

**ASSEMBLY BILL**

**No. 1370**

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**Introduced by Assembly Members Hayashi, Mullin, and Lieber**

February 23, 2007

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An act to add Sections 17276.8 and 24416.8 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1370, as introduced, Hayashi. Income and corporation taxes: net operating losses.

The Personal Income Tax Law and the Corporation Tax Law allow a deduction for specified portions of net operating losses that, in general, are allowed to be carried forward for specified periods. Those laws allow a carryforward of 100% of net operating losses for any taxable year beginning on or after January 1, 1997, in the case of a taxpayer who operates a new business with respect to losses incurred during the first 3 taxable years of operating the new business, if certain conditions are met. For purposes of those laws, new business includes any taxpayer that is engaged in biopharmaceutical and other biotechnology activities, as defined.

This bill would, under both laws, for taxable years beginning on and after January 1, 2008, allow those losses to be carried forward for the 20-year period following the year in which the net operating loss was deducted.

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 17276.8 is added to the Revenue and  
2 Taxation Code, to read:

3 17276.8. (a) Notwithstanding Section 17276, a qualified  
4 taxpayer may elect to take the deduction provided by Section 172  
5 of the Internal Revenue Code, with the exception that net operating  
6 loss carrybacks shall not be allowed.

7 (b) For purposes of this section “qualified taxpayer” means a  
8 taxpayer that is engaged in biopharmaceutical business activities  
9 or other biotechnology business activities that are described in  
10 Codes 325411 to 325414, inclusive, and 541710 of the North  
11 American Industry Classification System (NAICS) published by  
12 the United States Census Bureau, 2002 edition, and as further  
13 amended, and that has not received regulatory approval for any  
14 product from the United States Food and Drug Administration.

15 (c) The election to compute the net operating loss under this  
16 section shall be made in a statement attached to the original return,  
17 timely filed for the year in which the net operating loss is incurred.

18 (d) This section shall only apply to net operating losses incurred  
19 by a qualified taxpayer as a net operating loss that occurred during  
20 the taxable year beginning on or after January 1, 2008.

21 SEC. 2. Section 24416.8 is added to the Revenue and Taxation  
22 Code, to read:

23 24416.8. (a) Notwithstanding Section 24416, a qualified  
24 taxpayer may elect to take the deduction provided by Section 172  
25 of the Internal Revenue Code, with the exception that net operating  
26 loss carrybacks shall not be allowed.

27 (b) For purposes of this section “qualified taxpayer” means a  
28 taxpayer that is engaged in biopharmaceutical business activities  
29 or other biotechnology business activities that are described in  
30 Codes 325411 to 325414, inclusive, and 541710 of the North  
31 American Industry Classification System (NAICS) published by  
32 the United States Census Bureau, 2002 edition, and as further  
33 amended, and that has not received regulatory approval for any  
34 product from the United States Food and Drug Administration.

35 (c) The election to compute the net operating loss under this  
36 section shall be made in a statement attached to the original return,  
37 timely filed for the year in which the net operating loss is incurred.

1 (d) This section shall only apply to net operating losses incurred  
2 by a qualified taxpayer as a net operating loss that occurred during  
3 the taxable year beginning on or after January 1, 2008.

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

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