

ASSEMBLY BILL

No. 1564

Introduced by Assembly Member V. Manuel Pérez

January 29, 2014

An act to add Article 4.5 (commencing with Section 12097) to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government Code, and to amend Sections 17052.12 and 23609 of, and to add Section 19535 to, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1564, as introduced, V. Manuel Pérez. Income taxes: research and development credit: credit sale and purchase.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit for a percentage of specified research expenses.

This bill would increase that percentage by 3% each taxable year for 5 taxable years and then return to the current rate. This bill would limit the credit to a 10-year carryover period. This bill would create a Research and Development Tax Credit Trade Program, which the Governor's Office of Business and Economic Development (GO-Biz) would administer to authorize taxpayers to purchase and sell the credits. This bill would appropriate a portion of the money made from the sale of the credits to GO-Biz and the Franchise Tax Board for the costs incurred by the agencies in administering the program. This bill would impose specified auditing requirements on the Franchise Tax Board related to this credit, as specified.

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 2/3 of the membership of each house of the Legislature.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. The Legislature finds and declares the following:

2 (a) California’s greatest economic asset is its diverse economy
3 that supports key industry clusters that rely upon innovation to
4 compete globally.

5 (b) California is uniquely situated to benefit from increasing
6 research and development tax credits because of California’s world
7 renowned academic institutions, industry clusters, and diverse
8 population that attracts worldwide talent.

9 (c) Recent studies conducted by the Public Policy Institute of
10 California ranked California fourth in the nation in entrepreneurial
11 energy and second in the nation in innovation capacity. However,
12 California was ranked as having only the 43rd most favorable
13 corporate tax structure. This low raking artificially reduces the
14 capacity of research and development that could occur in the state
15 because companies are more likely to expand to other states or
16 counties where they will be taxed at a lower level.

17 (d) Creating an environment rich in research and development
18 spawns the growth of manufacturing. In the last 10 years, California
19 has declined from the sixth largest economy in the world to the
20 ninth, which is behind Brazil. During that time, manufacturing
21 declined in California from 1.865 million jobs to 1.257 million
22 jobs.

23 (e) California needs to invest in the innovation economy by
24 eliminating the roadblocks in state law and regulations and by
25 developing a tax system that rewards capital expenditures in order
26 to ensure that the private sector will invest financial capital and
27 intellectual capital in California.

28 (f) California needs to support the creation of new manufacturing
29 jobs created by the private sector in the innovation economy with
30 a highly skilled workforce.

31 SEC. 2. It is the intent of the Legislature to do the following:

1 (a) Incrementally increase the research and development tax
2 credits under the Personal Income Tax Law and the Corporation
3 Tax Law up to 15 percent for a five-year period.

4 (b) Reduce California's research and development tax credits
5 by creating a 10-year carryover maximum, focusing the credits on
6 startup businesses.

7 (c) Create new and clearly defined auditing procedures for the
8 Franchise Tax Board relating to this credit to allow taxpayers
9 claiming a research and development tax credit to defend their
10 research and development activities.

11 SEC. 3. Article 4.5 (commencing with Section 12097) is added
12 to Chapter 1.6 of Part 2 of Division 3 of Title 2 of the Government
13 Code, to read:

14
15 Article 4.5. The Research and Development Tax Credit Trade
16 Program
17

18 12097. The Governor's Office of Business and Economic
19 Development (GO-Biz) shall develop and administer a program
20 to allow the sale or purchase of research and development tax
21 credits allowed under Sections 17052.12 and 23609 of the Revenue
22 and Taxation Code. GO-Biz shall create an Internet Web site
23 through which approved taxpayers may, by January 1, 2017, make
24 such sale or purchase.

25 (a) The Franchise Tax Board shall notify GO-Biz quarterly of
26 all taxpayers that claim a credit under Sections 17052.12 and 23609
27 of the Revenue and Taxation Code, and the amount of credit
28 claimed.

