

AMENDED IN SENATE JUNE 13, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2408

Introduced by Assembly Member Skinner

February 24, 2012

An act to amend ~~Section 25943 of the Public Resources Sections 17276.20, 17276.21, 17276.22, 24416.20, 24416.21, and 24416.22 of the Revenue and Taxation Code~~, relating to ~~energy taxation~~, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2408, as amended, Skinner. ~~Energy: conservation. Taxation: deductions: net operating loss carrybacks.~~

The Personal Income Tax Law and the Corporation Tax Law allow individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law allows net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided.

This bill would disallow the use of net operating loss carrybacks by individual and corporate taxpayers.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of ²/₃ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

~~Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission), by March 1, 2010,~~

~~to establish a regulatory proceeding to develop a comprehensive program to achieve greater energy savings in the state's existing residential and nonresidential building stock. The Energy Commission is required to periodically update the comprehensive program to improve or refine the program requirements and report on the status of the program in the integrated energy policy report. The Energy Commission is required to fund these activities from the Federal Trust Fund consistent with the federal American Recovery and Reinvestment Act of 2009 or other sources of nonstate funds available to the commission.~~

~~This bill would repeal the provision requiring the commission to fund these activities in this manner.~~

Vote: ~~majority~~^{2/3}. 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 17276.20 of the Revenue and Taxation
2 Code is amended to read:
3 17276.20. Except as provided in Sections 17276.1, 17276.2,
4 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided
5 by Section 172 of the Internal Revenue Code, relating to net
6 operating loss deduction, shall be modified as follows:
7 (a) (1) Net operating losses attributable to taxable years
8 beginning before January 1, 1987, shall not be allowed.
9 (2) A net operating loss shall not be carried forward to any
10 taxable year beginning before January 1, 1987.
11 (b) (1) Except as provided in paragraphs (2) and (3), the
12 provisions of Section 172(b)(2) of the Internal Revenue Code,
13 relating to amount of carrybacks and carryovers, shall be modified
14 so that the applicable percentage of the entire amount of the net
15 operating loss for any taxable year shall be eligible for carryover
16 to any subsequent taxable year. For purposes of this subdivision,
17 the applicable percentage shall be:
18 (A) Fifty percent for any taxable year beginning before January
19 1, 2000.
20 (B) Fifty-five percent for any taxable year beginning on or after
21 January 1, 2000, and before January 1, 2002.
22 (C) Sixty percent for any taxable year beginning on or after
23 January 1, 2002, and before January 1, 2004.

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

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

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

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

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

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

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

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

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

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

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

39 (ii) With respect to that portion of the net operating loss that
40 exceeds the net loss from the eligible small business, the applicable

1 percentage of that amount shall be carried forward as provided in
2 subdivision (d).

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

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

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

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

26 ~~(e) Section 172(b)(1) of the Internal Revenue Code, relating to~~
27 ~~years to which the loss may be carried, is modified as follows:~~

28 ~~(1) Net operating loss carrybacks shall not be allowed for any~~
29 ~~net operating losses attributable to taxable years beginning before~~
30 ~~January 1, 2013.~~

31 ~~(2) A net operating loss attributable to taxable years beginning~~
32 ~~on or after January 1, 2013, shall be a net operating loss carryback~~
33 ~~to each of the two taxable years preceding the taxable year of the~~
34 ~~loss in lieu of the number of years provided therein.~~

35 ~~(A) For a net operating loss attributable to a taxable year~~
36 ~~beginning on or after January 1, 2013, and before January 1, 2014,~~
37 ~~the amount of carryback to any taxable year shall not exceed 50~~
38 ~~percent of the net operating loss.~~

39 ~~(B) For a net operating loss attributable to a taxable year~~
40 ~~beginning on or after January 1, 2014, and before January 1, 2015,~~

1 the amount of carryback to any taxable year shall not exceed 75
2 percent of the net operating loss.

