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REPEALS RECENT LEGISLATION THAT
WOULD ALLOW BUSINESSES TO LOWER
THEIR TAX LIABILITY

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REPEALS RECENT LEGISLATION THAT WOULD ALLOW BUSINESSES TO LOWER THEIR TAX LIABILITY. INITIATIVE STATUTE.

- Repeals recent legislation that would allow businesses to shift operating losses to prior tax years and that would extend the period permitted to shift operating losses to future tax years.
- Repeals recent legislation that would allow corporations to share tax credits with affiliated corporations.
- Repeals recent legislation that would allow multistate businesses to use a sales-based income calculation, rather than a combination property-, payroll-, and sales-based income calculation.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Increased state revenues of about \$1.3 billion each year by 2012–13 from higher taxes paid by some businesses. Smaller increases in 2010–11 and 2011–12.

ANALYSIS BY THE LEGISLATIVE ANALYST
BACKGROUND

This proposition would change three provisions of California’s laws for taxing businesses. As indicated below, these provisions have been changed recently as part of state budget agreements between the Legislature and the Governor. Under current law, all of these recent changes will be in effect by the 2011 tax year.

Businesses’ Use of Financial Losses. Under federal and state tax laws, in a year when a business has more deductible expenses than income, the business has a net operating loss (NOL). A business with an NOL in one year generally can use it to reduce its taxes when it makes a profit in some later years. This is known as a “carryforward” of losses. Federal tax law also allows businesses to “carry back” losses. In other words, federal law allows a business to use an NOL from one year to

reduce its taxes in an earlier year. These mechanisms—both carryforwards and carrybacks—have been put in place to recognize that business income and/or expenses can vary significantly from year to year.

A law approved by the Legislature and the Governor in 2008 allows carrybacks for state business taxes for the first time, starting in 2011. Specifically, this new law will allow a business to use an NOL from 2011 or later to reduce its state taxes for the two years before the NOL was generated. For example, a business that had profits and paid taxes in 2009 but has a loss in 2011 may deduct its 2011 NOL against its 2009 taxable income. The business would file an amended tax return for 2009 and receive a tax refund. In addition, the 2008 law extends the carryforward time allowed from 10 years to 20 years.

Determination of Income of Multistate Businesses' Taxed by California. Businesses often operate in many states. To determine how much of the income of a multistate business is taxed by the state, California law now uses a formula that involves three factors:

- ***Property.*** The value of the business' properties in California compared to the value of its properties throughout the nation.
- ***Payroll.*** The value of the business' compensation to its employees in California compared to the value of its compensation to its employees throughout the nation.
- ***Sales.*** The value of the business' sales in California compared to the value of its sales throughout the United States. (For most businesses, this factor counts more heavily than the others.)

A law approved by the Legislature and the Governor in 2009 will give multistate businesses a new way to determine how much of their income that California taxes. Starting in 2011 under this new law, most multistate businesses will be able to choose each year between two formulas to set the level of income California can tax. Businesses' two options will be: (1) the three-factor formula currently in use (described above), or (2) a new formula based only on the portion of their overall national sales that are in California (known as the "single sales" factor). A business typically will select the formula that minimizes its California taxes. A business would be allowed to switch back and forth between the two formulas.

Ability of Businesses to Share Tax Credits. California tax law allows tax credits that can reduce a business' taxes. If, for example, a business is able to use tax credits worth \$1 million, this reduces the business' state taxes by \$1 million. These tax credits are given to businesses doing certain things that the state wants to encourage. For example, a business that spends money in California to develop a new technology product may earn a "research and development" tax credit. If a business has credits which exceed the amount of taxes it owes in a given year, it will have unused credits. (Typically, these unused credits can be carried forward to be used in future years.)

Many business organizations consist of a group of business entities. This is called a "unitary group" if it meets certain conditions, such as operating jointly or operating under the same management. For example, one business in a group may develop a product, and another business in the group may sell that product. Tax credits are given to individual business entities—not unitary groups.

A law approved by the Legislature and the Governor in 2008 allows a business with available tax credits to transfer unused tax credits to another business in the same group. Shared credits can be used to reduce taxes in 2010 and later years. There are certain limitations to this credit sharing in the law. Some of these credits have been transferred already.

