

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 1239

Introduced by Senator Wyland

February 19, 2010

An act to amend Sections 17052.12, 17250, 17276, 17276.10, 23609, 24349, 24416, and 24416.10 of, to add Sections 6377.1, 17053.76, ~~and 23622.9 18154, 23622.9, and 24996~~ to, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1239, as amended, Wyland. Income and corporation ~~tax credits: research and development: manufacturer's investment: qualified employees: taxes: sales and use taxes.~~

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

The bill would exempt from those taxes, on or after January 1, 2011, the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased by a qualified person for use in the manufacturing process, as specified, or to be used primarily in qualified research, as specified. This bill would also exempt the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased for use by a contractor for specified purposes.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws. Both laws, in specified conformity to federal income tax laws, allow a credit 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 *over the base amount*. This bill would also provide complete conformity to the alternative incremental credit provided under those federal income tax laws.

The Personal Income Tax Law and the Corporation Tax Law authorize a credit for taxable years beginning on or after January 1, 2009, and before January 1, 2011, in an amount equal to \$3,000, prorated as provided, for each full-time employee hired during the taxable year by an employer that employed a specified number of employees. Those laws contain a specified cut-off date for the credits and require those sections to be repealed as of a specified date.

This bill would delete the requirement related to the number of employees employed by the employer and the specified cut-off date and repeal date. This bill would, for taxable years beginning on or after January 1, 2010, also allow a credit under both laws in an amount equal to specified percentages of wages paid by a ~~qualified employer taxpayer~~ to a qualified employee.

The Personal Income Tax Law and the Corporation Tax Law authorize a taxpayer to depreciate property, determined by an applicable depreciation method, an applicable recovery period, and an applicable convention.

This bill would reduce the recovery period for ~~the depreciating property to one-half of the amount period~~ authorized by existing law.

The Personal Income Tax Law and the Corporation Tax Law provide that a net operating loss attributable to a taxable year beginning on or

after January 1, 2008, shall be a net operating loss carryback to each of the 2 taxable years preceding the taxable year of loss. Those laws allow a net operating loss carryback in an amount that shall not exceed specified percentages of the net operating loss.

This bill would, commencing in 2015, extend the net operating loss carryback to each of the 5 taxable years preceding the taxable year of the loss and would increase the percentage of net operating loss carryback to 100% of the net operating loss for taxable years beginning on or after January 1, ~~2011~~ 2012.

The Personal Income Tax Law and the Corporation Tax Law provide that gain or loss upon the disposition of a capital asset is determined by reference to the specified adjusted basis of that asset.

This bill would provide under both laws that the gross income of a taxpayer does not include any gain from the sale or exchange of any capital asset.

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 6377.1 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6377.1. (a) (1) On and after January 1, 2011, there are
- 4 exempted from the taxes imposed by this part the gross receipts
- 5 from the sale of, and the storage, use, or other consumption in this
- 6 state of, any of the following:
- 7 (A) Tangible personal property purchased for use by a qualified
- 8 person to be used primarily in any stage of the manufacturing,
- 9 processing, refining, fabricating, or recycling of property,
- 10 beginning at the point any raw materials are received by the
- 11 qualified person and introduced into the process and ending at the
- 12 point at which the manufacturing, processing, refining, fabricating,
- 13 or recycling has altered property to its completed form, including
- 14 packaging, if required.
- 15 (B) Tangible personal property purchased for use by a contractor
- 16 purchasing that property either as an agent of a qualified person
- 17 or for the contractor's own account and subsequent resale to a
- 18 qualified person for use in the performance of a construction
- 19 contract for the qualified person who will use the tangible personal

1 property as an integral part of the manufacturing, processing,
2 refining, fabricating, or recycling process, or as a storage facility
3 for use in connection with the manufacturing process.

4 (C) Tangible personal property purchased for use by a qualified
5 person to be used primarily in research and development.

6 (2) This exemption shall not apply to any tangible personal
7 property that is used primarily in administration, general
8 management, or marketing.

9 (b) For purposes of this section:

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

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

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

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

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

1 (6) “Qualified person” means either of the following:

2 (A) A person who is engaged in those lines of business described
3 in Codes 3111 to 3399, inclusive, of the North American Industry
4 Classification System (NAICS) published by the United States
5 Office of Management and Budget (OMB), 2007 edition.

6 (B) An affiliate of a person qualified pursuant to subparagraph
7 (A) shall also be considered a qualified person as long as the
8 affiliate is included as a member of that person’s unitary group for
9 which a combined report is required to be filed under Article-I 1
10 (commencing with Section 25101) of Chapter 17.

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

13 (8) “Tangible personal property” includes, but is not limited to,
14 all of the following:

15 (A) Machinery and equipment, including component parts and
16 contrivances such as belts, shafts, moving parts, and operating
17 structures.

18 (B) All equipment or devices used or required to operate,
19 control, regulate, or maintain the machinery, including, without
20 limitation, computers, data processing equipment, and computer
21 software, together with all repair and replacement parts with a
22 useful life of one or more years therefor, whether purchased
23 separately or in conjunction with a complete machine and
24 regardless of whether the machine or component parts are
25 assembled by the taxpayer or another party.

26 (C) Property used in pollution control that meets standards
27 established by this state or any local or regional governmental
28 agency within this state.

29 (D) Special purpose buildings and foundations used as an
30 integral part of the manufacturing, processing, refining, or
31 fabricating process, or that constitute a research or storage facility
32 used during the manufacturing process. Buildings used solely for
33 warehousing purposes after completion of the manufacturing
34 process are not included.

35 (E) Fuels used or consumed in the manufacturing process.

36 (9) “Tangible personal property” shall not include any of the
37 following:

38 (A) Consumables with a normal useful life of less than one year,
39 except as provided in subparagraph (E) of paragraph (8).

1 (B) Furniture, inventory, and equipment used in the extraction
2 process, or equipment used to store finished products that have
3 completed the manufacturing process.

4 (c) No exemption shall be allowed under this section unless the
5 purchaser furnishes the retailer with an exemption certificate,
6 completed in accordance with any instructions or regulations as
7 the board may prescribe, and the retailer subsequently furnishes
8 the board with a copy of the exemption certificate. The exemption
9 certificate shall contain the sales price of the machinery or
10 equipment, the sale of, or the storage, use, or other consumption
11 of which is exempt pursuant to subdivision (a).

12 (d) Notwithstanding any provision of the Bradley-Burns
13 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
14 with Section 7200)) or the Transactions and Use Tax Law (Part
15 1.6 (commencing with Section 7251)), the exemption established
16 by this section shall not apply with respect to any tax levied by a
17 county, city, or district pursuant to, or in accordance with, either
18 of those laws.

19 (e) (1) Notwithstanding subdivision (a), the exemption provided
20 by this section shall not apply to any sale or use of property which,
21 within one year from the date of purchase, is removed from
22 California, converted from an exempt use under subdivision (a)
23 to some other use not qualifying for the exemption, or used in a
24 manner not qualifying for the exemption.

