

AMENDED IN SENATE OCTOBER 6, 2010

AMENDED IN ASSEMBLY APRIL 19, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1618**

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**Introduced by Committee on Budget (Blumenfield (Chair))**

January 11, 2010

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*An act relating to the Budget Act of 2010. An act to amend Sections 6453, 19138, and 23101 of, to amend and repeal Section 25136 of, to add Sections 6833, 9035, 11534, 17276.05, 17276.20, 17276.21, 17276.22, 24416.05, 24416.20, 24416.21, 24416.22, 30354.7, 32390, 38577, 40168, 41127.8, 43449, 45610, 46466, 50138.8, 55211, and 60495 to, to repeal Sections 17276, 17276.9, 17276.10, 24416, 24416.9, and 24416.10 of, and to repeal and add Sections 6452.1, 6487.3, and 18510 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1618, as amended, Committee on Budget. ~~Budget Act of 2010.~~ *Sales and use taxes: income and corporation taxes: collection cost recovery fee.*

*(1) The Sales and Use Tax Law provides that every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer is liable for use tax, and must pay the use tax to the State Board of Equalization, unless that person has paid the use tax to a retailer registered to collect the tax. That law requires a person selling tangible personal property for storage, use, or other consumption in this state to register with, and to obtain a seller's permit or*

*certification of registration-use tax from, the State Board of Equalization. For taxable years beginning on or after January 1, 2003, and on or before December 31, 2009, a person not otherwise registered with the board could make an irrevocable election to report qualified use tax, as defined, on that person's income tax return, and the Franchise Tax Board was required to revise the income tax returns to allow a person to report and remit qualified use tax to it and to remit the qualified use tax collected to the board.*

*This bill would authorize an eligible person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax return, for taxable years beginning on and after January 1, 2010, and would require the Franchise Tax Board to allow a person to report and remit qualified use taxes to it and to remit the qualified use taxes collected to the board, as provided.*

*(2) Existing law imposes a penalty on a taxpayer subject to the Corporation Tax Law with an understatement of tax, as defined, in excess of \$1,000,000 in an amount equal to 20% of that understatement, except as specified.*

*This bill would, for each taxable year beginning on or after January 1, 2010, revise those provisions to impose a penalty for understatement of tax for each taxable year that exceeds the greater of \$1,000,000 or 20% of the tax shown on an original return or shown on an amended return filed on or before the original or extended due date of the return for the taxable year, as provided.*

*(3) Existing law allows individual and corporate taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their individual and corporate tax liabilities. Existing law, for net operating losses incurred in taxable years beginning on or after January 1, 2008, provides a carryover period of 20 years and allows net operating losses attributable to taxable years beginning on or after January 1, 2011, to be carrybacks to each of the preceding 2 taxable years, as provided. Existing law disallows the deduction for net operating losses and net operating loss carryovers in the 2008 and 2009 taxable years for a taxpayer with business income of \$500,000 or more and extends the carryover period for those net operating losses, thus allowing the taxpayer to have the same number of years to utilize the deduction as it would have had if the disallowance for 2008 and 2009 had not occurred.*

*This bill would extend the disallowance of the net operating loss deduction and carryovers, and the carryover extension, to the 2010 and*

2011 taxable years for a taxpayer with income of \$300,000 or more. This bill would disallow net operating loss carrybacks for any net operating losses attributable to taxable years beginning before January 1, 2013, but would allow net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided. This bill would, under the Corporation Tax Law, specify that the above provisions do not apply to a taxpayer that ceased to do business or has a final taxable year ending prior to August 28, 2008, that sold or transferred substantially all of its assets resulting in a gain on sale during a taxable year ending prior to August 28, 2008, for which the gain could be offset with existing net operating loss deductions and the sale or transfer occurred pursuant to a reorganization under federal bankruptcy provisions. The bill would also specify that an amended tax return claiming net operating loss deductions allowed pursuant to those provisions shall be treated as a timely filed original return.

(4) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning or after January 1, 2011, revise provisions for determining whether sales of services and intangibles occur in this state for purposes of taxpayers who elect to have their business income apportioned in accordance with the single sales factor formula, as provided, and for purposes of the 4-factor formula if the single sales factor formula election is not allowed.

(5) Existing law requires the payment of taxes, fees, and surcharges that are administered by the State Board of Equalization under the provisions of the Sales and Use Tax Law, Use Fuel Tax Law, Private

*Railroad Car Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, Timber Yield Tax Law, Energy Resources Surcharge Law, Emergency Telephone Users Surcharge Act, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Oil Spill Response, Prevention, and Administration Fees Law, Underground Storage Tank Maintenance Fee Law, Fee Collection Procedures Law, and Diesel Fuel Tax Law, as prescribed.*

*This bill would require the payment of a collection cost recovery fee if a person fails to pay a tax, fee, or surcharge under the laws stated above, and the State Board of Equalization has mailed the person a demand notice, on or after January 1, 2011, that explains that the failure to pay the amount due may result in collection action, including the imposition of the collection cost recovery fee. This bill would authorize the collection cost recovery fee to be collected and deposited in the same manner in which the tax, fee, or surcharge that the person failed to pay is collected and deposited.*

*This bill would deposit the collection cost recovery fee in the same manner as the revenues derived from the tax, fee, or surcharge imposed by the laws stated above, which deposit those revenues into various funds, some of which are continuously appropriated. Because the bill would provide additional amounts payable from a continuously appropriated fund, the bill would make an appropriation.*

*(6) This bill would require the State Board of Equalization to relieve a person from paying the collection cost recovery fee if that person files a statement under penalty of perjury, setting forth the reasonable cause for not paying the tax, fee, or surcharge, to the State Board of Equalization. Because this bill would expand the scope of the existing crime of perjury, it would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

*(7) This bill would declare that it is to take effect immediately as an urgency statute.*

*This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2010.*

*Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: ~~no~~-yes.*

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 6452.1 of the Revenue and Taxation Code~~  
2 ~~is repealed.~~

3     ~~6452.1. (a) Notwithstanding Section 6451, every person that~~  
4 ~~purchases tangible personal property, the storage, use, or other~~  
5 ~~consumption of which is subject to qualified use tax, as defined~~  
6 ~~in subdivision (b), that is otherwise required to report and remit~~  
7 ~~that tax pursuant to this part, may elect to report and remit qualified~~  
8 ~~use tax on an acceptable tax return.~~

9     ~~(b) (1) A person that reports qualified use tax on an acceptable~~  
10 ~~tax return is deemed to have made the election authorized by this~~  
11 ~~section.~~

12     ~~(2) (A) In the case of a married individual filing a separate~~  
13 ~~California personal income tax return, an election may be made~~  
14 ~~to report either one-half of the qualified use tax or the entire~~  
15 ~~qualified use tax on his or her separate California personal income~~  
16 ~~tax return.~~

17     ~~(B) If an individual elects to report one-half of the qualified use~~  
18 ~~tax, that election will not be binding with respect to the remaining~~  
19 ~~one-half of the qualified use tax owed by that individual and that~~  
20 ~~individual's spouse.~~

21     ~~(c) An election to report qualified use tax on an acceptable tax~~  
22 ~~return shall be irrevocable. An acceptable tax return that contains~~  
23 ~~use tax shall be considered a tax return for purposes of this part.~~

24     ~~(d) For purposes of this section:~~

25     ~~(1) "Acceptable tax return" means a timely filed original return~~  
26 ~~that is filed pursuant to Article 1 (commencing with Section~~  
27 ~~18501), Article 2 (commencing with Section 18601), Section~~  
28 ~~18633, Section 18633.5 of Chapter 2 (commencing with Section~~  
29 ~~18501) of Part 10.2, or Article 3 (commencing with Section 23771)~~  
30 ~~of Chapter 4 of Part 11.~~

31     ~~(2) (A) Except as provided in subparagraph (B), "qualified use~~  
32 ~~tax" means the use tax imposed under this part, Section 35 of~~  
33 ~~Article XIII of the California Constitution, the Bradley-Burns~~  
34 ~~Uniform Local Sales and Use Tax Law (Part 1.5 (commencing~~  
35 ~~with Section 7200)), or the Transactions and Use Tax Law (Part~~  
36 ~~1.6 (commencing with Section 7251)) that has not been paid to a~~  
37 ~~retailer holding a seller's permit or certificate of registration-use~~  
38 ~~tax.~~

- 1 (B) “Qualified use tax” does not include:
- 2 (i) Use tax that applies to a mobilehome or a commercial coach  
3 that is required to be registered annually pursuant to the Health  
4 and Safety Code or use tax that applies to a vehicle subject to  
5 identification under Division 16.5 (commencing with Section  
6 38000) of the Vehicle Code, or to a vehicle that qualifies under  
7 the permanent trailer identification plate program pursuant to  
8 subdivision (a) of Section 5014.1 of the Vehicle Code.
- 9 (ii) Use tax imposed on a vehicle, vessel, or aircraft.
- 10 (iii) Use tax imposed on a lessee of tangible personal property.
- 11 (e) If a person elects to report qualified use tax on an acceptable  
12 tax return, that person shall comply with all of the following:
- 13 (1) The qualified use tax shall be reported on and remitted with  
14 an acceptable tax return.
- 15 (2) The qualified use tax shall be reported on and remitted with  
16 an acceptable tax return that is required to be filed for the taxable  
17 year in which the liability for the qualified use tax was incurred.
- 18 (f) (1) The penalties and interest imposed under this part, the  
19 Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5  
20 (commencing with Section 7200)), or the Transactions and Use  
21 Tax Law (Part 1.6 (commencing with Section 7251)) shall apply  
22 to use tax reported as qualified use tax on an acceptable return.
- 23 (2) Any claims for refunds or credits of any use tax reported as  
24 qualified use tax on an acceptable tax return shall be made in  
25 accordance with Chapter 7 (commencing with Section 6901) of  
26 this part.
- 27 (3) Qualified use tax shall be considered to be timely reported  
28 and remitted for purposes of this part, the Bradley-Burns Uniform  
29 Local Sales and Use Tax Law (Part 1.5 (commencing with Section  
30 7200)), and the Transactions and Use Tax Law (Part 1.6  
31 (commencing with Section 7251)), if the qualified use tax is timely  
32 reported on and remitted with an acceptable tax return in  
33 accordance with the provisions of this section.
- 34 (g) Notwithstanding a person’s election to remit and to report  
35 qualified use tax on an acceptable tax return, the State Board of  
36 Equalization is not precluded from making any determinations for  
37 understatements of qualified use tax against that person in  
38 accordance with Part 5 (commencing with Section 6451).
- 39 (h) Any payments and credits shown on the return, together  
40 with any other credits associated with that person’s account, of a

1 person that elects to report qualified use tax on an acceptable tax  
2 return shall be applied in the following order:

3 ~~(1) Taxes imposed under Part 10 (commencing with Section~~  
4 ~~17001) or Part 11 (commencing with Section 23001), including~~  
5 ~~penalties and interest, if any, imposed under Part 10.2 (commencing~~  
6 ~~with Section 18041).~~

7 ~~(2) Qualified use tax reported on the acceptable tax return in~~  
8 ~~accordance with this section.~~

9 ~~(i) (1) This section does not apply to a person who is otherwise~~  
10 ~~required to hold a seller's permit or to register with the State Board~~  
11 ~~of Equalization pursuant to Part 1 (commencing with Section 6001)~~  
12 ~~of this division.~~

13 ~~(2) This section applies to purchases of tangible personal~~  
14 ~~property made on or after January 1, 2003, in taxable years~~  
15 ~~beginning on or after January 1, 2003, and on or before December~~  
16 ~~31, 2009, and as of that date becomes inoperative, unless a later~~  
17 ~~enacted statute extends the operation of this section.~~

18 ~~(3) Notwithstanding this section becoming inoperative as~~  
19 ~~described in paragraph (2), any provisions in this section or Section~~  
20 ~~18510 relating to collection activities attributable to qualified use~~  
21 ~~taxes reported prior to the inoperative date of this section shall~~  
22 ~~continue in the same manner as if this section were still operative.~~

23 *SEC. 2. Section 6452.1 is added to the Revenue and Taxation*  
24 *Code, to read:*

25 *6452.1. (a) Notwithstanding Section 6451, every person that*  
26 *purchases tangible personal property, the storage, use, or other*  
27 *consumption of which is subject to qualified use tax, as defined in*  
28 *subdivision (d), that is otherwise required to report and remit that*  
29 *tax pursuant to this part, may elect to report and remit qualified*  
30 *use tax on an acceptable tax return.*

31 *(b) (1) A person that reports qualified use tax on an acceptable*  
32 *tax return is deemed to have made the election authorized by this*  
33 *section.*

34 *(2) (A) In the case of a married individual filing a separate*  
35 *California personal income tax return, an election may be made*  
36 *to report either one-half of the qualified use tax or the entire*  
37 *qualified use tax on his or her separate California personal income*  
38 *tax return.*

39 *(B) If an individual elects to report one-half of the qualified use*  
40 *tax, that election will not be binding with respect to the remaining*

1 *one-half of the qualified use tax owed by that individual and that*  
2 *individual's spouse.*

3 *(c) An election to report qualified use tax on an acceptable tax*  
4 *return shall be irrevocable. An acceptable tax return that contains*  
5 *use tax shall be considered a tax return for purposes of this part.*

6 *(d) For purposes of this section:*

7 *(1) "Acceptable tax return" means a timely filed original return*  
8 *that is filed pursuant to Article 1 (commencing with Section 18501),*  
9 *Article 2 (commencing with Section 18601), Section 18633, Section*  
10 *18633.5 of Chapter 2 (commencing with Section 18501) of Part*  
11 *10.2, or Article 3 (commencing with Section 23771) of Chapter 4*  
12 *of Part 11.*

13 *(2) (A) Except as provided in subparagraph (B), "qualified use*  
14 *tax" means the use tax imposed under this part, Section 35 of*  
15 *Article XIII of the California Constitution, in conformity with the*  
16 *Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5*  
17 *(commencing with Section 7200)), or in accordance with the*  
18 *Transactions and Use Tax Law (Part 1.6 (commencing with Section*  
19 *7251)) that has not been paid to a retailer holding a seller's permit*  
20 *or certificate of registration-use tax.*

21 *(B) "Qualified use tax" does not include:*

22 *(i) Use tax imposed on the storage, use, or other consumption*  
23 *of a mobilehome or a commercial coach that is required to be*  
24 *registered annually pursuant to the Health and Safety Code or use*  
25 *tax that applies to a vehicle subject to identification under Division*  
26 *16.5 (commencing with Section 38000) of the Vehicle Code, or a*  
27 *vehicle that qualifies under the permanent trailer identification*  
28 *plate program pursuant to subdivision (a) of Section 5014.1 of the*  
29 *Vehicle Code.*

30 *(ii) Use tax imposed on the storage, use, or other consumption*  
31 *of a vehicle, vessel, or aircraft.*

32 *(iii) Use tax imposed on a lease of tangible personal property.*

33 *(iv) Use tax imposed on a purchase of cigarettes, tobacco*  
34 *products, or cigarettes and tobacco products for which the*  
35 *purchaser is registered with the board as a cigarette consumer, a*  
36 *tobacco products consumer, or a cigarette and tobacco products*  
37 *consumer.*

38 *(e) (1) If a person elects to report qualified use tax on an*  
39 *acceptable tax return, that person shall report and remit the*  
40 *qualified use tax by reporting the amount due based on all taxable*

1 *purchases of tangible personal property made during the taxable*  
2 *year for which the acceptable tax return is required to be filed.*

3 *(2) The qualified use tax shall be reported on and remitted with*  
4 *an acceptable tax return that is required to be filed for the taxable*  
5 *year in which the liability for the qualified use tax was incurred.*

6 *(f) (1) The penalties and interest imposed under this part, in*  
7 *conformity with the Bradley-Burns Uniform Local Sales and Use*  
8 *Tax Law (Part 1.5 (commencing with Section 7200)), or in*  
9 *accordance with the Transactions and Use Tax Law (Part 1.6*  
10 *(commencing with Section 7251)) shall apply to use tax reported*  
11 *as qualified use tax on an acceptable return.*

12 *(2) Any claims for refunds or credits of any use tax reported as*  
13 *qualified use tax on an acceptable tax return shall be made in*  
14 *accordance with Chapter 7 (commencing with Section 6901) of*  
15 *this part.*

16 *(3) Qualified use tax shall be considered to be timely reported*  
17 *and remitted for purposes of this part, in conformity with the*  
18 *Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5*  
19 *(commencing with Section 7200)), and in accordance with the*  
20 *Transactions and Use Tax Law (Part 1.6 (commencing with Section*  
21 *7251)), if the qualified use tax is timely reported on and remitted*  
22 *with an acceptable tax return in accordance with the provisions*  
23 *of this section.*

24 *(g) Notwithstanding a person's payment of qualified use tax on*  
25 *an acceptable tax return, the board is not precluded from making*  
26 *any determinations for understatements of qualified use tax against*  
27 *that person in accordance with Part 5 (commencing with Section*  
28 *6451).*

29 *(h) Any payments and credits shown on the return, together*  
30 *with any other credits associated with that person's account, of a*  
31 *person that elects to report qualified use tax on an acceptable tax*  
32 *return shall be applied in the following order:*

33 *(1) Taxes imposed under Part 10 (commencing with Section*  
34 *17001) or Part 11 (commencing with Section 23001), including*  
35 *penalties and interest, if any, imposed under Part 10.2*  
36 *(commencing with Section 18401).*

37 *(2) Qualified use tax reported on the acceptable tax return in*  
38 *accordance with this section.*

39 *(i) (1) This section does not apply to a person who is otherwise*  
40 *required to hold a seller's permit or to register with the State*

1 Board of Equalization pursuant to Part 1 (commencing with  
2 Section 6001) of this division.

3 (2) This section applies to purchases of tangible personal  
4 property made on or after January 1, 2010, in taxable years  
5 beginning on or after January 1, 2010.

