

AMENDED IN ASSEMBLY APRIL 13, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 437

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

February 19, 2015

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 amended, 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~~ *excess* credit amount ~~allowed~~ *attributable* 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, *in specified amounts per calendar year, to be allocated by the Franchise Tax Board*. 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~~ *attributable* 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,”~~
 5 *tax,”* as defined by Section 17039, an amount determined in
 6 accordance with Section 41 of the Internal Revenue Code, relating
 7 to credit for increasing research activities, 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 the reference to “20 percent” in Section 41(a)(1) of the Internal
 21 Revenue Code is modified to read “15 percent.”
 22 (c) Section 41(a)(2) of the Internal Revenue Code shall not
 23 apply.

1 (d) “Qualified research” shall include only research conducted
2 in California.

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

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

12 (2) *For taxable years beginning on or after January 1, 2016,*
13 *in the case where the Franchise Tax Board has issued a certificate*
14 *for a grant pursuant to Division 3 (commencing with Section*
15 *70000) the following rules shall apply:*

16 (A) *The excess credit amount that may be carried over by a*
17 *taxpayer shall be reduced by the amount reflected on the*
18 *certificate.*

19 (B) (i) *In the case of a pass-thru entity, the amount of credit*
20 *that may be passed through shall be reduced by the amount*
21 *reflected on the certificate.*

22 (ii) *For purposes of this subparagraph, “pass-thru entity” means*
23 *a partnership or an “S” corporation.*

24 (C) *If any amount of a credit finally allowed is less than the*
25 *amount of the credit that provided the basis for a grant pursuant*
26 *to Division 3 (commencing with Section 70000), the amount of the*
27 *grant attributable to the credit not allowed shall be treated as a*
28 *deficiency pursuant to Section 19043, and assessed and collected*
29 *pursuant to Part 10.2.*

30 (f) (1) With respect to any expense paid or incurred after the
31 operative date of Section 6378, Section 41(b)(1) of the Internal
32 Revenue Code, relating to qualified research expenses, is modified
33 to exclude from the definition of “qualified research expense” any
34 amount paid or incurred for tangible personal property that is
35 eligible for the exemption from sales or use tax provided by Section
36 6378.

37 (2) For each taxable year beginning on or after January 1, 1998,
38 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
39 Internal Revenue Code, relating to amounts paid to certain research

1 consortia, is modified to read “this part or Part 11 (commencing
2 with Section 23001).”

3 (g) (1) For each taxable year beginning on or after January 1,
4 2000:

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

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

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

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

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

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

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

31 (i) Section 41(g) of the Internal Revenue Code, relating to
32 special rule for pass-thru of credit, is modified by each of the
33 following:

34 (1) The last sentence shall not apply.

35 (2) If the amount determined under Section 41(a) of the Internal
36 Revenue Code, relating to general rule, for any taxable year
37 exceeds the limitation of Section 41(g) of the Internal Revenue
38 Code, relating to special rule for pass-thru of credit, that amount
39 may be carried over to other taxable years under the rules of
40 subdivision (e); except that the limitation of Section 41(g) of the

1 Internal Revenue Code, relating to special rule for pass-thru of
2 credit, shall be taken into account in each subsequent taxable year.

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

4 (k) Section 41(b)(3)(D) of the Internal Revenue Code, relating
5 to amounts paid to eligible small businesses, universities, and
6 Federal laboratories, shall not apply.

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

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

11 17131.8. For taxable years beginning on or after January 1,
12 2016, and before January 1, 2025, gross income does not include
13 any grant received by a taxpayer pursuant to Division 3
14 (commencing with Section 70000).

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

17 23609. For each taxable year beginning on or after January 1,
18 1987, there shall be allowed as a credit against the “tax,” defined
19 by Section 23036, an amount determined in accordance with
20 Section 41 of the Internal Revenue Code, relating to credit for
21 increasing research activities, except as follows:

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

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

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

28 (b) (1) For each taxable year beginning on or after January 1,
29 1997, and before January 1, 1999, both of the following
30 modifications shall apply:

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

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

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

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

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

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

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

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

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

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

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

23 (1) Basic research conducted outside California.

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

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

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

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

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

13 (2) For purposes of this subdivision:

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

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

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

33 ~~(2) For taxable years beginning on or after January 1, 2016, and~~
34 ~~before January 1, 2025, the excess credit amount that may be~~
35 ~~carried over shall be reduced for that taxable year by the amount~~
36 ~~received as a grant pursuant to Division 3 (commencing with~~
37 ~~Section 70000).~~

38 (2) *For taxable years beginning on or after January 1, 2016,*
39 *in the case where the Franchise Tax Board has issued a certificate*

1 for a grant pursuant to Division 3 (commencing with Section
2 70000) the following rules shall apply:

3 (A) The excess credit amount that may be carried over by a
4 taxpayer shall be reduced by the amount reflected on the
5 certificate.

6 (B) (i) In the case of a pass-thru entity, the amount of credit
7 that may be passed through to a partner, taxable under this part,
8 shall be reduced by the amount reflected on the certificate.