25 (2) Notwithstanding subdivision (a), the exemption established
26 by this section shall not apply with respect to any tax levied
27 pursuant to Sections 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant
28 to Section 35 of Article XIII of the California Constitution.

29 (f) If a purchaser certifies in writing to the seller that the property
30 purchased without payment of the tax will be used in a manner
31 entitling the seller to regard the gross receipts from the sale as
32 exempt from the sales tax, and within one year from the date of
33 purchase, the purchaser (1) removes that property outside
34 California, (2) converts that property for use in a manner not
35 qualifying for the exemption, or (3) uses that property in a manner
36 not qualifying for the exemption, the purchaser shall be liable for
37 payment of sales tax, with applicable interest, as if the purchaser
38 were a retailer making a retail sale of the property at the time the
39 property is so removed, converted, or used, and the sales price of

1 the property to the purchaser shall be deemed the gross receipts
2 from that retail sale.

3 (g) This section applies to leases of tangible personal property
4 classified as “continuing sales” and “continuing purchases” in
5 accordance with Sections 6006.1 and 6010.1. The exemption
6 established by this section shall apply to the rentals payable
7 pursuant to such a lease, provided the lessee is a qualified person
8 and the property is used in an activity described in subdivision (a).
9 Rentals that meet the foregoing requirements are eligible for the
10 exemption for a period of six years from the date of commencement
11 of the lease. At the close of the six-year period from the date of
12 commencement of the lease, lease receipts are subject to tax
13 without exemption.

14 SEC. 2. Section 17052.12 of the Revenue and Taxation Code
15 is amended to read:

16 17052.12. For each taxable year beginning on or after January
17 1, 1987, there shall be allowed as a credit against the “net tax” (as
18 defined by Section 17039) for the taxable year an amount
19 determined in accordance with Section 41 of the Internal Revenue
20 Code, except as follows:

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

24 (b) (1) For each taxable year beginning on or after January 1,
25 1997, and before January 1, 1999, the reference to “20 percent”
26 in Section 41(a)(1) of the Internal Revenue Code is modified to
27 read “11 percent.”

28 (2) For each taxable year beginning on or after January 1, 1999,
29 and before January 1, 2000, the reference to “20 percent” in Section
30 41(a)(1) of the Internal Revenue Code is modified to read “12
31 percent.”

32 (3) For each taxable year beginning on or after January 1, 2000,
33 and before January 1, 2010, the reference to “20 percent” in Section
34 41(a)(1) of the Internal Revenue Code is modified to read “15
35 percent.”

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

39 (c) Section 41(a)(2) of the Internal Revenue Code, relating to
40 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 tangible personal property that is eligible for the exemption from sales or use tax under Section 6378.

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

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

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

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

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

(2) For each taxable year beginning on or after January 1, 2010, Section ~~41(c)(4)~~ 41(c)(4)(A) of the Internal Revenue Code, relating to the election of the alternative incremental credit, shall apply.

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

(4) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to

1 customers in the ordinary course of the taxpayer's trade or business
2 that is delivered or shipped to a purchaser within this state,
3 regardless of f.o.b. point or any other condition of the sale.

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

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

9 (1) The last sentence shall not apply.

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

17 SEC. 3. Section 17053.76 is added to the Revenue and Taxation
18 Code, to read:

19 17053.76. (a) For each taxable year beginning on or after
20 January 1, 2010, there shall be allowed a credit against the "net
21 tax," as defined in Section 17039, an amount equal to the sum of
22 the following percentages of wages paid or incurred by the taxpayer
23 during the taxable year to each qualified employee of the taxpayer:

24 (1) Twenty-five percent for each qualified employee employed
25 by the qualified taxpayer for at least 120 hours, but less than 400
26 hours, during the taxable year.

27 (2) Forty percent for each qualified employee employed by the
28 qualified taxpayer for at least 400 hours during the taxable year.

29 (b) The credit under subdivision (a) shall be allowed only with
30 respect to the first six thousand dollars (\$6,000) of wages paid or
31 incurred during the taxable year to each qualified employee.

32 (c) For purposes of this section, all of the following definitions
33 shall apply:

34 (1) "Qualified employee" means an individual who is any of
35 the following, as documented by the Employment Development
36 Department:

37 (A) A recipient of CalWORKs benefits.

38 (B) A parolee.

39 (C) A veteran, as defined in Section 980 of the Military and
40 Veterans Code.

1 (D) Eligible for receipt of unemployment insurance benefits or
2 currently receiving unemployment insurance benefits.

3 (E) A person on probation.

4 (2) “Qualified taxpayer” means a taxpayer that is a person or
5 entity engaged in a trade or business within California.

6 (d) For purposes of this section, the qualified taxpayer shall do
7 both of the following:

8 (1) Obtain a certificate from the Employment Development
9 Department certifying that a qualified employee is employed by
10 the qualified taxpayer.

11 (2) Retain a copy of the certification and provide it upon request
12 to the Franchise Tax Board.

13 (e) (1) For purposes of this section:

14 (A) All employees of trades or businesses, which are not
15 incorporated, that are under common control shall be treated as
16 employed by a single qualified taxpayer.

17 (B) The credit, if any, allowable by this section with respect to
18 each trade or business shall be determined by reference to its
19 proportionate share of the expense of the qualified wages giving
20 rise to the credit, and shall be allocated in that manner.

21 (C) Principles that apply in the case of controlled groups of
22 corporations, as specified in subdivision (e) of Section 23622.9,
23 shall apply with respect to determining employment.

24 (2) If an employer acquires the major portion of a trade or
25 business of another employer (hereafter in this paragraph referred
26 to as the “predecessor”) or the major portion of a separate unit of
27 a trade or business of a predecessor, then, for purposes of applying
28 this section for any calendar year ending after that acquisition, the
29 employment relationship between a qualified employee and an
30 employer shall not be treated as terminated if the employee
31 continues to be employed in that trade or business.

32 (f) No credit shall be allowed under this section for any wages
33 for which any other credit or deduction has been claimed under
34 this part.

35 (g) In the case where the credit otherwise allowed under this
36 section exceeds the “net tax” for the taxable year, that portion of
37 the credit that exceeds the “net tax” may be carried over and added
38 to the credit, if any, in succeeding taxable years, until the credit is
39 exhausted. The credit shall be applied first to the earliest taxable
40 years possible.

1 SEC. 4. Section 17053.80 of the Revenue and Taxation Code,
2 as added by Section 3 of Chapter 10 of the Third Extraordinary
3 Session of the Statutes of 2009, is repealed.