29 (b) A taxpayer may request approval by GO-Biz to sell or
30 purchase a credit.

31 (c) GO-Biz shall approve a taxpayer before that taxpayer may
32 sell or purchase the credits.

33 (1) GO-Biz shall approve a taxpayer to sell its credits if that
34 taxpayer has all of the following:

35 (A) A facility in which research and development occurs in the
36 state.

37 (B) Less than fifty million dollars (\$50,000,000) in earnings
38 before income tax, depreciation, and amortization.

39 (C) Unused research and development tax credits from a
40 previous taxable year.

1 (2) GO-Biz shall approve a taxpayer to purchase a research and
2 development tax credit if all of the following requirements are
3 met:

4 (A) The taxpayer has had qualified research expenses, as defined
5 in Sections 17052.12 and 23609 of the Revenue and Taxation Code
6 and Section 41 of the Internal Revenue Code, within the past five
7 years.

8 (B) The taxpayer conducts a trade or business in the state.

9 (d) If a taxpayer is approved, GO-Biz shall create an online
10 account for the taxpayer to allow the taxpayer to log into the
11 Internet Web site to sell or purchase the credits.

12 (e) A taxpayer shall not be approved to sell or purchase more
13 than five million dollars (\$5,000,000) in unused research and
14 development tax credits per taxable year.

15 (f) If the taxpayer does not reinvest the money received from
16 the sale of the credit into the taxpayer's trade or business or if the
17 purchased credits reduce the taxpayer's tax liability by more than
18 50 percent, any remaining unapplied credit shall be canceled and
19 any previously applied credit that was not reinvested or that
20 exceeds 50 percent of the taxpayer's tax liability shall be
21 recaptured, and the taxpayer shall be liable for any increase in tax
22 attributable to the recapture of any credit previously allowed under
23 this section.

24 (g) The price of the credit shall be based on the open-market
25 demand.

26 (h) GO-Biz shall notify the Franchise Tax Board of each sale
27 or purchase of a credit, the identity of the taxpayer selling the
28 credit, the identity of the taxpayer that purchased the credit, and
29 the amount of the credit sold quarterly. The Franchise Tax Board
30 shall review this information to ensure that a credit is not being
31 used multiple times.

32 12097.1. (a) There is hereby established in the State Treasury
33 the Research and Development Tax Credit Trade Fund.

34 (b) (1) Until GO-Biz has been fully reimbursed for its costs of
35 developing, creating, and starting the Research and Development
36 Tax Credit Trade Program, 15 percent of each credit sold or
37 purchased on the Internet Web site established by GO-Biz shall
38 be deposited into the Research and Development Tax Credit Trade
39 Fund for the purpose of funding this program pursuant to Section
40 12097, and appropriated as follows:

1 (A) Thirteen percent of each credit to GO-Biz for the
2 administrative and start-up costs of implementing this program.

3 (B) Two percent of each credit to the Franchise Tax Board for
4 the administrative costs of implementing this program.

5 (2) The remaining 85 percent of each credit may be used as a
6 credit against the “net tax” or “tax,” as applicable of the taxpayer
7 that purchased the credit.

8 (c) (1) Once GO-Biz has been fully reimbursed for its costs of
9 developing, creating, and starting this program, 5 percent of each
10 credit sold through the Internet Web site established by GO-Biz
11 shall be deposited into the Research and Development Tax Credit
12 Trade Fund for the purpose of funding the Research and
13 Development Tax Credit Trade Program pursuant to Section 12097,
14 and appropriated as follows:

15 (A) Three percent of each credit to GO-Biz for the administrative
16 costs of implementing this program.

17 (B) Two percent of each credit to the Franchise Tax Board for
18 the administrative costs of implementing this program.

19 (2) The remaining 95 percent of each credit may be used as a
20 credit against the “net tax” or “tax,” as applicable of the taxpayer
21 that purchased the credit.

