

AMENDED IN ASSEMBLY APRIL 30, 2014

AMENDED IN ASSEMBLY APRIL 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2330

Introduced by Assembly Member Mullin
(Principal coauthor: Assembly Member Wieckowski)
(Coauthors: Assembly Members Campos, Chávez, Gorell,
Maienschein, and Ting)
(Coauthors: Senators Berryhill and ~~Gaines~~, *Gaines, and 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 amended, 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 would 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 tax,” defined by Section ~~17039~~ 17039, for the taxable year an
6 amount determined in accordance with Section 41 of the Internal
7 Revenue Code, relating to credit for increasing research activities,
8 except 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.

(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, 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 and use taxes, as 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:

(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.”

(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.”

(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.”

(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 election

1 of alternative simplified credit, shall apply, except as otherwise
2 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 or
11 after January 1, 2014. That election shall apply to the taxable year
12 for which made and all succeeding taxable years unless revoked
13 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 (h) Except as otherwise provided in this section, Section 41(h)
21 of the Internal Revenue Code, relating to termination, shall not
22 apply.

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

26 (1) The last sentence shall not apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) (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 and use taxes, as provided by Section 6378.

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

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, relating to basic research, shall be modified so that “basic research,” for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the 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 published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code, relating to qualified organizations, 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, relating to definition of institution of higher education.

(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, relating to exemption from taxation, 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 to pharmaceutical activities that make use of chemical compounds to produce commercial products.

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

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

(g) 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 10 (commencing with Section 17001).”

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

(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.”

(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.”

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

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

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

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

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

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

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

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

36 (i) Except as otherwise provided in this section, Section 41(h)
37 of the Internal Revenue Code, relating to termination, shall not
38 apply.

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

(1) The last sentence shall not apply.

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

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

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

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

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

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

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