

Senate Bill No. 175

CHAPTER 42

An act to amend Sections 42885 and 42889 of the Public Resources Code, and to amend Sections 6902.5, 17039, and 23036 of, to add Sections 17039.4, 17276.24, 23036.4, and 24416.24 to, and to add and repeal Sections 17039.5 and 23036.5 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 29, 2024. Filed with Secretary of State June 29, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

SB 175, Committee on Budget and Fiscal Review. Taxation.

(1) The Personal Income Tax Law and the Corporation Tax Law, in modified conformity with federal income tax laws, allow various deductions in computing the income that is subject to the taxes imposed by those laws, including a deduction for a net operating loss, as specified. Existing law disallows the net operating loss deduction, as specified, for taxable years beginning on or after January 1, 2020, and before January 1, 2022.

Senate Bill 167 of the 2023–24 Regular Session (Senate Bill 167) proposes to disallow the net operating loss deduction for taxable years beginning on or after January 1, 2024, and before January 1, 2027.

This bill would provide that the disallowance of the net operating loss deduction proposed by Senate Bill 167 would not apply for taxable years in which the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and there is legislation in the annual Budget Act not applying those provisions, as specified.

(2) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws. Existing law, for taxable years beginning on or after January 1, 2020, and before January 1, 2022, limits the total tax reduction by all business credits, as defined, to \$5,000,000 per taxable year, and allows the amounts disallowed by that limit to be carried over, as specified.

Senate Bill 167 proposes to similarly apply a \$5,000,000 business credit limit and related carryover provisions to taxable years beginning on or after January 1, 2024, and before January 1, 2027, as provided, unless a specified exception applies.

This bill would provide that the \$5,000,000 business credit limit proposed by Senate Bill 167 would not apply for taxable years in which the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension

and credit limitation, and there is legislation in the annual Budget Act not applying those provisions, as specified.

This bill, for a qualified taxpayer who elects to receive a specified refund under the motion picture credit, would allow the amount of the credit under the motion picture credit that exceeds the \$5,000,000 limitation proposed in Senate Bill 167 to be refunded in the first taxable year that the limitation is not operative, subject to certain conditions.

This bill, for taxable years beginning on or after January 1, 2024, and before January 1, 2027, would allow a taxpayer to make an irrevocable election to receive an annual refundable credit amount, beginning the 3rd taxable year after the election is made, equal to 20% of the qualified credits that would have otherwise been available to the taxpayer but for the \$5,000,000 limitation proposed in Senate Bill 167. The bill would require the annual refundable credit amount to be allowed as a credit for the taxable year, as specified, and would require the balance, if any, to be paid from the Tax Relief and Refund Account to the taxpayer. By authorizing a refund to be paid from the Tax Relief and Refund Account, a continuously appropriated fund, the bill would make an appropriation.

(3) The Sales and Use Tax Law, in lieu of specified credits allowed under the Personal Income Tax Law and the Corporation Tax Law for qualified expenditures paid or incurred by a taxpayer for the production of a qualified motion picture, allows a qualified taxpayer or affiliate to make an irrevocable election to apply that income tax credit amount against qualified sales and use taxes imposed on the qualified taxpayer in the reporting periods in the following 5 years. Under existing law, amounts included in the election are excluded from the \$5,000,000 business credit limitation described above.

Existing law, for irrevocable elections made on and after June 29, 2020, imposes, until January 1, 2022, a cap of \$5,000,000 per taxable year on those tax credit amounts the taxpayer would otherwise be allowed to apply against those sales and use taxes for taxable years beginning on or after January 1, 2020, and before January 1, 2022, as specified.

Senate Bill 167 similarly proposes to impose a \$5,000,000 limitation on those tax credit amounts applied against qualified sales and use taxes, as specified.

This bill would specify that the \$5,000,000 credit limitation applies for the 2024, 2025, and 2026 calendar years. The bill would provide that the \$5,000,000 tax credit cap proposed by Senate Bill 167 would not apply in the 2025 or 2026 calendar years if the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and there is legislation in the annual Budget Act not applying those provisions, as specified.

(4) The California Tire Recycling Act, until January 1, 2034, requires a person who purchases a new tire, as defined, to pay a California tire fee of \$1.75 per tire, for deposit, except for 1½% retained by retailers and as provided below, in the California Tire Recycling Management Fund for expenditure by the Department of Resources Recycling and Recovery upon

appropriation by the Legislature for prescribed purposes related to disposal and use of used tires. Commencing January 1, 2034, existing law reduces the California tire fee to \$0.75 per tire and changes the retailers' share to 3%. Existing law authorizes the department, in carrying out the act, to solicit and use any and all expertise available in, and to contract or cooperate with, other state agencies, as provided. Existing law authorizes the department to contract with the California Department of Tax and Fee Administration to collect the fees imposed under the division. Existing law requires the department, or its authorized agent, to be reimbursed for its costs of collection, auditing, and making refunds associated with the California Tire Recycling Management Fund, in an amount not to exceed 3% of the total annual revenue deposited in the fund.

Existing law requires the payment of sales and use taxes, and specified taxes, fees, and surcharges that are administered by the California Department of Tax and Fee Administration under the provisions of the Sales and Use Tax Law and the Fee Collection Procedures Law, respectively. A violation of the Fee Collection Procedures Law is a crime.

Senate Bill 167 proposes, among other things, to require the California Department of Tax and Fee Administration to collect specified fees imposed by the California Tire Recycling Act pursuant to the Fee Collection Procedures Law.

This bill, if Senate Bill 167 becomes operative, would instead specify that the California Department of Tax and Fee Administration is required to collect the California tire fee pursuant to the Fee Collection Procedures Law. By expanding the scope of crimes, the bill would impose a state-mandated local program. The bill would make additional nonsubstantive changes to the California Tire Recycling Act amendments proposed by Senate Bill 167.

(5) This bill would make additional conforming changes related to tax administration.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(7) This bill would provide that it would become operative only if Senate Bill 167 of the 2023–24 Regular Session is enacted and becomes effective.

(8) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

SECTION 1. Section 42885 of the Public Resources Code, as amended by Section 20 of Chapter 355 of the Statutes of 2022, is amended to read:

42885. (a) For purposes of this section, “California tire fee” means the fee imposed pursuant to this section.

(b) (1) A person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of one dollar and seventy-five cents (\$1.75) per tire.

(2) The retail seller shall charge the retail purchaser the amount of the California tire fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the retail purchaser.

(3) The retail seller shall collect the California tire fee from the retail purchaser at the time of sale and may retain 1½ percent of the fee as reimbursement for any costs associated with the collection of the fee. The retail seller shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(c) The California Department of Tax and Fee Administration shall collect the California tire fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)) of Division 2 of the Revenue and Taxation Code. For purposes of this section, the reference in the Fee Collection Procedures Law to “feepayer” shall include a person required to pay the fee imposed by this section, which includes the retail seller.