PROPOSAL

This proposition repeals the business tax law changes passed in 2008 and 2009 described above. As such, this measure would return tax policies in these areas to the way they were prior to the recent law changes. The effects of this proposition are summarized in Figure 1.

Restricts Ability of a Business to Use Operating Losses to Lower Taxes. This proposition prevents a business from using an NOL carryback to reduce its taxes for previous years. Businesses could still use NOLs to reduce their taxes in future years—though they would have 10 years to use each NOL, rather than 20 years.

Figure 1
Effects of Proposition 24 on California Business Tax Law

Issue	Prior Law ^a	Current Law	Law if Proposition 24 Passes
Use of Operating Losses	<i>Carrybacks.</i> Business losses cannot be used to get refunds of taxes previously paid.	<i>Carrybacks.</i> Beginning in 2010, business losses can be used to get refunds of taxes paid in the prior two years.	Same as prior law.
	<i>Carryforwards.</i> Businesses can use losses to offset income in the 10 years following the loss.	<i>Carryforwards.</i> Beginning in 2010, businesses can use losses to offset income in the 20 years following the loss.	Same as prior law.
Income of Multistate Businesses	A single formula determines the level of a multistate business' income that California taxes based on the business' sales, property, and payroll in California.	Beginning in 2011, most multistate businesses will choose every year between two options to determine the level of income that California can tax: (1) the formula under prior law, or (2) a formula that considers only the business' sales in California relative to its national sales.	Same as prior law.
Tax Credit Sharing	Tax credits given to a business entity can only reduce that entity's taxes. That entity cannot share its tax credits with entities in the same group of businesses.	Beginning in 2010, tax credits given to a business entity can be used to reduce the taxes of other entities in the same group of related businesses.	Same as prior law.

^a State law prior to changes adopted as part of 2008 and 2009 budget agreements.

Ends Ability of a Multistate Business to Choose How Its California Income Is Determined. This proposition eliminates the option that multistate businesses will have to choose between two formulas to determine the portion of their income subject to California state taxes. Instead, businesses' taxable income in California would continue to be determined based on the formula currently in use which considers businesses' sales, property, and payroll. (The tax law used for businesses that only do business in California would be unchanged by this part of the proposition.)

Ends Ability of a Business to Share Tax Credits Within a Unitary Group. This proposition prevents business entities within a unitary group from sharing tax credits in the future. (While it is not certain, it appears that businesses would be able to use tax credits that already have been transferred to them.)

FISCAL EFFECTS

Increased State Revenues. This proposition would increase state General Fund revenues by increasing the taxes paid by businesses. When fully implemented by 2012–13, revenues would increase by an estimated \$1.3 billion each year. There would be smaller increases in 2010–11 and 2011–12. More than one-half of these estimated increased taxes would be paid by multistate businesses as a result of the elimination of the single sales factor option.

Effects on Education Funding and the State's General Fund. Proposition 98 (passed by the voters in 1988) determines the minimum amount of state and local funding for K–12 schools and community colleges each year. Under the formulas of Proposition 98, a significant part of Proposition 24's revenue increases would be allocated to schools and community colleges. The remaining revenues would be available to the Legislature and the Governor for any purpose.

PROP 24 REPEALS RECENT LEGISLATION THAT WOULD ALLOW BUSINESSES TO LOWER THEIR TAX LIABILITY. INITIATIVE STATUTE.

★ ARGUMENT IN FAVOR OF PROPOSITION 24 ★

A Yes vote on Prop. 24, the “Tax Fairness Act,” ends \$1.7 billion in special corporate tax loopholes that don’t require the creation or protection of one single California job. Vote Yes because we need jobs, not more big corporate tax loopholes!

During the recent state budget disaster, legislators and big corporations cut a deal behind closed doors which raises your taxes. That deal with legislators included \$18 billion in tax hikes for you and huge tax breaks for big corporations. These same corporations made no guarantees that a single job would be created or saved to get this handout. That’s why these tax breaks should be repealed. A Yes vote on Prop. 24 will end this bad deal.

If you’re worried that Prop. 24 would hurt California’s small businesses, don’t fall for those scare tactics. Here are the facts:

Prop. 24 will end tax loopholes that unfairly benefit less than 2% of California’s businesses that are the wealthiest, multi-state corporations. 98% of California’s businesses, especially small businesses, would get virtually no benefit from the tax breaks.

