

**ASSEMBLY BILL**

**No. 437**

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**Introduced by Assembly Member Atkins  
(Principal coauthor: Assembly Member Mullin)**

February 19, 2015

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An act to amend Sections 17052.12 and 23609 of, to add Sections 17131.8 and 24304 to, and to add and repeal Division 3 (commencing with Section 70000) of, the Revenue and Taxation Code, relating to small businesses, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 437, as introduced, Atkins. Research and Development: Small Business Grant Program.

Existing law provides for several programs supporting small businesses, including the Office of Small Business Advocate, the director of which duties include, among other things, representing the views and interests of small businesses before other state agencies whose policies and activities may affect small businesses.

The Personal Income Tax Law imposes taxes on taxable income at specified rates based upon the amount of taxable income. The Corporation Tax Law imposes taxes upon, according to, or measured by, net income, as specified. The Personal Income Tax Law and the Corporation Tax Law, in modified conformity to a credit allowed under federal law, allow a credit against taxes imposed by those laws for increasing research expenses, as defined. Existing law allows a taxpayer to carryover any excess amounts of that credit to succeeding taxable years, until the credit is exhausted.

This bill would, beginning January 1, 2016, establish the Research and Development-Small Business Grant Program, which would provide

qualified small businesses, as defined, grants in amounts equal to either 10% or 15% of any unused credit amount allowed to the small business for specified years under the credit described above. This bill would continuously appropriate moneys from the General Fund to award these grants. This bill would specify that any grant money received by a qualified small business would be excluded from its income and would provide that any excess credit amount accrued by the qualified small business would be reduced by the amount allowed as a grant.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
 State-mandated local program: no.

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

1 SECTION 1. 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 “tax,” as defined by Section ~~17039~~) for the taxable year 17039,  
 6 an amount determined in accordance with Section 41 of the Internal  
 7 Revenue Code, *relating to credit for increasing research activities*,  
 8 except as follows:  
 9 (a) For each taxable year beginning before January 1, 1997, the  
 10 reference to “20 percent” in Section 41(a)(1) of the Internal  
 11 Revenue Code is modified to read “8 percent.”  
 12 (b) (1) For each taxable year beginning on or after January 1,  
 13 1997, and before January 1, 1999, the reference to “20 percent”  
 14 in Section 41(a)(1) of the Internal Revenue Code is modified to  
 15 read “11 percent.”  
 16 (2) For each taxable year beginning on or after January 1, 1999,  
 17 and before January 1, 2000, the reference to “20 percent” in Section  
 18 41(a)(1) of the Internal Revenue Code is modified to read “12  
 19 percent.”  
 20 (3) For each taxable year beginning on or after January 1, 2000,  
 21 the reference to “20 percent” in Section 41(a)(1) of the Internal  
 22 Revenue Code is modified to read “15 percent.”  
 23 (c) Section 41(a)(2) of the Internal Revenue Code shall not  
 24 apply.  
 25 (d) “Qualified research” shall include only research conducted  
 26 in California.

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

5 (2) *For taxable years beginning on or after January 1, 2016,*  
6 *and before January 1, 2025, the excess credit amount that may be*  
7 *carried over shall be reduced for that taxable year by the amount*  
8 *received as a grant pursuant to Division 3 (commencing with*  
9 *Section 70000).*

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

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

22 (g) (1) For each taxable year beginning on or after January 1,  
23 2000:

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

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

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

33 (2) Section 41(c)(4)(B) *of the Internal Revenue Code, relating*  
34 *to election*, shall not apply and in lieu thereof an election under  
35 Section 41(c)(4)(A) of the Internal Revenue Code, *relating to in*  
36 *general*, may be made for any taxable year of the taxpayer  
37 beginning on or after January 1, 1998. That election shall apply  
38 to the taxable year for which made and all succeeding taxable years  
39 unless revoked with the consent of the Franchise Tax Board.

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

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

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

11 (i) Section 41(g) of the Internal Revenue Code, relating to  
12 special rule for ~~passthrough~~ *pass-thru* of credit, is modified by  
13 each of the following:

14 (1) The last sentence shall not apply.