(d) The California tire fee imposed pursuant to subdivision (b) shall be separately stated by the retail seller on the invoice given to the customer at the time of sale. Any other disposal or transaction fee charged by the retail seller related to the tire purchase shall be identified separately from the California tire fee.

(e) A person or business who knowingly, or with reckless disregard, makes a false statement or representation in a document used to comply with this section is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues. Liability under this section may be imposed in a civil action and shall not exceed twenty-five thousand dollars (\$25,000) for each violation.

(f) In addition to the civil penalty that may be imposed pursuant to subdivision (e), the department may impose an administrative penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues, on a person who intentionally or negligently violates a permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The department shall adopt regulations that specify the amount of the administrative penalty and the procedure for imposing an administrative penalty pursuant to this subdivision.

(g) For purposes of this section, “new tire” means a pneumatic or solid tire intended for use with onroad or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motorized equipment, or a new tire sold with a new or used motor vehicle, as defined in Section 42803.5, including the spare tire, construction equipment, or farm equipment. “New tire” does not include retreaded, reused, or recycled tires.

(h) The California tire fee shall not be imposed on a tire sold with, or sold separately for use on, any of the following:

- (1) A self-propelled wheelchair.
- (2) A motorized tricycle or motorized quadricycle, as defined in Section 407 of the Vehicle Code.
- (3) A vehicle that is similar to a motorized tricycle or motorized quadricycle and is designed to be operated by a person who, by reason of the person's physical disability, is otherwise unable to move about as a pedestrian.

(i) This section shall remain in effect only until January 1, 2034, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2034, deletes or extends that date.

SEC. 2. Section 42885 of the Public Resources Code, as amended by Section 21 of Chapter 355 of the Statutes of 2022, is amended to read:

42885. (a) For purposes of this section, "California tire fee" means the fee imposed pursuant to this section.

(b) (1) Every person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of seventy-five cents (\$0.75) per tire.

(2) The retail seller shall charge the retail purchaser the amount of the California tire fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the retail purchaser.

(3) The retail seller shall collect the California tire fee from the retail purchaser at the time of sale and may retain 3 percent of the fee as reimbursement for any costs associated with the collection of the fee. The retail seller shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(c) The California Department of Tax and Fee Administration shall collect the California tire fee pursuant to the Fee Collection Procedures Law (Part 30 (commencing with Section 55001)) of Division 2 of the Revenue and Taxation Code. For purposes of this section, the reference in the Fee Collection Procedures Law to "feepayer" shall include a person required to pay the fee imposed by this section, which includes the retail seller.

(d) The California tire fee imposed pursuant to subdivision (b) shall be separately stated by the retail seller on the invoice given to the customer at the time of sale. Any other disposal or transaction fee charged by the retail seller related to the tire purchase shall be identified separately from the California tire fee.

(e) Any person or business who knowingly, or with reckless disregard, makes any false statement or representation in any document used to comply with this section is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues. Liability under this section may be imposed in a civil action and shall not exceed twenty-five thousand dollars (\$25,000) for each violation.

(f) In addition to the civil penalty that may be imposed pursuant to subdivision (e), the department may impose an administrative penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation of

a separate provision or, for continuing violations, for each day that the violation continues, on any person who intentionally or negligently violates any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The department shall adopt regulations that specify the amount of the administrative penalty and the procedure for imposing an administrative penalty pursuant to this subdivision.

(g) For purposes of this section, “new tire” means a pneumatic or solid tire intended for use with onroad or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motorized equipment, or a new tire sold with a new or used motor vehicle, as defined in Section 42803.5, including the spare tire, construction equipment, or farm equipment. “New tire” does not include retreaded, reused, or recycled tires.

(h) The California tire fee may not be imposed on any tire sold with, or sold separately for use on, any of the following:

(1) Any self-propelled wheelchair.

(2) Any motorized tricycle or motorized quadricycle, as defined in Section 407 of the Vehicle Code.

(3) Any vehicle that is similar to a motorized tricycle or motorized quadricycle and is designed to be operated by a person who, by reason of the person’s physical disability, is otherwise unable to move about as a pedestrian.

(i) This section shall become operative on January 1, 2034.

SEC. 3. Section 42889 of the Public Resources Code, as amended by Section 22 of Chapter 355 of the Statutes of 2022, is amended to read:

42889. (a) All revenues, interest, and penalties derived from the California Tire Fee, less refunds and reimbursement to the California Department of Tax and Fee Administration for expenses incurred in the administration and collection of the fee imposed by this article, shall be deposited as follows:

(1) An amount equal to seventy-five cents (\$0.75) per tire on which the fee is imposed shall be deposited in the Air Pollution Control Fund. The state board shall expend those moneys, or allocate those moneys to the districts for expenditure, to fund programs and projects that mitigate or remediate air pollution caused by tires in the state, to the extent that the state board or the applicable district determines that the program or project remediates air pollution harms created by tires upon which the fee described in Section 42885 is imposed.

(2) The remaining moneys collected pursuant to Section 42885 shall be deposited in the California Tire Recycling Management Fund to fund the waste tire program, and shall be appropriated to the department in the annual Budget Act in a manner consistent with the five-year plan adopted and updated by the department. These moneys shall be expended for the payment of refunds under this chapter and for the following purposes:

(A) To pay the administrative overhead cost of this chapter, not to exceed 6 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

(B) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(C) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires and used tires. The department shall consider designating a city, county, or city and county as the enforcement authority of regulations relating to the storage of waste tires and used tires, as provided in subdivision (c) of Section 42850, and regulations relating to the hauling of waste and used tires, as provided in subdivision (b) of Section 42963. If the department designates a local entity for that purpose, the department shall provide sufficient, stable, and noncompetitive funding to that entity for that purpose, based on available resources, as provided in the five-year plan adopted and updated as provided in subdivision (a) of Section 42885.5. The department may consider and create, as appropriate, financial incentives for citizens who report the illegal hauling or disposal of waste tires as a means of enhancing local and statewide waste tire and used tire enforcement programs.

(D) To pay the costs of cleanup, abatement, removal, or other remedial action related to waste tire stockpiles throughout the state, including all approved costs incurred by other public agencies involved in these activities by contract with the department. Not less than six million five hundred thousand dollars (\$6,500,000) shall be expended by the department during each of the following fiscal years for this purpose: 2001–02 to 2006–07, inclusive.

(E) To make studies and conduct research directed at promoting and developing alternatives to the landfill disposal of waste tires.

