

Introduced by Senator Ashburn

February 26, 2009

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

SB 444, as introduced, Ashburn. 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:

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

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

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

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

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

(3) For each taxable year beginning on or after January 1, 2000, and before January 1, 2009, the reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code is modified to read “15 percent.”

(4) For each taxable year beginning on or after January 1, 2009, the reference to “20 percent” in Section 41(a)(1) of the Internal Revenue Code shall apply.

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

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

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

(f) (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

1 tangible personal property that is eligible for the exemption from
2 sales or use tax provided by Section 6378.

3 (2) For each taxable year beginning on or after January 1, 1998,
4 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
5 Internal Revenue Code, relating to contract research expenses, is
6 modified to read “this part or Part 11 (commencing with Section
7 23001).”

8 (g) (1) For each taxable year beginning on or after January 1,
9 ~~2000~~: 2000, and before January 1, 2009:

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

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

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

19 (2) *For each taxable year beginning on or after January 1,*
20 *2009, Section 41(c)(4) of the Internal Revenue Code, relating to*
21 *election of alternative incremental credit, shall apply.*

22 ~~(2)~~

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

29 ~~(3)~~

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

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

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

1 (1) The last sentence shall not apply.

2 (2) If the amount determined under Section 41(a) of the Internal
3 Revenue Code for any taxable year exceeds the limitation of
4 Section 41(g) of the Internal Revenue Code, that amount may be
5 carried over to other taxable years under the rules of subdivision
6 (e); except that the limitation of Section 41(g) of the Internal
7 Revenue Code shall be taken into account in each subsequent
8 taxable year.

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

11 23609. For each taxable year beginning on or after January 1,
12 1987, there shall be allowed as a credit against the “tax” (as defined
13 by Section 23036) an amount determined in accordance with
14 Section 41 of the Internal Revenue Code, except as follows:

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

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

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

21 (b) (1) For each taxable year beginning on or after January 1,
22 1997, and before January 1, 1999, both of the following
23 modifications shall apply:

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

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

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

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

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

34 (3) For each taxable year beginning on or after January 1, 2000,
35 *and before January 1, 2009*, both of the following shall apply:

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

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

(4) For each taxable year beginning on or after January 1, 2009, 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 States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an

1 institution of higher education as described in Section 3304(f) of
2 the Internal Revenue Code.

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

9 (2) For purposes of this subdivision:

10 (A) “Biopharmaceutical research activities” means those
11 activities that use organisms or materials derived from organisms,
12 and their cellular, subcellular, or molecular components, in order
13 to provide pharmaceutical products for human or animal
14 therapeutics and diagnostics. Biopharmaceutical activities make
15 use of living organisms to make commercial products, as opposed
16 to pharmaceutical activities that make use of chemical compounds
17 to produce commercial products.

18 (B) “Other biotechnology research and development activities”
19 means research and development activities consisting of the
20 application of recombinant DNA technology to produce
21 commercial products, as well as research and development
22 activities regarding pharmaceutical delivery systems designed to
23 provide a measure of control over the rate, duration, and site of
24 pharmaceutical delivery.

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

29 (g) For each taxable year beginning on or after January 1, 1998,
30 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
31 Internal Revenue Code, relating to contract research expenses, is
32 modified to read “this part or Part 10 (commencing with Section
33 17001).”

34 (h) (1) For each taxable year beginning on or after January 1;
35 ~~2000; 2000, and before January 1, 2009:~~

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

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

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

7 (2) *For each taxable year beginning on or after January 1,*
8 *2009, Section 41(c)(4) of the Internal Revenue Code, relating to*
9 *election of alternative incremental credit, shall apply.*

10 (2)
11 (3) Section 41(c)(4)(B) shall not apply and in lieu thereof an
12 election under Section 41(c)(4)(A) of the Internal Revenue Code
13 may be made for any taxable year of the taxpayer beginning on or
14 after January 1, 1998. That election shall apply to the taxable year
15 for which made and all succeeding taxable years unless revoked
16 with the consent of the Franchise Tax Board.

17 (3)
18 (4) Section 41(c)(6) of the Internal Revenue Code, relating to
19 gross receipts, is modified to take into account only those gross
20 receipts from the sale of property held primarily for sale to
21 customers in the ordinary course of the taxpayer’s trade or business
22 that is delivered or shipped to a purchaser within this state,
23 regardless of f.o.b. point or any other condition of the sale.

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

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

29 (1) The last sentence shall not apply.

30 (2) If the amount determined under Section 41(a) of the Internal
31 Revenue Code for any taxable year exceeds the limitation of
32 Section 41(g) of the Internal Revenue Code, that amount may be
33 carried over to other taxable years under the rules of subdivision
34 (f), except that the limitation of Section 41(g) of the Internal
35 Revenue Code shall be taken into account in each subsequent
36 taxable year.

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

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