

Assembly Bill No. 1452

CHAPTER 763

An act to amend Sections 6248, 17276, 17942, and 24416 of, to add Sections 17039.2, 17276.9, 17276.10, 19137, 23036.2, 23663, 24416.9, and 24416.10 to, and to add Chapter 9.2 (commencing with Section 19740) to Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2008. Filed with
Secretary of State September 30, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1452, Committee on Budget. Taxation.

(1) The Sales and Use Tax Law imposes a tax on the storage, use, or other consumption in this state of tangible personal property. Under existing law, there is a presumption that a vehicle shipped or brought into this state within 90 days from the date of its purchase was purchased from a retailer for storage, use, or other consumption in this state, under specified circumstances.

This bill would expand this presumption to a vehicle, vessel, or aircraft brought into California within 12 months from the date of its purchase, if that vehicle, vessel, or aircraft is (A) purchased by a California resident, (B) subject to California's registration or property tax laws during the first 12 months of ownership, or (C) used or stored in this state more than ½ of the time during the first 12 months of ownership. This bill would provide that the presumption may be controverted by documentary evidence, as specified. This bill would also provide that the presumption does not apply to aircraft or vessels brought into this state, on or after the effective date of this act, for the purpose of repair, retrofit, or modification.

(2) Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers of those losses for purposes of offsetting their individual and corporate tax liabilities.

This bill would disallow the deduction for net operating losses and net operating loss carryovers in the 2008 and 2009 taxable years. This bill would extend the carryover period for those net operating losses, thus allowing the taxpayers to have the same number of years to utilize the deduction as they would have if the change had not been enacted. This bill would, for net operating losses incurred in taxable years beginning on or after January 1, 2010, extend the carryover period to 20 years. This bill would allow net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding two taxable years.

(3) Existing law imposes personal income and corporate taxes collected and administered by the Franchise Tax Board.

This bill would require the Franchise Tax Board to administer a tax amnesty program during the period beginning February 1, 2009, and ending on March 27, 2009, inclusive, as provided.

(4) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would provide that for each taxable year beginning on or before January 1, 2008, and before January 1, 2010, the total business credit, as defined, shall not reduce the taxes imposed by those laws below the applicable amount, as defined.

This bill would, under the Corporation Tax Law, provide for taxable years beginning on or after July 1, 2008, that any credit that is an eligible credit, as defined, may be assigned to any eligible assignees, as defined.

(5) The Personal Income Tax Law requires every limited liability company subject to a specified tax to pay, annually to this state, a fee equal to specified amounts based upon total income from all sources derived from or attributable to this state. The fee is due and payable on or before the 15th day of the 4th month following the close of the taxable year and penalties and interest are payable for violations, as specified.

This bill would require that the fee be estimated and paid no later than the 15th day of the 6th month of the taxable year, and would impose an additional penalty for underpayment, as provided.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) On and after the effective date of this section, there shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) The vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is

not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) (1) Notwithstanding subdivision (a), any aircraft or vessel brought into this state for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state.

(2) This subdivision shall not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel is logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel shall not include airtime or sailing time following the completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.

(3) This subdivision shall apply to aircraft or vessels brought into this state for the purpose of repair, retrofit, or modification on or after the operative date of this subdivision.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 2. Section 17039.2 is added to the Revenue and Taxation Code, to read:

17039.2. (a) Notwithstanding any provision of this part or Part 10.2 (commencing with Section 18401) to the contrary, for each taxable year beginning on or after January 1, 2008, and before January 1, 2010, the total of all business credits otherwise allowable under any credit under any provision of Chapter 2 (commencing with Section 17041), including the carryover of any business credit under a former provision of that chapter, for the taxable year shall not reduce the “net tax” (as defined in Section 17039) below the applicable amount.

(b) For purposes of this section, “business credit” means a credit allowable under any provision of Chapter 2 (commencing with Section 17041) other than the following credits:

(1) The credit allowed by Section 17052.6 (relating to credit for household and dependent care).

