

AMENDED IN ASSEMBLY MAY 20, 2015

AMENDED IN ASSEMBLY MAY 11, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 544**

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**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

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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~~, *bill*, for taxable years beginning on or after January 1, 2016, *would* not apply the provisions of the Internal Revenue Code relating to the election of alternative incremental credit. This ~~bill would~~,

*bill*, for taxable years beginning on or after January 1, 2016, and before January 1, ~~2023~~, 2021, *would* 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,”
- 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.”

1 (c) Section 41(a)(2) of the Internal Revenue Code shall not  
2 apply.

3 (d) “Qualified research” shall include only research conducted  
4 in California.

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

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

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

21 (g) (1) (A) For each taxable year beginning on or after January  
22 1, 2000, and before January 1, 2016:

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

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

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

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

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

5 (2) (A) For taxable years beginning on or after January 1, 2016,  
6 and before January 1, ~~2023~~, 2021, Section 41(c)(5) of the Internal  
7 Revenue Code, relating to election of alternative simplified credit,  
8 shall apply, except as otherwise provided.

9 (i) ~~(I) For taxable years beginning on or after January 1, 2016,~~  
10 ~~and before January 1, 2019, the~~ *The* reference to “14 percent” in  
11 Section 41(c)(5)(A) of the Internal Revenue Code is modified to  
12 read ~~“5~~ “7 percent.”

13 ~~(H) For taxable years beginning on or after January 1, 2019,~~  
14 ~~and before January 1, 2022, the~~ reference to “14 percent” in Section  
15 41(c)(5)(A) of the Internal Revenue Code is modified to read “7.75  
16 percent.”

17 ~~(HH) For taxable years beginning on or after January 1, 2022,~~  
18 ~~and before January 1, 2023, the~~ reference to “14 percent” in Section  
19 41(c)(5)(A) of the Internal Revenue Code is modified to read “10.5  
20 percent.”

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

23 (B) Section 41(c)(5)(C) of the Internal Revenue Code, relating  
24 to election, shall not apply and in lieu thereof an election under  
25 Sections 41(c)(5)(A) and 41(c)(5)(B) of the Internal Revenue Code  
26 may be made for any taxable year of the taxpayer beginning on or  
27 after January 1, 2016, and before January 1, ~~2023~~. 2021. That  
28 election shall apply to the taxable year for which made and all  
29 succeeding taxable years beginning before January 1, ~~2023~~, 2021.  
30 unless revoked with the consent of the Franchise Tax Board.

31 (C) (i) For taxable years beginning on or after January 1, ~~2023~~,  
32 2021, Section 41(c)(5) of the Internal Revenue Code, relating to  
33 election of alternative simplified credit, shall not apply.

34 (ii) No election under Section 41(c)(5) of the Internal Revenue  
35 Code, relating to election of alternative simplified credit, shall  
36 apply to taxable years beginning after December 31, ~~2022~~. 2020.

37 (3) Section 41(c)(7) of the Internal Revenue Code, relating to  
38 gross receipts, is modified to take into account only those gross  
39 receipts from the sale of property held primarily for sale to  
40 customers in the ordinary course of the taxpayer’s trade or business

1 that is delivered or shipped to a purchaser within this state,  
2 regardless of f.o.b. point or any other condition of the sale.

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

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

9 (1) The last sentence shall not apply.

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

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

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

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

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

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

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

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

39 (1) The reference to "20 percent" in Section 41(a)(1) of the  
40 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, relating  
26 to election, shall not apply and in lieu thereof an election under  
27 Section 41(c)(4)(A) of the Internal Revenue Code may be made  
28 for any taxable year of the taxpayer beginning on or after January  
29 1, 1998, and before January 1, 2016. That election shall apply to  
30 the taxable year for which made and all succeeding taxable years  
31 beginning before January 1, 2016, unless revoked with the consent  
32 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~~, 2021, 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) ~~(I) For taxable years beginning on or after January 1, 2016,~~  
2 ~~and before January 1, 2019, the~~ The reference to “14 percent” in  
3 Section 41(c)(5)(A) of the Internal Revenue Code is modified to  
4 read—~~5~~ “7 percent.”

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

9 ~~(HI) For taxable years beginning on or after January 1, 2022,~~  
10 ~~and before January 1, 2023, the reference to “14 percent” in Section~~  
11 ~~41(c)(5)(A) of the Internal Revenue Code is modified to read “10.5~~  
12 ~~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.~~ 2021. That  
20 election shall apply to the taxable year for which made and all  
21 succeeding taxable years beginning before January 1, ~~2023.~~ 2021,  
22 unless revoked with the consent of the Franchise Tax Board.

23 (C) (i) For taxable years beginning on or after January 1, ~~2023,~~  
24 ~~2021,~~ Section 41(c)(5) of the Internal Revenue 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.~~ 2020.

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