Corporations that are paying to defeat Prop. 24 and keep these loopholes are paying their CEOs over \$8.5 billion, and made over \$65 billion in profits last year, while at the same time laying off over 100,000 workers.

By voting Yes on Prop. 24, we can keep the Legislature from making even deeper cuts in public schools, health care and public safety. During last year’s budget disaster, the Legislature made \$30 billion in cuts that resulted in 16,000 teacher layoffs, and put 6,500 prisoners back on the street. But they gave corporations \$1.7 billion in tax breaks. Prop. 24 will make big corporations pay their fair share and put \$1.7 billion back into the treasury for our students, classrooms, police and fire services and health care we

really need.

These unfair corporate tax loopholes put an even bigger burden on the average individual taxpayer. At the same time the Legislature gave corporations \$1.7 billion in tax breaks every year, they RAISED \$18 billion in taxes on people like you.

Republicans have joined Democrats in support of Prop. 24 because it stops Sacramento from using our tax system to play favorites. When Sacramento politicians passed targeted tax cuts last year, they were saying big corporations deserve a tax break, but average Californians don’t.

Vote Yes on Prop. 24 to ensure tax fairness so big corporations have to play by the same rules as the rest of us.

Instead of creating unfair tax loopholes for giant out-of-state corporations, we could be giving tax incentives to California’s small businesses that actually create jobs for Californians. Vote Yes to help our small businesses and put \$1.7 billion back into the treasury to help our students, schools and public safety.

Voting Yes on Prop. 24 tells the Legislature to get its priorities straight by putting schools and public safety ahead of tax loopholes for corporations.

DAVID A. SANCHEZ, President
California Teachers Association

JANIS R. HIROHAMA, President
League of Women Voters of California

LENNY GOLDBERG, Executive Director
California Tax Reform Association

★ REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 24 ★

Proposition 24’s proponents never met a tax they didn’t like. They won’t reduce lavish public pensions, yet have no problem raising taxes on everyone else. Sacramento politicians already increased taxes on families and businesses \$18 billion. Proponents want even more.

HIGHER TAXES ON SMALL BUSINESSES

Proponents falsely claim it only hits big corporations, but State Franchise Tax Board records show Proposition 24 could impact 120,000 businesses. Small businesses can’t survive more tax increases:

“We are struggling to keep our doors open and keep jobs for our employees and their families. Small businesses can’t afford Proposition 24.” —Terry Maxwell, T.L. Maxwell’s Restaurant

CALIFORNIA NEEDS JOBS, NOT A JOBS TAX

It taxes job creation in our most promising industries (high tech, biotech, and clean tech) and hits businesses with another \$1.7 billion tax increase—more layoffs, more companies and jobs leaving California. 2,000,000 Californians are already out of work. Isn’t that enough?

LESS MONEY FOR VITAL SERVICES

Proponents failed to include language to guarantee proper expenditure of the tax increase, leaving it up to the same politicians who misspent us into debt. Worse, Proposition 24 would dramatically slow down our economic recovery, leaving fewer long-term revenues for classrooms, public safety, services for seniors and others.

Everyone is suffering in this economy. Proposition 24 would make things worse by eliminating the tax updates necessary to rebuild our economy and grow jobs and reducing long-term revenues for schools and other services. A LOSE, LOSE proposition.

STOP THE JOBS TAX—NO ON 24

www.StopProp24.com

KENNETH A. MACIAS, Statewide Elected Chair
California Hispanic Chambers of Commerce

WILLIAM J. HUME, Past Vice-President
California State Board of Education

DR. JOSEPH L. BRIDGES, President & Chief Executive Officer
The Seniors Coalition

★ **ARGUMENT AGAINST PROPOSITION 24** ★

VOTE NO ON PROPOSITION 24—STOP THE JOBS TAX!

Make no mistake, Proposition 24:

- DOESN'T guarantee a single dollar will go into our classrooms, public safety or other vital programs, and would in fact REDUCE long-term revenues for these services
- DOESN'T close a single loophole

Instead, Proposition 24:

- Hits consumers and employers with \$1.7 billion in higher taxes—every year
- Gives Sacramento politicians a BLANK CHECK to spend billions with NO accountability
- Would cost California 144,000 jobs
- Taxes employers for creating jobs in California
- Stifles job growth in our most promising industries

PROPOSITION 24 HURTS SMALL BUSINESSES AND SENDS JOBS OUT OF CALIFORNIA

Small businesses are the backbone of our economy, but in this recession they've taken a hit, forcing them to lay off employees, reduce salaries and even close up shop.

