

ASSEMBLY BILL

No. 769

Introduced by Assembly Member Skinner

February 21, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

AB 769, as introduced, Skinner. 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 $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. 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.

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

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

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

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

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

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

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

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

20 (B) If the net operating loss is greater than the net loss from the
21 eligible small business, the net operating loss shall be carried over
22 as follows:

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

26 (ii) With respect to that portion of the net operating loss that
27 exceeds the net loss from the eligible small business, the applicable
28 percentage of that amount shall be carried forward as provided in
29 subdivision (d).

30 (C) For purposes of Section 172(b)(2) of the Internal Revenue
31 Code, the amount described in clause (ii) of subparagraph (B) shall
32 be absorbed before the amount described in clause (i) of
33 subparagraph (B).

34 (4) In the case of a taxpayer who has a net operating loss in a
35 taxable year beginning on or after January 1, 1994, and who
36 operates a business that qualifies as both a new business and an
37 eligible small business under this section, that business shall be
38 treated as a new business for the first three taxable years of the
39 new business.

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

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

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

16 ~~(1)~~

17 ~~(c) Net operating loss carrybacks shall not be allowed for any~~
18 ~~net operating losses attributable to taxable years beginning before~~
19 ~~January 1, 2013.~~

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

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

28 ~~(B) For a net operating loss attributable to a taxable year~~
29 ~~beginning on or after January 1, 2014, and before January 1, 2015,~~
30 ~~the amount of carryback to any taxable year shall not exceed 75~~
31 ~~percent of the net operating loss.~~

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

36 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~
37 ~~Internal Revenue Code, relating to special rules for REITs, and~~
38 ~~Section 172(b)(1)(E) of the Internal Revenue Code, relating to~~
39 ~~excess interest loss, and Section 172(h) of the Internal Revenue~~

1 Code, relating to corporate equity reduction interest losses, shall
2 apply as provided.

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

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

10 (B) For a net operating loss for any taxable year beginning on
11 or after January 1, 2000, and before January 1, 2008, Section
12 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
13 substitute “10 taxable years” in lieu of “20 taxable years.”

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

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

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

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

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

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

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

30 (4) The net operating loss attributable to taxable years beginning
31 on or after January 1, 1987, and before January 1, 1994, shall be
32 a net operating loss carryover to each of the 10 taxable years
33 following the year of the loss if it is incurred by a taxpayer that is
34 under the jurisdiction of the court in a Title 11 or similar case at
35 any time during the income year. The loss carryover provided in
36 the preceding sentence shall not apply to any loss incurred after
37 the date the taxpayer is no longer under the jurisdiction of the court
38 in a Title 11 or similar case.

39 (e) For purposes of this section:

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

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

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

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

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

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

27 (A) The determination of the relative fair market values of the
28 acquired assets and the total assets shall be made as of the last day
29 of the first taxable year in which the taxpayer (or any related
30 person) first uses any of the acquired trade or business assets in
31 its business activity.

32 (B) Any acquired assets that constituted property described in
33 Section 1221(1) of the Internal Revenue Code in the hands of the
34 transferor shall not be treated as assets acquired from an existing
35 trade or business, unless those assets also constitute property
36 described in Section 1221(1) of the Internal Revenue Code in the
37 hands of the acquiring taxpayer (or related person).

38 (2) In any case where a taxpayer (or any related person) is
39 engaged in one or more trade or business activities in this state, or
40 has been engaged in one or more trade or business activities in this

1 state within the preceding 36 months (“prior trade or business
2 activity”), and thereafter commences an additional trade or business
3 activity in this state, the additional trade or business activity shall
4 only be treated as a new business if the additional trade or business
5 activity is classified under a different division of the Standard
6 Industrial Classification (SIC) Manual published by the United
7 States Office of Management and Budget, 1987 edition, than are
8 any of the taxpayer’s (or any related person’s) current or prior
9 trade or business activities.

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

17 (4) In any case where the legal form under which a trade or
18 business activity is being conducted is changed, the change in form
19 shall be disregarded and the determination of whether the trade or
20 business activity is a new business shall be made by treating the
21 taxpayer as having purchased or otherwise acquired all or any
22 portion of the assets of an existing trade or business under the rules
23 of paragraph (1) of this subdivision.