22 SEC. 4. Section 17052.12 of the Revenue and Taxation Code
23 is amended to read:

24 17052.12. For each taxable year beginning on or after January
25 1, 1987, there shall be allowed as a credit against the “net tax” (as
26 defined by Section 17039) for the taxable year an amount
27 determined in accordance with Section 41 of the Internal Revenue
28 Code, except as follows:

29 (a) For each taxable year beginning before January 1, 1997, the
30 reference to “20 percent” in Section 41(a)(1) of the Internal
31 Revenue Code is modified to read “8 percent.”

32 (b) (1) For each taxable year beginning on or after January 1,
33 1997, and before January 1, 1999, the reference to “20 percent”
34 in Section 41(a)(1) of the Internal Revenue Code is modified to
35 read “11 percent.”

36 (2) For each taxable year beginning on or after January 1, 1999,
37 and before January 1, 2000, the reference to “20 percent” in Section
38 41(a)(1) of the Internal Revenue Code is modified to read “12
39 percent.”

- 1 (3) For each taxable year beginning on or after January 1, 2000,
 2 *and before January 1, 2014*, the reference to “20 percent” in
 3 Section 41(a)(1) of the Internal Revenue Code is modified to read
 4 “15 percent.”
- 5 (4) *For each taxable year beginning on or after January 1,*
 6 *2014, and before January 1, 2015*, the reference to “20 percent”
 7 *in Section 41(a)(1) of the Internal Revenue Code is modified to*
 8 *read “18 percent.”*
- 9 (5) *For each taxable year beginning on or after January 1,*
 10 *2015, and before January 1, 2016*, the reference to “20 percent”
 11 *in Section 41(a)(1) of the Internal Revenue Code is modified to*
 12 *read “21 percent.”*
- 13 (6) *For each taxable year beginning on or after January 1,*
 14 *2016, and before January 1, 2017*, the reference to “20 percent”
 15 *in Section 41(a)(1) of the Internal Revenue Code is modified to*
 16 *read “24 percent.”*
- 17 (7) *For each taxable year beginning on or after January 1,*
 18 *2017, and before January 1, 2018*, the reference to “20 percent”
 19 *in Section 41(a)(1) of the Internal Revenue Code is modified to*
 20 *read “27 percent.”*
- 21 (8) *For each taxable year beginning on or after January 1,*
 22 *2018, and before January 1, 2019*, the reference to “20 percent”
 23 *in Section 41(a)(1) of the Internal Revenue Code is modified to*
 24 *read “30 percent.”*
- 25 (9) *For each taxable year beginning on or after January 1,*
 26 *2019*, the reference to “20 percent” *in Section 41(a)(1) of the*
 27 *Internal Revenue Code is modified to read “15 percent.”*
- 28 (c) Section 41(a)(2) of the Internal Revenue Code shall not
 29 apply.
- 30 (d) “Qualified research” shall include only research conducted
 31 in California.
- 32 (e) In the case where the credit allowed under this section
 33 exceeds the “net tax,” the excess may be carried over to reduce
 34 the “net tax” in the following year, and succeeding *nine* years if
 35 necessary, until the credit has been exhausted.
- 36 (f) (1) With respect to any expense paid or incurred after the
 37 operative date of Section 6378, Section 41(b)(1) of the Internal
 38 Revenue Code is modified to exclude from the definition of
 39 “qualified research expense” any amount paid or incurred for

1 tangible personal property that is eligible for the exemption from
2 sales or use tax provided by Section 6378.

3 (2) For each taxable year beginning on or after January 1, 1998,
4 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
5 Internal Revenue Code, relating to contract research expenses, is
6 modified to read “this part or Part 11 (commencing with Section
7 23001).”

8 (g) (1) For each taxable year beginning on or after January 1,
9 2000:

10 (A) The reference to “3 percent” in Section 41(c)(4)(A)(i) of
11 the Internal Revenue Code is modified to read “one and forty-nine
12 hundredths of one percent.”

13 (B) The reference to “4 percent” in Section 41(c)(4)(A)(ii) of
14 the Internal Revenue Code is modified to read “one and
15 ninety-eight hundredths of one percent.”

