

AMENDED IN ASSEMBLY APRIL 8, 2013
AMENDED IN ASSEMBLY MARCH 14, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 33

Introduced by Assembly Member Perea
(~~Coauthor: Coauthors: Assembly Member Members Mullin and~~
***Wieckowski*)**
(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 *growing*, manufacturing, production, ~~growing~~,
15 or extraction process with respect to such property, or is
16 incorporated into such property and such incorporation serves a
17 significant 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 one year within the state, the licensed patent for which qualified
33 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

1 part shall be increased by an amount equal to the credit allowed
2 under subdivision (a) for all the taxable years the qualified taxpayer
3 claimed the credit.

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

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

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

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

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

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

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

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

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

8 23699. (a) For each taxable year beginning on or after January
9 1, 2013, there shall be allowed to a qualified taxpayer as a credit
10 against the “tax,” as defined in Section 23036, an amount equal
11 to 15 percent of the qualified amount paid by the qualified taxpayer
12 during the taxable year.

13 (b) For purposes of this section:

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

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

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

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

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

39 (c) If the qualified taxpayer does not commercialize the qualified
40 patent for at least five consecutive years, the tax imposed by this

1 part shall be increased by an amount equal to the credit allowed
2 under subdivision (a) for all the taxable years the qualified taxpayer
3 claimed the credit.

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

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

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

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

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

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

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

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 17053.99.

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

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

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