

AMENDED IN ASSEMBLY JANUARY 6, 2014

AMENDED IN ASSEMBLY APRIL 23, 2013

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 769**

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**Introduced by Assembly Member Skinner**

February 21, 2013

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~~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. An act to amend Section 402.5 of the Revenue and Taxation Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 769, as amended, Skinner. ~~Taxation: deductions: net operating loss carrybacks. Property taxation: valuing property: comparable sales.~~

~~Existing property tax law requires, when valuing property by comparison with sales of other properties, that to be considered comparable the sales be sufficiently near in time to the valuation date and that the properties sold be located sufficiently near, and be sufficiently alike, the property being valued, as specified.~~

~~This bill would make a clarifying change to this provision.~~

~~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:  $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: *yes-no*. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 402.5 of the Revenue and Taxation Code  
2     is amended to read:

3     402.5. When valuing property by comparison with sales of  
4     other properties, in order to be considered comparable, the sales  
5     shall be sufficiently near in time to the valuation date, and the  
6     properties sold shall be located sufficiently near the property being  
7     valued, and shall be sufficiently alike in respect to character, size,  
8     situation, usability, zoning, or other legal restriction as to use unless  
9     rebutted pursuant to Section 402.1, to make it clear that the  
10    properties sold and the properties being valued are comparable in  
11    value and that the cash equivalent price realized for the properties  
12    sold may fairly be considered as shedding light on the value of the  
13    property being valued. "Near in time to the valuation date" does  
14    not include any sale more than 90 days after the ~~lien~~ valuation  
15    date.

16    SECTION 1. ~~Section 17276.20 of the Revenue and Taxation~~  
17    Code is amended to read:

18    ~~17276.20. Except as provided in Sections 17276.1, 17276.2,~~  
19    ~~17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided~~  
20    ~~by Section 172 of the Internal Revenue Code, relating to net~~  
21    ~~operating loss deduction, shall be modified as follows:~~

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

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

26    ~~(b) (1) Except as provided in paragraphs (2) and (3), the~~  
27    ~~provisions of Section 172(b)(2) of the Internal Revenue Code,~~  
28    ~~relating to amount of carrybacks and carryovers, shall be modified~~

1 so that the applicable percentage of the entire amount of the net  
2 operating loss for any taxable year shall be eligible for carryover  
3 to any subsequent taxable year. For purposes of this subdivision,  
4 the applicable percentage shall be:

5 (A) Fifty percent for any taxable year beginning before January  
6 1, 2000.

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

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

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

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

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

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

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

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

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

35 (3) 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 an eligible small business during that taxable year, each  
38 of the following shall apply:

39 (A) If the net operating loss is equal to or less than the net loss  
40 from the eligible small business, 100 percent of the net operating

1 ~~loss shall be carried forward to the taxable years specified in~~  
2 ~~subdivision (d).~~

3 ~~(B) If the net operating loss is greater than the net loss from the~~  
4 ~~eligible small business, the net operating loss shall be carried over~~  
5 ~~as follows:~~

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

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

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

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

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

33 ~~(6) For purposes of this section, the term “net loss” means the~~  
34 ~~amount of net loss after application of Sections 465 and 469 of the~~  
35 ~~Internal Revenue Code.~~

36 ~~(e) Net operating loss carrybacks shall not be allowed.~~

37 ~~(d) (1) (A) For a net operating loss for any taxable year~~  
38 ~~beginning on or after January 1, 1987, and before January 1, 2000,~~  
39 ~~Section 172(b)(1)(A)(ii) of the Internal Revenue Code is modified~~

1 to substitute “five taxable years” in lieu of “20 taxable years”  
2 except as otherwise provided in paragraphs (2) and (3).

3 (B) For a net operating loss for any taxable year beginning on  
4 or after January 1, 2000, and before January 1, 2008, Section  
5 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
6 substitute “10 taxable years” in lieu of “20 taxable years.”

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

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

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

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

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

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

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

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

32 (e) For purposes of this section:

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

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

39 (3) “Title 11 or similar case” shall have the same meaning as  
40 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 “S” corporation paragraphs (1) and (2) shall be~~  
3 ~~applied to the partnership or “S” corporation.~~

4 ~~(f) 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 (c).

