

ASSEMBLY BILL

No. 2330

Introduced by Assembly Member Mullin
(Principal coauthor: Assembly Member Wieckowski)
(Coauthor: Senator Vidak)

February 21, 2014

An act to amend Sections 17052.12 and 23609 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2330, as introduced, Mullin. Income taxes: credits: research activities.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a credit for a percentage of specified research expenses. These laws, in modified conformity, apply the provisions of the Internal Revenue Code, relating to the election of alternative incremental credit. These laws provide that the provisions of the Internal Revenue Code relating to election of alternative simplified credit shall not apply.

This bill would not apply the provisions of the Internal Revenue Code, relating to the election of alternative incremental credit, and would apply the provisions of the Internal Revenue Code, relating to election of alternative simplified credit in modified conformity. This bill would apply the provisions of the Internal Revenue Code, relating to the inclusion of qualified research expenses and gross receipts of an acquired person and aggregation of expenditures. This bill would provide that these changes shall apply to taxable years beginning on or after January 1, 2014.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. 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 17052.12 of the Revenue and Taxation
2 Code is amended to read:

3 17052.12. For each taxable year beginning on or after January
4 1, 1987, there shall be allowed as a credit against the “net tax” (as
5 defined by Section 17039) for the taxable year an amount
6 determined in accordance with Section 41 of the Internal Revenue
7 Code, *relating to credit for increasing research activities*, except
8 as follows:

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

12 (b) (1) For each taxable year beginning on or after January 1,
13 1997, and before January 1, 1999, the reference to “20 percent”
14 in Section 41(a)(1) of the Internal Revenue Code is modified to
15 read “11 percent.”

16 (2) For each taxable year beginning on or after January 1, 1999,
17 and before January 1, 2000, the reference to “20 percent” in Section
18 41(a)(1) of the Internal Revenue Code is modified to read “12
19 percent.”

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

23 (c) Section 41(a)(2) of the Internal Revenue Code shall not
24 apply.

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

27 (e) In the case where the credit allowed under this section
28 exceeds the “net tax,” the excess may be carried over to reduce
29 the “net tax” in the following year, and succeeding years if
30 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, *relating to qualified research expenses*, is modified to exclude from the definition of “qualified research expense” any amount paid or incurred for tangible personal property that is eligible for the exemption from sales or use tax provided by Section 6378.

(2) 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) (A) For each taxable year beginning on or after January 1, 2000, *and before January 1, 2014*:

~~(A)~~

(i) The reference to “3 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)~~

(ii) The reference to “4 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)~~

(iii) The reference to “5 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)~~

(B) Section 41(c)(4)(B) *of the Internal Revenue Code* 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, *and before January 1, 2014*. 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.

(C) *Section 41(h)(2) of the Internal Revenue Code, relating to termination of alternative incremental credit, is modified by substituting “beginning on or after January 1, 2014” for “beginning after December 31, 2008”.*

(2) (A) *For taxable years beginning on or after January 1, 2014, Section 41(c)(5) of the Internal Revenue Code, relating to*

1 *election of alternative simplified credit, shall apply, except as*
2 *otherwise provided.*

3 (i) *The reference to “14 percent” in Section 41(c)(5)(A) of the*
4 *Internal Revenue Code is modified to read “10.5 percent”.*

5 (ii) *The reference to “6 percent” in Section 41(c)(5)(B)(ii) of*
6 *the Internal Revenue Code is modified to read “4.5 percent”.*

7 (B) *Section 41(c)(5)(C) of the Internal Revenue Code, relating*
8 *to election, shall not apply and in lieu thereof an election under*
9 *Sections 41(c)(5)(A) and 41(c)(5)(B) of the Internal Revenue Code*
10 *may be made for any taxable year of the taxpayer beginning on*
11 *or after January 1, 2014. That election shall apply to the taxable*
12 *year for which made and all succeeding taxable years unless*
13 *revoked with the consent of the Franchise Tax Board.*

