

AMENDED IN ASSEMBLY JUNE 12, 2007

AMENDED IN ASSEMBLY MAY 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1527

Introduced by Assembly Member Arambula

February 23, 2007

An act to add and repeal Sections ~~17052.14~~ 17052.13, 17052.14, 23613, and 23614 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1527, as amended, Arambula. Income and corporation taxes: credits: California Cleantech Advantage Act of 2008.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, *including, by reference to a specified federal statute, a credit against taxes imposed by those laws for increasing research expenses, as defined.*

This bill would authorize a credit against those taxes, *in lieu of the credit currently authorized for qualified research and the transferable credit described below*, for each taxable year beginning on or after January 1, ~~2008~~ 2009, and before January 1, 2013, in an amount equal to *20%* of the qualified amount, as defined, paid or incurred by a qualified taxpayer for qualified research in California, as defined, related to cleantech industries. *This bill would also authorize an alternative credit against those taxes for each taxable year beginning on or after January 1, 2009, and before January 1, 2013, in an amount equal to 10% of the qualified amount, as defined, paid or incurred by a qualified taxpayer for qualified research in California, as defined, related to*

cleantech industries. This bill would allow up to 50% of unused credits allowed to a qualified taxpayer *under the 2nd alternative credit* to be sold to, and used by, a qualified buyer, as defined, *subject to specified conditions.*

This bill would require specified information to be filed under penalty of perjury, thus imposing a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

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

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

- 1 SECTION 1. This act shall be known and may be cited as the
- 2 California Cleantech Advantage Act of 2008.
- 3 SEC. 2. (a) The Legislature finds and declares:
- 4 (1) That the enactment of Assembly Bill 32 (Chapter 488,
- 5 Statutes of 2006) made California a national and global policy
- 6 leader in the effort to reduce greenhouse gases that pose serious
- 7 threats to our natural environment and to our residents' health and
- 8 safety.
- 9 (2) That the prospect of global warming is very real and may
- 10 already be impacting our climate and ecosystems.
- 11 (3) That there is an urgent need to develop, market, and use
- 12 products, equipment, and services that reduce the formation of
- 13 greenhouse gases.
- 14 (b) The Legislature further finds and declares:
- 15 (1) That the level of national and global concern over greenhouse
- 16 gas emissions has begun to focus American technological research
- 17 and investment on developing industrial and consumer products
- 18 and processes that produce zero or ultra-low emissions of carbon
- 19 dioxide, the primary greenhouse gas.
- 20 (2) Nationally, in 2006, as much as \$63 billion was invested in
- 21 clean technologies, also called "cleantech."

1 (3) California received only 31 percent of venture capital
2 invested nationally in cleantech, as compared to 63 percent of the
3 nation’s venture capital invested in the computer industry.

4 (c) The Legislature further finds and declares:

5 (1) It is in the best interest of this state to expeditiously foster
6 a competitive cleantech industry in California by offering investors
7 financial incentives to spur cleantech research and development,
8 production, and utilization of environmentally clean products.

9 (2) That growing cleantech investment will help create as many
10 as 114,000 new, high-paying, skilled jobs, improve the state’s air
11 and water quality, and offer business reliable and affordable sources
12 of alternative energy.

13 (d) Therefore, it is the intent of the Legislature to enact and
14 enhance targeted tax credits to increase investment in cleantech
15 activities and the production of environmentally clean
16 manufacturing equipment, as well as maintain and enhance this
17 state’s competitive lead in attracting investment capital, clean
18 industry, and high-paying, skilled jobs.

19 *SEC. 3. Section 17052.13 is added to the Revenue and Taxation
20 Code, to read:*

21 *17052.13. (a) (1) For each taxable year beginning on or after
22 January 1, 2009, and before January 1, 2013, there shall be
23 allowed to a qualified taxpayer as a credit against the “net tax,”
24 as defined by Section 17039, an amount equal to 20 percent of the
25 qualified amount.*

26 *(2) The credit allowed under this section shall be claimed by a
27 qualified taxpayer by making an irrevocable election to claim this
28 credit in lieu of the credit otherwise allowed pursuant to Section
29 17052.12 or Section 17052.14.*

30 *(b) For purposes of this section:*

31 *(1) “Cleantech” means technologies identified by the California
32 Council on Science and Technology, the implementation of which
33 result in cleaner air and water, encourage the reuse of materials,
34 and result in reductions of emissions of greenhouse gases, as that
35 term is defined in subdivision (g) of Section 38505 of the Health
36 and Safety Code, including, but not limited to, wind, solar, biomass,
37 and hydrogen technologies.*

38 *(2) “Qualified amount” means an amount determined in
39 accordance with Section 41 of the Internal Revenue Code, except:*

1 (A) *Qualified research shall include only research conducted*
2 *in this state.*

3 (B) *Section 41(a)(2) and Section 41(a)(3) of the Internal*
4 *Revenue Code shall not apply.*

5 (3) *“Qualified research” means research certified by the*
6 *California Council on Science and Technology as cleantech*
7 *research, except that “qualified research” expenses include only*
8 *expenses for in-house research, within the meaning of Section*
9 *41(b)(2) of the Internal Revenue Code.*

10 (4) (A) *“Qualified taxpayer” means any taxpayer who, for the*
11 *taxable year, has received the certification described in subdivision*
12 *(e) from the California Council on Science and Technology and*
13 *otherwise satisfies the requirements of this section.*

14 (B) *A “qualified taxpayer” must be a business that has its*
15 *principal office located in California, the officers of which are*
16 *domiciled in California, and that, together with affiliates, has 100*
17 *or fewer employees, and average annual gross receipts of ten*
18 *million dollars (\$10,000,000) or less over the previous three*
19 *taxable years.*

20 (C) *In the case of any passthrough entity, the determination of*
21 *whether a taxpayer is a qualified taxpayer under this section shall*
22 *be made at the entity level and any credit under this section is not*
23 *allowed to the passthrough entity, but shall be passed through to*
24 *the partners or shareholders in accordance with applicable*
25 *provisions of Part 10 (commencing with Section 17001) or Part*
26 *11 (commencing with Section 23001). For purposes of this*
27 *paragraph, “passthrough entity” means any entity taxed as a*
28 *partnership or “S” corporation.*

29 (c) *Section 41 of the Internal Revenue Code shall apply, and is*
30 *modified as follows:*

31 (1) *The provisions of Section 41(c)(4) of the Internal Revenue*
32 *Code, relating to the election to use an alternate incremental credit,*
33 *shall not apply.*

34 (2) *Section 41(c)(7) of the Internal Revenue Code, relating to*
35 *gross receipts, is modified to take into account only those gross*
36 *receipts from the sale of property held primarily for sale to*
37 *customers in the ordinary course of the taxpayer’s trade or*
38 *business that is delivered or shipped to a purchaser within this*
39 *state, regardless of freight on board point or any other condition*
40 *of the sale.*

1 (3) Section 41(g) of the Internal Revenue Code, relating to
2 special rule for passthrough of credit, is modified by each of the
3 following:

4 (A) The last sentence shall not apply.

5 (B) If the amount determined under Section 41(a) of the Internal
6 Revenue Code for any taxable year exceeds the limitation of Section
7 41(g) of the Internal Revenue Code, that amount may be carried
8 over to other taxable years under the rules of subdivision (i), except
9 that the limitation of Section 41(g) of the Internal Revenue Code
10 shall be taken into account in each subsequent taxable year.

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

13 (d) In order to be eligible for the credit allowed under this
14 section, the qualified taxpayer shall do all of the following:

15 (1) (A) File an application for certification with the California
16 Council on Science and Technology, in the form and manner as
17 prescribed by the California Council on Science and Technology,
18 that the taxpayer's research or planned research is cleantech
19 research.

20 (B) The application for certification of cleantech research under
21 subparagraph (A) must be filed with the California Council on
22 Science and Technology before the close of the taxable year for
23 which the credit allowed pursuant to this section will be claimed.

24 (2) Maintain and provide, upon request by the Franchise Tax
25 Board, a copy of the application for certification and
26 accompanying materials provided to the California Council on
27 Science and Technology, along with substantiation, by adequate
28 books and records, or by sufficient corroborating evidence, that
29 the qualified research expenses on which the credit was calculated
30 were actually paid or incurred in the amount claimed, and that
31 the qualified research was performed in California.

32 (3) Provide a copy of the certification issued by the California
33 Council on Science and Technology, as specified in subdivision
34 (e), upon request, to the Franchise Tax Board. If the qualified
35 taxpayer fails to provide the Franchise Tax Board with a copy of
36 the certification, the credit shall be disallowed and any additional
37 tax shall be assessed and collected pursuant to Section 19051.

38 (e) The California Council on Science and Technology shall do
39 all of the following:

1 (1) Establish a procedure for qualified taxpayers to file with
2 the California Council on Science and Technology a written
3 application, on a form jointly prescribed by the California Council
4 on Science and Technology and the Franchise Tax Board, for
5 certification of cleantech research. The application shall be filed
6 under penalty of perjury and shall include, but not be limited to,
7 the following information:

8 (A) A written plan of research to be conducted or documentation
9 of ongoing research.

