

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 235**

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**Introduced by Senator Wyland**

February 12, 2013

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An act to amend Sections 17052.12, 17250, 17276.20, 23609, 24349, and 24416.20 of, to add ~~Section~~ Sections 6377.1, 17053.76, 18153, 23622.9, and 24996 to, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 235, as amended, Wyland. Sales and use taxes: ~~exemption: manufacturing; research.~~ *income taxes.*

Existing sales and use tax laws impose a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state, and law provides various exemptions from those taxes.

The bill would exempt from those taxes, on and after January 1, 2014, the gross receipts from the sale of, and the storage, use, or other consumption of, qualified tangible personal property purchased by a qualified person for use primarily in manufacturing, processing, refining, fabricating, or recycling of property, as specified, qualified tangible personal property purchased for use by a contractor for specified purposes, as provided, and qualified tangible personal property purchased for use by a qualified person to be used primarily in research and development, as provided. The bill would require the purchaser to furnish the retailer with an exemption certificate, as specified. The bill

would further limit the exemption for leases that are continuing sales or purchases to a six-year period.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes, transactions and use taxes, and specified state taxes from which revenues are deposited into the Local Public Safety Fund, the Education Protection Account, the Local Revenue Fund, the Fiscal Recovery Fund, or the Local Revenue Fund 2011.

*The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws. Both laws, in specified conformity to federal income tax laws, allow a credit for increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, for purposes of the Corporation Tax Law, 24% of the basic research payments, as defined. The term “base amount” means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable year and the fixed-base percentage, as defined, but in no event less than 50% of the qualified research expenses for the taxable year. A taxpayer may elect an alternative incremental credit for increasing research expenses in modified conformity to federal income tax laws.*

*This bill would increase the credit for increasing research expenses to 20% of the excess of the qualified research expenses over the base amount. This bill would also provide complete conformity to the alternative incremental credit provided under those federal income tax laws.*

*The Personal Income Tax Law and the Corporation Tax Law authorize a credit for taxable years beginning on or after January 1, 2009, in an amount equal to \$3,000, prorated as provided, for each full-time employee hired during the taxable year by an employer that employed a specified number of employees. Those laws contain a cut-off date for the credits based upon the estimated receipt of returns claiming credits*

for all taxable years of \$400 million, and require those sections to be repealed as of a specified date.

This bill would delete the requirement related to the number of employees employed by the employer and the specified cut-off date and repeal date. This bill would, for taxable years beginning on or after January 1, 2014, also allow a credit under both laws in an amount equal to specified percentages of wages paid by a qualified employer taxpayer to a qualified employee.

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. Existing law provides that for a net operating loss attributable to a taxable year beginning on or after January 1, 2014, and before January 1, 2015, the amount of carryback to any taxable year is not to exceed 75% of the net operating loss.

This bill would instead provide that for a net operating loss attributable to a taxable year beginning on or after January 1, 2014, the amount of carryback to any taxable year is not to exceed 100% of the net operating loss.

The Personal Income Tax Law and the Corporation Tax Law, in modified conformity with federal income tax law, authorize a taxpayer to depreciate property, determined by an applicable depreciation method, an applicable recovery period, and an applicable convention.

This bill would reduce the applicable recovery period for property placed into service on and after January 1, 2014, to  $\frac{1}{2}$  of the applicable recovery period set forth in existing federal income tax laws or state laws. This bill would, at the election of the taxpayer, reduce the applicable recovery period for property placed into service before January 1, 2014, to  $\frac{1}{2}$  of the applicable recovery period set forth in existing federal income tax laws or state laws.

The Personal Income Tax Law and the Corporation Tax Law provide that gain or loss upon the disposition of a capital asset is determined by reference to the specified adjusted basis of that asset.

This bill would provide under both laws that the gross income of a taxpayer does not include any gain from the sale or exchange of any capital asset.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. (a) It is the intent of the Legislature to enact a  
2 competitive tax policy for manufacturers by providing for an  
3 exemption from state sales and use taxes for the sale of, or the  
4 storage, use, or other consumption of, manufacturing equipment  
5 used in the manufacturing process and property purchased for  
6 research.

7 (b) California businesses are at competitive disadvantages, as  
8 California is only one of three states in the United States that  
9 currently impose a sales tax on manufacturing equipment.

10 SEC. 2. Section 6377.1 is added to the Revenue and Taxation  
11 Code, to read:

12 6377.1. (a) On or after January 1, 2014, there are exempted  
13 from the taxes imposed by this part the gross receipts from the sale  
14 of, and the storage, use, or other consumption in this state of, any  
15 of the following:

16 (1) Qualified tangible personal property purchased for use by  
17 a qualified person to be used primarily in any stage of the  
18 manufacturing, processing, refining, fabricating, or recycling of  
19 property, beginning at the point any raw materials are received by  
20 the qualified person and introduced into the process and ending at  
21 the point at which the manufacturing, processing, refining,  
22 fabricating, or recycling has altered property to its completed form,  
23 including packaging, if required.

24 (2) Qualified tangible personal property purchased for use by  
25 a contractor purchasing that property for use in the performance  
26 of a construction contract for the qualified person, who will use  
27 that property as an integral part of the manufacturing, processing,  
28 refining, fabricating, or recycling process, or as a storage facility  
29 for use in connection with those processes.

30 (3) Qualified tangible personal property purchased for use by  
31 a qualified person to be used primarily in research and  
32 development.

33 (b) For purposes of this section:

1 (1) “Fabricating” means to make, build, create, produce, or  
2 assemble components or property to work in a new or different  
3 manner.

4 (2) “Manufacturing” means the activity of converting or  
5 conditioning tangible personal property by changing the form,  
6 composition, quality, or character of the property for ultimate sale  
7 at retail or use in the manufacturing of a product to be ultimately  
8 sold at retail. Manufacturing includes improvements to tangible  
9 personal property that result in a greater service life or greater  
10 functionality than that of the original property.

11 (3) “Primarily” means 50 percent or more of the time.

12 (4) “Process” means the period beginning at the point at which  
13 raw materials are received by the qualified person and introduced  
14 into the manufacturing, processing, refining, fabricating, or  
15 recycling activity of the qualified person and ending at the point  
16 at which the manufacturing, processing, refining, fabricating, or  
17 recycling activity of the qualified person has altered tangible  
18 personal property to its completed form, including packaging, if  
19 required. Raw materials shall be considered to have been  
20 introduced into the process when the raw materials are stored on  
21 the same premises where the qualified person’s manufacturing,  
22 processing, refining, fabricating, or recycling activity is conducted.  
23 Raw materials that are stored on premises other than where the  
24 qualified person’s manufacturing, processing, refining, fabricating,  
25 or recycling activity is conducted, shall not be considered to have  
26 been introduced into the manufacturing, processing, refining,  
27 fabricating, or recycling process.

28 (5) “Processing” means the physical application of the materials  
29 and labor necessary to modify or change the characteristics of  
30 tangible personal property.

31 (6) “Qualified person” means any of the following:

32 (A) A person who is engaged in those lines of business described  
33 in Codes 3111 to 3399, inclusive, of the North American Industry  
34 Classification System (NAICS) published by the United States  
35 Office of Management and Budget (OMB), 2007 edition.

36 (B) An affiliate of a person who is a qualified person pursuant  
37 to subparagraph (A) if the affiliate is included as a member of that  
38 person’s unitary group for which a combined report is required to  
39 be filed under Article 1 (commencing with Section 25101) of  
40 Chapter 17 of Part 11.

1 (7) (A) “Qualified tangible personal property” includes, but is  
2 not limited to, all of the following:

3 (i) Machinery and equipment, including component parts and  
4 contrivances such as belts, shafts, moving parts, and operating  
5 structures.

6 (ii) Equipment or devices used or required to operate, control,  
7 regulate, or maintain the machinery and equipment, including, but  
8 not limited to, computers, data-processing equipment, and computer  
9 software, together with all repair and replacement parts with a  
10 useful life of one or more years therefor, whether purchased  
11 separately or in conjunction with a complete machine and  
12 regardless of whether the machine or component parts are  
13 assembled by the qualified person or another party.

14 (iii) Tangible personal property used in pollution control that  
15 meets standards established by this state or any local or regional  
16 governmental agency within this state.

17 (iv) Special purpose buildings and foundations used as an  
18 integral part of the manufacturing, processing, refining, fabricating,  
19 or recycling process, or that constitute a research or storage facility  
20 used during those processes. Buildings used solely for warehousing  
21 purposes after completion of those processes are not included.

22 (v) Fuels used or consumed in the manufacturing, processing,  
23 refining, fabricating, or recycling process.

24 (B) “Qualified tangible personal property” shall not include any  
25 of the following:

26 (i) Consumables with a useful life of less than one year, except  
27 as provided in clause (v) of subparagraph (A).

28 (ii) Furniture, inventory, and equipment used in the extraction  
29 process, or equipment used to store finished products that have  
30 completed the manufacturing, processing, refining, fabricating, or  
31 recycling process.

32 (iii) Tangible personal property used primarily in administration,  
33 general management, or marketing.

34 (8) “Refining” means the process of converting a natural  
35 resource to an intermediate or finished product.

36 (9) “Research and development” means those activities defined  
37 in Section 174 of the Internal Revenue Code or in any regulations  
38 thereunder.

