

AMENDED IN SENATE MAY 3, 2010

**SENATE BILL**

**No. 1074**

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**Introduced by Senator Ashburn**

February 17, 2010

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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 amended, 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 provide that credits allowable for specified taxable years would be allowed only against the taxes imposed for taxable years beginning on or after January 1, 2014, as prescribed.*

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:

1 17053.49. (a) ~~For~~(1) *Except as provided in paragraph (2),*  
 2 *for taxable years beginning on or after January 1, 2010, a qualified*  
 3 *taxpayer shall be allowed a credit against the “net tax,” as defined*  
 4 *in Section 17039, an amount equal to 6 percent of the qualified*  
 5 *cost of qualified property that is placed in service in this state.*

6 (2) *Any credit allowable for the taxpayer’s taxable years*  
 7 *beginning on or after January 1, 2010, and before January 1,*  
 8 *2014, shall be allowed as a credit only against the “net tax” for*  
 9 *the taxpayer’s first taxable year beginning on or after January 1,*  
 10 *2014.*

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

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

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

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

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

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

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

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

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

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

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

8 (2) In the case of any passthrough entity, the determination of  
9 whether a taxpayer is a qualified taxpayer under this section shall  
10 be made at the entity level and any credit under this section or  
11 Section 23649 shall be allowed to the passthrough entity and passed  
12 through to the partners or shareholders in accordance with  
13 applicable provisions of Part 10 (commencing with Section 17001)  
14 or Part 11 (commencing with Section 23001). For purposes of this  
15 paragraph, the term “passthrough entity” means any partnership  
16 or “S” corporation.

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

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

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

27 (A) For the manufacturing, processing, refining, fabricating, or  
28 recycling of property, beginning at the point at which any raw  
29 materials are received by the qualified taxpayer and introduced  
30 into the process and ending at the point at which the manufacturing,  
31 processing, refining, fabricating, or recycling has altered tangible  
32 personal property to its completed form, including packaging, if  
33 required.

34 (B) In research and development.

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

37 (D) For pollution control that meets or exceeds standards  
38 established by the state or by any local or regional governmental  
39 agency within the state.

40 (E) For recycling.

1 (2) Computers and computer peripheral equipment, as defined  
2 in Section 168(i)(2)(B) of the Internal Revenue Code, that is  
3 tangible personal property as defined in Section 1245(a) of the  
4 Internal Revenue Code for use by a qualified taxpayer, that is  
5 primarily used to develop or manufacture cogeneration technology,  
6 technology or products for the conservation of energy, or  
7 technology or products for the use of solar, biomass, ~~wind~~ *wind*,  
8 geothermal, hydroelectricity under 30 megawatts, or any other  
9 source of energy, the efficient use of which will reduce the use of  
10 fossil and nuclear fuels.

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

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

19 (B) The value of any capitalized labor costs that are directly  
20 allocable to the construction or modification of special purpose  
21 buildings and foundations that are used primarily in the  
22 manufacturing, processing, refining, or fabricating process, or as  
23 a research or storage facility primarily used in connection with a  
24 manufacturing process.

25 (C) (i) For purposes of this paragraph, “special purpose building  
26 and foundation” means only a building and the foundation  
27 immediately underlying the building that is specifically designed  
28 and constructed or reconstructed for the installation, operation,  
29 and use of specific machinery and equipment with a special  
30 purpose, which machinery and equipment, after installation, will  
31 become affixed to or a fixture of the real property, and the  
32 construction or reconstruction of which is specifically designed  
33 and used exclusively for the specified purposes as set forth in  
34 subparagraph (A) (“qualified purpose”).

35 (ii) A building is specifically designed and constructed or  
36 modified for a qualified purpose if it is not economical to design  
37 and construct the building for the intended purpose and then use  
38 the structure for a different purpose.

