

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 5  
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Finance  
4/14/1999  
Committee Report (Substituted)

### **DIGEST**

Currently, Texas does not offer a research and development (R&D) tax credit. Texas also lacks a job creation or capital investment franchise tax credit that targets economically distressed counties. CSSB 5 authorizes a corporation to claim a franchise tax credit on any increases in R&D expenses and payments incurred made in Texas after a specific base period. The bill also provides a franchise tax credit to corporations that create new high-wage jobs or make qualified investments in machinery and equipment in economically distressed counties.

### **PURPOSE**

As proposed, C.S.S.B. 5 provides a statewide research and development credit and a targeted job creation and investment tax credit.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Comptroller of Public Accounts in SECTION 1 (Section 171.728, Tax Code), SECTION 2 (Section 171.760, Tax Code), and SECTION 3 (Section 171.810, Tax Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

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

#### **SUBCHAPTER O. TAX CREDIT FOR CERTAIN RESEARCH AND DEVELOPMENT ACTIVITIES**

Sec. 171.721. DEFINITIONS. Defines “base amount,” “basic research payment,” “qualified research expense,” and “strategic investment area.”

Sec. 171.722. New heading: ELIGIBILITY. Provides that a corporation 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. Authorizes a corporation to claim a credit under Section 171.723(b), or take a carryforward credit without regard to whether the county in which it made qualified research expenses and basic research payments subsequently loses its designation as a strategic investment area.

Sec. 171.723. CALCULATION OF CREDIT. Sets forth the calculation of the credit for any report. Authorizes a corporation to multiply by two the amount of any qualified research expenses and basic research payments made in a strategic investment area as determined by the comptroller of public accounts (comptroller) under Section 171.726. Provides that the burden of establishing entitlement to and the value of the credit is on the corporation.

Sec. 171.724. LIMITATIONS. Prohibits the total credit claimed under this subchapter for a report from exceeding 25 percent of the amount of franchise tax due for the report before any other applicable tax credits. Prohibits the total credit claimed under Subchapters O, P and Q for a report from exceeding the amount of franchise tax due for the report after any other credits. Provides that a corporation that establishes its eligibility for a credit under this subchapter is not eligible to establish a credit under Subchapter P.

Sec. 171.725. CARRYFORWARD. Authorizes the corporation to carry the unused credit forward for not more than 20 consecutive reports, if a corporation is eligible for a credit that exceeds the limitation under Subsections (a) or (b) of Section 171.724. Provides that a credit

carryforward from a previous report is considered to be utilized before the current year credit.

Sec. 171.726. DETERMINATION OF STRATEGIC INVESTMENT AREAS. Requires the comptroller to determine strategic investment areas on an annual basis using the most current available data and to publish a list and map of strategic investment areas by September 1 of each year.

Sec. 171.727. BIENNIAL REPORT TO LEGISLATURE BY COMPTROLLER. Sets forth the information in the report the comptroller shall submit to the members of the legislature, before the beginning of each regular session of the legislature. Requires the final report issued prior to the expiration of this subchapter to include historical information on the credit authorized under this subchapter. Prohibits the comptroller from including in the report information that is confidential by law. Authorizes the comptroller to require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller on the location of the corporation's research expenses and payments in this state and any other information necessary to complete the report required under this section.

Sec. 171.728. COMPTROLLER POWERS AND DUTIES. Requires the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.729. EXPIRATION. (a) Expiration date for Subchapter O: December 31, 2009.

(b) Provides that the expiration of this subchapter does not affect the carryforward of a credit under Section 171.725 for those credits to which a corporation is eligible before the date this subchapter expires.

SECTION 2. Amends Chapter 171, Tax Code, by adding Subchapter P, as follows:

#### SUBCHAPTER P. TAX CREDITS FOR CERTAIN JOB CREATION ACTIVITIES

Sec. 171.751. DEFINITIONS. Defines "central administrative offices," "county average weekly wage," "data processing," "distribution," "group health benefit plan," "manufacturing," "qualified business," "qualifying job," "research and development," "strategic investment area," and "warehousing."

Sec. 171.752. ELIGIBILITY. Sets forth the conditions under which a corporation is eligible for a credit against the tax imposed under this chapter. Authorizes a corporation to claim a credit or take a carryforward credit without regard to whether the county in which it created the qualifying jobs subsequently loses its designation as a strategic investment area.