16 (C) The reference to “5 percent” in Section 41(c)(4)(A)(iii) of
17 the Internal Revenue Code is modified to read “two and forty-eight
18 hundredths of one percent.”

19 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
20 election under Section 41(c)(4)(A) of the Internal Revenue Code
21 may be made for any taxable year of the taxpayer beginning on or
22 after January 1, 1998. That election shall apply to the taxable year
23 for which made and all succeeding taxable years unless revoked
24 with the consent of the Franchise Tax Board.

25 (3) Section 41(c)(7) of the Internal Revenue Code, relating to
26 gross receipts, is modified to take into account only those gross
27 receipts from the sale of property held primarily for sale to
28 customers in the ordinary course of the taxpayer’s trade or business
29 that is delivered or shipped to a purchaser within this state,
30 regardless of f.o.b. point or any other condition of the sale.

31 (4) Section 41(c)(5) of the Internal Revenue Code, relating to
32 election of alternative simplified credit, shall not apply.

33 (h) Section 41(h) of the Internal Revenue Code, relating to
34 termination, shall not apply.

35 (i) Section 41(g) of the Internal Revenue Code, relating to
36 special rule for passthrough of credit, is modified by each of the
37 following:

38 (1) The last sentence shall not apply.

39 (2) If the amount determined under Section 41(a) of the Internal
40 Revenue Code for any taxable year exceeds the limitation of

1 Section 41(g) of the Internal Revenue Code, that amount may be
2 carried over to other taxable years under the rules of subdivision
3 (e); except that the limitation of Section 41(g) of the Internal
4 Revenue Code shall be taken into account in each subsequent
5 taxable year.

6 (j) Section 41(a)(3) of the Internal Revenue Code shall not apply.

7 (k) Section 41(b)(3)(D) of the Internal Revenue Code, relating
8 to amounts paid to eligible small businesses, universities, and
9 federal laboratories, shall not apply.

10 (l) Section 41(f)(6), relating to energy research consortium,
11 shall not apply.

12 (m) *A taxpayer may sell a credit allowed under this section*
13 *pursuant to Article 4.5 (commencing with Section 12097) of*
14 *Chapter 1.6 of Part, of Division 3 of Title 2 of the Government*
15 *Code.*

16 SEC. 5. Section 19535 is added to the Revenue and Taxation
17 Code, to read:

18 19535. (a) The Franchise Tax Board shall perform the
19 following audit procedures if a taxpayer filed for a credit under
20 Section 17052.12 or 23609 and was not allowed that credit:

21 (1) Use a risk-based approach to conduct an audit. The
22 risk-based approach shall focus on identifying areas of a taxpayer's
23 business or trade in which there may be subjectivity in determining
24 whether an employee of the taxpayer is performing qualified
25 research or nonqualified research, and what percentage of that
26 employee's time is devoted to performing qualified research.

27 (2) Require a general explanation of the taxpayer's trade or
28 business, the role of research and development in the trade or
29 business, the development of new and improved products,
30 processes, and software from the taxpayer.

31 (3) Determine whether the Internal Revenue Services has
32 conducted an examination of the credit allowed under Section 41
33 of the Internal Revenue Code and request a copy of the audit report.
34 If the Internal Revenue Services has conducted an examination,
35 the Franchise Tax Board shall rely upon the findings of the
36 examination, subject to verifying that the research activities and
37 costs were incurred in state.

38 (4) Conduct a physical tour of the taxpayer's facilities and
39 interview employees of the taxpayer that are performing qualified
40 research. A physical tour should be conducted prior to arriving at

1 a determination that a taxpayer's activities do not qualify as
2 qualified research, as defined in Sections 17052.12 and 23609.
3 The tour shall include the area in which research is performed and
4 follow a product or process through its life cycle beginning with
5 development and ending in production.

6 (5) Identify the types of employees dedicated to research,
7 production, or administrative duties, or a mixture of any of those
8 activities.

