

AMENDED IN ASSEMBLY MAY 18, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2328

Introduced by Assembly Member Ducheny

February 24, 2000

An act to add *and repeal* Section 23609.2 ~~to~~ of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2328, as amended, Ducheny. Bank and corporation tax law: credits: deductions.

The Bank and Corporation Tax Law allows various credits and deductions in computing taxes, including a credit for, and a net operating loss deduction for, certain expenses for research and development.

This bill would, in the case of biotechnology and technology companies, provide, *for income years beginning on or after January 1, 2000, and before January 1, 2006*, that a portion of those credits and net operating loss deductions may be surrendered to the state for a refund, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. 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 23609.2 is added to the Revenue
2 and Taxation Code, to read:

3 23609.2. (a) For purposes of this section:

4 (1) “Biotechnology company” means a corporation
5 ~~that has its headquarters or base of operations in this state~~
6 ~~and~~ that is engaged in research and development
7 activities regarding: organisms or materials derived from
8 organisms, and their cellular, subcellular, or molecular
9 components, in order to provide pharmaceutical
10 products; or recombinant DNA technology to produce
11 commercial products, or pharmaceutical delivery
12 systems designed to provide a measure of control over the
13 rate, duration, and site of pharmaceutical delivery.

14 (2) “Technology company” means a corporation that
15 ~~has its headquarters or base of operations in this state and~~
16 ~~that~~ employs highly educated or highly trained managers
17 and workers who use sophisticated scientific research
18 service or production equipment, process, or knowledge
19 to discover, develop, test, transfer, or manufacture a
20 product or service.

21 (3) “Unused tax benefits” means unused amounts of
22 tax credits for increased research activities permitted to
23 be carried over pursuant to subdivision (d) of Section
24 23609 or unused net operating loss deductions permitted
25 to be carried over pursuant to subdivision (b) of Section
26 24416.

27 (b) (1) Any biotechnology or technology company
28 with unused tax benefits shall receive a refund, without
29 regard to the amount of any tax previously paid, equal to
30 50 percent of the value of the unused tax benefits that are
31 surrendered to this state. Unused tax benefits shall be
32 surrendered and a refund for the surrendered unused tax
33 benefits shall be claimed by showing those amounts and
34 claiming the refund on an original or amended income
35 tax return, *but only for a return that is filed for any*
36 *income year beginning on or after January 1, 2000, and*
37 *before January 1, 2006.*



1 (2) The value of the surrendered tax benefit for a
2 research and development tax credit carryover is the
3 amount of the credit. The value of the surrendered tax
4 benefit for a net operating loss carryover is the amount of
5 the loss (A) multiplied by the biotechnology or
6 technology company's applicable allocation factor, as
7 determined in accordance with Sections 25120 to 25139,
8 inclusive, for the year in which the benefit is surrendered,
9 and (B) multiplied by the corporate tax rate set forth in
10 Section 23151 for that year. The maximum lifetime refund
11 that may be received by a corporation and its affiliated
12 corporation business taxpayers pursuant to this section is
13 twenty million dollars (\$20,000,000).

14 (3) For purposes of this section, a corporation is
15 affiliated with the taxpayer if either the taxpayer directly
16 or indirectly owns or controls 10 percent or more of the
17 voting rights or 10 percent of the value of all classes of
18 stock of that corporation or another organization directly
19 or indirectly owns or controls 10 percent or more of the
20 voting rights or 10 percent of the value of all classes of
21 stock of both taxpayer and that corporation.

22 (4) To the extent unused tax benefits have been
23 surrendered pursuant to this section, a surrendering
24 taxpayer is prohibited from claiming the tax benefits on
25 its tax return or surrendering the tax benefits more than
26 one time.

27 (5) The Franchise Tax Board shall maintain a
28 cumulative total of the value of all unused tax benefits
29 surrendered by taxpayers pursuant to this section in a
30 particular income year. At least 30 days prior to the
31 surrender of unused tax benefits pursuant to this section,
32 the surrendering taxpayer shall notify the Franchise Tax
33 Board of the value of the unused tax benefit being
34 surrendered. With respect to each proposed surrender of
35 unused tax benefits, the cumulative total value of
36 surrendered tax benefits shall be computed as of the time
37 the Franchise Tax Board is notified of the proposed
38 surrender of unused tax benefits. If the cumulative total
39 value of the surrendered tax benefits exceeds the
40 maximum annual surrendered tax benefits, the Franchise



1 Tax Board shall promptly notify the surrendering
2 taxpayer that the surrender is authorized by this section
3 only to the extent that the tax benefits do not exceed the
4 maximum annual surrendered tax benefits. For purposes
5 of this section, the maximum annual surrendered tax
6 benefits shall be twenty-five million dollars (\$25,000,000).

7 *(c) This section applies only to companies conducting*
8 *clinical studies on a new drug or a new biological or*
9 *medical device.*

10 *(d) This section shall remain in effect only until*
11 *December 1, 2006, and as of that date is repealed.*

12 SEC. 2. *The Franchise Tax Board shall report*
13 *annually to the Legislature regarding utilization of the*
14 *credit authorized by this act. To the extent data are*
15 *available, the report shall include information regarding*
16 *the total value of credits claimed, total number of*
17 *taxpayers claiming the credits, the adjusted gross incomes*
18 *of persons claiming the credits, and any other information*
19 *the Franchise Tax Board deems useful for helping the*
20 *Legislature evaluate credit utilization.*

21 SEC. 3. This act provides for a tax levy within the
22 meaning of Article IV of the Constitution and shall go into
23 immediate effect.