Sec. 171.753. CALCULATION OF CREDIT. Sets forth the calculation of the credit.

Sec. 171.754. LENGTH OF CREDIT. Requires the credit established to be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon the period during which the qualifying jobs were created.

Sec. 171.755. LIMITATIONS. Prohibits the total credit claimed under this subchapter for a report from exceeding 50 percent of the amount of franchise tax due for the report before any other applicable tax credits. Prohibits the total credit claimed under Subchapters O, P, and Q for a report from exceeding the amount of franchise tax due for the report after any other applicable credits. Provides that a corporation that establishes its eligibility for a credit under this subchapter is not eligible to establish a credit under Subchapter O.

Sec. 171.756. CARRYFORWARD. Authorizes the corporation to carry the unused credit forward for not more than five consecutive reports, if a corporation is eligible for a credit that exceeds the limitation under Subsections (a) or (b) of Section 171.755. Provides that a carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of the tax limitation under Section 171.755. Provides that a carryforward is added to the next year's installment of the credit in determining the tax limitation for that year. Provides that a credit carryforward from a previous report is considered to be utilized before the current year credit.

Sec. 171.757. CERTIFICATION OF ELIGIBILITY. Requires the corporation to file with its

report, on a form provided by the comptroller, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with Section 171.752, for the initial and each succeeding report in which a credit is claimed. Provides that the burden of establishing entitlement to and the value of the credit is on the corporation. Sets forth the condition under which the credit expires. Authorizes the corporation to take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.756, notwithstanding Subsection (c).

Sec. 171.758. ASSIGNMENT PROHIBITED. Prohibits a corporation from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.759. BIENNIAL REPORT TO LEGISLATURE BY COMPTROLLER. Sets forth the information required to be in the report to the legislature by the comptroller, due to the legislature before the beginning of each regular session of the legislature. Requires the final report issued prior to the expiration of this subchapter to include historical information on the credit authorized under this subchapter. Prohibits the comptroller from including in the report information that is confidential by law. Authorizes the comptroller to require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller on the location of the corporation's job creation in this state and any other information necessary to complete the report required under this section.

Sec. 171.760. COMPTROLLER POWERS AND DUTIES. Requires the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.761. EXPIRATION. (a) Expiration date for Subchapter P: December 31, 2009.

(b) Provides that the expiration of this subchapter does not affect the carryforward of a credit under Section 171.756 or those credits for which a corporation is eligible before the date this subchapter expires.

SECTION 3. Amends Chapter 171, Tax Code, by adding Subchapter Q, as follows:

#### SUBCHAPTER Q. TAX CREDITS FOR CERTAIN CAPITAL INVESTMENTS.

Sec. 171.801. DEFINITIONS. Defines "central administrative offices," "county average weekly wage," "data processing," "distribution," "manufacturing," "qualified business," "research and development," "warehousing," "capitalized lease," "qualified capital investment," and "strategic investment area."

Sec. 171.802. ELIGIBILITY. Provides that a corporation 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. Sets forth the conditions under which a corporation is eligible for a credit. Authorizes a corporation to claim a credit or take a carryforward credit without regard to whether the county in which it made the qualified capital investment subsequently loses its designation as a strategic investment area.

Sec. 171.803. CALCULATION OF CREDIT. Sets forth the calculation of the credit.

Sec. 171.804. LENGTH OF CREDIT. Requires the credit established to be claimed in five equal installments of one-fifth the credit amount over the five consecutive reports beginning with the report based upon the period during which the qualified capital investment was made.

Sec. 171.805. LIMITATIONS. Prohibits the total credit claimed under this subchapter for a report from exceeding 50 percent of the amount of franchise tax due for the report before any other applicable tax credits. Prohibits the total credit claimed under Subchapters O, P, and Q for a report from exceeding the amount of franchise tax due for the report after any other applicable credits. Provides that a corporation that establishes its eligibility for a credit under this subchapter is not eligible to claim a franchise tax reduction authorized under Section 171.1015.

Sec. 171.806. CARRYFORWARD. Authorizes the corporation to carry the unused credit forward for not more than five consecutive reports, if a corporation is eligible for a credit that exceeds the limitation under Subsections (a) or (b) of Section 171.805. Provides that a

carryforward is considered the remaining portion of an installment that cannot be claimed in the current year because of the tax limitation under Section 171.805. Provides that a carryforward is added to the next year's installment of the credit in determining the tax limitation for that year. Provides that a credit carryforward from a previous report is considered to be utilized before the current year credit.