9 (ii) For purposes of this subparagraph, “pass-thru entity” means
10 a partnership.

11 (C) If any amount of a credit finally allowed is less than the
12 amount of the credit that provided the basis for a grant pursuant
13 to Division 3 (commencing with Section 70000), the amount of the
14 grant attributable to the credit not allowed shall be treated as a
15 deficiency pursuant to Section 19043, and assessed and collected
16 pursuant to Part 10.2.

17 (g) 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 amounts paid to certain research
20 consortia, is modified to read “this part or Part 10 (commencing
21 with Section 17001).”

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

11 (j) Section 41(g) of the Internal Revenue Code, relating to
12 special rule for pass-thru of credit, is modified by each of the
13 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 (f), 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 (k) Section 41(a)(3) of the Internal Revenue Code shall not
24 apply.

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

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

32 24304. For taxable years beginning on or after January 1, 2016,
33 and before January 1, 2025, any grant received by a taxpayer
34 pursuant to Division 3 (commencing with Section 70000).

35 SEC. 5. Division 3 (commencing with Section 70000) is added
36 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 70000. For purposes of this division:

15 (a) (1) *Except as provided in paragraph (2), “excess credit*
 16 *amount” means the amount of credit under Section 17052.12 that*
 17 *exceeds the “net tax,” as defined by Section 17039, or the “tax,”*
 18 *as defined by Section 23036, and may be carried over to reduce*
 19 *“net tax” or “tax,” as applicable, in the following year.*

20 (2) *In the case of a pass-thru entity, for credits attributable to*
 21 *taxable years beginning on or after January 1, 2016, “excess credit*
 22 *amount” means the amount of credit allowed under Section*
 23 *17052.12 or Section 23609 to be passed through to partners or*
 24 *shareholders.*

25 (b) *“Qualified small business” means a taxpayer that meets all*
 26 *of the following requirements for the taxable year with respect to*
 27 *the credit for which a grant is authorized under this division:*

28 (1) *The taxpayer was allowed a credit under either Section*
 29 *17052.12 or Section 23609.*

30 (2) *The taxpayer has gross receipts for the taxable year of five*
 31 *million dollars (\$5,000,000) or less for the taxable year. For*
 32 *purposes of this paragraph, “gross receipts” has the same*
 33 *definition as Section 41(c)(7) of the Internal Revenue Code,*
 34 *relating to gross receipts, modified to provide that the last sentence*
 35 *shall not apply.*

36 (3) (A) *The taxpayer is not an affiliated corporation that is*
 37 *properly treated as a member of a combined reporting group*
 38 *pursuant to Section 25101 or 25110.*

1 (B) Notwithstanding any other provision, no grant may be
2 awarded pursuant to this division with respect to a credit that may
3 be assigned pursuant to Section 23663.

4 (4) The taxpayer has been certified by the Governor’s Office of
5 Business and Economic Development as an eligible qualified small
6 business for purposes of this division.

7 70001. (a) On or after January 1, 2016, and before January 1,
8 2025, a qualified small business may apply for and receive a grant
9 as follows:

10 (1) Beginning January 1, 2016, a qualified small business may
11 apply for and receive a one-time grant in an amount equal to 10
12 percent of any excess credit ~~accrued over~~ amount that is
13 attributable to taxable years beginning on or after January 1, 2014,
14 and before January 1, 2016, available for carryover into taxable
15 years beginning on or after January 1, 2016, for credits allowed
16 under Section 17052.12 or 23609.

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

23 (b) (1) In order to receive a grant under paragraph (1) of
24 subdivision (a), the qualified small ~~business~~ business, partner, or
25 “S” corporation shareholder of a qualified small business shall
26 be required to apply for a grant on a timely filed original return
27 filed with the Franchise Tax Board using electronic technology in
28 a form and manner prescribed by the Franchise Tax Board for the
29 taxable year beginning on or after January 1, 2015, and shall
30 apply to the Franchise Tax Board for a certificate indicating the
31 amount equal to 10 percent of ~~any excess credit accrued over the~~
32 excess credit amount that is attributable to taxable years beginning
33 on or after January 1, 2014, and before January 1, 2016, available
34 for carryover into taxable years beginning on or after January 1,
35 2016, for a credit allowed under Section 17052.12 or 23609. The
36 Franchise Tax Board shall supply the qualified small business with
37 a certificate within ~~30~~ 90 days of receiving the application.