(F) To assist in developing markets and new technologies for used tires and waste tires. The department's expenditure of funds for purposes of this subdivision shall reflect the priorities for waste management practices specified in subdivision (a) of Section 40051.

(G) To pay the costs associated with implementing and operating a waste tire and used tire hauler program and manifest system pursuant to Chapter 19 (commencing with Section 42950).

(H) To pay the costs to create and maintain an emergency reserve, which shall not exceed one million dollars (\$1,000,000).

(I) To pay the costs of cleanup, abatement, or other remedial action related to the disposal of waste tires in implementing and operating the Farm and Ranch Solid Waste Cleanup and Abatement Grant Program established pursuant to Chapter 2.5 (commencing with Section 48100) of Part 7.

(J) To fund border region activities specified in paragraph (8) of subdivision (b) of Section 42885.5.

(K) For expenditure pursuant to paragraph (3) of subdivision (a) of, and paragraph (3) of subdivision (b) of, Section 17001.

(b) This section shall remain in effect only until January 1, 2034, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2034, deletes or extends that date.

SEC. 4. Section 42889 of the Public Resources Code, as amended by Section 23 of Chapter 355 of the Statutes of 2022, is amended to read:

42889. (a) All revenues, interest, and penalties derived from the California tire fee, less refunds and reimbursement to the California Department of Tax and Fee Administration for expenses incurred in the administration and collection of the fee imposed by this article, shall be deposited in the California Tire Recycling Management Fund in the State Treasury. Funding for the waste tire program shall be appropriated to the department in the annual Budget Act. The moneys in the fund shall be expended for the following purposes:

(1) To pay the administrative overhead cost of this chapter, not to exceed 5 percent of the total revenue deposited in the fund annually, or an amount otherwise specified in the annual Budget Act.

(2) To pay the costs associated with operating the tire recycling program specified in Article 3 (commencing with Section 42870).

(3) To pay the costs associated with the development and enforcement of regulations relating to the storage of waste tires and used tires. The department shall consider designating a city, county, or city and county as the enforcement authority of regulations relating to the storage of waste tires and used tires, as provided in subdivision (c) of Section 42850, and regulations relating to the hauling of waste and used tires, as provided in subdivision (b) of Section 42963. If the department designates a local entity for that purpose, the department shall provide sufficient, stable, and noncompetitive funding to that entity for that purpose, based on available resources, as provided in the five-year plan adopted and updated as provided in subdivision (a) of Section 42885.5. The department may consider and create, as appropriate, financial incentives for citizens who report the illegal hauling or disposal of waste tires as a means of enhancing local and statewide waste tire and used tire enforcement programs.

(4) To pay the costs of cleanup, abatement, removal, or other remedial action related to waste tire stockpiles throughout the state, including all approved costs incurred by other public agencies involved in these activities by contract with the department. Not less than six million five hundred thousand dollars (\$6,500,000) shall be expended by the department during each of the following fiscal years for this purpose: 2001–02 to 2006–07, inclusive.

(5) To fund border region activities specified in paragraph (8) of subdivision (b) of Section 42885.5.

(6) For expenditure pursuant to paragraph (3) of subdivision (a) of, and paragraph (3) of subdivision (b) of, Section 17001.

(b) This section shall become operative on January 1, 2034.

SEC. 5. Section 6902.5 of the Revenue and Taxation Code, as proposed to be amended by Section 13 of Senate Bill 167 of the 2023–24 Regular Session, is amended to read:

6902.5. (a) For the purposes of this section:

(1) “Qualified taxpayer” means a person who is a qualified taxpayer within the meaning of paragraph (17) of subdivision (b) of Section 17053.85, 17053.95, 23685, or 23695, paragraph (19) of subdivision (b) of Section

17053.98 or 23698, or paragraph (20) of subdivision (b) of Section 17053.98.1 or 23698.1.

(2) “Affiliate” means a qualified taxpayer’s affiliated corporation that has been assigned any portion of the credit amount by the qualified taxpayer pursuant to subdivision (c) of Section 23685, subdivision (c) of Section 23695, subdivision (c) of Section 23698, or subdivision (c) of Section 23698.1.

(3) “Credit amount” means an amount equal to the tax credit amount that would otherwise be allowed to a qualified taxpayer pursuant to Section 17053.85, 17053.95, 17053.98, 17053.98.1, 23685, 23695, 23698, or 23698.1, but for the election made pursuant to this section.

(4) “Production period” means the production period as defined in paragraph (12) of subdivision (b) of Section 17053.85, 17053.95, 23685, or 23695, in paragraph (14) of subdivision (b) of Section 17053.98 or 23698, or in paragraph (15) of subdivision (b) of Section 17053.98.1 or Section 23698.1.

(5) (A) “Qualified sales and use taxes” means any state sales and use taxes imposed by Part 1 (commencing with Section 6001), on the operative date of the act adding this section.

(B) Notwithstanding subparagraph (A), “qualified sales and use taxes” does not mean taxes imposed by Section 6051.2, 6051.5, 6201.2, 6201.5, Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), or Section 35 of Article XIII of the California Constitution.

(b) (1) A qualified taxpayer may, in lieu of claiming the credit allowed by Section 17053.85, 17053.95, 17053.98, 17053.98.1, 23685, 23695, 23698, or 23698.1, make an irrevocable election to apply the credit amount against qualified sales and use taxes imposed on the qualified taxpayer in accordance with this section.

(2) An affiliate may, in lieu of claiming the assigned portion of the credit allowed by Section 23685, 23695, 23698, or 23698.1, make an irrevocable election to apply the assigned portion of the credit amount against qualified sales and use taxes imposed on the affiliate in accordance with this section.

(c) (1) A qualified taxpayer or affiliate shall submit to the California Department of Tax and Fee Administration an irrevocable election, in a form as prescribed by the California Department of Tax and Fee Administration, which shall include, but not be limited to, the following information:

(A) Representation that the claimant is a qualified taxpayer or an affiliate.

(B) Statement of the dates on which the production period began and ended.

(C) The credit amount, and if an affiliate, the portion of the credit amount assigned to it and documentation supporting the assignment of that portion of the credit amount.

(D) The amount of qualified sales and use taxes the claimant remitted to the California Department of Tax and Fee Administration during the period commencing on the first day of the calendar quarter commencing immediately before the beginning of the production period, and ending on

the date the claimant was required to file its most recent sales and use tax return with the California Department of Tax and Fee Administration.

(E) A copy of the credit certificate issued pursuant to subparagraph (C) of paragraph (2) of subdivision (g) of Section 17053.85 or 23685 or subparagraph (D) of paragraph (3) of subdivision (g) of Section 17053.95, 17053.98, 23695, 23698, or subparagraph (C) of paragraph (3) of subdivision (g) of Section 17053.98.1 or 23698.1.