10 (B) An application fee.

11 (C) Any other information deemed relevant by the California
12 Council on Science and Technology.

13 (2) Determine and provide certification to applicants meeting
14 the requirements of this section.

15 (3) Process and approve, or reject, all applications on a
16 first-come-first-served basis.

17 (4) No later than December 1, 2008, the California Council on
18 Science and Technology shall promulgate rules and regulations
19 necessary to establish procedures, processes, requirements, and
20 rules identified in or required to implement this section. Rules and
21 regulations may be adopted on an emergency basis if necessary
22 to meet the December 1, 2008, deadline. The California Council
23 on Science and Technology may adopt rules and regulations to
24 more narrowly define the terms listed in subdivision (b) to limit
25 their meaning, but may not expand the definition of any terms
26 defined in subdivision (b).

27 (5) Provide a list, at least annually, to the Franchise Tax Board,
28 in the form and manner agreed upon by the Franchise Tax Board,
29 of the names, taxpayer identification numbers, including taxpayer
30 identification numbers of each partner or shareholder, as
31 applicable, of approved applicants for certification pursuant to
32 this section.

33 (f) (1) The election described in subdivision (a) shall be made
34 on or included with the timely filed original return of the qualified
35 taxpayer, and shall be irrevocable once made.

36 (2) No other credit or deduction may be allowed for the same
37 expenses upon which the credit provided for in subdivision (a) is
38 allowed.

39 (g) In the case where the credit allowed under this section
40 exceeds the "net tax," the excess may be carried over to reduce

1 the “net tax” in the following year, and the succeeding eight years
2 if necessary, until the credit has been exhausted.

3 (h) This section shall remain in effect only until December 1,
4 2013, and as of that date is repealed.

5 SEC. 4. Section 17052.14 is added to the Revenue and Taxation
6 Code, to read:

7 17052.14. (a) (1) For each taxable year beginning on or after
8 January 1, 2009, and before January 1, 2013, there shall be
9 allowed to a qualified taxpayer as a credit against the “net tax,”
10 as defined by Section 17039, an amount equal to 10 percent of the
11 qualified amount, to the extent of a final allocation in accordance
12 with this section.

13 (2) A claim for the credit allowed pursuant to this section shall
14 be an election to claim this credit in lieu of the credit allowed
15 pursuant to Section 17052.12 or Section 17052.13.

16 (b) For purposes of this section:

17 (1) “Budget” means an estimate of all expenses expected to be
18 paid or incurred during the taxable year by the qualified taxpayer
19 for all qualified research purposes.

20 (2) “Cleantech” means technologies including, but not limited
21 to, wind, solar, biomass, and hydrogen technologies, the
22 implementation of which result in cleaner air and water, encourage
23 the reuse of materials, and result in reductions of emissions of
24 greenhouse gases, as that term is defined in subdivision (g) of
25 Section 38505 of the Health and Safety Code, including, but not
26 limited to, wind, solar, biomass, and hydrogen technologies.

27 (3) (A) “Qualified amount” means an amount determined in
28 accordance with Section 41 of the Internal Revenue Code, for
29 qualified research conducted in this state.

30 (B) Paragraphs (2) and (3) of subdivision (a) of Section 41 of
31 the Internal Revenue Code shall not apply in computing the
32 qualified amount.

33 (4) (A) “Qualified research” means research certified by the
34 California Council on Science and Technology as cleantech
35 research, except that “qualified research” expenses include only
36 expenses for in-house research, within the meaning of Section
37 41(b)(2) of the Internal Revenue Code, performed by employees
38 of the qualified taxpayer and do not include contract research
39 expenses, within the meaning of Section 41(b)(3) of the Internal
40 Revenue Code.

1 (B) In order to receive an allocation of credit under this section
2 the following conditions shall also be satisfied:

3 (i) The qualified taxpayer shall have a minimum budget of three
4 hundred thousand dollars (\$300,000) for qualified research.

5 (ii) The actual expenses for qualified research conducted during
6 the qualified taxpayer's taxable year must meet or satisfy the
7 minimum budget amount required by clause (i) at the time of
8 application to the California Council on Science and Technology
9 for a final allocation.

10 (5) (A) "Qualified taxpayer" means a taxpayer who, for the
11 taxable year, has received a final allocation of credit from the
12 California Council on Science and Technology pursuant to
13 subdivision (e) and who otherwise satisfies the requirements of
14 this section.

15 (B) A qualified taxpayer must be a business that has its principal
16 office located in California, the officers of which are domiciled in
17 California, and that, together with affiliates, has 100 or fewer
18 employees, and average annual gross receipts of ten million dollars
19 (\$10,000,000) or less over the previous taxable three years.

20 (C) In the case of any passthrough entity, the determination of
21 whether a taxpayer is a qualified taxpayer under this section shall
22 be made at the entity level and any credit under this section is not
23 allowed to the passthrough entity, but shall be passed through to
24 the partners or shareholders in accordance with applicable
25 provisions of Part 10 (commencing with Section 17001) or Part
26 11 (commencing with Section 23001). For purposes of this
27 paragraph, "passthrough entity" means any entity taxed as a
28 partnership or "S" corporation.

29 (6) "Unused credit" means an amount of tax credit reflected
30 in a final allocation to a qualified taxpayer pursuant to this section
31 that has not been applied to reduce the "net tax," as defined by
32 Section 17039, in any taxable year.

33 (c) Section 41 of the Internal Revenue Code shall apply, and is
34 modified as follows:

35 (1) The provisions of Section 41(c)(4) of the Internal Revenue
36 Code, relating to the election to use an alternate incremental credit,
37 shall not apply.

38 (2) Section 41(c)(7) 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 freight on board point or any other condition*
4 *of the sale.*

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

8 *(A) The last sentence shall not apply.*

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

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

17 *(d) In order to be eligible for the credit authorized by this*
18 *section, the qualified taxpayer shall do all of the following:*

19 *(1) (A) File an application for the tax credit with the California*
20 *Council on Science and Technology, in the form and manner as*
21 *prescribed by the California Council on Science and Technology,*
22 *for allocation of credit.*

23 *(B) The application for allocation of credit referenced in*
24 *subparagraph (A) must be filed with the California Council on*
25 *Science and Technology before the close of the taxable year for*
26 *which the credit allowed pursuant to this section will be claimed.*

27 *(2) File an application with the California Council on Science*
28 *and Technology for final allocation of the credit based upon the*
29 *taxpayer's conduct of qualified research during the taxable year.*

30 *(3) File an application with the California Council on Science*
31 *and Technology for certification of the amount of unused credit*
32 *which may be sold pursuant to subdivision (h).*

33 *(4) Provide the California Council on Science and Technology*
34 *with substantiation, by adequate books and records, or by sufficient*
35 *corroborating evidence, that the qualified research expenses on*
36 *which the credit was calculated were actually paid or incurred in*
37 *the amount claimed, and that the qualified research was performed*
38 *in California.*

39 *(e) The California Council on Science and Technology shall do*
40 *all of the following:*

1 (1) (A) Establish procedures for qualified taxpayers to file with
2 the California Council on Science and Technology a written
3 application, on a form jointly prescribed by the California Council
4 on Science and Technology and the Franchise Tax Board, for the
5 following purposes:

6 (i) Certification of cleantech research.
7 (ii) Preliminary allocation of credit.
8 (iii) Final allocation of credit.
9 (iv) Certification of the amount of credit for sale pursuant to
10 subdivision (h).

11 (B) The applications identified in subparagraph (A) shall be
12 filed under penalty of perjury. The application for certification
13 and allocation of credit shall include, but not be limited to, the
14 following information:

15 (i) A written budget and plan for qualified research to be
16 conducted, along with documentation of any ongoing research
17 that may be determined to be qualified research.

18 (ii) An application fee.

19 (iii) Any other information deemed relevant by the California
20 Council on Science and Technology.

21 (2) Allocate tax credits to qualified taxpayers, subject to the
22 aggregate allocation limits in subdivision (f), and which shall not
23 exceed the lesser of any of the following:

24 (A) The amount of the credit tentatively allocated to the qualified
25 taxpayer by the California Council on Science and Technology
26 based on the initial application.

27 (B) The amount of the credit calculated based on the actual
28 costs of qualified research.

29 (C) One million dollars (\$1,000,000) per qualified taxpayer per
30 qualified year.

31 (3) Determine and provide certification of the amount of unused
32 credit available for sale pursuant to subdivision (h).

33 (4) (A) Accept and evaluate applications for certification and
34 allocation. If the aggregate amount of tax credit applications
35 exceeds the amount of credit available for allocation, credit shall
36 be allocated on a first-come-first-served basis as determined by
37 the order in which complete, approved applications for allocation
38 are received.

1 (B) No certifications or allocations of credit may be made for
2 activity conducted in a calendar year prior to the calendar year
3 in which an application for certification and allocation is made.

