

AMENDED IN ASSEMBLY MAY 10, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2032

Introduced by Assembly Member Lieu

(Principal coauthor: ~~Assembly Member Mullin~~ coauthors:

***Assembly Members Mullin and Lieber*)**

**(Coauthors: Assembly Members Blakeslee, Canciamilla, DeVore,
and Sharon Runner)**

February 14, 2006

An act to amend Sections 17052.12 and 23609 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2032, as amended, Lieu. Income and corporation tax credits: research and development.

The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws for increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, for purposes of the Corporation Tax Law, 24% of the basic research payments, as defined. The term "base amount" means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable year and the fixed-base percentage, as defined, but in no event less than 50% of the qualified

research expenses for the taxable year. A taxpayer may elect an alternative incremental credit for increasing research expenses in modified conformity to federal income tax laws.

This bill would increase the credit for increasing research expenses to 20% of the excess of the qualified research expenses. This bill would also provide complete conformity to the alternative incremental credit provided under those federal income tax laws.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17052.12 of the Revenue and Taxation
2 Code is amended to read:
3 17052.12. For each taxable year beginning on or after January
4 1, 1987, there shall be allowed as a credit against the “net tax”
5 (as defined by Section 17039) for the taxable year an amount
6 determined in accordance with Section 41 of the Internal
7 Revenue Code, except as follows:
8 (a) For each taxable year beginning before January 1, 1997,
9 the reference to “20 percent” in Section 41(a)(1) of the Internal
10 Revenue Code is modified to read “8 percent.”
11 (b) (1) For each taxable year beginning on or after January 1,
12 1997, and before January 1, 1999, the reference to “20 percent”
13 in Section 41(a)(1) of the Internal Revenue Code is modified to
14 read “11 percent.”
15 (2) For each taxable year beginning on or after January 1,
16 1999, and before January 1, 2000, the reference to “20 percent”
17 in Section 41(a)(1) of the Internal Revenue Code is modified to
18 read “12 percent.”
19 (3) For each taxable year beginning on or after January 1,
20 2000, and before January 1, 2007, the reference to “20 percent”
21 in Section 41(a)(1) of the Internal Revenue Code is modified to
22 read “15 percent.”
23 (4) For each taxable year beginning on or after January 1,
24 2007, the reference to “20 percent” in Section 41(a)(1) of the
25 Internal Revenue Code shall apply.
26 (c) Section 41(a)(2) of the Internal Revenue Code, relating to
27 basic research payments, shall not apply.

1 (d) “Qualified research” shall include only research conducted
2 in California.

3 (e) In the case where the credit allowed under this section
4 exceeds the “net tax,” the excess may be carried over to reduce
5 the “net tax” in the following year, and succeeding years if
6 necessary, until the credit has been exhausted.

7 (f) (1) With respect to any expense paid or incurred after the
8 operative date of Section 6378, Section 41(b)(1) of the Internal
9 Revenue Code is modified to exclude from the definition of
10 “qualified research expense” any amount paid or incurred for
11 tangible personal property that is eligible for the exemption from
12 sales or use tax ~~provided by~~ *under* Section 6378.

13 (2) For each taxable year beginning on or after January 1,
14 1998, the reference to “Section 501(a)” in Section 41(b)(3)(C) of
15 the Internal Revenue Code, relating to contract research
16 expenses, is modified to read “this part or Part 11 (commencing
17 with Section 23001).”

18 (g) (1) For each taxable year beginning on or after January 1,
19 2000, and before January 1, 2007:

20 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
21 of the Internal Revenue Code is modified to read “one and
22 forty-nine hundredths of one percent.”

23 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
24 the Internal Revenue Code is modified to read “one and
25 ninety-eight hundredths of one percent.”

26 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
27 of the Internal Revenue Code is modified to read “two and
28 forty-eight hundredths of one percent.”

29 (2) For each taxable year beginning on or after January 1,
30 2007, Section 41(c)(4) of the Internal Revenue Code, relating to
31 the election of the alternative incremental credit, shall apply.

32 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an
33 election under Section 41(c)(4)(A) of the Internal Revenue Code
34 may be made for any taxable year of the taxpayer beginning on
35 or after January 1, 1998. That election shall apply to the taxable
36 year for which made and all succeeding taxable years unless
37 revoked with the consent of the Franchise Tax Board.

