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By:  Alvarado S.B. No. 2001

A BILL TO BE ENTITLED

AN ACT

relating to the creation of research technology corporations for the development and commercialization of technologies owned by institutions of higher education or by certain medical centers with members that are institutions of higher education; providing for tax exemptions; providing a penalty.

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

SECTION 1.  Subtitle H, Title 3, Education Code, is amended by adding Chapter 157 to read as follows:

CHAPTER 157.  UNIVERSITY RESEARCH TECHNOLOGY CORPORATIONS

Sec. 157.0001.  PURPOSE AND FINDINGS. The legislature finds that the development and commercialization of technology owned by public and private institutions of higher education and by medical centers associated with those institutions are critical components of the educational and research missions of those institutions and key contributors to the economic development and well-being of this state. The activities authorized by this chapter directly support those important public purposes.

Sec. 157.0002.  DEFINITIONS. In this chapter:

(1)  "Contribution" has the meaning assigned by Section 1.002, Business Organizations Code.

(2)  "Institution of higher education" means an institution of higher education or a private or independent institution of higher education as those terms are defined by Section 61.003.

(3)  "Medical center development corporation" means a nonprofit corporation that is eligible to claim an ad valorem tax exemption under Section 11.23(j-1), Tax Code, for all or any part of the corporation's properties.

(4)  "Qualified medical center," with respect to an institution of higher education, means a medical center development corporation that includes among its member institutions, as described in the corporation's books and records, one or more institutions of higher education, regardless of whether those institutions of higher education have membership status in the qualified medical center for purposes of the Business Organizations Code.

(5)  "Technology" means the application of scientific knowledge for practical purposes and includes inventions, discoveries, patents, trade secrets, copyrighted materials, tools, machines, materials, processes to do work, processes to produce goods, processes to perform services, processes to carry out other useful activities, trademarks, and computer software.

Sec. 157.0003.  CREATION OF SPECIAL-PURPOSE CORPORATION. (a)  Any person having the capacity to be an organizer of a corporation as provided by Section 3.004, Business Organizations Code, may create a special-purpose corporation for the exclusive purpose of developing and commercializing one or more technologies owned wholly or partly by an institution of higher education. To create the special-purpose corporation, an organizer of the corporation must present to the secretary of state written evidence that the organizer has a license to develop and commercialize a specific technology owned wholly or partly by an institution of higher education. The license may be conditioned on the creation of the special-purpose corporation.

(b)  A person described by Subsection (a) may create a special-purpose corporation for the exclusive purpose of developing and commercializing technology owned wholly or partly by a qualified medical center.

(c)  A special-purpose corporation created under Subsection (b) may be created in the same form and manner as a special-purpose corporation created under Subsection (a). To that extent, a qualified medical center that owns wholly or partly the technology for which a special-purpose corporation is created under Subsection (b) is governed by the same provisions of this chapter that are applicable to an institution of higher education.

(d)  A corporation created under this chapter that engages in other purposes that are not incidental to the purposes authorized by this section is not entitled to the benefits of this chapter, including any tax exemption authorized by Section 157.0008.

(e)  The certificate of formation of a corporation created under this chapter must state that the corporation is governed by this chapter and state the name and purposes of the corporation and other information required by law. Except as otherwise provided by this chapter, a corporation created under this chapter is governed by Chapters 20 and 21, Business Organizations Code, and Title 1 of that code.

(f)  The organizers of a corporation created under this chapter shall register the corporation with the comptroller.

Sec. 157.0004.  MANAGEMENT OF CORPORATION; RIGHTS OF CREATING INSTITUTION. (a)  The organizers of a corporation created under this chapter shall name the persons constituting the initial board of directors of the corporation. Directors other than the initial directors shall be determined as provided by Chapter 21, Business Organizations Code.

(b)  An institution of higher education that owns wholly or partly the technology for which a corporation is created under this chapter must at all times be a shareholder in the corporation. The institution of higher education shall be issued shares in the corporation when the corporation is created as agreed on by the organizers of the corporation according to any contribution of the institution.

(c)  The institution of higher education described by Subsection (b) may be issued shares in the corporation in exchange for the contribution of rights in the technology of the institution of higher education or of other contractual obligations, as agreed on by the corporation's board of directors.

Sec. 157.0005.  TECHNOLOGY LICENSING. The institution of higher education that owns wholly or partly the technology for which a corporation is created under this chapter may license to the corporation any technology owned by the institution of higher education.

Sec. 157.0006.  REQUIRED OPERATIONS IN TEXAS. The principal offices of the corporation must be located in this state, and more than 50 percent of any goods produced or services performed by the corporation must be produced or performed in this state.

