

Introduced by Senator AshburnFebruary 17, 2010

An act to add Sections 17053.49 and 23649 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1074, as introduced, Ashburn. Manufacturer's investment credit: qualified renewable energy materials.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, for taxable years beginning on or after January 1, 2010, allow a credit against the taxes imposed by those laws in an amount equal to 6% of the amount paid or incurred by the qualified taxpayer, that is engaged in specified green technology and renewable energy resource lines of business, during the taxable year for qualified property, as defined, that is placed in service in this state.

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 17053.49 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.49. (a) For taxable years beginning on or after January
- 4 1, 2010, a qualified taxpayer shall be allowed a credit against the
- 5 "net tax," as defined in Section 17039, an amount equal to 6 percent
- 6 of the qualified cost of qualified property that is placed in service
- 7 in this state.

(b) For purposes of this section, “qualified cost” means any cost that satisfies each of the following conditions:

(1) Is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 2010.

(2) Except as provided in paragraphs (3) and (4) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly, as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(3) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(c) (1) For purposes of this section, “qualified taxpayer” means any of the following:

(A) A taxpayer who is primarily engaged in green technology that is either consistent with meeting the goals and objectives of compliance with greenhouse gas emissions standards as set forth in Division 25.5 (commencing with Section 38500) of the Health and Safety Code or promotes the reduction of wasteful, inefficient, unnecessary, or uneconomic uses of energy.

(B) A taxpayer who is primarily engaged in the production of products, systems, or management of cost-effective water use efficiency practices to curtail the waste of water and to ensure that water use does not exceed reasonable needs.

(C) A taxpayer who is primarily engaged in the production of products, systems, or management of the utilization of recycled or reusable materials in the manufacturing process.

(D) A taxpayer who is primarily engaged in the production or application of cogeneration technology, as defined in Section 25134 of the Public Resources Code.

(E) A taxpayer who is primarily engaged in the production of products, systems, or management of the conservation of energy.

(F) A taxpayer who is primarily engaged in the production of products, systems, management, or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels.

(2) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or

1 Section 23649 shall be allowed to the passthrough entity and passed
2 through to the partners or shareholders in accordance with
3 applicable provisions of Part 10 (commencing with Section 17001)
4 or Part 11 (commencing with Section 23001). For purposes of this
5 paragraph, the term “passthrough entity” means any partnership
6 or “S” corporation.

7 (3) The Franchise Tax Board may prescribe regulations to carry
8 out the purposes of this section, including any regulations necessary
9 to prevent the avoidance of the effect of this section through
10 splitups, shell corporations, partnerships, tiered ownership
11 structures, sale-leaseback transactions, or otherwise.

12 (d) For purposes of this section, “qualified property” means
13 property that is described as any of the following:

14 (1) Tangible personal property that is defined in Section 1245(a)
15 of the Internal Revenue Code for use by a qualified taxpayer that
16 is primarily used for any of the following:

17 (A) For the manufacturing, processing, refining, fabricating, or
18 recycling of property, beginning at the point at which any raw
19 materials are received by the qualified taxpayer and introduced
20 into the process and ending at the point at which the manufacturing,
21 processing, refining, fabricating, or recycling has altered tangible
22 personal property to its completed form, including packaging, if
23 required.

24 (B) In research and development.

25 (C) To maintain, repair, measure, or test any property described
26 in this paragraph.

27 (D) For pollution control that meets or exceeds standards
28 established by the state or by any local or regional governmental
29 agency within the state.

30 (E) For recycling.

31 (2) Computers and computer peripheral equipment, as defined
32 in Section 168(i)(2)(B) of the Internal Revenue Code, that is
33 tangible personal property as defined in Section 1245(a) of the
34 Internal Revenue Code for use by a qualified taxpayer, that is
35 primarily used to develop or manufacture cogeneration technology,
36 technology or products for the conservation of energy, or
37 technology or products for the use of solar, biomass, wind,
38 geothermal, hydroelectricity under 30 megawatts, or any other
39 source of energy, the efficient use of which will reduce the use of
40 fossil and nuclear fuels.

