

AMENDED IN SENATE APRIL 3, 2013

SENATE BILL

No. 209

Introduced by Senator Lieu

(Principal coauthors: Assembly Members Gorell and Perea)

February 11, 2013

An act to amend ~~Section 10752~~ of *Section 18038.5* of, and to amend, repeal, and add *Section 18152.5* of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 209, as amended, Lieu. ~~Vehicle License Fee Law. Income taxes: exclusion: deferral: qualified small business stock.~~

The Personal Income Tax Law, in modified conformity with federal law, provides various exclusions from gross income in computing tax liability.

This bill would, in reference to specified federal income tax laws, provide that gross income does not include 50% of any gain from the sale or exchange of qualified small business stock, as defined, held for more than 5 years, for taxable years beginning on or after January 1, 2008, and before January 1, 2013, as provided. The bill would additionally, for taxable years beginning on or after January 1, 2016, exclude, and provide for a deferral of, gross income related to the gain from the sale or exchange of qualified small business stock, as provided.

~~The Vehicle License Fee Law, in lieu of an ad valorem property tax upon vehicles, imposes an annual license fee on specified vehicles subject to registration in this state in the amount of 0.65% of the market value of that vehicle, as provided.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: no.

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

1 SECTION 1. Section 18038.5 of the Revenue and Taxation
 2 Code is amended to read:
 3 18038.5. (a) In the case of any sale of qualified small business
 4 stock held by a taxpayer other than a corporation for more than
 5 six months and with respect to which that taxpayer elects the
 6 application of this section, gain from that sale shall be recognized
 7 only to the extent that the amount realized on that sale exceeds:
 8 (1) The cost of any qualified small business stock purchased by
 9 the taxpayer during the 60-day period beginning on the date of
 10 that sale, reduced by
 11 (2) Any portion of the cost previously taken into account under
 12 this section.
 13 This section shall not apply to any gain that is treated as ordinary
 14 income for purposes of this part.
 15 (b) For purposes of this section:
 16 (1) The term “qualified small business stock” has the meaning
 17 given that term by subdivision (c) of Section 18152.5.
 18 (2) A taxpayer shall be treated as having purchased any property
 19 if, but for paragraph (3), the unadjusted basis of that property in
 20 the hands of the taxpayer would be its cost (within the meaning
 21 of Section 1012 of the Internal Revenue Code).
 22 (3) If gain from any sale is not recognized by reason of
 23 subdivision (a), that gain shall be applied to reduce (in the order
 24 acquired) the basis for determining gain or loss of any qualified
 25 small business stock that is purchased by the taxpayer during the
 26 60-day period described in subdivision (a).
 27 (4) For purposes of determining whether the nonrecognition of
 28 gain under subdivision (a) applies to stock that is sold, both of the
 29 following shall apply:
 30 (A) The taxpayer’s holding period for that stock and the stock
 31 referred to in paragraph (1) of subdivision (a) shall be determined
 32 without regard to Section 1223 of the Internal Revenue Code.
 33 (B) Only the first six months of the taxpayer’s holding period
 34 for the stock referred to in paragraph (1) of subdivision (a) shall

1 be taken into account for purposes of applying paragraph (2) of
2 subdivision (c) of Section 18152.5.

3 (5) Rules similar to the rules of subdivisions (f), (g), (h), (i), (j),
4 and (k) of Section 18152.5 shall apply.

5 (c) This section shall apply to sales made after August 5, 1997,
6 *and before January 1, 2013, and to sales made on and after*
7 *January 1, 2016.*

8 *SEC. 2. Section 18152.5 of the Revenue and Taxation Code is*
9 *amended to read:*

10 18152.5. (a) For purposes of this part, gross income shall not
11 include 50 percent of any gain from the sale or exchange of
12 qualified small business stock held for more than five years.

13 (b) (1) If the taxpayer has eligible gain for the taxable year
14 from one or more dispositions of stock issued by any corporation,
15 the aggregate amount of the gain from dispositions of stock issued
16 by the corporation which may be taken into account under
17 subdivision (a) for the taxable year shall not exceed the greater of
18 either of the following:

19 (A) Ten million dollars (\$10,000,000) reduced by the aggregate
20 amount of eligible gain taken into account by the taxpayer under
21 subdivision (a) for prior taxable years and attributable to
22 dispositions of stock issued by the corporation.

23 (B) Ten times the aggregate adjusted bases of qualified small
24 business stock issued by the corporation and disposed of by the
25 taxpayer during the taxable year. For purposes of subparagraph
26 (B), the adjusted basis of any stock shall be determined without
27 regard to any addition to basis after the date on which the stock
28 was originally issued.

29 (2) For purposes of this subdivision, the term “eligible gain”
30 means any gain from the sale or exchange of qualified small
31 business stock held for more than five years.

32 (3) (A) In the case of a married individual filing a separate
33 return, subparagraph (A) of paragraph (1) shall be applied by
34 substituting five million dollars (\$5,000,000) for ten million dollars
35 (\$10,000,000).

36 (B) In the case of a married taxpayer filing a joint return, the
37 amount of gain taken into account under subdivision (a) shall be
38 allocated equally between the spouses for purposes of applying
39 this subdivision to subsequent taxable years.

