

Introduced by Senator Dunn

March 20, 2000

An act to amend Sections 17052.12 and 23609 of, and to add Sections 19141.7 and 19559 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 2200, as introduced, Dunn. Personal income taxes: bank and corporation taxes: research and development.

The Personal Income Tax Law and the Bank and Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws for increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 12% of the excess of the qualified research expenses, as defined, for the taxable or income year over the base amount and, in addition, for purposes of the Bank and Corporation Tax Law, 24% of the basic research payments, as defined. The term "base amount" means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable or income year and the fixed-base percentage, as defined, but in no event less than 50% of the qualified research expenses for the taxable or income year.

This bill would, under both laws, for each taxable or income year beginning on or after January 1, 2000, provide that the credit for increasing research expenses shall be equal to 17% of the qualified research expenses, and, under the Bank and Corporation Tax Law, 30% of the basic research payments.

The Bank and Corporation Tax Law authorizes various credits against the taxes imposed by that law.

This bill would require the taxpayer to provide the Franchise Tax Board with specified information regarding specified tax credits claimed by the taxpayer, and would impose a penalty for failing to do so, 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 17052.12 of the Revenue and
- 2 Taxation Code is amended to read:
- 3 17052.12. For each taxable year beginning on or after
- 4 January 1, 1987, there shall be allowed as a credit against
- 5 the “net tax” (as defined by Section 17039) for the taxable
- 6 year an amount determined in accordance with Section
- 7 41 of the Internal Revenue Code, except as follows:
- 8 (a) For each taxable year beginning before January 1,
- 9 1997, the reference to “20 percent” in Section 41(a)(1) of
- 10 the Internal Revenue Code is modified to read “8
- 11 percent.”
- 12 (b) (1) For each taxable year beginning on or after
- 13 January 1, 1997, and before January 1, 1999, the reference
- 14 to “20 percent” in Section 41(a)(1) of the Internal
- 15 Revenue Code is modified to read “11 percent.”
- 16 (2) For each taxable year beginning on or after
- 17 January 1, 1999, *and before January 1, 2000*, the reference
- 18 to “20 percent” in Section 41(a)(1) of the Internal
- 19 Revenue Code is modified to read “12 percent.”
- 20 (3) *For each taxable year beginning on or after*
- 21 *January 1, 2000, the reference to “20 percent” in Section*
- 22 *41(a)(1) of the Internal Revenue Code is modified to*
- 23 *read “17 percent.”*
- 24 (c) Section 41(a)(2) of the Internal Revenue Code,
- 25 relating to basic research payments, shall not apply.
- 26 (d) “Qualified research” shall include only research
- 27 conducted in California.



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

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

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

18 (g) (1) For each taxable year beginning on or after
19 January 1, 1998:

20 (A) The reference to “1.65 percent” in Section
21 41(c)(4)(A)(i) of the Internal Revenue Code is modified
22 to read “one and thirty-two hundredths of one percent.”

23 (B) The reference to “2.2 percent” in Section
24 41(c)(4)(A)(ii) of the Internal Revenue Code is
25 modified to read “one and seventy-six hundredths of one
26 percent.”

27 (C) The reference to “2.75 percent” in Section
28 41(c)(4)(A)(iii) of the Internal Revenue Code is
29 modified to read “two and two-tenths of one percent.”

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

37 (3) Section 41(c)(6) of the Internal Revenue Code,
38 relating to gross receipts, is modified to take into account
39 only those gross receipts from the sale of property held
40 primarily for sale to customers in the ordinary course of



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

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

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

9 (1) The last sentence shall not apply.

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

18 SEC. 2. Section 19141.7 is added to the Revenue and
19 Taxation Code, to read:

20 19141.7. (a) Any taxpayer subject to any tax imposed
21 by Part 11 (commencing with Section 23001) that meets
22 the criteria specified in subdivision (c) shall provide the
23 following information for each income year as part of the
24 taxpayer's original return in a form and manner specified
25 by the Franchise Tax Board no later than the due date of
26 that return, as provided in Section 18601, or the extended
27 due date of that return, as provided in Section 18604:

28 (1) The name of the taxpayer claiming the credit or
29 carryover of credit specified in subdivision (c).

30 (2) The amount of each credit specified in subdivision
31 (c) claimed by the taxpayer.

