

(i)  generally accepted accounting principles; or

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

(2)  "Exclusively used in qualified research" means used in qualified research without an intervening, simultaneous, or subsequent use, unless the intervening, simultaneous, or subsequent use is otherwise exempt under this Chapter.

(3)  "Good" means real or tangible personal property sold in the ordinary course of business.

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

[~~(3)~~] (5)  "Qualified research" has the meaning assigned by Section 41, Internal Revenue Code, except it does not include the use of depreciable tangible personal property in the production of a good or activities involved in the provision of services for a customer.

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

(1)  is engaged in qualified research; and

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

SECTION 2.  Section 171.651, Tax Code, is amended by amending Paragraphs (1), (3), (4), and (5) to read as follows:

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

(3)  "Qualified research" has the meaning assigned by Section 41, Internal Revenue Code, except that:

(A)  the research must be conducted in this state; and

(B)  it does not include activities performed in the production of a good or the performance of a service for a customer.

(4)  "Qualified research expense" has the meaning assigned by Section 41, Internal Revenue Code, except that:

(A)  the expense must be for research conducted in this state; and

(B)  if an employee has performed both qualified services and nonqualified services, only wages for actual time spent for the performance of qualified services constitutes a qualified research expense and the "substantially-all" provisions of Section 41(b)(2)(B) do not apply.

(5)  "Goods" has the meaning assigned by Section 171.1012.

SECTION 3.  Section 171.652, Tax Code, is amended to read as follows:

Sec. 171.652.  ELIGIBILITY FOR CREDIT. 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. Eligibility and acceptance by the Internal Revenue Service for credit under Section 41, Internal Revenue Code, on a taxable entity's federal tax return is not binding on the eligibility for credit under this Subchapter.

SECTION 4.  Section 171.654, Tax Code, is amended by amending Subsections (a) and (b) to read as follows:

(a)  Except as provided by Subsections (b), (c), and (d), the credit for any report equals five percent of the difference between:

(1)  the qualified research expenses incurred during the period on which the report is based[~~, subject to Section 171.655~~]; and

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

(b)  If the taxable entity contracts with one or more public or private institutions of higher education for the performance of qualified research and the taxable entity has qualified research expenses incurred in this state by the taxable entity under the contract during the period on which the report is based, the credit for the report equals 6.25 percent of the difference between:

(1)  all qualified research expenses incurred during the period on which the report is based[~~, subject to Section 171.655~~]; and

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

SECTION 5.  Section 171.6541, Tax Code, is added to read as follows:

Sec. 171.6541.  DETERMINATION OF THE AMOUNT OF CREDIT. (a) A taxable entity may use sampling to determine the amount of the credit using a generally accepted sampling method approved by the comptroller.

(b)  The taxable entity must record the sampling method performed and must make available, on request by the comptroller, the records on which the computation was based.

SECTION 6.  Section 171.656, Tax Code, is amended by amending Subsection (a) to read as follows:

(a)  A credit under this subchapter for qualified research expenses incurred by a member of a combined group must be claimed on the combined report required by Section 171.1014 for the group[~~, and the combined group is the taxable entity for purposes of this subchapter~~].

(1)  Each member of the combined group shall determine its credit as if it were an individual taxable entity. The total credits of the members determined in this section shall be added together to determine the total credit claimed on the combined report.

(2)  Any carryforward credit belongs to the member of the combined group that established that portion of the credit for future reports.

SECTION 7.  Section 171.655, Tax Code, is deleted.

SECTION 8.  The amendments made by this Act are a clarification of existing law and do not imply that existing law may be construed as inconsistent with the law as amended by this Act.