1 (C) For purposes of this subdivision, marital status shall be
2 determined under Section 7703 of the Internal Revenue Code.

3 (c) For purposes of this section:

4 (1) Except as otherwise provided in this section, the term
5 “qualified small business stock” means any stock in a C corporation
6 which is originally issued after August 10, 1993, if both of the
7 following apply:

8 (A) As of the date of issuance, the corporation is a qualified
9 small business.

10 (B) Except as provided in subdivisions (f) and (h), the stock is
11 acquired by the taxpayer at its original issue (directly or through
12 an underwriter) in either of the following manners:

13 (i) In exchange for money or other property (not including
14 stock).

15 (ii) As compensation for services provided to the corporation
16 (other than services performed as an underwriter of the stock).

17 (2) (A) Stock in a corporation shall not be treated as qualified
18 small business stock unless, during substantially all of the
19 taxpayer’s holding period for the stock, the corporation meets the
20 active business requirements of subdivision (e) and the corporation
21 is a C corporation.

22 (B) (i) Notwithstanding subdivision (e), a corporation shall be
23 treated as meeting the active business requirements of subdivision
24 (e) for any period during which the corporation qualifies as a
25 specialized small business investment company.

26 (ii) For purposes of clause (i), the term “specialized small
27 business investment company” means any eligible corporation (as
28 defined in paragraph (4) of subdivision (e)) that is licensed to
29 operate under Section 301(d) of the Small Business Investment
30 Act of 1958 (as in effect on May 13, 1993).

31 (3) (A) Stock acquired by the taxpayer shall not be treated as
32 qualified small business stock if, at any time during the four-year
33 period beginning on the date two years before the issuance of the
34 stock, the corporation issuing the stock purchased (directly or
35 indirectly) any of its stock from the taxpayer or from a related
36 person (within the meaning of Section 267(b) or 707(b)) to the
37 taxpayer.

38 (B) Stock issued by a corporation shall not be treated as qualified
39 small business stock if, during the two-year period beginning on
40 the date one year before the issuance of the stock, the corporation

1 made one or more purchases of its stock with an aggregate value
2 (as of the time of the respective purchases) exceeding 5 percent
3 of the aggregate value of all of its stock as of the beginning of the
4 two-year period.

5 (C) If any transaction is treated under Section 304(a) of the
6 Internal Revenue Code as a distribution in redemption of the stock
7 of any corporation, for purposes of subparagraphs (A) and (B), the
8 corporation shall be treated as purchasing an amount of its stock
9 equal to the amount treated as a distribution in redemption of the
10 stock of the corporation under Section 304(a) of the Internal
11 Revenue Code.

12 (d) For purposes of this section:

13 (1) The term “qualified small business” means any domestic
14 corporation (as defined in Section 7701(a)(4) of the Internal
15 Revenue Code) which is a C corporation if all of the following
16 apply:

17 (A) The aggregate gross assets of the corporation (or any
18 predecessor thereof) at all times on or after July 1, 1993, and before
19 the issuance did not exceed fifty million dollars (\$50,000,000).

20 (B) The aggregate gross assets of the corporation immediately
21 after the issuance (determined by taking into account amounts
22 received in the issuance) do not exceed fifty million dollars
23 (\$50,000,000).

24 (C) At least 80 percent of the corporation’s payroll, as measured
25 by total dollar value, is attributable to employment located within
26 California.

27 (D) The corporation agrees to submit those reports to the
28 Franchise Tax Board and to shareholders as the Franchise Tax
29 Board may require to carry out the purposes of this section.

30 (2) (A) For purposes of paragraph (1), the term “aggregate
31 gross assets” means the amount of cash and the aggregate adjusted
32 basis of other property held by the corporation.

33 (B) For purposes of subparagraph (A), the adjusted basis of any
34 property contributed to the corporation (or other property with a
35 basis determined in whole or in part by reference to the adjusted
36 basis of property so contributed) shall be determined as if the basis
37 of the property contributed to the corporation immediately after
38 the contribution was equal to its fair market value as of the time
39 of the contribution.

1 (3) (A) All corporations which are members of the same
2 parent-subsidiary controlled group shall be treated as one
3 corporation for purposes of this subdivision.

4 (B) For purposes of subparagraph (A), the term
5 “parent-subsidiary controlled group” means any controlled group
6 of corporations as defined in Section 1563(a)(1) of the Internal
7 Revenue Code, except that both of the following shall apply:

8 (i) “More than 50 percent” shall be substituted for “at least 80
9 percent” each place it appears in Section 1563(a)(1) of the Internal
10 Revenue Code.

11 (ii) Section 1563(a)(4) of the Internal Revenue Code shall not
12 apply.

13 (e) (1) For purposes of paragraph (2) of subdivision (c), the
14 requirements of this subdivision are met by a corporation for any
15 period if during that period both of the following apply:

16 (A) At least 80 percent (by value) of the assets of the corporation
17 are used by the corporation in the active conduct of one or more
18 qualified trades or businesses ~~in California~~.

19 (B) The corporation is an eligible corporation.

