

AMENDED IN SENATE MAY 8, 2013  
AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 235**

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**Introduced by Senator Wyland**  
*(Coauthors: Senators Huff and Walters)*

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 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: 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~~ *Section* 6051 or 6201 that  
26 is deposited in the State Treasury to the credit of the Local Revenue  
27 Fund 2011 pursuant to ~~Sections~~ *Section* 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 Section  
38 41(a)(1) of the Internal Revenue Code is modified to read “15  
39 percent.”

1 (4) For each taxable year beginning on or after January 1, 2014,  
2 the reference to “20 percent” in Section 41(a)(1) of the Internal  
3 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 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, 2014,  
35 Section 41(c)(4)(A) of the Internal Revenue Code, relating to the  
36 election of the alternative incremental credit, shall apply.

37 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an  
38 election under Section 41(c)(4)(A) of the Internal Revenue Code  
39 may be made for any taxable year of the taxpayer beginning on or  
40 after January 1, 1998. That election shall apply to the taxable year

1 for which made and all succeeding taxable years unless revoked  
2 with the consent of the Franchise Tax Board.

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

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

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

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

16 (1) The last sentence shall not apply.

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

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

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

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

30 SEC. 4. Section 17053.76 is added to the Revenue and Taxation  
31 Code, to read:

32 17053.76. (a) For each taxable year beginning on or after  
33 January 1, 2014, there shall be allowed a credit against the "net  
34 tax," as defined in Section 17039, an amount equal to the sum of  
35 the following percentages of wages paid or incurred by the  
36 qualified taxpayer during the taxable year to each qualified  
37 employee of the qualified taxpayer:

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

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

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

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

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

11 (A) A recipient of CalWORKs benefits.

12 (B) A parolee.

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

15 (D) Eligible for receipt of unemployment insurance benefits or  
16 currently receiving unemployment insurance benefits.

17 (E) A person on probation.

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

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

22 (1) Obtain a certificate from the Employment Development  
23 Department certifying that a qualified employee is employed by  
24 the qualified taxpayer.

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

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

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

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

35 (2) If an employer acquires the major portion of a trade or  
36 business of another employer (hereafter in this paragraph referred  
37 to as the “predecessor”) or the major portion of a separate unit of  
38 a trade or business of a predecessor, then, for purposes of applying  
39 this section for any calendar year ending after that acquisition, the  
40 employment relationship between a qualified employee and an

1 employer shall not be treated as terminated if the employee  
2 continues to be employed in that trade or business.

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

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

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

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

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 taxpayer.

23 (b) For purposes of this section:

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

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

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

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

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

36 (A) An employee certified as a qualified employee in an  
37 enterprise zone designated in accordance with Chapter 12.8  
38 (commencing with Section 7070) of Division 7 of Title 1 of the  
39 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 wages” means wages subject to Division 6  
15 (commencing with Section 13000) of the Unemployment Insurance  
16 Code.

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

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

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

25 (c) The net increase in qualified full-time employees of a  
26 taxpayer shall be determined as provided by this subdivision:

27 (1) (A) The net increase in qualified full-time employees shall  
28 be determined on an annual full-time equivalent basis by  
29 subtracting from the amount determined in subparagraph (C) the  
30 amount determined in subparagraph (B).

31 (B) The total number of qualified full-time employees employed  
32 in the preceding taxable year by the taxpayer and by any trade or  
33 business acquired by the taxpayer during the preceding taxable  
34 year.

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

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

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

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

8 (f) For purposes of this section:

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

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

16 (g) (1) The Franchise Tax Board may prescribe rules,  
17 guidelines, or procedures necessary or appropriate to carry out  
18 the purposes of this section, including any guidelines necessary to  
19 avoid the application of paragraph (2) of subdivision (f) through  
20 splitups, shell corporations, partnerships, tiered ownership  
21 structures, or otherwise.