6 SEC. 3. Section 6453 of the Revenue and Taxation Code is  
7 amended to read:

8 6453. For purposes of the sales tax, the return shall show the  
9 gross receipts of the seller during the preceding reporting period  
10 and, in the case of a person who is liable for the sales tax and is  
11 not a seller, the gross receipts of such person for the period in  
12 which the liability was incurred. For purposes of the use tax, in  
13 case of a return filed by a retailer, the return shall show the total  
14 sales price of the property sold by him or her, the storage, use, or  
15 consumption of which property became subject to the use tax  
16 during the preceding reporting period; in case of a return filed by  
17 a purchaser, *except as provided in Section 6452.1*, the return shall  
18 show the total sales price of the property purchased by him or her,  
19 the storage, use, or consumption of which became subject to the  
20 use tax during the preceding reporting period.

21 The return shall also show the amount of the taxes for the period  
22 covered by the return and any other information which the board  
23 deems necessary for the proper administration of this part.

24 SEC. 4. Section 6487.3 of the Revenue and Taxation Code is  
25 repealed.

26 ~~6487.3. (a) (1) For persons that elect to report qualified use~~  
27 ~~tax in accordance with Section 6452.1, except in the case of fraud,~~  
28 ~~intent to avoid this part or authorized rules and regulations issued~~  
29 ~~by the board, or the gross understatement of qualified use taxes,~~  
30 ~~every notice of a deficiency determination with respect to the~~  
31 ~~qualified use tax shall be mailed within three years after the last~~  
32 ~~day for which an acceptable tax return is due or filed, whichever~~  
33 ~~occurs later.~~

34 ~~(2) In the case of a gross understatement of qualified use tax,~~  
35 ~~every notice of a deficiency determination with respect to the~~  
36 ~~qualified use tax shall be mailed within six years after the last day~~  
37 ~~for which an acceptable tax return is due or filed, whichever occurs~~  
38 ~~later.~~

39 ~~(3) For purposes of this subdivision a “gross understatement of~~  
40 ~~qualified used tax” is a deficiency that is in excess of 25 percent~~

1 of the amount of qualified use tax reported on a person’s acceptable  
2 tax return. In the case of married individuals filing separate  
3 California personal income tax returns, the total amount of qualified  
4 use tax reported will be considered in determining whether there  
5 is a gross understatement of qualified use tax.

6 ~~(4) For purposes of this section “acceptable tax return” means~~  
7 ~~a timely filed original return that is filed pursuant to Article 1~~  
8 ~~(commencing with Section 18501), Article 2 (commencing with~~  
9 ~~Section 18601), Section 18633, Section 18633.5 of Chapter 2~~  
10 ~~(commencing with Section 18501) of Part 10.2, or Article 3~~  
11 ~~(commencing with Section 23771) of Chapter 4 of Part 11.~~

12 ~~(b) This section applies to reporting of purchases of tangible~~  
13 ~~personal property made on or after January 1, 2003, in taxable~~  
14 ~~years beginning on or after January 1, 2003, and on or before~~  
15 ~~December 31, 2009, and as of that latter date becomes inoperative,~~  
16 ~~unless a later enacted statute extends the operation of this section.~~

17 *SEC. 5. Section 6487.3 is added to the Revenue and Taxation*  
18 *Code, to read:*

19 *6487.3. (a) (1) For persons that elect to report qualified use*  
20 *tax in accordance with Section 6452.1, except in the case of fraud,*  
21 *intent to avoid this part or authorized rules and regulations issued*  
22 *by the board, or the gross understatement of qualified use taxes,*  
23 *every notice of a deficiency determination with respect to the*  
24 *qualified use tax shall be mailed within three years after the last*  
25 *day for which an acceptable tax return is due or filed, whichever*  
26 *occurs later.*

27 *(2) In the case of a gross understatement of qualified use tax,*  
28 *every notice of a deficiency determination with respect to the*  
29 *qualified use tax shall be mailed within six years after the last day*  
30 *for which an acceptable tax return is due or filed, whichever occurs*  
31 *later.*

32 *(3) For purposes of this subdivision a “gross understatement*  
33 *of qualified use tax” is a deficiency that is in excess of 25 percent*  
34 *of the amount of qualified use tax reported on a person’s*  
35 *acceptable tax return. In the case of married individuals filing*  
36 *separate California personal income tax returns, the total amount*  
37 *of qualified use tax reported will be considered in determining*  
38 *whether there is a gross understatement of qualified use tax.*

39 *(4) For purposes of this section “acceptable tax return” means*  
40 *a timely filed original return that is filed pursuant to Article 1*

1 (commencing with Section 18501), Article 2 (commencing with  
 2 Section 18601), Section 18633, Section 18633.5 of Chapter 2  
 3 (commencing with Section 18501) of Part 10.2, or Article 3  
 4 (commencing with Section 23771) of Chapter 4 of Part 11.

5 (b) This section applies to reporting of purchases of tangible  
 6 personal property made on or after January 1, 2010, in taxable  
 7 years beginning on or after January 1, 2010.

8 SEC. 6. Section 6833 is added to the Revenue and Taxation  
 9 Code, to read:

10 6833. (a) A collection cost recovery fee shall be imposed on  
 11 any person that fails to pay an amount of tax, interest, penalty, or  
 12 other amount due and payable under this part. The collection cost  
 13 recovery fee shall be in an amount equal to the board's costs for  
 14 collection, as reasonably determined by the board. The collection  
 15 cost recovery fee shall be imposed only if the board has mailed its  
 16 demand notice, to that person for payment, that advises that  
 17 continued failure to pay the amount due may result in collection  
 18 action, including the imposition of a collection cost recovery fee.

19 (b) Interest shall not accrue with respect to the collection cost  
 20 recovery fee provided by this section.

21 (c) The collection cost recovery fee imposed pursuant to this  
 22 section shall be collected in the same manner as the collection of  
 23 any other tax imposed by this part.

24 (d) (1) If the board finds that a person's failure to pay any  
 25 amount under this part is due to reasonable cause and  
 26 circumstances beyond the person's control, and occurred  
 27 notwithstanding the exercise of ordinary care and the absence of  
 28 willful neglect, the person shall be relieved of the collection cost  
 29 recovery fee provided by this section.

30 (2) Any person seeking to be relieved of the collection cost  
 31 recovery fee shall file with the board a statement under penalty of  
 32 perjury setting forth the facts upon which the person bases the  
 33 claim for relief.

34 (e) Subdivision (a) shall be operative with respect to a demand  
 35 notice for payment which is mailed on or after January 1, 2011.

36 (f) Collection cost recovery fee revenues shall be deposited in  
 37 the same manner as revenues derived from any other tax imposed  
 38 by this part.

39 SEC. 7. Section 9035 is added to the Revenue and Taxation  
 40 Code, to read:

1 9035. (a) A collection cost recovery fee shall be imposed on  
2 any person that fails to pay an amount of tax, interest, penalty, or  
3 other amount due and payable under this part. The collection cost  
4 recovery fee shall be in an amount equal to the board's costs for  
5 collection, as reasonably determined by the board. The collection  
6 cost recovery fee shall be imposed only if the board has mailed its  
7 demand notice, to that person for payment, that advises that  
8 continued failure to pay the amount due may result in collection  
9 action, including the imposition of a collection cost recovery fee.

10 (b) Interest shall not accrue with respect to the collection cost  
11 recovery fee provided by this section.

12 (c) The collection cost recovery fee imposed pursuant to this  
13 section shall be collected in the same manner as the collection of  
14 any other tax imposed by this part.

15 (d) (1) If the board finds that a person's failure to pay any  
16 amount under this part is due to reasonable cause and  
17 circumstances beyond the person's control, and occurred  
18 notwithstanding the exercise of ordinary care and the absence of  
19 willful neglect, the person shall be relieved of the collection cost  
20 recovery fee provided by this section.

21 (2) Any person seeking to be relieved of the collection cost  
22 recovery fee shall file with the board a statement under penalty of  
23 perjury setting forth the facts upon which the person bases the  
24 claim for relief.

25 (e) Subdivision (a) shall be operative with respect to a demand  
26 notice for payment which is mailed on or after January 1, 2011.

27 (f) Collection cost recovery fee revenues shall be deposited in  
28 the same manner as revenues derived from any other tax imposed  
29 by this part.

30 SEC. 8. Section 11534 is added to the Revenue and Taxation  
31 Code, to read:

32 11534. (a) A collection cost recovery fee shall be imposed on  
33 any person that fails to pay an amount of tax, interest, penalty, or  
34 other amount due and payable under this part. The collection cost  
35 recovery fee shall be in an amount equal to the board's costs for  
36 collection, as reasonably determined by the board. The collection  
37 cost recovery fee shall be imposed only if the board has mailed its  
38 demand notice, to that person for payment, that advises that  
39 continued failure to pay the amount due may result in collection  
40 action, including the imposition of a collection cost recovery fee.

1 (b) Interest shall not accrue with respect to the collection cost  
 2 recovery fee provided by this section.

3 (c) The collection cost recovery fee imposed pursuant to this  
 4 section shall be collected in the same manner as the collection of  
 5 any other tax imposed by this part.

6 (d) (1) If the board finds that a person's failure to pay any  
 7 amount under this part is due to reasonable cause and  
 8 circumstances beyond the person's control, and occurred  
 9 notwithstanding the exercise of ordinary care and the absence of  
 10 willful neglect, the person shall be relieved of the collection cost  
 11 recovery fee provided by this section.

12 (2) Any person seeking to be relieved of the collection cost  
 13 recovery fee shall file with the board a statement under penalty of  
 14 perjury setting forth the facts upon which the person bases the  
 15 claim for relief.

16 (e) Subdivision (a) shall be operative with respect to a demand  
 17 notice for payment which is mailed on or after January 1, 2011.

18 (f) Collection cost recovery fee revenues shall be deposited in  
 19 the same manner as revenues derived from any other tax imposed  
 20 by this part.

21 SEC. 9. Section 17276 of the Revenue and Taxation Code is  
 22 repealed.

23 ~~17276. Except as provided in Sections 17276.1, 17276.2,~~  
 24 ~~17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided~~  
 25 ~~by Section 172 of the Internal Revenue Code, relating to a net~~  
 26 ~~operating loss deduction, shall be modified as follows:~~

27 (a) (1) ~~Net operating losses attributable to taxable years~~  
 28 ~~beginning before January 1, 1987, shall not be allowed.~~

29 (2) ~~A net operating loss shall not be carried forward to any~~  
 30 ~~taxable year beginning before January 1, 1987.~~

31 (b) (1) ~~Except as provided in paragraphs (2) and (3), the~~  
 32 ~~provisions of Section 172(b)(2) of the Internal Revenue Code,~~  
 33 ~~relating to the amount of carryovers, shall be modified so that the~~  
 34 ~~applicable percentage of the entire amount of the net operating~~  
 35 ~~loss for any taxable year shall be eligible for carryover to any~~  
 36 ~~subsequent taxable year. For purposes of this subdivision, the~~  
 37 ~~applicable percentage shall be:~~

38 (A) ~~Fifty percent for any taxable year beginning before January~~  
 39 ~~1, 2000.~~

1 ~~(B) Fifty-five percent for any taxable year beginning on or after~~  
2 ~~January 1, 2000, and before January 1, 2002.~~

3 ~~(C) Sixty percent for any taxable year beginning on or after~~  
4 ~~January 1, 2002, and before January 1, 2004.~~

5 ~~(D) One hundred percent for any taxable year beginning on or~~  
6 ~~after January 1, 2004.~~

7 ~~(2) In the case of a taxpayer who has a net operating loss in any~~  
8 ~~taxable year beginning on or after January 1, 1994, and who~~  
9 ~~operates a new business during that taxable year, each of the~~  
10 ~~following shall apply to each loss incurred during the first three~~  
11 ~~taxable years of operating the new business:~~

12 ~~(A) If the net operating loss is equal to or less than the net loss~~  
13 ~~from the new business, 100 percent of the net operating loss shall~~  
14 ~~be carried forward as provided in subdivision (d).~~

15 ~~(B) If the net operating loss is greater than the net loss from the~~  
16 ~~new business, the net operating loss shall be carried over as~~  
17 ~~follows:~~

18 ~~(i) With respect to an amount equal to the net loss from the new~~  
19 ~~business, 100 percent of that amount shall be carried forward as~~  
20 ~~provided in subdivision (d).~~

21 ~~(ii) With respect to the portion of the net operating loss that~~  
22 ~~exceeds the net loss from the new business, the applicable~~  
23 ~~percentage of that amount shall be carried forward as provided in~~  
24 ~~subdivision (d).~~

25 ~~(C) For purposes of Section 172(b)(2) of the Internal Revenue~~  
26 ~~Code, the amount described in clause (ii) of subparagraph (B) shall~~  
27 ~~be absorbed before the amount described in clause (i) of~~  
28 ~~subparagraph (B).~~

29 ~~(3) In the case of a taxpayer who has a net operating loss in any~~  
30 ~~taxable year beginning on or after January 1, 1994, and who~~  
31 ~~operates an eligible small business during that taxable year, each~~  
32 ~~of the following shall apply:~~

33 ~~(A) If the net operating loss is equal to or less than the net loss~~  
34 ~~from the eligible small business, 100 percent of the net operating~~  
35 ~~loss shall be carried forward to the taxable years specified in~~  
36 ~~subdivision (d).~~

37 ~~(B) If the net operating loss is greater than the net loss from the~~  
38 ~~eligible small business, the net operating loss shall be carried over~~  
39 ~~as follows:~~

1 (i) ~~With respect to an amount equal to the net loss from the~~  
2 ~~eligible small business, 100 percent of that amount shall be carried~~  
3 ~~forward as provided in subdivision (d).~~

4 (ii) ~~With respect to that portion of the net operating loss that~~  
5 ~~exceeds the net loss from the eligible small business, the applicable~~  
6 ~~percentage of that amount shall be carried forward as provided in~~  
7 ~~subdivision (d).~~

8 (C) ~~For purposes of Section 172(b)(2) of the Internal Revenue~~  
9 ~~Code, the amount described in clause (ii) of subparagraph (B) shall~~  
10 ~~be absorbed before the amount described in clause (i) of~~  
11 ~~subparagraph (B).~~

12 (4) ~~In the case of a taxpayer who has a net operating loss in a~~  
13 ~~taxable year beginning on or after January 1, 1994, and who~~  
14 ~~operates a business that qualifies as both a new business and an~~  
15 ~~eligible small business under this section, that business shall be~~  
16 ~~treated as a new business for the first three taxable years of the~~  
17 ~~new business.~~

18 (5) ~~In the case of a taxpayer who has a net operating loss in a~~  
19 ~~taxable year beginning on or after January 1, 1994, and who~~  
20 ~~operates more than one business, and more than one of those~~  
21 ~~businesses qualifies as either a new business or an eligible small~~  
22 ~~business under this section, paragraph (2) shall be applied first,~~  
23 ~~except that if there is any remaining portion of the net operating~~  
24 ~~loss after application of clause (i) of subparagraph (B) of that~~  
25 ~~paragraph, paragraph (3) shall be applied to the remaining portion~~  
26 ~~of the net operating loss as though that remaining portion of the~~  
27 ~~net operating loss constituted the entire net operating loss.~~

28 (6) ~~For purposes of this section, the term “net loss” means the~~  
29 ~~amount of net loss after application of Sections 465 and 469 of the~~  
30 ~~Internal Revenue Code.~~

31 (e) ~~Section 172(b)(1) of the Internal Revenue Code, relating to~~  
32 ~~net operating loss carrybacks and carryovers and the years to which~~  
33 ~~the loss may be carried, is modified as follows:~~

34 (1) ~~Net operating loss carrybacks shall not be allowed for any~~  
35 ~~net operating losses attributable to taxable years beginning before~~  
36 ~~January 1, 2011.~~

37 (2) ~~A net operating loss attributable to taxable years beginning~~  
38 ~~on or after January 1, 2011, shall be a net operating loss carryback~~  
39 ~~to each of the two taxable years preceding the taxable year of the~~  
40 ~~loss in lieu of the number of years provided therein.~~

1 ~~(A) For a net operating loss attributable to a taxable year~~  
2 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~  
3 ~~the amount of carryback to any taxable year shall not exceed 50~~  
4 ~~percent of the net operating loss.~~

5 ~~(B) For a net operating loss attributable to a taxable year~~  
6 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~  
7 ~~the amount of carryback to any taxable year shall not exceed 75~~  
8 ~~percent of the net operating loss.~~

9 ~~(C) For a net operating loss attributable to a taxable year~~  
10 ~~beginning on or after January 1, 2013, the amount of carryback to~~  
11 ~~any taxable year shall not exceed 100 percent of the net operating~~  
12 ~~loss.~~