14 (3) *Section 41(c)(7) of the Internal Revenue Code, relating to*
15 *gross receipts, is modified to take into account only those gross*
16 *receipts from the sale of property held primarily for sale to*
17 *customers in the ordinary course of the taxpayer’s trade or business*
18 *that is delivered or shipped to a purchaser within this state,*
19 *regardless of f.o.b. point or any other condition of the sale.*

20 ~~(4) Section 41(c)(5) of the Internal Revenue Code, relating to~~
21 ~~election of alternative simplified credit, shall not apply.~~

22 (h) *Except as otherwise provided in this section, Section 41(h)*
23 *of the Internal Revenue Code, relating to termination, shall not*
24 *apply.*

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

28 (1) *The last sentence shall not apply.*

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

36 (j) *Section 41(a)(3) of the Internal Revenue Code shall not apply.*

37 (k) *Section 41(b)(3)(D) of the Internal Revenue Code, relating*
38 *to amounts paid to eligible small businesses, universities, and*
39 *federal laboratories, shall not apply.*

1 (l) Section 41(f)(6) of the Internal Revenue Code, relating to
2 energy research consortium, shall not apply.

3 (m) The amendments made by subdivisions (b) and (c) of Section
4 301 of the American Taxpayer Relief Act of 2012 (Public Law
5 112-240), relating to inclusion of qualified research expenses and
6 gross receipts of an acquired person and aggregation of
7 expenditures, shall apply, except as otherwise provided.

8 (n) The amendments made to this section by the act adding this
9 subdivision shall apply to taxable years beginning on or after
10 January 1, 2014.

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

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

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

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

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

24 (b) (1) For each taxable year beginning on or after January 1,
25 1997, and before January 1, 1999, both of the following
26 modifications shall apply:

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

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

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

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

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

37 (3) For each taxable year beginning on or after January 1, 2000,
38 both of the following shall apply:

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

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

3 (c) (1) With respect to any expense paid or incurred after the
4 operative date of Section 6378, Section 41(b)(1) of the Internal
5 Revenue Code, *relating to qualified research expenses*, is modified
6 to exclude from the definition of “qualified research expense” any
7 amount paid or incurred for tangible personal property that is
8 eligible for the exemption from sales or use tax provided by Section
9 6378.

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

12 (d) The provisions of Section 41(e)(7)(A) of the Internal
13 Revenue Code, *relating to basic research*, shall be modified so
14 that “basic research,” for purposes of this section, includes any
15 basic or applied research including scientific inquiry or original
16 investigation for the advancement of scientific or engineering
17 knowledge or the improved effectiveness of commercial products,
18 except that the term does not include any of the following:

19 (1) Basic research conducted outside California.

20 (2) Basic research in the social sciences, arts, or humanities.

21 (3) Basic research for the purpose of improving a commercial
22 product if the improvements relate to style, taste, cosmetic, or
23 seasonal design factors.

24 (4) Any expenditure paid or incurred for the purpose of
25 ascertaining the existence, location, extent, or quality of any deposit
26 of ore or other mineral (including oil and gas).

27 (e) (1) In the case of a taxpayer engaged in any
28 biopharmaceutical research activities that are described in codes
29 2833 to 2836, inclusive, or any research activities that are described
30 in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard
31 Industrial Classification (SIC) Manual published by the United
32 States Office of Management and Budget, 1987 edition, or any
33 other biotechnology research and development activities, the
34 provisions of Section 41(e)(6) of the Internal Revenue Code,
35 *relating to qualified organizations*, shall be modified to include
36 both of the following:

37 (A) A qualified organization as described in Section
38 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an
39 institution of higher education as described in Section 3304(f) of

1 the Internal Revenue Code, *relating to definition of institution of*
2 *higher education.*

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

10 (2) For purposes of this subdivision:

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

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

26 (f) 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 has been exhausted.

