

ASSEMBLY BILL

No. 2388

Introduced by Assembly Member Beall

February 24, 2012

An act to amend Section 23609 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2388, as introduced, Beall. Corporation Tax Law: credit: research. The Corporation Tax Law allows a credit against tax for amounts paid or incurred in increasing research activities in accordance with federal law, as modified.

This bill would make a technical, nonsubstantive change to these provisions.

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

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

- 1 SECTION 1. Section 23609 of the Revenue and Taxation Code
2 is amended to read:
3 23609. For each taxable year beginning on or after January 1,
4 1987, there shall be allowed as a credit against the “tax” (as defined
5 by Section 23036) an amount determined in accordance with
6 Section 41 of the Internal Revenue Code, except as follows:
7 (a) For each taxable year beginning before January 1, 1997,
8 both of the following modifications shall apply:
9 (1) The reference to “20 percent” in Section 41(a)(1) of the
10 Internal Revenue Code is modified to read “8 percent.”

- 1 (2) The reference to “20 percent” in Section 41(a)(2) of the
 2 Internal Revenue Code is modified to read “12 percent.”
- 3 (b) (1) For each taxable year beginning on or after January 1,
 4 1997, and before January 1, 1999, both of the following
 5 modifications shall apply:
- 6 (A) The reference to “20 percent” in Section 41(a)(1) of the
 7 Internal Revenue Code is modified to read “11 percent.”
- 8 (B) The reference to “20 percent” in Section 41(a)(2) of the
 9 Internal Revenue Code is modified to read “24 percent.”
- 10 (2) For each taxable year beginning on or after January 1, 1999,
 11 and before January 1, 2000, both of the following shall apply:
- 12 (A) The reference to “20 percent” in Section 41(a)(1) of the
 13 Internal Revenue Code is modified to read “12 percent.”
- 14 (B) The reference to “20 percent” in Section 41(a)(2) of the
 15 Internal Revenue Code is modified to read “24 percent.”
- 16 (3) For each taxable year beginning on or after January 1, 2000,
 17 both of the following shall apply:
- 18 (A) The reference to “20 percent” in Section 41(a)(1) of the
 19 Internal Revenue Code is modified to read “15 percent.”
- 20 (B) The reference to “20 percent” in Section 41(a)(2) of the
 21 Internal Revenue Code is modified to read “24 percent.”
- 22 (c) (1) With respect to any expense paid or incurred after the
 23 operative date of Section 6378, Section 41(b)(1) of the Internal
 24 Revenue Code is modified to exclude from the definition of
 25 “qualified research expense” any amount paid or incurred for
 26 tangible personal property that is eligible for the exemption from
 27 sales or use tax provided by Section 6378.
- 28 (2) “Qualified research” and “basic research” shall include only
 29 research *that is* conducted in California.
- 30 (d) The provisions of Section 41(e)(7)(A) of the Internal
 31 Revenue Code, shall be modified so that “basic research,” for
 32 purposes of this section, includes any basic or applied research
 33 including scientific inquiry or original investigation for the
 34 advancement of scientific or engineering knowledge or the
 35 improved effectiveness of commercial products, except that the
 36 term does not include any of the following:
- 37 (1) Basic research conducted outside California.
- 38 (2) Basic research in the social sciences, arts, or humanities.

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

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

7 (e) (1) In the case of a taxpayer engaged in any
8 biopharmaceutical research activities that are described in codes
9 2833 to 2836, inclusive, or any research activities that are described
10 in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard
11 Industrial Classification (SIC) Manual published by the United
12 States Office of Management and Budget, 1987 edition, or any
13 other biotechnology research and development activities, the
14 provisions of Section 41(e)(6) of the Internal Revenue Code shall
15 be modified to include both of the following:

16 (A) A qualified organization as described in Section
17 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
18 institution of higher education as described in Section 3304(f) of
19 the Internal Revenue Code.

20 (B) A charitable research hospital owned by an organization
21 that is described in Section 501(c)(3) of the Internal Revenue Code,
22 is exempt from taxation under Section 501(a) of the Internal
23 Revenue Code, is not a private foundation, is designated a
24 “specialized laboratory cancer center,” and has received Clinical
25 Cancer Research Center status from the National Cancer Institute.

26 (2) For purposes of this subdivision:

27 (A) “Biopharmaceutical research activities” means those
28 activities that use organisms or materials derived from organisms,
29 and their cellular, subcellular, or molecular components, in order
30 to provide pharmaceutical products for human or animal
31 therapeutics and diagnostics. Biopharmaceutical activities make
32 use of living organisms to make commercial products, as opposed
33 to pharmaceutical activities that make use of chemical compounds
34 to produce commercial products.

35 (B) “Other biotechnology research and development activities”
36 means research and development activities consisting of the
37 application of recombinant DNA technology to produce
38 commercial products, as well as research and development
39 activities regarding pharmaceutical delivery systems designed to

1 provide a measure of control over the rate, duration, and site of
2 pharmaceutical delivery.

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

7 (g) For each taxable year beginning on or after January 1, 1998,
8 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
9 Internal Revenue Code, relating to contract research expenses, is
10 modified to read “this part or Part 10 (commencing with Section
11 17001).”

12 (h) (1) For each taxable year beginning on or after January 1,
13 2000:

14 (A) The reference to “3 percent” in Section 41(c)(4)(A)(i) of
15 the Internal Revenue Code is modified to read “one and forty-nine
16 hundredths of one percent.”

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

20 (C) The reference to “5 percent” in Section 41(c)(4)(A)(iii) of
21 the Internal Revenue Code is modified to read “two and forty-eight
22 hundredths of one percent.”

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

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

35 (4) Section 41(c)(5) of the Internal Revenue Code, relating to
36 election of the alternative simplified credit, shall not apply.

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

1 (j) 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 (1) The last sentence shall not apply.

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

12 (k) Section 41(a)(3) of the Internal Revenue Code shall not
13 apply.

14 (l) Section 41(b)(3)(D) of the Internal Revenue Code, relating
15 to amounts paid to eligible small businesses, universities, and
16 federal laboratories, shall not apply.

17 (m) Section 41(f)(6) of the Internal Revenue Code, relating to
18 energy research consortium, shall not apply.