

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2491

Introduced by Assembly Member Gaines

February 21, 2008

~~An act to amend Section 17053.47 of the Revenue and Taxation Code, relating to taxation. An act to repeal and add Sections 17250, 17255, 24349, and 24356 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2491, as amended, Gaines. ~~Targeted economic development area: tax credit.~~ *Income and corporation taxes: depreciation: expensing.*

The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the taxes imposed by those laws. Both laws, in partial conformity to federal income tax laws, allow a deduction for depreciation and for expensing certain capital assets, as provided.

This bill would provide complete conformity to federal income tax laws with respect to those deductions.

This bill would take effect immediately as a tax levy.

~~The Personal Income Tax Law authorizes various credits against the tax imposed by that law, including a hiring credit for qualified taxpayers who hire qualified employees, as defined, within manufacturing enhancement areas, subject to specified criteria.~~

~~This bill would make a technical, nonsubstantive change to this provision.~~

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

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

1 ~~SECTION 1. Section 17250 of the Revenue and Taxation Code~~
2 ~~is repealed.~~

3 ~~17250. (a) Section 168 of the Internal Revenue Code is~~
4 ~~modified as follows:~~

5 ~~(1) Any reference to “tax imposed by this chapter” in Section~~
6 ~~168 of the Internal Revenue Code means “net tax,” as defined in~~
7 ~~Section 17039.~~

8 ~~(2) (A) Section 168(e)(3) is modified to provide that any~~
9 ~~grapevine, replaced in a vineyard in California in any taxable year~~
10 ~~beginning on or after January 1, 1992, as a direct result of a~~
11 ~~phylloxera infestation in that vineyard, or replaced in a vineyard~~
12 ~~in California in any taxable year beginning on or after January 1,~~
13 ~~1997, as a direct result of Pierce’s disease in that vineyard, shall~~
14 ~~be “five-year property,” rather than “10-year property.”~~

15 ~~(B) Section 168(g)(3) of the Internal Revenue Code is modified~~
16 ~~to provide that any grapevine, replaced in a vineyard in California~~
17 ~~in any taxable year beginning on or after January 1, 1992, as a~~
18 ~~direct result of a phylloxera infestation in that vineyard, or replaced~~
19 ~~in a vineyard in California in any taxable year beginning on or~~
20 ~~after January 1, 1997, as a direct result of Pierce’s disease in that~~
21 ~~vineyard, shall have a class life of 10 years.~~

22 ~~(C) Every taxpayer claiming a depreciation deduction with~~
23 ~~respect to grapevines as described in this paragraph shall obtain a~~
24 ~~written certification from an independent state-certified integrated~~
25 ~~pest management adviser, or a state agricultural commissioner or~~
26 ~~adviser, that specifies that the replanting was necessary to restore~~
27 ~~a vineyard infested with phylloxera or Pierce’s disease. The~~
28 ~~taxpayer shall retain the certification for future audit purposes.~~

29 ~~(3) Section 168(j) of the Internal Revenue Code, relating to~~
30 ~~property on Indian reservations, shall not apply.~~

31 ~~(4) Section 168(k) of the Internal Revenue Code, relating to~~
32 ~~special allowance for certain property acquired after September~~
33 ~~10, 2001, and before January 1, 2005, shall not apply.~~

34 ~~(5) Sections 168(b)(3)(G) and 168(b)(3)(H) of the Internal~~
35 ~~Revenue Code, relating to property to which the straight line~~
36 ~~method applies, shall not apply.~~

37 ~~(6) Sections 168(e)(3)(E)(iv) and 168(e)(3)(E)(v) of the Internal~~
38 ~~Revenue Code, relating to 15-year property, shall not apply.~~

1 ~~(7) Sections 168(e)(6) and 168(e)(7) of the Internal Revenue~~
2 ~~Code, relating to qualified leasehold improvement property and~~
3 ~~to qualified restaurant property, respectively, shall not apply.~~

4 ~~(b) Section 169 of the Internal Revenue Code, relating to~~
5 ~~amortization of pollution control facilities, is modified as follows:~~