13 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~  
14 ~~Internal Revenue Code, relating to special rules for REITs, and~~  
15 ~~Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,~~  
16 ~~relating to corporate equity reduction interest loss, shall apply as~~  
17 ~~provided.~~

18 ~~(4) A net operating loss carryback shall not be carried back to~~  
19 ~~any taxable year beginning before January 1, 2009.~~

20 ~~(d) (1) (A) For a net operating loss for any taxable year~~  
21 ~~beginning on or after January 1, 1987, and before January 1, 2000,~~  
22 ~~Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to~~  
23 ~~years to which net operating losses may be carried, is modified to~~  
24 ~~substitute “five taxable years” in lieu of “20 taxable years” except~~  
25 ~~as otherwise provided in paragraphs (2) and (3).~~

26 ~~(B) For a net operating loss for any taxable year beginning on~~  
27 ~~or after January 1, 2000, and before January 1, 2008, Section~~  
28 ~~172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years~~  
29 ~~to which net operating losses may be carried, is modified to~~  
30 ~~substitute “10 taxable years” in lieu of “20 taxable years.”~~

31 ~~(2) For any taxable year beginning before January 1, 2000, in~~  
32 ~~the case of a “new business,” the “five taxable years” in paragraph~~  
33 ~~(1) shall be modified to read as follows:~~

34 ~~(A) “Eight taxable years” for a net operating loss attributable~~  
35 ~~to the first taxable year of that new business.~~

36 ~~(B) “Seven taxable years” for a net operating loss attributable~~  
37 ~~to the second taxable year of that new business.~~

38 ~~(C) “Six taxable years” for a net operating loss attributable to~~  
39 ~~the third taxable year of that new business.~~

1 ~~(3) For any carryover of a net operating loss for which a~~  
 2 ~~deduction is denied by Section 17276.3, the carryover period~~  
 3 ~~specified in this subdivision shall be extended as follows:~~  
 4 ~~(A) By one year for a net operating loss attributable to taxable~~  
 5 ~~years beginning in 1991.~~  
 6 ~~(B) By two years for a net operating loss attributable to taxable~~  
 7 ~~years beginning prior to January 1, 1991.~~  
 8 ~~(4) The net operating loss attributable to taxable years beginning~~  
 9 ~~on or after January 1, 1987, and before January 1, 1994, shall be~~  
 10 ~~a net operating loss carryover to each of the 10 taxable years~~  
 11 ~~following the year of the loss if it is incurred by a taxpayer that is~~  
 12 ~~under the jurisdiction of the court in a Title 11 or similar case at~~  
 13 ~~any time during the income year. The loss carryover provided in~~  
 14 ~~the preceding sentence shall not apply to any loss incurred after~~  
 15 ~~the date the taxpayer is no longer under the jurisdiction of the court~~  
 16 ~~in a Title 11 or similar case.~~  
 17 ~~(e) For purposes of this section:~~  
 18 ~~(1) "Eligible small business" means any trade or business that~~  
 19 ~~has gross receipts, less returns and allowances, of less than one~~  
 20 ~~million dollars (\$1,000,000) during the taxable year.~~  
 21 ~~(2) Except as provided in subdivision (f), "new business" means~~  
 22 ~~any trade or business activity that is first commenced in this state~~  
 23 ~~on or after January 1, 1994.~~  
 24 ~~(3) "Title 11 or similar case" shall have the same meaning as~~  
 25 ~~in Section 368(a)(3) of the Internal Revenue Code.~~  
 26 ~~(4) In the case of any trade or business activity conducted by a~~  
 27 ~~partnership or "S" corporation paragraphs (1) and (2) shall be~~  
 28 ~~applied to the partnership or "S" corporation.~~  
 29 ~~(f) For purposes of this section, in determining whether a trade~~  
 30 ~~or business activity qualifies as a new business under paragraph~~  
 31 ~~(2) of subdivision (e), the following rules shall apply:~~  
 32 ~~(1) In any case where a taxpayer purchases or otherwise acquires~~  
 33 ~~all or any portion of the assets of an existing trade or business~~  
 34 ~~(irrespective of the form of entity) that is doing business in this~~  
 35 ~~state (within the meaning of Section 23101), the trade or business~~  
 36 ~~thereafter conducted by the taxpayer (or any related person) shall~~  
 37 ~~not be treated as a new business if the aggregate fair market value~~  
 38 ~~of the acquired assets (including real, personal, tangible, and~~  
 39 ~~intangible property) used by the taxpayer (or any related person)~~  
 40 ~~in the conduct of its trade or business exceeds 20 percent of the~~

1 aggregate fair market value of the total assets of the trade or  
2 business being conducted by the taxpayer (or any related person).  
3 For purposes of this paragraph only, the following rules shall apply:

4 (A) The determination of the relative fair market values of the  
5 acquired assets and the total assets shall be made as of the last day  
6 of the first taxable year in which the taxpayer (or any related  
7 person) first uses any of the acquired trade or business assets in  
8 its business activity.

9 (B) Any acquired assets that constituted property described in  
10 Section 1221(1) of the Internal Revenue Code in the hands of the  
11 transferor shall not be treated as assets acquired from an existing  
12 trade or business, unless those assets also constitute property  
13 described in Section 1221(1) of the Internal Revenue Code in the  
14 hands of the acquiring taxpayer (or related person).

15 (2) In any case where a taxpayer (or any related person) is  
16 engaged in one or more trade or business activities in this state, or  
17 has been engaged in one or more trade or business activities in this  
18 state within the preceding 36 months (“prior trade or business  
19 activity”), and thereafter commences an additional trade or business  
20 activity in this state, the additional trade or business activity shall  
21 only be treated as a new business if the additional trade or business  
22 activity is classified under a different division of the Standard  
23 Industrial Classification (SIC) Manual published by the United  
24 States Office of Management and Budget, 1987 edition, than are  
25 any of the taxpayer’s (or any related person’s) current or prior  
26 trade or business activities.

27 (3) In any case where a taxpayer, including all related persons,  
28 is engaged in trade or business activities wholly outside of this  
29 state and the taxpayer first commences doing business in this state  
30 (within the meaning of Section 23101) after December 31, 1993  
31 (other than by purchase or other acquisition described in paragraph  
32 (1)), the trade or business activity shall be treated as a new business  
33 under paragraph (2) of subdivision (c).

34 (4) In any case where the legal form under which a trade or  
35 business activity is being conducted is changed, the change in form  
36 shall be disregarded and the determination of whether the trade or  
37 business activity is a new business shall be made by treating the  
38 taxpayer as having purchased or otherwise acquired all or any  
39 portion of the assets of an existing trade or business under the rules  
40 of paragraph (1) of this subdivision.

1 (5) ~~“Related person” shall mean any person that is related to~~  
2 ~~the taxpayer under either Section 267 or 318 of the Internal~~  
3 ~~Revenue Code.~~

4 (6) ~~“Acquire” shall include any gift, inheritance, transfer incident~~  
5 ~~to divorce, or any other transfer, whether or not for consideration.~~

6 (7) (A) ~~For taxable years beginning on or after January 1, 1997,~~  
7 ~~the term “new business” shall include any taxpayer that is engaged~~  
8 ~~in biopharmaceutical activities or other biotechnology activities~~  
9 ~~that are described in Codes 2833 to 2836, inclusive, of the Standard~~  
10 ~~Industrial Classification (SIC) Manual published by the United~~  
11 ~~States Office of Management and Budget, 1987 edition, and as~~  
12 ~~further amended, and that has not received regulatory approval for~~  
13 ~~any product from the United States Food and Drug Administration.~~

14 (B) ~~For purposes of this paragraph:~~

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

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

28 (g) ~~In computing the modifications under Section 172(d)(2) of~~  
29 ~~the Internal Revenue Code, relating to capital gains and losses of~~  
30 ~~taxpayers other than corporations, the exclusion provided by~~  
31 ~~Section 18152.5 shall not be allowed.~~

32 (h) ~~Notwithstanding any provisions of this section to the~~  
33 ~~contrary, a deduction shall be allowed to a “qualified taxpayer” as~~  
34 ~~provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,~~  
35 ~~and 17276.7.~~

36 (i) ~~The Franchise Tax Board may prescribe appropriate~~  
37 ~~regulations to carry out the purposes of this section, including any~~  
38 ~~regulations necessary to prevent the avoidance of the purposes of~~  
39 ~~this section through splitups, shell corporations, partnerships, tiered~~  
40 ~~ownership structures, or otherwise.~~

1 ~~(j) The Franchise Tax Board may reclassify any net operating~~  
2 ~~loss carryover determined under either paragraph (2) or (3) of~~  
3 ~~subdivision (b) as a net operating loss carryover under paragraph~~  
4 ~~(1) of subdivision (b) upon a showing that the reclassification is~~  
5 ~~necessary to prevent evasion of the purposes of this section.~~

6 ~~(k) Except as otherwise provided, the amendments made by~~  
7 ~~Chapter 107 of the Statutes of 2000 shall apply to net operating~~  
8 ~~losses for taxable years beginning on or after January 1, 2000.~~

9 *SEC. 10. Section 17276.05 is added to the Revenue and*  
10 *Taxation Code, to read:*

11 *17276.05. (a) In addition to the modifications made by Section*  
12 *17276, the deduction provided by Section 172 of the Internal*  
13 *Revenue Code, relating to net operating loss deduction, shall be*  
14 *modified as follows:*

15 *(1) Section 172(b)(1)(J) of the Internal Revenue Code, relating*  
16 *to certain losses attributable to federally declared disasters, shall*  
17 *not apply.*

18 *(2) Section 172(j) of the Internal Revenue Code, relating to*  
19 *rules relating to qualified disaster losses, shall not apply.*

20 *(b) This section shall be operative for taxable years beginning*  
21 *on or after January 1, 2011.*

22 *SEC. 11. Section 17276.9 of the Revenue and Taxation Code*  
23 *is repealed.*

24 ~~17276.9.—(a) Notwithstanding Sections 17276, 17276.1,~~  
25 ~~17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and~~  
26 ~~Section 172 of the Internal Revenue Code, no net operating loss~~  
27 ~~deduction shall be allowed for any taxable year beginning on or~~  
28 ~~after January 1, 2008, and before January 1, 2010.~~

29 ~~(b) For any net operating loss or carryover of a net operating~~  
30 ~~loss for which a deduction is denied by subdivision (a), the~~  
31 ~~carryover period under Section 172 of the Internal Revenue Code~~  
32 ~~shall be extended as follows:~~

33 ~~(1) By one year, for losses incurred in taxable years beginning~~  
34 ~~on or after January 1, 2008, and before January 1, 2009.~~

35 ~~(2) By two years, for losses incurred in taxable years beginning~~  
36 ~~before January 1, 2008.~~

37 ~~(c) Notwithstanding subdivision (a), a net operating loss~~  
38 ~~deduction shall be allowed for carryback of a net operating loss~~  
39 ~~attributable to a taxable year beginning on or after January 1, 2011.~~

1 ~~(d) The provisions of this section shall not apply to a taxpayer~~  
 2 ~~with net business income of less than five hundred thousand dollars~~  
 3 ~~(\$500,000) for the taxable year. For purposes of this subdivision,~~  
 4 ~~business income means:~~

5 ~~(1) Income from a trade or business, whether conducted by the~~  
 6 ~~taxpayer or by a passthrough entity owned directly or indirectly~~  
 7 ~~by the taxpayer. For purposes of this paragraph, the term~~  
 8 ~~“passthrough entity” means a partnership or an “S” corporation.~~

9 ~~(2) Income from rental activity.~~

10 ~~(3) Income attributable to a farming business.~~

11 *SEC. 12. Section 17276.10 of the Revenue and Taxation Code*  
 12 *is repealed.*

13 ~~17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4,~~  
 14 ~~17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss~~  
 15 ~~attributable to a taxable year beginning on or after January 1, 2008,~~  
 16 ~~shall be a net operating carryover to each of the 20 taxable years~~  
 17 ~~following the year of the loss, and a net operating loss attributable~~  
 18 ~~to a taxable year beginning on or after January 1, 2011, shall also~~  
 19 ~~be a net operating loss carryback to each of the two taxable years~~  
 20 ~~preceding the taxable year of loss.~~

21 *SEC. 13. Section 17276.20 is added to the Revenue and*  
 22 *Taxation Code, to read:*

23 *17276.20. Except as provided in Sections 17276.1, 17276.2,*  
 24 *17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided*  
 25 *by Section 172 of the Internal Revenue Code, relating to net*  
 26 *operating loss deduction, shall be modified as follows:*

27 *(a) (1) Net operating losses attributable to taxable years*  
 28 *beginning before January 1, 1987, shall not be allowed.*

29 *(2) A net operating loss shall not be carried forward to any*  
 30 *taxable year beginning before January 1, 1987.*

31 *(b) (1) Except as provided in paragraphs (2) and (3), the*  
 32 *provisions of Section 172(b)(2) of the Internal Revenue Code,*  
 33 *relating to amount of carrybacks and carryovers, shall be modified*  
 34 *so that the applicable percentage of the entire amount of the net*  
 35 *operating loss for any taxable year shall be eligible for carryover*  
 36 *to any subsequent taxable year. For purposes of this subdivision,*  
 37 *the applicable percentage shall be:*

38 *(A) Fifty percent for any taxable year beginning before January*  
 39 *1, 2000.*

1 (B) Fifty-five percent for any taxable year beginning on or after  
2 January 1, 2000, and before January 1, 2002.

3 (C) Sixty percent for any taxable year beginning on or after  
4 January 1, 2002, and before January 1, 2004.

5 (D) One hundred percent for any taxable year beginning on or  
6 after January 1, 2004.

7 (2) In the case of a taxpayer who has a net operating loss in  
8 any taxable year beginning on or after January 1, 1994, and who  
9 operates a new business during that taxable year, each of the  
10 following shall apply to each loss incurred during the first three  
11 taxable years of operating the new business:

12 (A) If the net operating loss is equal to or less than the net loss  
13 from the new business, 100 percent of the net operating loss shall  
14 be carried forward as provided in subdivision (d).

15 (B) If the net operating loss is greater than the net loss from the  
16 new business, the net operating loss shall be carried over as  
17 follows:

18 (i) With respect to an amount equal to the net loss from the new  
19 business, 100 percent of that amount shall be carried forward as  
20 provided in subdivision (d).

21 (ii) With respect to the portion of the net operating loss that  
22 exceeds the net loss from the new business, the applicable  
23 percentage of that amount shall be carried forward as provided  
24 in subdivision (d).

25 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
26 Code, the amount described in clause (ii) of subparagraph (B)  
27 shall be absorbed before the amount described in clause (i) of  
28 subparagraph (B).

29 (3) In the case of a taxpayer who has a net operating loss in  
30 any taxable year beginning on or after January 1, 1994, and who  
31 operates an eligible small business during that taxable year, each  
32 of the following shall apply:

33 (A) If the net operating loss is equal to or less than the net loss  
34 from the eligible small business, 100 percent of the net operating  
35 loss shall be carried forward to the taxable years specified in  
36 subdivision (d).

37 (B) If the net operating loss is greater than the net loss from the  
38 eligible small business, the net operating loss shall be carried over  
39 as follows:

1 (i) With respect to an amount equal to the net loss from the  
2 eligible small business, 100 percent of that amount shall be carried  
3 forward as provided in subdivision (d).

4 (ii) With respect to that portion of the net operating loss that  
5 exceeds the net loss from the eligible small business, the applicable  
6 percentage of that amount shall be carried forward as provided  
7 in subdivision (d).

8 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
9 Code, the amount described in clause (ii) of subparagraph (B)  
10 shall be absorbed before the amount described in clause (i) of  
11 subparagraph (B).

12 (4) In the case of a taxpayer who has a net operating loss in a  
13 taxable year beginning on or after January 1, 1994, and who  
14 operates a business that qualifies as both a new business and an  
15 eligible small business under this section, that business shall be  
16 treated as a new business for the first three taxable years of the  
17 new business.

18 (5) In the case of a taxpayer who has a net operating loss in a  
19 taxable year beginning on or after January 1, 1994, and who  
20 operates more than one business, and more than one of those  
21 businesses qualifies as either a new business or an eligible small  
22 business under this section, paragraph (2) shall be applied first,  
23 except that if there is any remaining portion of the net operating  
24 loss after application of clause (i) of subparagraph (B) of that  
25 paragraph, paragraph (3) shall be applied to the remaining portion  
26 of the net operating loss as though that remaining portion of the  
27 net operating loss constituted the entire net operating loss.

28 (6) For purposes of this section, the term “net loss” means the  
29 amount of net loss after application of Sections 465 and 469 of  
30 the Internal Revenue Code.

31 (c) Section 172(b)(1) of the Internal Revenue Code, relating to  
32 years to which the loss may be carried, is modified as follows:

33 (1) Net operating loss carrybacks shall not be allowed for any  
34 net operating losses attributable to taxable years beginning before  
35 January 1, 2013.

36 (2) A net operating loss attributable to taxable years beginning  
37 on or after January 1, 2013, shall be a net operating loss carryback  
38 to each of the two taxable years preceding the taxable year of the  
39 loss in lieu of the number of years provided therein.