20 (2) For purposes of paragraph (1), if, in connection with any
21 future qualified trade or business, a corporation is engaged in:

22 (A) Startup activities described in Section 195(c)(1)(A) of the
23 Internal Revenue Code,

24 (B) Activities resulting in the payment or incurring of
25 expenditures which may be treated as research and experimental
26 expenditures under Section 174 of the Internal Revenue Code, or

27 (C) Activities with respect to in-house research expenses
28 described in Section 41(b)(4) of the Internal Revenue Code, then
29 assets used in those activities shall be treated as used in the active
30 conduct of a qualified trade or business. Any determination under
31 this paragraph shall be made without regard to whether a
32 corporation has any gross income from those activities at the time
33 of the determination.

34 (3) For purposes of this subdivision, the term “qualified trade
35 or business” means any trade or business other than any of the
36 following:

37 (A) Any trade or business involving the performance of services
38 in the fields of health, law, engineering, architecture, accounting,
39 actuarial science, performing arts, consulting, athletics, financial
40 services, brokerage services, or any trade or business where the

1 principal asset of the trade or business is the reputation or skill of
2 one or more of its employees.

3 (B) Any banking, insurance, financing, leasing, investing, or
4 similar business.

5 (C) Any farming business (including the business of raising or
6 harvesting trees).

7 (D) Any business involving the production or extraction of
8 products of a character with respect to which a deduction is
9 allowable under Section 613 or 613A of the Internal Revenue
10 Code.

11 (E) Any business of operating a hotel, motel, restaurant, or
12 similar business.

13 (4) For purposes of this subdivision, the term “eligible
14 corporation” means any domestic corporation, except that the term
15 shall not include any of the following:

16 (A) A DISC or former DISC.

17 (B) A corporation with respect to which an election under
18 Section 936 of the Internal Revenue Code is in effect or which has
19 a direct or indirect subsidiary with respect to which the election
20 is in effect.

21 (C) A regulated investment company, real estate investment
22 trust (REIT), or real estate mortgage investment conduit (REMIC).

23 (D) A cooperative.

24 (5) (A) For purposes of this subdivision, stock and debt in any
25 subsidiary corporation shall be disregarded and the parent
26 corporation shall be deemed to own its ratable share of the
27 subsidiary’s assets, and to conduct its ratable share of the
28 subsidiary’s activities.

29 (B) A corporation shall be treated as failing to meet the
30 requirements of paragraph (1) for any period during which more
31 than 10 percent of the value of its assets (in excess of liabilities)
32 consists of stock or securities in other corporations which are not
33 subsidiaries of the corporation (other than assets described in
34 paragraph (6)).

35 (C) For purposes of this paragraph, a corporation shall be
36 considered a subsidiary if the parent owns more than 50 percent
37 of the combined voting power of all classes of stock entitled to
38 vote, or more than 50 percent in value of all outstanding stock, of
39 the corporation.

1 (6) For purposes of subparagraph (A) of paragraph (1), the
2 following assets shall be treated as used in the active conduct of
3 a qualified trade or business:

4 (A) Assets that are held as a part of the reasonably required
5 working capital needs of a qualified trade or business of the
6 corporation.

7 (B) Assets that are held for investment and are reasonably
8 expected to be used within two years to finance research and
9 experimentation in a qualified trade or business or increases in
10 working capital needs of a qualified trade or business. For periods
11 after the corporation has been in existence for at least two years,
12 in no event may more than 50 percent of the assets of the
13 corporation qualify as used in the active conduct of a qualified
14 trade or business by reason of this paragraph.

15 (7) A corporation shall not be treated as meeting the
16 requirements of paragraph (1) for any period during which more
17 than 10 percent of the total value of its assets consists of real
18 property that is not used in the active conduct of a qualified trade
19 or business. For purposes of the preceding sentence, the ownership
20 of, dealing in, or renting of, real property shall not be treated as
21 the active conduct of a qualified trade or business.

22 (8) For purposes of paragraph (1), rights to computer software
23 that produces active business computer software royalties (within
24 the meaning of Section 543(d)(1) of the Internal Revenue Code)
25 shall be treated as an asset used in the active conduct of a trade or
26 business.

27 ~~(9) A corporation shall not be treated as meeting the~~
28 ~~requirements of paragraph (1) for any period during which more~~
29 ~~than 20 percent of the corporation's total payroll expense is~~
30 ~~attributable to employment located outside of California.~~

31 (f) If any stock in a corporation is acquired solely through the
32 conversion of other stock in the corporation that is qualified small
33 business stock in the hands of the taxpayer, both of the following
34 shall apply:

35 (1) The stock so acquired shall be treated as qualified small
36 business stock in the hands of the taxpayer.

37 (2) The stock so acquired shall be treated as having been held
38 during the period during which the converted stock was held.

1 (g) (1) If any amount included in gross income by reason of
2 holding an interest in a pass-through entity meets the requirements
3 of paragraph (2), then both of the following shall apply:

4 (A) The amount shall be treated as gain described in subdivision
5 (a).

6 (B) For purposes of applying subdivision (b), the amount shall
7 be treated as gain from a disposition of stock in the corporation
8 issuing the stock disposed of by the pass-through entity and the
9 taxpayer's proportionate share of the adjusted basis of the
10 pass-through entity in the stock shall be taken into account.

11 (2) An amount meets the requirements of this paragraph if both
12 of the following apply:

13 (A) The amount is attributable to gain on the sale or exchange
14 by the pass-through entity of stock that is qualified small business
15 stock in the hands of the entity (determined by treating the entity
16 as an individual) and that was held by that entity for more than
17 five years.