38 (4) Section 41(c)(6) of the Internal Revenue Code, relating to
39 gross receipts, is modified to take into account only those gross
40 receipts from the sale of property held primarily for sale to

1 customers in the ordinary course of the taxpayer's trade or
2 business that is delivered or shipped to a purchaser within this
3 state, regardless of f.o.b. point or any other condition of the sale.

4 (h) Section 41(h) of the Internal Revenue Code, relating to
5 termination, shall not apply.

6 (i) Section 41(g) of the Internal Revenue Code, relating to
7 special rule for passthrough of credit, is modified by each of the
8 following:

9 (1) The last sentence shall not apply.

10 (2) If the amount determined under Section 41(a) of the
11 Internal Revenue Code for any taxable year exceeds the
12 limitation of Section 41(g) of the Internal Revenue Code, that
13 amount may be carried over to other taxable years under the rules
14 of subdivision (e); except that the limitation of Section 41(g) of
15 the Internal Revenue Code shall be taken into account in each
16 subsequent taxable year.

17 SEC. 2. Section 23609 of the Revenue and Taxation Code is
18 amended to read:

19 23609. For each taxable year beginning on or after January 1,
20 1987, there shall be allowed as a credit against the "tax" (as
21 defined by Section 23036) an amount determined in accordance
22 with Section 41 of the Internal Revenue Code, except as follows:

23 (a) For each taxable year beginning before January 1, 1997,
24 both of the following modifications shall apply:

25 (1) The reference to "20 percent" in Section 41(a)(1) of the
26 Internal Revenue Code is modified to read "8 percent."

27 (2) The reference to "20 percent" in Section 41(a)(2) of the
28 Internal Revenue Code is modified to read "12 percent."

29 (b) (1) For each taxable year beginning on or after January 1,
30 1997, and before January 1, 1999, both of the following
31 modifications shall apply:

32 (A) The reference to "20 percent" in Section 41(a)(1) of the
33 Internal Revenue Code is modified to read "11 percent."

34 (B) The reference to "20 percent" in Section 41(a)(2) of the
35 Internal Revenue Code is modified to read "24 percent."

36 (2) For each taxable year beginning on or after January 1,
37 1999, and before January 1, 2000, both of the following shall
38 apply:

39 (A) The reference to "20 percent" in Section 41(a)(1) of the
40 Internal Revenue Code is modified to read "12 percent."

1 (B) The reference to “20 percent” in Section 41(a)(2) of the
2 Internal Revenue Code is modified to read “24 percent.”

3 (3) For each taxable year beginning on or after January 1,
4 2000, and before January 1, 2007, both of the following shall
5 apply:

6 (A) The reference to “20 percent” in Section 41(a)(1) of the
7 Internal Revenue Code is modified to read “15 percent.”

8 (B) The reference to “20 percent” in Section 41(a)(2) of the
9 Internal Revenue Code is modified to read “24 percent.”

10 (4) For each taxable year beginning on or after January 1,
11 2007, both of the following shall apply:

12 (A) The reference to “20 percent” in Section 41(a)(1) of the
13 Internal Revenue Code shall apply.

14 (B) The reference to “20 percent” in Section 41(a)(2) of the
15 Internal Revenue Code is modified to read “24 percent.”

16 (c) (1) With respect to any expense paid or incurred after the
17 operative date of Section 6378, Section 41(b)(1) of the Internal
18 Revenue Code is modified to exclude from the definition of
19 “qualified research expense” any amount paid or incurred for
20 tangible personal property that is eligible for the exemption from
21 sales or use tax ~~provided by~~ *under* Section 6378.

22 (2) “Qualified research” and “basic research” shall include
23 only research conducted in California.

24 (d) The provisions of Section 41(e)(7)(A) of the Internal
25 Revenue Code, shall be modified so that “basic research,” for
26 purposes of this section, includes any basic or applied research
27 including scientific inquiry or original investigation for the
28 advancement of scientific or engineering knowledge or the
29 improved effectiveness of commercial products, except that the
30 term does not include any of the following:

31 (1) Basic research conducted outside California.

32 (2) Basic research in the social sciences, arts, or humanities.

33 (3) Basic research for the purpose of improving a commercial
34 product if the improvements relate to style, taste, cosmetic, or
35 seasonal design factors.

36 (4) Any expenditure paid or incurred for the purpose of
37 ascertaining the existence, location, extent, or quality of any
38 deposit of ore or other mineral (including oil and gas).