39 (10) “Useful life” for tangible personal property that is treated  
40 as having a useful life of one or more years for state income or

1 franchise tax purposes shall be deemed to have a useful life of one  
2 or more years for purposes of this section. “Useful life” for tangible  
3 personal property that is treated as having a useful life of less than  
4 one year for state income or franchise tax purposes shall be deemed  
5 to have a useful life of less than one year for purposes of this  
6 section.

7 (c) An exemption shall not be allowed under this section unless  
8 the purchaser furnishes the retailer with an exemption certificate,  
9 completed in accordance with any instructions or regulations as  
10 the board may prescribe, and the retailer retains the exemption  
11 certificate in its records and furnishes it to the board upon request.  
12 The exemption certificate shall contain the sales price of the  
13 tangible personal property that the sale of, or the storage, use, or  
14 other consumption of, is exempt pursuant to subdivision (a).

15 (d) (1) Notwithstanding the Bradley-Burns Uniform Local Sales  
16 and Use Tax Law (Part 1.5 (commencing with Section 7200)) and  
17 the Transactions and Use Tax Law (Part 1.6 (commencing with  
18 Section 7251)), the exemption established by this section shall not  
19 apply with respect to any tax levied by a county, city, or district  
20 pursuant to, or in accordance with, either of those laws.

21 (2) Notwithstanding subdivision (a), the exemption established  
22 by this section shall not apply with respect to any tax levied  
23 pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, pursuant  
24 to Sections 35 and 36 of Article XIII of the California Constitution,  
25 or any tax levied pursuant to Sections 6051 or 6201 that is  
26 deposited in the State Treasury to the credit of the Local Revenue  
27 Fund 2011 pursuant to Sections 6051.15 or 6201.15.

28 (e) (1) Notwithstanding subdivision (a), the exemption provided  
29 by this section shall not apply to any sale or storage, use, or other  
30 consumption of property that, within one year from the date of  
31 purchase, is removed from California, converted from an exempt  
32 use under subdivision (a) to some other use not qualifying for  
33 exemption, or used in a manner not qualifying for exemption.

34 (2) If a purchaser certifies in writing to the seller that the  
35 property purchased without payment of the tax will be used in a  
36 manner entitling the seller to regard the gross receipts from the  
37 sale as exempt from the sales tax, and within one year from the  
38 date of purchase, the purchaser removes that property from  
39 California, converts that property for use in a manner not qualifying  
40 for the exemption, or uses that property in a manner not qualifying

1 for the exemption, the purchaser shall be liable for payment of  
2 sales tax, with applicable interest, as if the purchaser were a retailer  
3 making a retail sale of the property at the time the property is so  
4 removed, converted, or used, and the sales price of the property  
5 to the purchaser shall be deemed the gross receipts from that retail  
6 sale.

7 (f) This section applies to leases of qualified tangible personal  
8 property classified as “continuing sales” and “continuing  
9 purchases” in accordance with Sections 6006.1 and 6010.1. The  
10 exemption established by this section shall apply to the rentals  
11 payable pursuant to such a lease, provided the lessee is a qualified  
12 person and the property is used in an activity described in  
13 subdivision (a). Rentals that meet the foregoing requirements are  
14 eligible for the exemption for a period of six years from the date  
15 of commencement of the lease. At the close of the six-year period  
16 from the date of commencement of the lease, lease receipts are  
17 subject to tax without exemption.

18 *SEC. 3. Section 17052.12 of the Revenue and Taxation Code*  
19 *is amended to read:*

20 17052.12. For each taxable year beginning on or after January  
21 1, 1987, there shall be allowed as a credit against the “net tax” (as  
22 defined by Section 17039) for the taxable year an amount  
23 determined in accordance with Section 41 of the Internal Revenue  
24 Code, except as follows:

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

28 (b) (1) For each taxable year beginning on or after January 1,  
29 1997, and before January 1, 1999, the reference to “20 percent”  
30 in Section 41(a)(1) of the Internal Revenue Code is modified to  
31 read “11 percent.”

32 (2) For each taxable year beginning on or after January 1, 1999,  
33 and before January 1, 2000, the reference to “20 percent” in Section  
34 41(a)(1) of the Internal Revenue Code is modified to read “12  
35 percent.”

36 (3) For each taxable year beginning on or after January 1, 2000,  
37 *and before January 1, 2014*, the reference to “20 percent” in  
38 Section 41(a)(1) of the Internal Revenue Code is modified to read  
39 “15 percent.”

1 (4) For each taxable year beginning on or after January 1,  
2 2014, the reference to “20 percent” in Section 41(a)(1) of the  
3 Internal Revenue Code shall apply.

4 (c) Section 41(a)(2) of the Internal Revenue Code shall not  
5 apply.

6 (d) “Qualified research” shall include only research conducted  
7 in California.

8 (e) In the case where the credit allowed under this section  
9 exceeds the “net tax,” the excess may be carried over to reduce  
10 the “net tax” in the following year, and succeeding years if  
11 necessary, until the credit has been exhausted.

12 (f) (1) With respect to any expense paid or incurred after the  
13 operative date of Section 6378, Section 41(b)(1) of the Internal  
14 Revenue Code is modified to exclude from the definition of  
15 “qualified research expense” any amount paid or incurred for  
16 tangible personal property that is eligible for the exemption from  
17 sales or use tax ~~provided by~~ under Section 6378.

18 (2) For each taxable year beginning on or after January 1, 1998,  
19 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the  
20 Internal Revenue Code, relating to contract research expenses, is  
21 modified to read “this part or Part 11 (commencing with Section  
22 23001).”

23 (g) (1) For each taxable year beginning on or after January 1,  
24 2000, and before January 1, 2010:

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

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

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

34 (2) For each taxable year beginning on or after January 1,  
35 2014, Section 41(c)(4)(A) of the Internal Revenue Code, relating  
36 to the election of the alternative incremental credit, shall apply.

37 ~~(2)~~

38 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an  
39 election under Section 41(c)(4)(A) of the Internal Revenue Code  
40 may be made for any taxable year of the taxpayer beginning on or

1 after January 1, 1998. That election shall apply to the taxable year  
2 for which made and all succeeding taxable years unless revoked  
3 with the consent of the Franchise Tax Board.

4 ~~(3)~~

5 (4) Section 41(c)(7) of the Internal Revenue Code, relating to  
6 gross receipts, is modified to take into account only those gross  
7 receipts from the sale of property held primarily for sale to  
8 customers in the ordinary course of the taxpayer's trade or business  
9 that is delivered or shipped to a purchaser within this state,  
10 regardless of f.o.b. point or any other condition of the sale.

11 ~~(4)~~

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

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

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

19 (1) The last sentence shall not apply.

20 (2) If the amount determined under Section 41(a) of the Internal  
21 Revenue Code for any taxable year exceeds the limitation of  
22 Section 41(g) of the Internal Revenue Code, that amount may be  
23 carried over to other taxable years under the rules of subdivision  
24 (e); except that the limitation of Section 41(g) of the Internal  
25 Revenue Code shall be taken into account in each subsequent  
26 taxable year.

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

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

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

33 *SEC. 4. Section 17053.76 is added to the Revenue and Taxation*  
34 *Code, to read:*

35 *17053.76. (a) For each taxable year beginning on or after*  
36 *January 1, 2014, there shall be allowed a credit against the "net*  
37 *tax," as defined in Section 17039, an amount equal to the sum of*  
38 *the following percentages of wages paid or incurred by the*  
39 *qualified taxpayer during the taxable year to each qualified*  
40 *employee of the qualified taxpayer:*

1 (1) Twenty-five percent for each qualified employee employed  
2 by the qualified taxpayer for at least 120 hours, but less than 400  
3 hours, during the taxable year.

4 (2) Forty percent for each qualified employee employed by the  
5 qualified taxpayer for at least 400 hours during the taxable year.

6 (b) The credit under subdivision (a) shall be allowed only with  
7 respect to the first six thousand dollars (\$6,000) of wages paid or  
8 incurred during the taxable year to each qualified employee.

9 (c) For purposes of this section, all of the following definitions  
10 shall apply:

11 (1) “Qualified employee” means an individual who is any of  
12 the following, as documented by the Employment Development  
13 Department:

14 (A) A recipient of CalWORKs benefits.

15 (B) A parolee.

16 (C) A veteran, as defined in Section 980 of the Military and  
17 Veterans Code.

18 (D) Eligible for receipt of unemployment insurance benefits or  
19 currently receiving unemployment insurance benefits.

20 (E) A person on probation.

21 (2) “Qualified taxpayer” means a taxpayer that is a person or  
22 entity engaged in a trade or business within California.

23 (d) For purposes of this section, the qualified taxpayer shall do  
24 both of the following:

25 (1) Obtain a certificate from the Employment Development  
26 Department certifying that a qualified employee is employed by  
27 the qualified taxpayer.

28 (2) Retain a copy of the certification and provide it upon request  
29 to the Franchise Tax Board.

30 (e) (1) For purposes of this section:

31 (A) All employees of trades or businesses, which are not  
32 incorporated, that are under common control shall be treated as  
33 employed by a single qualified taxpayer.

34 (B) The credit, if any, allowable by this section with respect to  
35 each trade or business shall be determined by reference to its  
36 proportionate share of the expense of the qualified wages giving  
37 rise to the credit, and shall be allocated in that manner.