3 ~~(C) For a net operating loss attributable to a taxable year~~
4 ~~beginning on or after January 1, 2015, the amount of carryback to~~
5 ~~any taxable year shall not exceed 100 percent of the net operating~~
6 ~~loss.~~

7 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~
8 ~~Internal Revenue Code, relating to special rules for REITs, and~~
9 ~~Section 172(b)(1)(E) of the Internal Revenue Code, relating to~~
10 ~~excess interest loss, and Section 172(h) of the Internal Revenue~~
11 ~~Code, relating to corporate equity reduction interest losses, shall~~
12 ~~apply as provided.~~

13 ~~(4) A net operating loss carryback shall not be carried back to~~
14 ~~any taxable year beginning before January 1, 2011.~~

15 ~~(c) Net operating loss carrybacks shall not be allowed.~~

16 ~~(d) (1) (A) For a net operating loss for any taxable year~~
17 ~~beginning on or after January 1, 1987, and before January 1, 2000,~~
18 ~~Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified~~
19 ~~to substitute “five taxable years” in lieu of “20 taxable years”~~
20 ~~except as otherwise provided in paragraphs (2) and (3).~~

21 ~~(B) For a net operating loss for any taxable year beginning on~~
22 ~~or after January 1, 2000, and before January 1, 2008, Section~~
23 ~~172(b)(1)(A)(ii) of the Internal Revenue Code is modified to~~
24 ~~substitute “10 taxable years” in lieu of “20 taxable years.”~~

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

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

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

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

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

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

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

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

10 (e) For purposes of this section:

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

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

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

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

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

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

37 (A) The determination of the relative fair market values of the
38 acquired assets and the total assets shall be made as of the last day
39 of the first taxable year in which the taxpayer (or any related

1 person) first uses any of the acquired trade or business assets in
2 its business activity.

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

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

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

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

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

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

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

9 (B) For purposes of this paragraph:

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

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

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

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

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

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

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

4 *SEC. 2. Section 17276.21 of the Revenue and Taxation Code*
5 *is amended to read:*

6 17276.21. (a) Notwithstanding Sections 17276, 17276.1,
7 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.20 of
8 this code and Section 172 of the Internal Revenue Code, no net
9 operating loss deduction shall be allowed for any taxable year
10 beginning on or after January 1, 2008, and before January 1, 2012.

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

15 (1) By one year, for losses incurred in taxable years beginning
16 on or after January 1, 2010, and before January 1, 2011.

17 (2) By two years, for losses incurred in taxable years beginning
18 on or after January 1, 2009, and before January 1, 2010.

19 (3) By three years, for losses incurred in taxable years beginning
20 on or after January 1, 2008, and before January 1, 2009.

21 (4) By four years, for losses incurred in taxable years beginning
22 before January 1, 2008.

23 ~~(e) Notwithstanding subdivision (a), a net operating loss~~
24 ~~deduction shall be allowed for carryback of a net operating loss~~
25 ~~attributable to a taxable year beginning on or after January 1, 2013.~~

26 ~~(d)~~

27 (c) The provisions of this section shall not apply to the following
28 taxpayers:

29 (1) For any taxable year beginning on or after January 1, 2008,
30 and before January 1, 2010, this section shall not apply to a
31 taxpayer with net business income of less than five hundred
32 thousand dollars (\$500,000) for the taxable year. For purposes of
33 this paragraph, business income means:

34 (A) Income from a trade or business, whether conducted by the
35 taxpayer or by a ~~passthrough~~ *pass-thru* entity owned directly or
36 indirectly by the taxpayer. For purposes of this paragraph, the term
37 ~~“passthrough~~ *“pass-thru entity”* means a partnership or an “S”
38 corporation.

39 (B) Income from rental activity.

40 (C) Income attributable to a farming business.