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

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

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

27 (l) Section 41(f)(6), *of the Internal Revenue Code* relating to  
28 energy research consortium, shall not apply.

29 SEC. 2. Section 17131.8 is added to the Revenue and Taxation  
30 Code, to read:

31 17131.8. For taxable years beginning on or after January 1,  
32 2016, and before January 1, 2025, gross income does not include  
33 any grant received by a taxpayer pursuant to Division 3  
34 (commencing with Section 70000).

35 SEC. 3. Section 23609 of the Revenue and Taxation Code is  
36 amended to read:

37 23609. For each taxable year beginning on or after January 1,  
38 1987, there shall be allowed as a credit against the ~~“tax”~~ (as *“tax,”*  
39 defined by Section ~~23036~~ 23036, an amount determined in

1 accordance with Section 41 of the Internal Revenue Code, *relating*  
2 *to credit for increasing research activities*, except as follows:

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

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

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

9 (b) (1) For each taxable year beginning on or after January 1,  
10 1997, and before January 1, 1999, both of the following  
11 modifications shall apply:

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

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

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

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

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

22 (3) For each taxable year beginning on or after January 1, 2000,  
23 both of the following shall apply:

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

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

28 (c) (1) With respect to any expense paid or incurred after the  
29 operative date of Section 6378, Section 41(b)(1) of the Internal  
30 Revenue Code, *relating to qualified research expenses*, is modified  
31 to exclude from the definition of “qualified research expense” any  
32 amount paid or incurred for tangible personal property that is  
33 eligible for the exemption from sales or use tax provided by Section  
34 6378.

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

37 (d) The provisions of Section 41(e)(7)(A) of the Internal  
38 Revenue Code, *relating to basic research*, shall be modified so  
39 that “basic research,” for purposes of this section, includes any  
40 basic or applied research including scientific inquiry or original

1 investigation for the advancement of scientific or engineering  
2 knowledge or the improved effectiveness of commercial products,  
3 except that the term does not include any of the following:

4 (1) Basic research conducted outside California.

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

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

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

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

22 (A) A qualified organization as described in Section  
23 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an  
24 institution of higher education as described in Section 3304(f) of  
25 the Internal Revenue Code, *relating to definition of institution of*  
26 *higher education*.

27 (B) A charitable research hospital owned by an organization  
28 that is described in Section 501(c)(3) of the Internal Revenue Code,  
29 is exempt from taxation under Section 501(a) of the Internal  
30 Revenue Code, *relating to exempt from taxation*, is not a private  
31 foundation, is designated a “specialized laboratory cancer center,”  
32 and has received Clinical Cancer Research Center status from the  
33 National Cancer Institute.

34 (2) For purposes of this subdivision:

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

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

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

10 (f) (1) In the case where the credit allowed by this section  
11 exceeds the “tax,” the excess may be carried over to reduce the  
12 “tax” in the following year, and succeeding years if necessary,  
13 until the credit has been exhausted.

14 (2) *For taxable years beginning on or after January 1, 2016,*  
15 *and before January 1, 2025, the excess credit amount that may be*  
16 *carried over shall be reduced for that taxable year by the amount*  
17 *received as a grant pursuant to Division 3 (commencing with*  
18 *Section 70000).*

19 (g) For each taxable year beginning on or after January 1, 1998,  
20 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the  
21 Internal Revenue Code, relating to ~~contract research expenses,~~  
22 *amounts paid to certain research consortia*, is modified to read  
23 “this part or Part 10 (commencing with Section 17001).”

24 (h) (1) For each taxable year beginning on or after January 1,  
25 2000:

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

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

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

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

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

3 (3) 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 (4) Section 41(c)(5) of the Internal Revenue Code, relating to  
10 election of ~~the~~ alternative simplified credit, shall not apply.

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

13 (j) Section 41(g) of the Internal Revenue Code, relating to  
14 special rule for ~~passthrough~~ *pass-thru* of credit, is modified by  
15 each of the 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, *relating to general rule*, for any taxable year  
19 exceeds the limitation of Section 41(g) of the Internal Revenue  
20 Code, *relating to special rule for pass-thru of credit*, that amount  
21 may be carried over to other taxable years under the rules of  
22 subdivision (f), except that the limitation of Section 41(g) of the  
23 Internal Revenue Code, *relating to special rule for pass-thru of*  
24 *credit*, shall be taken into account in each subsequent taxable year.