38 (2) If an employer acquires the major portion of a trade or  
39 business of another employer (hereafter in this paragraph referred  
40 to as the “predecessor”) or the major portion of a separate unit

1 of a trade or business of a predecessor, then, for purposes of  
2 applying this section for any calendar year ending after that  
3 acquisition, the employment relationship between a qualified  
4 employee and an employer shall not be treated as terminated if  
5 the employee continues to be employed in that trade or business.

6 (f) A credit shall not be allowed under this section for any wages  
7 for which any other credit or deduction has been claimed under  
8 this part.

9 (g) In the case where the credit otherwise allowed under this  
10 section exceeds the “net tax” for the taxable year, that portion of  
11 the credit that exceeds the “net tax” may be carried over and  
12 added to the credit, if any, in succeeding taxable years, until the  
13 credit is exhausted. The credit shall be applied first to the earliest  
14 taxable years possible.

15 SEC. 5. Section 17053.80 of the Revenue and Taxation Code,  
16 as added by Section 3 of Chapter 10 of the Third Extraordinary  
17 Session of the Statutes of 2009, is repealed.

18 ~~17053.80.—(a) For each taxable year beginning on or after~~  
19 ~~January 1, 2009, there shall be allowed as a credit against the “net~~  
20 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~  
21 ~~for each net increase in qualified full-time employees, as specified~~  
22 ~~in subdivision (c), hired during the taxable year by a qualified~~  
23 ~~employer.~~

24 ~~(b) For purposes of this section:~~

25 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~  
26 ~~to divorce, or any other transfer, whether or not for consideration.~~

27 ~~(2) “Qualified full-time employee” means:~~

28 ~~(A) A qualified employee who was paid qualified wages by the~~  
29 ~~qualified employer for services of not less than an average of 35~~  
30 ~~hours per week.~~

31 ~~(B) A qualified employee who was a salaried employee and~~  
32 ~~was paid compensation during the taxable year for full-time~~  
33 ~~employment, within the meaning of Section 515 of the Labor Code,~~  
34 ~~by the qualified employer.~~

35 ~~(3) A “qualified employee” shall not include any of the~~  
36 ~~following:~~

37 ~~(A) An employee certified as a qualified employee in an~~  
38 ~~enterprise zone designated in accordance with Chapter 12.8~~  
39 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~  
40 ~~Government Code.~~

1 ~~(B) An employee certified as a qualified disadvantaged~~  
2 ~~individual in a manufacturing enhancement area designated in~~  
3 ~~accordance with Section 7073.8 of the Government Code.~~

4 ~~(C) An employee certified as a qualified employee in a targeted~~  
5 ~~tax area designated in accordance with Section 7097 of the~~  
6 ~~Government Code.~~

7 ~~(D) An employee certified as a qualified disadvantaged~~  
8 ~~individual or a qualified displaced employee in a local agency~~  
9 ~~military base recovery area (LAMBRA) designated in accordance~~  
10 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~  
11 ~~7 of Title 1 of the Government Code.~~

12 ~~(E) An employee whose wages are included in calculating any~~  
13 ~~other credit allowed under this part.~~

14 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~  
15 ~~day of the preceding taxable year, employed a total of 20 or fewer~~  
16 ~~employees.~~

17 ~~(5) “Qualified wages” means wages subject to Division 6~~  
18 ~~(commencing with Section 13000) of the Unemployment Insurance~~  
19 ~~Code.~~

20 ~~(6) “Annual full-time equivalent” means either of the following:~~

21 ~~(A) In the case of a full-time employee paid hourly qualified~~  
22 ~~wages, “annual full-time equivalent” means the total number of~~  
23 ~~hours worked for the taxpayer by the employee (not to exceed~~  
24 ~~2,000 hours per employee) divided by 2,000.~~

25 ~~(B) In the case of a salaried full-time employee, “annual~~  
26 ~~full-time equivalent” means the total number of weeks worked for~~  
27 ~~the taxpayer by the employee divided by 52.~~

28 ~~(e) The net increase in qualified full-time employees of a~~  
29 ~~qualified employer shall be determined as provided by this~~  
30 ~~subdivision:~~

31 ~~(1) (A) The net increase in qualified full-time employees shall~~  
32 ~~be determined on an annual full-time equivalent basis by~~  
33 ~~subtracting from the amount determined in subparagraph (C) the~~  
34 ~~amount determined in subparagraph (B).~~

35 ~~(B) The total number of qualified full-time employees employed~~  
36 ~~in the preceding taxable year by the taxpayer and by any trade or~~  
37 ~~business acquired by the taxpayer during the current taxable year.~~

38 ~~(C) The total number of full-time employees employed in the~~  
39 ~~current taxable year by the taxpayer and by any trade or business~~  
40 ~~acquired during the current taxable year.~~

1 ~~(2) For taxpayers who first commence doing business in this~~  
2 ~~state during the taxable year, the number of full-time employees~~  
3 ~~for the immediately preceding prior taxable year shall be zero.~~

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

8 ~~(e) Any deduction otherwise allowed under this part for qualified~~  
9 ~~wages shall not be reduced by the amount of the credit allowed~~  
10 ~~under this section.~~

11 ~~(f) For purposes of this section:~~

12 ~~(1) All employees of the trades or businesses that are treated as~~  
13 ~~related under either Section 267, 318, or 707 of the Internal~~  
14 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

15 ~~(2) In determining whether the taxpayer has first commenced~~  
16 ~~doing business in this state during the taxable year, the provisions~~  
17 ~~of subdivision (f) of Section 17276, without application of~~  
18 ~~paragraph (7) of that subdivision, shall apply.~~

19 ~~(g) (1) (A) Credit under this section and Section 23623 shall~~  
20 ~~be allowed only for credits claimed on timely filed original returns~~  
21 ~~received by the Franchise Tax Board on or before the cut-off date~~  
22 ~~established by the Franchise Tax Board.~~

23 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~  
24 ~~last day of the calendar quarter within which the Franchise Tax~~  
25 ~~Board estimates it will have received timely filed original returns~~  
26 ~~claiming credits under this section and Section 23623 that~~  
27 ~~cumulatively total four hundred million dollars (\$400,000,000)~~  
28 ~~for all taxable years.~~

29 ~~(2) The date a return is received shall be determined by the~~  
30 ~~Franchise Tax Board.~~

31 ~~(3) (A) The determinations of the Franchise Tax Board with~~  
32 ~~respect to the cut-off date, the date a return is received, and whether~~  
33 ~~a return has been timely filed for purposes of this subdivision may~~  
34 ~~not be reviewed in any administrative or judicial proceeding~~

35 ~~(B) Any disallowance of a credit claimed due to a determination~~  
36 ~~under this subdivision, including the application of the limitation~~  
37 ~~specified in paragraph (1), shall be treated as a mathematical error~~  
38 ~~appearing on the return. Any amount of tax resulting from such~~  
39 ~~disallowance may be assessed by the Franchise Tax Board in the~~  
40 ~~same manner as provided by Section 19051.~~

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

5 ~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines~~  
6 ~~or procedures necessary or appropriate to carry out the purposes~~  
7 ~~of this section, including any guidelines regarding the limitation~~  
8 ~~on total credits allowable under this section and Section 23623~~  
9 ~~and guidelines necessary to avoid the application of paragraph (2)~~  
10 ~~of subdivision (f) through split-ups, shell corporations, partnerships,~~  
11 ~~tiered ownership structures, or otherwise.~~

12 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~  
13 ~~Division 3 of Title 2 of the Government Code does not apply to~~  
14 ~~any standard, criterion, procedure, determination, rule, notice, or~~  
15 ~~guideline established or issued by the Franchise Tax Board~~  
16 ~~pursuant to this section.~~

17 ~~(i) This section shall remain in effect only until December 1 of~~  
18 ~~the calendar year after the year of the cut-off date, and as of that~~  
19 ~~December 1 is repealed.~~

20 *SEC. 6. Section 17053.80 of the Revenue and Taxation Code,*  
21 *as added by Section 3 of Chapter 17 of the Third Extraordinary*  
22 *Session of the Statutes of 2009, is amended to read:*

23 17053.80. (a) For each taxable year beginning on or after  
24 January 1, 2009, there shall be allowed as a credit against the “net  
25 tax,” as defined in Section 17039, three thousand dollars (\$3,000)  
26 for each net increase in qualified full-time employees, as specified  
27 in subdivision (c), hired during the taxable year by a ~~qualified~~  
28 ~~employer taxpayer.~~

29 (b) For purposes of this section:

30 (1) “Acquired” includes any gift, inheritance, transfer incident  
31 to divorce, or any other transfer, whether or not for consideration.

32 (2) “Qualified full-time employee” means:

33 (A) A qualified employee who was paid qualified wages by the  
34 ~~qualified employer taxpayer~~ for services of not less than an average  
35 of 35 hours per week.

36 (B) A ~~qualified employee taxpayer~~ who was a salaried employee  
37 and was paid compensation during the taxable year for full-time  
38 employment, within the meaning of Section 515 of the Labor Code,  
39 by the qualified employer.

1 (3) A “qualified employee” shall not include any of the  
2 following:

3 (A) An employee certified as a qualified employee in an  
4 enterprise zone designated in accordance with Chapter 12.8  
5 (commencing with Section 7070) of Division 7 of Title 1 of the  
6 Government Code.

7 (B) An employee certified as a qualified disadvantaged  
8 individual in a manufacturing enhancement area designated in  
9 accordance with Section 7073.8 of the Government Code.