(2) The election shall be filed on or before the date on which the qualified taxpayer or affiliate would first be allowed to claim a credit pursuant to Section 17053.85, 17053.95, 17053.98, 17053.98.1, 23685, 23695, 23698, or 23698.1 on its tax return.

(3) (A) For those amounts for which an irrevocable election is made in lieu of tax credits allowed pursuant to Section 17053.85, 17053.95, 17053.98, 23685, 23695, or 23698 that would otherwise be allowed for any taxable year beginning on or after January 1, 2020, and before January 1, 2022, subdivision (d) and paragraph (1) of subdivision (e) shall only apply to those in-lieu credit amounts that do not exceed five million dollars (\$5,000,000) for that taxable year.

(B) For those amounts for which an irrevocable election is made in lieu of tax credits allowed pursuant to Section 17053.85, 17053.95, 17053.98, 23685, 23695, or 23698 that would otherwise be allowed for any taxable year beginning on or after January 1, 2020, and before January 1, 2022, that are in excess of five million dollars (\$5,000,000) for that taxable year, subdivision (f) shall apply.

(d) (1) The claimant may elect to obtain a refund of qualified sales and use taxes paid during the period described in subparagraph (D) of paragraph (1) of subdivision (c). If the claimant elects to obtain a refund of qualified sales and use taxes, the claimant shall file a claim for refund with the irrevocable election described in subdivision (c). The refund amount shall not exceed, for a qualified taxpayer, the credit amount, or for an affiliate, the portion of the credit amount assigned to it.

(2) No interest shall be paid on any amount refunded or credited pursuant to paragraph (1).

(e) (1) If the claimant does not elect to obtain a refund or in the case where the credit amount, or assigned portion, exceeds the amount of its claim for refund for the qualified sales and use taxes, the claimant may, for the reporting periods in the five years following the last reporting period as described in subparagraph (D) of paragraph (1) of subdivision (c), offset any remaining credit amount, or assigned portion, against the qualified sales and use taxes imposed during those reporting periods.

(2) Notwithstanding paragraph (1), the total amount of refunds or credit offsets claimed under subdivision (d) and paragraph (1) of this subdivision in lieu of tax credits allowed pursuant to Section 17053.85, 17053.95, 17053.98, 23685, 23695, or 23698 that would otherwise be allowed for a taxable year beginning on or after January 1, 2020, and before January 1, 2022, shall not exceed five million dollars (\$5,000,000).

(f) Notwithstanding subdivision (d) and paragraph (1) of subdivision (e), for those amounts for which an irrevocable election is made in lieu of tax credits allowed pursuant to Sections 17053.85, 17053.95, 17053.98, 23685, 23695, or 23698 that would otherwise be allowed for any taxable year beginning on or after January 1, 2020, and before January 1, 2022, that are in excess of five million dollars (\$5,000,000) for that taxable year, both of the following shall apply:

(1) The claimant may elect to obtain a refund of the qualified sales and use taxes paid or offset that excess credit amount, or assigned portion against the qualified sales and use taxes imposed, during the reporting periods that occur during the 2021 calendar year. The total amount of refunds or credit offsets claimed under this paragraph, subdivision (d), and paragraph (1) of subdivision (e) shall not exceed five million dollars (\$5,000,000) in the 2021 calendar year for each claimant.

(2) If the claimant has not exhausted the excess credit amount, or assigned portion, as provided by paragraph (1), the claimant may offset the remaining excess credit amount, or assigned portion, against the qualified sales and use taxes imposed during the reporting periods in the five years following and including the reporting period beginning on and after January 1, 2022.

(g) Notwithstanding any other provision of this section or any other law, for the 2024, 2025, and 2026 calendar years, all of the following shall apply:

(1) The total amount of refunds or credit offsets under subdivision (d) and paragraph (1) of subdivision (e) in lieu of tax credits allowed pursuant to Sections 17053.85, 17053.95, 17053.98, 17053.98.1, 23685, 23695, 23698, and 23698.1 shall not exceed five million dollars (\$5,000,000) in each of the 2024, 2025, and 2026 calendar years for each claimant.

(2) For refunds or credit offsets claimed under subdivision (d) and paragraph (1) of subdivision (e) for which an irrevocable election is made in lieu of tax credits allowed pursuant to Sections 17053.85, 17053.95, 17053.98, 17053.98.1, 23685, 23695, 23698, and 23698.1 that are in excess of five million dollars (\$5,000,000), both of the following shall apply:

(A) The claimant may elect to obtain a refund of the qualified sales and use taxes paid or offset that excess credit amount, or assigned portion against the qualified sales and use taxes imposed, during the reporting periods that occur during the 2024, 2025, and 2026 calendar years. The total amount of refunds or credit offsets claimed under this paragraph, subdivision (d), and paragraph (1) of subdivision (e), shall not exceed five million dollars (\$5,000,000) in each of the 2024, 2025, and 2026 calendar years for each claimant.

(B) If the claimant has not exhausted the excess credit amount, or assigned portion, as provided by subparagraph (A), the claimant may offset the remaining excess credit amount, or assigned portion, against the qualified sales and use taxes imposed during the reporting periods in the five years following and including the reporting period beginning on and after January 1, 2027.

(3) For purposes of this subdivision, “claimant” means a qualified taxpayer together with its affiliates.

(h) Section 6961 shall apply to any refund, or part thereof, that is erroneously made and any credit, or part thereof, that is erroneously allowed pursuant to this section.

(i) The California Department of Tax and Fee Administration shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the California Department of Tax and Fee Administration and the Franchise Tax Board, of the qualified taxpayers, or affiliates that have been assigned a portion of the credit allowed under Section 23685 pursuant to subdivision (c) of Section 23685, Section 23695 pursuant to subdivision (c) of Section 23695, Section 23698 pursuant to subdivision (c) of Section 23698, or Section 23698.1 pursuant to subdivision (c) of Section 23698.1, who, during the year, have made an irrevocable election pursuant to this section and the credit amount, or portion of the credit amount, claimed by each qualified taxpayer or affiliate.

(j) The California Department of Tax and Fee Administration may prescribe rules and regulations for the administration of this section.

(k) The amendments made to this section by Chapter 8 of the Statutes of 2020 shall not apply to irrevocable elections made before June 29, 2020.

(l) The amendments made to this section by Chapter 3 of the Statutes of 2022 shall apply to irrevocable elections made on and after June 29, 2020.

(m) (1) The limitations set forth in subdivision (g) for the 2025 calendar year only shall not apply if, pursuant to paragraph (1) of subdivision (k) of Section 17039.4 and paragraph (1) of subdivision (j) of Section 23036.4, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply the limitations set forth in subdivision (g).