1 (A) For a net operating loss attributable to a taxable year  
2 beginning on or after January 1, 2013, and before January 1,  
3 2014, the amount of carryback to any taxable year shall not exceed  
4 50 percent of the net operating loss.

5 (B) For a net operating loss attributable to a taxable year  
6 beginning on or after January 1, 2014, and before January 1,  
7 2015, the amount of carryback to any taxable year shall not exceed  
8 75 percent of the net operating loss.

9 (C) For a net operating loss attributable to a taxable year  
10 beginning on or after January 1, 2015, the amount of carryback  
11 to any taxable year shall not exceed 100 percent of the net  
12 operating loss.

13 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
14 Internal Revenue Code, relating to special rules for REITs, and  
15 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
16 excess interest loss, and Section 172(h) of the Internal Revenue  
17 Code, relating to corporate equity reduction interest losses, shall  
18 apply as provided.

19 (4) A net operating loss carryback shall not be carried back to  
20 any taxable year beginning before January 1, 2011.

21 (d) (1) (A) For a net operating loss for any taxable year  
22 beginning on or after January 1, 1987, and before January 1,  
23 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is  
24 modified to substitute “five taxable years” in lieu of “20 taxable  
25 years” except as otherwise provided in paragraphs (2) and (3).

26 (B) For a net operating loss for any taxable year beginning on  
27 or after January 1, 2000, and before January 1, 2008, Section  
28 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
29 substitute “10 taxable years” in lieu of “20 taxable years.”

30 (2) For any taxable year beginning before January 1, 2000, in  
31 the case of a “new business,” the “five taxable years” in  
32 paragraph (1) shall be modified to read as follows:

33 (A) “Eight taxable years” for a net operating loss attributable  
34 to the first taxable year of that new business.

35 (B) “Seven taxable years” for a net operating loss attributable  
36 to the second taxable year of that new business.

37 (C) “Six taxable years” for a net operating loss attributable to  
38 the third taxable year of that new business.

1 (3) For any carryover of a net operating loss for which a  
2 deduction is denied by Section 17276.3, the carryover period  
3 specified in this subdivision shall be extended as follows:

4 (A) By one year for a net operating loss attributable to taxable  
5 years beginning in 1991.

6 (B) By two years for a net operating loss attributable to taxable  
7 years beginning prior to January 1, 1991.

8 (4) The net operating loss attributable to taxable years  
9 beginning on or after January 1, 1987, and before January 1,  
10 1994, shall be a net operating loss carryover to each of the 10  
11 taxable years following the year of the loss if it is incurred by a  
12 taxpayer that is under the jurisdiction of the court in a Title 11 or  
13 similar case at any time during the income year. The loss carryover  
14 provided in the preceding sentence shall not apply to any loss  
15 incurred after the date the taxpayer is no longer under the  
16 jurisdiction of the court in a Title 11 or similar case.

17 (e) For purposes of this section:

18 (1) "Eligible small business" means any trade or business that  
19 has gross receipts, less returns and allowances, of less than one  
20 million dollars (\$1,000,000) during the taxable year.

21 (2) Except as provided in subdivision (f), "new business" means  
22 any trade or business activity that is first commenced in this state  
23 on or after January 1, 1994.

24 (3) "Title 11 or similar case" shall have the same meaning as  
25 in Section 368(a)(3) of the Internal Revenue Code.

26 (4) In the case of any trade or business activity conducted by a  
27 partnership or "S" corporation paragraphs (1) and (2) shall be  
28 applied to the partnership or "S" corporation.

29 (f) For purposes of this section, in determining whether a trade  
30 or business activity qualifies as a new business under paragraph  
31 (2) of subdivision (e), the following rules shall apply:

32 (1) In any case where a taxpayer purchases or otherwise  
33 acquires all or any portion of the assets of an existing trade or  
34 business (irrespective of the form of entity) that is doing business  
35 in this state (within the meaning of Section 23101), the trade or  
36 business thereafter conducted by the taxpayer (or any related  
37 person) shall not be treated as a new business if the aggregate fair  
38 market value of the acquired assets (including real, personal,  
39 tangible, and intangible property) used by the taxpayer (or any  
40 related person) in the conduct of its trade or business exceeds 20

1 percent of the aggregate fair market value of the total assets of  
2 the trade or business being conducted by the taxpayer (or any  
3 related person). For purposes of this paragraph only, the following  
4 rules shall apply:

5 (A) The determination of the relative fair market values of the  
6 acquired assets and the total assets shall be made as of the last  
7 day of the first taxable year in which the taxpayer (or any related  
8 person) first uses any of the acquired trade or business assets in  
9 its business activity.

10 (B) Any acquired assets that constituted property described in  
11 Section 1221(1) of the Internal Revenue Code in the hands of the  
12 transferor shall not be treated as assets acquired from an existing  
13 trade or business, unless those assets also constitute property  
14 described in Section 1221(1) of the Internal Revenue Code in the  
15 hands of the acquiring taxpayer (or related person).

16 (2) In any case where a taxpayer (or any related person) is  
17 engaged in one or more trade or business activities in this state,  
18 or has been engaged in one or more trade or business activities  
19 in this state within the preceding 36 months (“prior trade or  
20 business activity”), and thereafter commences an additional trade  
21 or business activity in this state, the additional trade or business  
22 activity shall only be treated as a new business if the additional  
23 trade or business activity is classified under a different division  
24 of the Standard Industrial Classification (SIC) Manual published  
25 by the United States Office of Management and Budget, 1987  
26 edition, than are any of the taxpayer’s (or any related person’s)  
27 current or prior trade or business activities.

28 (3) In any case where a taxpayer, including all related persons,  
29 is engaged in trade or business activities wholly outside of this  
30 state and the taxpayer first commences doing business in this state  
31 (within the meaning of Section 23101) after December 31, 1993  
32 (other than by purchase or other acquisition described in  
33 paragraph (1)), the trade or business activity shall be treated as  
34 a new business under paragraph (2) of subdivision (e).

35 (4) In any case where the legal form under which a trade or  
36 business activity is being conducted is changed, the change in form  
37 shall be disregarded and the determination of whether the trade  
38 or business activity is a new business shall be made by treating  
39 the taxpayer as having purchased or otherwise acquired all or any

1 *portion of the assets of an existing trade or business under the*  
2 *rules of paragraph (1) of this subdivision.*

3 (5) *“Related person” shall mean any person that is related to*  
4 *the taxpayer under either Section 267 or 318 of the Internal*  
5 *Revenue Code.*

6 (6) *“Acquire” shall include any gift, inheritance, transfer*  
7 *incident to divorce, or any other transfer, whether or not for*  
8 *consideration.*

9 (7) (A) *For taxable years beginning on or after January 1,*  
10 *1997, the term “new business” shall include any taxpayer that is*  
11 *engaged in biopharmaceutical activities or other biotechnology*  
12 *activities that are described in Codes 2833 to 2836, inclusive, of*  
13 *the Standard Industrial Classification (SIC) Manual published by*  
14 *the United States Office of Management and Budget, 1987 edition,*  
15 *and as further amended, and that has not received regulatory*  
16 *approval for any product from the United States Food and Drug*  
17 *Administration.*

18 (B) *For purposes of this paragraph:*

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

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

33 (g) *In computing the modifications under Section 172(d)(2) of*  
34 *the Internal Revenue Code, relating to capital gains and losses of*  
35 *taxpayers other than corporations, the exclusion provided by*  
36 *Section 18152.5 shall not be allowed.*

37 (h) *Notwithstanding any provisions of this section to the*  
38 *contrary, a deduction shall be allowed to a “qualified taxpayer”*  
39 *as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5,*  
40 *17276.6, and 17276.7.*

1 (i) The Franchise Tax Board may prescribe appropriate  
2 regulations to carry out the purposes of this section, including any  
3 regulations necessary to prevent the avoidance of the purposes of  
4 this section through splitups, shell corporations, partnerships,  
5 tiered ownership structures, or otherwise.

6 (j) The Franchise Tax Board may reclassify any net operating  
7 loss carryover determined under either paragraph (2) or (3) of  
8 subdivision (b) as a net operating loss carryover under paragraph  
9 (1) of subdivision (b) upon a showing that the reclassification is  
10 necessary to prevent evasion of the purposes of this section.

11 (k) Except as otherwise provided, the amendments made by  
12 Chapter 107 of the Statutes of 2000 shall apply to net operating  
13 losses for taxable years beginning on or after January 1, 2000.

14 SEC. 14. Section 17276.21 is added to the Revenue and  
15 Taxation Code, to read:

16 17276.21. (a) Notwithstanding Sections 17276, 17276.1,  
17 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.20 of  
18 this code and Section 172 of the Internal Revenue Code, no net  
19 operating loss deduction shall be allowed for any taxable year  
20 beginning on or after January 1, 2008, and before January 1,  
21 2012.

22 (b) For any net operating loss or carryover of a net operating  
23 loss for which a deduction is denied by subdivision (a), the  
24 carryover period under Section 172 of the Internal Revenue Code  
25 shall be extended as follows:

26 (1) By one year, for losses incurred in taxable years beginning  
27 on or after January 1, 2010, and before January 1, 2011.

28 (2) By two years, for losses incurred in taxable years beginning  
29 on or after January 1, 2009, and before January 1, 2010.

30 (3) By three years, for losses incurred in taxable years beginning  
31 on or after January 1, 2008, and before January 1, 2009.

32 (4) By four years, for losses incurred in taxable years beginning  
33 before January 1, 2008.

34 (c) Notwithstanding subdivision (a), a net operating loss  
35 deduction shall be allowed for carryback of a net operating loss  
36 attributable to a taxable year beginning on or after January 1,  
37 2013.

38 (d) The provisions of this section shall not apply to the following  
39 taxpayers:

1 (1) For any taxable year beginning on or after January 1, 2008,  
2 and before January 1, 2010, this section shall not apply to a  
3 taxpayer with net business income of less than five hundred  
4 thousand dollars (\$500,000) for the taxable year. For purposes  
5 of this paragraph, business income means:

6 (A) Income from a trade or business, whether conducted by the  
7 taxpayer or by a passthrough entity owned directly or indirectly  
8 by the taxpayer. For purposes of this paragraph, the term  
9 “passthrough entity” means a partnership or an “S” corporation.

10 (B) Income from rental activity.

11 (C) Income attributable to a farming business.

12 (2) For any taxable year beginning on or after January 1, 2010,  
13 and before January 1, 2012, this section shall not apply to a  
14 taxpayer with modified adjusted gross income of less than three  
15 hundred thousand dollars (\$300,000) for the taxable year. For  
16 purposes of this paragraph, “modified adjusted gross income”  
17 means the amount described in paragraph (2) of subdivision (h)  
18 of Section 17024.5, determined without regard to the deduction  
19 allowed under Section 172 of the Internal Revenue Code, relating  
20 to net operating loss deduction.

21 SEC. 15. Section 17276.22 is added to the Revenue and  
22 Taxation Code, to read:

23 17276.22. Notwithstanding Section 17276.1, 17276.2, 17276.4,  
24 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss  
25 attributable to a taxable year beginning on or after January 1,  
26 2008, shall be a net operating carryover to each of the 20 taxable  
27 years following the year of the loss, and a net operating loss  
28 attributable to a taxable year beginning on or after January 1,  
29 2013, shall also be a net operating loss carryback to each of the  
30 two taxable years preceding the taxable year of loss.

31 SEC. 16. Section 18510 of the Revenue and Taxation Code is  
32 repealed.

33 ~~18510. (a) (1) The Franchise Tax Board shall revise the returns~~  
34 ~~required to be filed pursuant to this article, Article 2 (commencing~~  
35 ~~with Section 18601), Section 18633, Section 18633.5, and Article~~  
36 ~~3 (commencing with Section 23771) of Chapter 4 of Part 11 in a~~  
37 ~~form and manner approved by the State Board of Equalization, to~~  
38 ~~allow a person to report and pay qualified use tax in accordance~~  
39 ~~with the provisions of Section 6452.1.~~

1 ~~(2) Within 10 working days of receiving from the Franchise~~  
2 ~~Tax Board the returns described in paragraph (1), the State Board~~  
3 ~~of Equalization shall do either of the following:~~

4 ~~(A) Approve the form and manner of the returns and notify the~~  
5 ~~Franchise Tax Board of this approval.~~

6 ~~(B) Submit comments to the Franchise Tax Board regarding~~  
7 ~~changes to the returns that shall be incorporated before the State~~  
8 ~~Board of Equalization approves the form and manner of the returns.~~

9 ~~(b) Any payments and credits shown on the return, together~~  
10 ~~with any other credits associated with that person's account, of a~~  
11 ~~person that elects to report qualified use tax on an acceptable tax~~  
12 ~~return shall be applied in the following order:~~

13 ~~(1) Taxes imposed under Part 10 (commencing with Section~~  
14 ~~17001) or Part 11 (commencing with Section 23001), including~~  
15 ~~penalties and interest, if any, imposed under this part.~~

16 ~~(2) Qualified use tax as reported on the acceptable tax return,~~  
17 ~~in accordance with Section 6452.1.~~

18 ~~(c) The Franchise Tax Board shall transfer the qualified use tax~~  
19 ~~received pursuant to Section 6452.1, and any information the State~~  
20 ~~Board of Equalization deems necessary for its administration of~~  
21 ~~the use tax, to the State Board of Equalization within 60 days from~~  
22 ~~the date the use tax is received or the acceptable tax return is~~  
23 ~~processed, whichever is later.~~

24 ~~(d) This section shall be operative for returns filed for taxable~~  
25 ~~years on and after January 1, 2003, and ending on or before~~  
26 ~~December 31, 2009, and as of that date becomes inoperative, unless~~  
27 ~~a later enacted statute extends the operation of this section.~~

28 *SEC. 17. Section 18510 is added to the Revenue and Taxation*  
29 *Code, to read:*

30 *18510. (a) (1) The Franchise Tax Board shall revise the*  
31 *returns required to be filed pursuant to this article, Article 2*  
32 *(commencing with Section 18601), Section 18633, Section 18633.5,*  
33 *and Article 3 (commencing with Section 23771) of Chapter 4 of*  
34 *Part 11, and the accompanying instructions for filing those returns,*  
35 *in a form and manner approved by the State Board of Equalization,*  
36 *to allow a person to report and pay qualified use tax in accordance*  
37 *with the provisions of Section 6452.1.*

38 *(2) Within 10 working days of receiving from the Franchise Tax*  
39 *Board the returns and instructions described in paragraph (1),*  
40 *the State Board of Equalization shall do either of the following:*

1 (A) Approve the form and manner of the returns and notify the  
 2 Franchise Tax Board of this approval.  
 3 (B) Submit comments to the Franchise Tax Board regarding  
 4 changes to the returns that shall be incorporated before the State  
 5 Board of Equalization approves the form and manner of the  
 6 returns.  
 7 (b) Any payments and credits shown on the return, together  
 8 with any other credits associated with that person’s account, of a  
 9 person that elects to report qualified use tax on an acceptable tax  
 10 return shall be applied in the following order:  
 11 (1) Taxes imposed under Part 10 (commencing with Section  
 12 17001) or Part 11 (commencing with Section 23001), including  
 13 penalties and interest, if any, imposed under this part.  
 14 (2) Qualified use tax as reported on the acceptable tax return,  
 15 in accordance with Section 6452.1.  
 16 (c) The Franchise Tax Board shall transfer the qualified use  
 17 tax received pursuant to Section 6452.1, and any information the  
 18 State Board of Equalization deems necessary for its administration  
 19 of the use tax, to the State Board of Equalization within 60 days  
 20 from the date the use tax is received or the acceptable tax return  
 21 is processed, whichever is later.  
 22 (d) This section shall be operative for returns filed for taxable  
 23 years beginning on and after January 1, 2010.  
 24 SEC. 18. Section 19138 of the Revenue and Taxation Code is  
 25 amended to read:  
 26 19138. (a) (1) A taxpayer subject to the tax imposed under  
 27 Part 11 (commencing with Section 23001) with an understatement  
 28 of tax ~~in excess of one million dollars (\$1,000,000)~~ for any taxable  
 29 year shall be subject to the penalty imposed under this section: *if*  
 30 *that understatement exceeds the greater of the following:*  
 31 (A) One million dollars (\$1,000,000).  
 32 (B) Twenty percent of the tax shown on an original return or  
 33 shown on an amended return filed on or before the original or  
 34 extended due date of the return for the taxable year.  
 35 (2) For taxpayers that are required to be included in a combined  
 36 report under Section 25101 or authorized to be included in a  
 37 combined report under Section 25101.15, the threshold amount  
 38 prescribed in *subparagraph (A) or subparagraph (B) of paragraph*  
 39 (1) shall apply to the aggregate amount of tax liability under Part

1 11 (commencing with Section 23001) for all taxpayers that are  
2 required to be or authorized to be included in a combined report.

3 (b) The penalty under this section shall be an amount equal to  
4 20 percent of any understatement of tax. For purposes of this  
5 section, “understatement of tax” means the amount by which the  
6 tax imposed by Part 11 (commencing with Section 23001) exceeds  
7 the amount of tax shown on an original return or shown on an  
8 amended return filed on or before the original or extended due  
9 date of the return for the taxable year. For any taxable year  
10 beginning before January 1, 2008, the amount of tax paid on or  
11 before May 31, 2009, and shown on an amended return filed on  
12 or before May 31, 2009, shall be treated as the amount of tax shown  
13 on an original return for purposes of this section.