Sec. 171.807. CERTIFICATION OF ELIGIBILITY. Requires the corporation to file with its report, on a form provided by the comptroller, information that sufficiently demonstrates that the corporation is eligible for the credit and is in compliance with Section 171.802, for the initial and each succeeding report in which a credit is claimed. Provides that the burden of establishing entitlement to and the value of the credit is on the qualified business. Sets forth the conditions under which the credit expires. Authorizes the corporation to take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under Section 171.806, notwithstanding Subsection (c).

Sec. 171.808. ASSIGNMENT PROHIBITED. Prohibits a corporation from conveying, assigning, or transferring the credit allowed under this subchapter to another entity unless all of the assets of the corporation are conveyed, assigned, or transferred in the same transaction.

Sec. 171.809. BIENNIAL REPORT TO LEGISLATURE BY COMPTROLLER. Sets forth the required information in the report to the legislature by the comptroller, due to the legislature before the beginning of each regular session of the legislature. Requires the final report issued prior to the expiration of this subchapter to include historical information on the credit authorized under this subchapter. Prohibits the comptroller from including in the report information that is confidential by law. Authorizes the comptroller to require a corporation that claims a credit under this subchapter to submit information, on a form provided by the comptroller on the location of the corporation's capital investment in this state and any other information necessary to complete the report required under this section.

Sec. 171.810. COMPTROLLER POWERS AND DUTIES. Requires the comptroller to adopt rules and forms necessary to implement this subchapter.

Sec. 171.811. EXPIRATION. (a) Expiration date for Subchapter Q: December 31, 2009.

(b) Provides that the expiration of this subchapter does not affect the carryforward of a credit under Section 171.806 or those credits for which a corporation is eligible before the date this subchapter expires.

SECTION 4. Authorizes the comptroller to combine the reports required under this Act into a single report.

SECTION 5. Effective date: January 1, 2000.  
Makes application of this Act prospective.

SECTION 6. Emergency clause.

### **SUMMARY OF COMMITTEE CHANGES**

Relating clause.

Amends the relating clause to provide that the bill relates to the authorization of certain franchise tax incentives promoting economic development.

SECTION 1.

Amends Chapter 171O, Tax Code, to set forth a new heading for Subchapter O.

Amends Section 171.721, Tax Code, to redefine "base amount," "basic research payment," and "qualified research expense." Defines "strategic investment area."

Amends Section 171.722, Tax Code, to delete the proposed Section 171.722 regarding entitlement, and adds a new section regarding eligibility for the credit.

Amends Section 171.723, Tax Code, to delete the proposed Section 171.723 regarding the calculation of the credit, and adds a new section regarding the calculation of the credit.

Amends Section 171.724, Tax Code, to delete the proposed Section 171.724 regarding the application for a refund, and adds a new section regarding limitations on the credit claimed.

Amends Section 171.725, Tax Code, to delete the proposed Section 171.725 regarding the determination of the total amount of refunds, and adds a new section regarding a carryforward of the credit.

Amends Section 171.726, Tax Code, to delete the proposed Section 171.726 regarding the adjustment and payment of the refund, and adds a new section regarding determination of the strategic investment area.

Amends Section 171.727, Tax Code, to delete the proposed Section 171.727 regarding the credit, and adds a new Section regarding the biennial report to the legislature by the comptroller.

Amends Section 171.728, Tax Code to provide a new heading.

Adds Section 171.729, Tax Code, concerning the expiration of this subchapter.

## SECTION 2.

Amends Chapter 171, Tax Code, by adding Subchapter P, regarding tax credits for certain job creation activities.

## SECTION 3.

Amends Chapter 171, Tax Code, by adding Subchapter Q, regarding tax credits for certain capital investments.

## SECTION 4.

Authorizes the comptroller to combine the reports required under this Act into a single report.

## SECTION 5.

Authorizes a corporation to claim a credit under Subchapters O, P, and Q, Chapter 171, Tax Code, only for expenses and payments incurred, qualified investments made, or new jobs created, on or after January 1, 2000. Deletes text providing that this Act applies only to an expense or payment made on or after January 1, 1999. Redesignates existing SECTION 2 as SECTION 5, and existing SECTION 3 as SECTION 6.