(2) The limitations set forth in subdivision (g) for the 2026 calendar year only shall not apply if, pursuant to paragraph (2) of subdivision (k) of Section 17039.4 and paragraph (2) of subdivision (j) of Section 23036.4, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply the limitations set forth in subdivision (g).

(n) The amendments made to this section by the act adding this subdivision shall not apply to irrevocable elections made before the operative date of the act adding this section.

SEC. 6. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term “net tax” means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence,

the “net tax” shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against “net tax” in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions, except for those that are allowed to reduce “net tax” below the tentative minimum tax, as defined by Section 17062.

(3) Credits that contain both carryover and refundable provisions, except the credit described in paragraph (9).

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) (A) For taxable years beginning on or after January 1, 2002, and before January 1, 2022, credits that are allowed to reduce “net tax” below the tentative minimum tax, as defined by Section 17062.

(B) For taxable years beginning on or after January 1, 2022, credits that are allowed to reduce “net tax” below the tentative minimum tax, as defined by Section 17062, except the credit described in paragraph (7) and the credit described in paragraph (9).

(6) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(7) For taxable years beginning on or after January 1, 2022, the credit allowed by Section 17052.10 (relating to the elective tax under the Small Business Relief Act).

(8) Credits that contain refundable provisions but do not contain carryover provisions.

(9) For taxable years beginning on or after January 1, 2025, the credit allowed by Section 17053.98.1.

(10) For taxable years beginning on or after January 1, 2027, the credit allowed by Section 17039.5.

(11) The credits provided by Sections 17061 (relating to refunds pursuant to the Unemployment Insurance Code) and 19002 (relating to tax withholding).

(b) The order within each paragraph of subdivision (a) shall be determined by the Franchise Tax Board.

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits:

(A) The credit allowed by former Section 17052.2 (relating to teacher retention tax credit, repealed on August 24, 2007).

(B) The credit allowed by former Section 17052.4 (relating to solar energy, repealed on December 1, 1989).

(C) The credit allowed by former Section 17052.5 (relating to solar energy, repealed on January 1, 1987).

(D) The credit allowed by former Section 17052.5 (relating to solar energy, repealed on December 1, 1994).

(E) The credit allowed by Section 17052.12 (relating to research expenses).

(F) The credit allowed by former Section 17052.13 (relating to sales and use tax credit, repealed on January 1, 1997).

(G) The credit allowed by former Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit, repealed on December 1, 1998).

(H) The credit allowed by Section 17052.25 (relating to the adoption costs credit).

(I) The credit allowed by Section 17053.5 (relating to the renter's credit).

(J) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit, repealed on October 3, 1997).

(K) The credit allowed by former Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit, repealed on December 1, 1998).

(L) The credit allowed by former Section 17053.11 (relating to program area hiring credit, repealed on January 1, 1997).

(M) For each taxable year beginning on or after January 1, 1994, the credit allowed by former Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit, repealed on December 1, 1998).

(N) The credit allowed by former Section 17053.33 (relating to targeted tax area sales or use tax credit, repealed on December 1, 2015).

(O) The credit allowed by former Section 17053.34 (relating to targeted tax area hiring credit, repealed on December 1, 2019).

(P) The credit allowed by former Section 17053.49 (relating to qualified property, repealed on January 1, 2004).

(Q) The credit allowed by former Section 17053.70 (relating to enterprise zone sales or use tax credit, repealed on December 1, 2015).

(R) The credit allowed by former Section 17053.74 (relating to enterprise zone hiring credit, repealed on December 1, 2019).

(S) The credit allowed by Section 17054 (relating to credits for personal exemption).

(T) The credit allowed by Section 17054.5 (relating to the credits for a qualified joint custody head of household and a qualified taxpayer with a dependent parent).

(U) The credit allowed by Section 17054.7 (relating to the credit for a senior head of household).

(V) The credit allowed by former Section 17057 (relating to clinical testing expenses, repealed on December 1, 1993).

(W) The credit allowed by Section 17058 (relating to low-income housing).

(X) For taxable years beginning on or after January 1, 2014, the credit allowed by Section 17059.2 (relating to GO-Biz California Competes Credit).

(Y) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(Z) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(AA) The credit allowed by Section 19002 (relating to tax withholding).

(AB) For taxable years beginning on or after January 1, 2014, the credit allowed by former Section 17053.86 (relating to the College Access Tax Credit Fund, repealed on December 1, 2017).

(AC) For taxable years beginning on or after January 1, 2017, the credit allowed by Section 17053.87 (relating to the College Access Tax Credit Fund).

(AD) For taxable years beginning on or after January 1, 2021, the credit allowed by Section 17052.10 (relating to the elective tax under the Small Business Relief Act).

(AE) For taxable years beginning on or after January 1, 2020, the credit allowed by Section 17053.98 (relating to the California Motion Picture and Television Production Credit).

(AF) For taxable years beginning on or after January 1, 2025, the credit allowed by Section 17053.98.1 (relating to the California Motion Picture and Television Production Credit).

(AG) For taxable years beginning on or after January 1, 2027, the credit allowed by Section 17039.5.

(2) Any credit that is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately before being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than spouses) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to the taxpayer's respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of spouses who file separate returns, the credit may be taken by either or equally divided between them.

(f) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

(g) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity shall be limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "net tax," as defined in subdivision (a), for the taxable year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 17062), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to that disregarded business entity. A credit shall not be allowed if the taxpayer's regular tax (as defined in Section 17062), determined by including the income attributable to the disregarded business entity, is less than the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

(h) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-thru entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit before the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-thru entity" means any partnership or "S" corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year the credit is operative.

(3) This subdivision applies to credits that become inoperative on or after January 1, 2002.

(i) The amendments made to this section by Chapter 3 of the Statutes of 2022 shall apply as follows:

(1) The amendments to subdivisions (a), (e), and (h) shall be operative for taxable years beginning on or after January 1, 2022.

(2) The amendments to subdivision (c) shall be operative for taxable years beginning on or after January 1, 2021.

(j) The amendments made to this section by Chapter 56 of the Statutes of 2023 shall apply as follows:

(1) The amendments to paragraphs (3), (5), and (9) of subdivision (a) shall be operative for taxable years beginning on or after January 1, 2025.

(2) The amendments to subparagraph (AE) of paragraph (1) of subdivision (c) shall be operative for taxable years beginning on or after January 1, 2020.

(3) The amendments to subparagraph (AF) of paragraph (1) of subdivision (c) shall be operative for taxable years beginning on or after January 1, 2025.