18 (B) The amount is includable in the gross income of the taxpayer
19 by reason of the holding of an interest in the entity that was held
20 by the taxpayer on the date on which the pass-through entity
21 acquired the stock and at all times thereafter before the disposition
22 of the stock by the pass-through entity.

23 (3) Paragraph (1) shall not apply to any amount to the extent
24 the amount exceeds the amount to which paragraph (1) would have
25 applied if the amount was determined by reference to the interest
26 the taxpayer held in the pass-through entity on the date the qualified
27 small business stock was acquired.

28 (4) For purposes of this subdivision, the term "pass-through
29 entity" means any of the following:

30 (A) Any partnership.

31 (B) Any S corporation.

32 (C) Any regulated investment company.

33 (D) Any common trust fund.

34 (h) For purposes of this section:

35 (1) In the case of a transfer described in paragraph (2), the
36 transferee shall be treated as meeting both of the following:

37 (A) Having acquired the stock in the same manner as the
38 transferor.

1 (B) Having held the stock during any continuous period
2 immediately preceding the transfer during which it was held (or
3 treated as held under this subdivision) by the transferor.

4 (2) A transfer is described in this subdivision if the transfer is
5 any of the following:

6 (A) By gift.

7 (B) At death.

8 (C) From a partnership to a partner of stock with respect to
9 which requirements similar to the requirements of subdivision (g)
10 are met at the time of the transfer (without regard to the five-year
11 holding period requirement).

12 (3) Rules similar to the rules of Section 1244(d)(2) of the
13 Internal Revenue Code shall apply for purposes of this section.

14 (4) (A) In the case of a transaction described in Section 351 of
15 the Internal Revenue Code or a reorganization described in Section
16 368 of the Internal Revenue Code, if qualified small business stock
17 is exchanged for other stock that would not qualify as qualified
18 small business stock but for this subparagraph, the other stock
19 shall be treated as qualified small business stock acquired on the
20 date on which the exchanged stock was acquired.

21 (B) This section shall apply to gain from the sale or exchange
22 of stock treated as qualified small business stock by reason of
23 subparagraph (A) only to the extent of the gain that would have
24 been recognized at the time of the transfer described in
25 subparagraph (A) if Section 351 or 368 of the Internal Revenue
26 Code had not applied at that time. The preceding sentence shall
27 not apply if the stock that is treated as qualified small business
28 stock by reason of subparagraph (A) is issued by a corporation
29 that (as of the time of the transfer described in subparagraph (A))
30 is a qualified small business.

31 (C) For purposes of this paragraph, stock treated as qualified
32 small business stock under subparagraph (A) shall be so treated
33 for subsequent transactions or reorganizations, except that the
34 limitation of subparagraph (B) shall be applied as of the time of
35 the first transfer to which the limitation applied (determined after
36 the application of the second sentence of subparagraph (B)).

37 (D) In the case of a transaction described in Section 351 of the
38 Internal Revenue Code, this paragraph shall apply only if
39 immediately after the transaction the corporation issuing the stock
40 owns directly or indirectly stock representing control (within the

1 meaning of Section 368(c) of the Internal Revenue Code) of the
2 corporation whose stock was exchanged.

3 (i) For purposes of this section:

4 (1) In the case where the taxpayer transfers property (other than
5 money or stock) to a corporation in exchange for stock in the
6 corporation, both of the following shall apply:

7 (A) The stock shall be treated as having been acquired by the
8 taxpayer on the date of the exchange.

9 (B) The basis of the stock in the hands of the taxpayer shall in
10 no event be less than the fair market value of the property
11 exchanged.

12 (2) If the adjusted basis of any qualified small business stock
13 is adjusted by reason of any contribution to capital after the date
14 on which the stock was originally issued, in determining the
15 amount of the adjustment by reason of the contribution, the basis
16 of the contributed property shall in no event be treated as less than
17 its fair market value on the date of the contribution.

18 (j) (1) If the taxpayer has an offsetting short position with
19 respect to any qualified small business stock, subdivision (a) shall
20 not apply to any gain from the sale or exchange of the stock unless
21 both of the following apply:

22 (A) The stock was held by the taxpayer for more than five years
23 as of the first day on which there was such a short position.

24 (B) The taxpayer elects to recognize gain as if the stock was
25 sold on that first day for its fair market value.

26 (2) For purposes of paragraph (1), the taxpayer shall be treated
27 as having an offsetting short position with respect to any qualified
28 small business stock if any of the following apply:

29 (A) The taxpayer has made a short sale of substantially identical
30 property.

31 (B) The taxpayer has acquired an option to sell substantially
32 identical property at a fixed price.

33 (C) To the extent provided in regulations, the taxpayer has
34 entered into any other transaction that substantially reduces the
35 risk of loss from holding the qualified small business stock. For
36 purposes of the preceding sentence, any reference to the taxpayer
37 shall be treated as including a reference to any person who is
38 related (within the meaning of Section 267(b) or 707(b) of the
39 Internal Revenue Code) to the taxpayer.