(2) The credit allowed by Section 17052.25 (relating to credit for adoption costs).

(3) The credit allowed by Section 17053.5 (relating to renter’s tax credit).

(4) The credit allowed by Section 17054 (relating to credit for personal exemption).

(5) The credit allowed by Section 17054.5 (relating to credit for qualified joint custody head of household and a qualified taxpayer with a dependent parent).

(6) The credit allowed by Section 17054.7 (relating to credit for senior head of household).

(7) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(c) For purposes of this section, the “applicable amount” shall be equal to 50 percent of the “net tax” (as defined in Section 17039) before application of any credits.

(d) The amount of any credit otherwise allowable for the taxable year under Section 17039 that is not allowed due to application of this section shall remain a credit carryover amount under this part.

(e) The carryover period for any credit that is not allowed due to the application of this section shall be increased by the number of taxable years the credit (or any portion thereof) was not allowed.

(f) Notwithstanding anything to the contrary in this part or Part 10.2 (commencing with Section 18401) the credits listed in subdivision (b) shall be required to be applied before any business credits, as limited by subdivision (a), are applied.

(g) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:

(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “passthrough entity” means a partnership or an “S” corporation.

(2) Income from rental activity.

(3) Income attributable to a farming business.

SEC. 3. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (d).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2011, and before January 1, 2012, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest loss, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2009.

(d) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii)

of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “five taxable years” in lieu of “20 taxable years” except as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any taxable year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or “S” corporation paragraphs (1) and (2) shall be applied to the partnership or “S” corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) “Acquire” shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section to the contrary, a deduction shall be allowed to a “qualified taxpayer” as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 4. Section 17276.9 is added to the Revenue and Taxation Code, to read:

17276.9. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed

for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.

(d) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:

(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term “passthrough entity” means a partnership or an “S” corporation.

(2) Income from rental activity.

(3) Income attributable to a farming business.

SEC. 5. Section 17276.10 is added to the Revenue and Taxation Code, to read:

17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, and a net operating loss attributable to a taxable year beginning on or after January 1, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.

SEC. 6. Section 17942 of the Revenue and Taxation Code is amended to read:

17942. (a) In addition to the tax imposed under Section 17941, every limited liability company subject to tax under Section 17941 shall pay annually to this state a fee equal to:

(1) Nine hundred dollars (\$900), if the total income from all sources derived from or attributable to this state for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand dollars (\$500,000).

(2) Two thousand five hundred dollars (\$2,500), if the total income from all sources derived from or attributable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Six thousand dollars (\$6,000), if the total income from all sources derived from or attributable to this state for the taxable year is one million dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000).

(4) Eleven thousand seven hundred ninety dollars (\$11,790), if the total income from all sources derived from or attributable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(b) (1) (A) For purposes of this section, “total income from all sources derived from or attributable to this state” means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer. However, “total income from all sources derived from or attributable to this state” shall not include allocation or attribution of income or gain or distributions made to a limited liability company in its capacity as a member of, or holder of an economic interest in, another limited liability company if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the fee described in this section.

(B) For purposes of this section, “total income from all sources derived from or attributable to this state” shall be determined using the rules for assigning sales under Sections 25135 and 25136 and the regulations thereunder, as modified by regulations under Section 25137, other than those provisions that exclude receipts from the sales factor.

(2) In the event a taxpayer is a commonly controlled limited liability company, the total income from all sources derived from or attributable to this state, taking into account any election under Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

(c) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

(d) (1) The fee imposed by this section shall be estimated and paid on or before the 15th day of the sixth month of the current taxable year.

