

Introduced by Senator LieuFebruary 21, 2013

An act to amend Sections 17052.12 and 23609 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 500, as introduced, Lieu. Income and corporation tax credits: research and development.

The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws 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. This bill would also provide complete conformity to the alternative incremental credit provided under those federal income tax laws.

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. Section 17052.12 of the Revenue and Taxation
2 Code is amended to read:

3 17052.12. For each taxable year beginning on or after January
4 1, 1987, there shall be allowed as a credit against the “net tax” (as
5 defined by Section 17039) for the taxable year an amount
6 determined in accordance with Section 41 of the Internal Revenue
7 Code, except as follows:

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

11 (b) (1) For each taxable year beginning on or after January 1,
12 1997, and before January 1, 1999, the reference to “20 percent”
13 in Section 41(a)(1) of the Internal Revenue Code is modified to
14 read “11 percent.”

15 (2) For each taxable year beginning on or after January 1, 1999,
16 and before January 1, 2000, the reference to “20 percent” in Section
17 41(a)(1) of the Internal Revenue Code is modified to read “12
18 percent.”

19 (3) For each taxable year beginning on or after January 1, 2000,
20 *and before January 1, 2013*, the reference to “20 percent” in
21 Section 41(a)(1) of the Internal Revenue Code is modified to read
22 “15 percent.”

23 (4) *For each taxable year beginning on or after January 1,*
24 *2013, the reference to “20 percent” in Section 41(a)(1) of the*
25 *Internal Revenue Code shall apply.*

26 (c) Section 41(a)(2) of the Internal Revenue Code, *relating to*
27 *basic research payments*, shall not apply.

28 (d) “Qualified research” shall include only research conducted
29 in California.

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

34 (f) (1) With respect to any expense paid or incurred after the
35 operative date of Section 6378, Section 41(b)(1) of the Internal
36 Revenue Code is modified to exclude from the definition of
37 “qualified research expense” any amount paid or incurred for

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

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

8 (g) (1) For each taxable year beginning on or after January 1,
9 2000, *and before January 1, 2013*:

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

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

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

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

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

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

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

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

38 (1) The last sentence shall not apply.

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

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

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

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

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

12 SEC. 2. 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, 2013*, 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,
4 2013, 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 provided by 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, 2013*:

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

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

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

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

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

26 (1) The last sentence shall not apply.

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

34 ~~(k) Section 41(a)(3) of the Internal Revenue Code shall not~~
35 ~~apply.~~

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

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

1 SEC. 3. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.

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