1 (k) The Franchise Tax Board may prescribe those regulations
2 as may be appropriate to carry out the purposes of this section,
3 including regulations to prevent the avoidance of the purposes of
4 this section through splitups, shell corporations, partnerships, or
5 otherwise.

6 (l) It is the intent of the Legislature that, in construing this
7 section, any regulations that may be promulgated by the Secretary
8 of the Treasury under Section 1202(k) of the Internal Revenue
9 Code shall apply to the extent that those regulations do not conflict
10 with this section or with any regulations that may be promulgated
11 by the Franchise Tax Board.

12 (m) *The amendments made to this section by the act adding this*
13 *subdivision shall apply to each taxable year beginning on or after*
14 *January 1, 2008, and before January 1, 2013.*

15 (n) *This section shall remain in effect only until January 1, 2016,*
16 *and as of that date is repealed, unless a later enacted statute, that*
17 *is enacted before January 1, 2016, deletes or extends that date.*

18 SEC. 3. *Section 18152.5 is added to the Revenue and Taxation*
19 *Code, to read:*

20 *18152.5. (a) For each taxable year beginning on or after*
21 *January 1, 2016, for purposes of this part, gross income shall not*
22 *include 50 percent of any gain from the sale or exchange of*
23 *qualified small business stock held for more than five years.*

24 (b) (1) *If the taxpayer has eligible gain for the taxable year*
25 *from one or more dispositions of stock issued by any corporation,*
26 *the aggregate amount of the gain from dispositions of stock issued*
27 *by the corporation that may be taken into account under*
28 *subdivision (a) for the taxable year shall not exceed the greater*
29 *of either of the following:*

30 (A) *Ten million dollars (\$10,000,000) reduced by the aggregate*
31 *amount of eligible gain taken into account by the taxpayer under*
32 *subdivision (a) for prior taxable years and attributable to*
33 *dispositions of stock issued by the corporation.*

34 (B) *Ten times the aggregate adjusted bases of qualified small*
35 *business stock issued by the corporation and disposed of by the*
36 *taxpayer during the taxable year. For purposes of subparagraph*
37 *(B), the adjusted basis of any stock shall be determined without*
38 *regard to any addition to the basis after the date on which the*
39 *stock was originally issued.*

1 (2) For purposes of this subdivision, the term “eligible gain”
2 means any gain from the sale or exchange of qualified small
3 business stock held for more than five years.

4 (3) (A) In the case of a married individual filing a separate
5 return, subparagraph (A) of paragraph (1) shall be applied by
6 substituting five million dollars (\$5,000,000) for ten million dollars
7 (\$10,000,000).

8 (B) In the case of a married taxpayer filing a joint return, the
9 amount of gain taken into account under subdivision (a) shall be
10 allocated equally between the spouses for purposes of applying
11 this subdivision to subsequent taxable years.

12 (C) For purposes of this subdivision, marital status shall be
13 determined under Section 7703 of the Internal Revenue Code.

14 (c) For purposes of this section:

15 (1) Except as otherwise provided in this section, the term
16 “qualified small business stock” means any stock in a “C”
17 corporation that is originally issued after August 10, 1993, and
18 before January 1, 2013, or issued after January 1, 2016, if both
19 of the following apply:

20 (A) As of the date of issuance, the corporation is a qualified
21 small business.

22 (B) Except as provided in subdivisions (f) and (h), the stock is
23 acquired by the taxpayer at its original issue (directly or through
24 an underwriter) in either of the following manners:

25 (i) In exchange for money or other property (not including
26 stock).

27 (ii) As compensation for services provided to the corporation
28 (other than services performed as an underwriter of the stock).

29 (2) (A) Stock in a corporation shall not be treated as qualified
30 small business stock unless, during substantially all of the
31 taxpayer’s holding period for the stock, the corporation meets the
32 active business requirements of subdivision (e) and the corporation
33 is a “C” corporation.

34 (B) (i) Notwithstanding subdivision (e), a corporation shall be
35 treated as meeting the active business requirements of subdivision
36 (e) for any period during which the corporation qualifies as a
37 specialized small business investment company.

38 (ii) For purposes of clause (i), the term “specialized small
39 business investment company” means any eligible corporation (as
40 defined in paragraph (4) of subdivision (e)) that is licensed to

1 *operate under Section 301(d) of the Small Business Investment*
2 *Act of 1958 (as in effect on May 13, 1993).*

3 (3) (A) *Stock acquired by the taxpayer shall not be treated as*
4 *qualified small business stock if, at any time during the four-year*
5 *period beginning on the date two years before the issuance of the*
6 *stock, the corporation issuing the stock purchased (directly or*
7 *indirectly) any of its stock from the taxpayer or from a related*
8 *person (within the meaning of Section 267(b) or 707(b) of the*
9 *Internal Revenue Code) to the taxpayer.*

10 (B) *Stock issued by a corporation shall not be treated as*
11 *qualified small business stock if, during the two-year period*
12 *beginning on the date one year before the issuance of the stock,*
13 *the corporation made one or more purchases of its stock with an*
14 *aggregate value (as of the time of the respective purchases)*
15 *exceeding 5 percent of the aggregate value of all of its stock as of*
16 *the beginning of the two-year period.*

