

ASSEMBLY BILL

No. 79

Introduced by Assembly Member Beall

January 3, 2011

An act to add Article 7 (commencing with Section 92170) to Chapter 2 of Part 57 of Division 9 of Title 3 of the Education Code, and to add Sections 17053.49 and 23649 to the Revenue and Taxation Code, relating to qualified research expenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 79, as introduced, Beall. University of California: venture development: tax credit.

Existing law established the University of California under the administration of the Regents of the University of California.

This bill would authorize the regents to create a University Venture Development Fund for each campus of the university for the deposit of contributions made for purposes of paying for qualified research expenses, as defined. The bill would require the funds in each University Venture Development Fund to be used only for qualified research expenses that are used for qualified research with direct application to the biotech, nanotech, and cleantech industries in California.

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

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2011, in an amount equal to 50% of the amount contributed during the taxable year to the University of California for deposit into a University Venture Development Fund, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Article 7 (commencing with Section 92170) is added to Chapter 2 of Part 57 of Division 9 of Title 3 of the Education Code, to read:

Article 7. University Venture Development Fund

92170. (a) (1) The regents may create a University Venture Development Fund for each campus of the university for the deposit of contributions made for purposes of paying for qualified research expenses.

(2) The regents are requested to do both of the following:

(A) Notify the Franchise Tax Board of the establishment of each fund.

(B) Issue to each contributor a letter that certifies the contribution and its use for qualified research expenses.

(b) Funds in any University Venture Development Fund may be used only for qualified research expenses.

(c) For purposes of this section:

(1) "Qualified research expenses" means any of the following:

(A) Wages paid to or incurred by the university in regard to an employee for qualified services performed by the employee.

(B) Amounts paid or incurred for supplies used in the conduct of qualified research.

(C) Amounts paid or incurred to another person for the right to use computers in the conduct of qualified research, except in regard to the extent that the university receives or accrues any amount from any other person for the right to use substantially identical personal property.

(2) (A) "Qualified services" means services consisting of either of the following:

(i) Engaging in qualified research.

(ii) Engaging in the direct supervision or direct support of research activities that constitute qualified research.

(B) If substantially all of the services performed by an individual for the university during the taxable year consist of services

meeting the requirements of subparagraph (A), the term “qualified services” means all of the services performed by that individual for the university during the taxable year.

(3) (A) “Qualified research” means research that meets all of the following requirements:

(i) It is research with direct application to the biotech, nanotech, and cleantech industries in California.

(ii) It is research with respect to which expenditures may be treated as expenses under Section 174 of the Internal Revenue Code.

(iii) It is undertaken for the purpose of discovering information that is technological in nature, and the application of which is intended to be useful in the development of a new or improved business component.

(iv) Substantially all of the activities of the research constitute elements of a process of experimentation for a purpose that is a new or improved function, a performance, reliability, or quality.

(B) “Qualified research” shall not include any of the following:

(i) Research conducted after the beginning of commercial production of the business component.

(ii) Research related to the adaptation of an existing business component to a particular customer’s requirement or need.

(iii) Research related to the reproduction of an existing business component, in whole or in part, from a physical examination of the business component itself or from plans, blueprints, detailed specifications, or publicly available information with respect to the business component.

(iv) An efficiency survey; activity relating to a management function or technique; market research, testing, or development, including advertising or promotions; routine data collection; and routine or ordinary testing or inspection for quality control.

(v) Research with respect to computer software that is developed by, or for the benefit of, the university primarily for internal use by the university, other than for use in an activity that constitutes qualified research or a production process with respect to which the requirements of subparagraph (A) are met.

SEC. 2. Section 17053.49 is added to the Revenue and Taxation Code, to read:

17053.49. (a) (1) For each taxable year beginning on or after January 1, 2011, there shall be allowed as a credit against the “net

1 tax,” as defined in Section 17039, an amount equal to 50 percent,
2 subject to paragraph (2), of the amount contributed by the taxpayer
3 during the taxable year to any University Venture Development
4 Fund for purposes of qualified research expenses in accordance
5 with Article 7 (commencing with Section 92170) of Chapter 2 of
6 Part 57 of Division 9 of Title 3 of the Education Code.

7 (2) The maximum aggregate amount of credit available under
8 this section and Section 23649 in all years for all taxpayers is two
9 hundred million dollars (\$200,000,000).

10 (b) No credit shall be allowed pursuant to this section unless
11 the taxpayer does both of the following:

12 (1) Obtains and retains a letter from the Regents of the
13 University of California certifying that the contribution shall be
14 used only for qualified research expenses in accordance with
15 Article 7 (commencing with Section 92170) of Chapter 2 of Part
16 57 of Division 9 of Title 3 of the Education Code.

17 (2) Provides the Franchise Tax Board with the certification
18 described in paragraph (1), at the Franchise Tax Board’s request.

19 (c) The Franchise Tax Board shall allow credits under this
20 section and Section 23649 on a first-to-file basis until the maximum
21 aggregate credit amount, pursuant to paragraph (2) of subdivision
22 (a), is reached.

23 (d) No credit shall be allowed under this section for any
24 contribution for which the taxpayer claims a credit or deduction
25 pursuant to any other section in this part.

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

30 SEC. 3. Section 23649 is added to the Revenue and Taxation
31 Code, to read:

32 23649. (a) (1) For each taxable year beginning on or after
33 January 1, 2011, there shall be allowed as a credit against the “tax,”
34 as defined in Section 23036, an amount equal to 50 percent, subject
35 to paragraph (2), of the amount contributed by the taxpayer during
36 the taxable year to any University Venture Development Fund for
37 purposes of qualified research expenses in accordance with Article
38 7 (commencing with Section 92170) of Chapter 2 of Part 57 of
39 Division 9 of Title 3 of the Education Code.

1 (2) The maximum aggregate amount of credit available under
2 this section and Section 17053.49 in all years for all taxpayers is
3 two hundred million dollars (\$200,000,000).

4 (b) No credit shall be allowed pursuant to this section unless
5 the taxpayer does both of the following:

6 (1) Obtains and retains a letter from the Regents of the
7 University of California certifying that the contribution shall be
8 used only for qualified research expenses in accordance with
9 Article 7 (commencing with Section 92170) of Chapter 2 of Part
10 57 of Division 9 of Title 3 of the Education Code.

11 (2) Provides the Franchise Tax Board with the certification
12 described in paragraph (1), at the Franchise Tax Board's request.

13 (c) The Franchise Tax Board shall allow credits under this
14 section and Section 17053.49 on a first-to-file basis until the
15 maximum aggregate credit amount, pursuant to paragraph (2) of
16 subdivision (a), is reached.

17 (d) No credit shall be allowed under this section for any
18 contribution for which the taxpayer claims a credit or deduction
19 pursuant to any other section of this part.

20 (e) In the case where the credit allowed by this section exceeds
21 the "tax," the excess may be carried over to reduce the "tax" in
22 the following year, and succeeding years if necessary, until the
23 credit is exhausted.