

AMENDED IN ASSEMBLY MAY 11, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 544

Introduced by Assembly Member Mullin

(Principal coauthor: Assembly Member Low)

(Principal coauthor: Senator Wieckowski)

(Coauthors: Assembly Members Travis Allen, Baker, Chávez, Dodd, Gonzalez, Lackey, Maienschein, Rodriguez, 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 amended, 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, 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,

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,”
 5 defined by Section 17039, for the taxable year an amount
 6 determined in accordance with Section 41 of the Internal Revenue
 7 Code, relating to credit for increasing research activities, except
 8 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.

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

3 (e) In the case where the credit allowed under 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 (f) (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 and use taxes, as provided
13 by Section 6378.

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

19 (g) (1) (A) For each taxable year beginning on or after January
20 1, 2000, and before January 1, 2016:

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

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

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

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

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

3 (2) (A) For taxable years beginning on or after January 1, 2016,
4 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~~(I) For taxable years beginning on or after January 1,
8 2016, and before January 1, 2019, the reference to “14 percent”
9 in Section 41(c)(5)(A) of the Internal Revenue Code is modified
10 to read~~“10.5~~ “5 percent.”

11 (II) For taxable years beginning on or after January 1, 2019,
12 and before January 1, 2022, the reference to “14 percent” in
13 Section 41(c)(5)(A) of the Internal Revenue Code is modified to
14 read “7.75 percent.”

15 (III) For taxable years beginning on or after January 1, 2022,
16 and before January 1, 2023, the reference to “14 percent” in
17 Section 41(c)(5)(A) of the Internal Revenue Code is modified to
18 read “10.5 percent.”

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

21 (B) Section 41(c)(5)(C) of the Internal Revenue Code, relating
22 to election, shall not apply and in lieu thereof an election under
23 Sections 41(c)(5)(A) and 41(c)(5)(B) of the Internal Revenue Code
24 may be made for any taxable year of the taxpayer beginning on or
25 after January 1, 2016, and before January 1, 2023. That election
26 shall apply to the taxable year for which made and all succeeding
27 taxable years *beginning before January 1, 2023*, unless revoked
28 with the consent of the Franchise Tax Board.

29 (C) (i) For taxable years beginning on or after January 1, 2023,
30 Section 41(c)(5) of the Internal Revenue ~~Code Code~~, relating to
31 election of alternative simplified credit, shall not apply.

32 (ii) No election under Section 41(c)(5) of the *Internal Revenue*
33 *Code, relating to election of alternative simplified credit*, shall
34 apply to taxable years beginning after December 31, 2022.

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

1 (h) Except as otherwise provided in this section, Section 41(h)
2 of the Internal Revenue Code, relating to termination, shall not
3 apply.

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

7 (1) The last sentence shall not apply.

8 (2) If the amount determined under Section 41(a) of the Internal
9 Revenue ~~Code~~ *Code, relating to general rule*, for any taxable year
10 exceeds the limitation of Section 41(g) of the Internal Revenue
11 Code, *relating to special rule for pass-thru of credit*, that amount
12 may be carried over to other taxable years under the rules of
13 subdivision (e); except that the limitation of Section 41(g) of the
14 Internal Revenue ~~Code~~ *Code, relating to special rule for pass-thru*
15 *of credit*, shall be taken into account in each subsequent taxable
16 year.

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

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

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

23 (m) For taxable years beginning on or after January 1, 2016,
24 the amendments made by subdivisions (b) and (c) of Section 301
25 of the American Taxpayer Relief Act of 2012 (Public Law
26 112-240), relating to inclusion of qualified research expenses and
27 gross receipts of an acquired person and aggregation of
28 expenditures, shall apply, except as otherwise provided.

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

31 23609. For each taxable year beginning on or after January 1,
32 1987, there shall be allowed as a credit against the “tax,” as defined
33 by Section 23036, an amount determined in accordance with
34 Section 41 of the Internal Revenue Code, relating to credit for
35 increasing research activities, except as follows:

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

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

- 1 (2) The reference to “20 percent” in Section 41(a)(2) of the
2 Internal Revenue Code is modified to read “12 percent.”
- 3 (b) (1) For each taxable year beginning on or after January 1,
4 1997, and before January 1, 1999, both of the following
5 modifications shall apply:
- 6 (A) The reference to “20 percent” in Section 41(a)(1) of the
7 Internal Revenue Code is modified to read “11 percent.”
- 8 (B) The reference to “20 percent” in Section 41(a)(2) of the
9 Internal Revenue Code is modified to read “24 percent.”
- 10 (2) For each taxable year beginning on or after January 1, 1999,
11 and before January 1, 2000, both of the following shall apply:
- 12 (A) The reference to “20 percent” in Section 41(a)(1) of the
13 Internal Revenue Code is modified to read “12 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 (3) For each taxable year beginning on or after January 1, 2000,
17 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 “15 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 (c) (1) With respect to any expense paid or incurred after the
23 operative date of Section 6378, Section 41(b)(1) of the Internal
24 Revenue Code, relating to qualified research expenses, is modified
25 to exclude from the definition of “qualified research expense” any
26 amount paid or incurred for tangible personal property that is
27 eligible for the exemption from sales and use taxes, as provided
28 by Section 6378.
- 29 (2) “Qualified research” and “basic research” shall include only
30 research conducted in California.
- 31 (d) The provisions of Section 41(e)(7)(A) of the Internal
32 Revenue Code, relating to basic research, shall be modified so that
33 “basic research,” for purposes of this section, includes any basic
34 or applied research including scientific inquiry or original
35 investigation for the advancement of scientific or engineering
36 knowledge or the improved effectiveness of commercial products,
37 except that the term does not include any of the following:
- 38 (1) Basic research conducted outside California.
- 39 (2) Basic research in the social sciences, arts, or humanities.