32 (3) The amount of any carryover of each credit
33 specified in subdivision (c) claimed by the taxpayer.

34 (4) The number of full-time equivalent employees
35 employed by the taxpayer as specified in subdivision (d)
36 as of the first day of the taxpayer's income year. The
37 number of full-time equivalent employees employed by
38 the taxpayer shall equal the following:

39 (A) The total number of hours worked for the
40 taxpayer, as specified in subdivision (d), by employees



1 (not to exceed 1,750 per employee) who are paid in
2 hourly wage divided by 1,750.

3 (B) The total number of months worked for the
4 taxpayer, as specified in subdivision (d), by employees
5 who are salaried employees divided by 12.

6 (5) The median weekly wage or salary paid to the
7 taxpayer's nonsupervisory employees during the income
8 year as specified in subdivision (d).

9 (6) The percentage of nonsupervisory employees for
10 which the taxpayer pays at least 80 percent of the health
11 or medical insurance premiums during the income year
12 as specified in subdivision (d). For purposes of this
13 section, "health or medical insurance premiums" means
14 any payment made with respect to health or medical
15 insurance costs of the corporation's employees for which
16 a deduction is claimed pursuant to Section 24343, relating
17 to trade or business expenses.

18 (b) A taxpayer claiming any credit or carryover of
19 credit specified in subdivision (c) shall retain and make
20 available to the Franchise Tax Board, upon request, any
21 documents and information necessary to substantiate the
22 information specified in subdivision (a).

23 (c) Subdivisions (a) and (b) shall apply to any
24 taxpayer that has gross receipts, less returns and
25 allowances reportable to this state, of five million dollars
26 (\$5,000,000) or more and that claims any credit or any
27 carryover of credit allowed by Sections 17052.12 and
28 23609, relating to qualified research expense, but only
29 with respect to those taxpayers that claim a credit for the
30 increased amount provided by the act adding this section.

31 (d) In the case of a taxpayer that claims any credit or
32 carryover of credit allowed by Section 17052.12 or 23609,
33 the information required by subdivision (a) for those
34 credits shall be limited to information relating to the
35 taxpayer's trade or business activities within this state.

36 (e) (1) If a taxpayer claiming any credit specified in
37 subdivision (c) fails to file the information required
38 under subdivision (a), both of the following shall apply:

39 (A) The taxpayer shall pay a penalty of _____ for
40 the income year with respect to which the failure occurs.



1 (B) Any credit or carryover of credit specified in
2 subdivision (c) claimed by the taxpayer in the income
3 year shall be denied.

4 (2) No penalty shall be imposed and the credits shall
5 not be denied if:

6 (A) The information required under subdivision (a) is
7 filed within 90 days after the Franchise Tax Board sends
8 the taxpayer a notice and demand to file the required
9 information.

10 (B) The failure is shown to be due to reasonable cause
11 and not willful neglect.

12 (f) The Franchise Tax Board shall annually publish the
13 information required by subdivision (a) for the most
14 recent year available. This publication shall include the
15 name of any corporation claiming the credits specified in
16 subdivision (c) along with all of the information required
17 to be filed pursuant to subdivision (a). The publication of
18 this information shall be provided to the Legislature and
19 the public in the form and manner as determined by the
20 Franchise Tax Board and shall include posting on the
21 Franchise Tax Board's Internet website.

22 SEC. 3. Section 19559 is added to the Revenue and
23 Taxation Code, to read:

24 19559. Notwithstanding any other law, the Franchise
25 Tax Board annually may provide to the Legislature and
26 publish the tax credit information provided pursuant to
27 Section 19141.7.

28 SEC. 4. Section 23609 of the Revenue and Taxation
29 Code is amended to read:

30 23609. For each income year beginning on or after
31 January 1, 1987, there shall be allowed as a credit against
32 the "tax" (as defined by Section 23036) an amount
33 determined in accordance with Section 41 of the Internal
34 Revenue Code, except as follows:

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

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



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

4 (b) (1) For each income year beginning on or after
5 January 1, 1997, and before January 1, 1999, both of the
6 following modifications shall apply:

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

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

13 (2) For each income year beginning on or after
14 January 1, 1999, *and before January 1, 2000*, both of the
15 following shall apply:

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

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

22 (3) *For each income year beginning on or after*
23 *January 1, 2000, both of the following modifications shall*
24 *apply:*