"Last year, small business bankruptcies in California rose 81%. I own a small business. Proposition 24 is just one more tax burden we can't afford."—John Mullin, Owner, Pacific M Painting

Proposition 24 will eliminate the job-creating tax incentives that help small businesses survive the down economy, forcing more companies OUT OF BUSINESS and more families OUT OF WORK.

CALIFORNIA FAMILIES CAN'T AFFORD PROPOSITION 24'S NEW TAXES

California has one of the WORST tax climates for businesses, ranking 48 out of the 50 states.

Proposition 24 makes it even worse, hitting small businesses and employers with billions in higher taxes that are passed on to consumers in the form of higher prices for goods and services.

- More than 2 million Californians are unemployed.
- 12.4% unemployment—among the highest in the nation.
- 120,000 California businesses could be impacted by Proposition 24, according to California's Franchise Tax Board.

PROPOSITION 24 WILL LEAD TO FEWER JOBS FOR CALIFORNIANS

Proposition 24 repeals recent state tax updates desperately needed to grow our economy and put Californians back to work. Proposition 24 taxes new job creation and penalizes businesses when they try to expand in California. Twenty-three other states, like New York, Oregon and Texas, have updated their tax systems and California finally did too, but Proposition 24 will take our state back to an outdated, anti-competitive system.

Proposition 24 is a short-sighted scheme that closes the door on JOBS when we can least afford it. Fewer jobs mean LESS long-term revenues for schools, public safety and other vital services.

PROPOSITION 24—A GIANT STEP BACKWARD

Proposition 24 penalizes job growth and encourages businesses to expand into OTHER states—taking good jobs and tax revenue with them.

Proposition 24 taxes new jobs created by high tech, clean tech, biotech and other promising industries—jobs that could lead our economic recovery. California's non-partisan Legislative Analyst's Office says that under Proposition 24: "businesses . . . may cut back their planned California operations."

JOIN SMALL BUSINESSES, TAXPAYERS AND OTHERS AND VOTE NO ON PROPOSITION 24!

- California Association of Independent Business
- BayBio
- Silicon Valley Leadership Group
- California Chamber of Commerce
- TechNet

VOTE NO ON 24—STOP THE JOBS TAX, KEEP JOBS IN CALIFORNIA!

www.StopProp24.com

TERESA CASAZZA, President

California Taxpayers' Association

MARIAN BERGESON, Former California Secretary of Education

BILL LA MARR, Executive Director
California Small Business Alliance

★ **REBUTTAL TO ARGUMENT AGAINST PROPOSITION 24** ★

A Yes Vote on Prop. 24, the "Tax Fairness Act," ends \$1.7 BILLION in new special tax breaks to multi-state corporations with no requirement to create one new job. \$1.7 billion that is desperately needed for our public schools, health care and public safety.

That's why teachers, nurses, small businesses, and public safety groups urge you to vote YES on Prop. 24.

The scare tactics and distortions made by opponents of Prop. 24 illustrate how desperate these multi-state corporations and their CEOs are to take advantage of these additional tax breaks while ordinary Californians foot the bill.

Prop. 24 would prevent:

- 6 multi-state corporations from receiving new tax cuts averaging \$23.5 million each in 2013–14.
- 87% of the benefits from one tax break to go to 0.03% of California corporations. They have gross incomes over \$1 billion.

A YES vote on Prop. 24 ends these unfair new tax breaks before

they can take effect. That's Tax Fairness!

Make no mistake. A Yes vote *will not* raise ordinary Californians' taxes. A Yes vote *will not* cut jobs. A Yes vote *will not* hurt small businesses.

A Yes vote *will* stop unfair tax breaks that would go to some of the largest corporations in the nation, whose greed knows no end. That's why 12 wealthy, multi-billion dollar corporations have already contributed \$100,000 each to defeat Prop. 24. They want more tax breaks they don't have now.

That's why you should vote YES on Prop. 24.

ROB KERTH, President

North Sacramento Chamber of Commerce

MARTIN HITTLEMAN, President

California Federation of Teachers

HANK LACAYO, President

Congress of California Seniors

Section 10. Continuous Appropriations.