4 SEC. 5. ~~Section 17053.80 of the Revenue and Taxation Code,~~
5 ~~as added by Section 3 of Chapter 17 of the Third Extraordinary~~
6 ~~Session of the Statutes of 2009, is amended to read:~~

7 ~~17053.80.— (a) For each taxable year beginning on or after~~
8 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
9 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
10 ~~for each net increase in qualified full-time employees, as specified~~
11 ~~in subdivision (c), hired during the taxable year by a taxpayer.~~

12 ~~(b) For purposes of this section:~~

13 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
14 ~~to divorce, or any other transfer, whether or not for consideration.~~

15 ~~(2) “Qualified full-time employee” means:~~

16 ~~(A) A qualified employee who was paid qualified wages by the~~
17 ~~taxpayer for services of not less than an average of 35 hours per~~
18 ~~week.~~

19 ~~(B) A qualified employee who was a salaried employee and~~
20 ~~was paid compensation during the taxable year for full-time~~
21 ~~employment, within the meaning of Section 515 of the Labor Code,~~
22 ~~by the taxpayer.~~

23 ~~(3) A “qualified employee” shall not include any of the~~
24 ~~following:~~

25 ~~(A) An employee certified as a qualified employee in an~~
26 ~~enterprise zone designated in accordance with Chapter 12.8~~
27 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
28 ~~Government Code.~~

29 ~~(B) An employee certified as a qualified disadvantaged~~
30 ~~individual in a manufacturing enhancement area designated in~~
31 ~~accordance with Section 7073.8 of the Government Code.~~

32 ~~(C) An employee certified as a qualified employee in a targeted~~
33 ~~tax area designated in accordance with Section 7097 of the~~
34 ~~Government Code.~~

35 ~~(D) An employee certified as a qualified disadvantaged~~
36 ~~individual or a qualified displaced employee in a local agency~~
37 ~~military base recovery area (LAMBRA) designated in accordance~~
38 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
39 ~~7 of Title 1 of the Government Code.~~

1 ~~(E) An employee whose wages are included in calculating any~~
2 ~~other credit allowed under this part.~~

3 ~~(4) “Qualified wages” means wages subject to Division 6~~
4 ~~(commencing with Section 13000) of the Unemployment Insurance~~
5 ~~Code.~~

6 ~~(5) “Annual full-time equivalent” means either of the following:~~

7 ~~(A) In the case of a full-time employee paid hourly qualified~~
8 ~~wages, “annual full-time equivalent” means the total number of~~
9 ~~hours worked for the taxpayer by the employee (not to exceed~~
10 ~~2,000 hours per employee) divided by 2,000.~~

11 ~~(B) In the case of a salaried full-time employee, “annual~~
12 ~~full-time equivalent” means the total number of weeks worked for~~
13 ~~the taxpayer by the employee divided by 52.~~

14 ~~(c) The net increase in qualified full-time employees of a~~
15 ~~qualified employer shall be determined as provided by this~~
16 ~~subdivision:~~

17 ~~(1) (A) The net increase in qualified full-time employees shall~~
18 ~~be determined on an annual full-time equivalent basis by~~
19 ~~subtracting from the amount determined in subparagraph (C) the~~
20 ~~amount determined in subparagraph (B):~~

21 ~~(B) The total number of qualified full-time employees employed~~
22 ~~in the preceding taxable year by the taxpayer and by any trade or~~
23 ~~business acquired by the taxpayer during the preceding taxable~~
24 ~~year.~~

25 ~~(C) The total number of full-time employees employed in the~~
26 ~~current taxable year by the taxpayer and by any trade or business~~
27 ~~acquired during the current taxable year.~~

28 ~~(2) For taxpayers who first commence doing business in this~~
29 ~~state during the taxable year, the number of full-time employees~~
30 ~~for the immediately preceding prior taxable year shall be zero.~~

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

35 ~~(e) Any deduction otherwise allowed under this part for qualified~~
36 ~~wages shall not be reduced by the amount of the credit allowed~~
37 ~~under this section.~~

38 ~~(f) For purposes of this section:~~

1 ~~(1) All employees of the trades or businesses that are treated as~~
2 ~~related under either Section 267, 318, or 707 of the Internal~~
3 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

4 ~~(2) In determining whether the taxpayer has first commenced~~
5 ~~doing business in this state during the taxable year, the provisions~~
6 ~~of subdivision (f) of Section 17276, without application of~~
7 ~~paragraph (7) of that subdivision, shall apply.~~

8 ~~(g) (1) The Franchise Tax Board may prescribe rules, guidelines~~
9 ~~or procedures necessary or appropriate to carry out the purposes~~
10 ~~of this section, including any guidelines necessary to avoid the~~
11 ~~application of paragraph (2) of subdivision (f) through splitups,~~
12 ~~shell corporations, partnerships, tiered ownership structures, or~~
13 ~~otherwise.~~

14 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
15 ~~Division 3 of Title 2 of the Government Code does not apply to~~
16 ~~any standard, criterion, procedure, determination, rule, notice, or~~
17 ~~guideline established or issued by the Franchise Tax Board~~
18 ~~pursuant to this section.~~

19 ~~(h) No credit shall be allowed under this section for any wages~~
20 ~~for which any other credit or deduction has been claimed under~~
21 ~~this part.~~

22 ~~(i) The amendments made to this section by the act adding this~~
23 ~~subdivision shall apply only to taxable years beginning on or after~~
24 ~~January 1, 2010.~~

25 *SEC. 5. Section 17053.80 of the Revenue and Taxation Code,*
26 *as added by Section 3 of Chapter 17 of the Third Extraordinary*
27 *Session of the Statutes of 2009, is amended to read:*

28 17053.80. (a) For each taxable year beginning on or after
29 January 1, 2009, there shall be allowed as a credit against the “net
30 tax,” as defined in Section 17039, three thousand dollars (\$3,000)
31 for each net increase in qualified full-time employees, as specified
32 in subdivision (c), hired during the taxable year by a ~~qualified~~
33 ~~employer taxpayer.~~

34 (b) For purposes of this section:

35 (1) “Acquired” includes any gift, inheritance, transfer incident
36 to divorce, or any other transfer, whether or not for consideration.

37 (2) “Qualified full-time employee” means:

38 (A) A qualified employee who was paid qualified wages by the
39 ~~qualified employer taxpayer~~ for services of not less than an average
40 of 35 hours per week.

1 (B) A qualified employee who was a salaried employee and
2 was paid compensation during the taxable year for full-time
3 employment, within the meaning of Section 515 of the Labor Code,
4 by the ~~qualified employer taxpayer~~.

5 (3) A “qualified employee” shall not include any of the
6 following:

7 (A) An employee certified as a qualified employee in an
8 enterprise zone designated in accordance with Chapter 12.8
9 (commencing with Section 7070) of Division 7 of Title 1 of the
10 Government Code.

11 (B) An employee certified as a qualified disadvantaged
12 individual in a manufacturing enhancement area designated in
13 accordance with Section 7073.8 of the Government Code.

14 (C) An employee certified as a qualified employee in a targeted
15 tax area designated in accordance with Section 7097 of the
16 Government Code.

17 (D) An employee certified as a qualified disadvantaged
18 individual or a qualified displaced employee in a local agency
19 military base recovery area (LAMBRA) designated in accordance
20 with Chapter 12.97 (commencing with Section 7105) of Division
21 7 of Title 1 of the Government Code.

22 (E) An employee whose wages are included in calculating any
23 other credit allowed under this part.

24 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
25 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
26 ~~employees.~~

27 ~~(5)~~

28 (4) “Qualified wages” means wages subject to Division 6
29 (commencing with Section 13000) of the Unemployment Insurance
30 Code.