10 (C) An employee certified as a qualified employee in a targeted  
11 tax area designated in accordance with Section 7097 of the  
12 Government Code.

13 (D) An employee certified as a qualified disadvantaged  
14 individual or a qualified displaced employee in a local agency  
15 military base recovery area (LAMBRA) designated in accordance  
16 with Chapter 12.97 (commencing with Section 7105) of Division  
17 7 of Title 1 of the Government Code.

18 (E) An employee whose wages are included in calculating any  
19 other credit allowed under this part.

20 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~  
21 ~~day of the preceding taxable year, employed a total of 20 or fewer~~  
22 ~~employees.~~

23 ~~(5)~~

24 (4) “Qualified wages” means wages subject to Division 6  
25 (commencing with Section 13000) of the Unemployment Insurance  
26 Code.

27 ~~(6)~~

28 (5) “Annual full-time equivalent” means either of the following:

29 (A) In the case of a full-time employee paid hourly qualified  
30 wages, “annual full-time equivalent” means the total number of  
31 hours worked for the taxpayer by the employee (not to exceed  
32 2,000 hours per employee) divided by 2,000.

33 (B) In the case of a salaried full-time employee, “annual  
34 full-time equivalent” means the total number of weeks worked for  
35 the taxpayer by the employee divided by 52.

36 (c) The net increase in qualified full-time employees of a  
37 ~~qualified employer taxpayer~~ shall be determined as provided by  
38 this subdivision:

39 (1) (A) The net increase in qualified full-time employees shall  
40 be determined on an annual full-time equivalent basis by

1 subtracting from the amount determined in subparagraph (C) the  
2 amount determined in subparagraph (B).

3 (B) The total number of qualified full-time employees employed  
4 in the preceding taxable year by the taxpayer and by any trade or  
5 business acquired by the taxpayer during the ~~current~~ *preceding*  
6 taxable year.

7 (C) The total number of full-time employees employed in the  
8 current taxable year by the taxpayer and by any trade or business  
9 acquired during the current taxable year.

10 (2) For taxpayers who first commence doing business in this  
11 state during the taxable year, the number of full-time employees  
12 for the immediately preceding prior taxable year shall be zero.

13 (d) In the case where the credit allowed by this section exceeds  
14 the “net tax,” the excess may be carried over to reduce the “net  
15 tax” in the following year, and succeeding seven years if necessary,  
16 until the credit is exhausted.

17 (e) Any deduction otherwise allowed under this part for qualified  
18 wages shall not be reduced by the amount of the credit allowed  
19 under this section.

20 (f) For purposes of this section:

21 (1) All employees of the trades or businesses that are treated as  
22 related under either Section 267, 318, or 707 of the Internal  
23 Revenue Code shall be treated as employed by a single taxpayer.

24 (2) In determining whether the taxpayer has first commenced  
25 doing business in this state during the taxable year, the provisions  
26 of subdivision (f) of Section 17276, without application of  
27 paragraph (7) of that subdivision, shall apply.

28 ~~(g) (1) (A) Credit under this section and Section 23623 shall~~  
29 ~~be allowed only for credits claimed on timely filed original returns~~  
30 ~~received by the Franchise Tax Board on or before the cut-off date~~  
31 ~~established by the Franchise Tax Board.~~

32 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~  
33 ~~last day of the calendar quarter within which the Franchise Tax~~  
34 ~~Board estimates it will have received timely filed original returns~~  
35 ~~claiming credits under this section and Section 23623 that~~  
36 ~~cumulatively total four hundred million dollars (\$400,000,000)~~  
37 ~~for all taxable years.~~

38 ~~(2) The date a return is received shall be determined by the~~  
39 ~~Franchise Tax Board.~~

1 ~~(3) (A) The determinations of the Franchise Tax Board with~~  
2 ~~respect to the cut-off date, the date a return is received, and whether~~  
3 ~~a return has been timely filed for purposes of this subdivision may~~  
4 ~~not be reviewed in any administrative or judicial proceeding~~

5 ~~(B) Any disallowance of a credit claimed due to a determination~~  
6 ~~under this subdivision, including the application of the limitation~~  
7 ~~specified in paragraph (1), shall be treated as a mathematical error~~  
8 ~~appearing on the return. Any amount of tax resulting from such~~  
9 ~~disallowance may be assessed by the Franchise Tax Board in the~~  
10 ~~same manner as provided by Section 19051.~~

11 ~~(4) The Franchise Tax Board shall periodically provide notice~~  
12 ~~on its Web site with respect to the amount of credit under this~~  
13 ~~section and Section 23623 claimed on timely filed original returns~~  
14 ~~received by the Franchise Tax Board.~~

15 ~~(h)~~

16 ~~(g) (1) The Franchise Tax Board may prescribe rules, guidelines~~  
17 ~~or procedures necessary or appropriate to carry out the purposes~~  
18 ~~of this section, including any guidelines regarding the limitation~~  
19 ~~on total credits allowable under this section and Section 23623~~  
20 ~~and guidelines necessary to avoid the application of paragraph (2)~~  
21 ~~of subdivision (f) through split-ups, shell corporations, partnerships,~~  
22 ~~tiered ownership structures, or otherwise.~~

23 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~  
24 ~~Division 3 of Title 2 of the Government Code does not apply to~~  
25 ~~any standard, criterion, procedure, determination, rule, notice, or~~  
26 ~~guideline established or issued by the Franchise Tax Board~~  
27 ~~pursuant to this section.~~

28 ~~(i) This section shall remain in effect only until December 1 of~~  
29 ~~the calendar year after the year of the cut-off date, and as of that~~  
30 ~~December 1 is repealed.~~

31 ~~(h) The amendments made to this section by the act adding this~~  
32 ~~subdivision shall apply only to taxable years beginning on or after~~  
33 ~~January 1, 2014.~~

34 *SEC. 7. Section 17250 of the Revenue and Taxation Code is*  
35 *amended to read:*

36 17250. (a) Section 168 of the Internal Revenue Code is  
37 modified as follows:

38 (1) Any reference to “tax imposed by this chapter” in Section  
39 168 of the Internal Revenue Code means “net tax,” as defined in  
40 Section 17039.

1 (2) (A) Section 168(e)(3) is modified to provide that any  
2 grapevine, replaced in a vineyard in California in any taxable year  
3 beginning on or after January 1, 1992, as a direct result of a  
4 phylloxera infestation in that vineyard, or replaced in a vineyard  
5 in California in any taxable year beginning on or after January 1,  
6 1997, as a direct result of Pierce’s disease in that vineyard, shall  
7 be “five-year property,” rather than “10-year property.”

8 (B) Section 168(g)(3) of the Internal Revenue Code is modified  
9 to provide that any grapevine, replaced in a vineyard in California  
10 in any taxable year beginning on or after January 1, 1992, as a  
11 direct result of a phylloxera infestation in that vineyard, or replaced  
12 in a vineyard in California in any taxable year beginning on or  
13 after January 1, 1997, as a direct result of Pierce’s disease in that  
14 vineyard, shall have a class life of 10 years.

15 (C) Every taxpayer claiming a depreciation deduction with  
16 respect to grapevines as described in this paragraph shall obtain a  
17 written certification from an independent state-certified integrated  
18 pest management adviser, or a state agricultural commissioner or  
19 adviser, that specifies that the replanting was necessary to restore  
20 a vineyard infested with phylloxera or Pierce’s disease. The  
21 taxpayer shall retain the certification for future audit purposes.

22 (3) Section 168(j) of the Internal Revenue Code, relating to  
23 property on Indian reservations, shall not apply.

24 (4) Section 168(k) of the Internal Revenue Code, relating to  
25 special allowance for certain property acquired after December  
26 31, 2007, and before January 1, 2009, shall not apply.

27 (5) Sections 168(b)(3)(G) and 168(b)(3)(H) of the Internal  
28 Revenue Code shall not apply.

29 (6) Sections 168(e)(3)(E)(iv), 168(e)(3)(E)(v), and  
30 168(e)(3)(E)(ix) of the Internal Revenue Code shall not apply.

31 (7) Sections 168(e)(6), 168(e)(7), and 168(e)(8) of the Internal  
32 Revenue Code, relating to qualified leasehold improvement  
33 property, qualified restaurant property, and qualified retail  
34 improvement property, respectively, shall not apply.

35 (8) Section 168(l) of the Internal Revenue Code, relating to  
36 special allowance for cellulosic biofuel plant property, shall not  
37 apply.

38 (9) Section 168(m) of the Internal Revenue Code, relating to  
39 special allowance for certain reuse and recycling property, shall  
40 not apply.

1 (10) Section 168(n) of the Internal Revenue Code, relating to  
2 special allowance for qualified disaster assistance property, shall  
3 not apply.

4 (11) Section 168(i)(15)(D) of the Internal Revenue Code,  
5 relating to termination, is modified by substituting the phrase  
6 “December 31, 2007” for the phrase “December 31, 2009.”

7 (12) Section 168(e)(3)(B)(vii) of the Internal Revenue Code  
8 shall not apply.

9 (b) Section 169 of the Internal Revenue Code, relating to  
10 amortization of pollution control facilities, is modified as follows:

11 (1) The deduction allowed by Section 169 of the Internal  
12 Revenue Code shall be allowed only with respect to facilities  
13 located in this state.