4 (5) Issue a certificate to the qualified taxpayer setting forth the
5 name of the qualified taxpayer and the total amount of the tax
6 credit allocated to the qualified taxpayer.

7 (6) Issue a certificate to the qualified taxpayer setting forth the
8 name of the qualified taxpayer and the total amount of unused
9 credit available for sale pursuant to subdivision (h).

10 (7) (A) No later than December 1, 2008, the California Council
11 on Science and Technology shall promulgate rules and regulations
12 necessary to establish procedures, processes, requirements, and
13 rules identified in or required to implement this section. Rules and
14 regulations may be adopted on an emergency basis if necessary
15 to meet the December 1, 2008, deadline. The California Council
16 on Science and Technology may amend these rules and regulations
17 as necessary. The California Council on Science and Technology
18 may adopt rules and regulations to more narrowly define the terms
19 listed in subdivision (b) to limit their meaning, but may not expand
20 the definition of any terms defined in subdivision (b).

21 (B) Develop guidelines, in consultation with the Franchise Tax
22 Board, for review of applications for final confirmation and of
23 credit allocations supporting materials in a manner consistent
24 with generally accepted accounting principles.

25 (8) Provide a list, at least annually, to the Franchise Tax Board,
26 in the form and manner agreed upon by the Franchise Tax Board,
27 information including, but not limited to, the following:

28 (A) The names, taxpayer identification numbers, including
29 taxpayer identification numbers of each partner or shareholder,
30 as applicable, of approved applicants for allocation of credit
31 pursuant to this section.

32 (B) The amount of final credit allocation.

33 (C) The amount of unused credit certified for sale pursuant to
34 subdivision (h).

35 (f) The aggregate amount of credits that may be allocated in
36 any calendar year pursuant to this section and Section 23614 shall
37 be an amount not to exceed the sum of all of the following:

38 (1) Twelve million five hundred thousand dollars (\$12,500,000)
39 for each calendar quarter.

1 (2) *The unallocated credit, if any, for the preceding calendar*
2 *quarter.*

3 (g) *No other credit or deduction may be allowed for the same*
4 *expenses upon which the credit provided for in subdivision (a) is*
5 *allowed.*

6 (h) (1) *Notwithstanding any provisions of law to the contrary,*
7 *and except as otherwise provided in this section, a qualified*
8 *taxpayer may elect to sell unused credits to a buyer to claim against*
9 *its “net tax,” as defined by Section 17039, or its “tax,” as defined*
10 *in Section 23036, as the case may be, in any taxable year.*

11 (2) *The amount of unused credits that may be sold by a qualified*
12 *taxpayer under this section shall not exceed 50 percent of any*
13 *unused credits allocated for a taxable year. The precise amount*
14 *of credit that may be sold must be certified by the California*
15 *Council on Science and Technology prior to sale.*

16 (3) *The amount received by a qualified taxpayer for unused tax*
17 *credits may not be less than 85 percent of the total face amount*
18 *of any unused tax credits sold.*

19 (4) *A qualified taxpayer may only sell up to the amount certified*
20 *as described in paragraph (2), but may not sell unused credits*
21 *after the end of the taxable year beginning after the calendar year*
22 *in which the qualified taxpayer was allocated the credit pursuant*
23 *to this section.*

24 (5) *Unused credits may be sold by a qualified taxpayer for any*
25 *taxable year beginning on or after January 1, 2010, but unused*
26 *credits may not be applied by a buyer against the “net tax,” as*
27 *defined by Section 17039, or the “tax,” as defined in Section*
28 *23036, as the case may be, for any taxable year beginning before*
29 *January 1, 2011.*

30 (6) *A buyer of unused credits from a qualified taxpayer may*
31 *apply those credits against the “net tax,” as defined by Section*
32 *17039, for the taxable year of the buyer immediately preceding*
33 *the taxable year in which purchased, in the taxable year in which*
34 *purchased, or the immediately succeeding taxable year.*

35 (7) *In no case may a buyer of unused credits from a qualified*
36 *taxpayer further sell or otherwise transfer those credits.*

37 (8) *Both the qualified taxpayer and buyer of unused credits shall*
38 *report to the Franchise Tax Board, in the form and manner*
39 *specified by the Franchise Tax Board, all required information*

1 regarding the purchase and sale of unused credits under this
2 section.

3 (9) Unused credits may not be claimed by a qualified buyer
4 against its “net tax,” as defined by Section 17039, in any taxable
5 year unless the requirement in paragraph (7) has been satisfied.

6 (10) The Franchise Tax Board shall establish all necessary
7 procedures and rules for qualified taxpayers to sell tax credits
8 pursuant to this subdivision.

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

14 (i) Any deduction otherwise allowed under this part for any
15 amount paid or incurred by the taxpayer upon which the credit is
16 based shall be reduced by the amount of the credit allowed by this
17 section.

18 (j) In the case where the credit allowed under this section
19 exceeds the “net tax,” the excess may be carried over to reduce
20 the “net tax” in the following year, and the succeeding eight years
21 if necessary, until the credit has been exhausted.

22 (k) This section shall remain in effect only until December 1,
23 2013, and as of that date is repealed.

24 SEC. 5. Section 23613 is added to the Revenue and Taxation
25 Code, to read:

26 23613. (a) (1) For each taxable year beginning on or after
27 January 1, 2009, and before January 1, 2013, there shall be
28 allowed to a qualified taxpayer as a credit against the “tax,” as
29 defined by Section 23036, an amount equal to 20 percent of the
30 qualified amount.

31 (2) The credit allowed under this section shall be claimed by a
32 qualified taxpayer by making an irrevocable election to claim this
33 credit in lieu of the credit otherwise allowed pursuant to Section
34 23612 or Section 23614.

35 (b) For purposes of this section:

36 (1) “Cleantech” means technologies identified by the California
37 Council on Science and Technology, the implementation of which
38 result in cleaner air and water, encourage the reuse of materials,
39 and result in reductions of emissions of greenhouse gases, as that
40 term is defined in subdivision (g) of Section 38505 of the Health

1 and Safety Code, including, but not limited to, wind, solar, biomass,
2 and hydrogen technologies.

3 (2) “Qualified amount” means an amount determined in
4 accordance with Section 41 of the Internal Revenue Code, except:

5 (A) Qualified research shall include only research conducted
6 in this state.

7 (B) Section 41(a)(2) and Section 41(a)(3) of the Internal
8 Revenue Code shall not apply.

9 (3) “Qualified research” means research certified by the
10 California Council on Science and Technology as cleantech
11 research, except that “qualified research” expenses include only
12 expenses for in-house research, within the meaning of Section
13 41(b)(2) of the Internal Revenue Code.

14 (4) (A) “Qualified taxpayer” means any taxpayer who, for the
15 taxable year, has received the certification described in subdivision
16 (e) from the California Council on Science and Technology and
17 otherwise satisfies the requirements of this section.

18 (B) A qualified taxpayer must be a business that has its principal
19 office located in California, the officers of which are domiciled in
20 California, and that, together with affiliates, has 100 or fewer
21 employees, and average annual gross receipts of ten million dollars
22 (\$10,000,000) or less over the previous three taxable years.

23 (C) (i) In the case of any passthrough entity, the determination
24 of whether a taxpayer is a qualified taxpayer under this section
25 shall be made at the entity level and any credit under this section
26 is not allowed to the passthrough entity, but shall be passed
27 through to the partners or shareholders in accordance with
28 applicable provisions of Part 10 (commencing with Section 17001)
29 or Part 11 (commencing with Section 23001). For purposes of this
30 paragraph, “passthrough entity” means any entity taxed as a
31 partnership or “S” corporation.

32 (ii) In the case of an “S” corporation, the credit allowed under
33 this section shall not be used by an “S” corporation as a credit
34 against a tax imposed under Chapter 4.5 (commencing with Section
35 23800) of Part 11 of Division 2.

36 (c) Section 41 of the Internal Revenue Code shall apply, and is
37 modified as follows:

38 (1) The provisions of Section 41(c)(4) of the Internal Revenue
39 Code, relating to the election to use an alternate incremental credit,
40 shall not apply.

1 (2) Section 41(c)(7) of the Internal Revenue Code, relating to
2 gross receipts, is modified to take into account only those gross
3 receipts from the sale of property held primarily for sale to
4 customers in the ordinary course of the taxpayer's trade or
5 business that is delivered or shipped to a purchaser within this
6 state, regardless of freight on board point or any other condition
7 of the sale.

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

11 (A) The last sentence shall not apply.

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

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

20 (d) In order to be eligible for the credit allowed under this
21 section, the qualified taxpayer shall do all of the following:

22 (1) (A) File an application for certification with the California
23 Council on Science and Technology, in the form and manner as
24 prescribed by the California Council on Science and Technology,
25 that the taxpayer's research or planned research is cleantech
26 research.

27 (B) The application for certification of cleantech research under
28 subparagraph (A) must be filed with the California Council on
29 Science and Technology before the close of the taxable year for
30 which the credit allowed pursuant to this section will be claimed.

