

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2278

Introduced by Assembly Member Anderson
(Coauthor: Senator Dutton)

February 18, 2010

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2278, as amended, Anderson. Income and corporation tax credits: research and development.

The Personal Income Tax Law and the Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws for increasing research expenses, as defined. In general, the amount of the credit under both laws is equal to 15% of the excess of the qualified research expenses, as defined, for the taxable year over the base amount, as defined, and, in addition, for purposes of the Corporation Tax Law, 24% of the basic research payments, as defined. The term “base amount” means the product of the average annual gross receipts of the taxpayer for each of the specified years preceding the taxable year and the fixed-base percentage, as defined, but in no event less than 50% of the qualified research expenses for the taxable year. A taxpayer may elect an alternative incremental credit for increasing research expenses in modified conformity to federal income tax laws.

This bill would increase the credit for increasing research expenses to 20% of the excess of the qualified research expenses. This bill would

also provide complete conformity to the alternative incremental credit provided under those federal income tax laws.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 17052.12 of the Revenue and Taxation
2 Code is amended to read:

3 17052.12. For each taxable year beginning on or after January
4 1, 1987, there shall be allowed as a credit against the “net tax” (as
5 defined by Section 17039) for the taxable year an amount
6 determined in accordance with Section 41 of the Internal Revenue
7 Code, except as follows:

8 (a) For each taxable year beginning before January 1, 1997, the
9 reference to “20 percent” in Section 41(a)(1) of the Internal
10 Revenue Code is modified to read “8 percent.”

11 (b) (1) For each taxable year beginning on or after January 1,
12 1997, and before January 1, 1999, the reference to “20 percent”
13 in Section 41(a)(1) of the Internal Revenue Code is modified to
14 read “11 percent.”

15 (2) For each taxable year beginning on or after January 1, 1999,
16 and before January 1, 2000, the reference to “20 percent” in Section
17 41(a)(1) of the Internal Revenue Code is modified to read “12
18 percent.”

19 (3) For each taxable year beginning on or after January 1, 2000,
20 and before January 1, 2010, the reference to “20 percent” in Section
21 41(a)(1) of the Internal Revenue Code is modified to read “15
22 percent.”

23 (4) For each taxable year beginning on or after January 1, 2010,
24 the reference to “20 percent” in Section 41(a)(1) of the Internal
25 Revenue Code shall apply.

26 (c) Section 41(a)(2) of the Internal Revenue Code, relating to
27 basic research payments, shall not apply.

28 (d) “Qualified research” shall include only research conducted
29 in California.

30 (e) In the case where the credit allowed under this section
31 exceeds the “net tax,” the excess may be carried over to reduce

1 the “net tax” in the following year, and succeeding years if
2 necessary, until the credit has been exhausted.

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

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

14 (g) (1) For each taxable year beginning on or after January 1,
15 2000, and before January 1, 2010:

16 (A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i)
17 of the Internal Revenue Code is modified to read “one and
18 forty-nine hundredths of one percent.”

19 (B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of
20 the Internal Revenue Code is modified to read “one and
21 ninety-eight hundredths of one percent.”

22 (C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii)
23 of the Internal Revenue Code is modified to read “two and
24 forty-eight hundredths of one percent.”

25 (2) For each taxable year beginning on or after January 1, 2010,
26 Section 41(c)(4) of the Internal Revenue Code, *as amended by*
27 *Section 104(b) of Public Law 109-432*, relating to election of
28 alternative incremental credit, shall apply, *except as otherwise*
29 *provided*.

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

36 (4) Section 41(c)(6) of the Internal Revenue Code, relating to
37 gross receipts, is modified to take into account only those gross
38 receipts from the sale of property held primarily for sale to
39 customers in the ordinary course of the taxpayer’s trade or business

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

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

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

8 (1) The last sentence shall not apply.

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

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

18 23609. For each taxable year beginning on or after January 1,
19 1987, there shall be allowed as a credit against the “tax” (as defined
20 by Section 23036) an amount determined in accordance with
21 Section 41 of the Internal Revenue Code, except as follows:

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

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

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

28 (b) (1) For each taxable year beginning on or after January 1,
29 1997, and before January 1, 1999, both of the following
30 modifications shall apply:

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

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

35 (2) For each taxable year beginning on or after January 1, 1999,
36 and before January 1, 2000, both of the following shall apply:

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

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

(3) For each taxable year beginning on or after January 1, 2000, and before January 1, 2010, both of the following shall apply:

(A) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code is modified to read “15 percent.”

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

(4) For each taxable year beginning on or after January 1, 2010, both of the following shall apply:

(A) The reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code shall apply.

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

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

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

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

(1) Basic research conducted outside California.

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

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

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

(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United

1 States Office of Management and Budget, 1987 edition, or any
2 other biotechnology research and development activities, the
3 provisions of Section 41(e)(6) of the Internal Revenue Code shall
4 be modified to include both of the following:

5 (A) A qualified organization as described in Section
6 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
7 institution of higher education as described in Section 3304(f) of
8 the Internal Revenue Code.

9 (B) A charitable research hospital owned by an organization
10 that is described in Section 501(c)(3) of the Internal Revenue Code,
11 is exempt from taxation under Section 501(a) of the Internal
12 Revenue Code, is not a private foundation, is designated a
13 “specialized laboratory cancer center,” and has received Clinical
14 Cancer Research Center status from the National Cancer Institute.

15 (2) For purposes of this subdivision:

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

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

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

35 (g) For each taxable year beginning on or after January 1, 1998,
36 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
37 Internal Revenue Code, relating to contract research expenses, is
38 modified to read “this part or Part 10 (commencing with Section
39 17001).”

(h) (1) For each taxable year beginning on or after January 1, 2000, and before January 1, 2010:

(A) The reference to “2.65 percent” in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read “one and forty-nine hundredths of one percent.”

(B) The reference to “3.2 percent” in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read “one and ninety-eight hundredths of one percent.”

(C) The reference to “3.75 percent” in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read “two and forty-eight hundredths of one percent.”

(2) For each taxable year beginning on or after January 1, 2010, Section 41(c)(4) of the Internal Revenue Code, *as amended by Section 104(b) of Public Law 109-432*, relating to election of alternative incremental credit, shall apply, *except as otherwise provided*.

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

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

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

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

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (f), except that the limitation of Section 41(g) of the Internal

- 1 Revenue Code shall be taken into account in each subsequent
- 2 taxable year.
- 3 SEC. 3. This act provides for a tax levy within the meaning
- 4 of Article IV of the Constitution and shall go into immediate effect.

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