

**ASSEMBLY BILL**

**No. 33**

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**Introduced by Assembly Member Perea**

December 3, 2012

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An act to add and repeal Sections 17053.99 and 23699 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 33, as introduced, Perea. Income taxes: credit: patent licensing.

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

This bill would, under the Personal Income Tax Law and the Corporation Tax Law, for taxable years beginning on or after January 1, 2013, allow a credit against those taxes in an amount equal to 15% of the qualified royalties, as defined, paid by a qualified taxpayer, as defined. The bill would calculate the cut-off date for the above-described credit based upon an estimate by the Franchise Tax Board of claims cumulatively totaling \$100,000,000 for all taxable years, as specified.

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 17053.99 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.99. (a) For each taxable year beginning on or after
- 4 January 1, 2013, there shall be allowed to a qualified taxpayer as

1 a credit against the “net tax,” as defined in Section 17039, an  
2 amount equal to 15 percent of the qualified royalties paid by the  
3 qualified taxpayer during the taxable year.

4 (b) For purposes of this section:

5 (1) “Commercialize” means the process in which a taxpayer is  
6 a licensee of a qualified patent and uses the patent in connection  
7 with, or incorporates the patent into, intellectual property or  
8 tangible personal property in the manner described, with respect  
9 to which a qualified patent is used directly or indirectly in  
10 connection with the manufacturing, production, growing, or  
11 extraction process with respect to such property, or is incorporated  
12 into such property and such incorporation serves a significant  
13 commercial purpose.

14 (2) “Qualified patent” means a patent owned by the University  
15 of California for an invention where the research and development  
16 for that invention was funded, in whole or in part, by amounts  
17 eligible for the credit under Section 17052.12 or 23609.

18 (3) “Qualified research” has the same meaning as set forth in  
19 Section 41(d) of the Internal Revenue Code, as modified by Section  
20 17052.12.

21 (4) “Qualified royalties” means any royalties paid by a qualified  
22 taxpayer for the use of a qualified patent through a license  
23 agreement with the University of California or another entity.

24 (5) “Qualified taxpayer” means a taxpayer that paid qualified  
25 royalties during the taxable year and commercializes, for at least  
26 five consecutive years within the state, the licensed patent for  
27 which qualified royalties were paid during the taxable year.

28 (c) In the case where the credit allowed by this section exceeds  
29 the “net tax,” the excess may be carried over to reduce the “net  
30 tax” in the following year, and succeeding eight years if necessary,  
31 until the credit is exhausted.

32 (d) (1) (A) Credit under this section and Section 23699 shall  
33 be allowed only for credits claimed on timely filed original returns  
34 received by the Franchise Tax Board on or before the cut-off date  
35 established by the Franchise Tax Board.

36 (B) For purposes of this paragraph, the cut-off date shall be the  
37 last day of the calendar quarter within which the Franchise Tax  
38 Board estimates it will have received timely filed original returns  
39 claiming credits under this section and Section 23699 that

1 cumulatively total one hundred million dollars (\$100,000,000) for  
2 all taxable years.

3 (2) The date a return is received shall be determined by the  
4 Franchise Tax Board.

5 (3) (A) The determinations of the Franchise Tax Board with  
6 respect to the cut-off date, the date a return is received, and whether  
7 a return has been timely filed for purposes of this subdivision may  
8 not be reviewed in any administrative or judicial proceeding.

9 (B) Any disallowance of a credit claimed due to a determination  
10 under this subdivision, including the application of the limitation  
11 specified in paragraph (1), shall be treated as a mathematical error  
12 appearing on the return. Any amount of tax resulting from such  
13 disallowance may be assessed by the Franchise Tax Board in the  
14 same manner as provided by Section 19051.

15 (4) The Franchise Tax Board shall periodically provide notice  
16 on its Internet Web site with respect to the amount of credit under  
17 this section and Section 23699 claimed on timely filed original  
18 returns received by the Franchise Tax Board.