(2) A penalty of 10 percent of the amount of any underpayment shall be added to the fee. The underpayment amount shall be equal to the difference between the total amount of the fee imposed by this section for the taxable year less the amount paid under paragraph (1) by the date specified in that paragraph. A penalty shall not be imposed with respect to any fee estimated

and paid under this section if the amount paid by the date prescribed in this subdivision is equal to or greater than the total amount of the fee of the limited liability company for the preceding taxable year.

SEC. 7. Section 19137 is added to the Revenue and Taxation Code, to read:

19137. (a) There shall be added to the tax for amounts in each taxable year for which amnesty could have been requested a penalty in an amount determined as follows:

(1) For amounts that are due and payable (as provided in subdivision (f)) on the last day of the tax amnesty period, an amount equal to 50 percent of the accrued interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the last day of the tax amnesty period specified in Section 19741.

(2) For amounts that become due and payable (as provided in subdivision (f)) after the last date of the tax amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the tax amnesty period specified in Section 19741. In computing the final amount upon which the penalty is computed, deposits made before the end of the tax amnesty period pursuant to Section 19041.5 shall reduce the amount upon which the penalty is computed. Payments or deposits made after the end of the tax amnesty period shall not reduce the amount upon which the penalty is computed.

(3) For purposes of paragraph (2), Sections 19107, 19108, 19110, and 19113 shall apply in determining the amount computed under Section 19101.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(c) (1) This section shall not apply to any amounts that are treated as paid during the tax amnesty period under paragraph (1) or (2) of subdivision (b) of Section 19743.

(2) This section shall not apply to any amount attributable to an assessment resulting from either of the following:

(A) An examination, within the meaning of Section 19032, where the Franchise Tax Board first contacted the taxpayer in writing in connection with that examination before March 27, 2009, and that assessment was not final before March 27, 2009.

(B) A proposed assessment under Section 19087 where the Franchise Tax Board first contacted the taxpayer in writing in connection with failing to file a return before March 27, 2009, and that assessment was not final before March 27, 2009.

(d) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of

any penalty imposed by subdivision (a) or the determination of when an amount is considered due and payable.

(e) A refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.

(f) For purposes of this section, amounts are due and payable on the following dates:

(1) For amounts of any liability disclosed on a return filed on or before the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board, except that in no case shall it be prior to the day after the payment due date.

(2) For amounts of any liability disclosed on a return filed after the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board.

(3) For amounts of any liability determined under Section 19081 or 19082 (pertaining to jeopardy assessments), the date the notice of the Franchise Tax Board's finding is mailed or issued.

(4) For all other amounts of liability, the date the assessment is final.

SEC. 8. Chapter 9.2 (commencing with Section 19740) is added to Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 9.2. TAX AMNESTY 2009

19740. The Franchise Tax Board shall administer a tax amnesty for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this chapter.

19741. The tax amnesty shall be conducted during the period beginning February 1, 2009, and ending March 27, 2009, inclusive, pursuant to Section 19743. The tax amnesty shall apply to tax liabilities for taxable years beginning on or after January 1, 2003, and before January 1, 2007.

19742. (a) For any taxpayer who meets each of the requirements of Section 19743, both of the following shall apply:

(1) The Franchise Tax Board shall waive all unpaid penalties and fees imposed by this part for each taxable year for which tax amnesty is allowed, but only to the extent of the amount of any penalty or fee that is owed as a result of previous nonreporting or underreporting of tax liabilities or prior nonpayment of any taxes previously assessed or proposed to be assessed for that taxable year.

(2) Except as provided in subdivision (b), no criminal action shall be brought against the taxpayer for the taxable years for which tax amnesty is allowed for the nonreporting or underreporting of tax liabilities or the nonpayment of any taxes previously assessed or proposed to be assessed.

(b) This chapter shall not apply to violations of this part for which, as of February 1, 2009, any of the following apply:

(1) A criminal complaint was filed against the taxpayer.

(2) The taxpayer is under criminal investigation.