14 (2) The “state certifying authority,” as defined in Section  
15 169(d)(2) of the Internal Revenue Code, means the State Air  
16 Resources Board, in the case of air pollution, and the State Water  
17 Resources Control Board, in the case of water pollution.

18 (c) *Notwithstanding any other law to the contrary, for property*  
19 *placed in service on and after January 1, 2014, the applicable*  
20 *recovery period shall be one-half of the applicable recovery period*  
21 *set forth in the Internal Revenue Code provision 167 or 168 or*  
22 *one-half of the recovery period described in this code.*

23 (d) *Notwithstanding any other law to the contrary, for property*  
24 *placed in service before January 1, 2014, the remaining applicable*  
25 *recovery period shall, at the election of the taxpayer, be one-half*  
26 *of the applicable recovery period set forth in the Internal Revenue*  
27 *Code provision 167 or 168 or one-half of the recovery period*  
28 *described in this code.*

29 *SEC. 8. Section 17276.20 of the Revenue and Taxation Code*  
30 *is amended to read:*

31 17276.20. Except as provided in Sections 17276.1, 17276.2,  
32 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided  
33 by Section 172 of the Internal Revenue Code, relating to net  
34 operating loss deduction, shall be modified as follows:

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

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

39 (b) (1) Except as provided in paragraphs (2) and (3), the  
40 provisions of Section 172(b)(2) of the Internal Revenue Code,

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

6 (A) Fifty percent for any taxable year beginning before January  
7 1, 2000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (5) 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 more than one business, and more than one of those  
28 businesses qualifies as either a new business or an eligible small  
29 business under this section, paragraph (2) shall be applied first,  
30 except that if there is any remaining portion of the net operating  
31 loss after application of clause (i) of subparagraph (B) of that  
32 paragraph, paragraph (3) shall be applied to the remaining portion  
33 of the net operating loss as though that remaining portion of the  
34 net operating loss constituted the entire net operating loss.

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

38 (c) Section 172(b)(1) of the Internal Revenue Code, relating to  
39 years to which the loss may be carried, is modified as follows:

1 (1) Net operating loss carrybacks shall not be allowed for any  
2 net operating losses attributable to taxable years beginning before  
3 January 1, 2013.

4 (2) A net operating loss attributable to taxable years beginning  
5 on or after January 1, 2013, shall be a net operating loss carryback  
6 to each of the two taxable years preceding the taxable year of the  
7 loss in lieu of the number of years provided therein.

8 (A) For a net operating loss attributable to a taxable year  
9 beginning on or after January 1, 2013, and before January 1, 2014,  
10 the amount of carryback to any taxable year shall not exceed 50  
11 percent of the net operating loss.

12 (B) For a net operating loss attributable to a taxable year  
13 beginning on or after January 1, 2014, ~~and before January 1, 2015,~~  
14 the amount of carryback to any taxable year shall not exceed ~~75~~  
15 *100* percent of the net operating loss.

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

20 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
21 Internal Revenue Code, relating to special rules for REITs, and  
22 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
23 excess interest loss, and Section 172(h) of the Internal Revenue  
24 Code, relating to corporate equity reduction interest losses, shall  
25 apply as provided.

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

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

33 (B) For a net operating loss for any taxable year beginning on  
34 or after January 1, 2000, and before January 1, 2008, Section  
35 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
36 substitute “10 taxable years” in lieu of “20 taxable years.”

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

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

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

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

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

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

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

14 (4) The net operating loss attributable to taxable years beginning  
15 on or after January 1, 1987, and before January 1, 1994, shall be  
16 a net operating loss carryover to each of the 10 taxable years  
17 following the year of the loss if it is incurred by a taxpayer that is  
18 under the jurisdiction of the court in a Title 11 or similar case at  
19 any time during the income year. The loss carryover provided in  
20 the preceding sentence shall not apply to any loss incurred after  
21 the date the taxpayer is no longer under the jurisdiction of the court  
22 in a Title 11 or similar case.

23 (e) For purposes of this section:

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

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

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

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

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

38 (1) In any case where a taxpayer purchases or otherwise acquires  
39 all or any portion of the assets of an existing trade or business  
40 (irrespective of the form of entity) that is doing business in this

1 state (within the meaning of Section 23101), the trade or business  
2 thereafter conducted by the taxpayer (or any related person) shall  
3 not be treated as a new business if the aggregate fair market value  
4 of the acquired assets (including real, personal, tangible, and  
5 intangible property) used by the taxpayer (or any related person)  
6 in the conduct of its trade or business exceeds 20 percent of the  
7 aggregate fair market value of the total assets of the trade or  
8 business being conducted by the taxpayer (or any related person).

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

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

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

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

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

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

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

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

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

21 (B) For purposes of this paragraph:

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

30 (ii) “Other biotechnology activities” means activities consisting  
31 of the application of recombinant DNA technology to produce  
32 commercial products, as well as activities regarding pharmaceutical  
33 delivery systems designed to provide a measure of control over  
34 the rate, duration, and site of pharmaceutical delivery.

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

39 (h) Notwithstanding any provisions of this section to the  
40 contrary, a deduction shall be allowed to a “qualified taxpayer” as

1 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,  
2 and 17276.7.

3 (i) The Franchise Tax Board may prescribe appropriate  
4 regulations to carry out the purposes of this section, including any  
5 regulations necessary to prevent the avoidance of the purposes of  
6 this section through splitups, shell corporations, partnerships, tiered  
7 ownership structures, or otherwise.

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

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

16 *SEC. 9. Section 18153 is added to the Revenue and Taxation*  
17 *Code, to read:*

18 *18153. Notwithstanding any other law, gross income shall not*  
19 *include any gain from the sale or exchange of any capital asset.*  
20 *For purposes of this section, "capital asset" means a capital asset*  
21 *as defined by Section 1221 of the Internal Revenue Code.*

22 *SEC. 10. Section 23609 of the Revenue and Taxation Code is*  
23 *amended to read:*

24 23609. For each taxable year beginning on or after January 1,  
25 1987, there shall be allowed as a credit against the "tax" (as defined  
26 by Section 23036) an amount determined in accordance with  
27 Section 41 of the Internal Revenue Code, except as follows:

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

30 (1) The reference to "20 percent" in Section 41(a)(1) of the  
31 Internal Revenue Code is modified to read "8 percent."

32 (2) The reference to "20 percent" in Section 41(a)(2) of the  
33 Internal Revenue Code is modified to read "12 percent."

34 (b) (1) For each taxable year beginning on or after January 1,  
35 1997, and before January 1, 1999, both of the following  
36 modifications shall apply:

37 (A) The reference to "20 percent" in Section 41(a)(1) of the  
38 Internal Revenue Code is modified to read "11 percent."

39 (B) The reference to "20 percent" in Section 41(a)(2) of the  
40 Internal Revenue Code is modified to read "24 percent."

- 1 (2) For each taxable year beginning on or after January 1, 1999,  
2 and before January 1, 2000, both of the following shall apply:
- 3 (A) The reference to “20 percent” in Section 41(a)(1) of the  
4 Internal Revenue Code is modified to read “12 percent.”
- 5 (B) The reference to “20 percent” in Section 41(a)(2) of the  
6 Internal Revenue Code is modified to read “24 percent.”
- 7 (3) For each taxable year beginning on or after January 1, 2000,  
8 *and before January 1, 2014*, both of the following shall apply:
- 9 (A) The reference to “20 percent” in Section 41(a)(1) of the  
10 Internal Revenue Code is modified to read “15 percent.”
- 11 (B) The reference to “20 percent” in Section 41(a)(2) of the  
12 Internal Revenue Code is modified to read “24 percent.”
- 13 (4) *For each taxable year beginning on or after January 1,*  
14 *2014, both of the following shall apply:*
- 15 (A) *The reference to “20 percent” in Section 41(a)(1) of the*  
16 *Internal Revenue Code shall apply.*
- 17 (B) *The reference to “20 percent” in Section 41(a)(2) of the*  
18 *Internal Revenue Code is modified to read “24 percent.”*
- 19 (c) (1) With respect to any expense paid or incurred after the  
20 operative date of Section 6378, Section 41(b)(1) of the Internal  
21 Revenue Code is modified to exclude from the definition of  
22 “qualified research expense” any amount paid or incurred for  
23 tangible personal property that is eligible for the exemption from  
24 sales or use tax ~~provided by~~ *under* Section 6378.
- 25 (2) “Qualified research” and “basic research” shall include only  
26 research conducted in California.
- 27 (d) The provisions of Section 41(e)(7)(A) of the Internal  
28 Revenue Code, shall be modified so that “basic research,” for  
29 purposes of this section, includes any basic or applied research  
30 including scientific inquiry or original investigation for the  
31 advancement of scientific or engineering knowledge or the  
32 improved effectiveness of commercial products, except that the  
33 term does not include any of the following:
- 34 (1) Basic research conducted outside California.
- 35 (2) Basic research in the social sciences, arts, or humanities.
- 36 (3) Basic research for the purpose of improving a commercial  
37 product if the improvements relate to style, taste, cosmetic, or  
38 seasonal design factors.

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

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

13 (A) A qualified organization as described in Section  
14 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an  
15 institution of higher education as described in Section 3304(f) of  
16 the Internal Revenue Code.