6 ~~(1) The deduction allowed by Section 169 of the Internal~~
7 ~~Revenue Code shall be allowed only with respect to facilities~~
8 ~~located in this state.~~

9 ~~(2) The “state certifying authority,” as defined in Section~~
10 ~~169(d)(2) of the Internal Revenue Code, means the State Air~~
11 ~~Resources Board, in the case of air pollution, and the State Water~~
12 ~~Resources Control Board, in the case of water pollution.~~

13 *SEC. 2. Section 17250 is added to the Revenue and Taxation*
14 *Code, to read:*

15 *17250. Section 168 of the Internal Revenue Code, as amended*
16 *by Section 103 of Public Law 110-185, shall apply.*

17 *SEC. 3. Section 17255 of the Revenue and Taxation Code is*
18 *repealed.*

19 ~~17255. (a) Section 179(b)(1) of the Internal Revenue Code,~~
20 ~~relating to dollar limitation, shall not apply and in lieu thereof, the~~
21 ~~aggregate cost which may be taken into account under Section~~
22 ~~179(a) of the Internal Revenue Code for any taxable year shall not~~
23 ~~exceed twenty-five thousand dollars (\$25,000).~~

24 ~~(b) Section 179(b)(2) of the Internal Revenue Code, relating to~~
25 ~~reduction in limitation, shall not apply and in lieu thereof, the~~
26 ~~limitation under subdivision (a) for any taxable year shall be~~
27 ~~reduced, but not to below zero, by the amount by which the cost~~
28 ~~of Section 179 property, as defined in Section 179(d)(1) of the~~
29 ~~Internal Revenue Code, except as otherwise provided, placed in~~
30 ~~service during the taxable year exceeds two hundred thousand~~
31 ~~dollars (\$200,000).~~

32 ~~(c) Section 179 of the Internal Revenue Code is modified to~~
33 ~~provide that the “aggregate amount disallowed” referred to in~~
34 ~~Section 179(b)(3)(B) of the Internal Revenue Code shall be~~
35 ~~computed under this part as it read on the date the property~~
36 ~~generating the amount disallowed was placed in service.~~

37 ~~(d) Section 179(b)(5) of the Internal Revenue Code, relating to~~
38 ~~inflation adjustments, shall not apply.~~

39 ~~(e) The last sentence in Section 179(e)(2) of the Internal~~
40 ~~Revenue Code, relating to election irrevocable, shall not apply.~~

1 ~~(f) Section 179(d)(1)(A)(ii) of the Internal Revenue Code,~~
2 ~~relating to computer software, shall not apply.~~

3 *SEC. 4. Section 17255 is added to the Revenue and Taxation*
4 *Code, to read:*

5 *17255. Section 179 of the Internal Revenue Code, as amended*
6 *by Section 102 of Public Law 110-185, shall apply.*

7 *SEC. 5. Section 24349 of the Revenue and Taxation Code is*
8 *repealed.*

9 ~~24349. (a) There shall be allowed as a depreciation deduction~~
10 ~~a reasonable allowance for the exhaustion, wear and tear (including~~
11 ~~a reasonable allowance for obsolescence)—~~

12 ~~(1) Of property used in the trade or business; or~~

13 ~~(2) Of property held for the production of income.~~

14 ~~(b) Except as otherwise provided in subdivision (c), for taxable~~
15 ~~years ending after December 31, 1958, the term “reasonable~~
16 ~~allowance” as used in subdivision (a) shall include, but shall not~~
17 ~~be limited to, an allowance computed in accordance with~~
18 ~~regulations prescribed by the Franchise Tax Board, under any of~~
19 ~~the following methods:~~

20 ~~(1) The straight-line method.~~

21 ~~(2) The declining balance method, using a rate not exceeding~~
22 ~~twice the rate that would have been used had the annual allowance~~
23 ~~been computed under the method described in paragraph (1).~~