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

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

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

32 SEC. 4. Section 24304 is added to the Revenue and Taxation  
33 Code, to read:

34 24304. For taxable years beginning on or after January 1, 2016,  
35 and before January 1, 2025, any grant received by a taxpayer  
36 pursuant to Division 3 (commencing with Section 70000).

37 SEC. 5. Division 3 (commencing with Section 70000) is added  
38 to the Revenue and Taxation Code, to read:



1 DIVISION 3. RESEARCH AND DEVELOPMENT-SMALL  
2 BUSINESS GRANT PROGRAM  
3

4 70000. For purposes of this division, a “qualified small  
5 business” means a taxpayer that was allowed a credit under either  
6 Section 17052.12 or 23609 that has five million dollars  
7 (\$5,000,000) or less in gross receipts, as described in paragraph  
8 (3) of subdivision (g) of Section 17052.12 or 23609, per taxable  
9 year. A “qualified small business” does not include a taxpayer that  
10 has a parent company that may apply any excess credit amount  
11 accrued by the qualified small business under Section 17052.12  
12 or 23609 to reduce its “net tax,” as defined in Section 17039, or  
13 “tax,” as defined in Section 23609.

14 70001. (a) On or after January 1, 2016, and before January 1,  
15 2025, a qualified small business may apply for and receive a grant  
16 as follows:

17 (1) Beginning January 1, 2016, a qualified small business may  
18 apply for and receive a one-time grant in an amount equal to 10  
19 percent of any excess credit accrued over taxable years beginning  
20 on or after January 1, 2014, and before January 1, 2016, for credits  
21 allowed under Section 17052.12 or 23609.

22 (2) For taxable years beginning on or after January 1, 2016, and  
23 before January 1, 2025, a qualified small business may apply for  
24 and receive an annual grant in an amount equal to 15 percent of  
25 any excess credit accrued for the taxable year in which the credit  
26 is allowed under Section 17052.12 or 23609.

27 (b) (1) In order to receive a grant under paragraph (1) of  
28 subdivision (a), the qualified small business shall apply to the  
29 Franchise Tax Board for a certificate indicating the amount equal  
30 to 10 percent of any excess credit accrued over taxable years  
31 beginning on or after January 1, 2014, and before January 1, 2016,  
32 for a credit allowed under Section 17052.12 or 23609. The  
33 Franchise Tax Board shall supply the qualified small business with  
34 a certificate within 30 days of receiving the application.

35 (2) In order to receive a grant under paragraph (2) of subdivision  
36 (a), the qualified small business shall request, on an original, timely  
37 filed return, a certificate indicating the amount equal to 15 percent  
38 of any excess credit accrued over for that taxable year in which a  
39 credit is allowed under Section 17052.12 or 23609. The Franchise

1 Tax Board shall supply the qualified small business with a  
2 certificate within 30 days of receiving the return.

3 70002. (a) The Controller, upon a receipt of a certificate issued  
4 to a qualified small business under Section 70001, shall pay the  
5 qualified small business the grant amount indicated upon the  
6 certificate. Notwithstanding Section 13340 of the Government  
7 Code, the amounts necessary to provide the grants are hereby  
8 continuously appropriated from the General Fund.

9 (b) (1) Notwithstanding Section 10231.5 of the Government  
10 Code, on or before January 1, 2017, and each January 1 thereafter,  
11 the Controller shall provide a report to the Assembly Committee  
12 on Revenue and Taxation including the recipients of the grants for  
13 the previous calendar year and the grant amount each recipient  
14 received.

15 (2) A report submitted pursuant to paragraph (1) shall be  
16 submitted in compliance with Section 9795 of the Government  
17 Code.

18 70003. This division shall remain in effect only until January  
19 1, 2026, and as of that date is repealed, unless a later enacted  
20 statute, that is enacted before January 1, 2026, deletes or extends  
21 that date.