SEC. 7. Section 17039.4 of the Revenue and Taxation Code, as proposed to be added by Section 15 of Senate Bill 167 of the 2023–24 Regular Session, is amended to read:

17039.4. (a) Notwithstanding any provision of this part or Part 10.2 (commencing with Section 18401) to the contrary, for taxpayers not required to be included in a combined report under Section 25101 or 25110, or taxpayers not authorized to be included in a combined report under Section 25101.15, for each taxable year beginning on or after January 1, 2024, and before January 1, 2027, the total of all business credits otherwise allowable under any provision of Chapter 2 (commencing with Section 17041), including the carryover of any business credit under a former provision of that chapter, for the taxable year shall not reduce the “net tax,” as defined in Section 17039, by more than five million dollars (\$5,000,000).

(b) Notwithstanding any provision of this part or Part 10.2 (commencing with Section 18401) to the contrary, for taxpayers required to be included in a combined report under Section 25101 or 25110, or taxpayers authorized to be included in a combined report under Section 25101.15, for each taxable year beginning on or after January 1, 2024, and before January 1, 2027, the total of all business credits otherwise allowable under any provision of Chapter 2 (commencing with Section 17041), including the carryover of any business credit under a former provision of that chapter, by all members of the combined report shall not reduce the aggregate amount of “tax,” as defined in Section 23036, of all members of the combined report by more than five million dollars (\$5,000,000).

(c) For purposes of this section, “business credit” means a credit allowable under any provision of Chapter 2 (commencing with Section 17041) other than the following credits:

(1) The credit allowed by Section 17052 (relating to credit for earned income).

(2) The credit allowed by Section 17052.1 (relating to credit for young child).

(3) The credit allowed by Section 17052.2 (relating to credit for foster youth).

(4) The credit allowed by Section 17052.6 (relating to credit for household and dependent care).

(5) The credit allowed by Section 17052.10 (relating to the elective tax under the Small Business Relief Act).

(6) The credit allowed by Section 17052.25 (relating to credit for adoption costs).

(7) The credit allowed by Section 17053.5 (relating to renter’s tax credit).

(8) The credit allowed by Section 17054 (relating to credit for personal exemption).

(9) The credit allowed by Section 17054.5 (relating to credit for qualified joint custody head of household and a qualified taxpayer with a dependent parent).

(10) The credit allowed by Section 17054.7 (relating to credit for qualified senior head of household).

(11) The credit allowed by Section 17058 (relating to credit for low-income housing).

(12) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(d) Any amounts included in an election pursuant to Section 6902.5, relating to an irrevocable election to apply credit amounts under Section 17053.85, 17053.95, 17053.98, 17053.98.1, 23685, 23695, 23698, or 23698.1 against qualified sales and use tax, as defined in Section 6902.5, are not included in the five-million-dollar (\$5,000,000) limitation set forth in subdivision (a) or (b).

(e) The amount of any credit otherwise allowable for the taxable year under Section 17039 that is not allowed due to application of this section shall remain a credit carryover amount under this part.

(f) The carryover period for any credit that is not allowed due to the application of this section shall be increased by the number of taxable years the credit or any portion thereof was not allowed.

(g) Notwithstanding anything to the contrary in this part or Part 10.2 (commencing with Section 18401), the credits listed in subdivision (c) shall be applied after any business credits, as limited by subdivision (a) or (b), are applied.

(h) For taxpayers that make the election under subdivision (k) of Section 17053.98.1, any amount of refundable credits pursuant to that subdivision over the five million dollar (\$5,000,000) limitation under this section shall be allowed in the first taxable year for which the limitation under this section is not operative.

(i) If a taxpayer makes the election under both Section 17039.5 and subdivision (k) of Section 17053.98.1 with respect to the credit amount under Section 17053.98.1, the total amount of credit allowed pursuant to both elections shall not exceed the credit amount allowed under subdivision (a) of Section 17053.98.1.

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

(k) (1) For taxable years beginning on or after January 1, 2025, and before January 1, 2026, this section shall not apply if, by May 14, 2025, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply this section of law.

(2) For taxable years beginning on or after January 1, 2026, and before January 1, 2027, this section shall not apply if, by May 14, 2026, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply this section of law.

SEC. 8. Section 17039.5 is added to the Revenue and Taxation Code, to read:

17039.5. (a) (1) For taxable years beginning on or after January 1, 2024, and before January 1, 2027, a taxpayer may make an election to receive an annual refundable credit amount of qualified credits for each taxable year to be allowed pursuant to paragraph (2).

(2) In each taxable year of the refundable period, the annual refundable credit amount shall be allowed as a credit against the “net tax” computed under this part for the taxable year, and the excess, if any, shall be credited against other amounts due, if any, and the balance, if any, shall be paid from the Tax Relief and Refund Account to the taxpayer.

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

(1) “Annual refundable credit amount” means 20 percent of the credit amount for the taxable year.

(2) (A) “Credit amount” means the amount of the qualified credits that would have otherwise been available to reduce net tax in the taxable year of the election but for the limitation under Section 17039.4.

(B) In the case of a pass-thru entity, the “credit amount” refers to the pro rata share or distributive share of the credit passed through to the partner or shareholder of the qualified taxpayer. For purposes of this subparagraph, the term “pass-thru entity” means any partnership, “S” corporation, or limited liability company treated as a partnership.

(C) In the case of an assigned credit, the “credit amount” refers to the credit amount that was assigned to the taxpayer.

(D) In the case of taxpayers required to be included in a combined report under Section 25101 or 25110, or taxpayers authorized to be included in a combined report under Section 25101.15, the “credit amount” refers to the credit amount of all members of the combined report.

(3) “Qualified credits” means the credits subject to the limitation under Section 17039.4.

(4) “Refundable period” means the first five consecutive taxable years beginning the third taxable year after the taxable year that the taxpayer makes an election under this section.

(c) No portion of the annual refundable credit amount can be assigned to another taxpayer.

(d) The following shall apply for purposes of the election pursuant to this section:

(1) The taxpayer may make an election for each taxable year beginning on or after January 1, 2024, and before January 1, 2027.

(2) Each election shall be irrevocable and shall be made on an original, timely filed return required under Part 10.2 (commencing with Section 18401) for the taxable year that the election is made in the form and manner as prescribed by the Franchise Tax Board.

(e) (1) Any adjustment of an annual refundable credit amount shall be treated as a mathematical error appearing on the return. This includes, but is not limited to, all of the following:

(A) A valid election as required under this section was not made.

(B) The Franchise Tax Board determines that credit amount overstatements in any taxable year resulted in an overstatement in any carryover amount or an overstatement of any refundable credit amount.

(C) The Franchise Tax Board determines that the credit amount was overstated as a result of any subsequent adjustment in the amount of net tax, including, but not limited to, an audit adjustment or claim for refund.

