ASSEMBLY BILL No. 291

Introduced by Assembly Member Aghazarian

February 5, 2003

An act to amend, repeal, and add 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 291, as introduced, Aghazarian. Personal income and bank and corporation taxes: research and development: tax credit.

The Personal Income Tax Law and the Bank and Corporation Tax Law, by reference to a specified federal statute, allow a credit against taxes imposed by those laws 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 and, in addition, for purposes of the Bank and 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 and the fixed-base percentage, as defined, but in no event less than 50% of the qualified research expenses for the taxable year.

This bill would, under both laws, for each taxable year beginning on or after January 1, 2003, and before January 1, 2010, provide a credit for increasing research expenses equal to 24% of the qualified research expenses with respect to environmental research and development costs, as provided.

This bill would also make legislative findings and declarations relating to a lack of improvement or a deterioration of environmental conditions in California, including the levels of air pollution in the Central Valley, south coast, Salton Sea, and Great Basin, the increase of storm water pollution, and the significant increase in the number of disposable electronic products.

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:

SECTION 1. The Legislature finds and declares all of the following:

(a) California continues to grow faster than the rest of the nation, adding over half a million people to its population every four years. Significant pressures are exerted on the state's environmental and natural resources by the size and growth rate of the population. In addition, population growth affects the state economy, land use, the need to transport people and goods, and energy use.

(b) According to Environmental Protection Indicators for California (EPIC) published by the California Environmental Protection Agency, April 2002, the state has made significant strides in restoring and preserving the environment in most areas consistent with the state's goals. For example, emissions and ambient levels of certain air pollutants have generally declined. Contaminants in drinking water are rarely found at levels exceeding regulatory standards. Increasingly more solid waste is diverted from landfills, and less hazardous waste is produced per unit of economic activity.

Other indicators, however, demonstrate a lack of improvement or even a worsening of environmental conditions, as described below:

(1) Air monitors, designated to sample inhalable particulate matter show that, while inhalable particulate matter levels have declined in recent decades, the south coast, Central Valley, Salton Sea, and Great Basin continue to violate the federal 24-hour standards of 150 micrograms per cubic meter and that most of the state is in violation of the stricter state standard of 50 micrograms

per cubic meter. These particulates are linked to health and environmental problems and significantly affect visibility.

(2) County health officers close or post warnings at beaches when certain kinds of bacteria are found in the water at particularly high levels. The presence of these bacteria indicates the potential existence of microscopic disease-causing organisms originating from human and animal waste. The total annual Beach Mile-Day is a measurement of the frequency of all ocean beach postings and closures for a year. Current indicators show that the number of coastal beach-mile days posted and closed rose 15 percent from 1999 to 2000. The number of sewage and petroleum spills and releases increased by about 33 percent from 1997 to 2000, from 1,445 to 1,918. The number of sewage spills alone increased by 76 percent.

(3) The amount of solid waste disposed of in landfills has decreased by about 13 percent even though Californians generate more solid waste. At the same time, the amount of waste diverted from disposal, for purposes of recycling, reuse, and overall waste reduction, has increased by over 500 percent. However, the significant increase in disposable electronic products has created a new, unanswered waste management dilemma.

(c) In order to expand business activity, create jobs, and increase research in defining and resolving these critical environmental issues, it is imperative that the state create an investment tax credit program for applied research directed exclusively at identified issues, including air and stormwater pollution, agricultural discharges, and electronic equipment disposal.

(d) Some businesses do not find it profitable to invest in research because it is difficult to capture the full benefits from the research or to prevent competitors from utilizing these benefits. Costly scientific and technological advances made by one firm are cheaply copied by its competitors. It is the intent of the Legislature to provide a tax subsidy for businesses that invest in qualified research in order to address this bias against research and to stimulate the economy.

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

17052.12. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the ‘‘net tax’’ (as

defined by Section 17039) for the taxable year an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

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

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

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

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

(c) Section 41(a)(2) of the Internal Revenue Code, relating to 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 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) For each taxable year beginning on or after January 1, 1998, and before January 1, 2000:

(A) The reference to ‘‘1.65 percent’’ in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read ‘‘one and thirty-two hundredths of one percent.’’

(B) The reference to ‘‘2.2 percent’’ in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read ‘‘one and seventy-six hundredths of one percent.’’

(C) The reference to ‘‘2.75 percent’’ in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read ‘‘two and two-tenths of one percent.’’

