

BILL ANALYSIS

Senate Research Center

S.B. 2206
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Finance
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Research and development (R&D) activity creates high-paying jobs that provide substantial benefit to the Texas economy, produces new technologies and applications that generate economic efficiency and growth, and accelerates partnerships with institutions of higher education that expand opportunities for innovation and learning. For these reasons, states compete fiercely to locate R&D projects in their states.

Enacted as H.B. 800 by the 83rd Legislature in 2013, current law allows a taxpayer to claim either a franchise tax credit or a sales tax exemption for new and increasing R&D activity in Texas, in a manner similar to the federal income tax credit for R&D under Section 41 of the Internal Revenue Code (26 U.S.C. § 41). The current law is set to expire December 31, 2026.

S.B. 2206 seeks to extend the franchise tax credit beyond the current December 31, 2026, expiration date and to make the administration of the credit more efficient for both taxpayers and the Comptroller of Public Accounts of the State of Texas (comptroller) by adhering more closely to the federal R&D credit, thereby leveraging the work of the Internal Revenue Service and reducing the demand on resources of the comptroller.

S.B. 2206 would repeal the sales tax exemption for R&D because it has proven inefficient to administer and would increase the franchise tax credit from five percent to 8.722 percent of new R&D expenditures in Texas to improve the attractiveness of Texas for R&D projects. With the repeal of the sales tax exemption, the percentage increase in the franchise tax credit would not present an additional biennial cost to the state compared to current law.

Approximately 29 other states currently offer an R&D credit like the Texas franchise tax credit. Across these states, the credit ranges from five percent to 27 percent of new R&D expenditures in the state.

S.B. 2206 seeks to keep Texas economically competitive in the field of R&D by offering a more efficient incentive to locate R&D in Texas and consequently encouraging new investments, promoting the creation of high-paying jobs, and complementing Texas's manufacturing industries through innovation and efficiency.

S.B. 2206 amends current law relating to a franchise tax credit for, and the application of sales and use taxes to, certain research and development expenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Comptroller of Public Accounts of the State of Texas in SECTION 1 (Sections 171.9204 and 171.9211, Tax Code) of this bill.

Rulemaking authority previously granted to the Comptroller of Public Accounts of the State of Texas is rescinded in SECTION 3 (Sections 171.654 and 171.662, Tax Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 171, Tax Code, by adding Subchapter T, as follows:

SUBCHAPTER T. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT
ACTIVITIES

Sec. 171.9201. DEFINITION. Defines "public or private institution of higher education."

Sec. 171.9202. QUALIFIED RESEARCH EXPENSE. (a) Defines "qualified research expense."

(b) Provides that, for purposes of this section:

(1) a reference to Form 6765 is a reference to Internal Revenue Service (IRS) Form 6765 and includes a revised version of that form or a subsequent form with a different number or designation that substantially provides the same information as Form 6765; and

(2) a reference to a line number on Form 6765 includes a different line number on a revised or subsequent form described by Subdivision (1) that substantially provides the same information as the line number originally referenced.

(c) Provides that, notwithstanding Section 171.0001(9) (relating to defining "Internal Revenue Code"), for purposes of this section, a reference to an amount reported on a line number on Form 6765 is:

(1) a reference to the amount entered on that line number to the extent the amount entered complies with federal law in effect for the federal tax year for which the form is filed with the IRS;

(2) if an amended Form 6765 is filed by the taxable entity with the IRS before the expiration of the period for claiming a refund of federal income tax for the federal tax year for which the amended form is filed, a reference to the amount entered on that line number on the amended form; or

(3) if the IRS has audited the federal income tax return of a taxable entity for a federal tax year for which the taxable entity filed Form 6765 with the IRS and the audit has been made final, a reference to the amount reported on that line number on the form as audited or adjusted by the IRS.

