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OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

In the Matter of the Appeal of: **MEDIVATION, INC.**	OTA Case No. 220410165

OPINION

Representing the Parties:

For Appellant:	Annie H. Huang, Attorney Jeffrey M. Vesely, Attorney Frances Sewell, Director State Tax
For Respondent:	Matthew D. Miller, Attorney Supervisor Kasey Lewallen, Attorney
For Office of Tax Appeals:	Carl Joseph, Attorney

J. JOHNSON, Administrative Law Judge: Pursuant to Revenue and Taxation Code (R&TC) section 19045, appellant Medivation, Inc. appeals an action by respondent Franchise Tax Board proposing additional tax of $122,069 for the 2015 tax year.

Office of Tax Appeals (OTA) Administrative Law Judges John O. Johnson, Kenneth Gast, and Josh Lambert held an oral hearing for this matter in Sacramento, California, on October 21, 2025. At the conclusion of the hearing, the record was closed, and this matter was submitted for a decision.

ISSUE

Whether, by application of R&TC sections 23036(d)(1) and 23609, appellant is allowed to reduce its alternative minimum tax (AMT) liability using research credits.

FACTUAL FINDINGS

1. In 2015, appellant was a biopharmaceutical company headquartered in San Francisco, California, and focused on the development of novel therapies for cancer and other serious diseases.

2. For the year at issue, appellant and its subsidiaries were taxed as C corporations for federal income and California corporate franchise tax purposes. In California, they filed a 2015 worldwide unitary combined report on Form 100 and reported a total regular tax of $4,800 that consisted entirely of the $800 minimum franchise tax for six taxpayer members of the combined group.
3. On its 2015 California Schedule P (100), "Alternative Minimum Tax and Credit Limitations – Corporations," using the combined reporting method, appellant computed a tentative minimum tax (TMT) of $122,869 that was entirely attributable to one of its unitary taxpayer members, Medivation Prostate Therapeutics, Inc. (MPT). After subtracting a regular minimum franchise tax before credits of $800, MPT computed an AMT of $122,069 ($122,869 - $800), which MPT then fully offset with research credits it had generated under R&TC section 23609. As a result, on Form 100, appellant reported only a total regular tax of $4,800 and AMT of $0.
4. Respondent audited appellant's 2015 return and issued a Notice of Proposed Assessment (NPA), which proposed additional tax of $122,069 based on respondent's determination that appellant could not apply the research credits to reduce its AMT liability.
5. Appellant timely protested the NPA. After protest proceedings, respondent issued a Notice of Action sustaining the NPA in full. This timely appeal followed.

DISCUSSION

Background

This appeal essentially begins where the Board of Equalization (BOE), OTA's predecessor, left off in *Appeal of NASSCO Holdings, Inc*. (2010-SBE-001) 2010 WL 5626976 (*NASSCO*), a precedential decision issued in 2010, nearly 15 years ago. In *NASSCO*, BOE held that a taxpayer could utilize its enterprise zone hiring credits and manufacturer's investment credits to offset its corporate AMT liability. The current dispute does not involve those two credits. Rather, it involves the research credit under R&TC section 23609, and whether that credit can also offset the corporate AMT, an issue that was not specifically discussed in *NASSCO*. Before addressing this issue, OTA provides a brief background of the corporate AMT.

Beginning with the Tax Reform Act of 1986 and until its repeal (effective for tax years beginning after December 31, 2017) by the Tax Cuts and Jobs Act of 2017, the relevant federal corporate AMT was imposed and codified in Internal Revenue Code (IRC) sections 55

through 59. (See *NASSCO*, *supra*.) To determine whether a taxpayer owed the AMT, a taxpayer computed both its TMT and its regular tax for the tax year. (*Ibid*.) For the year at issue, IRC section 55(a) defined the AMT as a tax equal to the excess (if any) of the TMT for the tax year over the regular tax for the tax year. (*Ibid*.) Therefore, if the TMT exceeded the regular tax, the regular tax continued to be imposed and the difference is added to it as the AMT. (*Ibid*.)

For the 2015 tax year, California's Corporation Tax Law (R&TC, § 23001 et seq.) conformed to the since-repealed federal corporate AMT, except as otherwise provided. (R&TC, §§ 23400(a), 23051.5(a)(1), 17024.5(a)(1)(P).) Similar to the federal corporate AMT, if a taxpayer's regular corporate franchise tax before credits is less than the TMT, the taxpayer is required to pay the difference as the AMT. (R&TC, § 23455(a), (c)(1)-(2); *NASSCO*, *supra*.) There is no dispute that for the 2015 tax year, appellant's unitary combined group (specifically, MPT) was subject to, and properly computed, the California corporate AMT, or that the group (again, MPT) was eligible to claim, and properly computed its, research credits under R&TC section 23609. Instead, the dispute involves whether appellant can offset its corporate AMT with those research credits.