31 (2) Maintain and provide, upon request by the Franchise Tax
32 Board, a copy of the application for certification and
33 accompanying materials provided to the California Council on
34 Science and Technology, along with substantiation, by adequate
35 books and records, or by sufficient corroborating evidence, that
36 the qualified research expenses on which the credit was calculated
37 were actually paid or incurred in the amount claimed, and that
38 the qualified research was performed in California.

39 (3) Provide a copy of the certification issued by the California
40 Council on Science and Technology, as specified in subdivision

1 (e), upon request, to the Franchise Tax Board. If the qualified
2 taxpayer fails to provide the Franchise Tax Board with a copy of
3 the certification, the credit shall be disallowed and any additional
4 tax shall be assessed and collected pursuant to Section 19051.

5 (e) The California Council on Science and Technology shall do
6 all of the following:

7 (1) Establish a procedure for qualified taxpayers to file with
8 the California Council on Science and Technology a written
9 application, on a form jointly prescribed by the California Council
10 on Science and Technology and the Franchise Tax Board, for
11 certification of cleantech research. The application shall be filed
12 under penalty of perjury and shall include, but not be limited to,
13 the following information:

14 (A) A written plan of research to be conducted or documentation
15 of ongoing research.

16 (B) An application fee.

17 (C) Any other information deemed relevant by the California
18 Council on Science and Technology.

19 (2) Determine and provide certification to applicants meeting
20 the requirements of this section.

21 (3) Process and approve, or reject all applications on a
22 first-come-first-served basis.

23 (4) No later than December 1, 2008, the California Council on
24 Science and Technology shall promulgate rules and regulations
25 necessary to establish procedures, processes, requirements, and
26 rules identified in or required to implement this section. Rules and
27 regulations may be adopted on an emergency basis if necessary
28 to meet the December 1, 2008, deadline. The California Council
29 on Science and Technology may adopt rules and regulations to
30 more narrowly define the terms listed in subdivision (b) to limit
31 their meaning, but may not expand the definition of any terms
32 defined in subdivision (b).

33 (5) Provide a list, at least annually, to the Franchise Tax Board,
34 in the form and manner agreed upon by the Franchise Tax Board,
35 of the names, taxpayer identification numbers, including taxpayer
36 identification numbers of each partner or shareholder, as
37 applicable, of approved applicants for certification pursuant to
38 this section.

1 (f) (1) *The election described in subdivision (a) shall be made*
2 *on or included with the timely filed original return of the qualified*
3 *taxpayer, and shall be irrevocable once made.*

4 (2) *No other credit or deduction may be allowed for the same*
5 *expenses upon which the credit provided for in subdivision (a) is*
6 *allowed.*

7 (g) *In the case where the credit allowed under this section*
8 *exceeds the “tax,” the excess may be carried over to reduce the*
9 *“tax” in the following year, and the succeeding eight years if*
10 *necessary, until the credit has been exhausted.*

11 (h) *This section shall remain in effect only until December 1,*
12 *2013, and as of that date is repealed.*

13 SEC. 6. *Section 23614 is added to the Revenue and Taxation*
14 *Code, to read:*

15 23614. (a) (1) *For each taxable year beginning on or after*
16 *January 1, 2009, and before January 1, 2013, there shall be*
17 *allowed to a qualified taxpayer as a credit against the “tax,” as*
18 *defined by Section 23036, an amount equal to 10 percent of the*
19 *qualified amount, to the extent of a final allocation in accordance*
20 *with this section.*

21 (2) *A claim for the credit allowed pursuant to this section shall*
22 *be an election to claim this credit in lieu of the credit allowed*
23 *pursuant to Section 23612 or Section 23613.*

24 (b) *For purposes of this section:*

25 (1) *“Budget” means an estimate of all expenses expected to be*
26 *paid or incurred during the taxable year by the qualified taxpayer*
27 *for all qualified research purposes.*

28 (2) *“Cleantech” means technologies including, but not limited*
29 *to, wind, solar, biomass, and hydrogen technologies, the*
30 *implementation of which result in cleaner air and water, encourage*
31 *the reuse of materials, and result in reductions of emissions of*
32 *greenhouse gases, as that term is defined in subdivision (g) of*
33 *Section 38505 of the Health and Safety Code, including, but not*
34 *limited to, wind, solar, biomass, and hydrogen technologies.*

35 (3) (A) *“Qualified amount” means an amount determined in*
36 *accordance with Section 41 of the Internal Revenue Code, for*
37 *qualified research conducted in this state.*

38 (B) *Paragraphs (2) and (3) of subdivision (a) of Section 41 of*
39 *the Internal Revenue Code shall not apply in computing the*
40 *qualified amount.*

1 (4) (A) “Qualified research” means research certified by the
2 California Council on Science and Technology as cleantech
3 research, except that “qualified research” expenses include only
4 expenses for in-house research, within the meaning of Section
5 41(b)(2) of the Internal Revenue Code, performed by employees
6 of the qualified taxpayer and do not include contract research
7 expenses, within the meaning of Section 41(b)(3) of the Internal
8 Revenue Code.

9 (B) In order to receive an allocation of credit under this section
10 the following conditions shall also be satisfied:

11 (i) The qualified taxpayer shall have a minimum budget of three
12 hundred thousand dollars (\$300,000) for qualified research.

13 (ii) The actual expenses for qualified research conducted during
14 the qualified taxpayer’s taxable year must meet or satisfy the
15 minimum budget amount required by clause (i) at the time of
16 application to the California Council on Science and Technology
17 for a final allocation.

18 (5) (A) “Qualified taxpayer” means a taxpayer who, for the
19 taxable year, has received a final allocation of credit from the
20 California Council on Science and Technology pursuant to
21 subdivision (e) and who otherwise satisfies the requirements of
22 this section.

23 (B) A qualified taxpayer must be a business that has its principal
24 office located in California, the officers of which are domiciled in
25 California, and that, together with affiliates, has 100 or fewer
26 employees, and average annual gross receipts of ten million dollars
27 (\$10,000,000) or less over the previous taxable three years.

28 (C) (i) In the case of any passthrough entity, the determination
29 of whether a taxpayer is a qualified taxpayer under this section
30 shall be made at the entity level and any credit under this section
31 is not allowed to the passthrough entity, but shall be passed
32 through to the partners or shareholders in accordance with
33 applicable provisions of Part 10 (commencing with Section 17001)
34 or Part 11 (commencing with Section 23001). For purposes of this
35 paragraph, “passthrough entity” means any entity taxed as a
36 partnership or “S” corporation.

37 (ii) In the case of an “S” corporation, the credit allowed under
38 this section shall not be used by an “S” corporation as a credit
39 against a tax imposed under Chapter 4.5 (commencing with Section
40 23800) of Part 11 of Division 2.

1 (6) “Unused credit” means an amount of tax credit reflected
2 in a final allocation to a qualified taxpayer pursuant to this section
3 that has not been applied to reduce the “tax,” as defined by Section
4 23036, in any taxable year.

5 (c) Section 41 of the Internal Revenue Code shall apply, and is
6 modified as follows:

7 (1) The provisions of Section 41(c)(4) of the Internal Revenue
8 Code, relating to the election to use an alternate incremental credit,
9 shall not apply.

10 (2) Section 41(c)(7) of the Internal Revenue Code, relating to
11 gross receipts, is modified to take into account only those gross
12 receipts from the sale of property held primarily for sale to
13 customers in the ordinary course of the taxpayer’s trade or
14 business that is delivered or shipped to a purchaser within this
15 state, regardless of freight on board point or any other condition
16 of the sale.

17 (3) Section 41(g) of the Internal Revenue Code, relating to
18 special rule for passthrough of credit, is modified by each of the
19 following:

20 (A) The last sentence shall not apply.

21 (B) If the amount determined under Section 41(a) of the Internal
22 Revenue Code for any taxable year exceeds the limitation of Section
23 41(g) of the Internal Revenue Code, that amount may be carried
24 over to other taxable years under the rules of subdivision (i) except
25 that the limitation of Section 41(g) of the Internal Revenue Code
26 shall be taken into account in each subsequent taxable year.

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

29 (d) In order to be eligible for the credit authorized by this
30 section, the qualified taxpayer shall do all of the following:

31 (1) (A) File an application for the tax credit with the California
32 Council on Science and Technology, in the form and manner as
33 prescribed by the California Council on Science and Technology,
34 for allocation of credit.

35 (B) The application for allocation of credit referenced in
36 subparagraph (A) must be filed with the California Council on
37 Science and Technology before the close of the taxable year for
38 which the credit allowed pursuant to this section will be claimed.