1 (2) For any taxable year beginning on or after January 1, 2010,
2 and before January 1, 2012, this section shall not apply to a
3 taxpayer with modified adjusted gross income of less than three
4 hundred thousand dollars (\$300,000) for the taxable year. For
5 purposes of this paragraph, “modified adjusted gross income”
6 means the amount described in paragraph (2) of subdivision (h)
7 of Section 17024.5, determined without regard to the deduction
8 allowed under Section 172 of the Internal Revenue Code, relating
9 to net operating loss deduction.

10 *SEC. 3. Section 17276.22 of the Revenue and Taxation Code*
11 *is amended to read:*

12 17276.22. Notwithstanding Section 17276.1, 17276.2, 17276.4,
13 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss
14 attributable to a taxable year beginning on or after January 1, 2008,
15 shall be a net operating carryover to each of the 20 taxable years
16 following the year of the loss, ~~and a net operating loss attributable~~
17 ~~to a taxable year beginning on or after January 1, 2013, shall also~~
18 ~~be a net operating loss carryback to each of the two taxable years~~
19 ~~preceding the taxable year of loss.~~

20 *SEC. 4. Section 24416.20 of the Revenue and Taxation Code*
21 *is amended to read:*

22 24416.20. Except as provided in Sections 24416.1, 24416.2,
23 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss
24 deduction shall be allowed in computing net income under Section
25 24341 and shall be determined in accordance with Section 172 of
26 the Internal Revenue Code, except as otherwise provided.

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

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

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

38 (A) Fifty percent for any taxable year beginning before January
39 1, 2000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) For any taxable year in which the taxpayer has in effect a
32 water’s-edge election under Section 25110, the deduction of a net
33 operating loss carryover shall be denied to the extent that the net
34 operating loss carryover was determined by taking into account
35 the income and factors of an affiliated corporation in a combined
36 report whose income and apportionment factors would not have
37 been taken into account if a water’s-edge election under Section
38 25110 had been in effect for the taxable year in which the loss was
39 incurred.

1 ~~(d) Section 172(b)(1) of the Internal Revenue Code, relating to~~
2 ~~years to which the loss may be carried, is modified as follows:~~
3 ~~(1) Net operating loss carrybacks shall not be allowed for any~~
4 ~~net operating losses attributable to taxable years beginning before~~
5 ~~January 1, 2013.~~
6 ~~(2) A net operating loss attributable to taxable years beginning~~
7 ~~on or after January 1, 2013, shall be a net operating loss carryback~~
8 ~~to each of the two taxable years preceding the taxable year of the~~
9 ~~loss in lieu of the number of years provided therein.~~
10 ~~(A) For a net operating loss attributable to a taxable year~~
11 ~~beginning on or after January 1, 2013, and before January 1, 2014,~~
12 ~~the amount of carryback to any taxable year shall not exceed 50~~
13 ~~percent of the net operating loss.~~
14 ~~(B) For a net operating loss attributable to a taxable year~~
15 ~~beginning on or after January 1, 2014, and before January 1, 2015,~~
16 ~~the amount of carryback to any taxable year shall not exceed 75~~
17 ~~percent of the net operating loss.~~
18 ~~(C) For a net operating loss attributable to a taxable year~~
19 ~~beginning on or after January 1, 2015, the amount of carryback to~~
20 ~~any taxable year shall not exceed 100 percent of the net operating~~
21 ~~loss.~~
22 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~
23 ~~Internal Revenue Code, relating to special rules for REITs, and~~
24 ~~Section 172(b)(1)(E) of the Internal Revenue Code, relating to~~
25 ~~excess interest loss, and Section 172(h) of the Internal Revenue~~
26 ~~Code, relating to corporate equity reduction interest losses, shall~~
27 ~~apply as provided.~~
28 ~~(4) A net operating loss carryback shall not be carried back to~~
29 ~~any taxable year beginning before January 1, 2011.~~
30 ~~(d) Net operating loss carrybacks shall not be allowed.~~
31 (e) (1) (A) For a net operating loss for any taxable year
32 beginning on or after January 1, 1987, and before January 1, 2000,
33 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
34 to substitute “five taxable years” in lieu of “20 years” except as
35 otherwise provided in paragraphs (2), (3), and (4).
36 (B) For a net operating loss for any income year beginning on
37 or after January 1, 2000, and before January 1, 2008, Section
38 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
39 substitute “10 taxable years” in lieu of “20 taxable years.”