17 (C) *If any transaction is treated under Section 304(a) of the*
18 *Internal Revenue Code as a distribution in redemption of the stock*
19 *of any corporation, for purposes of subparagraphs (A) and (B),*
20 *the corporation shall be treated as purchasing an amount of its*
21 *stock equal to the amount treated as a distribution in redemption*
22 *of the stock of the corporation under Section 304(a) of the Internal*
23 *Revenue Code.*

24 (d) *For purposes of this section:*

25 (1) *The term “qualified small business” means any domestic*
26 *corporation (as defined in Section 7701(a)(4) of the Internal*
27 *Revenue Code) that is a “C” corporation if all of the following*
28 *apply:*

29 (A) *The aggregate gross assets of the corporation (or any*
30 *predecessor thereof) at all times on or after July 1, 1993, and*
31 *before the issuance did not exceed fifty million dollars*
32 *(\$50,000,000).*

33 (B) *The aggregate gross assets of the corporation immediately*
34 *after the issuance (determined by taking into account amounts*
35 *received in the issuance) do not exceed fifty million dollars*
36 *(\$50,000,000).*

37 (C) *At least 80 percent of the corporation’s payroll, as measured*
38 *by total dollar value, is attributable to employment located within*
39 *California.*

1 (D) The corporation agrees to submit those reports to the
2 Franchise Tax Board and to shareholders as the Franchise Tax
3 Board may require to carry out the purposes of this section.

4 (2) (A) For purposes of paragraph (1), the term “aggregate
5 gross assets” means the amount of cash and the aggregate adjusted
6 basis of other property held by the corporation.

7 (B) For purposes of subparagraph (A), the adjusted basis of
8 any property contributed to the corporation (or other property
9 with a basis determined in whole or in part by reference to the
10 adjusted basis of property so contributed) shall be determined as
11 if the basis of the property contributed to the corporation
12 immediately after the contribution was equal to its fair market
13 value as of the time of the contribution.

14 (3) (A) All corporations that are members of the same
15 parent-subsidiary controlled group shall be treated as one
16 corporation for purposes of this subdivision.

17 (B) For purposes of subparagraph (A), the term
18 “parent-subsidiary controlled group” means any controlled group
19 of corporations as defined in Section 1563(a)(1) of the Internal
20 Revenue Code, except that both of the following shall apply:

21 (i) “More than 50 percent” shall be substituted for “at least 80
22 percent” each place it appears in Section 1563(a)(1) of the Internal
23 Revenue Code.

24 (ii) Section 1563(a)(4) of the Internal Revenue Code shall not
25 apply.

26 (e) (1) For purposes of paragraph (2) of subdivision (c), the
27 requirements of this subdivision are met by a corporation for any
28 period if during that period both of the following apply:

29 (A) At least 80 percent (by value) of the assets of the corporation
30 are used by the corporation in the active conduct of one or more
31 qualified trades or businesses.

32 (B) The corporation is an eligible corporation.

33 (2) For purposes of paragraph (1), if, in connection with any
34 future qualified trade or business, a corporation is engaged in:

35 (A) Startup activities described in Section 195(c)(1)(A) of the
36 Internal Revenue Code,

37 (B) Activities resulting in the payment or incurring of
38 expenditures that may be treated as research and experimental
39 expenditures under Section 174 of the Internal Revenue Code, or

1 (C) Activities with respect to in-house research expenses
2 described in Section 41(b)(4) of the Internal Revenue Code, then
3 assets used in those activities shall be treated as used in the active
4 conduct of a qualified trade or business. Any determination under
5 this paragraph shall be made without regard to whether a
6 corporation has any gross income from those activities at the time
7 of the determination.

8 (3) For purposes of this subdivision, the term “qualified trade
9 or business” means any trade or business other than any of the
10 following:

11 (A) Any trade or business involving the performance of services
12 in the fields of health, law, engineering, architecture, accounting,
13 actuarial science, performing arts, consulting, athletics, financial
14 services, brokerage services, or any trade or business where the
15 principal asset of the trade or business is the reputation or skill
16 of one or more of its employees.

17 (B) Any banking, insurance, financing, leasing, investing, or
18 similar business.

19 (C) Any farming business (including the business of raising or
20 harvesting trees).

21 (D) Any business involving the production or extraction of
22 products of a character with respect to which a deduction is
23 allowable under Section 613 or 613A of the Internal Revenue
24 Code.

25 (E) Any business of operating a hotel, motel, restaurant, or
26 similar business.

27 (4) For purposes of this subdivision, the term “eligible
28 corporation” means any domestic corporation, except that the
29 term shall not include any of the following:

30 (A) A DISC or former DISC.

31 (B) A corporation with respect to which an election under
32 Section 936 of the Internal Revenue Code is in effect or which has
33 a direct or indirect subsidiary with respect to which the election
34 is in effect.

35 (C) A regulated investment company, real estate investment
36 trust (REIT), or real estate mortgage investment conduit (REMIC).

37 (D) A cooperative.

38 (5) (A) For purposes of this subdivision, stock and debt in any
39 subsidiary corporation shall be disregarded and the parent
40 corporation shall be deemed to own its ratable share of the

1 subsidiary's assets, and to conduct its ratable share of the
2 subsidiary's activities.