Sec. 157.0007.  DURATION. (a)  A corporation created under this chapter is limited in duration to 15 years. At the expiration of that period, the corporation may file a restated and amended certificate of formation under which the corporation continues in existence as a for-profit corporation governed by Chapters 20 and 21, Business Organizations Code, and Title 1 of that code. A corporation that files a restated and amended certificate of formation as authorized by this subsection is not governed by the other provisions of this chapter and is not entitled to an exemption authorized by Section 157.0008.

(b)  Subsection (a) does not limit the time or manner in which the corporation may be terminated as otherwise provided by law.

Sec. 157.0008.  TAX-EXEMPT STATUS OF CORPORATION. (a)  This section applies only to a corporation created under this chapter, other than a corporation that files a restated and amended certificate of formation as authorized by Section 157.0007, that:

(1)  is engaged exclusively in developing and commercializing one or more technologies owned wholly or partly by an institution of higher education or by a qualified medical center, including activities that are incidental to developing and commercializing those technologies; and

(2)  complies with Section 157.0006.

(b)  The corporation is entitled to an exemption from ad valorem taxation of real and tangible personal property as provided by Section 11.232, Tax Code.

(c)  The corporation is exempted from the sales and use tax imposed by Chapter 151, Tax Code, as provided by Section 151.3184 of that code.

(d)  The corporation is exempted from the franchise tax imposed by Chapter 171, Tax Code, as provided by Section 171.089 of that code.

(e)  This section does not limit the eligibility of the corporation for any other available tax benefit, including a tax benefit under Chapter 312 or 313, Tax Code.

(f)  The corporation shall maintain a complete record of all taxes for which the corporation would have been liable if the corporation had not been entitled to the exemptions authorized by this section. The corporation shall report that information annually to the comptroller in the form and manner required by the comptroller.

(g)  The comptroller shall adopt rules necessary to implement this section and administer the exemptions under Subsections (c) and (d).

Sec. 157.0009.  PENALTY FOR NONCOMPLIANCE WITH CORPORATE OPERATIONS REQUIREMENTS. (a)  A corporation created under this chapter that ceases to comply with Section 157.0006 is liable to the state for a penalty in an amount equal to any taxes, including ad valorem taxes, for which the corporation received an exemption under Section 157.0008 for the four calendar years preceding the year in which the noncompliance began. The comptroller shall determine the corporation's liability for the penalty and assess the amount owed.

(b)  A penalty assessed under this section is due on the date designated by the comptroller, not later than the 90th day after the date assessed, and shall be collected in the same manner as a state tax. A lien exists on any property of the corporation to secure the payment of any amount assessed under this section. The comptroller is entitled to collect interest and penalties on the unpaid amount of a delinquent penalty in the same manner as is prescribed for the collection of a delinquent state tax. The comptroller by rule shall establish the methods of payment and shall adopt other rules necessary to administer and enforce this section.

(c)  Amounts received under this section shall be deposited to the credit of the general revenue fund.

Sec. 157.0010.  CONFLICT WITH BUSINESS ORGANIZATIONS CODE. To the extent of any conflict between a provision of this chapter and a provision of the Business Organizations Code, the provision of this chapter controls.

SECTION 2.  Subchapter B, Chapter 11, Tax Code, is amended by adding Section 11.232 to read as follows:

Sec. 11.232.  PROPERTY OWNED BY OR LEASED TO UNIVERSITY RESEARCH TECHNOLOGY CORPORATION. (a)  In this section, "institution of higher education," "medical center development corporation," "qualified medical center," and "technology" have the meanings assigned by Section 157.0002, Education Code.

(b)  Except as provided by Subsection (c), a corporation that qualifies as a university research technology corporation as provided by Subsection (g) is entitled to an exemption from ad valorem taxation of:

(1)  the real and tangible personal property owned by the corporation that is used for a purpose described by Subsection (g)(2); and

(2)  the real property owned by the corporation that consists of:

(A)  an incomplete improvement that is under active construction or other physical preparation to make the property suitable to be used for a purpose described by Subsection (g)(2); and

(B)  the land on which the incomplete improvement is located that will be reasonably necessary for the corporation's use of the improvement.

(c)  A qualified university research technology corporation is not entitled to an exemption from taxation of real or tangible personal property:

(1)  owned by an organizer or director of the corporation before the creation of the corporation; and

(2)  subject to taxation in this state before being devoted exclusively to a purpose described by Subsection (g)(2).

(d)  Notwithstanding Subsection (c), a qualified university research technology corporation is entitled to an exemption from taxation of the value of that portion of an improvement that consists of an expansion of an improvement described by that subsection if the improvement is devoted exclusively to a purpose described by Subsection (g)(2).