38 (2) In order to receive a grant under paragraph (2) of subdivision
39 (a), the qualified small ~~business shall request, on an original, timely~~
40 ~~filed return,~~ business, partner, or “S” corporation shareholder,

1 *as applicable, shall be required to apply for a grant on a timely*
2 *filed original return with the Franchise Tax Board using electronic*
3 *technology in a form and manner prescribed by the Franchise Tax*
4 *Board for each taxable year beginning on or after January 1, 2016,*
5 *and shall apply to the Franchise Tax Board for a certificate*
6 *indicating the amount equal to 15 percent of ~~any excess credit~~*
7 *accrued over for that taxable year the amount that is attributable*
8 *to the taxable year and available for carryover to the following*
9 *taxable year in which a credit is allowed under Section 17052.12*
10 *or 23609. The Franchise Tax Board shall supply the qualified small*
11 *business with a certificate within 30 days of receiving the return.*

12 *(c) (1) The Franchise Tax Board shall allocate the certified*
13 *amounts based on the aggregate applicable amount for the*
14 *calendar year in which the certificate is issued.*

15 *(2) The aggregate applicable amount that may be certified for*
16 *the calendar year beginning January 1, 2016, shall be one hundred*
17 *million dollars (\$100,000,000), not to exceed fifty million dollars*
18 *(\$50,000,000) for each taxable year beginning January 1, 2014*
19 *and January 1, 2015.*

20 *(3) The aggregate applicable amount shall not exceed fifty*
21 *million dollars (\$50,000,000) for each calendar year beginning*
22 *on or after January 1, 2016, and before January 1, 2026,*
23 *regardless of the taxable year to which the grant relates.*

24 *(4) (A) The Franchise Tax Board shall allocate the certificates*
25 *to the qualified small business, partners, or "S" corporation*
26 *shareholder, as applicable, on a first-come-first-served basis,*
27 *determined by the date the taxpayer's original tax return is*
28 *received by the Franchise Tax Board. If the returns of two or more*
29 *qualified small businesses are received on the same day and the*
30 *amount of credit remaining to be allocated is insufficient to be*
31 *allocated fully to each, the credit remaining shall be allocated to*
32 *those qualified small businesses on a pro rata basis.*

33 *(B) For purposes of this paragraph, the date an application or*
34 *return is received shall be determined by the Franchise Tax Board.*
35 *The determination of the Franchise Tax Board as to the date an*
36 *application or return is received and whether an application or*
37 *return has been timely filed for purposes of this paragraph may*
38 *not be reviewed in any administrative or judicial proceeding.*

39 *(d) In the case of a qualified small business that is a pass-thru*
40 *entity, the following shall apply:*

1 (1) (A) For purposes of the credit allowed under Section
2 17052.12, a “pass-thru entity” means a partnership or an “S”
3 corporation.

4 (B) For purposes of the credit allowed under Section 23609, a
5 “pass-thru entity” means a partnership.

6 (2) (A) For grants with respect to taxable years beginning on
7 or after January 1, 2014, and before January 1, 2016, the
8 Franchise Tax Board shall issue the certificate to the qualified
9 small business, partners, or “S” corporation shareholders, as
10 applicable.

11 (B) For grants with respect to taxable years on or after January
12 1, 2016, the Franchise Tax Board shall issue the certificate to the
13 partnership or “S” corporation.

14 (3) A certificate shall not be issued to an “S” corporation with
15 respect to the credit allowed under Section 23609.

16 (e) To the extent the amount of the certificate issued by the
17 Franchise Tax Board is based on a request from a qualified small
18 business, partner, or “S” corporation shareholder, as applicable,
19 any amount of a credit finally allowed that is less than the amount
20 of the credit that provided the basis for a grant under this division,
21 the amount of the grant attributable to the credit not allowed shall
22 be treated as a deficiency pursuant to Section 19043, and assessed
23 and collected pursuant to Part 10.2.

24 (f) The Franchise Tax Board may prescribe rules, guidelines,
25 or procedures necessary or appropriate to carry out the purposes
26 of this division, including any guidelines regarding the allocation
27 of the certificates issued pursuant to this section. Chapter 3.5
28 (commencing with Section 11340) of Part 1 of Division 3 of Title
29 2 of the Government Code does not apply to any rule, guideline,
30 or procedure prescribed by the Franchise Tax Board pursuant to
31 this section.

32 70002. (a) The Controller, upon a receipt of a certificate issued
33 to a qualified small business, partner, or “S” corporation
34 shareholder, as applicable, under Section 70001, shall pay the
35 qualified small business the grant amount indicated upon the
36 certificate issued to the qualified small business, partner, or “S”
37 corporation shareholder. Notwithstanding Section 13340 of the
38 Government Code, the amounts necessary to provide the grants
39 are hereby continuously appropriated from the General Fund.

1 (b) (1) Notwithstanding Section 10231.5 of the Government
2 Code, on or before January 1, 2017, and each January 1 thereafter,
3 the Controller shall provide a report to the Assembly Committee
4 on Revenue and Taxation including the recipients of the grants for
5 the previous calendar year and the grant amount each recipient
6 received.

7 (2) A report submitted pursuant to paragraph (1) shall be
8 submitted in compliance with Section 9795 of the Government
9 Code.

10 *70003. On and after January 1, 2016, the Governor's Office*
11 *of Business and Economic Development, upon application by a*
12 *taxpayer, shall certify the taxpayer as a qualified small business*
13 *that meets the requirements of paragraphs (1) to (3), inclusive, of*
14 *subdivision (b) of Section 70000 and eligible to receive a grant*
15 *pursuant to this division.*

16 ~~70003.~~

17 *70004.* This division shall remain in effect only until January
18 1, 2026, and as of that date is repealed, unless a later enacted
19 statute, that is enacted before January 1, 2026, deletes or extends
20 that date.