

ASSEMBLY BILL

No. 544

Introduced by Assembly Member Mullin
(Principal coauthor: Assembly Member Low)
(Principal coauthor: Senator Wieckowski)
(Coauthors: Assembly Members Travis Allen, Chávez, Dodd,
Lackey, Maienschein, Steinorth, Waldron, and Wilk)
(Coauthor: Senator Anderson)

February 23, 2015

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

AB 544, as introduced, Mullin. Income taxes: credits: research activities.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit for a percentage of specified research expenses. These laws, in modified conformity, apply the provisions of the Internal Revenue Code, relating to the election of alternative incremental credit. These laws provide that the provisions of the Internal Revenue Code relating to election of alternative simplified credit shall not apply.

This bill would, for taxable years beginning on or after January 1, 2016, not apply the provisions of the Internal Revenue Code, relating to the election of alternative incremental credit. This bill would, for taxable years beginning on or after January 1, 2016, and before January 1, 2023, apply the provisions of the Internal Revenue Code, relating to election of alternative simplified credit in modified conformity, and for taxable years beginning on or after January 1, 2016, would apply the

provisions of the Internal Revenue Code, relating to the inclusion of qualified research expenses and gross receipts of an acquired person and aggregation of expenditures.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. 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 ~~tax,~~ defined by Section ~~17039~~ 17039, for the taxable year an
 6 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) 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 (f) (1) With respect to any expense paid or incurred after the
6 operative date of Section 6378, Section 41(b)(1) of the Internal
7 Revenue Code *Code, relating to qualified research expenses*, is
8 modified to exclude from the definition of “qualified research
9 expense” any amount paid or incurred for tangible personal
10 property that is eligible for the exemption from sales ~~or~~ and use
11 tax taxes, as provided by Section 6378.

12 (2) For each taxable year beginning on or after January 1, 1998,
13 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
14 Internal Revenue Code, relating to contract research expenses, is
15 modified to read “this part or Part 11 (commencing with Section
16 23001).”

17 (g) (1) (A) For each taxable year beginning on or after January
18 1, ~~2000~~ 2000, and before January 1, 2016:

19 ~~(A)~~

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

23 ~~(B)~~

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

27 ~~(C)~~

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

31 ~~(2)~~

32 (B) Section 41(c)(4)(B) of the Internal Revenue Code shall not
33 apply and in lieu thereof an election under Section 41(c)(4)(A) of
34 the Internal Revenue Code may be made for any taxable year of
35 the taxpayer beginning on or after January 1, ~~1998~~ 1998, and
36 before January 1, 2016. That election shall apply to the taxable
37 year for which made and all succeeding taxable years unless
38 revoked with the consent of the Franchise Tax Board.

39 (C) Section 41(h)(2) of the Internal Revenue Code, relating to
40 termination of alternative incremental credit, is modified by

1 *substituting “beginning on or after January 1, 2016” for*
 2 *“beginning after December 31, 2008.”*

3 (2) (A) *For taxable years beginning on or after January 1,*
 4 *2016, and before January 1, 2023, Section 41(c)(5) of the Internal*
 5 *Revenue Code, relating to election of alternative simplified credit,*
 6 *shall apply, except as otherwise provided.*

7 (i) *The reference to “14 percent” in Section 41(c)(5)(A) of the*
 8 *Internal Revenue Code is modified to read “10.5 percent.”*

9 (ii) *The reference to “6 percent” in Section 41(c)(5)(B)(ii) of*
 10 *the Internal Revenue Code is modified to read “4.5 percent.”*

11 (B) *Section 41(c)(5)(C) of the Internal Revenue Code, relating*
 12 *to election, shall not apply and in lieu thereof an election under*
 13 *Sections 41(c)(5)(A) and 41(c)(5)(B) of the Internal Revenue Code*
 14 *may be made for any taxable year of the taxpayer beginning on*
 15 *or after January 1, 2016, and before January 1, 2023. That election*
 16 *shall apply to the taxable year for which made and all succeeding*
 17 *taxable years unless revoked with the consent of the Franchise*
 18 *Tax Board.*

19 (C) (i) *For taxable years beginning on or after January 1, 2023,*
 20 *Section 41(c)(5) of the Internal Revenue Code shall not apply.*

21 (ii) *No election under Section 41(c)(5) shall apply to taxable*
 22 *years beginning after December 31, 2022.*

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

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

31 (h) *Except as otherwise provided in this section, Section 41(h)*
 32 *of the Internal Revenue Code, relating to termination, shall not*
 33 *apply.*

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

37 (1) *The last sentence shall not apply.*

38 (2) *If the amount determined under Section 41(a) of the Internal*
 39 *Revenue Code for any taxable year exceeds the limitation of*
 40 *Section 41(g) of the Internal Revenue Code, that amount may be*