39 (e) (1) In the case of a taxpayer engaged in any
40 biopharmaceutical research activities that are described in codes

1 2833 to 2836, inclusive, or any research activities that are
2 described in codes 3826, 3829, or 3841 to 3845, inclusive, of the
3 Standard Industrial Classification (SIC) Manual published by the
4 United States Office of Management and Budget, 1987 edition,
5 or any other biotechnology research and development activities,
6 the provisions of Section 41(e)(6) of the Internal Revenue Code
7 shall be modified to include both of the following:

8 (A) A qualified organization as described in Section
9 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
10 institution of higher education as described in Section 3304(f) of
11 the Internal Revenue Code.

12 (B) A charitable research hospital owned by an organization
13 that is described in Section 501(c)(3) of the Internal Revenue
14 Code, is exempt from taxation under Section 501(a) of the
15 Internal Revenue Code, is not a private foundation, is designated
16 a “specialized laboratory cancer center,” and has received
17 Clinical Cancer Research Center status from the National Cancer
18 Institute.

19 (2) For purposes of this subdivision:

20 (A) “Biopharmaceutical research activities” means those
21 activities that use organisms or materials derived from
22 organisms, and their cellular, subcellular, or molecular
23 components, in order to provide pharmaceutical products for
24 human or animal therapeutics and diagnostics.
25 Biopharmaceutical activities make use of living organisms to
26 make commercial products, as opposed to pharmaceutical
27 activities that make use of chemical compounds to produce
28 commercial products.

29 (B) “Other biotechnology research and development
30 activities” means research and development activities consisting
31 of the application of recombinant DNA technology to produce
32 commercial products, as well as research and development
33 activities regarding pharmaceutical delivery systems designed to
34 provide a measure of control over the rate, duration, and site of
35 pharmaceutical delivery.

36 (f) In the case where the credit allowed by this section exceeds
37 the “tax,” the excess may be carried over to reduce the “tax” in
38 the following year, and succeeding years if necessary, until the
39 credit has been exhausted.

1 (g) For each taxable year beginning on or after January 1,
2 1998, the reference to “Section 501(a)” in Section 41(b)(3)(C) of
3 the Internal Revenue Code, relating to contract research
4 expenses, is modified to read “this part or Part 10 (commencing
5 with Section 17001).”

6 (h) (1) For each taxable year beginning on or after January 1,
7 2000, and before January 1, 2007:

8 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
9 of the Internal Revenue Code is modified to read “one and
10 forty-nine hundredths of one percent.”

11 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
12 the Internal Revenue Code is modified to read “one and
13 ninety-eight hundredths of one percent.”

14 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
15 of the Internal Revenue Code is modified to read “two and
16 forty-eight hundredths of one percent.”

17 (2) For each taxable year beginning on or after January 1,
18 2007, Section 41(c)(4) of the Internal Revenue Code, relating to
19 the election of the alternative incremental credit, shall apply.

20 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an
21 election under Section 41(c)(4)(A) of the Internal Revenue Code
22 may be made for any taxable year of the taxpayer beginning on
23 or after January 1, 1998. That election shall apply to the taxable
24 year for which made and all succeeding taxable years unless
25 revoked with the consent of the Franchise Tax Board.

26 (4) Section 41(c)(6) of the Internal Revenue Code, relating to
27 gross receipts, is modified to take into account only those gross
28 receipts from the sale of property held primarily for sale to
29 customers in the ordinary course of the taxpayer’s trade or
30 business that is delivered or shipped to a purchaser within this
31 state, regardless of f.o.b. point or any other condition of the sale.

32 (i) Section 41(h) of the Internal Revenue Code, relating to
33 termination, shall not apply.

34 (j) Section 41(g) of the Internal Revenue Code, relating to
35 special rule for passthrough of credit, is modified by each of the
36 following:

37 (1) The last sentence shall not apply.

38 (2) If the amount determined under Section 41(a) of the
39 Internal Revenue Code for any taxable year exceeds the
40 limitation of Section 41(g) of the Internal Revenue Code, that

1 amount may be carried over to other taxable years under the rules
2 of subdivision (f), except that the limitation of Section 41(g) of
3 the Internal Revenue Code shall be taken into account in each
4 subsequent taxable year.

5 SEC. 3. This act provides for a tax levy within the meaning of
6 Article IV of the Constitution and shall go into immediate effect.

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