31 ~~(6)~~

32 (5) “Annual full-time equivalent” means either of the following:

33 (A) In the case of a full-time employee paid hourly qualified
34 wages, “annual full-time equivalent” means the total number of
35 hours worked for the taxpayer by the employee (not to exceed
36 2,000 hours per employee) divided by 2,000.

37 (B) In the case of a salaried full-time employee, “annual
38 full-time equivalent” means the total number of weeks worked for
39 the taxpayer by the employee divided by 52.

(c) The net increase in qualified full-time employees of a ~~qualified employer~~ *taxpayer* shall be determined as provided by this subdivision:

(1) (A) The net increase in qualified full-time employees shall be determined on an annual full-time equivalent basis by subtracting from the amount determined in subparagraph (C) the amount determined in subparagraph (B).

(B) The total number of qualified full-time employees employed in the preceding taxable year by the taxpayer and by any trade or business acquired by the taxpayer during the ~~current~~ *preceding* taxable year.

(C) The total number of full-time employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

(2) For taxpayers who first commence doing business in this state during the taxable year, the number of full-time employees for the immediately preceding prior taxable year shall be zero.

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

(e) Any deduction otherwise allowed under this part for qualified wages shall not be reduced by the amount of the credit allowed under this section.

(f) For purposes of this section:

(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.

~~(g) (1) (A) Credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cut-off date established by the Franchise Tax Board.~~

~~(B) For purposes of this paragraph, the cut-off date shall be the last day of the calendar quarter within which the Franchise Tax Board estimates it will have received timely filed original returns claiming credits under this section and Section 23623 that~~

1 ~~cumulatively total four hundred million dollars (\$400,000,000)~~
2 ~~for all taxable years.~~

3 ~~(2) The date a return is received shall be determined by the~~
4 ~~Franchise Tax Board.~~

5 ~~(3) (A) The determinations of the Franchise Tax Board with~~
6 ~~respect to the cut-off date, the date a return is received, and whether~~
7 ~~a return has been timely filed for purposes of this subdivision may~~
8 ~~not be reviewed in any administrative or judicial proceeding~~

9 ~~(B) Any disallowance of a credit claimed due to a determination~~
10 ~~under this subdivision, including the application of the limitation~~
11 ~~specified in paragraph (1), shall be treated as a mathematical error~~
12 ~~appearing on the return. Any amount of tax resulting from such~~
13 ~~disallowance may be assessed by the Franchise Tax Board in the~~
14 ~~same manner as provided by Section 19051.~~

15 ~~(4) The Franchise Tax Board shall periodically provide notice~~
16 ~~on its Web site with respect to the amount of credit under this~~
17 ~~section and Section 23623 claimed on timely filed original returns~~
18 ~~received by the Franchise Tax Board.~~

19 ~~(h)~~

20 ~~(g) (1) The Franchise Tax Board may prescribe rules, guidelines~~
21 ~~or procedures necessary or appropriate to carry out the purposes~~
22 ~~of this section, including any guidelines regarding the limitation~~
23 ~~on total credits allowable under this section and Section 23623~~
24 ~~and guidelines necessary to avoid the application of paragraph (2)~~
25 ~~of subdivision (f) through split-ups, shell corporations, partnerships,~~
26 ~~tiered ownership structures, or otherwise.~~

27 ~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
28 ~~Division 3 of Title 2 of the Government Code does not apply to~~
29 ~~any standard, criterion, procedure, determination, rule, notice, or~~
30 ~~guideline established or issued by the Franchise Tax Board~~
31 ~~pursuant to this section.~~

32 ~~(i) This section shall remain in effect only until December 1 of~~
33 ~~the calendar year after the year of the cut-off date, and as of that~~
34 ~~December 1 is repealed.~~

35 ~~(h) No credit shall be allowed under this section for any wages~~
36 ~~for which any other credit or deduction has been claimed under~~
37 ~~this part.~~

38 ~~(i) The amendments made to this section by the act adding this~~
39 ~~subdivision shall apply only to taxable years beginning on or after~~
40 ~~January 1, 2010.~~

1 SEC. 6. Section 17250 of the Revenue and Taxation Code is
2 amended to read:

3 17250. (a) Section 168 of the Internal Revenue Code is
4 modified as follows:

5 (1) Any reference to “tax imposed by this chapter” in Section
6 168 of the Internal Revenue Code means “net tax,” as defined in
7 Section 17039.

8 (2) (A) Section 168(e)(3) is modified to provide that any
9 grapevine, replaced in a vineyard in California in any taxable year
10 beginning on or after January 1, 1992, as a direct result of a
11 phylloxera infestation in that vineyard, or replaced in a vineyard
12 in California in any taxable year beginning on or after January 1,
13 1997, as a direct result of Pierce’s disease in that vineyard, shall
14 be “five-year property,” rather than “10-year property.”

15 (B) Section 168(g)(3) of the Internal Revenue Code is modified
16 to provide that any grapevine, replaced in a vineyard in California
17 in any taxable year beginning on or after January 1, 1992, as a
18 direct result of a phylloxera infestation in that vineyard, or replaced
19 in a vineyard in California in any taxable year beginning on or
20 after January 1, 1997, as a direct result of Pierce’s disease in that
21 vineyard, shall have a class life of 10 years.

22 (C) Every taxpayer claiming a depreciation deduction with
23 respect to grapevines as described in this paragraph shall obtain a
24 written certification from an independent state-certified integrated
25 pest management adviser, or a state agricultural commissioner or
26 adviser, that specifies that the replanting was necessary to restore
27 a vineyard infested with phylloxera or Pierce’s disease. The
28 taxpayer shall retain the certification for future audit purposes.

29 (3) Section 168(j) of the Internal Revenue Code, relating to
30 property on Indian reservations, shall not apply.

31 (4) Section 168(k) of the Internal Revenue Code, relating to
32 special allowance for certain property acquired after September
33 10, 2001, and before January 1, 2005, shall not apply.

34 (5) Sections 168(b)(3)(G) and 168(b)(3)(H) of the Internal
35 Revenue Code, relating to property to which the straight line
36 method applies, shall not apply.

37 (6) Sections 168(e)(3)(E)(iv) and 168(e)(3)(E)(v) of the Internal
38 Revenue Code, relating to 15-year property, shall not apply.

(7) Sections 168(e)(6) and 168(e)(7) of the Internal Revenue Code, relating to qualified leasehold improvement property and to qualified restaurant property, respectively, shall not apply.

(b) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, is modified as follows:

(1) The deduction allowed by Section 169 of the Internal Revenue Code shall be allowed only with respect to facilities located in this state.

(2) The “state certifying authority,” as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(c) Notwithstanding any other law to the contrary, for property placed in service on and after January 1, 2010, the applicable recovery period shall be one-half of the applicable recovery period set forth in the Internal Revenue Code provision 167 or 168 or one-half of the recovery period described in this code.

(d) Notwithstanding any other law to the contrary, for property placed in service before January 1, 2010, the remaining applicable recovery period shall be one-half of the applicable recovery period set forth in the Internal Revenue Code provision 167 or 168 or one-half of the recovery period described in this code.

