

By: Geren

H.B. No. 4393

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for, and the application of sales and use taxes to, certain research and development expenses.

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

SECTION 1. Chapter 171, Tax Code, is amended by adding Subchapter T to read as follows:

SUBCHAPTER T. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT
ACTIVITIES

Sec. 171.9201. DEFINITION. In this subchapter, "public or private institution of higher education" means:

(1) an institution of higher education, as defined by Section 61.003, Education Code; or

(2) a private or independent institution of higher education, as defined by Section 61.003, Education Code.

Sec. 171.9202. QUALIFIED RESEARCH EXPENSE. (a) In this subchapter, "qualified research expense" means, subject to this section, the portion of the amount reported by a taxable entity as the entity's total qualified research expenses on line 9 or 28, as applicable, of Form 6765, that is attributable to research conducted in this state. The term does not include any amount that is not paid or incurred by the taxable entity, a member of the entity's combined group, or a lower tier entity as provided by Section 171.9206.

(b) For purposes of this section:

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

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

9 (c) Notwithstanding Section 171.0001(9), for purposes of
10 this section, a reference to an amount reported on a line number on
11 Form 6765 is:

12 (1) a reference to the amount entered on that line
13 number to the extent the amount entered complies with federal law in
14 effect for the federal tax year for which the form is filed with the
15 Internal Revenue Service;

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

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

27 (d) For purposes of determining the amount on line 9 or 28,

1 as applicable, of Form 6765 under this section:

2 (1) a taxable entity or the comptroller may use
3 statistical sampling procedures if the procedures are permitted by
4 the Internal Revenue Service's Revenue Procedure 2011-42 or a
5 successor publication issued by the service; and

6 (2) expenses for supplies properly reportable by a
7 taxable entity as qualified research expenses on either of those
8 lines may not be excluded from the computation of those expenses for
9 purposes of this subchapter on the basis that the supplies are
10 taxable, nontaxable, or exempted from taxation under Chapter 151.

11 (e) Notwithstanding any other provision of this subchapter,
12 if the Internal Revenue Service or the comptroller determines that
13 a taxable entity has satisfied the requirements of the Internal
14 Revenue Service to accept as sufficient evidence of the entity's
15 qualified research expenses the entity's adjusted Accounting
16 Standards Codification 730 financial statement research and
17 development costs for a federal tax credit year, then the portion of
18 those adjusted costs that is related to research conducted in this
19 state is sufficient evidence of the entity's qualified research
20 expenses for that federal tax credit year for purposes of this
21 subchapter.

22 Sec. 171.9203. ELIGIBILITY FOR CREDIT. A taxable entity is
23 eligible for a credit against the tax imposed under this chapter in
24 the amount and under the conditions provided by this subchapter.

25 Sec. 171.9204. AMOUNT OF CREDIT. (a) Except as provided by
26 Subsections (b), (c), and (d), the credit for any report equals
27 8.722 percent of the difference between:

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

3 (2) 50 percent of the average amount of qualified
4 research expenses incurred during the three tax periods preceding
5 the period on which the report is based.

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

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

13 (2) 50 percent of the average amount of all qualified
14 research expenses incurred during the three tax periods preceding
15 the period on which the report is based.

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

22 (d) If the taxable entity contracts with one or more public
23 or private institutions of higher education and the entity incurs
24 qualified research expenses under the contract during the period on
25 which the report is based, but has no qualified research expenses in
26 one or more of the three tax periods preceding the period on which
27 the report is based, the credit for the period on which the report

1 is based equals 5.451 percent of all qualified research expenses
2 incurred during that period.

3 (e) Notwithstanding whether the time for claiming a credit
4 under this subchapter has expired for any tax period used in
5 determining the average amount of qualified research expenses under
6 Subsection (a)(2) or (b)(2), the determination of which research
7 expenses are qualified research expenses for purposes of computing
8 that average must be made in the same manner as that determination
9 is made for purposes of Subsection (a)(1) or (b)(1). This
10 subsection does not apply to a credit to which a taxable entity was
11 entitled under Subchapter O, as that subchapter existed before
12 January 1, 2008.

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

21 Sec. 171.9205. CREDIT FOR CERTAIN TAXABLE ENTITIES THAT OWE
22 NO TAX. (a) A taxable entity that incurs qualified research
23 expenses during a period for which the entity is not required to pay
24 the tax imposed by this chapter under Section 171.001(d) or
25 171.002(d) may calculate the amount of the credit to which the
26 entity would otherwise be entitled under this subchapter on a
27 report and receive that amount as a refundable credit.