1 (2) *File an application with the California Council on Science*
2 *and Technology for final allocation of the credit based upon the*
3 *taxpayer's conduct of qualified research during the taxable year.*

4 (3) *File an application with the California Council on Science*
5 *and Technology for certification of the amount of unused credit*
6 *which may be sold pursuant to subdivision (h).*

7 (4) *Provide the California Council on Science and Technology*
8 *with substantiation, by adequate books and records, or by sufficient*
9 *corroborating evidence, that the qualified research expenses on*
10 *which the credit was calculated were actually paid or incurred in*
11 *the amount claimed, and that the qualified research was performed*
12 *in California.*

13 (e) *The California Council on Science and Technology shall do*
14 *all of the following:*

15 (1) (A) *Establish procedures for qualified taxpayers to file with*
16 *the California Council on Science and Technology a written*
17 *application, on a form jointly prescribed by the California Council*
18 *on Science and Technology and the Franchise Tax Board, for the*
19 *following purposes:*

20 (i) *Certification of cleantech research.*

21 (ii) *Preliminary allocation of credit.*

22 (iii) *Final allocation of credit.*

23 (iv) *Certification of the amount of credit for sale pursuant to*
24 *subdivision (h).*

25 (B) *The applications identified in subparagraph (A) shall be*
26 *filed under penalty of perjury. The application for certification*
27 *and allocation of credit shall include, but not be limited to, the*
28 *following information:*

29 (i) *A written budget and plan for qualified research to be*
30 *conducted, along with documentation of any ongoing research*
31 *that may be determined to be qualified research.*

32 (ii) *An application fee.*

33 (iii) *Any other information deemed relevant by the California*
34 *Council on Science and Technology.*

35 (2) *Allocate tax credits to qualified taxpayers, subject to the*
36 *aggregate allocation limits in subdivision (f), and which shall not*
37 *exceed the lesser of any of the following:*

38 (A) *The amount of the credit tentatively allocated to the qualified*
39 *taxpayer by the California Council on Science and Technology*
40 *based on the initial application.*

1 (B) *The amount of the credit calculated based on the actual*
2 *costs of qualified research.*

3 (C) *One million dollars (\$1,000,000) per qualified taxpayer per*
4 *qualified year.*

5 (3) *Determine and provide certification of the amount of unused*
6 *credit available for sale pursuant to subdivision (h).*

7 (4) (A) *Accept and evaluate applications for certification and*
8 *allocation. If the aggregate amount of tax credit applications*
9 *exceeds the amount of credit available for allocation, credit shall*
10 *be allocated on a first-come-first-served basis as determined by*
11 *the order in which complete, approved applications for allocation*
12 *are received.*

13 (B) *No certifications or allocations of credit may be made for*
14 *activity conducted in a calendar year prior to the calendar year*
15 *in which an application for certification and allocation is made.*

16 (5) *Issue a certificate to the qualified taxpayer setting forth the*
17 *name of the qualified taxpayer and the total amount of the tax*
18 *credit allocated to the qualified taxpayer.*

19 (6) *Issue a certificate to the qualified taxpayer setting forth the*
20 *name of the qualified taxpayer and the total amount of unused*
21 *credit available for sale pursuant to subdivision (h).*

22 (7) (A) *No later than December 1, 2008, the California Council*
23 *on Science and Technology shall promulgate rules and regulations*
24 *necessary to establish procedures, processes, requirements, and*
25 *rules identified in or required to implement this section. Rules and*
26 *regulations may be adopted on an emergency basis if necessary*
27 *to meet the December 1, 2008, deadline. The California Council*
28 *on Science and Technology may amend these rules and regulations*
29 *as necessary. The California Council on Science and Technology*
30 *may adopt rules and regulations to more narrowly define the terms*
31 *listed in subdivision (b) to limit their meaning, but may not expand*
32 *the definition of any terms defined in subdivision (b).*

33 (B) *Develop guidelines, in consultation with the Franchise Tax*
34 *Board, for review of applications for final confirmation and of*
35 *credit allocations supporting materials in a manner consistent*
36 *with generally accepted accounting principles.*

37 (8) *Provide a list, at least annually, to the Franchise Tax Board,*
38 *in the form and manner agreed upon by the Franchise Tax Board,*
39 *information including, but not limited to, the following:*

1 (A) *The names, taxpayer identification numbers, including*
2 *taxpayer identification numbers of each partner or shareholder,*
3 *as applicable, of approved applicants for allocation of credit*
4 *pursuant to this section.*

5 (B) *The amount of final credit allocation.*

6 (C) *The amount of unused credit certified for sale pursuant to*
7 *subdivision (h).*

8 (f) *The aggregate amount of credits that may be allocated in*
9 *any calendar year pursuant to this section and Section 17053.14*
10 *shall be an amount not to exceed the sum of all of the following:*

11 (1) *Twelve million five hundred thousand dollars (\$12,500,000)*
12 *for each calendar quarter.*

13 (2) *The unallocated credit, if any, for the preceding calendar*
14 *quarter.*

15 (g) *No other credit or deduction may be allowed for the same*
16 *expenses upon which the credit provided for in subdivision (a) is*
17 *allowed.*

18 (h) (1) *Notwithstanding any provisions of law to the contrary,*
19 *and except as otherwise provided in this section, a qualified*
20 *taxpayer may elect to sell unused credits to a buyer to claim against*
21 *its “tax,” as defined by Section 23036, or its “net tax,” as defined*
22 *in Section 17039, as the case may be, in any taxable year.*

23 (2) *The amount of unused credits that may be sold by a qualified*
24 *taxpayer under this section shall not exceed 50 percent of any*
25 *unused credits allocated for a taxable year. The precise amount*
26 *of credit that may be sold must be certified by the California*
27 *Council on Science and Technology prior to sale.*

28 (3) *The amount received by a qualified taxpayer for unused tax*
29 *credits may not be less than 85 percent of the total face amount*
30 *of any unused tax credits sold.*

31 (4) *A qualified taxpayer may only sell up to the amount certified*
32 *as described in paragraph (2), but may not sell unused credits*
33 *after the end of the taxable year beginning after the calendar year*
34 *in which the qualified taxpayer was allocated the credit pursuant*
35 *to this section.*

36 (5) *Unused credits may be sold by a qualified taxpayer for any*
37 *taxable year beginning on or after January 1, 2010, but unused*
38 *credits may not be applied by a buyer against the “net tax,” as*
39 *defined by Section 17039, or the “tax,” as defined in Section*

1 23036, as the case may be, for any taxable year beginning before
2 January 1, 2011.

3 (6) A buyer of unused credits from a qualified taxpayer may
4 apply those credits against the “net tax,” as defined by Section
5 17039, for the taxable year of the buyer immediately preceding
6 the taxable year in which purchased, in the taxable year in which
7 purchased, or the immediately succeeding taxable year.

8 (7) In no case may a buyer of unused credits from a qualified
9 taxpayer further sell or otherwise transfer those credits.

10 (8) Both the qualified taxpayer and buyer of unused credits shall
11 report to the Franchise Tax Board, in the form and manner
12 specified by the Franchise Tax Board, all required information
13 regarding the purchase and sale of unused credits under this
14 section.

15 (9) Unused credits may not be claimed by a qualified buyer
16 against its “tax,” as defined by Section 23036, in any taxable year
17 unless the requirement in paragraph (7) has been satisfied.

18 (10) The Franchise Tax Board shall establish all necessary
19 procedures and rules for qualified taxpayers to sell tax credits
20 pursuant to this subdivision.

21 (11) Chapter 3.5 (commencing with Section 11340) of Part 1
22 of Division 3 of Title 2 of the Government Code does not apply to
23 any standard, criterion, procedure, determination, rule, notice, or
24 guideline established or issued by the Franchise Tax Board
25 pursuant to this subdivision.

26 (i) Any deduction otherwise allowed under this part for any
27 amount paid or incurred by the taxpayer upon which the credit is
28 based shall be reduced by the amount of the credit allowed by this
29 section.

30 (j) In the case where the credit allowed under this section
31 exceeds the “net tax,” the excess may be carried over to reduce
32 the “net tax” in the following year, and the succeeding eight years
33 if necessary, until the credit has been exhausted.

34 (k) This section shall remain in effect only until December 1,
35 2013, and as of that date is repealed. However, any unused credit
36 may be carried over and used after that repeal date in accordance
37 with subdivision (i).