Relevant Law and the Parties' Contentions

The parties sharply disagree whether, under California's Corporation Tax Law, the provisions of R&TC section 23609 or 23036 allow for the use of research credits to reduce the corporate AMT. OTA starts with R&TC section 23036(d), which provides in part:

> (d) Notwithstanding any other provision of this part [i.e., the Corporation Tax Law under Part 11 of Division 2 of the R&TC], 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:
> (D) The credit allowed by Section 23609 (relating to research expenditures).

(Italics added.)

The crux of the issue in this appeal is whether the term "tax" under R&TC section 23036(d)(1) means the AMT such that appellant can utilize its research credits under R&TC section 23609 to offset the corporate AMT. R&TC section 23036(d)(1) does not define the term "tax," as used in that subdivision, but the meaning of "tax" is addressed in subdivisions (a) and (b) of R&TC section 23036. R&TC section 23036(a) provides in full:

> (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.

R&TC section 23036(b) also provides in full:

> (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.

(Italics added.)

Respondent argues that because the definition of the term "tax" in R&TC section 23036(a) does not specifically include the AMT, it is unambiguous and the research credit cannot be used to reduce a taxpayer's corporate AMT liability. Respondent also contends the plain language of R&TC section 23036(b) unambiguously states that the AMT is only included in the term "tax" for purposes of administering the provisions of Part 10.2 of Division 2 of the R&TC, such as withholding, deficiency assessments, interest, powers, and respondent's duties. Accordingly, under both R&TC section 23036(a) and (b), respondent bases its argument on its interpretation of the plain meaning of R&TC section 23036 and argues that unless there is ambiguity in the statutory language, its plain meaning controls and there is no need to go outside the four corners of the statute to determine its application. Appellant disagrees and argues, similar to the taxpayer in *NASSCO*, that R&TC section 23036 is ambiguous as to its impact on a taxpayer's corporate AMT liability and that the legislative history of R&TC section 23036(d)(1)(D) unequivocally supports the use of the research credit to reduce the AMT.

Respondent's argument that there is no ambiguity in the language of R&TC section 23036(d)(1) was already addressed (and rejected) by BOE in *NASSCO*. As previously noted, in *NASSCO*, BOE reviewed the provisions of R&TC section 23036 in the context of the enterprise zone hiring credit and the manufacturer's investment credit, both of which, like the research credit at issue here, are found in the list of credits in R&TC section 23036(d)(1). In deciding that these two credits could reduce a taxpayer's corporate AMT liability, BOE determined that there was ambiguity in the words of the statute:

> Following the above discussion of the relevant statute (i.e., R&TC section 23036), we find that a plain reading of R&TC section 23036 reveals ambiguity in the use of the term "tax." The statute does not clearly express the meaning of the term "tax" for purposes of subdivision (d)(1). While respondent would have us apply the definition as set forth in subdivision (a), that section includes some types of tax, and excludes others, but does not specify where AMT falls in this definition.
>
> In addition, the statute as interpreted by respondent produces absurd results. In *Coburn v. Sievert* [(2005) 133 Cal.App.4th 1483 (*Coburn*)], the court stated that a latent ambiguity is found when a literal application of a statute would frustrate the purposes of the statute or would produce absurd consequences. (*Coburn*[,] at p. 1495.) That decision also stated that a court should not create a latent ambiguity where none exists and, conversely, "a court should not sacrifice legislative intent or purpose by overlooking a latent ambiguity and adopting a literal construction." (*Id*. at p. 1496.)

In this appeal before OTA, respondent acknowledges that *NASSCO* found ambiguity in R&TC section 23036 and specifically the meaning of the term "tax" as referenced in R&TC section 23036(d)(1). Several months after *NASSCO* was decided, respondent issued FTB Notice 2011-02, which provided respondent's guidance regarding *NASSCO*:

> The BOE concluded the use of the term "tax" in [R&TC] section 23036 was ambiguous and relied on legislative history to resolve such ambiguity. The term "tax" in [R&TC] section 23036 is uniquely applicable to the Corporation Tax Law in Part 11 of [Division 2 of the R&TC]. Therefore, the BOE opinion[1] only applies to corporations liable for the corporate AMT.

Nearly 15 years after BOE issued its decision in *NASSCO*, respondent now asks OTA to overturn it because in respondent's view, BOE's decision was wrongly decided and is "bad law."