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

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

30 SEC. 7. Section 17250 of the Revenue and Taxation Code is  
31 amended to read:

32 17250. (a) Section 168 of the Internal Revenue Code is  
33 modified as follows:

34 (1) Any reference to “tax imposed by this chapter” in Section  
35 168 of the Internal Revenue Code means “net tax,” as defined in  
36 Section 17039.

37 (2) (A) Section 168(e)(3) is modified to provide that any  
38 grapevine, replaced in a vineyard in California in any taxable year  
39 beginning on or after January 1, 1992, as a direct result of a  
40 phylloxera infestation in that vineyard, or replaced in a vineyard

1 in California in any taxable year beginning on or after January 1,  
2 1997, as a direct result of Pierce’s disease in that vineyard, shall  
3 be “five-year property,” rather than “10-year property.”

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

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

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

20 (4) Section 168(k) of the Internal Revenue Code, relating to  
21 special allowance for certain property acquired after December  
22 31, 2007, and before January 1, 2009, shall not apply.

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

25 (6) Sections 168(e)(3)(E)(iv), 168(e)(3)(E)(v), and  
26 168(e)(3)(E)(ix) of the Internal Revenue Code shall not apply.

27 (7) Sections 168(e)(6), 168(e)(7), and 168(e)(8) of the Internal  
28 Revenue Code, relating to qualified leasehold improvement  
29 property, qualified restaurant property, and qualified retail  
30 improvement property, respectively, shall not apply.

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

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

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

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

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

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

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

11 (2) The “state certifying authority,” as defined in Section  
12 169(d)(2) of the Internal Revenue Code, means the State Air  
13 Resources Board, in the case of air pollution, and the State Water  
14 Resources Control Board, in the case of water pollution.

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

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

26 SEC. 8. Section 17276.20 of the Revenue and Taxation Code  
27 is amended to read:

28 17276.20. Except as provided in Sections 17276.1, 17276.2,  
29 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided  
30 by Section 172 of the Internal Revenue Code, relating to net  
31 operating loss deduction, shall be modified as follows:

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

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

36 (b) (1) Except as provided in paragraphs (2) and (3), the  
37 provisions of Section 172(b)(2) of the Internal Revenue Code,  
38 relating to amount of carrybacks and carryovers, shall be modified  
39 so that the applicable percentage of the entire amount of the net  
40 operating loss for any taxable year shall be eligible for carryover

1 to any subsequent taxable year. For purposes of this subdivision,  
2 the applicable percentage shall be:

3 (A) Fifty percent for any taxable year beginning before January  
4 1, 2000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (2) A net operating loss attributable to taxable years beginning  
40 on or after January 1, 2013, shall be a net operating loss carryback

1 to each of the two taxable years preceding the taxable year of the  
2 loss in lieu of the number of years provided therein.

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

7 (B) For a net operating loss attributable to a taxable year  
8 beginning on or after January 1, 2014, the amount of carryback to  
9 any taxable year shall not exceed 100 percent of the net operating  
10 loss.

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

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

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

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

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

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

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

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

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

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

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

5 (4) The net operating loss attributable to taxable years beginning  
6 on or after January 1, 1987, and before January 1, 1994, shall be  
7 a net operating loss carryover to each of the 10 taxable years  
8 following the year of the loss if it is incurred by a taxpayer that is  
9 under the jurisdiction of the court in a Title 11 or similar case at  
10 any time during the income year. The loss carryover provided in  
11 the preceding sentence shall not apply to any loss incurred after  
12 the date the taxpayer is no longer under the jurisdiction of the court  
13 in a Title 11 or similar case.

14 (e) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (B) For purposes of this paragraph:

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

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

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

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

33 (i) 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 (j) 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 (k) 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. 9. Section 18153 is added to the Revenue and Taxation  
7 Code, to read:

8 18153. 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. 10. Section 23609 of the Revenue and Taxation Code is  
13 amended to read:

14 23609. For each taxable year beginning on or after January 1,  
15 1987, there shall be allowed as a credit against the “tax” (as defined  
16 by Section 23036) an amount determined in accordance with  
17 Section 41 of the Internal Revenue Code, except as follows:

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

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

22 (2) The reference to “20 percent” in Section 41(a)(2) of the  
23 Internal Revenue Code is modified to read “12 percent.”