38 SEC. 7. No reimbursement is required by this act pursuant to
39 Section 6 of Article XIII B of the California Constitution because
40 the only costs that may be incurred by a local agency or school

1 *district will be incurred because this act creates a new crime or*
2 *infraction, eliminates a crime or infraction, or changes the penalty*
3 *for a crime or infraction, within the meaning of Section 17556 of*
4 *the Government Code, or changes the definition of a crime within*
5 *the meaning of Section 6 of Article XIII B of the California*
6 *Constitution.*

7 SEC. 8. *This act provides for a tax levy within the meaning of*
8 *Article IV of the Constitution and shall go into immediate effect.*

9 SEC. 3. ~~Section 17052.14 is added to the Revenue and Taxation~~
10 ~~Code, to read:~~

11 ~~17052.14. (a) For each taxable year beginning on or after~~
12 ~~January 1, 2008, and before January 1, 2013, there shall be allowed~~
13 ~~to a qualified taxpayer that makes an irrevocable election pursuant~~
14 ~~to subdivision (g), as a credit against the “net tax,” as defined by~~
15 ~~Section 17039, an amount equal to the qualified amount for~~
16 ~~qualified research conducted in this state.~~

17 ~~(b) For purposes of this section:~~

18 ~~(1) “Budget” means an estimate of all expenses expected to be~~
19 ~~paid or incurred during the taxable year by the qualified taxpayer~~
20 ~~for all qualified research purposes.~~

21 ~~(2) “Cleantech” means technologies including, but not limited~~
22 ~~to, wind, solar, biomass, and hydrogen technologies, the~~
23 ~~implementation of which result in cleaner air and water, encourage~~
24 ~~the reuse of materials, and result in reductions of emissions of~~
25 ~~greenhouse gases, as that term is defined in subdivision (g) of~~
26 ~~Section 38505 of the Health and Safety Code.~~

27 ~~(3) (A) “Qualified amount” means an amount determined in~~
28 ~~accordance with Section 41 of the Internal Revenue Code, as~~
29 ~~modified under paragraph (4) of subdivision (e), for qualified~~
30 ~~research conducted in this state.~~

31 ~~(B) Paragraphs (2) and (3) of subdivision (a) of Section 41 of~~
32 ~~the Internal Revenue Code shall not apply in computing the~~
33 ~~qualified amount.~~

34 ~~(C) For purposes of this section, the reference in Section 41~~
35 ~~(a)(1) of the Internal Revenue Code is modified to read “20~~
36 ~~percent.”~~

37 ~~(4) “Qualified buyer” means any business with 500 or more~~
38 ~~employees in this state.~~

39 ~~(5) “Qualified research” means:~~

1 (A) Research certified by the California Council on Science and
2 Technology as cleantech research, except that “qualified research”
3 includes only expenses for in-house research described in Section
4 41(b)(2) of the Internal Revenue Code performed by employees
5 of the qualified taxpayer and does not include contract research
6 expenses.

7 (B) In order to qualify as “qualified research,” the following
8 conditions shall also be satisfied:

9 (i) The qualified taxpayer shall have a minimum budget of three
10 hundred thousand dollars (\$300,000) for qualified research.

11 (ii) The actual expenses for qualified research conducted during
12 the qualified taxpayer’s taxable year must meet or satisfy the
13 minimum budget amount required by clause (i) at the time of
14 application to the California Council on Science and Technology.

15 (6) (A) “Qualified taxpayer” means an applicant who has been
16 allocated tax credits by the California Council on Science and
17 Technology pursuant to subdivision (e).

18 (B) A qualified taxpayer must be a business that has its principal
19 office located in California, the officers of which are domiciled in
20 California, and that, together with affiliates, has 100 or fewer
21 employees, and average annual gross receipts of ten million dollars
22 (\$10,000,000) or less over the previous taxable three years.

23 (C) (i) In the case of any passthrough entity, the determination
24 of whether a taxpayer is a qualified taxpayer under this section
25 shall be made at the entity level and any credit under this section
26 is not allowed to the passthrough entity, but shall be passed through
27 to the partners or shareholders in accordance with applicable
28 provisions of Part 10 (commencing with Section 17001) or Part
29 11 (commencing with Section 23001). For purposes of this
30 paragraph, “passthrough entity” means any entity taxed as a
31 partnership or “S” corporation.

32 (ii) In the case of an “S” corporation, the credit allowed under
33 this section shall not be used by an “S” corporation as a credit
34 against a tax imposed under Chapter 4.5 (commencing with Section
35 23800) of Part 11 of Division 2.

36 (7) “Unused credit” means an amount of tax credit originally
37 allowed to a qualified taxpayer by this section that the qualified
38 taxpayer has not claimed against the “net tax,” as defined by
39 Section 17039, in any taxable year.

1 ~~(e) Section 41 of the Internal Revenue Code is modified as~~
2 ~~follows:~~

3 ~~(1) The provisions of Section 41(c)(4) of the Internal Revenue~~
4 ~~Code, relating to the election to use an alternate incremental credit,~~
5 ~~shall not apply.~~

6 ~~(2) Section 41(e)(7) of the Internal Revenue Code, relating to~~
7 ~~gross receipts, is modified to take into account only those gross~~
8 ~~receipts from the sale of property held primarily for sale to~~
9 ~~customers in the ordinary course of the taxpayer's trade or business~~
10 ~~that is delivered or shipped to a purchaser within this state,~~
11 ~~regardless of freight on board point or any other condition of the~~
12 ~~sale.~~

13 ~~(3) Section 41(h) of the Internal Revenue Code, relating to~~
14 ~~termination, shall not apply.~~

15 ~~(4) Section 41(g) of the Internal Revenue Code, relating to~~
16 ~~special rule for passthrough of credit, is modified by each of the~~
17 ~~following:~~

18 ~~(A) The last sentence shall not apply.~~

19 ~~(B) If the amount determined under Section 41(a) of the Internal~~
20 ~~Revenue Code for any taxable year exceeds the limitation of~~
21 ~~Section 41(g) of the Internal Revenue Code, that amount may be~~
22 ~~carried over to other taxable years under the rules of subdivision~~
23 ~~(g) except that the limitation of Section 41(g) of the Internal~~
24 ~~Revenue Code shall be taken into account in each subsequent~~
25 ~~taxable year.~~

26 ~~(d) In order to be eligible for the credit authorized by this~~
27 ~~section, the qualified taxpayer shall do all of the following:~~

28 ~~(1) File an application for the tax credit with the California~~
29 ~~Council on Science and Technology, in the form and manner as~~
30 ~~prescribed by the California Council on Science and Technology.~~

31 ~~(2) Provide the California Council on Science and Technology~~
32 ~~with substantiation, by adequate books and records, or by sufficient~~
33 ~~corroborating evidence, that the qualified research expenses on~~
34 ~~which the credit was calculated were actually paid or incurred in~~
35 ~~the amount claimed, and that the qualified research was performed~~
36 ~~in California.~~

37 ~~(3) Provide a copy of the certification issued by the California~~
38 ~~Council on Science and Technology, as specified in subdivision~~
39 ~~(e), to the Franchise Tax Board. If the qualified taxpayer fails to~~
40 ~~provide the Franchise Tax Board with a copy of the certification,~~

1 the credit shall be disallowed and assessed and collected pursuant
2 to Section 19051.

3 (e) ~~The California Council on Science and Technology shall do~~
4 ~~all of the following:~~

5 (1) ~~Establish a procedure for qualified taxpayers to file with the~~
6 ~~California Council on Science and Technology a written~~
7 ~~application, on a form jointly prescribed by the California Council~~
8 ~~on Science and Technology and the Franchise Tax Board, for~~
9 ~~allocation of tax credits. The application shall be filed under~~
10 ~~penalty of perjury and shall include, but not be limited to, the~~
11 ~~following information:~~

12 (A) ~~The budget for qualified research for the taxable year of the~~
13 ~~qualified taxpayer.~~

14 (B) ~~An application fee.~~

15 (C) ~~Any other information deemed relevant by the California~~
16 ~~Council on Science and Technology.~~

17 (2) ~~Determine and designate who is a qualified taxpayer meeting~~
18 ~~the requirements of this section.~~

19 (3) ~~Process and approve, or reject all applications on a~~
20 ~~first-come-first-served basis, not to exceed the amount specified~~
21 ~~in paragraph (4).~~

22 (4) ~~Allocate tax credits to qualified taxpayers, subject to the~~
23 ~~aggregate allocation limits in subdivision (f), and which shall not~~
24 ~~exceed the lesser of any of the following:~~

25 (A) ~~The amount of the credit tentatively allocated to the qualified~~
26 ~~taxpayer by the California Council on Science and Technology~~
27 ~~based on the initial application.~~

28 (B) ~~The amount of the credit calculated based on the actual costs~~
29 ~~of qualified research.~~

30 (C) ~~One million dollars (\$1,000,000) per qualified taxpayer per~~
31 ~~qualified year.~~

32 (5) ~~Issue a certificate to the qualified taxpayer setting forth the~~
33 ~~name of the qualified taxpayer and the total amount of the tax~~
34 ~~credit allocated to the qualified taxpayer.~~

35 (6) ~~Provide for the cancellation of the allocated credits, if~~
36 ~~qualified research does not begin within 180 days after notification~~
37 ~~of the credit allocation by the California Council on Science and~~
38 ~~Technology in accordance with subdivision (f).~~

39 (7) ~~No later than December 1, 2008, the California Council on~~
40 ~~Science and Technology shall promulgate rules and regulations~~

1 necessary to establish procedures, processes, requirements, and
2 rules identified in or required to implement this section. Rules and
3 regulations may be adopted on an emergency basis if necessary to
4 meet the December 1, 2008, deadline. The California Council on
5 Science and Technology may amend these rules and regulations
6 as necessary. The California Council on Science and Technology
7 may adopt rules and regulations to more narrowly define the terms
8 listed in subdivision (b) to limit their meaning, but may not expand
9 the definition of any terms defined in subdivision (b).