In resolving this appeal, OTA is guided by California Code of Regulations, title 18, section 30504, which provides that "[a] precedential opinion of [BOE] that was adopted prior to January 1, 2018 [such as *NASSCO*], may be cited as precedential authority to OTA unless OTA removes, in whole or in part, the precedential status of that opinion . . . ." OTA therefore has the authority to remove the precedential status of *NASSCO*, as respondent requests. In making such a determination, OTA is also guided by principles of stare decisis.

[1] The terms "opinion" and "decision" are used interchangeably in the record. Both are references to a final written determination of an appeal published by BOE or OTA.

Stare Decisis

Principles of stare decisis hold that subsequent decisions must give deference to prior rulings in the absence of a strong basis for a different ruling. (*Sierra Club v. San Joaquin Local Agency Formation Com*. (1999) 21 Cal.4th 489 (*Sierra Club*).) Stare decisis creates and fosters predictability in the meaning and application of law. (*Id.* at p. 504.) The California Supreme Court has addressed the value of stare decisis.

> The issue...is not before us for the first time, however, and we do not lightly set aside a 50–year–old precedent of this court. "It is, of course, a fundamental jurisprudential policy that prior applicable precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices. This policy, known as the doctrine of stare decisis, 'is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law.' [Citation.] [¶] It is likewise well established, however, that the foregoing policy is a flexible one which permits this court to reconsider, and ultimately to depart from, our own prior precedent in an appropriate case. [Citation.] As we stated in *Cianci v. Superior Court* (1985) 40 Cal.3d 903, 924 . . ., '[a]lthough the doctrine [of stare decisis] does indeed serve important values, it nevertheless should not shield court-created error from correction.' " (*Moradi–Shalal v. Fireman's Fund Ins. Companies* (1988) 46 Cal.3d 287, 296 . . . .

(*Id.* at pp. 503-504, brackets in original.)

In determining whether stare decisis weighs in favor of following *NASSCO* or removing its precedential status, one of the factors that courts and OTA consider is the nature of the issue at hand. For example, stare decisis compels less deference to precedent when constitutional principles are applied. (See *People v. Birks* (1998) 19 Cal.4th 108, 117.) On the other hand, stare decisis carries enhanced force when the decision interprets a statute, as is the case here. (*Ibid*.) This is because critics of such a ruling can take their objections to the decision to the Legislature to correct any mistakes they deem to have occurred. (*Kimble v. Marvel Entertainment, LLC* (2015) 576 U.S. 446, 456.) Furthermore, if legislative reliance on a particular decision can be shown, then stare decisis is even more appropriate:

> The significance of stare decisis is highlighted when legislative reliance is potentially implicated. [Citation.] Certainly, "[s]tare decisis has added force when the [L]egislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would dislodge settled rights and expectations or require an extensive legislative response. [Citation.]

(*Sierra Club*, *supra*, 21 Cal.4th at p. 504.)

Applying the Principles of Stare Decisis to *NASSCO*

The issue in this appeal is almost identical to the issue in *NASSCO*.[2] It is a question of statutory interpretation: does the language of R&TC section 23036(d)(1), which provides that "[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," allow a credit listed under R&TC section 23036(d)(1) to be utilized to reduce the AMT? *NASSCO* determined that the proper answer to this question was "yes."[3]

Since 2010, when BOE issued *NASSCO*, the Legislature has amended R&TC section 23036(d)(1) on eight occasions.[4] On each of those occasions, the Legislature did not pass legislation contrary to *NASSCO* or otherwise clarify that the credits listed in this section cannot be utilized to offset AMT liabilities. Conversely, bill analyses indicated that the credits listed under R&TC section 23036(d)(1) could be used to offset AMT liabilities.[5] Therefore, the legislative analyses present an interpretation of the statute that is consistent with *NASSCO*'s conclusion. (See *Gunther v. Lin* (2006) 144 Cal.App.4th 223, 236 [the Legislature is presumed to be aware of prior judicial construction of statutory language, and if it does not change the language judicially construed, there is an inference that it agreed with the prior construction when it undertakes to amend the area of law judicially construed].)

For instance, in discussing Assembly Bill (AB) 85, the Analysis of the Senate Committee on Budget and Fiscal Review provided that the bill "[s]pecifies that for taxable years beginning on or after January 1, 2020, and before January 1, 2026, the Advanced Strategic Aircraft Credit could be used to reduce the alternative minimum tax."[6] The bill accomplished this by adding the credit to the credits listed under R&TC section 23036(d)(1). This is at least supportive of

[2] As discussed herein, the only potentially relevant difference between the analysis in *NASSCO* and the issue in this appeal is that the R&TC section 23036(d)(1) credits at issue differ. Otherwise, both Opinions are analyzing the definition of "tax" as used in R&TC section 23036(d)(1).