The provisions of Sections 6, 6.1, 7, 7.1, and 8 of this act that require a continuous appropriation to the Controller without regard to fiscal year are intended to be “appropriations made by law” within the meaning of Section 7 of Article XVI of the California Constitution.

Section 11. Liberal Construction.

The provisions of this act shall be liberally construed in order to effectuate its purposes.

Section 12. Conflicting Statutes.

Any statute passed by the Legislature between October 21, 2009 and the effective date of this measure, that would have been prohibited if this measure were in effect on the date it was enacted, is hereby repealed.

Section 13. Conflicting Ballot Measures.

In the event that this measure and another measure or measures relating to the direction or redirection of revenues dedicated to funding services provided by local governments or transportation projects or services, or both, appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measure or measures shall be null and void.

Section 14. Severability.

It is the intent of the People that the provisions of this act are severable and that if any provision of this act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect any other provision or application of this act which can be given effect without the invalid provision or application.

PROPOSITION 23

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

California Jobs Initiative

SECTION 1. STATEMENT OF FINDINGS

(a) In 2006, the Legislature and Governor enacted a sweeping environmental law, AB 32. While protecting the environment is of utmost importance, we must balance such regulation with the ability to maintain jobs and protect our economy.

(b) At the time the bill was signed, the unemployment rate in California was 4.8 percent. California’s unemployment rate has since skyrocketed to more than 12 percent.

(c) Numerous economic studies predict that complying with AB 32 will cost Californians billions of dollars with massive increases in the price of gasoline, electricity, food and water, further punishing California consumers and households.

(d) California businesses cannot drive our economic recovery and create the jobs we need when faced with billions of dollars in new regulations and added costs; and

(e) California families being hit with job losses, pay cuts and furloughs cannot afford to pay the increased prices that will be passed onto them as a result of this legislation right now.

SEC. 2. STATEMENT OF PURPOSE

The people desire to temporarily suspend the operation and implementation of AB 32 until the state’s unemployment rate returns to the levels that existed at the time of its adoption.

SEC. 3. Division 25.6 (commencing with Section 38600) is added to the Health and Safety Code, to read:

DIVISION 25.6. SUSPENSION OF AB 32

38600. (a) From and after the effective date of this division, Division 25.5 (commencing with Section 38500) of the Health and Safety Code is suspended until such time as the unemployment rate in California is 5.5 percent or less for four consecutive calendar quarters.

(b) While suspended, no state agency shall propose, promulgate, or adopt any regulation implementing Division 25.5 (commencing with Section 38500) and any regulation adopted prior to the effective date of this division shall be void and unenforceable until such time as the suspension is lifted.

PROPOSITION 24

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends and repeals sections of the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title

This act shall be known as the “Repeal Corporate Tax Loopholes Act.”

SEC. 2. Findings and Declarations

The people of the State of California find and declare that:

1. The State of California is in the midst of the worst financial crisis since the Great Depression. State revenues have plummeted, millions of Californians have lost their jobs, and hundreds of thousands of California homes have been lost in foreclosure sales. Projections suggest it could be many years before the state and its citizens recover.

2. To cope with the fiscal crisis, in 2008 and 2009 the Legislature and Governor raised taxes paid by the people of this state: the personal income tax, the state sales tax, and vehicle license fees. Yet at the same time they passed three special corporate tax breaks that give large corporations nearly \$2 billion a year in state revenues.

3. No public hearings were held and no public notice was given before these corporate tax breaks were passed by the Legislature and signed into law by the Governor.

4. Corporations get these tax breaks without any requirements to create new jobs or to stop shipping current jobs overseas.

5. These loopholes benefit the biggest of corporations with gross incomes of over \$1 billion. One study estimates that 80 percent of the benefits from the first loophole will go to just 0.1 percent of all California corporations. Similarly, estimates are that 87 percent of the benefits from one tax break will go to just 229 companies, each of which has gross income over \$1 billion.

6. At the same time it created these corporate loopholes, the Legislature and Governor enacted \$31 billion in cuts to the state budget—decimating funding for public schools and colleges, eliminating health care services to our neediest citizens, closing

state parks, furloughing state workers, and wreaking havoc on our state's citizens.