(c) This chapter shall not apply to any nonreported or underreported tax liability amounts attributable to a potentially abusive tax avoidance transaction. For purposes of this chapter, a “potentially abusive tax avoidance transaction” means any of the following:

(1) A tax shelter as defined in Section 6662(d)(2)(C) of the Internal Revenue Code. For purposes of this chapter, Section 6662(d)(2)(C) of the Internal Revenue Code is modified by substituting the phrase “income or franchise tax” for “Federal income tax.”

(2) A reportable transaction, as defined in Section 6707A(c) (1) of the Internal Revenue Code, with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met.

(3) A listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code.

(4) Any entity, investment plan or arrangement, or other plan or arrangement which is of a type that the Secretary of the Treasury, Internal Revenue Service, or the Franchise Tax Board determines by regulations, notices, coordinated issue papers, or other official public notification as having a potential for tax avoidance or evasion.

(5) A gross misstatement, within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code.

(6) Any transaction to which Section 19774 applies.

(d) No refund or credit shall be allowed with respect to any penalty or fee paid with respect to a taxable year prior to the time the taxpayer makes a request for tax amnesty for that taxable year pursuant to Section 19743.

(e) Notwithstanding Chapter 6 (commencing with Section 19301), no claim for refund or credit for any amounts paid in connection with the tax amnesty program under this chapter shall be allowed.

19743. (a) This chapter shall apply to any taxpayer that satisfies all of the following requirements:

(1) During the tax amnesty period specified in Section 19741, is eligible to participate in the tax amnesty.

(2) During the tax amnesty period specified in Section 19741, files a completed amnesty application with the Franchise Tax Board electing to participate in the tax amnesty.

(3) By June 1, 2009, does the following:

(A) (i) For any taxable year eligible for the tax amnesty where the taxpayer has not filed any required return, files a completed original tax return for that year.

(ii) For any taxable year eligible for the tax amnesty where the taxpayer filed a return but underreported tax liability on that return, files an amended return for that year.

(B) Pays in full any taxes and interest due for each taxable year described in clauses (i) and (ii) of subparagraph (A), as applicable, for which amnesty is requested, or applies for an installment payment agreement under subdivision (b). For taxpayers who have not paid in full any taxes previously proposed to be assessed, pays in full the taxes and interest due for that portion of the proposed assessment for each taxable year for which amnesty

is requested or applies for an installment payment agreement under paragraph (2) of subdivision (b).

(4) In the case of any taxpayer that has filed for bankruptcy protection under Title 11 of the United States Code, submits an order from a Federal Bankruptcy Court allowing the taxpayer to participate in the tax amnesty.

(b) (1) For purposes of complying with the full payment provisions of paragraph (3) of subdivision (a), if the full amount due is paid within the period set forth in paragraph (3) of subdivision (c) of Section 19101 after the date the Franchise Tax Board mails a notice resulting from the filing of an amnesty application or the full amount is paid by June 1, 2009, the full amount due shall be treated as paid during the amnesty period.

(2) (A) For purposes of complying with the full payment provisions of subparagraph (B) of paragraph (3) of subdivision (a), the Franchise Tax Board may enter into an installment payment agreement, but only if final payment under the terms of that installment payment agreement is due and is paid no later than June 30, 2010.

(B) Any installment payment agreement authorized by this subdivision shall include interest on the outstanding amount due at the rate prescribed in Section 19521.

(C) Failure by the taxpayer to comply fully with the terms of an installment payment agreement under this subdivision shall render the waiver of penalties and fees under Section 19742 null and void, unless the Franchise Tax Board determines that the failure was due to reasonable cause and not due to willful neglect.

(D) In the case of any failure described under subparagraph (C), the total amount of tax, interest, fees, and all penalties shall become immediately due and payable.