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

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

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

37 (B) For purposes of this paragraph:

38 (i) “Biopharmaceutical activities” means those activities that
39 use organisms or materials derived from organisms, and their
40 cellular, subcellular, or molecular components, in order to provide

1 pharmaceutical products for human or animal therapeutics and
 2 diagnostics. Biopharmaceutical activities make use of living
 3 organisms to make commercial products, as opposed to
 4 pharmaceutical activities that make use of chemical compounds
 5 to produce commercial products.

6 (ii) “Other biotechnology activities” means activities consisting
 7 of the application of recombinant DNA technology to produce
 8 commercial products, as well as activities regarding pharmaceutical
 9 delivery systems designed to provide a measure of control over
 10 the rate, duration, and site of pharmaceutical delivery.

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

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

19 (i) The Franchise Tax Board may prescribe appropriate
 20 regulations to carry out the purposes of this section, including any
 21 regulations necessary to prevent the avoidance of the purposes of
 22 this section through ~~splitups~~ *split-ups*, shell corporations,
 23 partnerships, tiered ownership structures, or otherwise.

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

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

32 SEC. 2. Section 17276.21 of the Revenue and Taxation Code
 33 is amended to read:

34 17276.21. (a) Notwithstanding Sections 17276, 17276.1,
 35 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.20 of
 36 this code and Section 172 of the Internal Revenue Code, no net
 37 operating loss deduction shall be allowed for any taxable year
 38 beginning on or after January 1, 2008, and before January 1, 2012.

39 (b) For any net operating loss or carryover of a net operating
 40 loss for which a deduction is denied by subdivision (a), the

1 carryover period under Section 172 of the Internal Revenue Code
2 shall be extended as follows:

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

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

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

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

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

14 ~~(d)~~

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

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

22 (A) Income from a trade or business, whether conducted by the
23 taxpayer or by a ~~passthrough~~ *pass-thru* entity owned directly or
24 indirectly by the taxpayer. For purposes of this paragraph, the term
25 ~~“passthrough~~ “*pass-thru* entity” means a partnership or an “S”
26 corporation.

27 (B) Income from rental activity.

28 (C) Income attributable to a farming business.

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

38 SEC. 3. Section 17276.22 of the Revenue and Taxation Code
39 is amended to read:

1 17276.22. Notwithstanding Section 17276.1, 17276.2, 17276.4,
2 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss
3 attributable to a taxable year beginning on or after January 1, 2008,
4 shall be a net operating carryover to each of the 20 taxable years
5 following the year of the loss, and a net operating loss attributable
6 to a taxable year beginning on or after January 1, 2013, shall also
7 be a net operating loss carryback to each of the two taxable years
8 preceding the taxable year of loss.

9 SEC. 4. Section 24416.20 of the Revenue and Taxation Code
10 is amended to read:

11 24416.20. Except as provided in Sections 24416.1, 24416.2,
12 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss
13 deduction shall be allowed in computing net income under Section
14 24341 and shall be determined in accordance with Section 172 of
15 the Internal Revenue Code, except as otherwise provided.

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

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

20 (b) (1) Except as provided in paragraphs (2) and (3), the
21 provisions of Section 172(b)(2) of the Internal Revenue Code,
22 relating to amount of carrybacks and carryovers, shall be modified
23 so that the applicable percentage of the entire amount of the net
24 operating loss for any taxable year shall be eligible for carryover
25 to any subsequent taxable year. For purposes of this subdivision,
26 the applicable percentage shall be:

27 (A) Fifty percent for any taxable year beginning before January
28 1, 2000.

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

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

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

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

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

4 (B) If the net operating loss is greater than the net loss from the
5 new business, the net operating loss shall be carried over as
6 follows:

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

10 (ii) With respect to the portion of the net operating loss that
11 exceeds the net loss from the new business, the applicable
12 percentage of that amount shall be carried forward as provided in
13 subdivision (d).

14 (C) For purposes of Section 172(b)(2) of the Internal Revenue
15 Code, the amount described in clause (ii) of subparagraph (B) shall
16 be absorbed before the amount described in clause (i) of
17 subparagraph (B).