[3] Whether there is a distinction between *NASSCO* and the current appeal based on the specific subdivision (d)(1) credits at issue is addressed further herein.

[4] See Assem. Bill No. 1173 (2013-2014 Reg. Sess.); Assem. Bill No. 1839 (2013-2014 Reg. Sess.); Assem. Bill No. 2754 (2013-2014 Reg. Sess.); Sen. Bill No. 81 (2015-2016 Reg. Sess.); Assem. Bill No. 85 (2019-2020 Reg. Sess.); Sen. Bill No. 132 (2023-2024 Reg. Sess.); Sen. Bill 175 (2023-2024 Reg. Sess.); and Sen. Bill. No. 254 (2025-2026 Reg. Sess.)

[5] See, e.g., Sen. Com. on Rev. & Tax., Analysis of Assem. Bill 57 (1993-1994 Reg. Sess.); Sen. Com. on Budget and Fiscal Review, Analysis of Assem. Bill No. 85 (2019–2020 Reg. Sess.).

[6] Sen. Com. on Budget and Fiscal Review, Analysis of Assem. Bill No. 85 (2019–2020 Reg. Sess.)

NASSCO. Similarly, a Senate Floor Analysis for Senate Bill 167, which extended the timeline for use of the same credit, provided that the bill "[e]xtends the timeline for when the Advanced Strategic Aircraft Credit could be used to reduce the alternative minimum tax before January 1, 2026, to before January 1, 2031."[7]

Indeed, if the Legislature does not agree with a statutory interpretation made by OTA (or BOE in earlier years), or otherwise wishes to change or clarify the law as settled in OTA or BOE opinions, it may. (See, e.g., *Appeal of Teichert* (99-SBE-006) 1999 WL 1080256 [legislative changes to the statute confer BOE jurisdiction over interest abatement denials after decades of BOE precedential opinions finding it lacks jurisdiction].)[8] As noted above, the Legislature made no legislative change to R&TC section 23026(d)(1) since *NASSCO* was decided about 15 years ago.

In 1993, the Legislature also considered allowing certain credits to reduce the AMT. A Senate Revenue and Taxation Committee Bill Analysis discussed these issues in connection with AB 57 (1993), which was a bill specifically addressed in *NASSCO* and which added the enterprise zone hiring credit to R&TC section 23036(d)(1). The analysis stated:

> Tax credits are generally not permitted to be taken in computing the AMT. However, there are certain exceptions, which may be used in computing the AMT: low income housing credit, renter credit, solar credit, *research & development credit*, orphan drug credit.
>
> The alternative minimum tax was enacted at the federal level, and conformed to by California, with the objective of preventing a taxpayer (whether individual, partnership or corporation) to use various combinations of tax benefits to reduce tax to zero. *However, some of those tax benefits have been determined by the Legislature to be of such overriding importance that exceptions were made to the computation* [sic] *AMT to, in effect, authorize use of the credit against either the regular tax or the AMT*. So, the question posed by this bill is whether to let some taxpayers reduce their tax to very low levels or whether to limit the availability of the zone credits in some circumstances.

(Italics added.)

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[7] Sen. Com. on Budget and Fiscal Review, Analysis of Sen. Bill No. 167 (2023-2024 Reg. Sess.) as of June 13, 2024.

[8] See also the legislative reaction to revise R&TC section 25125(d) following the BOE's *Appeal of Holiday Inns, Inc.* (86-SBE-074) 1986 WL 22707, altering the allocation of nonbusiness gains from the sale of partnership income from being allocated to the taxpayer's commercial domicile, as decided by BOE, and instead allocating the gains based on a ratio of the cost of partnership tangible property in versus out of California. (See AB 2977, Stats.1988, ch. 1170, § 2.) The taxation of unitary businesses provides an additional example, with BOE alternating between the "Joyce" and "Finnigan" models before the Legislature ultimately stepped in to provide a codified solution, reversing BOE's latest ruling. (See *Citicorp North America, Inc. v. Franchise Tax Bd.* (2000) 83 Cal.App.4th 1403; R&TC, § 25135 as amended by AB 15, Stats. 2009-2010, 3rd Ex.Sess., ch. 10, § 12.)