1 (3) The value of any capitalized labor costs that are directly
2 allocable to the construction or modification of property described
3 in paragraph (1) or (2).

4 (4) (A) Special purpose buildings and foundations that are
5 constructed or modified for use by the qualified taxpayer primarily
6 in a manufacturing, processing, refining, or fabricating process,
7 or as a research or storage facility primarily used in connection
8 with a manufacturing process.

9 (B) The value of any capitalized labor costs that are directly
10 allocable to the construction or modification of special purpose
11 buildings and foundations that are used primarily in the
12 manufacturing, processing, refining, or fabricating process, or as
13 a research or storage facility primarily used in connection with a
14 manufacturing process.

15 (C) (i) For purposes of this paragraph, “special purpose building
16 and foundation” means only a building and the foundation
17 immediately underlying the building that is specifically designed
18 and constructed or reconstructed for the installation, operation,
19 and use of specific machinery and equipment with a special
20 purpose, which machinery and equipment, after installation, will
21 become affixed to or a fixture of the real property, and the
22 construction or reconstruction of which is specifically designed
23 and used exclusively for the specified purposes as set forth in
24 subparagraph (A) (“qualified purpose”).

25 (ii) A building is specifically designed and constructed or
26 modified for a qualified purpose if it is not economical to design
27 and construct the building for the intended purpose and then use
28 the structure for a different purpose.

29 (iii) For purposes of clause (i) and clause (vi), a building is used
30 exclusively for a qualified purpose only if its use does not include
31 a use for which it was not specifically designed and constructed
32 or modified. Incidental use of a building for nonqualified purposes
33 does not preclude the building from being a special purpose
34 building. “Incidental use” means a use that is both related and
35 subordinate to the qualified purpose. It will be conclusively
36 presumed that a use is not subordinate if more than one-third of
37 the total usable volume of the building is devoted to a use that is
38 not a qualified purpose.

39 (iv) In the event an entire building does not qualify as a special
40 purpose building, a qualified taxpayer may establish that a portion

1 of a building, and the foundation immediately underlying the
2 portion, qualifies for treatment as a special purpose building and
3 foundation if the portion satisfies all of the definitional provisions
4 in this subparagraph.

5 (v) To the extent that a building is not a special purpose building
6 as defined above, but a portion of the building qualifies for
7 treatment as a special purpose building, then all equipment that
8 exclusively supports the qualified purpose occurring within that
9 portion and that would qualify as Internal Revenue Code Section
10 1245 property if it were not a fixture or affixed to the building
11 shall be treated as a cost of the portion of the building that qualifies
12 for treatment as a special purpose building.

13 (vi) Buildings and foundations that do not meet the definition
14 of a special purpose building and foundation set forth above
15 include, but are not limited to: buildings designed and constructed
16 or reconstructed principally to function as a general purpose
17 manufacturing, industrial, or commercial building; research
18 facilities that are used primarily prior to or after, or prior to and
19 after, the manufacturing process; or storage facilities that are used
20 primarily prior to or after, or prior to and after, completion of the
21 manufacturing process.

22 (5) Subject to the provisions in paragraph (2) of subdivision
23 (b), qualified property also includes computer software that is
24 primarily used for those purposes set forth in paragraph (1) or (2)
25 of this subdivision.

26 (6) Qualified property does not include any of the following:

27 (A) Furniture.

28 (B) Facilities used for warehousing purposes after completion
29 of the manufacturing process.

30 (C) Inventory.

31 (D) Equipment used in the extraction process.

32 (E) Equipment used to store finished products that have
33 completed the manufacturing process.

34 (F) Any tangible personal property that is used in administration,
35 general management, or marketing.

36 (e) For purposes of this section:

37 (1) “Fabricating” means to make, build, create, produce, or
38 assemble components or property to work in a new or different
39 manner.

(2) “Manufacturing” means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) “Primarily” means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(4) “Process” means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials are considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer’s manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer’s manufacturing, processing, refining, fabricating, or recycling activity is conducted, are not considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) “Processing” means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(6) “Refining” means the process of converting a natural resource to an intermediate or finished product.

(7) “Research and development” means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(8) “Small business” means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars (\$50,000,000).