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

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

26 (B) If the net operating loss is greater than the net loss from the
27 eligible small business, the net operating loss shall be carried over
28 as follows:

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

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

36 (C) For purposes of Section 172(b)(2) of the Internal Revenue
37 Code, the amount described in clause (ii) of subparagraph (B) shall
38 be absorbed before the amount described in clause (i) of
39 subparagraph (B).

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

7 (5) 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 more than one business, and more than one of those
10 businesses qualifies as either a new business or an eligible small
11 business under this section, paragraph (2) shall be applied first,
12 except that if there is any remaining portion of the net operating
13 loss after application of clause (i) of subparagraph (B) of paragraph
14 (2), paragraph (3) shall be applied to the remaining portion of the
15 net operating loss as though that remaining portion of the net
16 operating loss constituted the entire net operating loss.

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

20 (c) For any taxable year in which the taxpayer has in effect a
21 water’s-edge election under Section 25110, the deduction of a net
22 operating loss carryover shall be denied to the extent that the net
23 operating loss carryover was determined by taking into account
24 the income and factors of an affiliated corporation in a combined
25 report whose income and apportionment factors would not have
26 been taken into account if a water’s-edge election under Section
27 25110 had been in effect for the taxable year in which the loss was
28 incurred.

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

31 ~~(1)~~

32 ~~(d) Net operating loss carrybacks shall not be allowed for any~~
33 ~~net operating losses attributable to taxable years beginning before~~
34 ~~January 1, 2013.~~

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

39 ~~(A) For a net operating loss attributable to a taxable year~~
40 ~~beginning on or after January 1, 2013, and before January 1, 2014,~~

1 the amount of carryback to any taxable year shall not exceed 50
2 percent of the net operating loss.

3 ~~(B) For a net operating loss attributable to a taxable year~~
4 ~~beginning on or after January 1, 2014, and before January 1, 2015,~~
5 ~~the amount of carryback to any taxable year shall not exceed 75~~
6 ~~percent of the net operating loss.~~

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

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

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

19 (e) (1) (A) For a net operating loss for any taxable year
20 beginning on or after January 1, 1987, and before January 1, 2000,
21 Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified
22 to substitute “five taxable years” in lieu of “20 years” except as
23 otherwise provided in paragraphs (2), (3), and (4).

24 (B) For a net operating loss for any income year beginning on
25 or after January 1, 2000, and before January 1, 2008, Section
26 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to
27 substitute “10 taxable years” in lieu of “20 taxable years.”

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

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

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

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

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

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

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

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

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

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

19 (f) For purposes of this section:

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

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

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

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

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

34 (1) In any case where a taxpayer purchases or otherwise acquires
35 all or any portion of the assets of an existing trade or business
36 (irrespective of the form of entity) that is doing business in this
37 state (within the meaning of Section 23101), the trade or business
38 thereafter conducted by the taxpayer (or any related person) shall
39 not be treated as a new business if the aggregate fair market value
40 of the acquired assets (including real, personal, tangible, and

1 intangible property) used by the taxpayer (or any related person)
2 in the conduct of its trade or business exceeds 20 percent of the
3 aggregate fair market value of the total assets of the trade or
4 business being conducted by the taxpayer (or any related person).

5 For purposes of this paragraph only, the following rules shall apply:

6 (A) The determination of the relative fair market values of the
7 acquired assets and the total assets shall be made as of the last day
8 of the first taxable year in which the taxpayer (or any related
9 person) first uses any of the acquired trade or business assets in
10 its business activity.

11 (B) Any acquired assets that constituted property described in
12 Section 1221(1) of the Internal Revenue Code in the hands of the
13 transferor shall not be treated as assets acquired from an existing
14 trade or business, unless those assets also constitute property
15 described in Section 1221(1) of the Internal Revenue Code in the
16 hands of the acquiring taxpayer (or related person).

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

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

36 (4) In any case where the legal form under which a trade or
37 business activity is being conducted is changed, the change in form
38 shall be disregarded and the determination of whether the trade or
39 business activity is a new business shall be made by treating the
40 taxpayer as having purchased or otherwise acquired all or any

1 portion of the assets of an existing trade or business under the rules
2 of paragraph (1) of this subdivision.

