

ASSEMBLY BILL

No. 377

Introduced by Assembly Member Harman

February 20, 2001

An act to amend Section 25114 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 377, as introduced, Harman. Bank and corporation taxes.

The Bank and Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, the income is apportioned between this state and the other states and foreign countries for tax purposes in accordance with a specified formula based on the property, payroll, and sales within and without this state. That law permits a qualified taxpayer, as defined, to elect to determine its income under a water's-edge election and requires the Franchise Tax Board to examine the returns filed pursuant to those provisions. That law provides that where the examination reveals potential noncompliance, a detailed examination shall be made, except as provided.

This bill would provide, notwithstanding those provisions, that it shall be presumed that the board followed certain rules, regulations, and procedures of the Internal Revenue Service in making audits under specified federal laws, as provided.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 25114 of the Revenue and Taxation
2 Code is amended to read:
3 25114. (a) The Franchise Tax Board, for purposes of
4 administering the provisions of this article, shall examine the
5 returns filed by taxpayers subject to these provisions. Where this
6 examination reveals potential noncompliance, a detailed
7 examination shall be made, notwithstanding the potential net
8 revenue benefit to the state, unless the taxpayer is being examined
9 by the Internal Revenue Service for the same year or years on the
10 same issues.
11 (b) (1) In any case of two or more organizations, trades, or
12 businesses (whether or not organized in the United States and
13 whether or not affiliated) owned or controlled directly or indirectly
14 by the same interests, the Franchise Tax Board may distribute,
15 apportion, or allocate gross income, deductions, credits, or
16 allowances between or among these organizations, trades, or
17 businesses, if the board determines that the distribution,
18 apportionment, or allocation is necessary in order to prevent
19 evasion of taxes or clearly to reflect the income of any of these
20 organizations, trades, or businesses. In the case of any transfer (or
21 license) of intangible property (within the meaning of Section
22 936(h)(3)(B) of the Internal Revenue Code), the income with
23 respect to that transfer or license shall be commensurate with the
24 income attributable to the intangible property.
25 (2) In making distributions, apportionments, and allocations
26 under this section, the Franchise Tax Board shall generally follow
27 the rules, regulations, and procedures of the Internal Revenue
28 Service in making audits under Section 482 of the Internal
29 Revenue Code. Any of these rules, regulations, and procedures
30 adopted by the Franchise Tax Board shall not be subject to review
31 by the Office of Administrative Law.
32 (3) If the Internal Revenue Service has conducted a detailed
33 audit pursuant to Section 482 of the Internal Revenue Code or
34 Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue
35 Code and has made adjustments pursuant to those provisions, it
36 shall be presumed, to the extent that the provisions relate to the
37 determination of the amount of income and factors required to be
38 taken into account pursuant to Section 25110, that no further



1 adjustments are necessary for this state’s purposes. If the Internal
2 Revenue Service has conducted a detailed audit pursuant to
3 Section 482 of the Internal Revenue Code or Subchapter N of
4 Chapter 1 of Subtitle A of the Internal Revenue Code and has made
5 or proposed no adjustments to the transactions examined, it shall
6 be presumed, to the extent that the provisions relate to the
7 determination of the amount of income and factors required to be
8 taken into account pursuant to Section 25110, that no adjustment
9 is necessary for this state’s purposes. These presumptions apply to
10 all Internal Revenue Service audit determinations, including
11 determinations made by the Appeals and Competent Authority.
12 These presumptions shall be overcome if the Franchise Tax Board
13 or the taxpayer demonstrates that an adjustment or a failure to
14 make an adjustment was erroneous, if it demonstrates that the
15 results of such an adjustment would produce a minimal tax change
16 for federal purposes because of correlative or offsetting
17 adjustments or for other reasons, or if substantially the same
18 federal tax result was obtained under other sections of the Internal
19 Revenue Code. No inference shall be drawn from an Internal
20 Revenue Service failure to audit international transactions
21 pursuant to Section 482 of the Internal Revenue Code or
22 Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue
23 Code and it shall not be presumed that any of those transactions
24 were correctly reported.

25 *(4) (A) Notwithstanding subdivision (a), it shall be presumed*
26 *that the Franchise Tax Board followed the rules, regulations, and*
27 *procedures of the Internal Revenue Service in making audits under*
28 *Section 482 of the Internal Revenue Code with respect to two or*
29 *more corporations which elect to use the profit split method under*
30 *Section 936(h)(5)(C)(ii) of the Internal Revenue Code, and that*
31 *the allocation of combined taxable income under the profit split*
32 *method clearly reflects the income of the taxpayer or taxpayers in*
33 *the water’s edge group and clearly reflects the income of the*
34 *electing corporation.*

35 *(B) (i) If a taxpayer has, at any time, made an election for*
36 *federal purposes under Section 936(h)(5)(C)(ii) of the Internal*
37 *Revenue Code, relating to computation of taxable income, to have*
38 *Section 936(h)(5)(C)(ii) of the Internal Revenue Code apply,*
39 *Section 936(h)(5)(C)(ii) of the Internal Revenue Code shall apply*
40 *to that taxpayer for state purposes, a separate election for state*



1 purposes shall not be allowed under paragraph (3) of subdivision
2 (e) of Section 23051.5, and the federal election shall be binding for
3 purposes of this part.

4 (ii) If a taxpayer fails to make, or has not previously made, an
5 election for federal purposes under Section 936(h)(5)(C)(ii) of the
6 Internal Revenue Code, relating to election of profit split method,
7 to have Section 936(h)(5)(C)(ii) apply, an election under Section
8 936(h)(5)(C)(ii) of the Internal Revenue Code shall not be allowed
9 for state purposes, and a separate election for state purposes shall
10 not be allowed under paragraph (3) of subdivision (e) of Section
11 23051.5.

12 SEC. 2. This act provides for a tax levy within the meaning of
13 Article IV of the Constitution and shall go into immediate effect.