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

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

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

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

11 (m) *For taxable years beginning on or after January 1, 2016,*
12 *the amendments made by subdivisions (b) and (c) of Section 301*
13 *of the American Taxpayer Relief Act of 2012 (Public Law 112-240),*
14 *relating to inclusion of qualified research expenses and gross*
15 *receipts of an acquired person and aggregation of expenditures,*
16 *shall apply, except as otherwise provided.*

17 SEC. 2. Section 23609 of the Revenue and Taxation Code is
18 amended to read:

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

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

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

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

30 (b) (1) For each taxable year beginning on or after January 1,
31 1997, and before January 1, 1999, both of the following
32 modifications shall apply:

33 (A) The reference to “20 percent” in Section 41(a)(1) of the
34 Internal Revenue Code is modified to read “11 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 (2) For each taxable year beginning on or after January 1, 1999,
38 and before January 1, 2000, 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 “12 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 (3) For each taxable year beginning on or after January 1, 2000,
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 is modified to read “15 percent.”

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~~ *Code, relating to qualified research expenses*, is
12 modified to exclude from the definition of “qualified research
13 expense” any amount paid or incurred for tangible personal
14 property that is eligible for the exemption from sales ~~or~~ and use
15 ~~tax~~ *taxes, as provided by Section 6378.*

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

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

25 (1) Basic research conducted outside California.

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

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

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

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

1 *relating to qualified organizations*, shall be modified to include
2 both of the following:

3 (A) A qualified organization as described in Section
4 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
5 institution of higher education as described in Section 3304(f) of
6 the Internal Revenue ~~Code~~. *Code, relating to definition of*
7 *institution of higher education.*

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

15 (2) For purposes of this subdivision:

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

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

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

35 (g) For each taxable year beginning on or after January 1, 1998,
36 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
37 Internal Revenue Code, relating to contract research expenses, is
38 modified to read “this part or Part 10 (commencing with Section
39 17001).”

1 (h) (1) (A) For each taxable year beginning on or after January
2 1, ~~2000~~: 2000, and before January 1, 2016:

3 ~~(A)~~

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

7 ~~(B)~~

8 (ii) 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)~~

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

15 ~~(2)~~

16 (B) Section 41(c)(4)(B) of the Internal Revenue Code shall not
17 apply and in lieu thereof an election under Section 41(c)(4)(A) of
18 the Internal Revenue Code may be made for any taxable year of
19 the taxpayer beginning on or after January 1, ~~1998~~: 1998, and
20 before January 1, 2016. That election shall apply to the taxable
21 year for which made and all succeeding taxable years unless
22 revoked with the consent of the Franchise Tax Board.

23 (C) Section 41(h)(2) of the Internal Revenue Code, relating to
24 termination of alternative incremental credit, is modified by
25 substituting “beginning on or after January 1, 2016” for
26 “beginning after December 31, 2008.”

27 (2) (A) For taxable years beginning on or after January 1,
28 2016, and before January 1, 2023, Section 41(c)(5) of the Internal
29 Revenue Code, relating to election of alternative simplified credit,
30 shall apply, except as otherwise provided.

31 (i) The reference to “14 percent” in Section 41(c)(5)(A) of the
32 Internal Revenue Code is modified to read “10.5 percent.”

33 (ii) The reference to “6 percent” in Section 41(c)(5)(B)(ii) of
34 the Internal Revenue Code is modified to read “4.5 percent.”

35 (B) Section 41(c)(5)(C) of the Internal Revenue Code, relating
36 to election, shall not apply and in lieu thereof an election under
37 Sections 41(c)(5)(A) and 41(c)(5)(B) of the Internal Revenue Code
38 may be made for any taxable year of the taxpayer beginning on
39 or after January 1, 2016, and before January 1, 2023. That election
40 shall apply to the taxable year for which made and all succeeding

1 *taxable years unless revoked with the consent of the Franchise*
2 *Tax Board.*

3 (C) (i) *For taxable years beginning on or after January 1, 2023,*
4 *Section 41(c)(5) of the Internal Revenue Code shall not apply.*

5 (ii) *No election under Section 41(c)(5) shall apply to taxable*
6 *years beginning after December 31, 2022.*

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

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

15 (i) *Except as otherwise provided in this section, Section 41(h)*
16 *of the Internal Revenue Code, relating to termination, shall not*
17 *apply.*

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

21 (1) The last sentence shall not apply.

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

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

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

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

36 (n) *For taxable years beginning on or after January 1, 2016,*
37 *the amendments made by subdivisions (b) and (c) of Section 301*
38 *of the American Taxpayer Relief Act of 2012 (Public Law 112-240),*
39 *relating to inclusion of qualified research expenses and gross*

- 1 *receipts of an acquired person and aggregation of expenditures,*
- 2 *shall apply, except as otherwise provided.*
- 3 SEC. 3. This act provides for a tax levy within the meaning
- 4 of Article IV of the Constitution and shall go into immediate effect.

O