7. The first tax loophole allows corporations to choose which of two formulas to use to determine the share of their profits that is taxed in California. There is little doubt corporations will choose the formula that allows them to pay less taxes to this state.

8. The second tax loophole allows corporations to transfer tax credits among their related companies. This allows a company to use tax credits it didn't even earn to reduce the amount of taxes it pays to this state.

9. The third loophole allows corporations to carry back net operating losses and claim refunds for taxes they have already owed and paid in prior years.

10. Public schools are bearing the brunt of these cuts. Over the last two years, the state has cut more than \$17 billion from the K-12 school system. Schools have laid off more than 20,000 classroom teachers and education support staff. Elementary class sizes have grown from 20 students to more than 30 kids in each class. Middle and high school class sizes of 40 are common, with some as large as 60. There will be no new textbooks for years. Entire art, music, vocational education and athletic programs have been eliminated. Schools throughout the state may shut their doors five days early.

11. Since 1981, the share of corporate income paid in taxes has fallen by nearly half—even before these special tax breaks. California taxpayers are paying more, while big corporations are paying less.

12. We should not be cutting vital programs and raising taxes on low-income and middle-class Californians while enacting tax loopholes for big corporations. It makes no sense, and it isn't fair. When public education has been cut by over \$9 billion this year, and taxes on individuals have increased by \$12.5 billion, we cannot afford to give large corporations billions in special tax breaks that are not tied in any way to creating jobs in California. In these tough economic times, everyone should pay their fair share.

SEC. 3. Purpose and Intent

The people enact this measure to repeal three tax breaks that were granted to corporations in 2008 and 2009: the elective single sales factor provisions contained in ABx3 15 and SBx3 15 of 2009; (2) the net operating loss carryback provisions contained in AB 1452 of 2008; and (3) the tax credit sharing provisions in AB 1452 of 2008.

SEC. 4. 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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

operating loss constituted the entire net operating loss.

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

~~(c) Net operating loss carrybacks shall not be allowed.~~

~~(e) 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 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.~~

~~(A) 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) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.~~

~~(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, 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.~~

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

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

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

~~(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a~~

net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

~~(e) For purposes of this section:~~

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

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

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

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

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

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

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

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

~~(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or 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 published by the United States Office of Management and Budget, 1987 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 gift, inheritance, transfer incident to divorce, or any other 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 published by the United States Office of Management and Budget, 1987 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.

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

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

(i) 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.

(j) 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.

(k) 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. 5. Section 17276.9 of the Revenue and Taxation Code is amended to read:

17276.9. (a) Notwithstanding Sections 17276, 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss

deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

~~(c) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.~~

~~(d) (c) The provisions of this section shall not apply to a taxpayer with net business income of less than five hundred thousand dollars (\$500,000) for the taxable year. For purposes of this subdivision, business income means:~~

~~(1) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer. For purposes of this paragraph, the term "passthrough entity" means a partnership or an "S" corporation.~~

~~(2) Income from rental activity.~~

~~(3) Income attributable to a farming business.~~

SEC. 6. Section 17276.10 of the Revenue and Taxation Code is repealed.

~~17276.10.—Notwithstanding Section 17276.1, 17276.2, 17276.4, 17276.5, 17276.6, or 17276.7 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, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.~~

SEC. 7. Section 23663 of the Revenue and Taxation Code is repealed.

~~23663.—(a) (1) Notwithstanding any other law to the contrary, for each taxable year beginning on or after July 1, 2008, any credit allowed to a taxpayer under this chapter that is an "eligible credit (within the meaning of paragraph (2) of subdivision (b)) may be assigned by that taxpayer to any "eligible assignee" (within the meaning of paragraph (3) of subdivision (b)):~~

~~(2) A credit assigned under paragraph (1) may only be applied by the eligible assignee against the "tax" of the eligible assignee in a taxable year beginning on or after January 1, 2010.~~

~~(3) Except as specifically provided in this section, following an assignment of any eligible credit under this section, the eligible assignee shall be treated as if it originally earned the assigned credit.~~

~~(b) For purposes of this section, the following definitions shall apply:~~

~~(1) "Affiliated corporation" means a corporation that is a member of a commonly controlled group as defined in Section 25105.~~

~~(2) "Eligible credit" shall mean:~~

~~(A) Any credit earned by the taxpayer in a taxable year beginning on or after July 1, 2008, or~~