(c) (1) The application required under paragraph (2) of subdivision (a) shall be in the form and manner specified by the Franchise Tax Board, but in no case shall a mere payment of any taxes and interest due, in whole or in part, for any taxable year otherwise eligible for amnesty under this part be deemed to constitute an acceptable amnesty application under this part. For purposes of the prior sentence, the application of a refund from one taxable year to offset a tax liability from another taxable year otherwise eligible for amnesty shall not, without the filing of an amnesty application, be deemed to constitute an acceptable amnesty application under this part.

(2) The Legislature specifically intends that the Franchise Tax Board, in administering the amnesty application requirement under this part, make the amnesty application process as streamlined as possible to ensure that participation in the tax amnesty be available to as many taxpayers as possible without otherwise compromising the Franchise Tax Board's ability to enforce and collect the taxes imposed under Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(d) Upon the conclusion of the tax amnesty period, the Franchise Tax Board may propose a deficiency upon any return filed pursuant to subparagraph (A) of paragraph (3) of subdivision (a), impose penalties and fees, or initiate criminal action under this part with respect to the difference

between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers previously granted under Section 19742.

(e) All revenues derived pursuant to subdivision (c) shall be subject to Sections 19602 and 19604.

19744. Notwithstanding any other provision of this chapter, if any overpayment of tax shown on an original or amended return filed under this article is refunded or credited within 180 days after the return is filed, no interest shall be allowed under Section 19340 on that overpayment.

19745. (a) The Franchise Tax Board may issue forms, instructions, notices, rules, or guidelines, and take any other necessary actions, needed to implement this chapter, specifically including any forms, instructions, notices, rules, or guidelines that specify the form and manner of any acceptable form of amnesty application described in Section 19743.

(b) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this chapter.

19746. (a) The Franchise Tax Board shall conduct a public outreach program and adequately publicize the tax amnesty so as to maximize public awareness and to make taxpayers aware of tax amnesty. In addition, the Franchise Tax Board shall make taxpayers aware of the new and increased penalties associated with taxpayer failure to participate in the tax amnesty.

(b) The Franchise Tax Board shall make reasonable efforts to identify taxpayer liabilities and, to the extent practicable, shall send written notice to taxpayers of their eligibility for the tax amnesty. However, failure of the Franchise Tax Board to notify a taxpayer of the existence or correct amount of a tax liability eligible for amnesty shall not preclude the taxpayer from participating in the tax amnesty, nor shall that failure be grounds for abating the penalty imposed under Section 19137.

19747. Any taxpayer who has an existing installment payment agreement under Section 19008 as of the start of the tax amnesty, and who does not participate in the tax amnesty, may not be subject to the penalty imposed under Section 19137 with respect to amounts payable under that agreement.

SEC. 9. Section 23036.2 is added to the Revenue and Taxation Code, to read:

23036.2. (a) Notwithstanding any provision of this part or Part 10.2 (commencing with Section 18401) to the contrary, for each taxable year beginning on or after January 1, 2008, and before January 1, 2010, the total of all credits otherwise allowable under any provision of Chapter 3.5 (commencing with Section 23604) including the carryover of any credit under a former provision of that chapter, for the taxable year shall not reduce the “tax” (as defined in Section 23036) below the applicable amount.

(b) For purposes of this section, the “applicable amount” shall be equal to 50 percent of the “tax” (as defined in Section 23036) before application of any credits.

(c) The amount of any credit otherwise allowable for the taxable year under Section 23036 that is not allowed due to the application of this section shall remain a credit carryover amount under this part.

(d) The carryover period for any credit that is not allowed due to the application of this section shall be increased by the number of taxable years the credit (or any portion thereof) was not allowed.

(e) The provisions of this section shall not apply to a taxpayer with income subject to tax under this part of less than \$500,000 for the taxable year.

SEC. 10. Section 23663 is added to the Revenue and Taxation Code, to read:

23663. (a) (1) Notwithstanding any other law to the contrary, for each taxable year beginning on or after July 1, 2008, any credit allowed to a taxpayer under this chapter that is an “eligible credit (within the meaning of paragraph (2) of subdivision (b)) may be assigned by that taxpayer to any “eligible assignee” (within the meaning of paragraph (3) of subdivision (b)).