(2) Any amount of tax due resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(f) (1) The Franchise Tax Board may prescribe regulations necessary or appropriate to carry out the purposes of this section.

(2) 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 rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.

(g) This section shall remain in effect only until December 1, 2034, and as of that date is repealed.

SEC. 9. Section 17276.24 of the Revenue and Taxation Code, as proposed to be added by Section 23 of Senate Bill 167 of the 2023–24 Regular Session, is amended to read:

17276.24. (a) Notwithstanding Sections 17276, 17276.1, 17276.4, 17276.7, and 17276.22, Sections 17276.2, 17276.5, and 17276.6, as those sections read on November 29, 2014, Section 17276.20, as that section read on December 31, 2015, and Section 172 of the Internal Revenue Code, a net operating loss deduction shall not be allowed for any taxable year beginning on or after January 1, 2024, and before January 1, 2027.

(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, 2025, and before January 1, 2026.

(2) By two years, for losses incurred in taxable years beginning on or after January 1, 2024, and before January 1, 2025.

(3) By three years, for losses incurred in taxable years beginning before January 1, 2024.

(c) For a taxable year beginning on or after January 1, 2024, and before January 1, 2027, this section shall not apply to a taxpayer that has either of the following:

(1) Net business income of less than one million dollars (\$1,000,000) for the taxable year.

(2) Modified adjusted gross income of less than one million dollars (\$1,000,000) for the taxable year.

(d) For purposes of this section:

(1) “Business income” means any of the following:

(A) Income from a trade or business, whether conducted by the taxpayer or by a passthrough entity owned directly or indirectly by the taxpayer.

(B) Income from rental activity.

(C) Income attributable to a farming business.

(2) “Modified adjusted gross income” means the amount described in paragraph (2) of subdivision (h) of Section 17024.5, determined without regard to the deduction allowed under Section 172 of the Internal Revenue Code, relating to net operating loss deduction.

(3) “Passthrough entity” means a partnership or an S corporation.

(e) (1) For taxable years beginning on or after January 1, 2025, and before January 1, 2026, this section shall not apply if, by May 14, 2025, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply this section of law.

(2) For taxable years beginning on or after January 1, 2026, and before January 1, 2027, this section shall not apply if, by May 14, 2026, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply this section of law.

SEC. 10. Section 23036 of the Revenue and Taxation Code, as proposed to be amended by Section 32 of Senate Bill 167 of the 2023–24 Regular Session, is amended to read:

23036. (a) (1) The term “tax” includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on “S” corporations imposed under Section 23802.

(2) The term “tax” does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term “tax” also includes all of the following:

(1) The tax on limited partnerships, imposed under Section 17935, the tax on limited liability companies, imposed under Section 17941, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of “S” corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of “S” corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits are allowed against the “tax” in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the “tax,” allow the excess to be carried over to offset the “tax” in succeeding taxable years, except for those credits that are allowed to reduce the “tax” below the tentative minimum tax, as defined by Section 23455. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits that are allowed to reduce the “tax” below the tentative minimum tax, as defined by Section 23455, except the credit described in paragraph (5).

(5) For taxable years beginning on or after January 1, 2025, the credit allowed by Section 23698.1.

(6) For taxable years beginning on or after January 1, 2027, the credit allowed by Section 23036.5.

(7) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following applies:

(1) A credit may not reduce the “tax” below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by former Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by former Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by former Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) The credit allowed by former Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by former Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

(P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

(Q) The credit allowed by former Section 23649 (relating to qualified property).

(R) For taxable years beginning on or after January 1, 2011, the credit allowed by Section 23685 (relating to qualified motion pictures).

(S) For taxable years beginning on or after January 1, 2014, the credit allowed by Section 23689 (relating to GO-Biz California Competes Credit).

(T) For taxable years beginning on or after January 1, 2016, the credit allowed by Section 23695 (relating to qualified motion pictures).

(U) For taxable years beginning on or after January 1, 2014, the credit allowed by Section 23686 (relating to the College Access Tax Credit Fund).

(V) For taxable years beginning on or after January 1, 2017, the credit allowed by Section 23687 (relating to the College Access Tax Credit Fund).

(W) For taxable years beginning on or after January 1, 2020, and before January 1, 2031, the credit allowed by Section 23636 (relating to the new advanced strategic aircraft credit).

(X) For taxable years beginning on or after January 1, 2020, the credit allowed by Section 23698 (relating to the California Motion Picture and Television Production Credit).

(Y) For taxable years beginning on or after January 1, 2025, the credit allowed by Section 23698.1 (relating to the California Motion Picture and Television Production Credit).

(Z) For taxable years beginning on or after January 1, 2027, the credit allowed by Section 23036.5.

(2) A credit against the tax may not reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) is allowed to be carried over to reduce the “tax” in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative is allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer is eligible to receive the tax credit in proportion to their respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an “S” corporation, any credit allowed by this part is computed at the “S” corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit applies to the “S” corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to

Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the disregarded business entity is limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the taxable year is limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. A credit is not allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

(j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-thru entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-thru entity" means any partnership or "S" corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year a credit is operative.

(3) This subdivision applies to credits that become inoperative on or after the operative date of the act adding this subdivision.

(k) The amendments made to this section by Chapter 56 of the Statutes of 2023 shall apply as follows:

(1) The amendments to subdivision (c) shall be operative for taxable years beginning on or after January 1, 2025.

(2) The amendments to subparagraph (X) of paragraph (1) of subdivision (d) shall be operative for taxable years beginning on or after January 1, 2020.

(3) The amendments to subparagraph (Y) of paragraph (1) of subdivision (d) shall be operative for taxable years beginning on or after January 1, 2025.

SEC. 11. Section 23036.4 of the Revenue and Taxation Code, as proposed to be added by Section 33 of Senate Bill 167 of the 2023–24 Regular Session, is amended to read:

23036.4. (a) Notwithstanding any provision of this part or Part 10.2 (commencing with Section 18401) to the contrary, except as provided in subdivision (d), for taxpayers not required to be included in a combined report under Section 25101 or 25110, or taxpayers not authorized to be included in a combined report under Section 25101.15, for each taxable year beginning on or after January 1, 2024, and before January 1, 2027, the total of all credits otherwise allowable under any provision of Chapter 3.5 (commencing with Section 23604) including the carryover of any credit under a former provision of that chapter, for the taxable year shall not reduce the “tax,” as defined in Section 23036, by more than five million dollars (\$5,000,000).