For the reasons stated above, there is no compelling reason present to not adhere to the doctrine of stare decisis or to otherwise not follow the finding in NASSCO that the definition of the term "tax" in R&TC section 23036(d)(1) is ambiguous. Further, a review of the applicable legislative history reveals not only that there was no legislative reaction to contradict or undo the holding in *NASSCO*, but rather what is discovered is subsequent legislative action involving the credits listed under R&TC section 23036(d)(1) that appears aligned with the holding in *NASSCO* and not limited to just the credits at issue in *NASSCO*. Accordingly, the finding in *NASSCO* that "tax" as used in R&TC section 23036(d)(1) includes the AMT for the credits at issue in *NASSCO*, applies to the research credit at issue in this appeal as well.

Respondent's Arguments for Overruling *NASSCO*

Respondent essentially reargues *NASSCO* and makes the same arguments regarding "plain meaning" and its continued insistence that looking to legislative intent, as BOE did in *NASSCO*, was improper. In addition, respondent argues that "defining 'tax' for purposes of subdivision (d)(1) of [R&TC] section 23036 to include the AMT renders subdivision (d)(1) nonsensical and inoperable"; however, the acquiescence of respondent to BOE's decision in *NASSCO* through FTB Notice 2011-02 seems to conflict with this claim. That notice provides guidance on how to apply the *NASSCO* decision, including specific guidance regarding the redetermination of credit carryforwards. At no point in the notice does respondent suggest that the decision results in the statute being "inoperable." As discussed above, no compelling argument has been provided to overturn precedent that has been in operation for 15 years, and which appears to have been relied upon by the Legislature in subsequent legislative action. Accordingly, OTA declines to overturn NASSCO here.

While respondent contends that focusing on R&TC section 23609, as opposed to R&TC section 23036, is the proper means to determine the outcome of this appeal, a review of that statute counters respondent's assertion. First, R&TC section 23609 directly points to R&TC section 23036 for the definition of "tax" upon which the research credit may apply (which is the precise issue on appeal). Second, R&TC section 23609, at best, provides ambiguity as to its stance on whether the research credit applies to the AMT. Prior to September 1988, the statute provided that the research credit applied against taxes imposed in Part 11, "except the minimum franchise tax and the [AMT]". However, SB 1801 (Stats. 1988, ch. 1465, § 25, eff. Sept. 28, 1988) removed the explicit prohibition against using the research credit against the AMT and instead deferred to R&TC section 23036 for the determination of what taxes the

research credit could be used against. Therefore, the proper statute to find the answer of whether the research credit can be used to offset the AMT is R&TC section 23036.

The parties were asked by OTA during briefing and at the oral hearing whether *NASSCO* could be distinguishable from this appeal in the event that *NASSCO* is not overturned. While appellant said it was not distinguishable, respondent said that it was distinguishable. By reference to FTB Notice 2011-02, respondent states that *NASSCO* only addressed whether a taxpayer may reduce its AMT utilizing the enterprise zone hiring credit or the manufacturer's investment credit and that BOE did not discuss other tax credits listed in subdivision (d)(1) of R&TC section 23036. However, neither in the briefing nor the hearing did respondent elaborate on why *NASSCO* should be distinguished, and instead it reiterated its primary claim that *NASSCO* should be overturned. Without further elaboration, and based on the analysis provided above, OTA finds no reason to distinguish *NASSCO* and depart from the path set forth on this issue of the meaning of the word "tax" in R&TC section 23036(d)(1), as presented in that precedential Opinion. There is no compelling argument on appeal that the fact that the specific credits from the list in R&TC section 23036(d)(1) at issue in *NASSCO* differ from the credit at issue in this appeal bears any significance.

Because OTA declines to distinguish or overrule *NASSCO*, its holding that the word "tax" in R&TC section 23036(d)(1) includes the AMT is binding precedent and therefore compels OTA to reverse respondent's assessment in this matter.[9]

[9] To the extent OTA has not specifically addressed authorities or arguments discussed in respondent's briefing or during the oral hearing, OTA has considered them and finds them to be unpersuasive or distinguishable for reasons expressed in this Opinion.

HOLDING

Appellant, by application of R&TC sections 23609 and 23036(d)(1), is allowed to reduce its AMT liability using research credits.

DISPOSITION

Respondent's action is reversed.

DocuSigned by:
John O Johnson
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John O. Johnson
Administrative Law Judge

We concur:

DocuSigned by:
Kenneth Gast
3AF5C32BB93B456...
Kenneth Gast
Administrative Law Judge

Signed by:
Josh Lambert
CB1F7DA37831416...
Josh Lambert
Administrative Law Judge

Date Issued: 1/27/2026