SEC. 7. Section 17276 of the Revenue and Taxation Code is amended to read:

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

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

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

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

1 (A) Fifty percent for any taxable year beginning before January
2 1, 2000.

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

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

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

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

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

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

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

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

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

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

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

1 (B) If the net operating loss is greater than the net loss from the
2 eligible small business, the net operating loss shall be carried over
3 as follows:

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

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

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

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

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

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

34 (c) Section 172(b)(1) of the Internal Revenue Code, relating to
35 net operating loss carrybacks and carryovers and the years to which
36 the loss may be carried, is modified as follows:

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

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

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

~~(B)~~

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, ~~2011~~ 2012, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

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

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

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

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

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

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

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

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

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

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

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

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

17 (e) For purposes of this section:

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

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

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

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

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

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

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

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

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

15 (2) In any case where a taxpayer (or any related person) is
16 engaged in one or more trade or business activities in this state, or
17 has been engaged in one or more trade or business activities in this
18 state within the preceding 36 months (“prior trade or business
19 activity”), and thereafter commences an additional trade or business
20 activity in this state, the additional trade or business activity shall
21 only be treated as a new business if the additional trade or business
22 activity is classified under a different division of the ~~Standard~~
23 ~~Industrial Classification (SIC) Manual~~ *North American Industry*
24 *Classification System (NAICS)* published by the United States
25 Office of Management and Budget, ~~1987~~ 2007 edition, than are
26 any of the taxpayer’s (or any related person’s) current or prior
27 trade or business activities.

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

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

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

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

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

8 (7) (A) For taxable years beginning on or after January 1, 1997,
9 the term “new business” shall include any taxpayer that is engaged
10 in biopharmaceutical activities or other biotechnology activities
11 that are described in Codes 2833 to 2836, inclusive, of the Standard
12 Industrial Classification (SIC) Manual 325411 to 325414, inclusive,
13 of the North American Industry Classification System (NAICS)
14 published by the United States Office of Management and Budget,
15 1987 2007 edition, and as further amended, and that has not
16 received regulatory approval for any product from the United States
17 Food and Drug Administration.

18 (B) For purposes of this paragraph:

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

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

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

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

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

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

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

14 SEC. 8. Section 17276.10 of the Revenue and Taxation Code
15 is amended to read:

16 17276.10. Notwithstanding Section 17276.1, 17276.2, 17276.4,
17 17276.5, 17276.6, or 17276.7 to the contrary, a net operating loss
18 attributable to a taxable year beginning on or after January 1, 2008,
19 shall be a net operating carryover to each of the 20 taxable years
20 following the year of the loss, and a net operating loss attributable
21 to a taxable year beginning on or after January 1, 2015, shall also
22 be a net operating loss carryback to each of the five taxable years
23 preceding the taxable year of loss.

24 SEC. 9. *Section 18154 is added to the Revenue and Taxation*
25 *Code, to read:*

26 18154. *Notwithstanding any other law, gross income shall not*
27 *include any gain from the sale or exchange of any capital asset.*
28 *For purposes of this section, "capital asset" means a capital asset*
29 *as defined by Section 1221 of the Internal Revenue Code.*

30 ~~SEC. 9.~~

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

33 23609. For each taxable year beginning on or after January 1,
34 1987, there shall be allowed as a credit against the "tax" (as defined
35 by Section 23036) an amount determined in accordance with
36 Section 41 of the Internal Revenue Code, except as follows:

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

39 (1) The reference to "20 percent" in Section 41(a)(1) of the
40 Internal Revenue Code is modified to read "8 percent."

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

3 (b) (1) For each taxable year beginning on or after January 1,
4 1997, and before January 1, 1999, both of the following
5 modifications shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

36 (d) The provisions of Section 41(e)(7)(A) of the Internal
37 Revenue Code, shall be modified so that “basic research,” for
38 purposes of this section, includes any basic or applied research
39 including scientific inquiry or original investigation for the
40 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 Codes 325411 to 325414, inclusive, or any research activities described in Codes 322291, 332994, 334510, 334514, 334516, to 334519, inclusive, 339111 to 339114, inclusive, or 339999, of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 1987 2007 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 institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

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

(2) For purposes of this subdivision:

(A) “Biopharmaceutical research activities” means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed

1 to pharmaceutical activities that make use of chemical compounds
2 to produce commercial products.

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

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

14 (g) For each taxable year beginning on or after January 1, 1998,
15 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
16 Internal Revenue Code, relating to contract research expenses, is
17 modified to read “this part or Part 10 (commencing with Section
18 17001).”

19 (h) (1) For each taxable year beginning on or after January 1,
20 2000, and before January 1, 2010:

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

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

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

30 (2) For each taxable year beginning on or after January 1, 2010,
31 ~~Section 41(c)(4)~~ 41(c)(4)(A) of the Internal Revenue Code, relating
32 to the election of the alternative incremental credit, shall apply.

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

39 (4) Section 41(c)(6) of the Internal Revenue Code, relating to
40 gross receipts, is modified to take into account only those gross

1 receipts from the sale of property held primarily for sale to
2 customers in the ordinary course of the taxpayer's trade or business
3 that is delivered or shipped to a purchaser within this state,
4 regardless of f.o.b. point or any other condition of the sale.

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

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

10 (1) The last sentence shall not apply.

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

18 ~~SEC. 10.~~

19 *SEC. 11.* Section 23622.9 is added to the Revenue and Taxation
20 Code, to read:

21 23622.9. (a) For each taxable year beginning on or after
22 January 1, 2010, there shall be allowed a credit against the "tax,"
23 as defined in Section 23036, an amount equal to the sum of the
24 following percentages of wages paid or incurred by the taxpayer
25 during the taxable year to each qualified employee of the taxpayer.

26 (1) Twenty-five percent for each qualified employee employed
27 by the qualified taxpayer for at least 120 hours, but not less than
28 400 hours, during the taxable year.

29 (2) Forty percent for each qualified employee employed by the
30 qualified taxpayer for at least 400 hours during the taxable year.

31 (b) The credit under subdivision (a) shall be allowed only with
32 respect to the first six thousand dollars (\$6,000) of wages paid or
33 incurred during the taxable year to each qualified employee.

34 (c) For purposes of this section, all of the following definitions
35 shall apply:

36 (1) "Qualified employee" means an individual who is any of
37 the following, as documented by the Employment Development
38 Department:

39 (A) A recipient of CalWORKs benefits.

40 (B) A parolee.

1 (C) A veteran, as defined in Section 980 of the Military and
2 Veterans Code.

3 (D) Eligible for receipt of unemployment insurance benefits or
4 currently receiving unemployment insurance benefits.

5 (E) A person on probation.

6 (2) “Qualified taxpayer” means a taxpayer that is a person or
7 entity engaged in a trade or business within California.

8 (d) For purposes of this section the qualified taxpayer shall do
9 both of the following:

10 (1) Obtain a certificate from the Employment Development
11 Department certifying that a qualified employee is employed by
12 the qualified taxpayer.