24 ~~(3) The sum-of-the-years-digits method.~~

25 ~~(4) Any other consistent method productive of an annual~~
26 ~~allowance that, when added to all allowances for the period~~
27 ~~commencing with the taxpayer’s use of the property and including~~
28 ~~the taxable year, does not, during the first two-thirds of the useful~~
29 ~~life of the property, exceed the total of those allowances that would~~
30 ~~have been used had those allowances been computed under the~~
31 ~~method described in paragraph (2).~~

32 ~~Nothing in this subdivision shall be construed to limit or reduce~~
33 ~~an allowance otherwise allowable under subdivision (a).~~

34 ~~(c) Any grapevine replaced in a vineyard in California in a~~
35 ~~taxable year beginning on or after January 1, 1992, as a direct~~
36 ~~result of a phylloxera infestation in that vineyard, and any~~
37 ~~grapevine replaced in a vineyard in California in a taxable year~~
38 ~~beginning on or after January 1, 1997, as a direct result of Pierce’s~~
39 ~~disease in that vineyard, shall have a useful life of five years, except~~
40 ~~that it shall have a class life of 10 years for purposes of depreciation~~

1 under Section 168(g)(2) of the Internal Revenue Code where the
2 taxpayer has made an election under Section 263A(d)(3) of the
3 Internal Revenue Code not to capitalize costs of the infested
4 vineyard. Every taxpayer claiming a deduction under this section
5 with respect to a grapevine as described in this subdivision shall
6 obtain a written certification from an independent state-certified
7 integrated pest management adviser, or a state agricultural
8 commissioner or adviser, that specifies that the replanting was
9 necessary to restore a vineyard infested with phylloxera or Pierce's
10 disease. The taxpayer shall retain the certification for future audit
11 purposes.

12 (d) For purposes of this part, the deduction for property leased
13 to governments and other tax-exempt entities, as defined in Section
14 168(h) of the Internal Revenue Code, shall be limited to the amount
15 determined under Section 168(g) of the Internal Revenue Code,
16 relating to alternative depreciation system for certain property.

17 (e) (1) In the case of any building erected or improvements
18 made on leased property, if the building or improvement is property
19 to which this section applies, the depreciation deduction shall be
20 determined under the provisions of this section.

21 (2) An improvement shall be treated for purposes of determining
22 gain or loss under this part as disposed of by the lessor when so
23 disposed of or abandoned if both of the following occur:

24 (A) The improvement is made by the lessor of leased property
25 for the lessee of that property.

26 (B) The improvement is irrevocably disposed of or abandoned
27 by the lessor at the termination of the lease by the lessee.

28 This subdivision shall not apply to any property to which Section
29 168 of the Internal Revenue Code does not apply for federal
30 purposes by reason of Section 168(f) of the Internal Revenue Code.
31 Any election made under Section 168(f)(1) of the Internal Revenue
32 Code for federal purposes with respect to that property shall be
33 treated as a binding election for state purposes under this
34 subdivision with respect to that same property and no separate
35 election under subdivision (e) of Section 23051.5 with respect to
36 that property shall be allowed.

37 (3) (A) In determining a lease term, both of the following shall
38 apply:

39 (i) There shall be taken into account options to renew.

1 (ii) ~~Two or more successive leases which are part of the same~~
2 ~~transaction (or a series of related transactions) with respect to the~~
3 ~~same or substantially similar property shall be treated as one lease.~~

4 (B) ~~For purposes of clause (i) of subparagraph (A), in the case~~
5 ~~of nonresidential real property or residential rental property, there~~
6 ~~shall not be taken into account any option to renew at fair market~~
7 ~~value determined at the time of renewal.~~

8 (f) (1) ~~Section 167(g) of the Internal Revenue Code, relating~~
9 ~~to depreciation under income forecast method, shall apply except~~
10 ~~as otherwise provided.~~

11 (2) ~~Section 167(g)(2)(C) of the Internal Revenue Code is~~
12 ~~modified by substituting “Section 19521” in lieu of “Section~~
13 ~~460(b)(7)” of the Internal Revenue Code.~~