~~(B) Any credit earned in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer's first taxable year beginning on or after July 1, 2008, under the provisions of this part.~~

~~(3) "Eligible assignee" shall mean any affiliated corporation that is properly treated as a member of the same combined reporting group pursuant to Section 25101 or 25110 as the taxpayer assigning~~

the eligible credit as of:

(A) In the case of credits earned in taxable years beginning before July 1, 2008:

(i) June 30, 2008, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(B) In the case of credits earned in taxable years beginning on or after July 1, 2008:

(i) The last day of the first taxable year in which the credit was allowed to the taxpayer, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(c) (1) The election to assign any credit under subdivision (a) shall be irrevocable once made, and shall be made by the taxpayer allowed that credit on its original return for the taxable year in which the assignment is made.

(2) The taxpayer assigning any credit under this section shall reduce the amount of its unused credit by the face amount of any credit assigned under this section, and the amount of the assigned credit shall not be available for application against the assigning taxpayer's "tax" in any taxable year, nor shall it thereafter be included in the amount of any credit carryover of the assigning taxpayer.

(3) The eligible assignee of any credit under this section may apply all or any portion of the assigned credits against the "tax" (as defined in Section 23036) of the eligible assignee for the taxable year in which the assignment occurs, or any subsequent taxable year, subject to any carryover period limitations that apply to the assigned credit and also subject to the limitation in paragraph (2) of subdivision (a).

(4) In no case may the eligible assignee sell, otherwise transfer, or thereafter assign the assigned credit to any other taxpayer.

(d) (1) No consideration shall be required to be paid by the eligible assignee to the assigning taxpayer for assignment of any credit under this section.

(2) In the event that any consideration is paid by the eligible assignee to the assigning taxpayer for the transfer of an eligible credit under this section, then:

(A) No deduction shall be allowed to the eligible assignee under this part with respect to any amounts so paid, and

(B) No amounts so received by the assigning taxpayer shall be includable in gross income under this part.

(e) (1) The Franchise Tax Board shall specify the form and manner in which the election required under this section shall be made, as well as any necessary information that shall be required to be provided by the taxpayer assigning the credit to the eligible assignee.

(2) Any taxpayer who assigns any credit under this section shall report any information, in the form and manner specified by the Franchise Tax Board, necessary to substantiate any credit assigned under this section and verify the assignment and subsequent application of any assigned credit.

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

(4) The Franchise Tax Board may issue any regulations necessary to implement the purposes of this section, including any regulations necessary to specify the treatment of any assignment that does not comply with the requirements of this section (including, for example, where the taxpayer and eligible assignee are not properly treated as members of the same combined

reporting group on any of the dates specified in paragraph (3) of subdivision (b):

(f) (1) The taxpayer and the eligible assignee shall be jointly and severally liable for any tax, addition to tax, or penalty that results from the disallowance, in whole or in part, of any eligible credit assigned under this section.

(2) Nothing in this section shall limit the authority of the Franchise Tax Board to audit either the assigning taxpayer or the eligible assignee with respect to any eligible credit assigned under this section.

(g) On or before June 30, 2013, the Franchise Tax Board shall report to the Joint Legislative Budget Committee, the Legislative Analyst, and the relevant policy committees of both houses on the effects of this section. The report shall include, but need not be limited to, the following:

(1) An estimate of use of credits in the 2010 and 2011 taxable years by eligible taxpayers.

(2) An analysis of effect of this section on expanding business activity in the state related to these credits.

(3) An estimate of the resulting tax revenue loss to the state.

(4) The report shall cover all credits covered in this section, but focus on the credits related to research and development, economic incentive areas, and low income housing.

SEC. 8. Section 24416 of the Revenue and Taxation Code is amended to read:

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

(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:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net 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) Net operating loss carrybacks shall not be allowed.