14 (c) The penalty imposed by this section shall be in addition to  
15 any other penalty imposed under Part 11 (commencing with Section  
16 23001) or this part.

17 (d) Article 3 (commencing with Section 19031), relating to  
18 deficiency assessments, shall not apply with respect to the  
19 assessment or collection of any penalty imposed by subdivision  
20 (a).

21 (e) A refund or credit for any amounts paid to satisfy a penalty  
22 imposed under this section may be allowed only on the grounds  
23 that the amount of the penalty was not properly computed by the  
24 Franchise Tax Board.

25 (f) (1) No penalty shall be imposed under this section on any  
26 understatement to the extent that the understatement is attributable  
27 to a change in law that is enacted, promulgated, issued, or becomes  
28 final after the earlier of either of the following dates:

29 (A) The date the taxpayer files the return for the taxable year  
30 for which the change is operative.

31 (B) The extended due date for the return of the taxpayer for the  
32 taxable year for which the change is operative.

33 (2) For purposes of this subdivision, a “change of law” means  
34 a statutory change or an interpretation of law or rule of law by  
35 regulation, legal ruling of counsel, within the meaning of  
36 subdivision (b) of Section 11340.9 of the Government Code, or a  
37 published federal or California court decision.

38 (3) The Franchise Tax Board shall implement this subdivision  
39 in a reasonable manner.

1 (g) No penalty shall be imposed under this section to the extent  
 2 that a taxpayer’s understatement is attributable to the taxpayer’s  
 3 reasonable reliance on written advice of the Franchise Tax Board,  
 4 but only if the written advice was a legal ruling by the Chief  
 5 Counsel, within the meaning of paragraph (1) of subdivision (a)  
 6 of Section 21012.

7 (h) (1) This section shall apply to each taxable year beginning  
 8 on or after January 1, 2003, for which the statute of limitations on  
 9 assessment has not expired.

10 (2) *The amendments made to this section by the act adding this*  
 11 *paragraph shall apply to each taxable year beginning on or after*  
 12 *January 1, 2010.*

13 *SEC. 19. Section 23101 of the Revenue and Taxation Code is*  
 14 *amended to read:*

15 23101. (a) “Doing business” means actively engaging in any  
 16 transaction for the purpose of financial or pecuniary gain or profit.

17 (b) For taxable years beginning on or after January 1, 2011, a  
 18 taxpayer is doing business in this state for a taxable year if any of  
 19 the following conditions has been satisfied:

20 (1) The taxpayer is organized or commercially domiciled in this  
 21 state.

22 (2) Sales, as defined in subdivision (e) or (f) of Section 25120  
 23 as applicable for the taxable year, of the taxpayer in this state  
 24 exceed the lesser of five hundred thousand dollars (\$500,000) or  
 25 25 percent of the taxpayer’s total sales. For purposes of this  
 26 paragraph, sales of the taxpayer include sales by an agent or  
 27 independent contractor of the taxpayer. For purposes of this  
 28 paragraph, sales in this state shall be determined using the rules  
 29 for assigning sales under ~~Sections~~ *Section* 25135 and *subdivision*  
 30 *(b) of Section* 25136 and the regulations thereunder, as modified  
 31 by regulations under Section 25137.

32 (3) The real property and tangible personal property of the  
 33 taxpayer in this state exceed the lesser of fifty thousand dollars  
 34 (\$50,000) or 25 percent of the taxpayer’s total real property and  
 35 tangible personal property. The value of real and tangible personal  
 36 property and the determination of whether property is in this state  
 37 shall be determined using the rules contained in Sections 25129  
 38 to 25131, inclusive, and the regulations thereunder, as modified  
 39 by regulation under Section 25137.

1 (4) The amount paid in this state by the taxpayer for  
2 compensation, as defined in subdivision (c) of Section 25120,  
3 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent  
4 of the total compensation paid by the taxpayer. Compensation in  
5 this state shall be determined using the rules for assigning payroll  
6 contained in Section 25133 and the regulations thereunder, as  
7 modified by regulations under Section 25137.

8 (c) (1) The Franchise Tax Board shall annually revise the  
9 amounts in paragraphs (2), (3), and (4) of subdivision (b) in  
10 accordance with subdivision (h) of Section 17041.

11 (2) For purposes of the adjustment required by paragraph (1),  
12 subdivision (h) of Section 17041 shall be applied by substituting  
13 “2012” in lieu of “1988.”

14 (d) The sales, property, and payroll of the taxpayer include the  
15 taxpayer’s pro rata or distributive share of pass-through entities.  
16 For purposes of this subdivision, “pass-through entities” means a  
17 partnership or an “S” corporation.

18 *SEC. 20. Section 24416 of the Revenue and Taxation Code is*  
19 *repealed.*

20 ~~24416. Except as provided in Sections 24416.1, 24416.2,~~  
21 ~~24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss~~  
22 ~~deduction shall be allowed in computing net income under Section~~  
23 ~~24341 and shall be determined in accordance with Section 172 of~~  
24 ~~the Internal Revenue Code, except as otherwise provided.~~

25 ~~(a) (1) Net operating losses attributable to taxable years~~  
26 ~~beginning before January 1, 1987, shall not be allowed.~~

27 ~~(2) A net operating loss shall not be carried forward to any~~  
28 ~~taxable year beginning before January 1, 1987.~~

29 ~~(b) (1) Except as provided in paragraphs (2) and (3), the~~  
30 ~~provisions of Section 172(b)(2) of the Internal Revenue Code,~~  
31 ~~relating to the amount of carryovers, shall be modified so that the~~  
32 ~~applicable percentage of the entire amount of the net operating~~  
33 ~~loss for any taxable year shall be eligible for carryover to any~~  
34 ~~subsequent taxable year. For purposes of this subdivision, the~~  
35 ~~applicable percentage shall be:~~

36 ~~(A) Fifty percent for any taxable year beginning before January~~  
37 ~~1, 2000.~~

38 ~~(B) Fifty-five percent for any taxable year beginning on or after~~  
39 ~~January 1, 2000, and before January 1, 2002.~~

1     ~~(C) Sixty percent for any taxable year beginning on or after~~  
2     ~~January 1, 2002, and before January 1, 2004.~~  
3     ~~(D) One hundred percent for any taxable year beginning on or~~  
4     ~~after January 1, 2004.~~  
5     ~~(2) In the case of a taxpayer who has a net operating loss in any~~  
6     ~~taxable year beginning on or after January 1, 1994, and who~~  
7     ~~operates a new business during that taxable year, each of the~~  
8     ~~following shall apply to each loss incurred during the first three~~  
9     ~~taxable years of operating the new business:~~  
10    ~~(A) If the net operating loss is equal to or less than the net loss~~  
11    ~~from the new business, 100 percent of the net operating loss shall~~  
12    ~~be carried forward as provided in subdivision (e).~~  
13    ~~(B) If the net operating loss is greater than the net loss from the~~  
14    ~~new business, the net operating loss shall be carried over as~~  
15    ~~follows:~~  
16    ~~(i) With respect to an amount equal to the net loss from the new~~  
17    ~~business, 100 percent of that amount shall be carried forward as~~  
18    ~~provided in subdivision (e).~~  
19    ~~(ii) With respect to the portion of the net operating loss that~~  
20    ~~exceeds the net loss from the new business, the applicable~~  
21    ~~percentage of that amount shall be carried forward as provided in~~  
22    ~~subdivision (d).~~  
23    ~~(C) For purposes of Section 172(b)(2) of the Internal Revenue~~  
24    ~~Code, the amount described in clause (ii) of subparagraph (B) shall~~  
25    ~~be absorbed before the amount described in clause (i) of~~  
26    ~~subparagraph (B).~~  
27    ~~(3) In the case of a taxpayer who has a net operating loss in any~~  
28    ~~taxable year beginning on or after January 1, 1994, and who~~  
29    ~~operates an eligible small business during that taxable year, each~~  
30    ~~of the following shall apply:~~  
31    ~~(A) If the net operating loss is equal to or less than the net loss~~  
32    ~~from the eligible small business, 100 percent of the net operating~~  
33    ~~loss shall be carried forward to the taxable years specified in~~  
34    ~~paragraph (1) of subdivision (e).~~  
35    ~~(B) If the net operating loss is greater than the net loss from the~~  
36    ~~eligible small business, the net operating loss shall be carried over~~  
37    ~~as follows:~~  
38    ~~(i) With respect to an amount equal to the net loss from the~~  
39    ~~eligible small business, 100 percent of that amount shall be carried~~  
40    ~~forward as provided in subdivision (e).~~

1 ~~(ii) With respect to that portion of the net operating loss that~~  
2 ~~exceeds the net loss from the eligible small business, the applicable~~  
3 ~~percentage of that amount shall be carried forward as provided in~~  
4 ~~subdivision (e).~~

5 ~~(C) For purposes of Section 172(b)(2) of the Internal Revenue~~  
6 ~~Code, the amount described in clause (ii) of subparagraph (B) shall~~  
7 ~~be absorbed before the amount described in clause (i) of~~  
8 ~~subparagraph (B).~~

9 ~~(4) In the case of a taxpayer who has a net operating loss in a~~  
10 ~~taxable year beginning on or after January 1, 1994, and who~~  
11 ~~operates a business that qualifies as both a new business and an~~  
12 ~~eligible small business under this section, that business shall be~~  
13 ~~treated as a new business for the first three taxable years of the~~  
14 ~~new business.~~

15 ~~(5) In the case of a taxpayer who has a net operating loss in a~~  
16 ~~taxable year beginning on or after January 1, 1994, and who~~  
17 ~~operates more than one business, and more than one of those~~  
18 ~~businesses qualifies as either a new business or an eligible small~~  
19 ~~business under this section, paragraph (2) shall be applied first,~~  
20 ~~except that if there is any remaining portion of the net operating~~  
21 ~~loss after application of clause (i) of subparagraph (B) of paragraph~~  
22 ~~(2), paragraph (3) shall be applied to the remaining portion of the~~  
23 ~~net operating loss as though that remaining portion of the net~~  
24 ~~operating loss constituted the entire net operating loss.~~

25 ~~(6) For purposes of this section, “net loss” means the amount~~  
26 ~~of net loss after application of Sections 465 and 469 of the Internal~~  
27 ~~Revenue Code.~~

28 ~~(e) For any taxable year in which the taxpayer has in effect a~~  
29 ~~water’s-edge election under Section 25110, the deduction of a net~~  
30 ~~operating loss carryover shall be denied to the extent that the net~~  
31 ~~operating loss carryover was determined by taking into account~~  
32 ~~the income and factors of an affiliated corporation in a combined~~  
33 ~~report whose income and apportionment factors would not have~~  
34 ~~been taken into account if a water’s-edge election under Section~~  
35 ~~25110 had been in effect for the taxable year in which the loss was~~  
36 ~~incurred.~~

37 ~~(d) Section 172(b)(1) of the Internal Revenue Code, relating to~~  
38 ~~net operating loss carrybacks and carryovers and the years to which~~  
39 ~~the loss may be carried, is modified as follows:~~

1 ~~(1) Net operating loss carrybacks shall not be allowed for any~~  
2 ~~net operating losses attributable to taxable years beginning before~~  
3 ~~January 1, 2011.~~

4 ~~(2) A net operating loss attributable to taxable years beginning~~  
5 ~~on or after January 1, 2011, shall be a net operating loss carryback~~  
6 ~~to each of the two taxable years preceding the taxable year of the~~  
7 ~~loss in lieu of the number of years provided therein.~~

8 ~~(A) For a net operating loss attributable to a taxable year~~  
9 ~~beginning on or after January 1, 2011, and before January 1, 2012,~~  
10 ~~the amount of carryback to any taxable year shall not exceed 50~~  
11 ~~percent of the net operating loss.~~

12 ~~(B) For a net operating loss attributable to a taxable year~~  
13 ~~beginning on or after January 1, 2012, and before January 1, 2013,~~  
14 ~~the amount of carryback to any taxable year shall not exceed 75~~  
15 ~~percent of the net operating loss.~~

16 ~~(C) For a net operating loss attributable to a taxable year~~  
17 ~~beginning on or after January 1, 2013, the amount of carryback to~~  
18 ~~any taxable year shall not exceed 100 percent of the net operating~~  
19 ~~loss.~~

20 ~~(3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the~~  
21 ~~Internal Revenue Code, relating to special rules for REITs, and~~  
22 ~~Sections 172(b)(1)(E) and 172(h) of the Internal Revenue Code,~~  
23 ~~relating to corporate equity reduction interest loss, shall apply as~~  
24 ~~provided.~~

25 ~~(4) A net operating loss carryback shall not be carried back to~~  
26 ~~any taxable year beginning before January 1, 2009.~~

27 ~~(e) (1) (A) For a net operating loss for any taxable year~~  
28 ~~beginning on or after January 1, 1987, and before January 1, 2000,~~  
29 ~~Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to~~  
30 ~~years to which net operating losses may be carried, is modified to~~  
31 ~~substitute “five taxable years” in lieu of “20 years” except as~~  
32 ~~otherwise provided in paragraphs (2), (3), and (4).~~

33 ~~(B) For a net operating loss for any income year beginning on~~  
34 ~~or after January 1, 2000, and before January 1, 2008, Section~~  
35 ~~172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years~~  
36 ~~to which net operating losses may be carried, is modified to~~  
37 ~~substitute “10 taxable years” in lieu of “20 taxable years.”~~

38 ~~(2) For any income year beginning before January 1, 2000, in~~  
39 ~~the case of a “new business,” the “five taxable years” referred to~~  
40 ~~in paragraph (1) shall be modified to read as follows:~~

1 (A) “Eight taxable years” for a net operating loss attributable  
2 to the first taxable year of that new business.

3 (B) “Seven taxable years” for a net operating loss attributable  
4 to the second taxable year of that new business.

5 (C) “Six taxable years” for a net operating loss attributable to  
6 the third taxable year of that new business.

7 (3) For any carryover of a net operating loss for which a  
8 deduction is denied by Section 24416.3, the carryover period  
9 specified in this subdivision shall be extended as follows:

10 (A) By one year for a net operating loss attributable to taxable  
11 years beginning in 1991.

12 (B) By two years for a net operating loss attributable to taxable  
13 years beginning prior to January 1, 1991.

14 (4) The net operating loss attributable to taxable years beginning  
15 on or after January 1, 1987, and before January 1, 1994, shall be  
16 a net operating loss carryover to each of the 10 taxable years  
17 following the year of the loss if it is incurred by a corporation that  
18 was either of the following:

19 (A) Under the jurisdiction of the court in a Title 11 or similar  
20 case at any time prior to January 1, 1994. The loss carryover  
21 provided in the preceding sentence shall not apply to any loss  
22 incurred in an income year after the taxable year during which the  
23 corporation is no longer under the jurisdiction of the court in a  
24 Title 11 or similar case.

25 (B) In receipt of assets acquired in a transaction that qualifies  
26 as a tax-free reorganization under Section 368(a)(1)(G) of the  
27 Internal Revenue Code.

28 (f) For purposes of this section:

29 (1) “Eligible small business” means any trade or business that  
30 has gross receipts, less returns and allowances, of less than one  
31 million dollars (\$1,000,000) during the income year.

32 (2) Except as provided in subdivision (g), “new business” means  
33 any trade or business activity that is first commenced in this state  
34 on or after January 1, 1994.

35 (3) “Title 11 or similar case” shall have the same meaning as  
36 in Section 368(a)(3) of the Internal Revenue Code.

37 (4) In the case of any trade or business activity conducted by a  
38 partnership or an “S corporation,” paragraphs (1) and (2) shall be  
39 applied to the partnership or “S corporation.”

1     ~~(g) For purposes of this section, in determining whether a trade~~  
2     ~~or business activity qualifies as a new business under paragraph~~  
3     ~~(2) of subdivision (e), the following rules shall apply:~~

4     ~~(1) In any case where a taxpayer purchases or otherwise acquires~~  
5     ~~all or any portion of the assets of an existing trade or business~~  
6     ~~(irrespective of the form of entity) that is doing business in this~~  
7     ~~state (within the meaning of Section 23101), the trade or business~~  
8     ~~thereafter conducted by the taxpayer (or any related person) shall~~  
9     ~~not be treated as a new business if the aggregate fair market value~~  
10    ~~of the acquired assets (including real, personal, tangible, and~~  
11    ~~intangible property) used by the taxpayer (or any related person)~~  
12    ~~in the conduct of its trade or business exceeds 20 percent of the~~  
13    ~~aggregate fair market value of the total assets of the trade or~~  
14    ~~business being conducted by the taxpayer (or any related person).~~  
15    ~~For purposes of this paragraph only, the following rules shall apply:~~

16    ~~(A) The determination of the relative fair market values of the~~  
17    ~~acquired assets and the total assets shall be made as of the last day~~  
18    ~~of the first taxable year in which the taxpayer (or any related~~  
19    ~~person) first uses any of the acquired trade or business assets in~~  
20    ~~its business activity.~~

21    ~~(B) Any acquired assets that constituted property described in~~  
22    ~~Section 1221(1) of the Internal Revenue Code in the hands of the~~  
23    ~~transferor shall not be treated as assets acquired from an existing~~  
24    ~~trade or business, unless those assets also constitute property~~  
25    ~~described in Section 1221(1) of the Internal Revenue Code in the~~  
26    ~~hands of the acquiring taxpayer (or related person).~~

27    ~~(2) In any case where a taxpayer (or any related person) is~~  
28    ~~engaged in one or more trade or business activities in this state, or~~  
29    ~~has been engaged in one or more trade or business activities in this~~  
30    ~~state within the preceding 36 months (“prior trade or business~~  
31    ~~activity”), and thereafter commences an additional trade or business~~  
32    ~~activity in this state, the additional trade or business activity shall~~  
33    ~~only be treated as a new business if the additional trade or business~~  
34    ~~activity is classified under a different division of the Standard~~  
35    ~~Industrial Classification (SIC) Manual published by the United~~  
36    ~~States Office of Management and Budget, 1987 edition, than are~~  
37    ~~any of the taxpayer’s (or any related person’s) current or prior~~  
38    ~~trade or business activities.~~

39    ~~(3) In any case where a taxpayer, including all related persons,~~  
40    ~~is engaged in trade or business activities wholly outside of this~~

1 state and the taxpayer first commences doing business in this state  
2 (within the meaning of Section 23101) after December 31, 1993  
3 (other than by purchase or other acquisition described in paragraph  
4 (1)), the trade or business activity shall be treated as a new business  
5 under paragraph (2) of subdivision (e).