13 (2) Retain a copy of the certification and provide it upon request
14 to the Franchise Tax Board.

15 (e) (1) For purposes of this section:

16 (A) All employees of trades or businesses, which are not
17 incorporated, that are under common control shall be treated as
18 employed by a single qualified taxpayer.

19 (B) The credit, if any, allowable by this section with respect to
20 each trade or business shall be determined by reference to its
21 proportionate share of the expense of the qualified wages giving
22 rise to the credit, and shall be allocated in that manner.

23 (C) Principles that apply in the case of controlled groups of
24 corporations, as specified in subdivision (e), shall apply with
25 respect to determining employment.

26 (2) If an employer acquires the major portion of a trade or
27 business of another employer (hereafter in this paragraph referred
28 to as the “predecessor”) or the major portion of a separate unit of
29 a trade or business of a predecessor, then, for purposes of applying
30 this section for any calendar year ending after that acquisition, the
31 employment relationship between a qualified employee and an
32 employer shall not be treated as terminated if the employee
33 continues to be employed in that trade or business.

34 (f) No credit shall be allowed under this section for any wages
35 for which any other credit or deduction has been claimed under
36 this part.

37 (g) In the case where the credit otherwise allowed under this
38 section exceeds the “tax” for the taxable year, that portion of the
39 credit that exceeds the “tax” may be carried over and added to the
40 credit, if any, in succeeding taxable years, until the credit is

exhausted. The credit shall be applied first to the earliest taxable years possible.

~~SEC. 11.~~

SEC. 12. Section 23623 of the Revenue and Taxation Code, as added by Section 8 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

~~SEC. 12.~~ ~~Section 23623 of the Revenue and Taxation Code, as added by Section 8 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:~~

23623. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the “tax,” as defined in Section 23036, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a taxpayer.

(b) For purposes of this section:

(1) “Acquired” includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) “Qualified full-time employee” means:

(A) A qualified employee who was paid qualified wages during the taxable year by the taxpayer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the taxpayer.

(3) A “qualified employee” shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance

1 with Chapter 12.97 (commencing with Section 7105) of Division
2 7 of Title 1 of the Government Code.

3 (E) An employee whose wages are included in calculating any
4 other credit allowed under this part.

5 (4) “Qualified wages” means wages subject to Division 6
6 (commencing with Section 13000) of the Unemployment Insurance
7 Code.

8 (5) “Annual full-time equivalent” means either of the following:

9 (A) In the case of a full-time employee paid hourly qualified
10 wages, “annual full-time equivalent” means the total number of
11 hours worked for the taxpayer by the employee (not to exceed
12 2,000 hours per employee) divided by 2,000.

13 (B) In the case of a salaried full-time employee, “annual
14 full-time equivalent” means the total number of weeks worked for
15 the taxpayer by the employee divided by 52.

16 (c) The net increase in qualified full-time employees of a
17 qualified employer shall be determined as provided by this
18 subdivision:

19 (1) (A) The net increase in qualified full-time employees shall
20 be determined on an annual full-time equivalent basis by
21 subtracting from the amount determined in subparagraph (C) the
22 amount determined in subparagraph (B):

23 (B) The total number of qualified full-time employees employed
24 in the preceding taxable year by the taxpayer and by any trade or
25 business acquired by the taxpayer during the preceding taxable
26 year.

27 (C) The total number of full-time employees employed in the
28 current taxable year by the taxpayer and by any trade or business
29 acquired during the current taxable year.

30 (2) For taxpayers who first commence doing business in this
31 state during the taxable year, the number of full-time employees
32 for the immediately preceding prior taxable year shall be zero.

33 (d) In the case where the credit allowed by this section exceeds
34 the “tax,” the excess may be carried over to reduce the “tax” in
35 the following year, and succeeding seven years if necessary, until
36 the credit is exhausted.

37 (e) Any deduction otherwise allowed under this part for qualified
38 wages shall not be reduced by the amount of the credit allowed
39 under this section.

40 (f) For purposes of this section:

~~(1) All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single taxpayer.~~

~~(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276, without application of paragraph (7) of that subdivision, shall apply.~~

~~(g) (1) The Franchise Tax Board may prescribe rules, guidelines or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines necessary to avoid the application of paragraph (2) of subdivision (f) through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.~~

~~(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this section.~~

~~(h) No credit shall be allowed under this section for any wages for which any other credit or deduction has been claimed under this part.~~

~~(i) The amendments made to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 2010.~~

SEC. 13. Section 23623 of the Revenue and Taxation Code, as added by Section 8 of Chapter 17 of the Third Extraordinary Session of the Statutes of 2009, is amended to read:

23623. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the “tax,” as defined in Section 23036, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a ~~qualified employer taxpayer~~.

(b) For purposes of this section:

(1) “Acquired” includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) “Qualified full-time employee” means:

(A) A qualified employee who was paid qualified wages during the taxable year by the ~~qualified employer taxpayer~~ for services of not less than an average of 35 hours per week.

1 (B) A qualified employee who was a salaried employee and
2 was paid compensation during the taxable year for full-time
3 employment, within the meaning of Section 515 of the Labor Code,
4 by the ~~qualified employer taxpayer~~.

5 (3) A “qualified employee” shall not include any of the
6 following:

7 (A) An employee certified as a qualified employee in an
8 enterprise zone designated in accordance with Chapter 12.8
9 (commencing with Section 7070) of Division 7 of Title 1 of the
10 Government Code.

11 (B) An employee certified as a qualified disadvantaged
12 individual in a manufacturing enhancement area designated in
13 accordance with Section 7073.8 of the Government Code.

14 (C) An employee certified as a qualified employee in a targeted
15 tax area designated in accordance with Section 7097 of the
16 Government Code.

17 (D) An employee certified as a qualified disadvantaged
18 individual or a qualified displaced employee in a local agency
19 military base recovery area (LAMBRA) designated in accordance
20 with Chapter 12.97 (commencing with Section 7105) of Division
21 7 of Title 1 of the Government Code.

22 (E) An employee whose wages are included in calculating any
23 other credit allowed under this part.

24 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
25 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
26 ~~employees.~~

27 ~~(5)~~

28 (4) “Qualified wages” means wages subject to Division 6
29 (commencing with Section 13000) of the Unemployment Insurance
30 Code.

31 ~~(6)~~

32 (5) “Annual full-time equivalent” means either of the following:

33 (A) In the case of a full-time employee paid hourly qualified
34 wages, “annual full-time equivalent” means the total number of
35 hours worked for the taxpayer by the employee (not to exceed
36 2,000 hours per employee) divided by 2,000.

37 (B) In the case of a salaried full-time employee, “annual
38 full-time equivalent” means the total number of weeks worked for
39 the taxpayer by the employee divided by 52.

1 (c) The net increase in qualified full-time employees of a
2 ~~qualified employer taxpayer~~ shall be determined as provided by
3 this subdivision:

4 (1) (A) The net increase in qualified full-time employees shall
5 be determined on an annual full-time equivalent basis by
6 subtracting from the amount determined in subparagraph (C) the
7 amount determined in subparagraph (B).