10 (8) Provide a list, at least annually, to the Franchise Tax Board,
11 in the form and manner agreed upon by the Franchise Tax Board,
12 of the names, taxpayer identification numbers, including taxpayer
13 identification numbers of each partner or shareholder, as applicable,
14 and the total amount of the tax credit allocated to each qualified
15 taxpayer.

16 (f) The aggregate amount of credits that may be allocated in
17 any calendar year pursuant to this section and Section 23614 shall
18 be an amount not to exceed the sum of all of the following:

19 (1) Twelve million five hundred thousand dollars (\$12,500,000)
20 for each calendar quarter, and for each calendar quarter thereafter.

21 (2) The unused credit ceiling, if any, for the preceding calendar
22 quarter.

23 (3) The amount of previously allocated credits cancelled or
24 disallowed in the preceding calendar quarter by reason of paragraph
25 (3) or paragraph (6) of subdivision (d).

26 (g) (1) The election authorized under subdivision (a) shall be
27 made on or included with the timely-filed original return of the
28 qualified taxpayer, and shall be irrevocable.

29 (2) No other credit or deduction may be allowed for the same
30 expenses upon which the credit provided for in subdivision (a) is
31 allowed.

32 (h) Notwithstanding any provisions of law to the contrary, and
33 except as otherwise provided in this section, a qualified taxpayer
34 may elect to sell unused credits to a qualified buyer to claim against
35 its "net tax," as defined by Section 17039, in any taxable year.

36 (1) The tax value of all unused tax credits that may be sold by
37 all qualified taxpayers under this section shall not exceed up to 50
38 percent of any unused credits, as measured at the time of the sale.

39 (2) Unused credits may be sold by a qualified taxpayer during
40 any taxable year beginning on or after January 1, 2008, but no

1 ~~unused credits may be used by a qualified buyer in any taxable~~
2 ~~year beginning before January 1, 2009.~~

3 ~~(3) Both the qualified taxpayer and qualified buyer of unused~~
4 ~~credits shall report to the Franchise Tax Board, in the form and~~
5 ~~manner specified by the Franchise Tax Board, all required~~
6 ~~information regarding the purchase and sale of unused credits~~
7 ~~under this section.~~

8 ~~(4) Unused credits may not be claimed by a qualified buyer~~
9 ~~against its “net tax,” as defined by Section 17039, in any taxable~~
10 ~~year unless the requirement in paragraph (3) has been satisfied.~~

11 ~~(5) The Franchise Tax Board shall establish all necessary~~
12 ~~procedures and rules for qualified taxpayers to sell tax credits~~
13 ~~pursuant to this subdivision.~~

14 ~~(6) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
15 ~~Division 3 of Title 2 of the Government Code does not apply to~~
16 ~~any standard, criterion, procedure, determination, rule, notice, or~~
17 ~~guideline established or issued by the Franchise Tax Board~~
18 ~~pursuant to this subdivision.~~

19 ~~(i) Any deduction otherwise allowed under this part for any~~
20 ~~amount paid or incurred by the taxpayer upon which the credit is~~
21 ~~based shall be reduced by the amount of the credit allowed by this~~
22 ~~section.~~

23 ~~(j) In the case where the credit allowed under this section~~
24 ~~exceeds the “net tax,” the excess may be carried over to reduce~~
25 ~~the “net tax” in the following year, and the succeeding eight years~~
26 ~~if necessary, until the credit has been exhausted.~~

27 ~~(k) This section shall remain in effect only until December 1,~~
28 ~~2013, and as of that date is repealed. However, any unused credit~~
29 ~~may be carried over and used after that repeal date in accordance~~
30 ~~with subdivision (j).~~

31 ~~SEC. 4. Section 23614 is added to the Revenue and Taxation~~
32 ~~Code, to read:~~

33 ~~23614. (a) For each taxable year beginning on or after January~~
34 ~~1, 2008, and before January 1, 2013, there shall be allowed to a~~
35 ~~qualified taxpayer that makes an irrevocable election pursuant to~~
36 ~~subdivision (g), as a credit against the “tax,” as defined by Section~~
37 ~~23036, an amount equal to the qualified amount for qualified~~
38 ~~research conducted in this state.~~

39 ~~(b) For purposes of this section:~~

1 (1) ~~“Budget” means an estimate of all expenses expected to be~~
2 ~~paid or incurred during the taxable year by the qualified taxpayer~~
3 ~~for all qualified research purposes.~~

4 (2) ~~“Cleantech” means technologies including, but not limited~~
5 ~~to, wind, solar, biomass, and hydrogen technologies, the~~
6 ~~implementation of which result in cleaner air and water, encourage~~
7 ~~the reuse of materials, and result in reductions of emissions of~~
8 ~~greenhouse gases, as that term is defined in subdivision (g) of~~
9 ~~Section 38505 of the Health and Safety Code.~~

10 (3) (A) ~~“Qualified amount” means an amount determined in~~
11 ~~accordance with Section 41 of the Internal Revenue Code, as~~
12 ~~modified under paragraph (4) of subdivision (e), for qualified~~
13 ~~research conducted in this state.~~

14 (B) ~~Paragraphs (2) and (3) of subdivision (a) of Section 41 of~~
15 ~~the Internal Revenue Code shall not apply in computing the~~
16 ~~qualified amount.~~

17 (C) ~~For purposes of this section, the reference in Section 41~~
18 ~~(a)(1) of the Internal Revenue Code is modified to read “20~~
19 ~~percent.”~~

20 (4) ~~“Qualified buyer” means any business with 500 or more~~
21 ~~employees in this state.~~

22 (5) ~~“Qualified research” means:~~

23 (A) ~~Research certified by the California Council on Science and~~
24 ~~Technology as cleantech research, except that “qualified research”~~
25 ~~includes only expenses for in-house research described in Section~~
26 ~~41(b)(2) of the Internal Revenue Code performed by employees~~
27 ~~of the qualified taxpayer and does not include contract research~~
28 ~~expenses.~~

29 (B) ~~In order to qualify as “qualified research,” the following~~
30 ~~conditions shall also be satisfied:~~

31 (i) ~~The qualified taxpayer shall have a minimum budget of three~~
32 ~~hundred thousand dollars (\$300,000) for qualified research.~~

33 (ii) ~~The actual expenses for qualified research conducted during~~
34 ~~the qualified taxpayer’s taxable year must meet or satisfy the~~
35 ~~minimum budget amount required by clause (i) at the time of~~
36 ~~application to the California Council on Science and Technology.~~

37 (6) (A) ~~“Qualified taxpayer” means an applicant who has been~~
38 ~~allocated tax credits by the California Council on Science and~~
39 ~~Technology pursuant to subdivision (e).~~

1 ~~(B) A qualified taxpayer must be a business that has its principal~~
2 ~~office located in California, the officers of which are domiciled in~~
3 ~~California, and that, together with affiliates, has 100 or fewer~~
4 ~~employees, and average annual gross receipts of ten million dollars~~
5 ~~(\$10,000,000) or less over the previous taxable three years.~~

6 ~~(C) (i) In the case of any passthrough entity, the determination~~
7 ~~of whether a taxpayer is a qualified taxpayer under this section~~
8 ~~shall be made at the entity level and any credit under this section~~
9 ~~is not allowed to the passthrough entity, but shall be passed through~~
10 ~~to the partners or shareholders in accordance with applicable~~
11 ~~provisions of Part 10 (commencing with Section 17001) or Part~~
12 ~~11 (commencing with Section 23001). For purposes of this~~
13 ~~paragraph, “passthrough entity” means any entity taxed as a~~
14 ~~partnership or “S” corporation.~~

15 ~~(ii) In the case of an “S” corporation, the credit allowed under~~
16 ~~this section shall not be used by an “S” corporation as a credit~~
17 ~~against a tax imposed under Chapter 4.5 (commencing with Section~~
18 ~~23800) of Part 11 of Division 2.~~

19 ~~(7) “Unused credit” means an amount of tax credit originally~~
20 ~~allowed to a qualified taxpayer by this section that the qualified~~
21 ~~taxpayer has not claimed against the “tax,” as defined by Section~~
22 ~~23036, in any taxable year.~~

23 ~~(e) Section 41 of the Internal Revenue Code is modified as~~
24 ~~follows:~~

25 ~~(1) The provisions of Section 41(e)(4) of the Internal Revenue~~
26 ~~Code, relating to the election to use an alternate incremental credit,~~
27 ~~shall not apply.~~

28 ~~(2) Section 41(e)(7) of the Internal Revenue Code, relating to~~
29 ~~gross receipts, is modified to take into account only those gross~~
30 ~~receipts from the sale of property held primarily for sale to~~
31 ~~customers in the ordinary course of the taxpayer’s trade or business~~
32 ~~that is delivered or shipped to a purchaser within this state,~~
33 ~~regardless of freight on board point or any other condition of the~~
34 ~~sale.~~