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 gift, inheritance, transfer incident  
21 to divorce, or any other transfer, whether or not for 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 (g) ~~In computing the modifications under Section 172(d)(2) of  
5 the Internal Revenue Code, relating to capital gains and losses of  
6 taxpayers other than corporations, the exclusion provided by  
7 Section 18152.5 shall not be allowed.~~

8 (h) ~~Notwithstanding any provisions of this section to the  
9 contrary, a deduction shall be allowed to a “qualified taxpayer” as  
10 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,  
11 and 17276.7.~~

12 (i) ~~The Franchise Tax Board may prescribe appropriate  
13 regulations to carry out the purposes of this section, including any  
14 regulations necessary to prevent the avoidance of the purposes of  
15 this section through split-ups, shell corporations, partnerships,  
16 tiered ownership structures, or otherwise.~~

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

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

25 ~~SEC. 2. Section 17276.21 of the Revenue and Taxation Code  
26 is amended to read:~~

27 ~~17276.21. (a) Notwithstanding Sections 17276, 17276.1,  
28 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.20 of  
29 this code and Section 172 of the Internal Revenue Code, no net  
30 operating loss deduction shall be allowed for any taxable year  
31 beginning on or after January 1, 2008, and before January 1, 2012.~~

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

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

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

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

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

5 ~~(e) The provisions of this section shall not apply to the following~~  
6 ~~taxpayers:~~

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

12 ~~(A) Income from a trade or business, whether conducted by the~~  
13 ~~taxpayer or by a pass-thru entity owned directly or indirectly by~~  
14 ~~the taxpayer. For purposes of this paragraph, the term “pass-thru~~  
15 ~~entity” means a partnership or an “S” corporation.~~

16 ~~(B) Income from rental activity.~~

17 ~~(C) Income attributable to a farming business.~~

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

27 ~~SEC. 3. Section 17276.22 of the Revenue and Taxation Code~~  
28 ~~is amended to read:~~

29 ~~17276.22. Notwithstanding Section 17276.1, 17276.2, 17276.4,~~  
30 ~~17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss~~  
31 ~~attributable to a taxable year beginning on or after January 1, 2008,~~  
32 ~~shall be a net operating carryover to each of the 20 taxable years~~  
33 ~~following the year of the loss.~~

34 ~~SEC. 4. Section 24416.20 of the Revenue and Taxation Code~~  
35 ~~is amended to read:~~

36 ~~24416.20. Except as provided in Sections 24416.1, 24416.2,~~  
37 ~~24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss~~  
38 ~~deduction shall be allowed in computing net income under Section~~  
39 ~~24341 and shall be determined in accordance with Section 172 of~~  
40 ~~the Internal Revenue Code, except as otherwise provided.~~

- 1 ~~(a) (1) Net operating losses attributable to taxable years~~  
2 ~~beginning before January 1, 1987, shall not be allowed.~~
- 3 ~~(2) A net operating loss shall not be carried forward to any~~  
4 ~~taxable year beginning before January 1, 1987.~~
- 5 ~~(b) (1) Except as provided in paragraphs (2) and (3), the~~  
6 ~~provisions of Section 172(b)(2) of the Internal Revenue Code,~~  
7 ~~relating to amount of carrybacks and carryovers, shall be modified~~  
8 ~~so that the applicable percentage of the entire amount of the net~~  
9 ~~operating loss for any taxable year shall be eligible for carryover~~  
10 ~~to any subsequent taxable year. For purposes of this subdivision,~~  
11 ~~the applicable percentage shall be:~~
- 12 ~~(A) Fifty percent for any taxable year beginning before January~~  
13 ~~1, 2000.~~
- 14 ~~(B) Fifty-five percent for any taxable year beginning on or after~~  
15 ~~January 1, 2000, and before January 1, 2002.~~
- 16 ~~(C) Sixty percent for any taxable year beginning on or after~~  
17 ~~January 1, 2002, and before January 1, 2004.~~
- 18 ~~(D) One hundred percent for any taxable year beginning on or~~  
19 ~~after January 1, 2004.~~
- 20 ~~(2) In the case of a taxpayer who has a net operating loss in any~~  
21 ~~taxable year beginning on or after January 1, 1994, and who~~  
22 ~~operates a new business during that taxable year, each of the~~  
23 ~~following shall apply to each loss incurred during the first three~~  
24 ~~taxable years of operating the new business:~~
- 25 ~~(A) If the net operating loss is equal to or less than the net loss~~  
26 ~~from the new business, 100 percent of the net operating loss shall~~  
27 ~~be carried forward as provided in subdivision (e).~~
- 28 ~~(B) If the net operating loss is greater than the net loss from the~~  
29 ~~new business, the net operating loss shall be carried over as~~  
30 ~~follows:~~
- 31 ~~(i) With respect to an amount equal to the net loss from the new~~  
32 ~~business, 100 percent of that amount shall be carried forward as~~  
33 ~~provided in subdivision (e).~~
- 34 ~~(ii) With respect to the portion of the net operating loss that~~  
35 ~~exceeds the net loss from the new business, the applicable~~  
36 ~~percentage of that amount shall be carried forward as provided in~~  
37 ~~subdivision (d).~~
- 38 ~~(C) For purposes of Section 172(b)(2) of the Internal Revenue~~  
39 ~~Code, the amount described in clause (ii) of subparagraph (B) shall~~