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

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

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

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

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

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

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

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

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

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

31 (f) For purposes of this section:

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

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

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

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

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

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

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

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

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

1 any of the taxpayer’s (or any related person’s) current or prior
2 trade or business activities.

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

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

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

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

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

30 (B) For purposes of this paragraph:

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

39 (ii) “Other biotechnology activities” means activities consisting
40 of the application of recombinant DNA technology to produce

1 commercial products, as well as activities regarding pharmaceutical
2 delivery systems designed to provide a measure of control over
3 the rate, duration, and site of pharmaceutical delivery.

4 (h) For purposes of corporations whose net income is determined
5 under Chapter 17 (commencing with Section 25101), Section
6 25108 shall apply to each of the following:

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

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

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

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

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

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

27 *SEC. 5. Section 24416.21 of the Revenue and Taxation Code*
28 *is amended to read:*

29 24416.21. (a) Notwithstanding Sections 24416, 24416.1,
30 24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.20 of
31 this code and Section 172 of the Internal Revenue Code, no net
32 operating loss deduction shall be allowed for any taxable year
33 beginning on or after January 1, 2008, and before January 1, 2012.

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

38 (1) By one year, for losses incurred in taxable years beginning
39 on or after January 1, 2010, and before January 1, 2011.

1 (2) By two years, for losses incurred in taxable years beginning
2 on or after January 1, 2009, and before January 1, 2010.

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

5 (4) By four years, for losses incurred in taxable years beginning
6 before January 1, 2008.

7 ~~(e) Notwithstanding subdivision (a), a net operating loss~~
8 ~~deduction shall be allowed for carryback of a net operating loss~~
9 ~~attributable to a taxable year beginning on or after January 1, 2013.~~

10 ~~(d)~~

11 (c) The disallowance of any net operating loss deduction for
12 any taxable year beginning on or after January 1, 2008, and before
13 January 1, 2010, pursuant to subdivision (a) shall not apply to a
14 taxpayer with income subject to tax under this part of less than
15 five hundred thousand dollars (\$500,000) for the taxable year.

16 ~~(e)~~

17 (d) (1) The disallowance of any net operating loss deduction
18 for any taxable year beginning on or after January 1, 2010, and
19 before January 1, 2012, pursuant to subdivision (a) shall not apply
20 to a taxpayer with preapportioned income of less than three hundred
21 thousand dollars (\$300,000) for the taxable year.

22 (2) For purposes of this subdivision, “preapportioned income”
23 means net income after state adjustments, before the application
24 of the apportionment and allocation provisions of this part.

25 (3) For taxpayers that are required to be included in a combined
26 report under Section 25101 or authorized to be included in a
27 combined report under Section 25101.15, the amount prescribed
28 in paragraph (1) shall apply to the aggregate amount of
29 preapportioned income for all members included in a combined
30 report.

31 ~~(f)~~

32 (e) Notwithstanding subdivision (a), this section shall not apply
33 to a taxpayer that ceased to do business or has a final taxable year
34 ending prior to August 28, 2008, that sold or transferred
35 substantially all of its assets resulting in a gain on sale during a
36 taxable year ending prior to August 28, 2008, for which the gain
37 could be offset with existing net operating loss deductions and the
38 sale or transfer occurred pursuant to a plan of reorganization under
39 Chapter 11 of Title 11 of the United States Code. An amended tax

1 return claiming net operating loss deductions allowed pursuant to
2 this subdivision shall be treated as a timely filed original return.