(2) For each taxable year beginning on or after January 1, 2000:

(A) The reference to ‘‘1.65 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 ‘‘2.2 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 ‘‘2.75 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.’’

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

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

(i) 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 (e); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

(j) Notwithstanding any other provision in this section to the contrary, for each taxable year beginning on or after January 1, 2003, and before January 1, 2010, this section and Section 41 of the Internal Revenue Code shall be modified with respect to environmental research and development costs, as follows:

(1) "Qualified costs" include environmental research and development costs directed at resolving the issues of air and stormwater pollution, agricultural discharges, and disposal of electronic equipment.

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

(k) This section shall remain in effect only until January 1, 2010, and as of that date is repealed.

SEC. 3. Section 17052.12 is added to the Revenue and Taxation Code, to read:

17052.12. For each taxable year beginning on or after January 1, 2010, there shall be allowed as a credit against the ''net tax'' (as defined by Section 17039) for the taxable year an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

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

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

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

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

(c) Section 41(a)(2) of the Internal Revenue Code, relating to 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 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) For each taxable year beginning on or after January 1, 1998, and before January 1, 2000:

(A) The reference to ‘‘1.65 percent’’ in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read ‘‘one and thirty-two hundredths of one percent.’’

(B) The reference to ‘‘2.2 percent’’ in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read ‘‘one and seventy-six hundredths of one percent.’’

(C) The reference to ‘‘2.75 percent’’ in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read ‘‘two and two-tenths of one percent.’’

(2) For each taxable year beginning on or after January 1, 2000:

(A) The reference to ‘‘1.65 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 ‘‘2.2 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 ‘‘2.75 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.’’

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

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

(i) 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 (e); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

(j) This section shall become operative on, and apply in the computation of taxes for taxable years beginning on or after, January 1, 2010.

SEC. 4. Section 23609 of the Revenue and Taxation Code is amended to read:

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

(a) For each ~~income~~ *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 ~~income~~ *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 ~~income~~ *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 ~~income~~ *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 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) ‘‘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, 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 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 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 ~~income~~ *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) For each ~~income~~ *taxable* year beginning on or after January 1, 1998, and before January 1, 2000:

(A) The reference to "1.65 percent" in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read "one and thirty-two hundredths of one percent."

(B) The reference to "2.2 percent" in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read "one and seventy-six hundredths of one percent."

(C) The reference to "2.75 percent" in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read "two and two-tenths of one percent."

(2) For each ~~income~~ *taxable* year beginning on or after January 1, 2000:

(A) The reference to "1.65 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 "2.2 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 "2.75 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."

(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 income year of the taxpayer beginning on or after January 1, 1998. That election shall apply to the ~~income~~ *taxable* year for which made and all succeeding ~~income~~ *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 customers in the ordinary course of the taxpayer's trade or business

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

(i) Section 41(h) of the Internal Revenue Code, relating to termination, shall not 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 income year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other income 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 ~~income~~ *taxable* year.

(k) Notwithstanding any other provision in this section to the contrary, for each taxable year beginning on or after January 1, 2003, and before January 1, 2010, this section and Section 41 of the Internal Revenue Code shall be modified with respect to environmental research and development costs, as follows:

(1) "Qualified costs" include environmental research and development costs directed at resolving the issues of air and stormwater pollution, agricultural discharge, and disposal of electronic equipment.

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

(l) This section shall remain in effect only until January 1, 2010, and as of that date is repealed.

SEC. 5. Section 23609 is added to the Revenue and Taxation Code, to read:

23609. For each taxable year beginning on or after January 1, 2010, there shall be allowed as a credit against the ''tax'' (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, 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 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) ‘‘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, 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 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 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) For each taxable year beginning on or after January 1, 1998, and before January 1, 2000:

(A) The reference to ''1.65 percent'' in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read ''one and thirty-two hundredths of one percent.''

(B) The reference to ''2.2 percent'' in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read ''one and seventy-six hundredths of one percent.''

(C) The reference to ''2.75 percent'' in Section 41(c)(4)(A)(iii) of the Internal Revenue Code is modified to read ''two and two-tenths of one percent.''

(2) For each taxable year beginning on or after January 1, 2000:

(A) The reference to ''1.65 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 ''2.2 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 ''2.75 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.''

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

(i) Section 41(h) of the Internal Revenue Code, relating to termination, shall not 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 income year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other income 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) This section shall become operative on, and apply in the computation of taxes for taxable years beginning on or after January 1, 2010.

SEC. 6. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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