24 (b) (1) For each taxable year beginning on or after January 1,  
25 1997, and before January 1, 1999, both of the following  
26 modifications shall apply:

27 (A) The reference to “20 percent” in Section 41(a)(1) of the  
28 Internal Revenue Code is modified to read “11 percent.”

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

31 (2) For each taxable year beginning on or after January 1, 1999,  
32 and before January 1, 2000, both of the following shall apply:

33 (A) The reference to “20 percent” in Section 41(a)(1) of the  
34 Internal Revenue Code is modified to read “12 percent.”

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

37 (3) For each taxable year beginning on or after January 1, 2000,  
38 and before January 1, 2014, both of the following shall apply:

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

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

3 (4) For each taxable year beginning on or after January 1, 2014,  
4 both of the following shall apply:

5 (A) The reference to “20 percent” in Section 41(a)(1) of the  
6 Internal Revenue Code shall apply.

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

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

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

17 (d) The provisions of Section 41(e)(7)(A) of the Internal  
18 Revenue Code, shall be modified so that “basic research,” for  
19 purposes of this section, includes any basic or applied research  
20 including scientific inquiry or original investigation for the  
21 advancement of scientific or engineering knowledge or the  
22 improved effectiveness of commercial products, except that the  
23 term does not include any of the following:

24 (1) Basic research conducted outside California.

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

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

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

32 (e) (1) In the case of a taxpayer engaged in any  
33 biopharmaceutical research activities that are described in Codes  
34 2833 to 2836, inclusive, or any research activities that are described  
35 in Codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard  
36 Industrial Classification (SIC) Manual published by the United  
37 States Office of Management and Budget, 1987 edition, or any  
38 other biotechnology research and development activities, the  
39 provisions of Section 41(e)(6) of the Internal Revenue Code shall  
40 be modified to include both of the following:

1 (A) A qualified organization as described in Section  
2 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an  
3 institution of higher education as described in Section 3304(f) of  
4 the Internal Revenue Code.

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

11 (2) For purposes of this subdivision:

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

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

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

31 (g) For each taxable year beginning on or after January 1, 1998,  
32 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the  
33 Internal Revenue Code, relating to contract research expenses, is  
34 modified to read “this part or Part 10 (commencing with Section  
35 17001).”

36 (h) (1) For each taxable year beginning on or after January 1,  
37 2000, and before January 1, 2014:

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

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

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

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

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

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

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

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

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

29 (1) The last sentence shall not apply.

30 (2) If the amount determined under Section 41(a) of the Internal  
31 Revenue Code for any taxable year exceeds the limitation of  
32 Section 41(g) of the Internal Revenue Code, that amount may be  
33 carried over to other taxable years under the rules of subdivision  
34 (f), except that the limitation of Section 41(g) of the Internal  
35 Revenue Code shall be taken into account in each subsequent  
36 taxable year.

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

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

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

6 SEC. 11. Section 23622.9 is added to the Revenue and Taxation  
7 Code, to read:

8 23622.9. (a) For each taxable year beginning on or after  
9 January 1, 2014, there shall be allowed a credit against the “tax,”  
10 as defined in Section 23036, an amount equal to the sum of the  
11 following percentages of wages paid or incurred by the taxpayer  
12 during the taxable year to each qualified employee of the taxpayer.

13 (1) Twenty-five percent for each qualified employee employed  
14 by the qualified taxpayer for at least 120 hours, but not less than  
15 400 hours, during the taxable year.

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

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

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

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

26 (A) A recipient of CalWORKs benefits.

27 (B) A parolee.

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

30 (D) Eligible for receipt of unemployment insurance benefits or  
31 currently receiving unemployment insurance benefits.