14 (3) ~~Section 167(g)(5)(D) of the Internal Revenue Code is~~
15 ~~modified by substituting “Part 10.2 (commencing with Section~~
16 ~~18401) (other than Article 2 (commencing with Section 19021)~~
17 ~~and Sections 19142 to 19150, inclusive)” in lieu of “Subtitle F~~
18 ~~(other than Sections 6654 and 6655).”~~

19 (4) ~~Section 167(g)(5)(E) of the Internal Revenue Code, relating~~
20 ~~to treatment of distribution costs, shall not apply.~~

21 (5) ~~Section 167(g)(7) of the Internal Revenue Code, relating to~~
22 ~~treatment of participations and residuals, shall not apply.~~

23 *SEC. 6. Section 24349 is added to the Revenue and Taxation*
24 *Code, to read:*

25 *24349. Section 168 of the Internal Revenue Code, as amended*
26 *by Section 103 of Public Law 110-185, shall apply.*

27 *SEC. 7. Section 24356 of the Revenue and Taxation Code is*
28 *repealed.*

29 ~~24356. (a) (1) In the case of Section 24356 property, the term~~
30 ~~“reasonable allowance” as used in subdivision (a) of Section 24349,~~
31 ~~may, at the election of the taxpayer, include an allowance, for the~~
32 ~~first taxable year for which a deduction is allowable under Sections~~
33 ~~24349 through 24354 to the taxpayer with respect to such property,~~
34 ~~of 20 percent of the cost of that property.~~

35 (2) ~~If in any one taxable year the cost of Section 24349 property~~
36 ~~with respect to which the taxpayer may elect an allowance under~~
37 ~~paragraph (1) for that taxable year exceeds ten thousand dollars~~
38 ~~(\$10,000), then paragraph (1) shall apply with respect to those~~
39 ~~items selected by the taxpayer, but only to the extent of an~~
40 ~~aggregate cost of ten thousand dollars (\$10,000).~~

- 1 ~~(b) (1) In lieu of subdivision (a), Section 179 of the Internal~~
2 ~~Revenue Code, relating to the election to expense certain~~
3 ~~depreciable business assets, shall apply, except as otherwise~~
4 ~~provided.~~
- 5 ~~(2) Section 179(b)(1) of the Internal Revenue Code, relating to~~
6 ~~the dollar limitation, shall not apply and in lieu thereof, the~~
7 ~~aggregate cost that may be taken into account under Section 179(a)~~
8 ~~of the Internal Revenue Code, for any taxable year, shall not exceed~~
9 ~~twenty-five thousand dollars (\$25,000).~~
- 10 ~~(3) Section 179(b)(2) of the Internal Revenue Code, relating to~~
11 ~~the reduction in the dollar limitation, shall not apply and in lieu~~
12 ~~thereof, the limitation under paragraph (2), for any taxable year,~~
13 ~~shall be reduced, but not below zero, by the amount by which the~~
14 ~~cost of Section 179 property, as defined in Section 179(d)(1) of~~
15 ~~the Internal Revenue Code, except as otherwise provided, that is~~
16 ~~placed in service during the taxable year, exceeds two hundred~~
17 ~~thousand dollars (\$200,000).~~
- 18 ~~(4) Section 179 of the Internal Revenue Code is modified to~~
19 ~~provide that the “aggregate amount disallowed” referred to in~~
20 ~~Section 179(b)(3)(B) of the Internal Revenue Code shall be~~
21 ~~computed under this part as that section read on the date the~~
22 ~~property generating the amount disallowed was placed in service.~~
- 23 ~~(5) Section 179(b)(5) of the Internal Revenue Code, relating to~~
24 ~~inflation adjustments, shall not apply.~~
- 25 ~~(6) The last sentence in Section 179(c)(2) of the Internal~~
26 ~~Revenue Code, relating to irrevocable elections, shall not apply.~~
- 27 ~~(7) Section 179(d)(1)(A)(ii) of the Internal Revenue Code,~~
28 ~~relating to computer software, shall not apply.~~
- 29 ~~(e) (1) The election under this section for any taxable year shall~~
30 ~~be made within the time prescribed by law (including extensions~~
31 ~~thereof) for filing the return for such taxable year. The election~~
32 ~~shall be made in such manner as the Franchise Tax Board may by~~
33 ~~regulations prescribe.~~
- 34 ~~(2) Any election made under this section may not be revoked~~
35 ~~except with the consent of the Franchise Tax Board.~~
- 36 ~~(d) (1) For purposes of this section, the term “Section 24356~~
37 ~~property” means tangible personal property—~~
- 38 ~~(A) Of a character subject to the allowance for depreciation~~
39 ~~under Sections 24349 through 24354,~~