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

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

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

16 (B) For purposes of this paragraph:

17 (i) “Biopharmaceutical activities” means those activities that
18 use organisms or materials derived from organisms, and their
19 cellular, subcellular, or molecular components, in order to provide
20 pharmaceutical products for human or animal therapeutics and
21 diagnostics. Biopharmaceutical activities make use of living
22 organisms to make commercial products, as opposed to
23 pharmaceutical activities that make use of chemical compounds
24 to produce commercial products.

25 (ii) “Other biotechnology activities” means activities consisting
26 of the application of recombinant DNA technology to produce
27 commercial products, as well as activities regarding pharmaceutical
28 delivery systems designed to provide a measure of control over
29 the rate, duration, and site of pharmaceutical delivery.

30 (h) For purposes of corporations whose net income is determined
31 under Chapter 17 (commencing with Section 25101), Section
32 25108 shall apply to each of the following:

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

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

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

1 (j) The Franchise Tax Board may prescribe appropriate
2 regulations to carry out the purposes of this section, including any
3 regulations necessary to prevent the avoidance of the purposes of
4 this section through ~~splitups~~ *split-ups*, shell corporations,
5 partnerships, tiered ownership structures, or otherwise.

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

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

14 SEC. 5. Section 24416.21 of the Revenue and Taxation Code
15 is amended to read:

16 24416.21. (a) Notwithstanding Sections 24416, 24416.1,
17 24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.20 of
18 this code and Section 172 of the Internal Revenue Code, no net
19 operating loss deduction shall be allowed for any taxable year
20 beginning on or after January 1, 2008, and before January 1, 2012.

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

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

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

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

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

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

36 ~~(d)~~

37 (c) The disallowance of any net operating loss deduction for
38 any taxable year beginning on or after January 1, 2008, and before
39 January 1, 2010, pursuant to subdivision (a) shall not apply to a

1 taxpayer with income subject to tax under this part of less than
2 five hundred thousand dollars (\$500,000) for the taxable year.

3 ~~(e)~~

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

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

12 (3) For taxpayers that are required to be included in a combined
13 report under Section 25101 or authorized to be included in a
14 combined report under Section 25101.15, the amount prescribed
15 in paragraph (1) shall apply to the aggregate amount of
16 preapportioned income for all members included in a combined
17 report.

18 ~~(f)~~

19 (e) Notwithstanding subdivision (a), this section shall not apply
20 to a taxpayer that ceased to do business or has a final taxable year
21 ending prior to August 28, 2008, that sold or transferred
22 substantially all of its assets resulting in a gain on sale during a
23 taxable year ending prior to August 28, 2008, for which the gain
24 could be offset with existing net operating loss deductions and the
25 sale or transfer occurred pursuant to a plan of reorganization under
26 Chapter 11 of Title 11 of the United States Code. An amended tax
27 return claiming net operating loss deductions allowed pursuant to
28 this subdivision shall be treated as a timely filed original return.

29 ~~(g)~~

30 (f) The Legislature finds and declares that the addition of
31 subdivision ~~(f)~~ (e) to this section by the act adding this subdivision
32 fulfills a statewide public purpose by providing necessary tax relief
33 for 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 or sale during a
36 taxable year prior to August 28, 2008, for which the gain could be
37 offset with existing net operating loss deductions and the sale or
38 transfer occurred pursuant to a plan of reorganization under Chapter
39 11 of Title 11 of the United States Code, in order to ensure that

1 these taxpayers are not permanently denied the net operating loss
2 deduction.

3 SEC. 6. Section 24416.22 of the Revenue and Taxation Code
4 is amended to read:

5 24416.22. Notwithstanding Section 24416.1, 24416.2, 24416.4,
6 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss
7 attributable to a taxable year beginning on or after January 1, 2008,
8 shall be a net operating carryover to each of the 20 taxable years
9 following the year of the loss, ~~and a net operating loss attributable~~
10 ~~to a taxable year beginning on or after January 1, 2013, shall also~~
11 ~~be a net operating loss carryback to each of the two taxable years~~
12 ~~preceding the taxable year of loss.~~

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

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