1 ~~be absorbed before the amount described in clause (i) of~~  
2 ~~subparagraph (B):~~

3 ~~(3) 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 an eligible small business during that taxable year, each~~  
6 ~~of the following shall apply:~~

7 ~~(A) If the net operating loss is equal to or less than the net loss~~  
8 ~~from the eligible small business, 100 percent of the net operating~~  
9 ~~loss shall be carried forward to the taxable years specified in~~  
10 ~~paragraph (1) of subdivision (e):~~

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

14 ~~(i) With respect to an amount equal to the net loss from the~~  
15 ~~eligible small business, 100 percent of that amount shall be carried~~  
16 ~~forward as provided in subdivision (e):~~

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

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 ~~(4) In the case of a taxpayer who has a net operating loss in a~~  
26 ~~taxable year beginning on or after January 1, 1994, and who~~  
27 ~~operates a business that qualifies as both a new business and an~~  
28 ~~eligible small business under this section, that business shall be~~  
29 ~~treated as a new business for the first three taxable years of the~~  
30 ~~new business:~~

31 ~~(5) In the case of a taxpayer who has a net operating loss in a~~  
32 ~~taxable year beginning on or after January 1, 1994, and who~~  
33 ~~operates more than one business, and more than one of those~~  
34 ~~businesses qualifies as either a new business or an eligible small~~  
35 ~~business under this section, paragraph (2) shall be applied first,~~  
36 ~~except that if there is any remaining portion of the net operating~~  
37 ~~loss after application of clause (i) of subparagraph (B) of paragraph~~  
38 ~~(2), paragraph (3) shall be applied to the remaining portion of the~~  
39 ~~net operating loss as though that remaining portion of the net~~  
40 ~~operating loss constituted the entire net operating loss:~~

1     ~~(6) For purposes of this section, “net loss” means the amount~~  
2     ~~of net loss after application of Sections 465 and 469 of the Internal~~  
3     ~~Revenue Code.~~

4     ~~(e) For any taxable year in which the taxpayer has in effect a~~  
5     ~~water’s-edge election under Section 25110, the deduction of a net~~  
6     ~~operating loss carryover shall be denied to the extent that the net~~  
7     ~~operating loss carryover was determined by taking into account~~  
8     ~~the income and factors of an affiliated corporation in a combined~~  
9     ~~report whose income and apportionment factors would not have~~  
10    ~~been taken into account if a water’s-edge election under Section~~  
11    ~~25110 had been in effect for the taxable year in which the loss was~~  
12    ~~incurred.~~

13    ~~(d) Net operating loss carrybacks shall not be allowed.~~

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

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

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

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

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

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

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

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

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

39    ~~(4) The net operating loss attributable to taxable years beginning~~  
40    ~~on or after January 1, 1987, and before January 1, 1994, shall be~~

1 a net operating loss carryover to each of the 10 taxable years  
2 following the year of the loss if it is incurred by a corporation that  
3 was either of the following:

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

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

13 (f) For purposes of this section:

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

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

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

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

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

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

1 (A) The determination of the relative fair market values of the  
2 acquired assets and the total assets shall be made as of the last day  
3 of the first taxable year in which the taxpayer (or any related  
4 person) first uses any of the acquired trade or business assets in  
5 its business activity.