(e)  A medical center development corporation is entitled to an exemption from taxation of the corporation's real and tangible personal property that is leased to or used or occupied primarily by a qualified university research technology corporation and used exclusively for a purpose described by Subsection (g)(2).

(f)  Notwithstanding Section 25.07, a qualified university research technology corporation is entitled to an exemption from taxation of a possessory interest in property described by Subsection (e).

(g)  To qualify as a university research technology corporation for purposes of this section, a corporation must:

(1)  be a corporation created under Chapter 157, Education Code, other than a corporation created under that chapter that files a restated and amended certificate of formation as authorized by Section 157.0007 of that code;

(2)  be engaged exclusively in developing and commercializing one or more technologies owned wholly or partly by an institution of higher education or by a qualified medical center, including activities that are incidental to developing and commercializing those technologies; and

(3)  be in compliance with Section 157.0006, Education Code.

SECTION 3.  Section 11.42(d), Tax Code, is amended to read as follows:

(d)  A person who acquires property after January 1 of a tax year may receive an exemption authorized by Section 11.17, 11.18, 11.19, 11.20, 11.21, 11.23, 11.231, 11.232, or 11.30 for the applicable portion of that tax year immediately on qualification for the exemption.

SECTION 4.  The heading to Section 26.113, Tax Code, is amended to read as follows:

Sec. 26.113.  PRORATING TAXES--ACQUISITION BY NONPROFIT ORGANIZATION OR UNIVERSITY RESEARCH TECHNOLOGY CORPORATION.

SECTION 5.  Subchapter H, Chapter 151, Tax Code, is amended by adding Section 151.3184 to read as follows:

Sec. 151.3184.  UNIVERSITY RESEARCH TECHNOLOGY CORPORATION. (a)  In this section, "university research technology corporation" means a corporation to which Section 157.0008, Education Code, applies.

(b)  A taxable item sold, leased, or rented to, or stored, used, or consumed by, a university research technology corporation is exempted from the taxes imposed by this chapter if the item is classified by the corporation as a capital asset. An item is considered to be classified by the corporation as a capital asset if the item is considered to be a capital asset according to generally accepted accounting principles adopted by the Financial Accounting Standards Board and is recognized by the corporation as a capital asset on the corporation's federal income tax returns.

(c)  The comptroller shall adopt rules necessary to implement this section, including rules to ensure that a taxable item with respect to which an exemption from the taxes imposed by this chapter is granted under this section meets the requirements of Subsection (b).

SECTION 6.  Subchapter B, Chapter 171, Tax Code, is amended by adding Section 171.089 to read as follows:

Sec. 171.089.  EXEMPTION--UNIVERSITY RESEARCH TECHNOLOGY CORPORATION. (a)  In this section, "university research technology corporation" means a corporation to which Section 157.0008, Education Code, applies.

(b)  A university research technology corporation is exempted from the franchise tax.

(c)  A corporation created as a university research technology corporation that files at the expiration of the period described by Section 157.0007(a), Education Code, a restated and amended certificate of formation as authorized by that section is no longer exempted from the franchise tax by Subsection (b) on the expiration of that period. Unless the corporation is otherwise exempted from the franchise tax, the date of the expiration of that period is considered the corporation's beginning date for purposes of determining the corporation's privilege periods and for all other purposes of this chapter.

SECTION 7.  Section 11.232, Tax Code, as added by this Act, applies only to an ad valorem tax year that begins on or after the effective date of this Act.

SECTION 8.  Section 151.3184, Tax Code, as added by this Act, does not affect tax liability accruing before the effective date of this Act. That liability continues in effect as if this Act had not been enacted, and the former law is continued in effect for the collection of taxes due and for civil and criminal enforcement of the liability for those taxes.

SECTION 9.  The change in law made by this Act to Chapter 171, Tax Code, applies only to a report originally due on or after the effective date of this Act.

SECTION 10.  (a)  Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2020.

(b)  Section 157.0008(b), Education Code, and Section 11.232, Tax Code, as added by this Act, and Sections 11.42(d) and 26.113, Tax Code, as amended by this Act, take effect January 1, 2020, but only if the constitutional amendment proposed by the 86th Legislature, Regular Session, 2019, authorizing the legislature to provide for an exemption from ad valorem taxation of certain property owned by or leased to or by a university research technology corporation is approved by the voters. If that amendment is not approved by the voters, Section 157.0008(b), Education Code, and Section 11.232, Tax Code, as added by this Act, and Sections 11.42(d) and 26.113, Tax Code, as amended by this Act, have no effect.