ASSEMBLY BILL No. 1147

Introduced by Assembly Members Mullin and Lieber

February 23, 2007

An act to add Section 24416.9 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

legislative counsel's digest

AB 1147, as introduced, Mullin. Corporation taxes: net operating losses.

The Corporation Tax Law allows a deduction for specified portions of net operating losses that, in general, are allowed to be carried forward for specified periods.

This bill would, for taxable years beginning on and after January 1, 2008, allow unused net operating losses incurred by a qualified seller, as defined, to be sold to, and be used by, a qualified buyer, as defined.

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:

SECTION 1. Section 24416.9 is added to the Revenue and Taxation Code, to read:

24416.9. (a) Notwithstanding Sections 24416, 24416.1, 24416.2, 24416.3, 24416.4, 24416.5, 24416.6, and 24416.7, and any other provision of this part to the contrary, and except as otherwise provided in this section, any unused net operating losses incurred by a qualified seller may be sold to, and used by, a qualified buyer.

(b) The tax value of all unused net operating losses that may be sold by all qualified sellers under this section shall not exceed one hundred million dollars ($100,000,000) for each taxable year. No qualified seller under this section may sell unused net operating losses for more than 10 percent of the tax value allowed for each taxable year.

(c) For purposes of this section:

(1) "Qualified seller" means a bioscience company that satisfies the following:

(A) Is based in this state.

(B) At least 50 percent of its annual expenditures are for purposes of research and development relating to bioscience products.

(C) Able to substantiate the following in a form and manner as requested by the Franchise Tax Board:

(i) Has not had a positive net income from product sales for any year in the last five years at the time of the submission of the application to sell.

(ii) Is headquartered or incorporated within the state.

(iii) Has raised 400 percent of the tax value of the proposed net operating loss sale from public or private funding sources in the prior 24 months.

(2) "Qualified buyer" means any company that employs 500 or more employees in this state.

(d) Unused net operating losses may be sold by a qualified seller during any taxable year beginning on or after January 1, 2008, but may be used by a qualified buyer only for taxable years beginning on or after January 1, 2010.

(e) Any unused net operating losses purchased by a qualified buyer may be used only as deduction from gross income derived from bioscience products, and the qualified buyer shall commence using the unused net operating losses within five years of purchase.

(f) A qualified seller may not sell unused net operating losses for less than 75 percent of their tax value amount.

(g) Any revenues received by a qualified seller from the sale of unused net operating losses shall be excluded from the gross income of the qualified seller.

(h) A qualified seller and qualified buyer shall apply to the Franchise Tax Board, in the form and manner determined by the board, for the purchase and sale of unused net operating losses under this section.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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