

AMENDED IN SENATE MARCH 29, 2007

SENATE BILL

No. 928

Introduced by Senator Harman
(Coauthor: Senator Battin)
(Coauthor: Assembly Member Maze)

February 23, 2007

An act to amend Sections 17052.12 and 23609 of, and to add Sections 17052.11 and 23611 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 928, as amended, Harman. Income and corporation taxes: credits: research.

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

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2007, in an amount equal to 25% of the aggregate amount of qualified donations made by a qualified taxpayer, as defined, to any cancer research institution, as defined.

The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, also allow a credit against taxes imposed by those laws for increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, for purposes of the Corporation Tax Law, 24% of the basic research payments, as defined. The term "base amount" means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable year and the fixed-base percentage, as defined,

but in no event less than 50% of the qualified research expenses for the taxable year. A taxpayer may elect an alternative incremental credit for increasing research expenses in modified conformity to federal income tax laws.

This bill would increase the credit for increasing research expenses to 20% of the excess of the qualified research expenses. This bill would also provide complete conformity to the alternative incremental credit provided under those federal income tax laws.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. Section 17052.11 is added to the Revenue and
2 Taxation Code, to read:
3 17052.11. (a) For each taxable year beginning on or after
4 January 1, 2007, there shall be allowed as a credit against the “net
5 tax,” as defined by Section 17039, an amount equal to 25 percent
6 of the aggregate amount of qualified donations made by a qualified
7 taxpayer during the taxable year to a qualified cancer research
8 institution.
9 (b) For purposes of this section, *all of the following shall apply*:
10 (1) “Cancer research” is research with respect to the cause, cure,
11 treatment, early detection, and prevention of cancer.
12 (2) “Qualified cancer research institution” includes, but shall
13 not be limited to, any center, company, foundation, organization,
14 program, or university, located in this state, that allocates at least
15 20 percent of its resources to conduct cancer research.
16 (3) “Qualified donations” means the aggregate amount of
17 donations, not to exceed five hundred thousand dollars (\$500,000),
18 made by a qualified taxpayer to a qualified cancer research
19 institution during the taxable year.
20 (4) “Qualified taxpayer” is a taxpayer, located within this state,
21 that creates, manufactures, distributes, sells, produces, or plays a
22 significant role in the areas of medical technology, biotechnology,
23 or pharmaceuticals.
24 (c) A qualified cancer research institution receiving a donation
25 under this section shall use the donation only for the purpose of
26 conducting cancer research.

1 (d) In the case where the credit allowed by this section exceeds
2 the “net tax,” the excess may be carried over to reduce the “net
3 tax” in the following year, and succeeding years if necessary, until
4 the credit is exhausted.

5 SEC. 2. Section 17052.12 of the Revenue and Taxation Code
6 is amended to read:

7 17052.12. For each taxable year beginning on or after January
8 1, 1987, there shall be allowed as a credit against the “net tax” (as
9 defined by Section 17039) for the taxable year an amount
10 determined in accordance with Section 41 of the Internal Revenue
11 Code, except as follows:

12 (a) For each taxable year beginning before January 1, 1997, the
13 reference to “20 percent” in Section 41(a)(1) of the Internal
14 Revenue Code is modified to read “8 percent.”

15 (b) (1) For each taxable year beginning on or after January 1,
16 1997, and before January 1, 1999, the reference to “20 percent”
17 in Section 41(a)(1) of the Internal Revenue Code is modified to
18 read “11 percent.”

19 (2) For each taxable year beginning on or after January 1, 1999,
20 and before January 1, 2000, the reference to “20 percent” in Section
21 41(a)(1) of the Internal Revenue Code is modified to read “12
22 percent.”

23 (3) For each taxable year beginning on or after January 1, 2000,
24 and before January 1, 2007, the reference to “20 percent” in Section
25 41(a)(1) of the Internal Revenue Code is modified to read “15
26 percent.”

27 (4) For each taxable year beginning on or after January 1, 2007,
28 the reference to “20 percent” in Section 41(a)(1) of the Internal
29 Revenue Code shall apply.

30 (c) Section 41(a)(2) of the Internal Revenue Code, relating to
31 basic research payments, shall not apply.

32 (d) “Qualified research” shall include only research conducted
33 in California.

34 (e) In the case where the credit allowed under this section
35 exceeds the “net tax,” the excess may be carried over to reduce
36 the “net tax” in the following year, and succeeding years if
37 necessary, until the credit has been exhausted.

38 (f) (1) With respect to any expense paid or incurred after the
39 operative date of Section 6378, Section 41(b)(1) of the Internal
40 Revenue Code is modified to exclude from the definition of

1 “qualified research expense” any amount paid or incurred for
2 tangible personal property that is eligible for the exemption from
3 sales or use tax under Section 6378.