8 (B) The total number of qualified full-time employees employed
9 in the preceding taxable year by the taxpayer and by any trade or
10 business acquired by the taxpayer during the ~~current~~ *preceding*
11 taxable year.

12 (C) The total number of full-time employees employed in the
13 current taxable year by the taxpayer and by any trade or business
14 acquired during the current taxable year.

15 (2) For taxpayers who first commence doing business in this
16 state during the taxable year, the number of full-time employees
17 for the immediately preceding prior taxable year shall be zero.

18 (d) In the case where the credit allowed by this section exceeds
19 the “tax,” the excess may be carried over to reduce the “tax” in
20 the following year, and succeeding seven years if necessary, until
21 the credit is exhausted.

22 (e) Any deduction otherwise allowed under this part for qualified
23 wages shall not be reduced by the amount of the credit allowed
24 under this section.

25 (f) For purposes of this section:

26 (1) All employees of the trades or businesses that are treated as
27 related under either Section 267, 318, or 707 of the Internal
28 Revenue Code shall be treated as employed by a single taxpayer.

29 (2) In determining whether the taxpayer has first commenced
30 doing business in this state during the taxable year, the provisions
31 of subdivision (f) of Section 17276, without application of
32 paragraph (7) of that subdivision, shall apply.

33 ~~(g) (1) (A) Credit under this section and Section 17053.80 shall~~
34 ~~be allowed only for credits claimed on timely filed original returns~~
35 ~~received by the Franchise Tax Board on or before the cut-off date~~
36 ~~established by the Franchise Tax Board.~~

37 ~~(B) For purposes of this paragraph, the cut-off date shall be the~~
38 ~~last day of the calendar quarter within which the Franchise Tax~~
39 ~~Board estimates it will have received timely filed original returns~~
40 ~~claiming credits under this section and Section 17053.80 that~~

~~1 cumulatively total four hundred million dollars (\$400,000,000)~~
~~2 for all taxable years.~~

~~3 (2) The date a return is received shall be determined by the~~
~~4 Franchise Tax Board.~~

~~5 (3) (A) The determinations of the Franchise Tax Board with~~
~~6 respect to the cut-off date, the date a return is received, and whether~~
~~7 a return has been timely filed for purposes of this subdivision may~~
~~8 not be reviewed in any administrative or judicial proceeding.~~

~~9 (B) Any disallowance of a credit claimed due to a determination~~
~~10 under this subdivision, including the application of the limitation~~
~~11 specified in paragraph (1), shall be treated as a mathematical error~~
~~12 appearing on the return. Any amount of tax resulting from such~~
~~13 disallowance may be assessed by the Franchise Tax Board in the~~
~~14 same manner as provided by Section 19051.~~

~~15 (4) The Franchise Tax Board shall periodically provide notice~~
~~16 on its Web site with respect to the amount of credit under this~~
~~17 section and Section 17053.80 claimed on timely filed original~~
~~18 returns received by the Franchise Tax Board.~~

~~19 (h)~~

~~20 (g) (1) The Franchise Tax Board may prescribe rules, guidelines~~
~~21 or procedures necessary or appropriate to carry out the purposes~~
~~22 of this section, including any guidelines regarding the limitation~~
~~23 on total credits allowable under this section and Section 17053.80~~
~~24 and guidelines necessary to avoid the application of paragraph (2)~~
~~25 of subdivision (f) through split-ups, shell corporations, partnerships,~~
~~26 tiered ownership structures, or otherwise.~~

~~27 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
~~28 Division 3 of Title 2 of the Government Code does not apply to~~
~~29 any standard, criterion, procedure, determination, rule, notice, or~~
~~30 guideline established or issued by the Franchise Tax Board~~
~~31 pursuant to this section.~~

~~32 (i) This section shall remain in effect only until December 1 of~~
~~33 the calendar year after the year of the cut-off date, and as of that~~
~~34 December 1 is repealed.~~

~~35 (h) No credit shall be allowed under this section for any wages~~
~~36 for which any other credit or deduction has been claimed under~~
~~37 this part.~~

~~38 (i) The amendments made to this section by the act adding this~~
~~39 subdivision shall apply only to taxable years beginning on or after~~
~~40 January 1, 2010.~~

~~SEC. 13.~~

SEC. 14. Section 24349 of the Revenue and Taxation Code is amended to read:

24349. (a) There shall be allowed as a depreciation deduction a reasonable allowance for the exhaustion, wear and tear (including a reasonable allowance for obsolescence)—

(1) Of property used in the trade or business; or

(2) Of property held for the production of income.

(b) Except as otherwise provided in subdivision (c), for taxable years ending after December 31, 1958, the term “reasonable allowance” as used in subdivision (a) shall include, but shall not be limited to, an allowance computed in accordance with regulations prescribed by the Franchise Tax Board, under any of the following methods:

(1) The straight-line method.

(2) The declining balance method, using a rate not exceeding twice the rate that would have been used had the annual allowance been computed under the method described in paragraph (1).

(3) The sum of the years-digits method.

(4) Any other consistent method productive of an annual allowance that, when added to all allowances for the period commencing with the taxpayer’s use of the property and including the taxable year, does not, during the first two-thirds of the useful life of the property, exceed the total of those allowances that would have been used had those allowances been computed under the method described in paragraph (2).

Nothing in this subdivision shall be construed to limit or reduce an allowance otherwise allowable under subdivision (a).

(c) Any grapevine replaced in a vineyard in California in a taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, and any grapevine replaced in a vineyard in California in a taxable year beginning on or after January 1, 1997, as a direct result of Pierce’s disease in that vineyard, shall have a useful life of five years, except that it shall have a class life of 10 years for purposes of depreciation under Section 168(g)(2) of the Internal Revenue Code where the taxpayer has made an election under Section 263A(d)(3) of the Internal Revenue Code not to capitalize costs of the infested vineyard. Every taxpayer claiming a deduction under this section with respect to a grapevine as described in this subdivision shall

1 obtain a written certification from an independent state-certified
2 integrated pest management adviser, or a state agricultural
3 commissioner or adviser, that specifies that the replanting was
4 necessary to restore a vineyard infested with phylloxera or Pierce's
5 disease. The taxpayer shall retain the certification for future audit
6 purposes.

7 (d) For purposes of this part, the deduction for property leased
8 to governments and other tax-exempt entities, as defined in Section
9 168(h) of the Internal Revenue Code, shall be limited to the amount
10 determined under Section 168(g) of the Internal Revenue Code,
11 relating to alternative depreciation system for certain property.

12 (e) (1) In the case of any building erected or improvements
13 made on leased property, if the building or improvement is property
14 to which this section applies, the depreciation deduction shall be
15 determined under the provisions of this section.

16 (2) An improvement shall be treated for purposes of determining
17 gain or loss under this part as disposed of by the lessor when so
18 disposed of or abandoned if both of the following occur:

19 (A) The improvement is made by the lessor of leased property
20 for the lessee of that property.