3 ~~(g)~~

4 (f) The Legislature finds and declares that the addition of
5 subdivision ~~(f)~~ (e) to this section by the act adding this subdivision
6 fulfills a statewide public purpose by providing necessary tax relief
7 for a taxpayer that ceased to do business or has a final taxable year
8 ending prior to August 28, 2008, that sold or transferred
9 substantially all of its assets resulting in a gain or sale during a
10 taxable year prior to August 28, 2008, for which the gain could be
11 offset with existing net operating loss deductions and the sale or
12 transfer occurred pursuant to a plan of reorganization under Chapter
13 11 of Title 11 of the United States Code, in order to ensure that
14 these taxpayers are not permanently denied the net operating loss
15 deduction.

16 *SEC. 6. Section 24416.22 of the Revenue and Taxation Code*
17 *is amended to read:*

18 24416.22. Notwithstanding Section 24416.1, 24416.2, 24416.4,
19 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss
20 attributable to a taxable year beginning on or after January 1, 2008,
21 shall be a net operating carryover to each of the 20 taxable years
22 following the year of the loss, and a net operating loss attributable
23 to a taxable year beginning on or after January 1, 2013, shall also
24 be a net operating loss carryback to each of the two taxable years
25 preceding the taxable year of loss.

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

28 ~~SECTION 1. Section 25943 of the Public Resources Code is~~
29 ~~amended to read:~~

30 ~~25943. (a) (1) By March 1, 2010, the commission shall~~
31 ~~establish a regulatory proceeding to develop and implement a~~
32 ~~comprehensive program to achieve greater energy savings in~~
33 ~~California's existing residential and nonresidential building stock.~~
34 ~~This program shall comprise a complementary portfolio of~~
35 ~~techniques, applications, and practices that will achieve greater~~
36 ~~energy efficiency in existing residential and nonresidential~~
37 ~~structures that fall significantly below the current standards in Title~~
38 ~~24 of the California Code of Regulations, as determined by the~~
39 ~~commission.~~

1 ~~(2) The comprehensive program may include, but need not be~~
2 ~~limited to, a broad range of energy assessments, building~~
3 ~~benchmarking, energy rating, cost-effective energy efficiency~~
4 ~~improvements, public and private sector energy efficiency~~
5 ~~financing options, public outreach and education efforts, and green~~
6 ~~workforce training.~~
7 ~~(b) To develop and implement the program specified in~~
8 ~~subdivision (a), the commission shall do both of the following:~~
9 ~~(1) Coordinate with the Public Utilities Commission and consult~~
10 ~~with representatives from the Department of Real Estate, the~~
11 ~~Department of Housing and Community Development,~~
12 ~~investor-owned and publicly owned utilities, local governments,~~
13 ~~real estate licensees, commercial and home builders, commercial~~
14 ~~property owners, small businesses, mortgage lenders, financial~~
15 ~~institutions, home appraisers, inspectors, energy rating~~
16 ~~organizations, consumer groups, environmental and environmental~~
17 ~~justice groups, and other entities the commission deems~~
18 ~~appropriate.~~
19 ~~(2) Hold at least three public hearings in geographically diverse~~
20 ~~locations throughout the state.~~
21 ~~(c) In developing the requirements for the program specified in~~
22 ~~subdivision (a), the commission shall consider all of the following:~~
23 ~~(1) The amount of annual and peak energy savings, greenhouse~~
24 ~~gas emission reductions, and projected customer utility bill savings~~
25 ~~that will accrue from the program.~~
26 ~~(2) The most cost-effective means and reasonable timeframes~~
27 ~~to achieve the goals of the program.~~
28 ~~(3) The various climatic zones within the state.~~
29 ~~(4) An appropriate method to inform and educate the public~~
30 ~~about the need for, benefits of, and environmental impacts of, the~~
31 ~~comprehensive energy efficiency program.~~
32 ~~(5) The most effective way to report the energy assessment~~
33 ~~results and the corresponding energy efficiency improvements to~~
34 ~~the owner of the residential or nonresidential building, including,~~
35 ~~among other things, the following:~~
36 ~~(A) Prioritizing the identified energy efficiency improvements.~~
37 ~~(B) The payback period or cost-effectiveness of each~~
38 ~~improvement identified.~~
39 ~~(C) The various incentives, loans, grants, and rebates offered~~
40 ~~to finance the improvements.~~