(B) Has net assets of less than fifty million dollars (\$50,000,000).

1 (C) Has a total credit of less than one million dollars
2 (\$1,000,000).

3 (f) The credit allowed under subdivision (a) shall apply to
4 qualified property that is acquired by or subject to lease by a
5 qualified taxpayer, subject to the following special rules:

6 (1) A lessor of qualified property, irrespective of whether the
7 lessor is a qualified taxpayer, is not allowed the credit provided
8 under subdivision (a) with respect to any qualified property leased
9 to another qualified taxpayer.

10 (2) (A) For purposes of determining the qualified cost paid or
11 incurred by a lessee in any leasing transaction that is not treated
12 as a sale under Part 1 (commencing with Section 6001), the
13 following rules apply:

14 (i) Except as provided by subparagraph (C) of this paragraph,
15 paragraphs (1) and (3) of subdivision (b) do not apply.

16 (ii) Except as provided in subparagraph (B) and clause (iii), the
17 “qualified cost” upon which the lessee shall compute the credit
18 provided under this section shall be equal to the original cost to
19 the lessor (within the meaning of Section 18031) of the qualified
20 property that is the subject of the lease.

21 (iii) The requirement of paragraph (2) of subdivision (b) shall
22 be treated as satisfied only if the lessor has made a timely election
23 under either Section 6094.1 or subdivision (d) of Section 6244 and
24 has paid sales tax reimbursement or use tax measured by the
25 purchase price of the qualified property (within the meaning of
26 paragraph (5) of subdivision (g) of Section 6006). For purposes
27 of this subdivision, the amount of original cost to the lessor that
28 may be taken into account under clause (ii) may not exceed the
29 purchase price upon which sales tax reimbursement or use tax has
30 been paid under the preceding sentence.

31 (B) For purposes of applying subparagraph (A) only, the
32 following special rules shall apply:

33 (i) The original cost to the lessor of the qualified property shall
34 be reduced by the amount of any original cost of that property that
35 was taken into account by any predecessor lessee in computing
36 the credit allowable under this section.

37 (ii) Clause (i) does not apply in any case where the predecessor
38 lessee was required to recapture the credit provided under this
39 section pursuant to subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 2010, shall be taken into account.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(3) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules apply:

(A) Paragraph (1) of subdivision (b) is applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Paragraph (3) of subdivision (b) applies.

(C) The requirement of paragraph (2) of subdivision (b) are treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(4) (A) In the case of any leasing transaction described in paragraph (2), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

1 (B) The statement required under subparagraph (A) shall be
2 made available to the Franchise Tax Board upon request.

3 (g) No credit is allowed if the qualified property is removed
4 from the state, is disposed of to an unrelated party, or is used for
5 any purpose not qualifying for the credit provided in this section
6 in the same taxable year in which the qualified property is first
7 placed in service in this state. If any qualified property for which
8 a credit is allowed pursuant to this section is thereafter removed
9 from this state, disposed of to an unrelated party, or used for any
10 purpose not qualifying for the credit provided in this section within
11 one year from the date the qualified property is first placed in
12 service in this state, the amount of the credit allowed by this section
13 for that qualified property shall be recaptured by adding that credit
14 amount to the net tax of the qualified taxpayer for the taxable year
15 in which the qualified property is disposed of, removed, or put to
16 an ineligible use.

17 (h) In the case where the credit allowed by this section exceeds
18 the “net tax,” the excess may be carried over to reduce the “net
19 tax” in the following year, and succeeding years as follows:

20 (1) Except as provided in paragraph (2), for the seven succeeding
21 years if necessary, until the credit is exhausted.

22 (2) In the case of a small business, for the nine succeeding years,
23 if necessary, until the credit is exhausted.

24 SEC. 2. Section 23649 is added to the Revenue and Taxation
25 Code, to read:

26 23649. (a) For taxable years beginning on or after January 1,
27 2010, a qualified taxpayer shall be allowed a credit against the
28 “tax,” as defined in Section 23036, an amount equal to 6 percent
29 of the qualified cost of qualified property that is placed in service
30 in this state.