1 (b) In determining the amount of the credit that may be
2 refunded to a taxable entity under Subsection (a) of this section,
3 the limitation prescribed by Section 171.9207 does not apply.

4 (c) Notwithstanding Section 171.204(b), a taxable entity
5 must apply for a credit under this section on or with the report for
6 the period for which the credit is claimed or, if the entity does
7 not file a report for the applicable period, on a form adopted by
8 the comptroller. The form must be submitted to the comptroller on
9 or before the date a report for the period for which the credit is
10 claimed would be due.

11 Sec. 171.9206. COMBINED REPORTING. (a) A credit under
12 this subchapter for qualified research expenses incurred by a
13 member of a combined group must be claimed on the combined report
14 required by Section 171.1014 for the group, and the combined group
15 is the taxable entity for purposes of this subchapter.

16 (b) An upper tier entity that includes the total revenue of
17 a lower tier entity for purposes of computing its taxable margin as
18 authorized by Section 171.1015 may claim the credit under this
19 subchapter for qualified research expenses incurred by the lower
20 tier entity to the extent of the upper tier entity's ownership
21 interest in the lower tier entity.

22 Sec. 171.9207. LIMITATION. The total credit claimed under
23 this subchapter for a report, including the amount of any
24 carryforward under Section 171.9208, may not exceed 50 percent of
25 the amount of tax due for the report before any other applicable tax
26 credits.

27 Sec. 171.9208. CARRYFORWARD. (a) If a taxable entity is

1 eligible for a credit that exceeds the limitation under Section
2 171.9207, the entity may carry the unused credit forward for not
3 more than 20 consecutive reports.

4 (b) Credits, including credit carryforwards, are considered
5 used in the following order:

6 (1) a credit carryforward of unused credits accrued
7 under Subchapter O before its repeal on January 1, 2008, and claimed
8 as authorized by Section 18(d), Chapter 1 (H.B. 3), Acts of the 79th
9 Legislature, 3rd Called Session, 2006;

10 (2) a credit carryforward of unused credits accrued
11 under Subchapter M before its repeal on January 1, 2026, and claimed
12 as authorized by Section 4, __.B. __, Regular Session, 2025;

13 (3) a credit carryforward under this subchapter; and

14 (4) a current year credit.

15 Sec. 171.9209. ASSIGNMENT PROHIBITED. A taxable entity may
16 not convey, assign, or transfer the credit allowed under this
17 subchapter to another entity unless substantially all of the assets
18 of the taxable entity are conveyed, assigned, or transferred in the
19 same transaction.

20 Sec. 171.9210. APPLICATION FOR CREDIT. Except as provided
21 by Section 171.9205(c), a taxable entity must apply for a credit
22 under this subchapter on or with the report for the period for which
23 the credit is claimed.

24 Sec. 171.9211. RULES. The comptroller may adopt rules and
25 forms necessary to implement this subchapter.

26 Sec. 171.9212. REPORTING OF ESTIMATES. (a) Before the
27 beginning of each regular session of the legislature, the

1 comptroller shall submit to the legislature and the governor
2 estimates of:

3 (1) the total number of taxable entities that applied
4 credits under this subchapter against the tax imposed under this
5 chapter or received refundable credits under this subchapter;

6 (2) the total amount of those credits and refundable
7 credits; and

8 (3) the total amount of unused credits carried
9 forward.

10 (b) The comptroller shall provide the estimates required by
11 this section as part of the report required by Section 403.014,
12 Government Code.

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

19 SECTION 2. Section 171.212(a), Tax Code, is amended to read
20 as follows:

21 (a) In this subsection, "qualified research expense" has
22 the meaning assigned by Section 171.9202. A taxable entity must
23 file an amended report under this chapter if:

24 (1) the [~~taxable entity's~~] taxable margin of the
25 taxable entity or the amount of qualified research expenses
26 incurred by the taxable entity is changed as the result of an audit
27 or other adjustment by the Internal Revenue Service or another

1 competent authority; or

2 (2) the taxable entity files an amended federal income
3 tax return or other return that changes the [~~taxable entity's~~]
4 taxable margin of the taxable entity or the amount of qualified
5 research expenses incurred by the taxable entity.

6 SECTION 3. The following provisions are repealed:

7 (1) Section 151.3182, Tax Code; and

8 (2) Subchapter M, Chapter 171, Tax Code.

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

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

25 SECTION 5. (a) Subchapter T, Chapter 171, Tax Code, as
26 added by this Act, applies only to a report originally due on or
27 after the effective date of this Act.

(b) Notwithstanding any other provision of this Act, a taxable entity is not eligible for and may not claim 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. This Act takes effect January 1, 2026.