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

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

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

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

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

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

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

11 ~~(B) For purposes of this paragraph:~~

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

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

25 ~~(h) For purposes of corporations whose net income is determined~~  
26 ~~under Chapter 17 (commencing with Section 25101), Section~~  
27 ~~25108 shall apply to each of the following:~~

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

30 ~~(2) The amount of any loss carry forward that may be deducted~~  
31 ~~in any taxable year.~~

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

35 ~~(j) The Franchise Tax Board may prescribe appropriate~~  
36 ~~regulations to carry out the purposes of this section, including any~~  
37 ~~regulations necessary to prevent the avoidance of the purposes of~~  
38 ~~this section through split-ups, shell corporations, partnerships,~~  
39 ~~tiered ownership structures, or otherwise.~~

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

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

9     ~~SEC. 5. Section 24416.21 of the Revenue and Taxation Code~~  
 10 ~~is amended to read:~~

11     ~~24416.21. (a) Notwithstanding Sections 24416, 24416.1,~~  
 12 ~~24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.20 of~~  
 13 ~~this code and Section 172 of the Internal Revenue Code, no net~~  
 14 ~~operating loss deduction shall be allowed for any taxable year~~  
 15 ~~beginning on or after January 1, 2008, and before January 1, 2012.~~

16     ~~(b) For any net operating loss or carryover of a net operating~~  
 17 ~~loss for which a deduction is denied by subdivision (a), the~~  
 18 ~~carryover period under Section 172 of the Internal Revenue Code~~  
 19 ~~shall be extended as follows:~~

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

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

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

26     ~~(4) By four years, for losses incurred in taxable years beginning~~  
 27 ~~before January 1, 2008.~~

28     ~~(e) The disallowance of any net operating loss deduction for~~  
 29 ~~any taxable year beginning on or after January 1, 2008, and before~~  
 30 ~~January 1, 2010, pursuant to subdivision (a) shall not apply to a~~  
 31 ~~taxpayer with income subject to tax under this part of less than~~  
 32 ~~five hundred thousand dollars (\$500,000) for the taxable year.~~

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

38     ~~(2) For purposes of this subdivision, "preapportioned income"~~  
 39 ~~means net income after state adjustments, before the application~~  
 40 ~~of the apportionment and allocation provisions of this part.~~

1 ~~(3) For taxpayers that are required to be included in a combined~~  
2 ~~report under Section 25101 or authorized to be included in a~~  
3 ~~combined report under Section 25101.15, the amount prescribed~~  
4 ~~in paragraph (1) shall apply to the aggregate amount of~~  
5 ~~preapportioned income for all members included in a combined~~  
6 ~~report.~~

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

17 ~~(f) The Legislature finds and declares that the addition of~~  
18 ~~subdivision (e) to this section by the act adding this subdivision~~  
19 ~~fulfills a statewide public purpose by providing necessary tax relief~~  
20 ~~for 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 or sale during a~~  
23 ~~taxable year prior to August 28, 2008, for which the gain could be~~  
24 ~~offset with existing net operating loss deductions and the sale or~~  
25 ~~transfer occurred pursuant to a plan of reorganization under Chapter~~  
26 ~~11 of Title 11 of the United States Code, in order to ensure that~~  
27 ~~these taxpayers are not permanently denied the net operating loss~~  
28 ~~deduction.~~

29 ~~SEC. 6. Section 24416.22 of the Revenue and Taxation Code~~  
30 ~~is amended to read:~~

31 ~~24416.22. Notwithstanding Section 24416.1, 24416.2, 24416.4,~~  
32 ~~24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss~~  
33 ~~attributable to a taxable year beginning on or after January 1, 2008,~~  
34 ~~shall be a net operating carryover to each of the 20 taxable years~~  
35 ~~following the year of the loss.~~

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

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