4 (2) For each taxable year beginning on or after January 1, 1998,
5 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
6 Internal Revenue Code, relating to contract research expenses, is
7 modified to read “this part or Part 11 (commencing with Section
8 23001).”

9 (g) (1) For each taxable year beginning on or after January 1,
10 2000, and before January 1, 2007:

11 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
12 of the Internal Revenue Code is modified to read “one and
13 forty-nine hundredths of one percent.”

14 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
15 the Internal Revenue Code is modified to read “one and
16 ninety-eight hundredths of one percent.”

17 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
18 of the Internal Revenue Code is modified to read “two and
19 forty-eight hundredths of one percent.”

20 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
21 election under Section 41(c)(4)(A) of the Internal Revenue Code
22 may be made for any taxable year of the taxpayer beginning on or
23 after January 1, 1998. That election shall apply to the taxable year
24 for which made and all succeeding taxable years unless revoked
25 with the consent of the Franchise Tax Board.

26 (3) Section 41(c)(6) of the Internal Revenue Code, relating to
27 gross receipts, is modified to take into account only those gross
28 receipts from the sale of property held primarily for sale to
29 customers in the ordinary course of the taxpayer’s trade or business
30 that is delivered or shipped to a purchaser within this state,
31 regardless of f.o.b. point or any other condition of the sale.

32 (h) Section 41(h) of the Internal Revenue Code, relating to
33 termination, shall not apply.

34 (i) Section 41(g) of the Internal Revenue Code, relating to
35 special rule for passthrough of credit, is modified by each of the
36 following:

37 (1) The last sentence shall not apply.

38 (2) If the amount determined under Section 41(a) of the Internal
39 Revenue Code for any taxable year exceeds the limitation of
40 Section 41(g) of the Internal Revenue Code, that amount may be

1 carried over to other taxable years under the rules of subdivision
2 (e); except that the limitation of Section 41(g) of the Internal
3 Revenue Code shall be taken into account in each subsequent
4 taxable year.

5 SEC. 3. Section 23609 of the Revenue and Taxation Code is
6 amended to read:

7 23609. For each taxable year beginning on or after January 1,
8 1987, there shall be allowed as a credit against the “tax” (as defined
9 by Section 23036) an amount determined in accordance with
10 Section 41 of the Internal Revenue Code, except as follows:

11 (a) For each taxable year beginning before January 1, 1997,
12 both of the following modifications shall apply:

13 (1) The reference to “20 percent” in Section 41(a)(1) of the
14 Internal Revenue Code is modified to read “8 percent.”

15 (2) The reference to “20 percent” in Section 41(a)(2) of the
16 Internal Revenue Code is modified to read “12 percent.”

17 (b) (1) For each taxable year beginning on or after January 1,
18 1997, and before January 1, 1999, both of the following
19 modifications shall apply:

20 (A) The reference to “20 percent” in Section 41(a)(1) of the
21 Internal Revenue Code is modified to read “11 percent.”

22 (B) The reference to “20 percent” in Section 41(a)(2) of the
23 Internal Revenue Code is modified to read “24 percent.”

24 (2) For each taxable year beginning on or after January 1, 1999,
25 and before January 1, 2000, both of the following shall apply:

26 (A) The reference to “20 percent” in Section 41(a)(1) of the
27 Internal Revenue Code is modified to read “12 percent.”

28 (B) The reference to “20 percent” in Section 41(a)(2) of the
29 Internal Revenue Code is modified to read “24 percent.”

30 (3) For each taxable year beginning on or after January 1, 2000,
31 and before January 1, 2007, both of the following shall apply:

32 (A) The reference to “20 percent” in Section 41(a)(1) of the
33 Internal Revenue Code is modified to read “15 percent.”

34 (B) The reference to “20 percent” in Section 41(a)(2) of the
35 Internal Revenue Code is modified to read “24 percent.”

36 (4) For each taxable year beginning on or after January 1, 2007,
37 both of the following shall apply:

38 (A) The reference to “20 percent” in Section 41(a)(1) of the
39 Internal Revenue Code shall apply.

1 (B) The reference to “20 percent” in Section 41(a)(2) of the
2 Internal Revenue Code is modified to read “24 percent.”

3 (c) (1) With respect to any expense paid or incurred after the
4 operative date of Section 6378, Section 41(b)(1) of the Internal
5 Revenue Code is modified to exclude from the definition of
6 “qualified research expense” any amount paid or incurred for
7 tangible personal property that is eligible for the exemption from
8 sales or use tax under Section 6378.

9 (2) “Qualified research” and “basic research” shall include only
10 research conducted in California.