(b) Notwithstanding any provision of this part or Part 10.2 (commencing with Section 18401) to the contrary, except as provided in subdivision (d), for taxpayers required to be included in a combined report under Section 25101 or 25110, or taxpayers authorized to be included in a combined report under Section 25101.15, for each taxable year beginning on or after January 1, 2024, and before January 1, 2027, the total of all credits otherwise allowable under any provision of Chapter 3.5 (commencing with Section 23604), including the carryover of any credit under a former provision of that chapter, by all members of the combined report shall not reduce the aggregate amount of “tax,” as defined in Section 23036, of all members of the combined report by more than five million dollars (\$5,000,000).

(c) Any amounts included in an election pursuant to Section 6902.5, relating to an irrevocable election to apply credit amounts under Section 17053.85, 17053.95, 17053.98, 17053.98.1, 23685, 23695, 23698, or 23698.1 against qualified sales and use tax, as defined in Section 6902.5, are not included in the five million dollar (\$5,000,000) limitation set forth in subdivision (a) or (b).

(d) The limitation under subdivision (a) or (b) shall not apply to the credit allowed by Section 23610.5 (relating to credit for low-income housing).

(e) The amount of any credit otherwise allowable for the taxable year under Section 23036 that is not allowed due to the application of this section shall remain a credit carryover amount under this part.

(f) The carryover period for any credit that is not allowed due to the application of this section shall be increased by the number of taxable years the credit or any portion thereof was not allowed.

(g) For taxpayers that make the election under subdivision (k) of Section 23698.1, any amount of refundable credits pursuant to that subdivision over the five million dollar (\$5,000,000) limitation under this section shall be allowed in the first taxable year for which the limitation under this section is not operative.

(h) If a taxpayer makes the election under both Section 23036.5 and subdivision (k) of Section 23698.1 with respect to the credit amount under Section 23698.1, the total amount of credit allowed pursuant to both elections shall not exceed the credit amount allowed under subdivision (a) of Section 23698.1.

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

(j) (1) For taxable years beginning on or after January 1, 2025, and before January 1, 2026, this section shall not apply if, by May 14, 2025, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply this section of law.

(2) For taxable years beginning on or after January 1, 2026, and before January 1, 2027, this section shall not apply if, by May 14, 2026, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply this section of law.

SEC. 12. Section 23036.5 is added to the Revenue and Taxation Code, to read:

23036.5. (a) (1) For taxable years beginning on or after January 1, 2024, and before January 1, 2027, a taxpayer may make an election to receive an annual refundable credit amount of qualified credits for each taxable year to be allowed pursuant to paragraph (2).

(2) In each taxable year of the refundable period, the annual refundable credit amount shall be allowed as a credit against the “tax” computed under this part for the taxable year, and the excess, if any, shall be credited against other amounts due, if any, and the balance, if any, shall be paid from the Tax Relief and Refund Account to the taxpayer.

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

(1) “Annual refundable credit amount” means 20 percent of the credit amount for the taxable year.

(2) (A) “Credit amount” means the amount of the qualified credits that would have otherwise been available to reduce net tax in the taxable year of the election but for the limitation under Section 23036.4.

(B) In the case of a pass-thru entity, the “credit amount” refers to the pro rata share or distributive share of the credit passed through to the partner or shareholder of the qualified taxpayer. For purposes of this subparagraph, the term “pass-thru entity” means any partnership, “S” corporation, or limited liability company treated as a partnership.

(C) In the case of an assigned credit, the “credit amount” refers to the credit amount that was assigned to the taxpayer.

(D) In the case of taxpayers required to be included in a combined report under Section 25101 or 25110, or taxpayers authorized to be included in a combined report under Section 25101.15, the “credit amount” refers to the credit amount of all members of the combined report.

(3) “Qualified credits” means the credits subject to the limitation under Section 23036.4.

(4) “Refundable period” means the first five consecutive taxable years beginning the third taxable year after the taxable year that the taxpayer makes an election under this section.

(c) No portion of the annual refundable credit amount can be assigned to another taxpayer.

(d) The following shall apply for purposes of the election pursuant to this section:

(1) The taxpayer may make an election for each taxable year beginning on or after January 1, 2024, and before January 1, 2027.

(2) Each election shall be irrevocable and shall be made on an original, timely filed return required under Part 10.2 (commencing with Section 18401) for the taxable year that the election is made in the form and manner as prescribed by the Franchise Tax Board.

(e) (1) Any adjustment of an annual refundable credit amount shall be treated as a mathematical error appearing on the return. This includes, but is not limited to, all of the following:

(A) A valid election as required under this section was not made.

(B) The Franchise Tax Board determines that credit amount overstatements in any taxable year resulted in an overstatement in any carryover amount or an overstatement of any refundable credit amount.

(C) The Franchise Tax Board determines that the credit amount was overstated as a result of any subsequent adjustment in the amount of net tax, including, but not limited to, an audit adjustment or claim for refund.

(2) Any amount of tax due resulting from such disallowance may be assessed by the Franchise Tax Board in the same manner as provided by Section 19051.

(f) (1) The Franchise Tax Board may prescribe regulations necessary or appropriate to carry out the purposes of this section.

(2) 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 rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.

(g) This section shall remain in effect only until December 1, 2034, and as of that date is repealed.

SEC. 13. Section 24416.24 of the Revenue and Taxation Code, as proposed to be added by Section 36 of Senate Bill 167 of the 2023–24 Regular Session, is amended to read:

24416.24. (a) Notwithstanding Sections 24416, 24416.1, 24416.4, 24416.7, and 24416.22, former Sections 24416.2, 24416.5, 24416.6, and 24416.20, and Section 172 of the Internal Revenue Code, a net operating loss deduction shall not be allowed for any taxable year beginning on or after January 1, 2024, and before January 1, 2027.

(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, 2025, and before January 1, 2026.

(2) By two years, for losses incurred in taxable years beginning on or after January 1, 2024, and before January 1, 2025.

(3) By three years, for losses incurred in taxable years beginning before January 1, 2024.

(c) The disallowance of any net operating loss deduction for any taxable year beginning on or after January 1, 2024, and before January 1, 2027, pursuant to subdivision (a) shall not apply to a taxpayer with income subject to tax under this part of less than one million dollars (\$1,000,000) for the taxable year.

(d) (1) For taxable years beginning on or after January 1, 2025, and before January 1, 2026, this section shall not apply if, by May 14, 2025, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply this section of law.

(2) For taxable years beginning on or after January 1, 2026, and before January 1, 2027, this section shall not apply if, by May 14, 2026, the Director of Finance determines that General Fund money over the multiyear forecast is sufficient without the revenue impact of the net operating loss suspension and credit limitation, and pursuant to legislation in the annual Budget Act to not apply this section of law.

SEC. 14. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 15. This act shall become operative only if Senate Bill 167 of the 2023–24 Regular Session is enacted and becomes effective.

SEC. 16. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.