3 (B) A corporation shall be treated as failing to meet the
4 requirements of paragraph (1) for any period during which more
5 than 10 percent of the value of its assets (in excess of liabilities)
6 consists of stock or securities in other corporations that are not
7 subsidiaries of the corporation (other than assets described in
8 paragraph (6)).

9 (C) For purposes of this paragraph, a corporation shall be
10 considered a subsidiary if the parent owns more than 50 percent
11 of the combined voting power of all classes of stock entitled to
12 vote, or more than 50 percent in value of all outstanding stock, of
13 the corporation.

14 (6) For purposes of subparagraph (A) of paragraph (1), the
15 following assets shall be treated as used in the active conduct of
16 a qualified trade or business:

17 (A) Assets that are held as a part of the reasonably required
18 working capital needs of a qualified trade or business of the
19 corporation.

20 (B) Assets that are held for investment and are reasonably
21 expected to be used within two years to finance research and
22 experimentation in a qualified trade or business or increases in
23 the working capital needs of a qualified trade or business. For
24 periods after the corporation has been in existence for at least two
25 years, in no event may more than 50 percent of the assets of the
26 corporation qualify as used in the active conduct of a qualified
27 trade or business by reason of this paragraph.

28 (7) A corporation shall not be treated as meeting the
29 requirements of paragraph (1) for any period during which more
30 than 10 percent of the total value of its assets consists of real
31 property that is not used in the active conduct of a qualified trade
32 or business. For purposes of the preceding sentence, the ownership
33 of, dealing in, or renting of, real property shall not be treated as
34 the active conduct of a qualified trade or business.

35 (8) For purposes of paragraph (1), rights to computer software
36 that produces active business computer software royalties (within
37 the meaning of Section 543(d)(1) of the Internal Revenue Code)
38 shall be treated as an asset used in the active conduct of a trade
39 or business.

1 (f) If any stock in a corporation is acquired solely through the
2 conversion of other stock in the corporation that is qualified small
3 business stock in the hands of the taxpayer, both of the following
4 shall apply:

5 (1) The stock so acquired shall be treated as qualified small
6 business stock in the hands of the taxpayer.

7 (2) The stock so acquired shall be treated as having been held
8 during the period during which the converted stock was held.

9 (g) (1) If any amount included in gross income by reason of
10 holding an interest in a pass-thru entity meets the requirements of
11 paragraph (2), then both of the following shall apply:

12 (A) The amount shall be treated as gain described in subdivision
13 (a).

14 (B) For purposes of applying subdivision (b), the amount shall
15 be treated as gain from a disposition of stock in the corporation
16 issuing the stock disposed of by the pass-thru entity and the
17 taxpayer's proportionate share of the adjusted basis of the
18 pass-thru entity in the stock shall be taken into account.

19 (2) An amount meets the requirements of this paragraph if both
20 of the following apply:

21 (A) The amount is attributable to gain on the sale or exchange
22 by the pass-thru entity of stock that is qualified small business
23 stock in the hands of the entity (determined by treating the entity
24 as an individual) and that was held by that entity for more than
25 five years.

26 (B) The amount is includable in the gross income of the taxpayer
27 by reason of the holding of an interest in the entity that was held
28 by the taxpayer on the date on which the pass-thru entity acquired
29 the stock and at all times thereafter before the disposition of the
30 stock by the pass-thru entity.

31 (3) Paragraph (1) shall not apply to any amount to the extent
32 the amount exceeds the amount to which paragraph (1) would
33 have applied if the amount was determined by reference to the
34 interest the taxpayer held in the pass-thru entity on the date the
35 qualified small business stock was acquired.

36 (4) For purposes of this subdivision, the term "pass-thru entity"
37 means any of the following:

38 (A) Any partnership.

39 (B) Any "S" corporation.

40 (C) Any regulated investment company.

1 (D) Any common trust fund.

2 (h) For purposes of this section:

3 (1) In the case of a transfer described in paragraph (2), the
4 transferee shall be treated as meeting both of the following:

5 (A) Having acquired the stock in the same manner as the
6 transferor.

7 (B) Having held the stock during any continuous period
8 immediately preceding the transfer during which it was held (or
9 treated as held under this subdivision) by the transferor.

10 (2) A transfer is described in this subdivision if the transfer is
11 any of the following:

12 (A) By gift.

13 (B) At death.

14 (C) From a partnership to a partner of stock with respect to
15 which requirements similar to the requirements of subdivision (g)
16 are met at the time of the transfer (without regard to the five-year
17 holding period requirement).

18 (3) Rules similar to the rules of Section 1244(d)(2) of the
19 Internal Revenue Code shall apply for purposes of this section.

20 (4) (A) In the case of a transaction described in Section 351 of
21 the Internal Revenue Code or a reorganization described in Section
22 368 of the Internal Revenue Code, if qualified small business stock
23 is exchanged for other stock that would not qualify as qualified
24 small business stock but for this subparagraph, the other stock
25 shall be treated as qualified small business stock acquired on the
26 date on which the exchanged stock was acquired.

27 (B) This section shall apply to gain from the sale or exchange
28 of stock treated as qualified small business stock by reason of
29 subparagraph (A) only to the extent of the gain that would have
30 been recognized at the time of the transfer described in
31 subparagraph (A) if Section 351 or 368 of the Internal Revenue
32 Code had not applied at that time. The preceding sentence shall
33 not apply if the stock that is treated as qualified small business
34 stock by reason of subparagraph (A) is issued by a corporation
35 that (as of the time of the transfer described in subparagraph (A))
36 is a qualified small business.