39 (iii) For purposes of clause (i) and clause (vi), a building is used  
40 exclusively for a qualified purpose only if its use does not include

1 a use for which it was not specifically designed and constructed  
2 or modified. Incidental use of a building for nonqualified purposes  
3 does not preclude the building from being a special purpose  
4 building. “Incidental use” means a use that is both related and  
5 subordinate to the qualified purpose. It will be conclusively  
6 presumed that a use is not subordinate if more than one-third of  
7 the total usable volume of the building is devoted to a use that is  
8 not a qualified purpose.

9 (iv) In the event an entire building does not qualify as a special  
10 purpose building, a qualified taxpayer may establish that a portion  
11 of a building, and the foundation immediately underlying the  
12 portion, qualifies for treatment as a special purpose building and  
13 foundation if the portion satisfies all of the definitional provisions  
14 in this subparagraph.

15 (v) To the extent that a building is not a special purpose building  
16 as defined above, but a portion of the building qualifies for  
17 treatment as a special purpose building, then all equipment that  
18 exclusively supports the qualified purpose occurring within that  
19 portion and that would qualify as Internal Revenue Code Section  
20 1245 property if it were not a fixture or affixed to the building  
21 shall be treated as a cost of the portion of the building that qualifies  
22 for treatment as a special purpose building.

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

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

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

37 (A) Furniture.

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

40 (C) Inventory.

1 (D) Equipment used in the extraction process.

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

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

6 (e) For purposes of this section:

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

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

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

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

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

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

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

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

7 (A) Has gross receipts of less than fifty million dollars  
8 (\$50,000,000).

9 (B) Has net assets of less than fifty million dollars  
10 (\$50,000,000).

11 (C) Has a total credit of less than one million dollars  
12 (\$1,000,000).

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

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

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

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

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

31 (iii) The requirement of paragraph (2) of subdivision (b) shall  
32 be treated as satisfied only if the lessor has made a timely election  
33 under either Section 6094.1 or subdivision (d) of Section 6244 and  
34 has paid sales tax reimbursement or use tax measured by the  
35 purchase price of the qualified property (within the meaning of  
36 paragraph (5) of subdivision (g) of Section 6006). For purposes  
37 of this subdivision, the amount of original cost to the lessor that  
38 may be taken into account under clause (ii) may not exceed the  
39 purchase price upon which sales tax reimbursement or use tax has  
40 been paid under the preceding sentence.

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

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

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

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

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

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

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

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

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

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

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

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

13 (g) No credit is allowed if the qualified property is removed  
14 from the state, is disposed of to an unrelated party, or is used for  
15 any purpose not qualifying for the credit provided in this section  
16 in the same taxable year in which the qualified property is first  
17 placed in service in this state. If any qualified property for which  
18 a credit is allowed pursuant to this section is thereafter removed  
19 from this state, disposed of to an unrelated party, or used for any  
20 purpose not qualifying for the credit provided in this section within  
21 one year from the date the qualified property is first placed in  
22 service in this state, the amount of the credit allowed by this section  
23 for that qualified property shall be recaptured by adding that credit  
24 amount to the net tax of the qualified taxpayer for the taxable year  
25 in which the qualified property is disposed of, removed, or put to  
26 an ineligible use.

27 (h) In the case where the credit allowed by this section exceeds  
28 the "net tax," the excess may be carried over to reduce the "net  
29 tax" in the following year, and succeeding years as follows:

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

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

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

36 23649. (a) ~~For~~ *(1) Except as provided in paragraph (2), for*  
37 *taxable years beginning on or after January 1, 2010, a qualified*  
38 *taxpayer shall be allowed a credit against the "tax," as defined in*  
39 *Section 23036, an amount equal to 6 percent of the qualified cost*  
40 *of qualified property that is placed in service in this state.*

1 (2) Any credit allowable for the taxpayer's taxable years  
2 beginning on or after January 1, 2010, and before January 1,  
3 2014, shall be allowed as a credit only against the "tax" for the  
4 taxpayer's first taxable year beginning on or after January 1, 2014.

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

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

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

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

17 (c) (1) For purposes of this section, "qualified taxpayer" means  
18 any of the following:

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

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

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

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

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

37 (F) A taxpayer who is primarily engaged in the production of  
38 products, systems, management, or the use of solar, biomass, wind,  
39 geothermal, hydroelectricity under 30 megawatts, or any other

1 source of energy, the efficient use of which will reduce the use of  
2 fossil and nuclear fuels.