25 (A) *The reference to “20 percent” in Section 41(a)(1)*
26 *of the Internal Revenue Code is modified to read “17*
27 *percent.”*

28 (B) *The reference to “20 percent” in Section 41(a)(2)*
29 *of the Internal Revenue Code is modified to read “30*
30 *percent.”*

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

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



1 (d) The provisions of Section 41(e)(7)(A) of the
2 Internal Revenue Code, shall be modified so that “basic
3 research,” for purposes of this section, includes any basic
4 or applied research including scientific inquiry or original
5 investigation for the advancement of scientific or
6 engineering knowledge or the improved effectiveness of
7 commercial products, except that the term does not
8 include any of the following:

9 (1) Basic research conducted outside California.

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

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

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

19 (e) (1) In the case of a taxpayer engaged in any
20 biopharmaceutical research activities that are described
21 in codes 2833 to 2836, inclusive, or any research activities
22 that are described in codes 3826, 3829, or 3841 to 3845,
23 inclusive, of the Standard Industrial Classification (SIC)
24 Manual published by the United States Office of
25 Management and Budget, 1987 edition, or any other
26 biotechnology research and development activities, the
27 provisions of Section 41(e)(6) of the Internal Revenue
28 Code shall be modified to include both of the following:

29 (A) A qualified organization as described in Section
30 170(b)(1)(A)(iii) of the Internal Revenue Code and
31 owned by an institution of higher education as described
32 in Section 3304(f) of the Internal Revenue Code.

33 (B) A charitable research hospital owned by an
34 organization that is described in Section 501(c)(3) of the
35 Internal Revenue Code, is exempt from taxation under
36 Section 501(a) of the Internal Revenue Code, is not a
37 private foundation, is designated a “specialized
38 laboratory cancer center,” and has received Clinical
39 Cancer Research Center status from the National Cancer
40 Institute.



1 (2) For purposes of this subdivision:

2 (A) “Biopharmaceutical research activities” means
3 those activities that use organisms or materials derived
4 from organisms, and their cellular, subcellular, or
5 molecular components, in order to provide
6 pharmaceutical products for human or animal
7 therapeutics and diagnostics. Biopharmaceutical
8 activities make use of living organisms to make
9 commercial products, as opposed to pharmaceutical
10 activities that make use of chemical compounds to
11 produce commercial products.

12 (B) “Other biotechnology research and development
13 activities” means research and development activities
14 consisting of the application of recombinant DNA
15 technology to produce commercial products, as well as
16 research and development activities regarding
17 pharmaceutical delivery systems designed to provide a
18 measure of control over the rate, duration, and site of
19 pharmaceutical delivery.

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

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

29 (h) (1) For each income year beginning on or after
30 January 1, 1998:

31 (A) The reference to “1.65 percent” in Section
32 41(c)(4)(A)(i) of the Internal Revenue Code is modified
33 to read “one and thirty-two hundredths of one percent.”

34 (B) The reference to “2.2 percent” in Section
35 41(c)(4)(A)(ii) of the Internal Revenue Code is
36 modified to read “one and seventy-six hundredths of one
37 percent.”

38 (C) The reference to “2.75 percent” in Section
39 41(c)(4)(A)(iii) of the Internal Revenue Code is
40 modified to read “two and two-tenths of one percent.”



1 (2) Section 41(c)(4)(B) shall not apply and in lieu
 2 thereof an election under Section 41(c)(4)(A) of the
 3 Internal Revenue Code may be made for any income year
 4 of the taxpayer beginning on or after January 1, 1998. That
 5 election shall apply to the income year for which made
 6 and all succeeding income years unless revoked with the
 7 consent of the Franchise Tax Board.

8 (3) Section 41(c)(6) of the Internal Revenue Code,
 9 relating to gross receipts, is modified to take into account
 10 only those gross receipts from the sale of property held
 11 primarily for sale to customers in the ordinary course of
 12 the taxpayer's trade or business that is delivered or
 13 shipped to a purchaser within this state, regardless of
 14 f.o.b. point or any other condition of the sale.

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

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

20 (1) The last sentence shall not apply.

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

29 SEC. 5. This act provides for a tax levy within the
 30 meaning of Article IV of the Constitution and shall go into
 31 immediate effect.