9 (b) The Franchise Tax Board may perform the following audit
10 procedures if a taxpayer filed for a credit under Section 17052.12
11 or 23609 and was not allowed that credit and the auditor deems it
12 necessary:

13 (1) Ask the taxpayer to provide examples of research projects
14 from the examination years and to describe projects that are
15 currently under development.

16 (2) Ask the taxpayer to explain each step of the development
17 process, where mixed-services are performed, and distinguish
18 between production or administration functions and research.

19 (c) If the Franchise Tax Board determines a particular expense
20 to not be a qualified research expenditure, a taxpayer shall be
21 allowed an opportunity to provide additional supporting records.
22 If an adjustment in whether an expense is considered a qualified
23 research expense is necessary based on the taxpayers additional
24 supporting records, the Franchise Tax Board shall explain and
25 document the discrepancy. An adjustment based upon mere
26 criticism of a taxpayer's workpapers, study, methods, or vague
27 disallowance for law of substantiation, without actual information
28 or evidence that contradict a taxpayer's documents or other
29 evidence shall not be upheld. A lack of substantiation shall be a
30 valid reason for disallowing a credit when the taxpayer only
31 submits vague testimony.

32 SEC. 6. Section 23609 of the Revenue and Taxation Code is
33 amended to read:

34 23609. For each taxable year beginning on or after January 1,
35 1987, there shall be allowed as a credit against the "tax" (as defined
36 by Section 23036) an amount determined in accordance with
37 Section 41 of the Internal Revenue Code, except as follows:

38 (a) For each taxable year beginning before January 1, 1997,
39 both of the following modifications shall apply:

- 1 (1) The reference to “20 percent” in Section 41(a)(1) of the
2 Internal Revenue Code is modified to read “8 percent.”
- 3 (2) The reference to “20 percent” in Section 41(a)(2) of the
4 Internal Revenue Code is modified to read “12 percent.”
- 5 (b) (1) For each taxable year beginning on or after January 1,
6 1997, and before January 1, 1999, both of the following
7 modifications shall apply:
- 8 (A) The reference to “20 percent” in Section 41(a)(1) of the
9 Internal Revenue Code is modified to read “11 percent.”
- 10 (B) The reference to “20 percent” in Section 41(a)(2) of the
11 Internal Revenue Code is modified to read “24 percent.”
- 12 (2) For each taxable year beginning on or after January 1, 1999,
13 and before January 1, 2000, both of the following shall apply:
- 14 (A) The reference to “20 percent” in Section 41(a)(1) of the
15 Internal Revenue Code is modified to read “12 percent.”
- 16 (B) The reference to “20 percent” in Section 41(a)(2) of the
17 Internal Revenue Code is modified to read “24 percent.”
- 18 (3) For each taxable year beginning on or after January 1, 2000,
19 *and before January 1, 2014*, both of the following shall apply:
- 20 (A) The reference to “20 percent” in Section 41(a)(1) of the
21 Internal Revenue Code is modified to read “15 percent.”
- 22 (B) The reference to “20 percent” in Section 41(a)(2) of the
23 Internal Revenue Code is modified to read “24 percent.”
- 24 (4) *For each taxable year beginning on or after January 1,*
25 *2014, and before January 1, 2015, both of the following shall*
26 *apply:*
- 27 (A) *The reference to “20 percent” in Section 41(a)(1) of the*
28 *Internal Revenue Code is modified to read “18 percent.”*
- 29 (B) *The reference to “20 percent” in Section 41(a)(2) of the*
30 *Internal Revenue Code is modified to read “27 percent.”*
- 31 (5) *For each taxable year beginning on or after January 1,*
32 *2015, and before January 1, 2016, both of the following shall*
33 *apply:*
- 34 (A) *The reference to “20 percent” in Section 41(a)(1) of the*
35 *Internal Revenue Code is modified to read “21 percent.”*
- 36 (B) *The reference to “20 percent” in Section 41(a)(2) of the*
37 *Internal Revenue Code is modified to read “30 percent.”*
- 38 (6) *For each taxable year beginning on or after January 1,*
39 *2016, and before January 1, 2017, both of the following shall*
40 *apply:*

1 (A) The reference to “20 percent” in Section 41(a)(1) of the
2 Internal Revenue Code is modified to read “24 percent.”