(2) A credit assigned under paragraph (1) may only be applied by the eligible assignee against the “tax” of the eligible assignee in a taxable year beginning on or after January 1, 2010.

(3) Except as specifically provided in this section, following an assignment of any eligible credit under this section, the eligible assignee shall be treated as if it originally earned the assigned credit.

(b) For purposes of this section, the following definitions shall apply:

(1) “Affiliated corporation” means a corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) “Eligible credit” shall mean:

(A) Any credit earned by the taxpayer in a taxable year beginning on or after July 1, 2008, or

(B) Any credit earned in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer’s first taxable year beginning on or after July 1, 2008, under the provisions of this part.

(3) “Eligible assignee” shall mean any affiliated corporation that is properly treated as a member of the same combined reporting group pursuant to Section 25101 or 25110 as the taxpayer assigning the eligible credit as of:

(A) In the case of credits earned in taxable years beginning before July 1, 2008:

(i) June 30, 2008, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(B) In the case of credits earned in taxable years beginning on or after July 1, 2008.

(i) The last day of the first taxable year in which the credit was allowed to the taxpayer, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(c) (1) The election to assign any credit under subdivision (a) shall be irrevocable once made, and shall be made by the taxpayer allowed that credit on its original return for the taxable year in which the assignment is made.

(2) The taxpayer assigning any credit under this section shall reduce the amount of its unused credit by the face amount of any credit assigned under this section, and the amount of the assigned credit shall not be available for application against the assigning taxpayer's "tax" in any taxable year, nor shall it thereafter be included in the amount of any credit carryover of the assigning taxpayer.

(3) The eligible assignee of any credit under this section may apply all or any portion of the assigned credits against the "tax" (as defined in Section 23036) of the eligible assignee for the taxable year in which the assignment occurs, or any subsequent taxable year, subject to any carryover period limitations that apply to the assigned credit and also subject to the limitation in paragraph (2) of subdivision (a).

(4) In no case may the eligible assignee sell, otherwise transfer, or thereafter assign the assigned credit to any other taxpayer.

(d) (1) No consideration shall be required to be paid by the eligible assignee to the assigning taxpayer for assignment of any credit under this section.

(2) In the event that any consideration is paid by the eligible assignee to the assigning taxpayer for the transfer of an eligible credit under this section, then:

(A) No deduction shall be allowed to the eligible assignee under this part with respect to any amounts so paid, and

(B) No amounts so received by the assigning taxpayer shall be includable in gross income under this part.

(e) (1) The Franchise Tax Board shall specify the form and manner in which the election required under this section shall be made, as well as any necessary information that shall be required to be provided by the taxpayer assigning the credit to the eligible assignee.

(2) Any taxpayer who assigns any credit under this section shall report any information, in the form and manner specified by the Franchise Tax Board, necessary to substantiate any credit assigned under this section and verify the assignment and subsequent application of any assigned credit.

(3) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraphs (1) and (2).

(4) The Franchise Tax Board may issue any regulations necessary to implement the purposes of this section, including any regulations necessary to specify the treatment of any assignment that does not comply with the requirements of this section (including, for example, where the taxpayer and eligible assignee are not properly treated as members of the same combined reporting group on any of the dates specified in paragraph (3) of subdivision (b)).

(f) (1) The taxpayer and the eligible assignee shall be jointly and severally liable for any tax, addition to tax, or penalty that results from the disallowance, in whole or in part, of any eligible credit assigned under this section.

(2) Nothing in this section shall limit the authority of the Franchise Tax Board to audit either the assigning taxpayer or the eligible assignee with respect to any eligible credit assigned under this section.