35 ~~(3) Section 41(h) of the Internal Revenue Code, relating to~~
36 ~~termination, shall not apply.~~

37 ~~(4) Section 41(g) of the Internal Revenue Code, relating to~~
38 ~~special rule for passthrough of credit, is modified by each of the~~
39 ~~following:~~

40 ~~(A) The last sentence shall not apply.~~

1 ~~(B) If the amount determined under Section 41(a) of the Internal~~
2 ~~Revenue Code for any taxable year exceeds the limitation of~~
3 ~~Section 41(g) of the Internal Revenue Code, that amount may be~~
4 ~~carried over to other taxable years under the rules of subdivision~~
5 ~~(g) except that the limitation of Section 41(g) of the Internal~~
6 ~~Revenue Code shall be taken into account in each subsequent~~
7 ~~taxable year.~~

8 ~~(d) In order to be eligible for the credit authorized by this~~
9 ~~section, the qualified taxpayer shall do all of the following:~~

10 ~~(1) File an application for the tax credit with the California~~
11 ~~Council on Science and Technology, in the form and manner as~~
12 ~~prescribed by the California Council on Science and Technology.~~

13 ~~(2) Provide the California Council on Science and Technology~~
14 ~~with substantiation, by adequate books and records, or by sufficient~~
15 ~~corroborating evidence, that the qualified research expenses on~~
16 ~~which the credit was calculated were actually paid or incurred in~~
17 ~~the amount claimed, and that the qualified research was performed~~
18 ~~in California.~~

19 ~~(3) Provide a copy of the certification issued by the California~~
20 ~~Council on Science and Technology, as specified in subdivision~~
21 ~~(e), to the Franchise Tax Board. If the qualified taxpayer fails to~~
22 ~~provide the Franchise Tax Board with a copy of the certification,~~
23 ~~the credit shall be disallowed and assessed and collected pursuant~~
24 ~~to Section 19051.~~

25 ~~(e) The California Council on Science and Technology shall do~~
26 ~~all of the following:~~

27 ~~(1) Establish a procedure for qualified taxpayers to file with the~~
28 ~~California Council on Science and Technology a written~~
29 ~~application, on a form jointly prescribed by the California Council~~
30 ~~on Science and Technology and the Franchise Tax Board, for~~
31 ~~allocation of tax credits. The application shall be filed under~~
32 ~~penalty of perjury and shall include, but not be limited to, the~~
33 ~~following information:~~

34 ~~(A) The budget for qualified research for the taxable year of the~~
35 ~~qualified taxpayer.~~

36 ~~(B) An application fee.~~

37 ~~(C) Any other information deemed relevant by the California~~
38 ~~Council on Science and Technology.~~

39 ~~(2) Determine and designate who is a qualified taxpayer meeting~~
40 ~~the requirements of this section.~~

- 1 ~~(3) Process and approve, or reject all applications on a~~
2 ~~first-come-first-served basis, not to exceed the amount specified~~
3 ~~in paragraph (4).~~
4 ~~(4) Allocate tax credits to qualified taxpayers, subject to the~~
5 ~~aggregate allocation limits in subdivision (f), and which shall not~~
6 ~~exceed the lesser of any of the following:~~
7 ~~(A) The amount of the credit tentatively allocated to the qualified~~
8 ~~taxpayer by the California Council on Science and Technology~~
9 ~~based on the initial application.~~
10 ~~(B) The amount of the credit calculated based on the actual costs~~
11 ~~of qualified research.~~
12 ~~(C) One million dollars (\$1,000,000) per qualified taxpayer per~~
13 ~~qualified year.~~
14 ~~(5) Issue a certificate to the qualified taxpayer setting forth the~~
15 ~~name of the qualified taxpayer and the total amount of the tax~~
16 ~~credit allocated to the qualified taxpayer.~~
17 ~~(6) Provide for the cancellation of the allocated credits, if~~
18 ~~qualified research does not begin within 180 days after notification~~
19 ~~of the credit allocation by the California Council on Science and~~
20 ~~Technology in accordance with subdivision (f).~~
21 ~~(7) No later than December 1, 2008, the California Council on~~
22 ~~Science and Technology shall promulgate rules and regulations~~
23 ~~necessary to establish procedures, processes, requirements, and~~
24 ~~rules identified in or required to implement this section. Rules and~~
25 ~~regulations may be adopted on an emergency basis if necessary to~~
26 ~~meet the December 1, 2008, deadline. The California Council on~~
27 ~~Science and Technology may amend these rules and regulations~~
28 ~~as necessary. The California Council on Science and Technology~~
29 ~~may adopt rules and regulations to more narrowly define the terms~~
30 ~~listed in subdivision (b) to limit their meaning, but may not expand~~
31 ~~the definition of any terms defined in subdivision (b).~~
32 ~~(8) Provide a list, at least annually, to the Franchise Tax Board,~~
33 ~~in the form and manner agreed upon by the Franchise Tax Board,~~
34 ~~of the names, taxpayer identification numbers, including taxpayer~~
35 ~~identification numbers of each partner or shareholder, as applicable,~~
36 ~~and the total amount of the tax credit allocated to each qualified~~
37 ~~taxpayer.~~
38 ~~(f) The aggregate amount of credits that may be allocated in~~
39 ~~any calendar year pursuant to this section and Section 17052.14~~
40 ~~shall be an amount not to exceed the sum of all of the following:~~

- 1 ~~(1) Twelve million five hundred thousand dollars (\$12,500,000)~~
2 ~~for each calendar quarter, and for each calendar quarter thereafter.~~
- 3 ~~(2) The unused credit ceiling, if any, for the preceding calendar~~
4 ~~quarter.~~
- 5 ~~(3) The amount of previously allocated credits cancelled or~~
6 ~~disallowed in the preceding calendar quarter by reason of paragraph~~
7 ~~(3) or paragraph (6) of subdivision (d).~~
- 8 ~~(g) (1) The election authorized under subdivision (a) shall be~~
9 ~~made on or included with the timely-filed original return of the~~
10 ~~qualified taxpayer, and shall be irrevocable.~~
- 11 ~~(2) No other credit or deduction may be allowed for the same~~
12 ~~expenses upon which the credit provided for in subdivision (a) is~~
13 ~~allowed.~~
- 14 ~~(h) Notwithstanding any provisions of law to the contrary, and~~
15 ~~except as otherwise provided in this section, a qualified taxpayer~~
16 ~~may elect to sell unused credits to a qualified buyer to claim against~~
17 ~~its “tax,” as defined by Section 23036, in any taxable year.~~
- 18 ~~(1) The tax value of all unused tax credits that may be sold by~~
19 ~~all qualified taxpayers under this section shall not exceed up to 50~~
20 ~~percent of any unused credits, as measured at the time of the sale.~~
- 21 ~~(2) Unused credits may be sold by a qualified taxpayer during~~
22 ~~any taxable year beginning on or after January 1, 2008, but no~~
23 ~~unused credits may be used by a qualified buyer in any taxable~~
24 ~~year beginning before January 1, 2009.~~
- 25 ~~(3) Both the qualified taxpayer and qualified buyer of unused~~
26 ~~credits shall report to the Franchise Tax Board, in the form and~~
27 ~~manner specified by the Franchise Tax Board, all required~~
28 ~~information regarding the purchase and sale of unused credits~~
29 ~~under this section.~~
- 30 ~~(4) Unused credits may not be claimed by a qualified buyer~~
31 ~~against its “tax,” as defined by Section 23036, in any taxable year~~
32 ~~unless the requirement in paragraph (3) has been satisfied.~~
- 33 ~~(5) The Franchise Tax Board shall establish all necessary~~
34 ~~procedures and rules for qualified taxpayers to sell tax credits~~
35 ~~pursuant to this subdivision.~~
- 36 ~~(6) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
37 ~~Division 3 of Title 2 of the Government Code does not apply to~~
38 ~~any standard, criterion, procedure, determination, rule, notice, or~~
39 ~~guideline established or issued by the Franchise Tax Board~~
40 ~~pursuant to this subdivision.~~

1 ~~(i) Any deduction otherwise allowed under this part for any~~
2 ~~amount paid or incurred by the taxpayer upon which the credit is~~
3 ~~based shall be reduced by the amount of the credit allowed by this~~
4 ~~section.~~

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

9 ~~(k) This section shall remain in effect only until December 1,~~
10 ~~2013, and as of that date is repealed. However, any unused credit~~
11 ~~may be carried over and used after that repeal date in accordance~~
12 ~~with subdivision (j).~~

13 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
14 ~~Section 6 of Article XIII B of the California Constitution because~~
15 ~~the only costs that may be incurred by a local agency or school~~
16 ~~district will be incurred because this act creates a new crime or~~
17 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
18 ~~for a crime or infraction, within the meaning of Section 17556 of~~
19 ~~the Government Code, or changes the definition of a crime within~~
20 ~~the meaning of Section 6 of Article XIII B of the California~~
21 ~~Constitution.~~

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