3 (B) The reference to “20 percent” in Section 41(a)(2) of the
4 Internal Revenue Code is modified to read “33 percent.”

5 (7) For each taxable year beginning on or after January 1,
6 2017, and before January 1, 2018, both of the following shall
7 apply:

8 (A) The reference to “20 percent” in Section 41(a)(1) of the
9 Internal Revenue Code is modified to read “27 percent.”

10 (B) The reference to “20 percent” in Section 41(a)(2) of the
11 Internal Revenue Code is modified to read “36 percent.”

12 (8) For each taxable year beginning on or after January 1,
13 2018, and before January 1, 2019, both of the following shall
14 apply:

15 (A) The reference to “20 percent” in Section 41(a)(1) of the
16 Internal Revenue Code is modified to read “30 percent.”

17 (B) The reference to “20 percent” in Section 41(a)(2) of the
18 Internal Revenue Code is modified to read “39 percent.”

19 (9) For each taxable year beginning on or after January 1,
20 2019, both of the following shall apply:

21 (A) The reference to “20 percent” in Section 41(a)(1) of the
22 Internal Revenue Code is modified to read “15 percent.”

23 (B) The reference to “20 percent” in Section 41(a)(2) of the
24 Internal Revenue Code is modified to read “24 percent.”

25 (c) (1) With respect to any expense paid or incurred after the
26 operative date of Section 6378, Section 41(b)(1) of the Internal
27 Revenue Code is modified to exclude from the definition of
28 “qualified research expense” any amount paid or incurred for
29 tangible personal property that is eligible for the exemption from
30 sales or use tax provided by Section 6378.

31 (2) “Qualified research” and “basic research” shall include only
32 research conducted in California.

33 (d) The provisions of Section 41(e)(7)(A) of the Internal
34 Revenue Code, shall be modified so that “basic research,” for
35 purposes of this section, includes any basic or applied research
36 including scientific inquiry or original investigation for the
37 advancement of scientific or engineering knowledge or the
38 improved effectiveness of commercial products, except that the
39 term does not include any of the following:

40 (1) Basic research conducted outside California.

1 (2) Basic research in the social sciences, arts, or humanities.

2 (3) Basic research for the purpose of improving a commercial
3 product if the improvements relate to style, taste, cosmetic, or
4 seasonal design factors.

5 (4) Any expenditure paid or incurred for the purpose of
6 ascertaining the existence, location, extent, or quality of any deposit
7 of ore or other mineral (including oil and gas).

8 (e) (1) In the case of a taxpayer engaged in any
9 biopharmaceutical research activities that are described in codes
10 2833 to 2836, inclusive, or any research activities that are described
11 in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard
12 Industrial Classification (SIC) Manual published by the United
13 States Office of Management and Budget, 1987 edition, or any
14 other biotechnology research and development activities, the
15 provisions of Section 41(e)(6) of the Internal Revenue Code shall
16 be modified to include both of the following:

17 (A) A qualified organization as described in Section
18 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
19 institution of higher education as described in Section 3304(f) of
20 the Internal Revenue Code.

21 (B) A charitable research hospital owned by an organization
22 that is described in Section 501(c)(3) of the Internal Revenue Code,
23 is exempt from taxation under Section 501(a) of the Internal
24 Revenue Code, is not a private foundation, is designated a
25 “specialized laboratory cancer center,” and has received Clinical
26 Cancer Research Center status from the National Cancer Institute.