(d) Provides that, for purposes of determining the amount on line 48 of Form 6765 under this section:

(1) a taxable entity or the Comptroller of Public Accounts of the State of Texas (comptroller) is authorized to use statistical sampling procedures if the procedures are permitted by the IRS' Revenue Procedure 2011-42 or a successor publication issued by the service; and

(2) expenses for supplies properly reportable by a taxable entity as qualified research expenses on either of those lines is prohibited from being excluded from the computation of those expenses for purposes of this subchapter on the basis that the supplies are taxable, nontaxable, or exempted from taxation under Chapter 151 (Limited Sales, Excise, and Use Tax).

(e) Provides that, notwithstanding any other provision of this subchapter, if the IRS or the comptroller determines that a taxable entity has satisfied the requirements of the IRS to accept as sufficient evidence of the entity's qualified research expenses the entity's adjusted Accounting Standards Codification 730 financial statement research and development costs for a federal tax credit year, then the portion of those adjusted costs that is related to research conducted in this

state is sufficient evidence of the entity's qualified research expenses for that federal tax credit year for purposes of this subchapter.

Sec. 171.9203. ELIGIBILITY FOR CREDIT. Provides that a taxable entity is eligible for a credit against the tax imposed under Chapter 171 (Franchise Tax) in the amount and under the conditions provided by this subchapter.

Sec. 171.9204. AMOUNT OF CREDIT. (a) Provides that, except as provided by Subsections (b), (c), and (d), the credit for any report equals 8.722 percent of the difference between:

(1) the qualified research expenses incurred during the period on which the report is based; 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.

(b) Provides that, if the taxable entity contracts with one or more public or private institutions of higher education and the entity incurs qualified research expenses under the contract during the period on which the report is based, the credit for the report equals 10.903 percent of the difference between:

(1) all qualified research expenses incurred during the period on which the report is based; 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.

(c) Provides that, except as provided by Subsection (d), if the taxable entity has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, the credit for the period on which the report is based equals 4.361 percent of the qualified research expenses incurred during that period.

(d) Provides that, if the taxable entity contracts with one or more public or private institutions of higher education and the entity incurs qualified research expenses under the contract during the period on which the report is based, but has no qualified research expenses in one or more of the three tax periods preceding the period on which the report is based, the credit for the period on which the report is based equals 5.451 percent of all qualified research expenses incurred during that period.

(e) Requires that the determination of which research expenses are qualified research expenses for purposes of computing the average amount of qualified research expenses under Subsection (a)(2) or (b)(2), notwithstanding whether the time for claiming a credit under this subchapter has expired for any tax period used in determining that average, be made in the same manner as that determination is made for purposes of Subsection (a)(1) or (b)(1). Provides that this subsection does not apply to a credit to which a taxable entity was entitled under Subchapter O (Tax Credit for Certain Research and Development Activities), as that subchapter existed before January 1, 2008.

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

Sec. 171.9205. CREDIT FOR CERTAIN TAXABLE ENTITIES THAT OWE NO TAX.

(a) Authorizes a taxable entity that incurs qualified research expenses during a period for which the entity is not required to pay the tax imposed by this chapter under Section 171.001(d) (relating to providing that a certain tax is not imposed on a taxable entity that qualifies as a veteran-owned business) or 171.002(d) (relating to providing that a taxable entity is not required to pay any tax and is not considered to owe any tax if it meets certain criteria) to calculate the amount of the credit to which the entity would otherwise be entitled under this subchapter on a report and receive that amount as a refundable credit.

(b) Provides that, in determining the amount of the credit that is authorized to be refunded to a taxable entity under Subsection (a) of this section, the limitation prescribed by Section 171.9207 does not apply.

(c) Requires a taxable entity, notwithstanding Section 171.204(b) (relating to prohibiting the comptroller from requiring a taxable entity that does not owe any tax to file an information report with the comptroller), to apply for a credit under this section on or with the report for the period for which the credit is claimed or, if the entity does not file a report for the applicable period, on a form adopted by the comptroller. Requires that the form be submitted to the comptroller on or before the date a report for the period for which the credit is claimed would be due.

Sec. 171.9206. COMBINED REPORTING. (a) Requires that a credit under this subchapter for qualified research expenses incurred by a member of a combined group be claimed on the combined report required by Section 171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business) for the group, and provides that the combined group is the taxable entity for purposes of this subchapter.