6 (4) ~~In any case where the legal form under which a trade or~~  
7 ~~business activity is being conducted is changed, the change in form~~  
8 ~~shall be disregarded and the determination of whether the trade or~~  
9 ~~business activity is a new business shall be made by treating the~~  
10 ~~taxpayer as having purchased or otherwise acquired all or any~~  
11 ~~portion of the assets of an existing trade or business under the rules~~  
12 ~~of paragraph (1) of this subdivision.~~

13 (5) ~~“Related person” shall mean any person that is related to~~  
14 ~~the taxpayer under either Section 267 or 318 of the Internal~~  
15 ~~Revenue Code.~~

16 (6) ~~“Acquire” shall include any transfer, whether or not for~~  
17 ~~consideration.~~

18 (7) (A) ~~For taxable years beginning on or after January 1, 1997,~~  
19 ~~the term “new business” shall include any taxpayer that is engaged~~  
20 ~~in biopharmaceutical activities or other biotechnology activities~~  
21 ~~that are described in Codes 2833 to 2836, inclusive, of the Standard~~  
22 ~~Industrial Classification (SIC) Manual published by the United~~  
23 ~~States Office of Management and Budget, 1987 edition, and as~~  
24 ~~further amended, and that has not received regulatory approval for~~  
25 ~~any product from the United States Food and Drug Administration.~~

26 (B) ~~For purposes of this paragraph:~~

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

35 (ii) ~~“Other biotechnology activities” means activities consisting~~  
36 ~~of the application of recombinant DNA technology to produce~~  
37 ~~commercial products, as well as activities regarding pharmaceutical~~  
38 ~~delivery systems designed to provide a measure of control over~~  
39 ~~the rate, duration, and site of pharmaceutical delivery.~~

1 ~~(h) For purposes of corporations whose net income is determined~~  
2 ~~under Chapter 17 (commencing with Section 25101), Section~~  
3 ~~25108 shall apply to each of the following:~~

4 ~~(1) The amount of net operating loss incurred in any taxable~~  
5 ~~year that may be carried forward to another taxable year.~~

6 ~~(2) The amount of any loss carry forward that may be deducted~~  
7 ~~in any taxable year.~~

8 ~~(i) The provisions of Section 172(b)(1)(D) of the Internal~~  
9 ~~Revenue Code, relating to bad debt losses of commercial banks,~~  
10 ~~shall not be applicable.~~

11 ~~(j) The Franchise Tax Board may prescribe appropriate~~  
12 ~~regulations to carry out the purposes of this section, including any~~  
13 ~~regulations necessary to prevent the avoidance of the purposes of~~  
14 ~~this section through splitups, shell corporations, partnerships, tiered~~  
15 ~~ownership structures, or otherwise.~~

16 ~~(k) The Franchise Tax Board may reclassify any net operating~~  
17 ~~loss carryover determined under either paragraph (2) or (3) of~~  
18 ~~subdivision (b) as a net operating loss carryover under paragraph~~  
19 ~~(1) of subdivision (b) upon a showing that the reclassification is~~  
20 ~~necessary to prevent evasion of the purposes of this section.~~

21 ~~(l) Except as otherwise provided, the amendments made by~~  
22 ~~Chapter 107 of the Statutes of 2000 shall apply to net operating~~  
23 ~~losses for taxable years beginning on or after January 1, 2000.~~

24 *SEC. 21. Section 24416.05 is added to the Revenue and*  
25 *Taxation Code, to read:*

26 *24416.05. (a) In addition to the modifications made by Section*  
27 *24416, the deduction provided by Section 172 of the Internal*  
28 *Revenue Code, relating to net operating loss deduction, shall be*  
29 *modified as follows:*

30 *(1) Section 172(b)(1)(J) of the Internal Revenue Code, relating*  
31 *to certain losses attributable to federally declared disasters, shall*  
32 *not apply.*

33 *(2) Section 172(j) of the Internal Revenue Code, relating to*  
34 *rules relating to qualified disaster losses, shall not apply.*

35 *(b) This section shall be operative for taxable years beginning*  
36 *on or after January 1, 2011.*

37 *SEC. 22. Section 24416.9 of the Revenue and Taxation Code*  
38 *is repealed.*

39 ~~24416.9. (a) Notwithstanding Sections 24416, 24416.1,~~  
40 ~~24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and~~

1 ~~Section 172 of the Internal Revenue Code, no net operating loss~~  
2 ~~deduction shall be allowed for any taxable year beginning on or~~  
3 ~~after January 1, 2008, and before January 1, 2010.~~

4 ~~(b) For any net operating loss or carryover of a net operating~~  
5 ~~loss for which a deduction is denied by subdivision (a), the~~  
6 ~~carryover period under Section 172 of the Internal Revenue Code~~  
7 ~~shall be extended as follows:~~

8 ~~(1) By one year, for losses incurred in taxable years beginning~~  
9 ~~on or after January 1, 2008, and before January 1, 2009.~~

10 ~~(2) By two years, for losses incurred in taxable years beginning~~  
11 ~~before January 1, 2008.~~

12 ~~(c) Notwithstanding subdivision (a), a net operating loss~~  
13 ~~deduction shall be allowed for carryback of a net operating loss~~  
14 ~~attributable to a taxable year beginning on or after January 1, 2011.~~

15 ~~(d) The provisions of this section shall not apply to a taxpayer~~  
16 ~~with income subject to tax under this part of less than five hundred~~  
17 ~~thousand dollars (\$500,000) for the taxable year.~~

18 *SEC. 23. Section 24416.10 of the Revenue and Taxation Code*  
19 *is repealed.*

20 ~~24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4,~~  
21 ~~24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss~~  
22 ~~attributable to a taxable year beginning on or after January 1, 2008,~~  
23 ~~shall be a net operating carryover to each of the 20 taxable years~~  
24 ~~following the year of the loss, and a net operating loss attributable~~  
25 ~~to a taxable year beginning on or after January 1, 2011, shall also~~  
26 ~~be a net operating loss carryback to each of the two taxable years~~  
27 ~~preceding the taxable year of loss.~~

28 *SEC. 24. Section 24416.20 is added to the Revenue and*  
29 *Taxation Code, to read:*

30 *24416.20. Except as provided in Sections 24416.1, 24416.2,*  
31 *24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss*  
32 *deduction shall be allowed in computing net income under Section*  
33 *24341 and shall be determined in accordance with Section 172 of*  
34 *the Internal Revenue Code, except as otherwise provided.*

35 *(a) (1) Net operating losses attributable to taxable years*  
36 *beginning before January 1, 1987, shall not be allowed.*

37 *(2) A net operating loss shall not be carried forward to any*  
38 *taxable year beginning before January 1, 1987.*

39 *(b) (1) Except as provided in paragraphs (2) and (3), the*  
40 *provisions of Section 172(b)(2) of the Internal Revenue Code,*

1 relating to amount of carrybacks and carryovers, shall be modified  
2 so that the applicable percentage of the entire amount of the net  
3 operating loss for any taxable year shall be eligible for carryover  
4 to any subsequent taxable year. For purposes of this subdivision,  
5 the applicable percentage shall be:

6 (A) Fifty percent for any taxable year beginning before January  
7 1, 2000.

8 (B) Fifty-five percent for any taxable year beginning on or after  
9 January 1, 2000, and before January 1, 2002.

10 (C) Sixty percent for any taxable year beginning on or after  
11 January 1, 2002, and before January 1, 2004.

12 (D) One hundred percent for any taxable year beginning on or  
13 after January 1, 2004.

14 (2) In the case of a taxpayer who has a net operating loss in  
15 any taxable year beginning on or after January 1, 1994, and who  
16 operates a new business during that taxable year, each of the  
17 following shall apply to each loss incurred during the first three  
18 taxable years of operating the new business:

19 (A) If the net operating loss is equal to or less than the net loss  
20 from the new business, 100 percent of the net operating loss shall  
21 be carried forward as provided in subdivision (e).

22 (B) If the net operating loss is greater than the net loss from the  
23 new business, the net operating loss shall be carried over as  
24 follows:

25 (i) With respect to an amount equal to the net loss from the new  
26 business, 100 percent of that amount shall be carried forward as  
27 provided in subdivision (e).

28 (ii) With respect to the portion of the net operating loss that  
29 exceeds the net loss from the new business, the applicable  
30 percentage of that amount shall be carried forward as provided  
31 in subdivision (d).

32 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
33 Code, the amount described in clause (ii) of subparagraph (B)  
34 shall be absorbed before the amount described in clause (i) of  
35 subparagraph (B).

36 (3) In the case of a taxpayer who has a net operating loss in  
37 any taxable year beginning on or after January 1, 1994, and who  
38 operates an eligible small business during that taxable year, each  
39 of the following shall apply:

1 (A) *If the net operating loss is equal to or less than the net loss*  
2 *from the eligible small business, 100 percent of the net operating*  
3 *loss shall be carried forward to the taxable years specified in*  
4 *paragraph (1) of subdivision (e).*

5 (B) *If the net operating loss is greater than the net loss from the*  
6 *eligible small business, the net operating loss shall be carried over*  
7 *as follows:*

8 (i) *With respect to an amount equal to the net loss from the*  
9 *eligible small business, 100 percent of that amount shall be carried*  
10 *forward as provided in subdivision (e).*

11 (ii) *With respect to that portion of the net operating loss that*  
12 *exceeds the net loss from the eligible small business, the applicable*  
13 *percentage of that amount shall be carried forward as provided*  
14 *in subdivision (e).*

15 (C) *For purposes of Section 172(b)(2) of the Internal Revenue*  
16 *Code, the amount described in clause (ii) of subparagraph (B)*  
17 *shall be absorbed before the amount described in clause (i) of*  
18 *subparagraph (B).*

19 (4) *In the case of a taxpayer who has a net operating loss in a*  
20 *taxable year beginning on or after January 1, 1994, and who*  
21 *operates a business that qualifies as both a new business and an*  
22 *eligible small business under this section, that business shall be*  
23 *treated as a new business for the first three taxable years of the*  
24 *new business.*

25 (5) *In the case of a taxpayer who has a net operating loss in a*  
26 *taxable year beginning on or after January 1, 1994, and who*  
27 *operates more than one business, and more than one of those*  
28 *businesses qualifies as either a new business or an eligible small*  
29 *business under this section, paragraph (2) shall be applied first,*  
30 *except that if there is any remaining portion of the net operating*  
31 *loss after application of clause (i) of subparagraph (B) of*  
32 *paragraph (2), paragraph (3) shall be applied to the remaining*  
33 *portion of the net operating loss as though that remaining portion*  
34 *of the net operating loss constituted the entire net operating loss.*

35 (6) *For purposes of this section, “net loss” means the amount*  
36 *of net loss after application of Sections 465 and 469 of the Internal*  
37 *Revenue Code.*

38 (c) *For any taxable year in which the taxpayer has in effect a*  
39 *water’s-edge election under Section 25110, the deduction of a net*  
40 *operating loss carryover shall be denied to the extent that the net*

1 operating loss carryover was determined by taking into account  
2 the income and factors of an affiliated corporation in a combined  
3 report whose income and apportionment factors would not have  
4 been taken into account if a water's-edge election under Section  
5 25110 had been in effect for the taxable year in which the loss was  
6 incurred.

7 (d) Section 172(b)(1) of the Internal Revenue Code, relating to  
8 years to which the loss may be carried, is modified as follows:

9 (1) Net operating loss carrybacks shall not be allowed for any  
10 net operating losses attributable to taxable years beginning before  
11 January 1, 2013.

12 (2) A net operating loss attributable to taxable years beginning  
13 on or after January 1, 2013, shall be a net operating loss carryback  
14 to each of the two taxable years preceding the taxable year of the  
15 loss in lieu of the number of years provided therein.

16 (A) For a net operating loss attributable to a taxable year  
17 beginning on or after January 1, 2013, and before January 1,  
18 2014, the amount of carryback to any taxable year shall not exceed  
19 50 percent of the net operating loss.

20 (B) For a net operating loss attributable to a taxable year  
21 beginning on or after January 1, 2014, and before January 1,  
22 2015, the amount of carryback to any taxable year shall not exceed  
23 75 percent of the net operating loss.

24 (C) For a net operating loss attributable to a taxable year  
25 beginning on or after January 1, 2015, the amount of carryback  
26 to any taxable year shall not exceed 100 percent of the net  
27 operating loss.

28 (3) Notwithstanding paragraph (2), Section 172(b)(1)(B) of the  
29 Internal Revenue Code, relating to special rules for REITs, and  
30 Section 172(b)(1)(E) of the Internal Revenue Code, relating to  
31 excess interest loss, and Section 172(h) of the Internal Revenue  
32 Code, relating to corporate equity reduction interest losses, shall  
33 apply as provided.

34 (4) A net operating loss carryback shall not be carried back to  
35 any taxable year beginning before January 1, 2011.

36 (e) (1) (A) For a net operating loss for any taxable year  
37 beginning on or after January 1, 1987, and before January 1,  
38 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code is  
39 modified to substitute "five taxable years" in lieu of "20 years"  
40 except as otherwise provided in paragraphs (2), (3), and (4).

1 (B) For a net operating loss for any income year beginning on  
2 or after January 1, 2000, and before January 1, 2008, Section  
3 172(b)(1)(A)(ii) of the Internal Revenue Code is modified to  
4 substitute “10 taxable years” in lieu of “20 taxable years.”

5 (2) For any income year beginning before January 1, 2000, in  
6 the case of a “new business,” the “five taxable years” referred to  
7 in paragraph (1) shall be modified to read as follows:

8 (A) “Eight taxable years” for a net operating loss attributable  
9 to the first taxable year of that new business.

10 (B) “Seven taxable years” for a net operating loss attributable  
11 to the second taxable year of that new business.

12 (C) “Six taxable years” for a net operating loss attributable to  
13 the third taxable year of that new business.

14 (3) For any carryover of a net operating loss for which a  
15 deduction is denied by Section 24416.3, the carryover period  
16 specified in this subdivision shall be extended as follows:

17 (A) By one year for a net operating loss attributable to taxable  
18 years beginning in 1991.

19 (B) By two years for a net operating loss attributable to taxable  
20 years beginning prior to January 1, 1991.

21 (4) The net operating loss attributable to taxable years  
22 beginning on or after January 1, 1987, and before January 1,  
23 1994, shall be a net operating loss carryover to each of the 10  
24 taxable years following the year of the loss if it is incurred by a  
25 corporation that was either of the following:

26 (A) Under the jurisdiction of the court in a Title 11 or similar  
27 case at any time prior to January 1, 1994. The loss carryover  
28 provided in the preceding sentence shall not apply to any loss  
29 incurred in an income year after the taxable year during which  
30 the corporation is no longer under the jurisdiction of the court in  
31 a Title 11 or similar case.

32 (B) In receipt of assets acquired in a transaction that qualifies  
33 as a tax-free reorganization under Section 368(a)(1)(G) of the  
34 Internal Revenue Code.

35 (f) For purposes of this section:

36 (1) “Eligible small business” means any trade or business that  
37 has gross receipts, less returns and allowances, of less than one  
38 million dollars (\$1,000,000) during the income year.

1 (2) Except as provided in subdivision (g), “new business” means  
2 any trade or business activity that is first commenced in this state  
3 on or after January 1, 1994.

4 (3) “Title 11 or similar case” shall have the same meaning as  
5 in Section 368(a)(3) of the Internal Revenue Code.

6 (4) In the case of any trade or business activity conducted by a  
7 partnership or an “S corporation,” paragraphs (1) and (2) shall  
8 be applied to the partnership or “S corporation.”