- 1 ~~(D) Available financing options including all of the following:~~
2 ~~(i) Mortgages or sales agreement components.~~
3 ~~(ii) On-bill financing.~~
4 ~~(iii) Contractual property tax assessments.~~
5 ~~(iv) Home warranties.~~
6 ~~(6) Existing statutory and regulatory requirements to achieve~~
7 ~~energy efficiency savings and greenhouse gas emission reductions.~~
8 ~~(7) A broad range of implementation approaches, including both~~
9 ~~utility and nonutility administration of energy efficiency programs.~~
10 ~~(8) Any other considerations deemed appropriate by the~~
11 ~~commission.~~
12 ~~(d) The program developed pursuant to this section shall do all~~
13 ~~of the following:~~
14 ~~(1) Minimize the overall costs of establishing and implementing~~
15 ~~the comprehensive energy efficiency program requirements.~~
16 ~~(2) Ensure, for residential buildings, that the energy efficiency~~
17 ~~assessments, ratings, or improvements do not unreasonably or~~
18 ~~unnecessarily affect the home purchasing process or the ability of~~
19 ~~individuals to rent housing. A transfer of property subject to the~~
20 ~~program implemented pursuant to this section shall not be~~
21 ~~invalidated solely because of the failure of a person to comply~~
22 ~~with a provision of the program.~~
23 ~~(3) Ensure, for nonresidential buildings, that the energy~~
24 ~~improvements do not have an undue economic impact on California~~
25 ~~businesses.~~
26 ~~(4) Determine, for residential buildings, the appropriateness of~~
27 ~~the Home Energy Rating System (HERS) program to support the~~
28 ~~goals of this section and whether there are a sufficient number of~~
29 ~~HERS-certified raters available to meet the program requirements.~~
30 ~~(5) Determine, for nonresidential structures, the availability of~~
31 ~~an appropriate cost-effective energy efficiency assessment system~~
32 ~~and whether there are a sufficient number of certified raters or~~
33 ~~auditors available to meet the program requirements.~~
34 ~~(6) Coordinate with the California Workforce Investment Board,~~
35 ~~the Employment Training Panel, the California Community~~
36 ~~Colleges, and other entities to ensure a qualified, well-trained~~
37 ~~workforce is available to implement the program requirements.~~
38 ~~(7) Coordinate with, and avoid duplication of, existing~~
39 ~~proceedings of the Public Utilities Commission and programs~~
40 ~~administered by utilities.~~

- 1 ~~(e) A home energy rating or energy assessment service does not~~
2 ~~meet the requirements of this section unless the service has been~~
3 ~~certified by the commission to be in compliance with the program~~
4 ~~criteria developed pursuant to this section and is in conformity~~
5 ~~with other applicable elements of the program.~~
- 6 ~~(f) The commission shall periodically update the criteria and~~
7 ~~adopt any revision that, in its judgment, is necessary to improve~~
8 ~~or refine program requirements after receiving public input.~~
- 9 ~~(g) Before implementing an element of the program developed~~
10 ~~pursuant to subdivision (a) that requires the expansion of statutory~~
11 ~~authority of the commission or the Public Utilities Commission,~~
12 ~~the commission and the Public Utilities Commission shall obtain~~
13 ~~legislative approval for the expansion of their authorities.~~
- 14 ~~(h) The commission shall report on the status of the program in~~
15 ~~the integrated energy policy report pursuant to Section 25302.~~
- 16 ~~(i) For purposes of this section, “energy assessment” means a~~
17 ~~determination of an energy user’s energy consumption level,~~
18 ~~relative efficiency compared to other users, and opportunities to~~
19 ~~achieve greater efficiency or improve energy resource utilization.~~