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

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

7 (e) (1) In the case of a taxpayer engaged in any
8 biopharmaceutical research activities that are described in codes
9 2833 to 2836, inclusive, or any research activities that are described
10 in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard
11 Industrial Classification (SIC) Manual published by the United
12 States Office of Management and Budget, 1987 edition, or any
13 other biotechnology research and development activities, the
14 provisions of Section 41(e)(6) of the Internal Revenue Code,
15 relating to qualified organizations, shall be modified to include
16 both of the following:

17 (A) A qualified organization as described in Section
18 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
19 institution of higher education as described in Section 3304(f) of
20 the Internal Revenue Code, relating to definition of institution of
21 higher education.

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

29 (2) For purposes of this subdivision:

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

38 (B) “Other biotechnology research and development activities”
39 means research and development activities consisting of the
40 application of recombinant DNA technology to produce

1 commercial products, as well as research and development
2 activities regarding pharmaceutical delivery systems designed to
3 provide a measure of control over the rate, duration, and site of
4 pharmaceutical delivery.

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

9 (g) For each taxable year beginning on or after January 1, 1998,
10 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
11 Internal Revenue Code, relating to contract research expenses, is
12 modified to read “this part or Part 10 (commencing with Section
13 17001).”

14 (h) (1) (A) For each taxable year beginning on or after January
15 1, 2000, and before January 1, 2016:

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

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

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

25 (B) Section 41(c)(4)(B) of the Internal Revenue ~~Code~~ Code,
26 *relating to election*, shall not apply and in lieu thereof an election
27 under Section 41(c)(4)(A) of the Internal Revenue Code may be
28 made for any taxable year of the taxpayer beginning on or after
29 January 1, 1998, and before January 1, 2016. That election shall
30 apply to the taxable year for which made and all succeeding taxable
31 years *beginning before January 1, 2016*, unless revoked with the
32 consent of the Franchise Tax Board.

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

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

1 (i) ~~The~~(I) For taxable years beginning on or after January 1,
2 2016, and before January 1, 2019, the reference to “14 percent”
3 in Section 41(c)(5)(A) of the Internal Revenue Code is modified
4 to read~~“10.5~~ “5 percent.”

5 (II) For taxable years beginning on or after January 1, 2019,
6 and before January 1, 2022, the reference to “14 percent” in
7 Section 41(c)(5)(A) of the Internal Revenue Code is modified to
8 read “7.75 percent.”

9 (III) For taxable years beginning on or after January 1, 2022,
10 and before January 1, 2023, the reference to “14 percent” in
11 Section 41(c)(5)(A) of the Internal Revenue Code is modified to
12 read “10.5 percent.”

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

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

23 (C) (i) For taxable years beginning on or after January 1, 2023,
24 Section 41(c)(5) of the Internal Revenue~~Code Code~~, relating to
25 *election of alternative simplified credit*, shall not apply.

26 (ii) No election under Section 41(c)(5) of the *Internal Revenue*
27 *Code, relating to election of alternative simplified credit*, shall
28 apply to taxable years beginning after December 31, 2022.

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

35 (i) Except as otherwise provided in this section, Section 41(h)
36 of the Internal Revenue Code, relating to termination, shall not
37 apply.

38 (j) Section 41(g) of the Internal Revenue Code, relating to
39 special rule for ~~passthrough~~ *pass-thru* of credit, is modified by
40 each of the following:

- 1 (1) The last sentence shall not apply.
- 2 (2) If the amount determined under Section 41(a) of the Internal
- 3 Revenue Code, relating to general rule, for any taxable year
- 4 exceeds the limitation of Section 41(g) of the Internal Revenue
- 5 Code, relating to special rule for pass-thru of credit, that amount
- 6 may be carried over to other taxable years under the rules of
- 7 subdivision (f), except that the limitation of Section 41(g) of the
- 8 Internal Revenue Code, relating to special rule for pass-thru
- 9 of credit, shall be taken into account in each subsequent taxable
- 10 year.
- 11 (k) Section 41(a)(3) of the Internal Revenue Code shall not
- 12 apply.
- 13 (l) Section 41(b)(3)(D) of the Internal Revenue Code, relating
- 14 to amounts paid to eligible small businesses, universities, and
- 15 federal laboratories, shall not apply.
- 16 (m) Section 41(f)(6) of the Internal Revenue Code, relating to
- 17 energy research consortium, shall not apply.
- 18 (n) For taxable years beginning on or after January 1, 2016, the
- 19 amendments made by subdivisions (b) and (c) of Section 301 of
- 20 the American Taxpayer Relief Act of 2012 (Public Law 112-240),
- 21 relating to inclusion of qualified research expenses and gross
- 22 receipts of an acquired person and aggregation of expenditures,
- 23 shall apply, except as otherwise provided.
- 24 SEC. 3. This act provides for a tax levy within the meaning
- 25 of Article IV of the Constitution and shall go into immediate effect.

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