

AMENDED IN SENATE JULY 18, 2007

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1370**

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

February 23, 2007

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1370, as amended, Lieber. 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, under both laws, for taxable years beginning on and after January 1, 2008, and before January 1, 2028, would 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 amended.

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

19 (d) This section shall only apply to net operating losses incurred  
20 by a qualified taxpayer as a net operating loss that occurred during  
21 the taxable year beginning on or after January 1, 2008, and before  
22 January 1, 2028.

23 (e) This section shall remain in effect only until December 1,  
24 2028, and as of that date is repealed, unless a later enacted statute,  
25 that is enacted before December 1, 2028, deletes or extends that  
26 date.

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

29 24416.8. (a) Notwithstanding Section 24416, a qualified  
30 taxpayer may elect to take the deduction provided by Section 172  
31 of the Internal Revenue Code, with the exception that net operating  
32 loss carrybacks shall not be allowed.

33 (b) For purposes of this section, “qualified taxpayer” means a  
34 taxpayer that is engaged in biopharmaceutical business activities

1 or other biotechnology business activities that are described in  
2 Codes 325411 to 325414, inclusive, and 541710 of the North  
3 American Industry Classification System (NAICS) published by  
4 the United States Census Bureau, 2002 edition, and as further  
5 amended, and that has not received regulatory approval for any  
6 product from the United States Food and Drug Administration.  
7 amended.

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

11 (d) This section shall only apply to net operating losses incurred  
12 by a qualified taxpayer as a net operating loss that occurred during  
13 the taxable year beginning on or after January 1, 2008, and before  
14 January 1, 2028.

15 (e) This section shall remain in effect only until December 1,  
16 2028, and as of that date is repealed, unless a later enacted statute,  
17 that is enacted before December 1, 2028, deletes or extends that  
18 date.

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