31 (b) For purposes of this section, “qualified cost” means any cost
32 that satisfies each of the following conditions:

33 (1) Is a cost paid or incurred by the qualified taxpayer for the
34 construction, reconstruction, or acquisition of qualified property
35 on or after January 1, 2010.

36 (2) Except as provided in paragraphs (3) and (4) of subdivision
37 (d), is an amount upon which the qualified taxpayer has paid,
38 directly or indirectly, as a separately stated contract amount or as
39 determined from the records of the qualified taxpayer, sales or use
40 tax under Part 1 (commencing with Section 6001).

1 (3) Is an amount properly chargeable to the capital account of
2 the qualified taxpayer.

3 (c) (1) For purposes of this section, “qualified taxpayer” means
4 any of the following:

5 (A) A taxpayer who is primarily engaged in green technology
6 that is either consistent with meeting the goals and objectives of
7 compliance with greenhouse gas emissions standards as set forth
8 in Division 25.5 (commencing with Section 38500) of the Health
9 and Safety Code or promotes the reduction of wasteful, inefficient,
10 unnecessary, or uneconomic uses of energy.

11 (B) A taxpayer who is primarily engaged in the production of
12 products, systems, or management of cost-effective water use
13 efficiency practices to curtail the waste of water and to ensure that
14 water use does not exceed reasonable needs.

15 (C) A taxpayer who is primarily engaged in the production of
16 products, systems, or management of the utilization of recycled
17 or reusable materials in the manufacturing process.

18 (D) A taxpayer who is primarily engaged in the production or
19 application of cogeneration technology, as defined in Section 25134
20 of the Public Resources Code.

21 (E) A taxpayer who is primarily engaged in the production of
22 products, systems, or management of the conservation of energy.

23 (F) A taxpayer who is primarily engaged in the production of
24 products, systems, management, or the use of solar, biomass, wind,
25 geothermal, hydroelectricity under 30 megawatts, or any other
26 source of energy, the efficient use of which will reduce the use of
27 fossil and nuclear fuels.

28 (2) In the case of any passthrough entity, the determination of
29 whether a taxpayer is a qualified taxpayer under this section shall
30 be made at the entity level and any credit under this section or
31 Section 17053.49 shall be allowed to the passthrough entity and
32 passed through to the partners or shareholders in accordance with
33 applicable provisions of Part 10 (commencing with Section 17001)
34 or Part 11 (commencing with Section 23001). For purposes of this
35 paragraph, the term “passthrough entity” means any partnership
36 or “S” corporation.

37 (3) The Franchise Tax Board may prescribe regulations to carry
38 out the purposes of this section, including any regulations necessary
39 to prevent the avoidance of the effect of this section through

1 splitups, shell corporations, partnerships, tiered ownership
2 structures, sale-leaseback transactions, or otherwise.

3 (d) For purposes of this section, “qualified property” means
4 property that is described as any of the following:

5 (1) Tangible personal property that is defined in Section 1245(a)
6 of the Internal Revenue Code for use by a qualified taxpayer that
7 is primarily used for any of the following:

8 (A) For the manufacturing, processing, refining, fabricating, or
9 recycling of property, beginning at the point at which any raw
10 materials are received by the qualified taxpayer and introduced
11 into the process and ending at the point at which the manufacturing,
12 processing, refining, fabricating, or recycling has altered tangible
13 personal property to its completed form, including packaging, if
14 required.

15 (B) In research and development.

16 (C) To maintain, repair, measure, or test any property described
17 in this paragraph.

18 (D) For pollution control that meets or exceeds standards
19 established by the state or by any local or regional governmental
20 agency within the state.

21 (E) For recycling.

22 (2) Computers and computer peripheral equipment, as defined
23 in Section 168(i)(2)(B) of the Internal Revenue Code, that is
24 tangible personal property as defined in Section 1245(a) of the
25 Internal Revenue Code for use by a qualified taxpayer, that is
26 primarily used to develop or manufacture cogeneration technology,
27 technology or products for the conservation of energy, or
28 technology or products for the use of solar, biomass, wind,
29 geothermal, hydroelectricity under 30 megawatts, or any other
30 source of energy, the efficient use of which will reduce the use of
31 fossil and nuclear fuels.