9 (g) For purposes of this section, in determining whether a trade  
10 or business activity qualifies as a new business under paragraph  
11 (2) of subdivision (e), the following rules shall apply:

12 (1) In any case where a taxpayer purchases or otherwise  
13 acquires all or any portion of the assets of an existing trade or  
14 business (irrespective of the form of entity) that is doing business  
15 in this state (within the meaning of Section 23101), the trade or  
16 business thereafter conducted by the taxpayer (or any related  
17 person) shall not be treated as a new business if the aggregate fair  
18 market value of the acquired assets (including real, personal,  
19 tangible, and intangible property) used by the taxpayer (or any  
20 related person) in the conduct of its trade or business exceeds 20  
21 percent of the aggregate fair market value of the total assets of  
22 the trade or business being conducted by the taxpayer (or any  
23 related person). For purposes of this paragraph only, the following  
24 rules shall apply:

25 (A) The determination of the relative fair market values of the  
26 acquired assets and the total assets shall be made as of the last  
27 day of the first taxable year in which the taxpayer (or any related  
28 person) first uses any of the acquired trade or business assets in  
29 its business activity.

30 (B) Any acquired assets that constituted property described in  
31 Section 1221(1) of the Internal Revenue Code in the hands of the  
32 transferor shall not be treated as assets acquired from an existing  
33 trade or business, unless those assets also constitute property  
34 described in Section 1221(1) of the Internal Revenue Code in the  
35 hands of the acquiring taxpayer (or related person).

36 (2) In any case where a taxpayer (or any related person) is  
37 engaged in one or more trade or business activities in this state,  
38 or has been engaged in one or more trade or business activities  
39 in this state within the preceding 36 months (“prior trade or  
40 business activity”), and thereafter commences an additional trade

1 or business activity in this state, the additional trade or business  
2 activity shall only be treated as a new business if the additional  
3 trade or business activity is classified under a different division  
4 of the Standard Industrial Classification (SIC) Manual published  
5 by the United States Office of Management and Budget, 1987  
6 edition, than are any of the taxpayer's (or any related person's)  
7 current or prior trade or business activities.

8 (3) In any case where a taxpayer, including all related persons,  
9 is engaged in trade or business activities wholly outside of this  
10 state and the taxpayer first commences doing business in this state  
11 (within the meaning of Section 23101) after December 31, 1993  
12 (other than by purchase or other acquisition described in  
13 paragraph (1)), the trade or business activity shall be treated as  
14 a new business under paragraph (2) of subdivision (e).

15 (4) In any case where the legal form under which a trade or  
16 business activity is being conducted is changed, the change in form  
17 shall be disregarded and the determination of whether the trade  
18 or business activity is a new business shall be made by treating  
19 the taxpayer as having purchased or otherwise acquired all or any  
20 portion of the assets of an existing trade or business under the  
21 rules of paragraph (1) of this subdivision.

22 (5) "Related person" shall mean any person that is related to  
23 the taxpayer under either Section 267 or 318 of the Internal  
24 Revenue Code.

25 (6) "Acquire" shall include any transfer, whether or not for  
26 consideration.

27 (7) (A) For taxable years beginning on or after January 1,  
28 1997, the term "new business" shall include any taxpayer that is  
29 engaged in biopharmaceutical activities or other biotechnology  
30 activities that are described in Codes 2833 to 2836, inclusive, of  
31 the Standard Industrial Classification (SIC) Manual published by  
32 the United States Office of Management and Budget, 1987 edition,  
33 and as further amended, and that has not received regulatory  
34 approval for any product from the United States Food and Drug  
35 Administration.

36 (B) For purposes of this paragraph:

37 (i) "Biopharmaceutical activities" means those activities that  
38 use organisms or materials derived from organisms, and their  
39 cellular, subcellular, or molecular components, in order to provide  
40 pharmaceutical products for human or animal therapeutics and

1 *diagnostics. Biopharmaceutical activities make use of living*  
2 *organisms to make commercial products, as opposed to*  
3 *pharmaceutical activities that make use of chemical compounds*  
4 *to produce commercial products.*

5 (ii) *“Other biotechnology activities” means activities consisting*  
6 *of the application of recombinant DNA technology to produce*  
7 *commercial products, as well as activities regarding*  
8 *pharmaceutical delivery systems designed to provide a measure*  
9 *of control over the rate, duration, and site of pharmaceutical*  
10 *delivery.*

11 (h) *For purposes of corporations whose net income is*  
12 *determined under Chapter 17 (commencing with Section 25101),*  
13 *Section 25108 shall apply to each of the following:*

14 (1) *The amount of net operating loss incurred in any taxable*  
15 *year that may be carried forward to another taxable year.*

16 (2) *The amount of any loss carry forward that may be deducted*  
17 *in any taxable year.*

18 (i) *The provisions of Section 172(b)(1)(D) of the Internal*  
19 *Revenue Code, relating to bad debt losses of commercial banks,*  
20 *shall not be applicable.*

21 (j) *The Franchise Tax Board may prescribe appropriate*  
22 *regulations to carry out the purposes of this section, including any*  
23 *regulations necessary to prevent the avoidance of the purposes of*  
24 *this section through splitups, shell corporations, partnerships,*  
25 *tiered ownership structures, or otherwise.*

26 (k) *The Franchise Tax Board may reclassify any net operating*  
27 *loss carryover determined under either paragraph (2) or (3) of*  
28 *subdivision (b) as a net operating loss carryover under paragraph*  
29 *(1) of subdivision (b) upon a showing that the reclassification is*  
30 *necessary to prevent evasion of the purposes of this section.*

31 (l) *Except as otherwise provided, the amendments made by*  
32 *Chapter 107 of the Statutes of 2000 shall apply to net operating*  
33 *losses for taxable years beginning on or after January 1, 2000.*

34 SEC. 25. *Section 24416.21 is added to the Revenue and*  
35 *Taxation Code, to read:*

36 24416.21. (a) *Notwithstanding Sections 24416, 24416.1,*  
37 *24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.20 of*  
38 *this code and Section 172 of the Internal Revenue Code, no net*  
39 *operating loss deduction shall be allowed for any taxable year*

1 *beginning on or after January 1, 2008, and before January 1,*  
2 *2012.*

3 *(b) For any net operating loss or carryover of a net operating*  
4 *loss for which a deduction is denied by subdivision (a), the*  
5 *carryover period under Section 172 of the Internal Revenue Code*  
6 *shall be extended as follows:*

7 *(1) By one year, for losses incurred in taxable years beginning*  
8 *on or after January 1, 2010, and before January 1, 2011.*

9 *(2) By two years, for losses incurred in taxable years beginning*  
10 *on or after January 1, 2009, and before January 1, 2010.*

11 *(3) By three years, for losses incurred in taxable years beginning*  
12 *on or after January 1, 2008, and before January 1, 2009.*

13 *(4) By four years, for losses incurred in taxable years beginning*  
14 *before January 1, 2008.*

15 *(c) Notwithstanding subdivision (a), a net operating loss*  
16 *deduction shall be allowed for carryback of a net operating loss*  
17 *attributable to a taxable year beginning on or after January 1,*  
18 *2013.*

19 *(d) The disallowance of any net operating loss deduction for*  
20 *any taxable year beginning on or after January 1, 2008, and before*  
21 *January 1, 2010, pursuant to subdivision (a) shall not apply to a*  
22 *taxpayer with income subject to tax under this part of less than*  
23 *five hundred thousand dollars (\$500,000) for the taxable year.*

24 *(e) (1) The disallowance of any net operating loss deduction*  
25 *for any taxable year beginning on or after January 1, 2010, and*  
26 *before January 1, 2012, pursuant to subdivision (a) shall not apply*  
27 *to a taxpayer with preapportioned income of less than three*  
28 *hundred thousand dollars (\$300,000) for the taxable year.*

29 *(2) For purposes of this subdivision, “preapportioned income”*  
30 *means net income after state adjustments, before the application*  
31 *of the apportionment and allocation provisions of this part.*

32 *(3) For taxpayers that are required to be included in a combined*  
33 *report under Section 25101 or authorized to be included in a*  
34 *combined report under Section 25101.15, the amount prescribed*  
35 *in paragraph (1) shall apply to the aggregate amount of*  
36 *preapportioned income for all members included in a combined*  
37 *report.*

38 *(f) Notwithstanding subdivision (a), this section shall not apply*  
39 *to a taxpayer that ceased to do business or has a final taxable year*  
40 *ending prior to August 28, 2008, that sold or transferred*

1 substantially all of its assets resulting in a gain on sale during a  
2 taxable year ending prior to August 28, 2008, for which the gain  
3 could be offset with existing net operating loss deductions and the  
4 sale or transfer occurred pursuant to a plan of reorganization  
5 under Chapter 11 of Title 11 of the United States Code. An  
6 amended tax return claiming net operating loss deductions allowed  
7 pursuant to this subdivision shall be treated as a timely filed  
8 original return.

9 (g) The Legislature finds and declares that the addition of  
10 subdivision (f) to this section by the act adding this subdivision  
11 fulfills a statewide public purpose by providing necessary tax relief  
12 for a taxpayer that ceased to do business or has a final taxable  
13 year ending prior to August 28, 2008, that sold or transferred  
14 substantially all of its assets resulting in a gain or sale during a  
15 taxable year prior to August 28, 2008, for which the gain could  
16 be offset with existing net operating loss deductions and the sale  
17 or transfer occurred pursuant to a plan of reorganization under  
18 Chapter 11 of Title 11 of the United States Code, in order to ensure  
19 that these taxpayers are not permanently denied the net operating  
20 loss deduction.

21 SEC. 26. Section 24416.22 is added to the Revenue and  
22 Taxation Code, to read:

23 24416.22. Notwithstanding Section 24416.1, 24416.2, 24416.4,  
24 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss  
25 attributable to a taxable year beginning on or after January 1,  
26 2008, shall be a net operating carryover to each of the 20 taxable  
27 years following the year of the loss, and a net operating loss  
28 attributable to a taxable year beginning on or after January 1,  
29 2013, shall also be a net operating loss carryback to each of the  
30 two taxable years preceding the taxable year of loss.

31 SEC. 27. Section 25136 of the Revenue and Taxation Code, as  
32 amended by Section 13 of Chapter 17 of the 3rd Extraordinary  
33 Session of the Statutes of 2009, is amended to read:

34 25136. (a) ~~Sales~~, For taxable years beginning before January  
35 1, 2011, and for taxable years beginning on or after January 1,  
36 2011, for which Section 25128.5 is operative and an election under  
37 subdivision (a) of Section 25128.5 has not been made, sales, other  
38 than sales of tangible personal property, are in this state if:

39 (1) The income-producing activity is performed in this state; or

1 (2) The income-producing activity is performed both in and  
2 outside this state and a greater proportion of the income-producing  
3 activity is performed in this state than in any other state, based on  
4 costs of performance.

5 ~~(b) This section shall not apply to taxable years beginning on~~  
6 ~~or after January 1, 2011, and as of that date is repealed.~~

7 *(3) This subdivision shall apply, and subdivision (b) shall not*  
8 *apply, for any taxable year beginning on or after January 1, 2011,*  
9 *for which Section 25128.5 is not operative for any taxpayer subject*  
10 *to the tax imposed under this part.*

11 *(b) For taxable years beginning on or after January 1, 2011:*

12 *(1) Sales from services are in this state to the extent the*  
13 *purchaser of the service received the benefit of the service in this*  
14 *state.*

15 *(2) Sales from intangible property are in this state to the extent*  
16 *the property is used in this state. In the case of marketable*  
17 *securities, sales are in this state if the customer is in this state.*

18 *(3) Sales from the sale, lease, rental, or licensing of real*  
19 *property are in this state if the real property is located in this state.*

20 *(4) Sales from the rental, lease, or licensing of tangible personal*  
21 *property are in this state if the property is located in this state.*

22 *(5) (A) If Section 25128.5 is operative, then this subdivision*  
23 *shall apply in lieu of subdivision (a) for any taxable year for which*  
24 *an election has been made under subdivision (a) of Section*  
25 *25128.5.*

26 *(B) If Section 25128.5 is not operative, then this subdivision*  
27 *shall not apply and subdivision (a) shall apply for any taxpayer*  
28 *subject to the tax imposed under this part.*

29 *(C) Notwithstanding subparagraphs (A) or (B), this subdivision*  
30 *shall apply for purposes of paragraph (2) of subdivision (b) of*  
31 *Section 23101.*

32 *(c) The Franchise Tax Board may prescribe those regulations*  
33 *as necessary or appropriate to carry out the purposes of*  
34 *subdivision (b).*

35 *SEC. 28. Section 25136 of the Revenue and Taxation Code, as*  
36 *added by Section 14 of Chapter 10 of the 3rd Extraordinary Session*  
37 *of the Statutes of 2009, is repealed.*

38 ~~25136. For taxable years beginning on or after January 1, 2011:~~

39 ~~(a) Sales, other than sales of tangible personal property, are in~~  
40 ~~this state as follows:~~

1 ~~(1) Sales from services are in this state to the extent the~~  
2 ~~purchaser of the service received the benefit of the service in this~~  
3 ~~state.~~

4 ~~(2) Sales from intangible property are in this state to the extent~~  
5 ~~the property is used in this state. In the case of marketable~~  
6 ~~securities, sales are in this state if the customer is in this state.~~

7 ~~(3) Sales from the sale, lease, rental, or licensing of real property~~  
8 ~~are in this state if the real property is located in this state.~~

9 ~~(4) Sales from the rental, lease, or licensing of tangible personal~~  
10 ~~property are in this state if the property is located in this state.~~

11 ~~(b) The Franchise Tax Board may prescribe regulations as~~  
12 ~~necessary or appropriate to carry out the purposes of this section.~~

13 *SEC. 29. Section 25136 of the Revenue and Taxation Code, as*  
14 *added by Section 14 of Chapter 17 of the 3rd Extraordinary Session*  
15 *of the Statutes of 2009, is repealed.*

16 *25136. For taxable years beginning on or after January 1, 2011:*

17 ~~(a) Sales, other than sales of tangible personal property, are in~~  
18 ~~this state as follows:~~

19 ~~(1) Sales from services are in this state to the extent the~~  
20 ~~purchaser of the service received the benefit of the service in this~~  
21 ~~state.~~

22 ~~(2) Sales from intangible property are in this state to the extent~~  
23 ~~the property is used in this state. In the case of marketable~~  
24 ~~securities, sales are in this state if the customer is in this state.~~

25 ~~(3) Sales from the sale, lease, rental, or licensing of real property~~  
26 ~~are in this state if the real property is located in this state.~~

27 ~~(4) Sales from the rental, lease, or licensing of tangible personal~~  
28 ~~property are in this state if the property is located in this state.~~

29 ~~(b) The Franchise Tax Board may prescribe regulations as~~  
30 ~~necessary or appropriate to carry out the purposes of this section.~~

31 *SEC. 30. Section 30354.7 is added to the Revenue and Taxation*  
32 *Code, to read:*

33 *30354.7. (a) A collection cost recovery fee shall be imposed*  
34 *on any person that fails to pay an amount of tax, interest, penalty,*  
35 *or other amount due and payable under this part. The collection*  
36 *cost recovery fee shall be in an amount equal to the board's costs*  
37 *for collection, as reasonably determined by the board. The*  
38 *collection cost recovery fee shall be imposed only if the board has*  
39 *mailed its demand notice, to that person for payment, that advises*  
40 *that continued failure to pay the amount due may result in*

1 collection action, including the imposition of a collection cost  
2 recovery fee.

3 (b) Interest shall not accrue with respect to the collection cost  
4 recovery fee provided by this section.

5 (c) The collection cost recovery fee imposed pursuant to this  
6 section shall be collected in the same manner as the collection of  
7 any other tax imposed by this part.

8 (d) (1) If the board finds that a person's failure to pay any  
9 amount under this part is due to reasonable cause and  
10 circumstances beyond the person's control, and occurred  
11 notwithstanding the exercise of ordinary care and the absence of  
12 willful neglect, the person shall be relieved of the collection cost  
13 recovery fee provided by this section.

14 (2) Any person seeking to be relieved of the collection cost  
15 recovery fee shall file with the board a statement under penalty of  
16 perjury setting forth the facts upon which the person bases the  
17 claim for relief.

18 (e) Subdivision (a) shall be operative with respect to a demand  
19 notice for payment which is mailed on or after January 1, 2011.

20 (f) Collection cost recovery fee revenues shall be deposited in  
21 the same manner as revenues derived from any other tax imposed  
22 by this part.

23 SEC. 31. Section 32390 is added to the Revenue and Taxation  
24 Code, to read:

25 32390. (a) A collection cost recovery fee shall be imposed on  
26 any person that fails to pay an amount of tax, interest, penalty, or  
27 other amount due and payable under this part. The collection cost  
28 recovery fee shall be in an amount equal to the board's costs for  
29 collection, as reasonably determined by the board. The collection  
30 cost recovery fee shall be imposed only if the board has mailed its  
31 demand notice, to that person for payment, that advises that  
32 continued failure to pay the amount due may result in collection  
33 action, including the imposition of a collection cost recovery fee.

34 (b) Interest shall not accrue with respect to the collection cost  
35 recovery fee provided by this section.

36 (c) The collection cost recovery fee imposed pursuant to this  
37 section shall be collected in the same manner as the collection of  
38 any other tax imposed by this part.

