

AMENDED IN ASSEMBLY MARCH 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 33

Introduced by Assembly Member Perea
(Coauthor: Assembly Member Mullin)
(Coauthor: Senator Beall)

December 3, 2012

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 amended, 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. *The bill would require a qualified taxpayer to commercialize, as defined, a qualified patent for at least 5 consecutive years.*

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

8 (b) For purposes of this section:

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

18 (2) “Qualified patent” means a patent owned by the University
19 of California *or the California State University* for an invention
20 where the research and development for that invention was funded,
21 in whole or in part, by amounts eligible for the credit under Section
22 17052.12 or 23609.

23 (3) “Qualified research” has the same meaning as set forth in
24 Section 41(d) of the Internal Revenue Code, as modified by Section
25 17052.12.

26 (4) “Qualified royalties” means any royalties paid by a qualified
27 taxpayer for the use of a qualified patent through a license
28 agreement with the University of California, *the California State*
29 *University*, or another entity.

30 (5) “Qualified taxpayer” means a taxpayer that paid qualified
31 royalties during the taxable year and commercializes, for at least
32 ~~five consecutive years~~ *one year* within the state, the licensed patent
33 for which qualified royalties were paid during the taxable year.

34 (c) *If the qualified taxpayer does not commercialize the qualified*
35 *patent for at least five consecutive years, the tax imposed by this*
36 *part shall be increased by an amount equal to the credit allowed*
37 *under subdivision (a) for all the taxable years the qualified*
38 *taxpayer claimed the credit.*

1 ~~(e)~~

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

6 ~~(d)~~

7 ~~(e)~~ (1) (A) Credit under this section and Section 23699 shall
8 be allowed only for credits claimed on timely filed original returns
9 received by the Franchise Tax Board on or before the cutoff date
10 established by the Franchise Tax Board.

11 (B) For purposes of this paragraph, the cutoff date shall be the
12 last day of the calendar quarter within which the Franchise Tax
13 Board estimates it will have received timely filed original returns
14 claiming credits under this section and Section 23699 that
15 cumulatively total one hundred million dollars (\$100,000,000) for
16 all taxable years.

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

19 (3) (A) The determinations of the Franchise Tax Board with
20 respect to the cutoff date, the date a return is received, and whether
21 a return has been timely filed for purposes of this subdivision may
22 not be reviewed in any administrative or judicial proceeding.

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

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

33 ~~(e)~~

34 ~~(f)~~ (1) The Franchise Tax Board may prescribe rules, guidelines,
35 or procedures necessary or appropriate to carry out the purposes
36 of this section, including any guidelines regarding the limitation
37 on total credits allowable under this section and Section 23699.

38 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
39 Division 3 of Title 2 of the Government Code does not apply to
40 any standard, criterion, procedure, determination, rule, notice, or

1 guideline established or issued by the Franchise Tax Board
2 pursuant to this section.

3 (f)

4 (g) This section shall remain in effect only until December 1 of
5 the calendar year after the year of the cutoff date, and as of that
6 December 1 is repealed.

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

9 23699. (a) For each taxable year beginning on or after January
10 1, 2013, there shall be allowed to a qualified taxpayer as a credit
11 against the “tax,” as defined in Section 23036, an amount equal
12 to 15 percent of the qualified amount paid by the qualified taxpayer
13 during the taxable year.

14 (b) For purposes of this section:

15 (1) “Commercialize” means the process in which a taxpayer is
16 a licensee of a qualified patent and uses the patent in connection
17 with, or incorporates the patent into, intellectual property or
18 tangible personal property in the manner described, with respect
19 to which a qualified patent is used directly or indirectly in
20 connection with the manufacturing, production, growing, or
21 extraction process with respect to such property, or is incorporated
22 into such property and such incorporation serves a significant
23 commercial purpose.

24 (2) “Qualified patent” means a patent owned by the University
25 of California *or the California State University* for an invention
26 where the research and development for that invention was funded,
27 in whole or in part, by amounts eligible for the credit under Section
28 17052.12 or 23609.

29 (3) “Qualified research” has the same meaning as set forth in
30 Section 41(d) of the Internal Revenue Code, as modified by Section
31 23609.

32 (4) “Qualified royalties” means any royalties paid by a qualified
33 taxpayer for the use of a qualified patent through a license
34 agreement with the University of California, *the California State*
35 *University*, or another entity.

36 (5) “Qualified taxpayer” means a taxpayer that paid qualified
37 royalties during the taxable year and commercializes, for at least
38 ~~five consecutive years~~ *one year* within the state, the licensed patent
39 for which qualified royalties were paid during the taxable year.

1 (c) *If the qualified taxpayer does not commercialize the qualified*
2 *patent for at least five consecutive years, the tax imposed by this*
3 *part shall be increased by an amount equal to the credit allowed*
4 *under subdivision (a) for all the taxable years the qualified*
5 *taxpayer claimed the credit.*

6 ~~(e)~~

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

11 ~~(d)~~

12 (e) (1) (A) Credit under this section and Section 17053.99 shall
13 be allowed only for credits claimed on timely filed original returns
14 received by the Franchise Tax Board on or before the cutoff date
15 established by the Franchise Tax Board.

16 (B) For purposes of this paragraph, the cutoff date shall be the
17 last day of the calendar quarter within which the Franchise Tax
18 Board estimates it will have received timely filed original returns
19 claiming credits under this section and Section 17053.99 that
20 cumulatively total one hundred million dollars (\$100,000,000) for
21 all taxable years.

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

24 (3) (A) The determinations of the Franchise Tax Board with
25 respect to the cutoff date, the date a return is received, and whether
26 a return has been timely filed for purposes of this subdivision may
27 not be reviewed in any administrative or judicial proceeding.

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

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

38 ~~(e)~~

39 (f) (1) The Franchise Tax Board may prescribe rules, guidelines,
40 or procedures necessary or appropriate to carry out the purposes

1 of this section, including any guidelines regarding the limitation
2 on total credits allowable under this section and Section 17053.99.

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

8 (f)

9 (g) This section shall remain in effect only until December 1 of
10 the calendar year after the year of the cutoff date, and as of that
11 December 1 is repealed.

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

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