11 (d) The provisions of Section 41(e)(7)(A) of the Internal
12 Revenue Code, shall be modified so that “basic research,” for
13 purposes of this section, includes any basic or applied research
14 including scientific inquiry or original investigation for the
15 advancement of scientific or engineering knowledge or the
16 improved effectiveness of commercial products, except that the
17 term does not include any of the following:

18 (1) Basic research conducted outside California.

19 (2) Basic research in the social sciences, arts, or humanities.

20 (3) Basic research for the purpose of improving a commercial
21 product if the improvements relate to style, taste, cosmetic, or
22 seasonal design factors.

23 (4) Any expenditure paid or incurred for the purpose of
24 ascertaining the existence, location, extent, or quality of any deposit
25 of ore or other mineral (including oil and gas).

26 (e) (1) In the case of a taxpayer engaged in any
27 biopharmaceutical research activities that are described in codes
28 2833 to 2836, inclusive, or any research activities that are described
29 in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard
30 Industrial Classification (SIC) Manual published by the United
31 States Office of Management and Budget, 1987 edition, or any
32 other biotechnology research and development activities, the
33 provisions of Section 41(e)(6) of the Internal Revenue Code shall
34 be modified to include both of the following:

35 (A) A qualified organization as described in Section
36 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
37 institution of higher education as described in Section 3304(f) of
38 the Internal Revenue Code.

39 (B) A charitable research hospital owned by an organization
40 that is described in Section 501(c)(3) of the Internal Revenue Code,

1 is exempt from taxation under Section 501(a) of the Internal
2 Revenue Code, is not a private foundation, is designated a
3 “specialized laboratory cancer center,” and has received Clinical
4 Cancer Research Center status from the National Cancer Institute.

5 (2) For purposes of this subdivision:

6 (A) “Biopharmaceutical research activities” means those
7 activities that use organisms or materials derived from organisms,
8 and their cellular, subcellular, or molecular components, in order
9 to provide pharmaceutical products for human or animal
10 therapeutics and diagnostics. Biopharmaceutical activities make
11 use of living organisms to make commercial products, as opposed
12 to pharmaceutical activities that make use of chemical compounds
13 to produce commercial products.

14 (B) “Other biotechnology research and development activities”
15 means research and development activities consisting of the
16 application of recombinant DNA technology to produce
17 commercial products, as well as research and development
18 activities regarding pharmaceutical delivery systems designed to
19 provide a measure of control over the rate, duration, and site of
20 pharmaceutical delivery.

21 (f) In the case where the credit allowed by this section exceeds
22 the “tax,” the excess may be carried over to reduce the “tax” in
23 the following year, and succeeding years if necessary, until the
24 credit has been exhausted.

25 (g) For each taxable year beginning on or after January 1, 1998,
26 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
27 Internal Revenue Code, relating to contract research expenses, is
28 modified to read “this part or Part 10 (commencing with Section
29 17001).”

30 (h) (1) For each taxable year beginning on or after January 1,
31 2000, and before January 1, 2007:

32 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
33 of the Internal Revenue Code is modified to read “one and
34 forty-nine hundredths of one percent.”

35 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
36 the Internal Revenue Code is modified to read “one and
37 ninety-eight hundredths of one percent.”

38 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
39 of the Internal Revenue Code is modified to read “two and
40 forty-eight hundredths of one percent.”

(2) Section 41(c)(4)(B) shall not apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made for any taxable year of the taxpayer beginning on or after January 1, 1998. That election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Franchise Tax Board.

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

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

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

(1) The last sentence shall not apply.

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

SEC. 4. Section 23611 is added to the Revenue and Taxation Code, to read:

23611. (a) For each taxable year beginning on or after January 1, 2007, there shall be allowed as a credit against the "tax," as defined by Section 23036, an amount equal to 25 percent of the aggregate amount of qualified donations made by a qualified taxpayer during the taxable year to a qualified cancer research institution.

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

(1) "Cancer research" is research with respect to the cause, cure, treatment, early detection, and prevention of cancer.

(2) "Qualified cancer research institution" includes, but shall not be limited to, any center, company, foundation, organization, program, or university, located in this state, that allocates at least 20 percent of its resources to conduct cancer research.

1 (3) “Qualified donations” means the aggregate amount of
2 donations, not to exceed five hundred thousand dollars (\$500,000),
3 made by a qualified taxpayer to a qualified cancer research
4 institution during the taxable year.

5 (4) “Qualified taxpayer” is a taxpayer, located within this state,
6 that creates, manufactures, distributes, sells, produces, or plays a
7 significant role in the areas of medical technology, biotechnology,
8 or pharmaceuticals.

9 (c) A qualified cancer research institution receiving a donation
10 under this section shall use the donation only for the purpose of
11 conducting cancer research.

12 (d) In the case where the credit allowed by this section exceeds
13 the “tax,” the excess may be carried over to reduce the “tax” in
14 the following year, and succeeding years if necessary, until the
15 credit is exhausted.

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