3 (2) In the case of any passthrough entity, the determination of  
4 whether a taxpayer is a qualified taxpayer under this section shall  
5 be made at the entity level and any credit under this section or  
6 Section 17053.49 shall be allowed to the passthrough entity and  
7 passed through to the partners or shareholders in accordance with  
8 applicable provisions of Part 10 (commencing with Section 17001)  
9 or Part 11 (commencing with Section 23001). For purposes of this  
10 paragraph, the term “passthrough entity” means any partnership  
11 or “S” corporation.

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

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

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

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

29 (B) In research and development.

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

32 (D) For pollution control that meets or exceeds standards  
33 established by the state or by any local or regional governmental  
34 agency within the state.

35 (E) For recycling.

36 (2) Computers and computer peripheral equipment, as defined  
37 in Section 168(i)(2)(B) of the Internal Revenue Code, that is  
38 tangible personal property as defined in Section 1245(a) of the  
39 Internal Revenue Code for use by a qualified taxpayer, that is  
40 primarily used to develop or manufacture cogeneration technology,

1 technology or products for the conservation of energy, or  
2 technology or products for the use of solar, biomass, ~~wind~~ *wind*,  
3 geothermal, hydroelectricity under 30 megawatts, or any other  
4 source of energy, the efficient use of which will reduce the use of  
5 fossil and nuclear fuels.

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

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

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

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

30 (ii) A building is specifically designed and constructed or  
31 modified for a qualified purpose if it is not economical to design  
32 and construct the building for the intended purpose and then use  
33 the structure for a different purpose.

34 (iii) For purposes of clause (i) and clause (vi), a building is used  
35 exclusively for a qualified purpose only if its use does not include  
36 a use for which it was not specifically designed and constructed  
37 or modified. Incidental use of a building for nonqualified purposes  
38 does not preclude the building from being a special purpose  
39 building. “Incidental use” means a use that is both related and  
40 subordinate to the qualified purpose. It will be conclusively

1 presumed that a use is not subordinate if more than one-third of  
2 the total usable volume of the building is devoted to a use that is  
3 not a qualified purpose.

4 (iv) In the event an entire building does not qualify as a special  
5 purpose building, a qualified taxpayer may establish that a portion  
6 of a building, and the foundation immediately underlying the  
7 portion, qualifies for treatment as a special purpose building and  
8 foundation if the portion satisfies all of the definitional provisions  
9 in this subparagraph.

10 (v) To the extent that a building is not a special purpose building  
11 as defined above, but a portion of the building qualifies for  
12 treatment as a special purpose building, then all equipment that  
13 exclusively supports the qualified purpose occurring within that  
14 portion and that would qualify as Internal Revenue Code Section  
15 1245 property if it were not a fixture or affixed to the building  
16 shall be treated as a cost of the portion of the building that qualifies  
17 for treatment as a special purpose building.

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

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

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

32 (A) Furniture.

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

35 (C) Inventory.

36 (D) Equipment used in the extraction process.

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

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

1 (e) For purposes of this section:

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

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

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

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

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

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

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

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

1 (A) Has gross receipts of less than fifty million dollars  
2 (\$50,000,000).

3 (B) Has net assets of less than fifty million dollars  
4 (\$50,000,000).

5 (C) Has a total credit of less than one million dollars  
6 (\$1,000,000).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (4) (A) In the case of any leasing transaction described in  
39 paragraph (2), the lessor shall provide a statement to the lessee  
40 specifying the amount of the lessor's original cost of the qualified

1 property and the amount of that cost upon which a sales or use tax  
2 was paid within 45 days after the close of the lessee's taxable year  
3 in which the credit is allowable to the lessee under this section.

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

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

20 (h) In the case where the credit allowed by this section exceeds  
21 the "tax," the excess may be carried over to reduce the "tax" in  
22 the following year, and succeeding years as follows:

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

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

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