1 ~~(B) Acquired by purchase after December 31, 1958, for use in~~
2 ~~a trade or business, and~~
3 ~~(C) With a useful life (determined at the time of such~~
4 ~~acquisition) of six years or more.~~
5 ~~(2) For purposes of paragraph (1), the term “purchase” means~~
6 ~~any acquisition of property, but only if—~~
7 ~~(A) The property is not acquired from a person whose~~
8 ~~relationship to the person acquiring it would result in the~~
9 ~~disallowance of losses under Section 24427 (but, in applying~~
10 ~~Section 267 of the Internal Revenue Code, relating to losses,~~
11 ~~expenses, and interest with respect to transactions between related~~
12 ~~taxpayers, for purposes of this section, Section 267(e)(4) of the~~
13 ~~Internal Revenue Code shall be treated as providing that the family~~
14 ~~of an individual shall include only his or her spouse, ancestors,~~
15 ~~and lineal descendants);~~
16 ~~(B) The property is not acquired by one member of an affiliated~~
17 ~~group from another member of the same affiliated group, and~~
18 ~~(C) The basis of the property in the hands of the person acquiring~~
19 ~~it is not determined in whole or in part by reference to the adjusted~~
20 ~~basis of that property in the hands of the person from whom~~
21 ~~acquired.~~
22 ~~(3) For purposes of this section, the cost of property does not~~
23 ~~include so much of the basis of such property as is determined by~~
24 ~~reference to the basis of other property held at any time by the~~
25 ~~person acquiring that property.~~
26 ~~(4) For purposes of subdivision (a) and subdivision (b) of this~~
27 ~~section—~~
28 ~~(A) All members of an affiliated group shall be treated as one~~
29 ~~taxpayer, and~~
30 ~~(B) The Franchise Tax Board shall apportion the dollar~~
31 ~~limitation contained in subdivision (a) or subdivision (b) among~~
32 ~~the members of the affiliated group in the manner as it shall by~~
33 ~~regulations prescribe.~~
34 ~~(5) For purposes of paragraphs (2) and (4), the term “affiliated~~
35 ~~group” has the meaning assigned to it by Section 1504 of the~~
36 ~~Internal Revenue Code, except that, for those purposes, the phrase~~
37 ~~“more than 50 percent” shall be substituted for the phrase “at least~~
38 ~~80 percent” each place it appears in Section 1504(a) of the Internal~~
39 ~~Revenue Code.~~

1 ~~(6) In applying Section 24353, the adjustment under paragraph~~
2 ~~(1) of subdivision (b) of Section 24916, resulting by reason of an~~
3 ~~election made under this section with respect to any Section 24356~~
4 ~~property, shall be made before any other deduction allowed by~~
5 ~~subdivision (a) of Section 24349 is computed.~~

6 ~~(e) The Franchise Tax Board shall prescribe those regulations~~
7 ~~as may be necessary to carry out the purposes of this section.~~

8 *SEC. 8. Section 24356 is added to the Revenue and Taxation*
9 *Code, to read:*

10 *24356. Section 179 of the Internal Revenue Code, as amended*
11 *by Section 102 of Public Law 110-185, shall apply.*

12 *SEC. 9. This act provides for a tax levy within the meaning of*
13 *Article IV of the Constitution and shall go into immediate effect.*

14
15
16 **All matter omitted in this version of the bill**
17 **appears in the bill as introduced in**
18 **Assembly, February 21, 2008 (JR11)**
19