19 (e) (1) The Franchise Tax Board may prescribe rules, guidelines,  
20 or procedures necessary or appropriate to carry out the purposes  
21 of this section, including any guidelines regarding the limitation  
22 on total credits allowable under this section and Section 23699.

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

28 (f) This section shall remain in effect only until December 1 of  
29 the calendar year after the year of the cutoff date, and as of that  
30 December 1 is repealed.

31 SEC. 2. Section 23699 is added to the Revenue and Taxation  
32 Code, to read:

33 23699. (a) For each taxable year beginning on or after January  
34 1, 2013, there shall be allowed to a qualified taxpayer as a credit  
35 against the "tax," as defined in Section 23036, an amount equal  
36 to 15 percent of the qualified amount paid by the qualified taxpayer  
37 during the taxable year.

38 (b) For purposes of this section:

39 (1) "Commercialize" means the process in which a taxpayer is  
40 a licensee of a qualified patent and uses the patent in connection

1 with, or incorporates the patent into, intellectual property or  
2 tangible personal property in the manner described, with respect  
3 to which a qualified patent is used directly or indirectly in  
4 connection with the manufacturing, production, growing, or  
5 extraction process with respect to such property, or is incorporated  
6 into such property and such incorporation serves a significant  
7 commercial purpose.

8 (2) “Qualified patent” means a patent owned by the University  
9 of California for an invention where the research and development  
10 for that invention was funded, in whole or in part, by amounts  
11 eligible for the credit under Section 17052.12 or 23609.

12 (3) “Qualified research” has the same meaning as set forth in  
13 Section 41(d) of the Internal Revenue Code, as modified by Section  
14 23609.

15 (4) “Qualified royalties” means any royalties paid by a qualified  
16 taxpayer for the use of a qualified patent through a license  
17 agreement with the University of California or another entity.

18 (5) “Qualified taxpayer” means a taxpayer that paid qualified  
19 royalties during the taxable year and commercializes, for at least  
20 five consecutive years within the state, the licensed patent for  
21 which qualified royalties were paid during the taxable year.

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

26 (d) (1) (A) Credit under this section and Section 17053.99 shall  
27 be allowed only for credits claimed on timely filed original returns  
28 received by the Franchise Tax Board on or before the cut-off date  
29 established by the Franchise Tax Board.

30 (B) For purposes of this paragraph, the cut-off date shall be the  
31 last day of the calendar quarter within which the Franchise Tax  
32 Board estimates it will have received timely filed original returns  
33 claiming credits under this section and Section 17053.99 that  
34 cumulatively total one hundred million dollars (\$100,000,000) for  
35 all taxable years.

36 (2) The date a return is received shall be determined by the  
37 Franchise Tax Board.

38 (3) (A) The determinations of the Franchise Tax Board with  
39 respect to the cut-off date, the date a return is received, and whether

1 a return has been timely filed for purposes of this subdivision may  
2 not be reviewed in any administrative or judicial proceeding.

3 (B) Any disallowance of a credit claimed due to a determination  
4 under this subdivision, including the application of the limitation  
5 specified in paragraph (1), shall be treated as a mathematical error  
6 appearing on the return. Any amount of tax resulting from such  
7 disallowance may be assessed by the Franchise Tax Board in the  
8 same manner as provided by Section 19051.

9 (4) The Franchise Tax Board shall periodically provide notice  
10 on its Internet Web site with respect to the amount of credit under  
11 this section and Section 23623 claimed on timely filed original  
12 returns received by the Franchise Tax Board.

13 (e) (1) The Franchise Tax Board may prescribe rules, guidelines,  
14 or procedures necessary or appropriate to carry out the purposes  
15 of this section, including any guidelines regarding the limitation  
16 on total credits allowable under this section and Section 17053.99.

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

22 (f) This section shall remain in effect only until December 1 of  
23 the calendar year after the year of the cutoff date, and as of that  
24 December 1 is repealed.

25 SEC. 3. This act provides for a tax levy within the meaning of  
26 Article IV of the Constitution and shall go into immediate effect.