32 (3) The value of any capitalized labor costs that are directly
33 allocable to the construction or modification of property described
34 in paragraph (1) or (2).

35 (4) (A) Special purpose buildings and foundations that are
36 constructed or modified for use by the qualified taxpayer primarily
37 in a manufacturing, processing, refining, or fabricating process,
38 or as a research or storage facility primarily used in connection
39 with a manufacturing process.

1 (B) The value of any capitalized labor costs that are directly
2 allocable to the construction or modification of special purpose
3 buildings and foundations that are used primarily in the
4 manufacturing, processing, refining, or fabricating process, or as
5 a research or storage facility primarily used in connection with a
6 manufacturing process.

7 (C) (i) For purposes of this paragraph, “special purpose building
8 and foundation” means only a building and the foundation
9 immediately underlying the building that is specifically designed
10 and constructed or reconstructed for the installation, operation,
11 and use of specific machinery and equipment with a special
12 purpose, which machinery and equipment, after installation, will
13 become affixed to or a fixture of the real property, and the
14 construction or reconstruction of which is specifically designed
15 and used exclusively for the specified purposes as set forth in
16 subparagraph (A) (“qualified purpose”).

17 (ii) A building is specifically designed and constructed or
18 modified for a qualified purpose if it is not economical to design
19 and construct the building for the intended purpose and then use
20 the structure for a different purpose.

21 (iii) For purposes of clause (i) and clause (vi), a building is used
22 exclusively for a qualified purpose only if its use does not include
23 a use for which it was not specifically designed and constructed
24 or modified. Incidental use of a building for nonqualified purposes
25 does not preclude the building from being a special purpose
26 building. “Incidental use” means a use that is both related and
27 subordinate to the qualified purpose. It will be conclusively
28 presumed that a use is not subordinate if more than one-third of
29 the total usable volume of the building is devoted to a use that is
30 not a qualified purpose.

31 (iv) In the event an entire building does not qualify as a special
32 purpose building, a qualified taxpayer may establish that a portion
33 of a building, and the foundation immediately underlying the
34 portion, qualifies for treatment as a special purpose building and
35 foundation if the portion satisfies all of the definitional provisions
36 in this subparagraph.

37 (v) To the extent that a building is not a special purpose building
38 as defined above, but a portion of the building qualifies for
39 treatment as a special purpose building, then all equipment that
40 exclusively supports the qualified purpose occurring within that

portion and that would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building that qualifies for treatment as a special purpose building.

(vi) Buildings and foundations that do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process.

(5) Subject to the provisions in paragraph (2) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) or (2) of this subdivision.

(6) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(e) For purposes of this section:

(1) “Fabricating” means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) “Manufacturing” means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) “Primarily” means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(4) “Process” means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials are considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer’s manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer’s manufacturing, processing, refining, fabricating, or recycling activity is conducted, are not considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) “Processing” means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(6) “Refining” means the process of converting a natural resource to an intermediate or finished product.

(7) “Research and development” means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(8) “Small business” means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars (\$50,000,000).

(B) Has net assets of less than fifty million dollars (\$50,000,000).

(C) Has a total credit of less than one million dollars (\$1,000,000).

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, is not allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

1 (2) (A) For purposes of determining the qualified cost paid or
2 incurred by a lessee in any leasing transaction that is not treated
3 as a sale under Part 1 (commencing with Section 6001), the
4 following rules apply:

5 (i) Except as provided by subparagraph (C) of this paragraph,
6 paragraphs (1) and (3) of subdivision (b) do not apply.

7 (ii) Except as provided in subparagraph (B) and clause (iii), the
8 “qualified cost” upon which the lessee shall compute the credit
9 provided under this section shall be equal to the original cost to
10 the lessor (within the meaning of Section 24912) of the qualified
11 property that is the subject of the lease.

12 (iii) The requirement of paragraph (2) of subdivision (b) shall
13 be treated as satisfied only if the lessor has made a timely election
14 under either Section 6094.1 or subdivision (d) of Section 6244 and
15 has paid sales tax reimbursement or use tax measured by the
16 purchase price of the qualified property (within the meaning of
17 paragraph (5) of subdivision (g) of Section 6006). For purposes
18 of this subdivision, the amount of original cost to the lessor that
19 may be taken into account under clause (ii) may not exceed the
20 purchase price upon which sales tax reimbursement or use tax has
21 been paid under the preceding sentence.