32 (E) A person on probation.

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

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

37 (1) Obtain a certificate from the Employment Development  
38 Department certifying that a qualified employee is employed by  
39 the qualified taxpayer.

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

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

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

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

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

14 (2) If an employer acquires the major portion of a trade or  
15 business of another employer (hereafter in this paragraph referred  
16 to as the “predecessor”) or the major portion of a separate unit of  
17 a trade or business of a predecessor, then, for purposes of applying  
18 this section for any calendar year ending after that acquisition, the  
19 employment relationship between a qualified employee and an  
20 employer shall not be treated as terminated if the employee  
21 continues to be employed in that trade or business.

22 (f) In the case where the credit otherwise allowed under this  
23 section exceeds the “tax” for the taxable year, that portion of the  
24 credit that exceeds the “tax” may be carried over and added to the  
25 credit, if any, in succeeding taxable years, until the credit is  
26 exhausted. The credit shall be applied first to the earliest taxable  
27 years possible.

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

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

34 23623. (a) For each taxable year beginning on or after January  
35 1, 2009, there shall be allowed as a credit against the “tax,” as  
36 defined in Section 23036, three thousand dollars (\$3,000) for each  
37 net increase in qualified full-time employees, as specified in  
38 subdivision (c), hired during the taxable year by a taxpayer.

39 (b) For purposes of this section:

- 1 (1) “Acquired” includes any gift, inheritance, transfer incident  
2 to divorce, or any other transfer, whether or not for consideration.
- 3 (2) “Qualified full-time employee” means:
- 4 (A) A qualified employee who was paid qualified wages during  
5 the taxable year by the taxpayer for services of not less than an  
6 average of 35 hours per week.
- 7 (B) A qualified employee who was a salaried employee and  
8 was paid compensation during the taxable year for full-time  
9 employment, within the meaning of Section 515 of the Labor Code,  
10 by the taxpayer.
- 11 (3) A “qualified employee” shall not include any of the  
12 following:
- 13 (A) An employee certified as a qualified employee in an  
14 enterprise zone designated in accordance with Chapter 12.8  
15 (commencing with Section 7070) of Division 7 of Title 1 of the  
16 Government Code.
- 17 (B) An employee certified as a qualified disadvantaged  
18 individual in a manufacturing enhancement area designated in  
19 accordance with Section 7073.8 of the Government Code.
- 20 (C) An employee certified as a qualified employee in a targeted  
21 tax area designated in accordance with Section 7097 of the  
22 Government Code.
- 23 (D) An employee certified as a qualified disadvantaged  
24 individual or a qualified displaced employee in a local agency  
25 military base recovery area (LAMBRA) designated in accordance  
26 with Chapter 12.97 (commencing with Section 7105) of Division  
27 7 of Title 1 of the Government Code.
- 28 (E) An employee whose wages are included in calculating any  
29 other credit allowed under this part.
- 30 (4) “Qualified wages” means wages subject to Division 6  
31 (commencing with Section 13000) of the Unemployment Insurance  
32 Code.
- 33 (5) “Annual full-time equivalent” means either of the following:
- 34 (A) In the case of a full-time employee paid hourly qualified  
35 wages, “annual full-time equivalent” means the total number of  
36 hours worked for the taxpayer by the employee (not to exceed  
37 2,000 hours per employee) divided by 2,000.
- 38 (B) In the case of a salaried full-time employee, “annual  
39 full-time equivalent” means the total number of weeks worked for  
40 the taxpayer by the employee divided by 52.

1 (c) The net increase in qualified full-time employees of a  
2 taxpayer shall be determined as provided by this subdivision:

3 (1) (A) The net increase in qualified full-time employees shall  
4 be determined on an annual full-time equivalent basis by  
5 subtracting from the amount determined in subparagraph (C) the  
6 amount determined in subparagraph (B).