27 (2) For purposes of this subdivision:

28 (A) “Biopharmaceutical research activities” means those
29 activities that use organisms or materials derived from organisms,
30 and their cellular, subcellular, or molecular components, in order
31 to provide pharmaceutical products for human or animal
32 therapeutics and diagnostics. Biopharmaceutical activities make
33 use of living organisms to make commercial products, as opposed
34 to pharmaceutical activities that make use of chemical compounds
35 to produce commercial products.

36 (B) “Other biotechnology research and development activities”
37 means research and development activities consisting of the
38 application of recombinant DNA technology to produce
39 commercial products, as well as research and development
40 activities regarding pharmaceutical delivery systems designed to

1 provide a measure of control over the rate, duration, and site of
2 pharmaceutical delivery.

3 (f) In the case where the credit allowed by this section exceeds
4 the “tax,” the excess may be carried over to reduce the “tax” in
5 the following year, and succeeding *nine* years if necessary, until
6 the credit has been exhausted.

7 (g) For each taxable year beginning on or after January 1, 1998,
8 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
9 Internal Revenue Code, relating to contract research expenses, is
10 modified to read “this part or Part 10 (commencing with Section
11 17001).”

12 (h) (1) For each taxable year beginning on or after January 1,
13 2000:

14 (A) The reference to “3 percent” in Section 41(c)(4)(A)(i) of
15 the Internal Revenue Code is modified to read “one and forty-nine
16 hundredths of one percent.”

17 (B) The reference to “4 percent” in Section 41(c)(4)(A)(ii) of
18 the Internal Revenue Code is modified to read “one and
19 ninety-eight hundredths of one percent.”

20 (C) The reference to “5 percent” in Section 41(c)(4)(A)(iii) of
21 the Internal Revenue Code is modified to read “two and forty-eight
22 hundredths of one percent.”

23 (2) Section 41(c)(4)(B) shall not apply and in lieu thereof an
24 election under Section 41(c)(4)(A) of the Internal Revenue Code
25 may be made for any taxable year of the taxpayer beginning on or
26 after January 1, 1998. That election shall apply to the taxable year
27 for which made and all succeeding taxable years unless revoked
28 with the consent of the Franchise Tax Board.

29 (3) Section 41(c)(7) of the Internal Revenue Code, relating to
30 gross receipts, is modified to take into account only those gross
31 receipts from the sale of property held primarily for sale to
32 customers in the ordinary course of the taxpayer’s trade or business
33 that is delivered or shipped to a purchaser within this state,
34 regardless of f.o.b. point or any other condition of the sale.

35 (4) Section 41(c)(5) of the Internal Revenue Code, relating to
36 election of the alternative simplified credit, shall not apply.

37 (i) Section 41(h) of the Internal Revenue Code, relating to
38 termination, shall not apply.

- 1 (j) Section 41(g) of the Internal Revenue Code, relating to
- 2 special rule for passthrough of credit, is modified by each of the
- 3 following:
- 4 (1) The last sentence shall not apply.
- 5 (2) If the amount determined under Section 41(a) of the Internal
- 6 Revenue Code for any taxable year exceeds the limitation of
- 7 Section 41(g) of the Internal Revenue Code, that amount may be
- 8 carried over to other taxable years under the rules of subdivision
- 9 (f), except that the limitation of Section 41(g) of the Internal
- 10 Revenue Code shall be taken into account in each subsequent
- 11 taxable year.
- 12 (k) Section 41(a)(3) of the Internal Revenue Code shall not
- 13 apply.
- 14 (l) Section 41(b)(3)(D) of the Internal Revenue Code, relating
- 15 to amounts paid to eligible small businesses, universities, and
- 16 federal laboratories, shall not apply.
- 17 (m) Section 41(f)(6) of the Internal Revenue Code, relating to
- 18 energy research consortium, shall not apply.
- 19 (n) *A taxpayer may sell a credit allowed under this section*
- 20 *pursuant to Article 4.5 (commencing with Section 12097) of*
- 21 *Chapter 1.6 of Part, of Division 3 of Title 2 of the Government*
- 22 *Code.*