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

23 (2) For purposes of this subdivision:

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

32 (B) “Other biotechnology research and development activities”  
33 means research and development activities consisting of the  
34 application of recombinant DNA technology to produce  
35 commercial products, as well as research and development  
36 activities regarding pharmaceutical delivery systems designed to  
37 provide a measure of control over the rate, duration, and site of  
38 pharmaceutical delivery.

39 (f) In the case where the credit allowed by this section exceeds  
40 the “tax,” the excess may be carried over to reduce the “tax” in

1 the following year, and succeeding years if necessary, until the  
2 credit has been exhausted.

3 (g) 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 10 (commencing with Section  
7 17001).”

8 (h) (1) For each taxable year beginning on or after January 1,  
9 2000, *and before January 1, 2014*:

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 (D) *For each taxable year beginning on or after January 1,*  
20 *2014, Section 41(c)(4)(A) of the Internal Revenue Code, relating*  
21 *to the election of the alternative incremental credit, shall apply.*

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

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

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

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

38 (j) Section 41(g) of the Internal Revenue Code, relating to  
39 special rule for passthrough of credit, is modified by each of the  
40 following:

1 (1) The last sentence shall not apply.

2 (2) If the amount determined under Section 41(a) of the Internal  
3 Revenue Code for any taxable year exceeds the limitation of  
4 Section 41(g) of the Internal Revenue Code, that amount may be  
5 carried over to other taxable years under the rules of subdivision  
6 (f), except that the limitation of Section 41(g) of the Internal  
7 Revenue Code shall be taken into account in each subsequent  
8 taxable year.

9 (k) Section 41(a)(3) of the Internal Revenue Code shall not  
10 apply.

11 (l) Section 41(b)(3)(D) of the Internal Revenue Code, relating  
12 to amounts paid to eligible small businesses, universities, and  
13 federal laboratories, shall not apply.

14 (m) Section 41(f)(6) of the Internal Revenue Code, relating to  
15 energy research consortium, shall not apply.

16 *SEC. 11. Section 23622.9 is added to the Revenue and Taxation*  
17 *Code, to read:*

18 *23622.9. (a) For each taxable year beginning on or after*  
19 *January 1, 2014, there shall be allowed a credit against the "tax,"*  
20 *as defined in Section 23036, an amount equal to the sum of the*  
21 *following percentages of wages paid or incurred by the taxpayer*  
22 *during the taxable year to each qualified employee of the taxpayer.*

23 (1) *Twenty-five percent for each qualified employee employed*  
24 *by the qualified taxpayer for at least 120 hours, but not less than*  
25 *400 hours, during the taxable year.*

26 (2) *Forty percent for each qualified employee employed by the*  
27 *qualified taxpayer for at least 400 hours during the taxable year.*

28 (b) *The credit under subdivision (a) shall be allowed only with*  
29 *respect to the first six thousand dollars (\$6,000) of wages paid or*  
30 *incurred during the taxable year to each qualified employee.*

31 (c) *For purposes of this section, all of the following definitions*  
32 *shall apply:*

33 (1) *"Qualified employee" means an individual who is any of*  
34 *the following, as documented by the Employment Development*  
35 *Department:*

36 (A) *A recipient of CalWORKs benefits.*

37 (B) *A parolee.*

38 (C) *A veteran, as defined in Section 980 of the Military and*  
39 *Veterans Code.*

1 (D) Eligible for receipt of unemployment insurance benefits or  
2 currently receiving unemployment insurance benefits.

3 (E) A person on probation.

4 (2) “Qualified taxpayer” means a taxpayer that is a person or  
5 entity engaged in a trade or business within California.

6 (d) For purposes of this section the qualified taxpayer shall do  
7 both of the following:

8 (1) Obtain a certificate from the Employment Development  
9 Department certifying that a qualified employee is employed by  
10 the qualified taxpayer.

11 (2) Retain a copy of the certification and provide it upon request  
12 to the Franchise Tax Board.

13 (e) (1) For purposes of this section:

14 (A) All employees of trades or businesses, which are not  
15 incorporated, that are under common control shall be treated as  
16 employed by a single qualified taxpayer.

17 (B) The credit, if any, allowable by this section with respect to  
18 each trade or business shall be determined by reference to its  
19 proportionate share of the expense of the qualified wages giving  
20 rise to the credit, and shall be allocated in that manner.

21 (C) Principles that apply in the case of controlled groups of  
22 corporations, as specified in subdivision (e), shall apply with  
23 respect to determining employment.

24 (2) If an employer acquires the major portion of a trade or  
25 business of another employer (hereafter in this paragraph referred  
26 to as the “predecessor”) or the major portion of a separate unit  
27 of a trade or business of a predecessor, then, for purposes of  
28 applying this section for any calendar year ending after that  
29 acquisition, the employment relationship between a qualified  
30 employee and an employer shall not be treated as terminated if  
31 the employee continues to be employed in that trade or business.

32 (f) In the case where the credit otherwise allowed under this  
33 section exceeds the “tax” for the taxable year, that portion of the  
34 credit that exceeds the “tax” may be carried over and added to  
35 the credit, if any, in succeeding taxable years, until the credit is  
36 exhausted. The credit shall be applied first to the earliest taxable  
37 years possible.

38 SEC. 12. Section 23623 of the Revenue and Taxation Code, as  
39 added by Section 8 of Chapter 10 of the Third Extraordinary  
40 Session of the Statutes of 2009, is repealed.

1     ~~23623. (a) For each taxable year beginning on or after January~~  
2 ~~1, 2009, there shall be allowed as a credit against the “tax,” as~~  
3 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~  
4 ~~net increase in qualified full-time employees, as specified in~~  
5 ~~subdivision (c), hired during the taxable year by a qualified~~  
6 ~~employer.~~  
7     ~~(b) For purposes of this section:~~  
8     ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~  
9 ~~to divorce, or any other transfer, whether or not for consideration.~~  
10     ~~(2) “Qualified full-time employee” means:~~  
11     ~~(A) A qualified employee who was paid qualified wages during~~  
12 ~~the taxable year by the qualified employer for services of not less~~  
13 ~~than an average of 35 hours per week.~~  
14     ~~(B) A qualified employee who was a salaried employee and~~  
15 ~~was paid compensation during the taxable year for full-time~~  
16 ~~employment, within the meaning of Section 515 of the Labor Code,~~  
17 ~~by the qualified employer.~~  
18     ~~(3) A “qualified employee” shall not include any of the~~  
19 ~~following:~~  
20     ~~(A) An employee certified as a qualified employee in an~~  
21 ~~enterprise zone designated in accordance with Chapter 12.8~~  
22 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~  
23 ~~Government Code.~~  
24     ~~(B) An employee certified as a qualified disadvantaged~~  
25 ~~individual in a manufacturing enhancement area designated in~~  
26 ~~accordance with Section 7073.8 of the Government Code.~~  
27     ~~(C) An employee certified as a qualified employee in a targeted~~  
28 ~~tax area designated in accordance with Section 7097 of the~~  
29 ~~Government Code.~~  
30     ~~(D) An employee certified as a qualified disadvantaged~~  
31 ~~individual or a qualified displaced employee in a local agency~~  
32 ~~military base recovery area (LAMBRA) designated in accordance~~  
33 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~  
34 ~~7 of Title 1 of the Government Code.~~  
35     ~~(E) An employee whose wages are included in calculating any~~  
36 ~~other credit allowed under this part.~~  
37     ~~(4) “Qualified employer” means a taxpayer that, as of the last~~  
38 ~~day of the preceding taxable year, employed a total of 20 or fewer~~  
39 ~~employees.~~

1 ~~(5) “Qualified wages” means wages subject to Division 6~~  
2 ~~(commencing with Section 13000) of the Unemployment Insurance~~  
3 ~~Code.~~

4 ~~(6) “Annual full-time equivalent” means either of the following:~~

5 ~~(A) In the case of a full-time employee paid hourly qualified~~  
6 ~~wages, “annual full-time equivalent” means the total number of~~  
7 ~~hours worked for the taxpayer by the employee (not to exceed~~  
8 ~~2,000 hours per employee) divided by 2,000.~~

9 ~~(B) In the case of a salaried full-time employee, “annual~~  
10 ~~full-time equivalent” means the total number of weeks worked for~~  
11 ~~the taxpayer by the employee divided by 52.~~

12 ~~(c) The net increase in qualified full-time employees of a~~  
13 ~~qualified employer shall be determined as provided by this~~  
14 ~~subdivision:~~

15 ~~(1) (A) The net increase in qualified full-time employees shall~~  
16 ~~be determined on an annual full-time equivalent basis by~~  
17 ~~subtracting from the amount determined in subparagraph (C) the~~  
18 ~~amount determined in subparagraph (B).~~

19 ~~(B) The total number of qualified full-time employees employed~~  
20 ~~in the preceding taxable year by the taxpayer and by any trade or~~  
21 ~~business acquired by the taxpayer during the current taxable year.~~

22 ~~(C) The total number of full-time employees employed in the~~  
23 ~~current taxable year by the taxpayer and by any trade or business~~  
24 ~~acquired during the current taxable year.~~

25 ~~(2) For taxpayers who first commence doing business in this~~  
26 ~~state during the taxable year, the number of full-time employees~~  
27 ~~for the immediately preceding prior taxable year shall be zero.~~

28 ~~(d) In the case where the credit allowed by this section exceeds~~  
29 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~  
30 ~~the following year, and succeeding seven years if necessary, until~~  
31 ~~the credit is exhausted.~~

32 ~~(e) Any deduction otherwise allowed under this part for qualified~~  
33 ~~wages shall not be reduced by the amount of the credit allowed~~  
34 ~~under this section.~~

35 ~~(f) For purposes of this section:~~

36 ~~(1) All employees of the trades or businesses that are treated as~~  
37 ~~related under either Section 267, 318, or 707 of the Internal~~  
38 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

39 ~~(2) In determining whether the taxpayer has first commenced~~  
40 ~~doing business in this state during the taxable year, the provisions~~

1 of subdivision (f) of Section 17276, without application of  
2 paragraph (7) of that subdivision, shall apply.