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

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

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

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

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

24 (f) For purposes of this section:

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

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

32 (g) (1) The Franchise Tax Board may prescribe rules,  
33 guidelines, or procedures necessary or appropriate to carry out  
34 the purposes of this section, including any guidelines necessary to  
35 avoid the application of paragraph (2) of subdivision (f) through  
36 splitups, shell corporations, partnerships, tiered ownership  
37 structures, or otherwise.

38 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
39 Division 3 of Title 2 of the Government Code does not apply to  
40 any standard, criterion, procedure, determination, rule, notice, or

1 guideline established or issued by the Franchise Tax Board  
2 pursuant to this section.

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

6 SEC. 14. Section 24349 of the Revenue and Taxation Code is  
7 amended to read:

8 24349. (a) There shall be allowed as a depreciation deduction  
9 a reasonable allowance for the exhaustion, wear and tear (including  
10 a reasonable allowance for obsolescence)—

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

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

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

19 (1) The straight-line method.

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

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

24 (4) Any other consistent method productive of an annual  
25 allowance that, when added to all allowances for the period  
26 commencing with the taxpayer’s use of the property and including  
27 the taxable year, does not, during the first two-thirds of the useful  
28 life of the property, exceed the total of those allowances that would  
29 have been used had those allowances been computed under the  
30 method described in paragraph (2).

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

33 (c) Any grapevine replaced in a vineyard in California in a  
34 taxable year beginning on or after January 1, 1992, as a direct  
35 result of a phylloxera infestation in that vineyard, and any  
36 grapevine replaced in a vineyard in California in a taxable year  
37 beginning on or after January 1, 1997, as a direct result of Pierce’s  
38 disease in that vineyard, shall have a useful life of five years, except  
39 that it shall have a class life of 10 years for purposes of depreciation  
40 under Section 168(g)(2) of the Internal Revenue Code where the

1 taxpayer has made an election under Section 263A(d)(3) of the  
2 Internal Revenue Code not to capitalize costs of the infested  
3 vineyard. Every taxpayer claiming a deduction under this section  
4 with respect to a grapevine as described in this subdivision shall  
5 obtain a written certification from an independent state-certified  
6 integrated pest management adviser, or a state agricultural  
7 commissioner or adviser, that specifies that the replanting was  
8 necessary to restore a vineyard infested with phylloxera or Pierce's  
9 disease. The taxpayer shall retain the certification for future audit  
10 purposes.

11 (d) For purposes of this part, the deduction for property leased  
12 to governments and other tax-exempt entities, as defined in Section  
13 168(h) of the Internal Revenue Code, shall be limited to the amount  
14 determined under Section 168(g) of the Internal Revenue Code,  
15 relating to alternative depreciation system for certain property.

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

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

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

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

27 This subdivision shall not apply to any property to which Section  
28 168 of the Internal Revenue Code does not apply for federal  
29 purposes by reason of Section 168(f) of the Internal Revenue Code.  
30 Any election made under Section 168(f)(1) of the Internal Revenue  
31 Code for federal purposes with respect to that property shall be  
32 treated as a binding election for state purposes under this  
33 subdivision with respect to that same property and no separate  
34 election under subdivision (e) of Section 23051.5 with respect to  
35 that property shall be allowed.

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

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

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

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

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

11 (2) Section 167(g)(2)(C) of the Internal Revenue Code is  
12 modified by substituting “Section 19521” in lieu of “Section  
13 460(b)(7)” of the Internal Revenue Code.

14 (3) Section 167(g)(5)(D) of the Internal Revenue Code is  
15 modified by substituting “Part 10.2 (commencing with Section  
16 18401) (other than Article 2 (commencing with Section 19021)  
17 and Sections 19142 to 19150, inclusive)” in lieu of “Subtitle F  
18 (other than Sections 6654 and 6655).”

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

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

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

28 (h) Notwithstanding any other provision of law to the contrary,  
29 for property placed in service before January 1, 2014, the remaining  
30 applicable recovery period shall, at the election of the taxpayer,  
31 be one-half of the applicable recovery period set forth in the  
32 Internal Revenue Code provision 167 or 168 or one-half of the  
33 recovery period described in this code.