39 (d) (1) If the board finds that a person's failure to pay any  
40 amount under this part is due to reasonable cause and

1 *circumstances beyond the person's control, and occurred*  
2 *notwithstanding the exercise of ordinary care and the absence of*  
3 *willful neglect, the person shall be relieved of the collection cost*  
4 *recovery fee provided by this section.*

5 *(2) Any person seeking to be relieved of the collection cost*  
6 *recovery fee shall file with the board a statement under penalty of*  
7 *perjury setting forth the facts upon which the person bases the*  
8 *claim for relief.*

9 *(e) Subdivision (a) shall be operative with respect to a demand*  
10 *notice for payment which is mailed on or after January 1, 2011.*

11 *(f) Collection cost recovery fee revenues shall be deposited in*  
12 *the same manner as revenues derived from any other tax imposed*  
13 *by this part.*

14 *SEC. 32. Section 38577 is added to the Revenue and Taxation*  
15 *Code, to read:*

16 *38577. (a) A collection cost recovery fee shall be imposed on*  
17 *any person that fails to pay an amount of tax, interest, penalty, or*  
18 *other amount due and payable under this part. The collection cost*  
19 *recovery fee shall be in an amount equal to the board's costs for*  
20 *collection, as reasonably determined by the board. The collection*  
21 *cost recovery fee shall be imposed only if the board has mailed its*  
22 *demand notice, to that person for payment, that advises that*  
23 *continued failure to pay the amount due may result in collection*  
24 *action, including the imposition of a collection cost recovery fee.*

25 *(b) Interest shall not accrue with respect to the collection cost*  
26 *recovery fee provided by this section.*

27 *(c) The collection cost recovery fee imposed pursuant to this*  
28 *section shall be collected in the same manner as the collection of*  
29 *any other tax imposed by this part.*

30 *(d) (1) If the board finds that a person's failure to pay any*  
31 *amount under this part is due to reasonable cause and*  
32 *circumstances beyond the person's control, and occurred*  
33 *notwithstanding the exercise of ordinary care and the absence of*  
34 *willful neglect, the person shall be relieved of the collection cost*  
35 *recovery fee provided by this section.*

36 *(2) Any person seeking to be relieved of the collection cost*  
37 *recovery fee shall file with the board a statement under penalty of*  
38 *perjury setting forth the facts upon which the person bases the*  
39 *claim for relief.*

1 (e) Subdivision (a) shall be operative with respect to a demand  
2 notice for payment which is mailed on or after January 1, 2011.

3 (f) Collection cost recovery fee revenues shall be deposited in  
4 the same manner as revenues derived from any other tax imposed  
5 by this part.

6 SEC. 33. Section 40168 is added to the Revenue and Taxation  
7 Code, to read:

8 40168. (a) A collection cost recovery fee shall be imposed on  
9 any person that fails to pay an amount of surcharge, interest,  
10 penalty, or other amount due and payable under this part. The  
11 collection cost recovery fee shall be in an amount equal to the  
12 board's costs for collection, as reasonably determined by the  
13 board. The collection cost recovery fee shall be imposed only if  
14 the board has mailed its demand notice, to that person for payment,  
15 that advises that continued failure to pay the amount due may  
16 result in collection action, including the imposition of a collection  
17 cost recovery fee.

18 (b) Interest shall not accrue with respect to the collection cost  
19 recovery fee provided by this section.

20 (c) The collection cost recovery fee imposed pursuant to this  
21 section shall be collected in the same manner as the collection of  
22 any other surcharge imposed by this part.

23 (d) (1) If the board finds that a person's failure to pay any  
24 amount under this part is due to reasonable cause and  
25 circumstances beyond the person's control, and occurred  
26 notwithstanding the exercise of ordinary care and the absence of  
27 willful neglect, the person shall be relieved of the collection cost  
28 recovery fee provided by this section.

29 (2) Any person seeking to be relieved of the collection cost  
30 recovery fee shall file with the board a statement under penalty of  
31 perjury setting forth the facts upon which the person bases the  
32 claim for relief.

33 (e) Subdivision (a) shall be operative with respect to a demand  
34 notice for payment which is mailed on or after January 1, 2011.

35 (f) Collection cost recovery fee revenues shall be deposited in  
36 the same manner as revenues derived from any other surcharge  
37 imposed by this part.

38 SEC. 34. Section 41127.8 is added to the Revenue and Taxation  
39 Code, to read:

1     41127.8. (a) A collection cost recovery fee shall be imposed  
2 on any person that fails to pay an amount of surcharge, interest,  
3 penalty, or other amount due and payable under this part. The  
4 collection cost recovery fee shall be in an amount equal to the  
5 board's costs for collection, as reasonably determined by the  
6 board. The collection cost recovery fee shall be imposed only if  
7 the board has mailed its demand notice, to that person for payment,  
8 that advises that continued failure to pay the amount due may  
9 result in collection action, including the imposition of a collection  
10 cost recovery fee.

11     (b) Interest shall not accrue with respect to the collection cost  
12 recovery fee provided by this section.

13     (c) The collection cost recovery fee imposed pursuant to this  
14 section shall be collected in the same manner as the collection of  
15 any other surcharge imposed by this part.

16     (d) (1) If the board finds that a person's failure to pay any  
17 amount under this part is due to reasonable cause and  
18 circumstances beyond the person's control, and occurred  
19 notwithstanding the exercise of ordinary care and the absence of  
20 willful neglect, the person shall be relieved of the collection cost  
21 recovery fee provided by this section.

22     (2) Any person seeking to be relieved of the collection cost  
23 recovery fee shall file with the board a statement under penalty of  
24 perjury setting forth the facts upon which the person bases the  
25 claim for relief.

26     (e) Subdivision (a) shall be operative with respect to a demand  
27 notice for payment which is mailed on or after January 1, 2011.

28     (f) Collection cost recovery fee revenues shall be deposited in  
29 the same manner as revenues derived from any other surcharge  
30 imposed by this part.

31     SEC. 35. Section 43449 is added to the Revenue and Taxation  
32 Code, to read:

33     43449. (a) A collection cost recovery fee shall be imposed on  
34 any person that fails to pay an amount of tax, interest, penalty, or  
35 other amount due and payable under this part. The collection cost  
36 recovery fee shall be in an amount equal to the board's costs for  
37 collection, as reasonably determined by the board. The collection  
38 cost recovery fee shall be imposed only if the board has mailed its  
39 demand notice, to that person for payment, that advises that

1 continued failure to pay the amount due may result in collection  
2 action, including the imposition of a collection cost recovery fee.

3 (b) Interest shall not accrue with respect to the collection cost  
4 recovery fee provided by this section.

5 (c) The collection cost recovery fee imposed pursuant to this  
6 section shall be collected in the same manner as the collection of  
7 any other tax imposed by this part.

8 (d) (1) If the board finds that a person's failure to pay any  
9 amount under this part is due to reasonable cause and  
10 circumstances beyond the person's control, and occurred  
11 notwithstanding the exercise of ordinary care and the absence of  
12 willful neglect, the person shall be relieved of the collection cost  
13 recovery fee provided by this section.

14 (2) Any person seeking to be relieved of the collection cost  
15 recovery fee shall file with the board a statement under penalty of  
16 perjury setting forth the facts upon which the person bases the  
17 claim for relief.

18 (e) Subdivision (a) shall be operative with respect to a demand  
19 notice for payment which is mailed on or after January 1, 2011.

20 (f) Collection cost recovery fee revenues shall be deposited in  
21 the same manner as revenues derived from any other tax imposed  
22 by this part.

23 SEC. 36. Section 45610 is added to the Revenue and Taxation  
24 Code, to read:

25 45610. (a) A collection cost recovery fee shall be imposed on  
26 any person that fails to pay an amount of fee, interest, penalty, or  
27 other amount due and payable under this part. The collection cost  
28 recovery fee shall be in an amount equal to the board's costs for  
29 collection, as reasonably determined by the board. The collection  
30 cost recovery fee shall be imposed only if the board has mailed its  
31 demand notice, to that person for payment, that advises that  
32 continued failure to pay the amount due may result in collection  
33 action, including the imposition of a collection cost recovery fee.

34 (b) Interest shall not accrue with respect to the collection cost  
35 recovery fee provided by this section.

36 (c) The collection cost recovery fee imposed pursuant to this  
37 section shall be collected in the same manner as the collection of  
38 any other fee imposed by this part.

39 (d) (1) If the board finds that a person's failure to pay any  
40 amount under this part is due to reasonable cause and

1 *circumstances beyond the person's control, and occurred*  
2 *notwithstanding the exercise of ordinary care and the absence of*  
3 *willful neglect, the person shall be relieved of the collection cost*  
4 *recovery fee provided by this section.*

5 *(2) Any person seeking to be relieved of the collection cost*  
6 *recovery fee shall file with the board a statement under penalty of*  
7 *perjury setting forth the facts upon which the person bases the*  
8 *claim for relief.*

9 *(e) Subdivision (a) shall be operative with respect to a demand*  
10 *notice for payment which is mailed on or after January 1, 2011.*

11 *(f) Collection cost recovery fee revenues shall be deposited in*  
12 *the same manner as revenues derived from any other fee imposed*  
13 *by this part.*

14 *SEC. 37. Section 46466 is added to the Revenue and Taxation*  
15 *Code, to read:*

16 *46466. (a) A collection cost recovery fee shall be imposed on*  
17 *any person that fails to pay an amount of fee, interest, penalty, or*  
18 *other amount due and payable under this part. The collection cost*  
19 *recovery fee shall be in an amount equal to the board's costs for*  
20 *collection, as reasonably determined by the board. The collection*  
21 *cost recovery fee shall be imposed only if the board has mailed its*  
22 *demand notice, to that person for payment, that advises that*  
23 *continued failure to pay the amount due may result in collection*  
24 *action, including the imposition of a collection cost recovery fee.*

25 *(b) Interest shall not accrue with respect to the collection cost*  
26 *recovery fee provided by this section.*

27 *(c) The collection cost recovery fee imposed pursuant to this*  
28 *section shall be collected in the same manner as the collection of*  
29 *any other fee imposed by this part.*

30 *(d) (1) If the board finds that a person's failure to pay any*  
31 *amount under this part is due to reasonable cause and*  
32 *circumstances beyond the person's control, and occurred*  
33 *notwithstanding the exercise of ordinary care and the absence of*  
34 *willful neglect, the person shall be relieved of the collection cost*  
35 *recovery fee provided by this section.*

36 *(2) Any person seeking to be relieved of the collection cost*  
37 *recovery fee shall file with the board a statement under penalty of*  
38 *perjury setting forth the facts upon which the person bases the*  
39 *claim for relief.*

1 (e) Subdivision (a) shall be operative with respect to a demand  
2 notice for payment which is mailed on or after January 1, 2011.

3 (f) Collection cost recovery fee revenues shall be deposited in  
4 the same manner as revenues derived from any other fee imposed  
5 by this part.

6 SEC. 38. Section 50138.8 is added to the Revenue and Taxation  
7 Code, to read:

8 50138.8. (a) A collection cost recovery fee shall be imposed  
9 on any person that fails to pay an amount of fee, interest, penalty,  
10 or other amount due and payable under this part. The collection  
11 cost recovery fee shall be in an amount equal to the board's costs  
12 for collection, as reasonably determined by the board. The  
13 collection cost recovery fee shall be imposed only if the board has  
14 mailed its demand notice, to that person for payment, that advises  
15 that continued failure to pay the amount due may result in  
16 collection action, including the imposition of a collection cost  
17 recovery fee.

18 (b) Interest shall not accrue with respect to the collection cost  
19 recovery fee provided by this section.

20 (c) The collection cost recovery fee imposed pursuant to this  
21 section shall be collected in the same manner as the collection of  
22 any other fee imposed by this part.

23 (d) (1) If the board finds that a person's failure to pay any  
24 amount under this part is due to reasonable cause and  
25 circumstances beyond the person's control, and occurred  
26 notwithstanding the exercise of ordinary care and the absence of  
27 willful neglect, the person shall be relieved of the collection cost  
28 recovery fee provided by this section.

29 (2) Any person seeking to be relieved of the collection cost  
30 recovery fee shall file with the board a statement under penalty of  
31 perjury setting forth the facts upon which the person bases the  
32 claim for relief.

33 (e) Subdivision (a) shall be operative with respect to a demand  
34 notice for payment which is mailed on or after January 1, 2011.

35 (f) Collection cost recovery fee revenues shall be deposited in  
36 the same manner as revenues derived from any other fee imposed  
37 by this part.

38 SEC. 39. Section 55211 is added to the Revenue and Taxation  
39 Code, to read:

1     55211. (a) A collection cost recovery fee shall be imposed on  
2 any person that fails to pay an amount of fee, interest, penalty, or  
3 other amount due and payable under this part. The collection cost  
4 recovery fee shall be in an amount equal to the board's costs for  
5 collection, as reasonably determined by the board. The collection  
6 cost recovery fee shall be imposed only if the board has mailed its  
7 demand notice, to that person for payment, that advises that  
8 continued failure to pay the amount due may result in collection  
9 action, including the imposition of a collection cost recovery fee.

10     (b) Interest shall not accrue with respect to the collection cost  
11 recovery fee provided by this section.

12     (c) The collection cost recovery fee imposed pursuant to this  
13 section shall be collected in the same manner as the collection of  
14 any other fee imposed by this part.

15     (d) (1) If the board finds that a person's failure to pay any  
16 amount under this part is due to reasonable cause and  
17 circumstances beyond the person's control, and occurred  
18 notwithstanding the exercise of ordinary care and the absence of  
19 willful neglect, the person shall be relieved of the collection cost  
20 recovery fee provided by this section.

21     (2) Any person seeking to be relieved of the collection cost  
22 recovery fee shall file with the board a statement under penalty of  
23 perjury setting forth the facts upon which the person bases the  
24 claim for relief.

25     (e) Subdivision (a) shall be operative with respect to a demand  
26 notice for payment which is mailed on or after January 1, 2011.

27     (f) Collection cost recovery fee revenues shall be deposited in  
28 the same manner as revenues derived from any other fee imposed  
29 by this part.

30     SEC. 40. Section 60495 is added to the Revenue and Taxation  
31 Code, to read:

32     60495. (a) A collection cost recovery fee shall be imposed on  
33 any person that fails to pay an amount of tax, interest, penalty, or  
34 other amount due and payable under this part. The collection cost  
35 recovery fee shall be in an amount equal to the board's costs for  
36 collection, as reasonably determined by the board. The collection  
37 cost recovery fee shall be imposed only if the board has mailed its  
38 demand notice, to that person for payment, that advises that  
39 continued failure to pay the amount due may result in collection  
40 action, including the imposition of a collection cost recovery fee.

1 (b) Interest shall not accrue with respect to the collection cost  
2 recovery fee provided by this section.

3 (c) The collection cost recovery fee imposed pursuant to this  
4 section shall be collected in the same manner as the collection of  
5 any other tax imposed by this part.

6 (d) (1) If the board finds that a person's failure to pay any  
7 amount under this part is due to reasonable cause and  
8 circumstances beyond the person's control, and occurred  
9 notwithstanding the exercise of ordinary care and the absence of  
10 willful neglect, the person shall be relieved of the collection cost  
11 recovery fee provided by this section.

12 (2) Any person seeking to be relieved of the collection cost  
13 recovery fee shall file with the board a statement under penalty of  
14 perjury setting forth the facts upon which the person bases the  
15 claim for relief.

16 (e) Subdivision (a) shall be operative with respect to a demand  
17 notice for payment which is mailed on or after January 1, 2011.

18 (f) Collection cost recovery fee revenues shall be deposited in  
19 the same manner as revenues derived from any other tax imposed  
20 by this part.

21 SEC. 41. No inference shall be drawn from the enactment of  
22 the amendments made to Section 25136 of the Revenue and  
23 Taxation Code by this act with respect to the extent to which the  
24 rules for assigning sales, other than sales of tangible personal  
25 property, contained in subdivision (a) of Section 25136 of the  
26 Revenue and Taxation Code, before and after such amendment,  
27 are intended to properly reflect the market for the activities of the  
28 taxpayer giving rise to business income. The rules contained in  
29 subdivisions (a) and (b) of Section 25136 of the Revenue and  
30 Taxation Code are intended to accomplish the goal of proper  
31 market reflection in the sales factor numerator.

32 SEC. 42. The provisions of this measure are severable. If any  
33 provision of this measure or its application is held invalid, that  
34 invalidity shall not affect other provisions or applications that can  
35 be given effect without the invalid provision or application.

36 SEC. 43. No reimbursement is required by this act pursuant  
37 to Section 6 of Article XIII B of the California Constitution because  
38 the only costs that may be incurred by a local agency or school  
39 district will be incurred because this act creates a new crime or  
40 infraction, eliminates a crime or infraction, or changes the penalty

1 *for a crime or infraction, within the meaning of Section 17556 of*  
2 *the Government Code, or changes the definition of a crime within*  
3 *the meaning of Section 6 of Article XIII B of the California*  
4 *Constitution.*

5 *SEC. 44. This act is an urgency statute necessary for the*  
6 *immediate preservation of the public peace, health, or safety within*  
7 *the meaning of Article IV of the Constitution and shall go into*  
8 *immediate effect. The facts constituting the necessity are:*

9 *In order to address the current state budgetary requirements at*  
10 *the earliest possible time, it is necessary that this act go into*  
11 *immediate effect.*

12 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~  
13 ~~changes relating to the Budget Act of 2010.~~