An act to amend Section 6902.5 of, and to add Sections 12209, 17039.3, and 23036.3 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.
THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 6902.5 of the Revenue and Taxation Code 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, or paragraph (19) of subdivision (b) of Section 17053.98 or 23698.
(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, or subdivision (c) of Section 23698.
(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, 23685, 23695, or 23698, 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 or in paragraph (14) of subdivision (b) of Section 17053.98 or 23698.
(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, 23685, 23695, or 23698, 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, or 23698, 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, or 23698.

(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, 23685, 23695, or 23698 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, 2023, 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, 2023, 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, 2023, 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 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, 2023, that are in excess of five million dollars ($5,000,000) for that taxable year, the claimant may offset that 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, 2024.
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.

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, or Section 23698 pursuant to subdivision (c) of Section 23698, 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.

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

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 subdivision.

SEC. 2. Section 12209 is added to the Revenue and Taxation Code, to read:

12209. (a) Notwithstanding Sections 12206, 12207, and 12208 to the contrary, for the years 2020, 2021, and 2022, the total amount of all credits otherwise allowable under Sections 12206, 12207, and 12208, including any credit amount allowed to be carried over pursuant to those sections or subdivision (c), shall not reduce the “tax,” as described by Section 12201, by more than five million dollars ($5,000,000) for a given year.

(b) (1) The amount of any credit otherwise allowable for a year under Sections 12206 and 12207 that is not allowed due to the application of this section shall remain a credit carryover amount under Sections 12206 and 12207.

(2) The carryover period for any credit allowable under Sections 12206 and 12207 that is not allowed due to the application of this section shall be increased by the number of years the credit or any portion thereof was not allowed.

(c) The amount of any credit otherwise allowable for a year under Section 12208 that was not allowed due to the application of this section may be carried over to reduce the “tax,” as described by Section 12201, for the following year, and succeeding years if necessary, until the credit amount or any portion thereof that was not allowed due to the application of this section is exhausted. However, any credit amount under Section 12208 that is allowed to be carried over pursuant to this subdivision is also subject to the limitation in subdivision (a).

SEC. 3. Section 17039.3 is added to the Revenue and Taxation Code, to read:

17039.3. (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, 2020, and before January 1, 2023, 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, 2020, and before January 1, 2023, 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:

(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 17052.6 (relating to credit for household and dependent care).
(4) The credit allowed by Section 17052.25 (relating to credit for adoption costs).
(5) The credit allowed by Section 17053.5 (relating to renter’s tax credit).
(6) The credit allowed by Section 17054 (relating to credit for personal exemption).
(7) 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).
(8) The credit allowed by Section 17054.7 (relating to credit for qualified senior head of household).
(9) 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, 23685, 23695, or 23698 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) 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.
SEC. 4. Section 23036.3 is added to the Revenue and Taxation Code, to read:

23036.3. (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, 2020, and before January 1, 2023, 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, 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, 2020, and before January 1, 2023, 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, 23685, 23695, or 23698 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 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.

(e) 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.

(f) 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.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.
LEGISLATIVE COUNSEL’S DIGEST

Bill No.  
as introduced, _____.

General Subject: Sales and use taxes: insurance taxes: income taxes: credits: temporary limit.

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 (1) claim a refund of qualified sales and use taxes previously paid during a specified period not exceeding the income tax credit amount and (2) apply that income tax credit amount against qualified sales and use taxes imposed on the qualified taxpayer in the reporting periods in the 5 years following the reporting period for which the claimant was required to file its most recent sales and use tax return, as specified.

This bill would prohibit the total amount of refunds or credit offsets claimed in lieu of qualified motion picture tax credits that would otherwise be allowed for a taxable year beginning on or after January 1, 2020, and before January 1, 2023, from exceeding $5,000,000. This bill would provide, that for those amounts for which an irrevocable election is made in lieu of those qualified motion picture tax credits that would otherwise be allowed for any taxable year beginning on or after January 1, 2020, and before January 1, 2023, that are in excess of $5,000,000 for that taxable year, the claimant may offset that excess credit amount, or assigned portion, against the qualified sales and use taxes imposed during the reporting periods in the 5 years following and including the reporting period beginning on and after January 1, 2024. The bill would not apply to irrevocable elections made before the operative date of the bill.

Existing state constitutional law governing insurance taxation imposes an annual tax on the gross premiums of an insurer, as defined, doing business in this state at specified rates. Existing law governing the taxation of insurers allows as credits against the taxes imposed by those laws a low-income housing tax credit allocated by the California Tax Credit Allocation Committee, a College Access Tax Credit allocated and certified by the California Educational Facilities Authority, and a credit in an amount equal to the amount of the gross premiums tax due from an insurer on account of pilot project insurance for previously uninsured motorists, as defined. Existing law allows any excess low-income housing tax credit and College Access Tax Credit to be carried over to reduce the tax in a succeeding year, as specified.

This bill would provide that for the years 2020, 2021, and 2022, the total amount of all those insurance tax credits otherwise allowable, including any credit amount allowed to be carried over, may not reduce the annual tax by more than $5,000,000 for a given year. The bill would provide that the amount of any low-income housing tax credit or College Access Tax Credit otherwise allowable that is not allowed due to the application of this bill will remain a credit carryover amount, and would also provide that the carryover period for any credit that is not allowed due to the application of this
The bill would provide that the amount of any credit of gross premiums tax due from an insurer on account of pilot project insurance for previously uninsured motorists otherwise allowable for a year that was not allowed due to the application of this bill may be carried over to reduce the annual tax in succeeding years if necessary, until the credit amount or any portion thereof that was not allowed is exhausted.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would provide that for each taxable year beginning on or before January 1, 2020, and before January 1, 2023, the total credits otherwise allowable under those laws, except as specified, for the taxable year may not reduce the taxes imposed by those laws by more than $5,000,000, as provided. The bill would provide that the amount of any credit otherwise allowable that is not allowed due to the application of this bill will remain a credit carryover amount. The bill would also provide that the carryover period for any credit that is not allowed due to the application of this bill will be increased by the number of taxable years the credit or any portion thereof was not allowed.

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

This bill would take effect immediately as a tax levy.