3 (g) (1) (A) Credit under this section and Section 17053.80 shall  
4 be allowed only for credits claimed on timely filed original returns  
5 received by the Franchise Tax Board on or before the cut-off date  
6 established by the Franchise Tax Board.

7 (B) For purposes of this paragraph, the cut-off date shall be the  
8 last day of the calendar quarter within which the Franchise Tax  
9 Board estimates it will have received timely filed original returns  
10 claiming credits under this section and Section 17053.80 that  
11 cumulatively total four hundred million dollars (\$400,000,000)  
12 for all taxable years.

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

15 (3) (A) The determinations of the Franchise Tax Board with  
16 respect to the cut-off date, the date a return is received, and whether  
17 a return has been timely filed for purposes of this subdivision may  
18 not be reviewed in any administrative or judicial proceeding.

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

25 (4) The Franchise Tax Board shall periodically provide notice  
26 on its Web site with respect to the amount of credit under this  
27 section and Section 17053.80 claimed on timely filed original  
28 returns received by the Franchise Tax Board.

29 (h) (1) The Franchise Tax Board may prescribe rules, guidelines  
30 or procedures necessary or appropriate to carry out the purposes  
31 of this section, including any guidelines regarding the limitation  
32 on total credits allowable under this section and Section 17053.80  
33 and guidelines necessary to avoid the application of paragraph (2)  
34 of subdivision (f) through split-ups, shell corporations, partnerships,  
35 tiered ownership structures, or otherwise.

36 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
37 Division 3 of Title 2 of the Government Code does not apply to  
38 any standard, criterion, procedure, determination, rule, notice, or  
39 guideline established or issued by the Franchise Tax Board  
40 pursuant to this section.

1 (i) ~~This section shall remain in effect only until December 1 of~~  
2 ~~the calendar year after the year of the cut-off date, and as of that~~  
3 ~~December 1 is repealed.~~

4 *SEC. 13. Section 23623 of the Revenue and Taxation Code, as*  
5 *added by Section 8 of Chapter 17 of the Third Extraordinary*  
6 *Session of the Statutes of 2009, is amended to read:*

7 23623. (a) For each taxable year beginning on or after January  
8 1, 2009, there shall be allowed as a credit against the “tax,” as  
9 defined in Section 23036, three thousand dollars (\$3,000) for each  
10 net increase in qualified full-time employees, as specified in  
11 subdivision (c), hired during the taxable year by a ~~qualified~~  
12 ~~employer taxpayer.~~

13 (b) For purposes of this section:

14 (1) “Acquired” includes any gift, inheritance, transfer incident  
15 to divorce, or any other transfer, whether or not for consideration.

16 (2) “Qualified full-time employee” means:

17 (A) A qualified employee who was paid qualified wages during  
18 the taxable year by the ~~qualified employer taxpayer~~ for services  
19 of not less than an average of 35 hours per week.

20 (B) A qualified employee who was a salaried employee and  
21 was paid compensation during the taxable year for full-time  
22 employment, within the meaning of Section 515 of the Labor Code,  
23 by the ~~qualified employer taxpayer.~~

24 (3) A “qualified employee” shall not include any of the  
25 following:

26 (A) An employee certified as a qualified employee in an  
27 enterprise zone designated in accordance with Chapter 12.8  
28 (commencing with Section 7070) of Division 7 of Title 1 of the  
29 Government Code.

30 (B) An employee certified as a qualified disadvantaged  
31 individual in a manufacturing enhancement area designated in  
32 accordance with Section 7073.8 of the Government Code.

33 (C) An employee certified as a qualified employee in a targeted  
34 tax area designated in accordance with Section 7097 of the  
35 Government Code.

36 (D) An employee certified as a qualified disadvantaged  
37 individual or a qualified displaced employee in a local agency  
38 military base recovery area (LAMBRA) designated in accordance  
39 with Chapter 12.97 (commencing with Section 7105) of Division  
40 7 of Title 1 of the Government Code.

- 1 (E) An employee whose wages are included in calculating any  
2 other credit allowed under this part.
- 3 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~  
4 ~~day of the preceding taxable year, employed a total of 20 or fewer~~  
5 ~~employees.~~
- 6 ~~(5)~~
- 7 (4) “Qualified wages” means wages subject to Division 6  
8 (commencing with Section 13000) of the Unemployment Insurance  
9 Code.
- 10 ~~(6)~~
- 11 (5) “Annual full-time equivalent” means either of the following:
- 12 (A) In the case of a full-time employee paid hourly qualified  
13 wages, “annual full-time equivalent” means the total number of  
14 hours worked for the taxpayer by the employee (not to exceed  
15 2,000 hours per employee) divided by 2,000.
- 16 (B) In the case of a salaried full-time employee, “annual  
17 full-time equivalent” means the total number of weeks worked for  
18 the taxpayer by the employee divided by 52.
- 19 (c) The net increase in qualified full-time employees of a  
20 ~~qualified employer taxpayer~~ shall be determined as provided by  
21 this subdivision:
- 22 (1) (A) The net increase in qualified full-time employees shall  
23 be determined on an annual full-time equivalent basis by  
24 subtracting from the amount determined in subparagraph (C) the  
25 amount determined in subparagraph (B).
- 26 (B) The total number of qualified full-time employees employed  
27 in the preceding taxable year by the taxpayer and by any trade or  
28 business acquired by the taxpayer during the ~~current~~ *preceding*  
29 taxable year.
- 30 (C) The total number of full-time employees employed in the  
31 current taxable year by the taxpayer and by any trade or business  
32 acquired during the current taxable year.
- 33 (2) For taxpayers who first commence doing business in this  
34 state during the taxable year, the number of full-time employees  
35 for the immediately preceding prior taxable year shall be zero.
- 36 (d) In the case where the credit allowed by this section exceeds  
37 the “tax,” the excess may be carried over to reduce the “tax” in  
38 the following year, and succeeding seven years if necessary, until  
39 the credit is exhausted.

1 (e) Any deduction otherwise allowed under this part for qualified  
2 wages shall not be reduced by the amount of the credit allowed  
3 under this section.

4 (f) For purposes of this section:

5 (1) All employees of the trades or businesses that are treated as  
6 related under either Section 267, 318, or 707 of the Internal  
7 Revenue Code shall be treated as employed by a single taxpayer.

8 (2) In determining whether the taxpayer has first commenced  
9 doing business in this state during the taxable year, the provisions  
10 of subdivision (f) of Section 17276, without application of  
11 paragraph (7) of that subdivision, shall apply.

12 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~  
13 ~~be allowed only for credits claimed on timely filed original returns~~  
14 ~~received by the Franchise Tax Board on or before the cut-off date~~  
15 ~~established by the Franchise Tax Board.~~

16 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~  
17 ~~last day of the calendar quarter within which the Franchise Tax~~  
18 ~~Board estimates it will have received timely filed original returns~~  
19 ~~claiming credits under this section and Section 17053.80 that~~  
20 ~~cumulatively total four hundred million dollars (\$400,000,000)~~  
21 ~~for all taxable years.~~

22 ~~(2) The date a return is received shall be determined by the~~  
23 ~~Franchise Tax Board.~~

24 ~~(3) (A) The determinations of the Franchise Tax Board with~~  
25 ~~respect to the cut-off date, the date a return is received, and whether~~  
26 ~~a return has been timely filed for purposes of this subdivision may~~  
27 ~~not be reviewed in any administrative or judicial proceeding.~~

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

34 ~~(4) The Franchise Tax Board shall periodically provide notice~~  
35 ~~on its Web site with respect to the amount of credit under this~~  
36 ~~section and Section 17053.80 claimed on timely filed original~~  
37 ~~returns received by the Franchise Tax Board.~~

38 ~~(h)~~

39 (g) (1) The Franchise Tax Board may prescribe rules, guidelines  
40 or procedures necessary or appropriate to carry out the purposes

1 of this section, including any guidelines regarding the limitation  
2 on total credits allowable under this section and Section 17053.80  
3 and guidelines necessary to avoid the application of paragraph (2)  
4 of subdivision (f) through split-ups, shell corporations, partnerships,  
5 tiered ownership structures, or otherwise.

6 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
7 Division 3 of Title 2 of the Government Code does not apply to  
8 any standard, criterion, procedure, determination, rule, notice, or  
9 guideline established or issued by the Franchise Tax Board  
10 pursuant to this section.