22 (B) For purposes of applying subparagraph (A) only, the
23 following special rules shall apply:

24 (i) The original cost to the lessor of the qualified property shall
25 be reduced by the amount of any original cost of that property that
26 was taken into account by any predecessor lessee in computing
27 the credit allowable under this section.

28 (ii) Clause (i) does not apply in any case where the predecessor
29 lessee was required to recapture the credit provided under this
30 section pursuant to subdivision (g).

31 (iii) For purposes of this section only, in any case where a
32 successor lessor has acquired qualified property from a predecessor
33 lessor in a transaction not treated as a sale under Part 1
34 (commencing with Section 6001), the original cost to the successor
35 lessor of the qualified property shall be reduced by the amount of
36 the original cost of the qualified property that was taken into
37 account by any lessee of the predecessor lessor in computing the
38 credit allowable under this section.

1 (C) In determining the original cost of any qualified property
2 under this paragraph, only amounts paid or incurred by the lessor
3 on or after January 1, 2010, shall be taken into account.

4 (D) Notwithstanding subparagraph (A), in the case of any leasing
5 transaction for which the lessee is allowed the credit under this
6 section and thereafter the lessee (or any party related to the lessee
7 within the meaning of Section 267 or 318 of the Internal Revenue
8 Code) acquires the qualified property from the lessor (or any
9 successor lessor) within one year from the date the qualified
10 property is first used by the lessee under the terms of the lease, the
11 lessee's (or related party's) acquisition of the qualified property
12 from the lessor (or successor lessor) shall be treated as a disposition
13 by the lessee of the qualified property that was subject to the lease
14 under subdivision (g).

15 (3) For purposes of determining the qualified cost paid or
16 incurred by a lessee in any leasing transaction that is treated as a
17 sale under Part 1 (commencing with Section 6001), the following
18 rules apply:

19 (A) Paragraph (1) of subdivision (b) is applied by substituting
20 the term "purchase" for the term "construction, reconstruction, or
21 acquisition."

22 (B) Paragraph (3) of subdivision (b) applies.

23 (C) The requirement of paragraph (2) of subdivision (b) are
24 treated as satisfied at the time that either the lessor or the qualified
25 taxpayer pays sales or use tax under Part 1 (commencing with
26 Section 6001).

27 (4) (A) In the case of any leasing transaction described in
28 paragraph (2), the lessor shall provide a statement to the lessee
29 specifying the amount of the lessor's original cost of the qualified
30 property and the amount of that cost upon which a sales or use tax
31 was paid within 45 days after the close of the lessee's taxable year
32 in which the credit is allowable to the lessee under this section.

33 (B) The statement required under subparagraph (A) shall be
34 made available to the Franchise Tax Board upon request.

35 (g) No credit is allowed if the qualified property is removed
36 from the state, is disposed of to an unrelated party, or is used for
37 any purpose not qualifying for the credit provided in this section
38 in the same taxable year in which the qualified property is first
39 placed in service in this state. If any qualified property for which
40 a credit is allowed pursuant to this section is thereafter removed

1 from this state, disposed of to an unrelated party, or used for any
2 purpose not qualifying for the credit provided in this section within
3 one year from the date the qualified property is first placed in
4 service in this state, the amount of the credit allowed by this section
5 for that qualified property shall be recaptured by adding that credit
6 amount to the net tax of the qualified taxpayer for the taxable year
7 in which the qualified property is disposed of, removed, or put to
8 an ineligible use.

9 (h) In the case where the credit allowed by this section exceeds
10 the “tax,” the excess may be carried over to reduce the “tax” in
11 the following year, and succeeding years as follows:

12 (1) Except as provided in paragraph (2), for the seven succeeding
13 years if necessary, until the credit is exhausted.

14 (2) In the case of a small business, for the nine succeeding years,
15 if necessary, until the credit is exhausted.

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