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

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

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

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

5 (b) (1) Except as provided in paragraphs (2) and (3), the  
6 provisions of Section 172(b)(2) of the Internal Revenue Code,  
7 relating to amount of carrybacks and carryovers, shall be modified  
8 so that the applicable percentage of the entire amount of the net  
9 operating loss for any taxable year shall be eligible for carryover  
10 to any subsequent taxable year. For purposes of this subdivision,  
11 the applicable percentage shall be:

12 (A) Fifty percent for any taxable year beginning before January  
13 1, 2000.

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

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

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

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

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

28 (B) If the net operating loss is greater than the net loss from the  
29 new business, the net operating loss shall be carried over as  
30 follows:

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

34 (ii) With respect to the portion of the net operating loss that  
35 exceeds the net loss from the new business, the applicable  
36 percentage of that amount shall be carried forward as provided in  
37 subdivision (d).

38 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
39 Code, the amount described in clause (ii) of subparagraph (B) shall

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

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

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

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

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

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

21 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
22 Code, the amount described in clause (ii) of subparagraph (B) shall  
23 be absorbed before the amount described in clause (i) of  
24 subparagraph (B).

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

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

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

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

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

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

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

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

26 (B) For a net operating loss attributable to a taxable year  
27 beginning on or after January 1, 2014, the amount of carryback to  
28 any taxable year shall not exceed 100 percent of the net operating  
29 loss.

30 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
31 Internal Revenue Code, relating to special rules for REITs, and  
32 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
33 excess interest loss, and Section 172(h) of the Internal Revenue  
34 Code, relating to corporate equity reduction interest losses, shall  
35 apply as provided.

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

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

1 to substitute “five taxable years” in lieu of “20 years” except as  
2 otherwise provided in paragraphs (2), (3), and (4).

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

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

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

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

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

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

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

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

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

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

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

37 (f) For purposes of this section:

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

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

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

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

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

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

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

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

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

35 (2) In any case where a taxpayer (or any related person) is  
36 engaged in one or more trade or business activities in this state, or  
37 has been engaged in one or more trade or business activities in this  
38 state within the preceding 36 months (“prior trade or business  
39 activity”), and thereafter commences an additional trade or business  
40 activity in this state, the additional trade or business activity shall

1 only be treated as a new business if the additional trade or business  
2 activity is classified under a different division of the Standard  
3 Industrial Classification (SIC) Manual published by the United  
4 States Office of Management and Budget, 1987 edition, than are  
5 any of the taxpayer's (or any related person's) current or prior  
6 trade or business activities.

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

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

21 (5) "Related person" shall mean any person that is related to  
22 the taxpayer under either Section 267 or 318 of the Internal  
23 Revenue Code.

24 (6) "Acquire" shall include any transfer, whether or not for  
25 consideration.

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

34 (B) For purposes of this paragraph:

35 (i) "Biopharmaceutical activities" means those activities that  
36 use organisms or materials derived from organisms, and their  
37 cellular, subcellular, or molecular components, in order to provide  
38 pharmaceutical products for human or animal therapeutics and  
39 diagnostics. Biopharmaceutical activities make use of living  
40 organisms to make commercial products, as opposed to

1 pharmaceutical activities that make use of chemical compounds  
2 to produce commercial products.

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

8 (h) For purposes of corporations whose net income is determined  
9 under Chapter 17 (commencing with Section 25101), Section  
10 25108 shall apply to each of the following:

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

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

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

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

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

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

31 SEC. 16. Section 24996 is added to the Revenue and Taxation  
32 Code, to read:

33 24996. Notwithstanding any other law, gross income shall not  
34 include any gain from the sale or exchange of any capital asset.  
35 For purposes of this section, “capital asset” means a capital asset  
36 as defined by Section 1221 of the Internal Revenue Code.

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

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