11 (i) ~~This section shall remain in effect only until December 1 of~~  
12 ~~the calendar year after the year of the cut-off date, and as of that~~  
13 ~~December 1 is repealed.~~

14 (h) *The amendments made to this section by the act adding this*  
15 *subdivision shall apply only to taxable years beginning on or after*  
16 *January 1, 2014.*

17 *SEC. 14. Section 24349 of the Revenue and Taxation Code is*  
18 *amended to read:*

19 24349. (a) There shall be allowed as a depreciation deduction  
20 a reasonable allowance for the exhaustion, wear and tear (including  
21 a reasonable allowance for obsolescence)—

22 (1) Of property used in the trade or business; or

23 (2) Of property held for the production of income.

24 (b) Except as otherwise provided in subdivision (c), for taxable  
25 years ending after December 31, 1958, the term “reasonable  
26 allowance” as used in subdivision (a) shall include, but shall not  
27 be limited to, an allowance computed in accordance with  
28 regulations prescribed by the Franchise Tax Board, under any of  
29 the following methods:

30 (1) The straight-line method.

31 (2) The declining balance method, using a rate not exceeding  
32 twice the rate that would have been used had the annual allowance  
33 been computed under the method described in paragraph (1).

34 (3) The sum of the years-digits method.

35 (4) Any other consistent method productive of an annual  
36 allowance that, when added to all allowances for the period  
37 commencing with the taxpayer’s use of the property and including  
38 the taxable year, does not, during the first two-thirds of the useful  
39 life of the property, exceed the total of those allowances that would

1 have been used had those allowances been computed under the  
2 method described in paragraph (2).

3 Nothing in this subdivision shall be construed to limit or reduce  
4 an allowance otherwise allowable under subdivision (a).

5 (c) Any grapevine replaced in a vineyard in California in a  
6 taxable year beginning on or after January 1, 1992, as a direct  
7 result of a phylloxera infestation in that vineyard, and any  
8 grapevine replaced in a vineyard in California in a taxable year  
9 beginning on or after January 1, 1997, as a direct result of Pierce's  
10 disease in that vineyard, shall have a useful life of five years, except  
11 that it shall have a class life of 10 years for purposes of depreciation  
12 under Section 168(g)(2) of the Internal Revenue Code where the  
13 taxpayer has made an election under Section 263A(d)(3) of the  
14 Internal Revenue Code not to capitalize costs of the infested  
15 vineyard. Every taxpayer claiming a deduction under this section  
16 with respect to a grapevine as described in this subdivision shall  
17 obtain a written certification from an independent state-certified  
18 integrated pest management adviser, or a state agricultural  
19 commissioner or adviser, that specifies that the replanting was  
20 necessary to restore a vineyard infested with phylloxera or Pierce's  
21 disease. The taxpayer shall retain the certification for future audit  
22 purposes.

23 (d) For purposes of this part, the deduction for property leased  
24 to governments and other tax-exempt entities, as defined in Section  
25 168(h) of the Internal Revenue Code, shall be limited to the amount  
26 determined under Section 168(g) of the Internal Revenue Code,  
27 relating to alternative depreciation system for certain property.

28 (e) (1) In the case of any building erected or improvements  
29 made on leased property, if the building or improvement is property  
30 to which this section applies, the depreciation deduction shall be  
31 determined under the provisions of this section.

32 (2) An improvement shall be treated for purposes of determining  
33 gain or loss under this part as disposed of by the lessor when so  
34 disposed of or abandoned if both of the following occur:

35 (A) The improvement is made by the lessor of leased property  
36 for the lessee of that property.

37 (B) The improvement is irrevocably disposed of or abandoned  
38 by the lessor at the termination of the lease by the lessee.

39 This subdivision shall not apply to any property to which Section  
40 168 of the Internal Revenue Code does not apply for federal

1 purposes by reason of Section 168(f) of the Internal Revenue Code.  
2 Any election made under Section 168(f)(1) of the Internal Revenue  
3 Code for federal purposes with respect to that property shall be  
4 treated as a binding election for state purposes under this  
5 subdivision with respect to that same property and no separate  
6 election under subdivision (e) of Section 23051.5 with respect to  
7 that property shall be allowed.

8 (3) (A) In determining a lease term, both of the following shall  
9 apply:

10 (i) There shall be taken into account options to renew.

11 (ii) Two or more successive leases which are part of the same  
12 transaction (or a series of related transactions) with respect to the  
13 same or substantially similar property shall be treated as one lease.

14 (B) For purposes of clause (i) of subparagraph (A), in the case  
15 of nonresidential real property or residential rental property, there  
16 shall not be taken into account any option to renew at fair market  
17 value determined at the time of renewal.

18 (f) (1) Section 167(g) of the Internal Revenue Code, relating  
19 to depreciation under income forecast method, shall apply except  
20 as otherwise provided.

21 (2) Section 167(g)(2)(C) of the Internal Revenue Code is  
22 modified by substituting “Section 19521” in lieu of “Section  
23 460(b)(7)” of the Internal Revenue Code.

24 (3) Section 167(g)(5)(D) of the Internal Revenue Code is  
25 modified by substituting “Part 10.2 (commencing with Section  
26 18401) (other than Article 2 (commencing with Section 19021)  
27 and Sections 19142 to 19150, inclusive)” in lieu of “Subtitle F  
28 (other than Sections 6654 and 6655).”

29 (4) Section 167(g)(5)(E) of the Internal Revenue Code, relating  
30 to treatment of distribution costs, shall not apply.

31 (5) Section 167(g)(7) of the Internal Revenue Code, relating to  
32 treatment of participations and residuals, shall not apply.

33 (g) *Notwithstanding any other law to the contrary, for property  
34 placed in service on and after January 1, 2014, the applicable  
35 recovery period shall be one-half of the applicable recovery period  
36 set forth in the Internal Revenue Code provision 167 or 168 or  
37 one-half of the recovery period described in this code.*

38 (h) *Notwithstanding any other provision of law to the contrary,  
39 for property placed in service before January 1, 2014, the  
40 remaining applicable recovery period shall, at the election of the*

1 taxpayer, be one-half of the applicable recovery period set forth  
2 in the Internal Revenue Code provision 167 or 168 or one-half of  
3 the recovery period described in this code.

4 SEC. 15. Section 24416.20 of the Revenue and Taxation Code  
5 is amended to read:

6 24416.20. Except as provided in Sections 24416.1, 24416.2,  
7 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss  
8 deduction shall be allowed in computing net income under Section  
9 24341 and shall be determined in accordance with Section 172 of  
10 the Internal Revenue Code, except as otherwise provided.

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

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

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

22 (A) Fifty percent for any taxable year beginning before January  
23 1, 2000.

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

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

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

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

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

38 (B) If the net operating loss is greater than the net loss from the  
39 new business, the net operating loss shall be carried over as  
40 follows:

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

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

8 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
9 Code, the amount described in clause (ii) of subparagraph (B) shall  
10 be absorbed before the amount described in clause (i) of  
11 subparagraph (B).

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

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

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

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

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

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

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

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

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

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

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

25 (1) Net operating loss carrybacks shall not be allowed for any  
26 net operating losses attributable to taxable years beginning before  
27 January 1, 2013.

28 (2) A net operating loss attributable to taxable years beginning  
29 on or after January 1, 2013, shall be a net operating loss carryback  
30 to each of the two taxable years preceding the taxable year of the  
31 loss in lieu of the number of years provided therein.

32 (A) For a net operating loss attributable to a taxable year  
33 beginning on or after January 1, 2013, and before January 1, 2014,  
34 the amount of carryback to any taxable year shall not exceed 50  
35 percent of the net operating loss.

36 (B) For a net operating loss attributable to a taxable year  
37 beginning on or after January 1, 2014, ~~and before January 1, 2015,~~  
38 the amount of carryback to any taxable year shall not exceed ~~75~~  
39 *100* percent of the net operating loss.

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

5 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
6 Internal Revenue Code, relating to special rules for REITs, and  
7 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
8 excess interest loss, and Section 172(h) of the Internal Revenue  
9 Code, relating to corporate equity reduction interest losses, shall  
10 apply as provided.

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

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

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

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

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

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

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

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

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

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

38 (4) The net operating loss attributable to taxable years beginning  
39 on or after January 1, 1987, and before January 1, 1994, shall be  
40 a net operating loss carryover to each of the 10 taxable years

1 following the year of the loss if it is incurred by a corporation that  
2 was either of the following:

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

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

12 (f) For purposes of this section:

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

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

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

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

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

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

39 (A) The determination of the relative fair market values of the  
40 acquired assets and the total assets shall be made as of the last day

1 of the first taxable year in which the taxpayer (or any related  
2 person) first uses any of the acquired trade or business assets in  
3 its business activity.

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

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

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

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

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

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

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

9 (B) For purposes of this paragraph:

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

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

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

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

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

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

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

38 (k) The Franchise Tax Board may reclassify any net operating  
39 loss carryover determined under either paragraph (2) or (3) of  
40 subdivision (b) as a net operating loss carryover under paragraph

1 (1) of subdivision (b) upon a showing that the reclassification is  
2 necessary to prevent evasion of the purposes of this section.

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

6 *SEC. 16. Section 24996 is added to the Revenue and Taxation  
7 Code, to read:*

8 *24996. Notwithstanding any other law, gross income shall not  
9 include any gain from the sale or exchange of any capital asset.*

10 *For purposes of this section, "capital asset" means a capital asset  
11 as defined by Section 1221 of the Internal Revenue Code.*

12 ~~SEC. 3.~~

13 *SEC. 17.* This act provides for a tax levy within the meaning  
14 of Article IV of the Constitution and shall go into immediate effect.