(b) Authorizes an upper tier entity that includes the total revenue of a lower tier entity for purposes of computing its taxable margin as authorized by Section 171.1015 (Reporting for Certain Partnerships in Tiered Partnership Arrangement) to claim the credit under this subchapter for qualified research expenses incurred by the lower tier entity to the extent of the upper tier entity's ownership interest in the lower tier entity.

Sec. 171.9207. LIMITATION. Prohibits the total credit claimed under this subchapter for a report, including the amount of any carryforward under Section 171.9208, from exceeding 50 percent of the amount of tax due for the report before any other applicable tax credits.

Sec. 171.9208. CARRYFORWARD. (a) Authorizes a taxable entity, if the entity is eligible for a credit that exceeds the limitation under Section 171.9207, to carry the unused credit forward for not more than 20 consecutive reports.

(b) Provides that credits, including credit carryforwards, are considered used in a certain order.

Sec. 171.9209. ASSIGNMENT PROHIBITED. Prohibits a taxable entity from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless substantially all of the assets of the taxable entity are conveyed, assigned, or transferred in the same transaction.

Sec. 171.9210. APPLICATION FOR CREDIT. Requires a taxable entity, except as provided by Section 171.9205(c), to apply for a credit under this subchapter on or with the report for the period for which the credit is claimed.

Sec. 171.9211. RULES. Authorizes the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.9212. REPORTING OF ESTIMATES. (a) Requires the comptroller, before the beginning of each regular session of the legislature, to submit to the legislature and the governor estimates of the total number of taxable entities that applied credits under this subchapter against the tax imposed under this chapter or received refundable credits under this subchapter, the total amount of those credits and refundable credits, and the total amount of unused credits carried forward.

(b) Requires the comptroller to provide the estimates required by this section as part of the report required by Section 403.014 (Report on Effect of Certain Tax Provisions), Government Code.

Sec. 171.9213. DEPOSIT OF CERTAIN REVENUE. Requires the comptroller, notwithstanding any other law, for each state fiscal year, to deposit to the credit of the property tax relief fund an amount of revenue received from the tax imposed under this chapter sufficient to offset any decrease in deposits to that fund for the state fiscal year that results from the implementation of this subchapter.

SECTION 2. Amends Section 171.212(a), Tax Code, as follows:

(a) Defines "qualified research expense."

SECTION 3. Repealer: Section 151.3182 (Certain Property Used in Research and Development Activities; Reporting of Estimates and Evaluation), Tax Code.

Repealer: Subchapter M (Franchise Tax; Credits), Chapter 171 (Franchise Tax), Tax Code.

SECTION 4. (a) Provides that the repeal by this Act of Section 151.3182, Tax Code, does not affect tax liability accruing before the effective date of this Act. Provides that that liability continues in effect as if Section 151.3182, Tax Code, had not been repealed, 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.

(b) Provides that the repeal by this Act of Subchapter M, Chapter 171, Tax Code, does not affect an unused credit a taxable entity was authorized to carry forward under that subchapter. Authorizes a taxable entity to continue to apply those credits on or with each consecutive report until the date the credit would have expired under Subchapter M, Chapter 171, Tax Code, had that subchapter continued in effect, and the former law under which the taxable entity accrued the credits is continued in effect for purposes of determining the amount of the credits the taxable entity may claim and the manner in which the taxable entity may claim the credits.

SECTION 5. (a) Makes application of Subchapter T, Chapter 171, Tax Code, as added by this Act, prospective.

(b) Provides that, notwithstanding any other provision of this Act, a taxable entity is not eligible for and is prohibited from claiming on a report a credit under Subchapter T, Chapter 171, Tax Code, as added by this Act, if the taxable entity, or a member of the taxable entity's combined group if the taxable entity is a combined group, received an exemption under Section 151.3182, Tax Code, during the period for which the report is based.

SECTION 6. Effective date: January 1, 2026.