21 (B) The improvement is irrevocably disposed of or abandoned
22 by the lessor at the termination of the lease by the lessee.

23 This subdivision shall not apply to any property to which Section
24 168 of the Internal Revenue Code does not apply for federal
25 purposes by reason of Section 168(f) of the Internal Revenue Code.
26 Any election made under Section 168(f)(1) of the Internal Revenue
27 Code for federal purposes with respect to that property shall be
28 treated as a binding election for state purposes under this
29 subdivision with respect to that same property and no separate
30 election under subdivision (e) of Section 23051.5 with respect to
31 that property shall be allowed.

32 (3) (A) In determining a lease term, both of the following shall
33 apply:

34 (i) There shall be taken into account options to renew.

35 (ii) Two or more successive leases which are part of the same
36 transaction (or a series of related transactions) with respect to the
37 same or substantially similar property shall be treated as one lease.

38 (B) For purposes of clause (i) of subparagraph (A), in the case
39 of nonresidential real property or residential rental property, there

1 shall not be taken into account any option to renew at fair market
2 value determined at the time of renewal.

3 (f) (1) Section 167(g) of the Internal Revenue Code, relating
4 to depreciation under income forecast method, shall apply except
5 as otherwise provided.

6 (2) Section 167(g)(2)(C) of the Internal Revenue Code is
7 modified by substituting “Section 19521” in lieu of “Section
8 460(b)(7)” of the Internal Revenue Code.

9 (3) Section 167(g)(5)(D) of the Internal Revenue Code is
10 modified by substituting “Part 10.2 (commencing with Section
11 18401) (other than Article 2 (commencing with Section 19021)
12 and Sections 19142 to 19150, inclusive)” in lieu of “Subtitle F
13 (other than Sections 6654 and 6655).”

14 (4) Section 167(g)(5)(E) of the Internal Revenue Code, relating
15 to treatment of distribution costs, shall not apply.

16 (5) Section 167(g)(7) of the Internal Revenue Code, relating to
17 treatment of participations and residuals, shall not apply.

18 (g) Notwithstanding any other provision of law to the contrary,
19 for property placed in service on and after January 1, 2010, the
20 applicable recovery period shall be one-half of the applicable
21 recovery period set forth in the Internal Revenue Code provision
22 167 or 168 or one-half of the recovery period described in this
23 code.

24 (h) Notwithstanding any other provision of law to the contrary,
25 for property placed in service before January 1, 2010, the remaining
26 applicable recovery period shall be one-half of the applicable
27 recovery period set forth in the Internal Revenue Code provision
28 167 or 168 or one-half of the recovery period described in this
29 code.

30 ~~SEC. 14.~~

31 *SEC. 15.* Section 24416 of the Revenue and Taxation Code is
32 amended to read:

33 24416. Except as provided in Sections 24416.1, 24416.2,
34 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss
35 deduction shall be allowed in computing net income under Section
36 24341 and shall be determined in accordance with Section 172 of
37 the Internal Revenue Code, except as otherwise provided.

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

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

3 (b) (1) Except as provided in paragraphs (2) and (3), the
4 provisions of Section 172(b)(2) of the Internal Revenue Code,
5 relating to the amount of carryovers, shall be modified so that the
6 applicable percentage of the entire amount of the net operating
7 loss for any taxable year shall be eligible for carryover to any
8 subsequent taxable year. For purposes of this subdivision, the
9 applicable percentage shall be:

10 (A) Fifty percent for any taxable year beginning before January
11 1, 2000.

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

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

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

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

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

26 (B) If the net operating loss is greater than the net loss from the
27 new business, the net operating loss shall be carried over as
28 follows:

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

32 (ii) With respect to the portion of the net operating loss that
33 exceeds the net loss from the new business, the applicable
34 percentage of that amount shall be carried forward as provided in
35 subdivision (d).

36 (C) For purposes of Section 172(b)(2) of the Internal Revenue
37 Code, the amount described in clause (ii) of subparagraph (B) shall
38 be absorbed before the amount described in clause (i) of
39 subparagraph (B).

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

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

9 (B) If the net operating loss is greater than the net loss from the
10 eligible small business, the net operating loss shall be carried over
11 as follows:

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

15 (ii) With respect to that portion of the net operating loss that
16 exceeds the net loss from the eligible small business, the applicable
17 percentage of that amount shall be carried forward as provided in
18 subdivision (e).

19 (C) For purposes of Section 172(b)(2) of the Internal Revenue
20 Code, the amount described in clause (ii) of subparagraph (B) shall
21 be absorbed before the amount described in clause (i) of
22 subparagraph (B).

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

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

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

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

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

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

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

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

~~(B)~~

(C) For a net operating loss attributable to a taxable year beginning on or after January 1, ~~2011~~ 2012, the amount of carryback to any taxable year shall not exceed 100 percent of the net operating loss.

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

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

(e) (1) (A) For a net operating loss for any taxable year beginning on or after January 1, 1987, and before January 1, 2000,

1 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
2 years to which net operating losses may be carried, is modified to
3 substitute “five taxable years” in lieu of “20 years” except as
4 otherwise provided in paragraphs (2), (3), and (4).

5 (B) For a net operating loss for any income year beginning on
6 or after January 1, 2000, and before January 1, 2008, Section
7 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years
8 to which net operating losses may be carried, is modified to
9 substitute “10 taxable years” in lieu of “20 taxable years.”

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

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

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

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

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

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

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

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

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

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

40 (f) For purposes of this section:

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

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

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

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

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

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

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

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

38 (2) In any case where a taxpayer (or any related person) is
39 engaged in one or more trade or business activities in this state, or
40 has been engaged in one or more trade or business activities in this

state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the ~~Standard Industrial Classification (SIC) Manual~~ *North American Industry Classification System (NAICS)* published by the United States Office of Management and Budget, ~~1987~~ 2007 edition, than are any of the taxpayer’s (or any related person’s) current or prior trade or business activities.

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

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

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

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

(7) (A) For taxable years beginning on or after January 1, 1997, the term “new business” shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes ~~2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual~~ 325411 to 325414, inclusive, of the *North American Industry Classification System (NAICS)* published by the United States Office of Management and Budget, ~~1987~~ 2007 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

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

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

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

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

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

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

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

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

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

~~SEC. 15.~~

SEC. 16. Section 24416.10 of the Revenue and Taxation Code is amended to read:

24416.10. Notwithstanding Section 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, or 24416.7 to the contrary, a net operating loss attributable to a taxable year beginning on or after January 1, 2008, shall be a net operating carryover to each of the 20 taxable years following the year of the loss, and a net operating loss attributable to a taxable year beginning on or after January 1, 2015, shall also be a net operating loss carryback to each of the five taxable years preceding the taxable year of loss.

SEC. 17. Section 24996 is added to the Revenue and Taxation Code, to read:

24996. Notwithstanding any other law, gross income shall not include any gain from the sale or exchange of any capital asset. For purposes of this section, "capital asset" means a capital asset as defined by Section 1221 of the Internal Revenue Code.

~~SEC. 16.~~

SEC. 18. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CORRECTIONS:

Text—Page 22.