30 (g) For each taxable year beginning on or after January 1, 1998,
31 the reference to “Section 501(a)” in Section 41(b)(3)(C) of the
32 Internal Revenue Code, relating to contract research expenses, is
33 modified to read “this part or Part 10 (commencing with Section
34 17001).”

35 (h) (1) (A) For each taxable year beginning on or after January
36 1, 2000, and before January 1, 2014:

37 ~~(A)~~

38 (i) The reference to “3 percent” in Section 41(c)(4)(A)(i) of the
39 Internal Revenue Code is modified to read “one and forty-nine
40 hundredths of one percent.”

1 ~~(B)~~

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

5 ~~(C)~~

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

9 ~~(2)~~

10 (B) Section 41(c)(4)(B) of the Internal Revenue Code shall not
11 apply and in lieu thereof an election under Section 41(c)(4)(A) of
12 the Internal Revenue Code may be made for any taxable year of
13 the taxpayer beginning on or after January 1, 1998, and before
14 January 1, 2014. That election shall apply to the taxable year for
15 which made and all succeeding taxable years unless revoked with
16 the consent of the Franchise Tax Board.

17 (C) Section 41(h)(2) of the Internal Revenue Code, relating to
18 termination of alternative incremental credit, is modified by
19 substituting “beginning on or after January 1, 2014,” for
20 “beginning after December 31, 2008”.

21 (2) (A) For taxable years beginning on or after January 1,
22 2014, Section 41(c)(5) of the Internal Revenue Code, relating to
23 election of alternative simplified credit, shall apply, except as
24 otherwise provided.

25 (i) The reference to “14 percent” in Section 41(c)(5)(A) of the
26 Internal Revenue Code is modified to read “10.5 percent”.

27 (ii) The reference to “6 percent” in Section 41(c)(5)(B)(ii) of
28 the Internal Revenue Code is modified to read “4.5 percent”.

29 (B) Section 41(c)(5)(C) of the Internal Revenue Code, relating
30 to election, shall not apply and in lieu thereof an election under
31 Sections 41(c)(5)(A) and 41(c)(5)(B) of the Internal Revenue Code
32 may be made for any taxable year of the taxpayer beginning on
33 or after January 1, 2014. That election shall apply to the taxable
34 year for which made and all succeeding taxable years unless
35 revoked with the consent of the Franchise Tax Board.

36 (3) Section 41(c)(7) of the Internal Revenue Code, relating to
37 gross receipts, is modified to take into account only those gross
38 receipts from the sale of property held primarily for sale to
39 customers in the ordinary course of the taxpayer’s trade or business

1 that is delivered or shipped to a purchaser within this state,
2 regardless of f.o.b. point or any other condition of the sale.

3 ~~(4) Section 41(c)(5) of the Internal Revenue Code, relating to~~
4 ~~election of the alternative simplified credit, shall not apply.~~

5 (i) *Except as otherwise provided in this section*, Section 41(h)
6 of the Internal Revenue Code, relating to termination, shall not
7 apply.

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

11 (1) The last sentence shall not apply.

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

19 (k) Section 41(a)(3) of the Internal Revenue Code shall not
20 apply.

21 (l) Section 41(b)(3)(D) of the Internal Revenue Code, relating
22 to amounts paid to eligible small businesses, universities, and
23 federal laboratories, shall not apply.

24 (m) Section 41(f)(6) of the Internal Revenue Code, relating to
25 energy research consortium, shall not apply.

26 (n) *The amendments made by subdivisions (b) and (c) of Section*
27 *301 of the American Taxpayer Relief Act of 2012 (Public Law*
28 *112-240), relating to inclusion of qualified research expenses and*
29 *gross receipts of an acquired person and aggregation of*
30 *expenditures, shall apply, except as otherwise provided.*

31 (o) *The amendments made to this section by the act adding this*
32 *subdivision shall apply to taxable years beginning on or after*
33 *January 1, 2014.*

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