~~(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 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.~~

~~(A) 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) For a net operating loss attributable to a taxable year beginning on or after January 1, 2012, and before January 1, 2013, the amount of carryback to any taxable year shall not exceed 75 percent of the net operating loss.~~

~~(C) For a net operating loss attributable to a taxable year beginning on or after January 1, 2013, 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) (l) (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 years” except as otherwise provided in paragraphs (2), (3), and (4).~~

~~(B) For a net operating loss for any income 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 income year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” referred to 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.~~

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

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

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

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

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

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

(f) For purposes of this section:

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

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

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

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

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

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

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

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

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or 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 published by the United States Office of Management and Budget, 1987 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 published by the United States Office of Management and Budget, 1987 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. 9. Section 24416.9 of the Revenue and Taxation Code is amended to read:

24416.9. (a) Notwithstanding Sections 24416, 24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7 of this code and Section 172 of the Internal Revenue Code, no net operating loss deduction shall be allowed for any taxable year beginning on or after January 1, 2008, and before January 1, 2010.

(b) For any net operating loss or carryover of a net operating

loss for which a deduction is denied by subdivision (a), the carryover period under Section 172 of the Internal Revenue Code shall be extended as follows:

(1) By one year, for losses incurred in taxable years beginning on or after January 1, 2008, and before January 1, 2009.

(2) By two years, for losses incurred in taxable years beginning before January 1, 2008.

~~(e) Notwithstanding subdivision (a), a net operating loss deduction shall be allowed for carryback of a net operating loss attributable to a taxable year beginning on or after January 1, 2011.~~

~~(d) (c)~~ The provisions of this section shall not apply to a taxpayer with income subject to tax under this part of less than five hundred thousand dollars (\$500,000) for the taxable year.

SEC. 10. Section 24416.10 of the Revenue and Taxation Code is repealed.

~~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, 2011, shall also be a net operating loss carryback to each of the two taxable years preceding the taxable year of loss.~~

SEC. 11. Section 25128.5 of the Revenue and Taxation Code is repealed.

~~25128.5. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board to apportion its income in accordance with this section, and not in accordance with Section 25128.~~

~~(b) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, all business income of an apportioning trade or business making an election described in subdivision (a) shall be apportioned to this state by multiplying the business income by the sales factor.~~

~~(c) The Franchise Tax Board is authorized to issue regulations necessary or appropriate regarding the making of an election under this section, including regulations that are consistent with rules prescribed for making an election under Section 25113.~~

SEC. 12. Severability

If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, such finding shall not affect the remaining provisions or applications of this measure to other persons or circumstances, and to that extent the provisions of this measure are deemed to be severable.

SEC. 13. Conflicting Initiatives

In the event that this measure and another measure relating to these tax provisions shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the other measure shall be null and void.

PROPOSITION 25

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends a section of the California Constitution; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title.

This measure shall be known and may be cited as the “On-Time Budget Act of 2010.”

SEC. 2. Findings and Declarations.

The people of the State of California find and declare that:

1. For more than 20 years, the California Legislature has been unable to meet its constitutional duty to pass a Budget Act by June 15. In many of those years, the Legislature did not pass a Budget Act until the month of August, and in 2008, the Budget Act was not passed until September 16, more than three months late.

2. Late budget passage can have a sudden and devastating effect on individual Californians and California businesses. Individuals and families can be deprived of essential governmental services and businesses are subject to protracted delays in payments for services rendered to the State.

3. A major cause of the inability of the Legislature to pass a budget in a timely manner is the supermajority two-thirds vote required to pass a budget. Political party leaders refuse to compromise to solve the state’s budget problem and have used the two-thirds vote requirement to hold up the budget or to leverage special interest concessions that benefit only a handful of politicians.

4. California, Rhode Island and Arkansas are the only states in the country that require a vote of two-thirds or more of the legislature to pass a budget.

5. A second major cause of the inability of the Legislature to pass a budget on time is that individual legislators have no incentive for doing so. Whether they adopt a budget on time or not has no effect upon those elected to represent the voters. In order to give the Legislature an incentive to pass the annual state budget on time, legislators should not be paid or reimbursed for living expenses if they fail to enact the budget on time. This measure requires incumbents to permanently forfeit their salaries and expenses for each day the budget is late.

SEC. 3. Purpose and Intent.

1. The people enact this measure to end budget delays by changing the legislative vote necessary to pass the budget from two-thirds to a majority vote and by requiring legislators to forfeit their pay if the Legislature fails to pass the budget on time.

2. This measure will not change Proposition 13’s property tax limitations in any way. This measure will not change the two-thirds vote requirement for the Legislature to raise taxes.

SEC. 4. Section 12 of Article IV of the California Constitution is amended to read:

SEC. 12. (a) Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.