(g) On or before June 30, 2013, the Franchise Tax Board shall report to the Joint Legislative Budget Committee, the Legislative Analyst, and the relevant policy committees of both houses on the effects of this section. The report shall include, but need not be limited to, the following:

(1) An estimate of use of credits in the 2010 and 2011 taxable years by eligible taxpayers.

(2) An analysis of effect of this section on expanding business activity in the state related to these credits.

(3) An estimate of the resulting tax revenue loss to the state.

(4) The report shall cover all credits covered in this section, but focus on the credits related to research and development, economic incentive areas, and low income housing.

SEC. 11. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that the applicable percentage of the entire amount of the net operating loss for any taxable year shall be eligible for carryover to any subsequent taxable year. For purposes of this subdivision, the applicable percentage shall be:

(A) Fifty percent for any taxable year beginning before January 1, 2000.

(B) Fifty-five percent for any taxable year beginning on or after January 1, 2000, and before January 1, 2002.

(C) Sixty percent for any taxable year beginning on or after January 1, 2002, and before January 1, 2004.

(D) One hundred percent for any taxable year beginning on or after January 1, 2004.

(2) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, the applicable percentage of that amount shall be carried forward as provided in subdivision (d).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in any taxable year beginning on or after January 1, 1994, and who operates an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward as provided in subdivision (e).

(ii) With respect to that portion of the net operating loss that exceeds the net loss from the eligible small business, the applicable percentage of that amount shall be carried forward as provided in subdivision (e).

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, “net loss” means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any taxable year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the taxable year in which the loss was incurred.

(d) Section 172(b)(1) of the Internal Revenue Code, relating to net operating loss carrybacks and carryovers and the years to which the loss may be carried, is modified as follows:

(1) Net operating loss carrybacks shall not be allowed for any net operating losses attributable to taxable years beginning before January 1, 2011.

(2) A net operating loss attributable to taxable years beginning on or after January 1, 2011, shall be a net operating loss carryback to each of the two taxable years preceding the taxable year of the loss in lieu of the number of years provided therein.

(A) For a net operating loss attributable to a taxable year beginning on or after January 1, 2011, and before January 1, 2012, the amount of carryback to any taxable year shall not exceed 50 percent of the net operating loss.

(B) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the Internal Revenue Code, relating to special rules for REITs, and Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code, relating to corporate equity reduction interest loss, shall apply as provided.

(4) A net operating loss carryback shall not be carried back to any taxable year beginning before January 1, 2009.

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five taxable years" in lieu of "20 years" except as otherwise provided in paragraphs (2), (3), and (4).

(B) For a net operating loss for any income year beginning on or after January 1, 2000, and before January 1, 2008, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "10 taxable years" in lieu of "20 taxable years."

(2) For any income year beginning before January 1, 2000, in the case of a "new business," the "five taxable years" referred to in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the income year.

(2) Except as provided in subdivision (g), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an “S corporation,” paragraphs (1) and (2) shall be applied to the partnership or “S corporation.”

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair

market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) “Related person” shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) “Acquire” shall include any transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) “Biopharmaceutical activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(ii) “Other biotechnology activities” means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any taxable year that may be carried forward to another taxable year.

(2) The amount of any loss carry forward that may be deducted in any taxable year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(l) Except as otherwise provided, the amendments made by Chapter 107 of the Statutes of 2000 shall apply to net operating losses for taxable years beginning on or after January 1, 2000.

SEC. 12. Section 24416.9 is added to the Revenue and Taxation Code, to read:

24416.9. (a) Notwithstanding Sections 24416, 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.

(d) The provisions of this section shall not apply to a taxpayer with income subject to tax under this part of less than five hundred thousand dollars (\$500,000) for the taxable year.

SEC. 13. Section 24416.10 is added to the Revenue and Taxation Code, to read:

24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, and a net operating loss attributable to a taxable year beginning on or after January 1, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to alleviate the current fiscal crisis, it is necessary that this act go into immediate effect.