

By: Longoria

H.B. No. 4425

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the exemption for depreciable tangible personal
3 property used in qualified research from the sales and use tax and
4 the tax credit for certain research and development credit
5 activities for franchise tax purposes.

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

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

9 (a) In this section:

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

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

13 (B) is subject to depreciation under:

14 (i) generally accepted accounting
15 principles; or

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

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

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

24 (4) "Internal Revenue Code" has the meaning assigned

1 by Section 171.651.

2 ~~[(3)]~~ (5) "Qualified research" has the meaning
3 assigned by Section 41, Internal Revenue Code, except it does not
4 include the use of depreciable tangible personal property in the
5 production of a good or activities involved in the provision of
6 services for a customer.

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

12 (1) is engaged in qualified research; and

13 (2) will not, as a taxable entity as defined by Section
14 171.0002 or as a member of a combined group that is a taxable
15 entity, claim a credit under Subchapter M, Chapter 171, on a
16 franchise tax report for the period during which the sale, storage,
17 or use occurs.

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

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

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

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

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

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

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

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

15 (5) "Goods" has the meaning assigned by Section
16 171.1012.

17 SECTION 3. Section [171.652](#), Tax Code, is amended to read as
18 follows:

19 Sec. 171.652. ELIGIBILITY FOR CREDIT. A taxable entity is
20 eligible for a credit against the tax imposed under this chapter in
21 the amount and under the conditions and limitations provided by
22 this subchapter. Eligibility and acceptance by the Internal
23 Revenue Service for credit under Section 41, Internal Revenue Code,
24 on a taxable entity's federal tax return is not binding on the
25 eligibility for credit under this Subchapter.

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

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

4 (1) the qualified research expenses incurred during
5 the period on which the report is based[, ~~subject to Section~~
6 ~~171.655~~]; and

7 (2) 50 percent of the average amount of qualified
8 research expenses incurred during the three tax periods preceding
9 the period on which the report is based[, ~~subject to Section~~
10 ~~171.655~~].

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

17 (1) all qualified research expenses incurred during
18 the period on which the report is based[, ~~subject to Section~~
19 ~~171.655~~]; and

20 (2) 50 percent of the average amount of all qualified
21 research expenses incurred during the three tax periods preceding
22 the period on which the report is based[, ~~subject to Section~~
23 ~~171.655~~].

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

26 Sec. 171.6541. DETERMINATION OF THE AMOUNT OF CREDIT. (a)

27 A taxable entity may use sampling to determine the amount of the

1 credit using a generally accepted sampling method approved by the
2 comptroller.

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

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

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

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

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

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

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