37 (C) For purposes of this paragraph, stock treated as qualified
38 small business stock under subparagraph (A) shall be so treated
39 for subsequent transactions or reorganizations, except that the
40 limitation of subparagraph (B) shall be applied as of the time of

1 *the first transfer to which the limitation applied (determined after*
2 *the application of the second sentence of subparagraph (B)).*

3 *(D) In the case of a transaction described in Section 351 of the*
4 *Internal Revenue Code, this paragraph shall apply only if*
5 *immediately after the transaction the corporation issuing the stock*
6 *owns directly or indirectly stock representing control (within the*
7 *meaning of Section 368(c) of the Internal Revenue Code) of the*
8 *corporation whose stock was exchanged.*

9 *(i) For purposes of this section:*

10 *(1) In the case where the taxpayer transfers property (other*
11 *than money or stock) to a corporation in exchange for stock in the*
12 *corporation, both of the following shall apply:*

13 *(A) The stock shall be treated as having been acquired by the*
14 *taxpayer on the date of the exchange.*

15 *(B) The basis of the stock in the hands of the taxpayer shall not*
16 *be less than the fair market value of the property exchanged.*

17 *(2) If the adjusted basis of any qualified small business stock is*
18 *adjusted by reason of any contribution to capital after the date on*
19 *which the stock was originally issued, in determining the amount*
20 *of the adjustment by reason of the contribution, the basis of the*
21 *contributed property shall not be treated as less than its fair market*
22 *value on the date of the contribution.*

23 *(j) (1) If the taxpayer has an offsetting short position with*
24 *respect to any qualified small business stock, subdivision (a) shall*
25 *not apply to any gain from the sale or exchange of the stock unless*
26 *both of the following apply:*

27 *(A) The stock was held by the taxpayer for more than five years*
28 *as of the first day on which there was such a short position.*

29 *(B) The taxpayer elects to recognize gain as if the stock was*
30 *sold on that first day for its fair market value.*

31 *(2) For purposes of paragraph (1), the taxpayer shall be treated*
32 *as having an offsetting short position with respect to any qualified*
33 *small business stock if any of the following apply:*

34 *(A) The taxpayer has made a short sale of substantially identical*
35 *property.*

36 *(B) The taxpayer has acquired an option to sell substantially*
37 *identical property at a fixed price.*

38 *(C) To the extent provided in regulations, the taxpayer has*
39 *entered into any other transaction that substantially reduces the*
40 *risk of loss from holding the qualified small business stock. For*

1 purposes of the preceding sentence, any reference to the taxpayer
2 shall be treated as including a reference to any person who is
3 related (within the meaning of Section 267(b) or 707(b) of the
4 Internal Revenue Code) to the taxpayer.

5 (k) The Franchise Tax Board may prescribe those regulations
6 as may be appropriate to carry out the purposes of this section,
7 including regulations to prevent the avoidance of the purposes of
8 this section through splitups, shell corporations, partnerships, or
9 otherwise.

10 (l) It is the intent of the Legislature that, in construing this
11 section, any regulations that may be promulgated by the Secretary
12 of the Treasury under Section 1202(k) of the Internal Revenue
13 Code shall apply to the extent that those regulations do not conflict
14 with this section or with any regulations that may be promulgated
15 by the Franchise Tax Board.

16 (m) This section shall become operative on January 1, 2016.

17 ~~SECTION 1. Section 10752 of the Revenue and Taxation Code~~
18 ~~is amended to read:~~

19 ~~10752. (a) The annual amount of the license fee for any~~
20 ~~vehicle, other than a trailer or semitrailer, as described in~~
21 ~~subdivision (a) of Section 5014.1 of the Vehicle Code or a~~
22 ~~commercial motor vehicle described in Section 9400.1 of the~~
23 ~~Vehicle Code, or a trailer coach that is required to be moved under~~
24 ~~permit as authorized in Section 35790 of the Vehicle Code, shall~~
25 ~~be a sum equal to the following percentage of the market value of~~
26 ~~the vehicle as determined by the department:~~

27 ~~(1) Sixty-five hundredths of 1 percent on and after January 1,~~
28 ~~2005, and before May 19, 2009.~~

29 ~~(2) One percent for initial and renewal registrations due on and~~
30 ~~after May 19, 2009, but before July 1, 2011.~~

31 ~~(3) Sixty-five hundredths of 1 percent for initial and renewal~~
32 ~~registrations due on and after July 1, 2011.~~

33 ~~(b) The annual amount of the license fee for any commercial~~
34 ~~vehicle as described in Section 9400.1 of the Vehicle Code, shall~~
35 ~~be a sum equal to 0.65 percent of the market value of the vehicle~~
36 ~~as determined by the department.~~

37 ~~(c) Notwithstanding Chapter 5 (commencing with Section~~
38 ~~11001) or any other law, all revenues, including penalties, less~~
39 ~~refunds, attributable to that portion of the rate imposed pursuant~~

- 1 to this section in excess of 0.65 percent shall be deposited into the
- 2 General Fund.

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