

AMENDED IN SENATE FEBRUARY 25, 2002

SENATE BILL

No. 1256

Introduced by Senator Brulte

January 9, 2002

An act to amend Sections ~~17052.6~~, 17085, 17140, 17140.3, 17501, 17551, 23701s, 23705, 23711, and 23712 of, and to add Sections 17144.5 and 17205 to, the Revenue and Taxation Code, relating to taxation, ~~and making an appropriation therefor~~, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1256, as amended, Brulte. Income and bank and corporation taxes: retirement plans: ~~dependent care~~.

The Personal Income Tax Law and the Bank and Corporation Tax Law, in partial conformity with federal law, provide various tax benefits and specified rules and procedures relating to contributions to retirement plans.

This bill would conform those state laws to those provisions of the federal Economic Growth and Tax Relief Reconciliation Act of 2001 that apply to retirement plans and certain trusts, including provisions relating to annuities and certain proceeds of life insurance contracts, IRA's, employee annuities, qualified state tuition programs, retirement savings, deferred compensation plans, employee-funded pension trusts, VEBA's, and group legal service plans.

~~The Personal Income Tax Law, in modified conformity to federal income tax law, authorizes a refundable credit for household and dependent care expenses necessary for gainful employment, as provided.~~

~~This bill would, in further conformity to federal income tax law, increase the amount of the credit, as provided.~~

~~The Tax Relief and Refund Account in the General Fund is continuously appropriated to make all payments required to be made to taxpayers or other persons, as specified.~~

~~By authorizing an increase in the refundable income tax credit to be paid from that account, this bill would make an appropriation.~~

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$ majority. Appropriation: ~~yes~~ no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. ~~Section 17052.6 of the Revenue and Taxation~~
2 ~~Code is amended to read:~~

3 ~~17052.6. (a) (1) For each taxable year beginning on or after~~
4 ~~January 1, 2000, and before January 1, 2002, there is allowed as~~
5 ~~a credit against the "net tax" (as defined in Section 17039) an~~
6 ~~amount determined in accordance with Section 21 of the Internal~~
7 ~~Revenue Code, except that the amount of the credit shall be a~~
8 ~~percentage, as provided in paragraph (2) of the allowable federal~~
9 ~~credit without taking into account whether there is a federal tax~~
10 ~~liability.~~

11 ~~(2) For the purposes of paragraph (1), the percentage of the~~
12 ~~allowable federal credit shall be determined as follows:~~

If the California adjusted gross income is:	The percentage of
credit is:	
16 \$40,000 or less	63%
17 Over \$40,000 but not over \$70,000	53%
18 Over \$70,000 but not over \$100,000	42%
19 Over \$100,000	-0%

20
21 ~~(b) For each taxable year beginning on or after January 1, 2002,~~
22 ~~there is allowed as a credit against the "net tax," as defined in~~
23 ~~Section 17039, an amount equal to the amount determined in~~
24 ~~accordance with Section 21 of the Internal Revenue Code, as~~
25 ~~amended by Section 204 of the Economic Growth and Tax Relief~~
26 ~~Reconciliation Act of 2001 (P.L. 107-16), without taking into~~
27 ~~account whether there is a federal tax liability.~~



1 ~~(c) In the case of a taxpayer whose credits provided under this~~
2 ~~section exceed the taxpayer's tax liability computed under this~~
3 ~~part, the excess shall be credited against other amounts due, if any,~~
4 ~~from the taxpayer and the balance, if any, shall be paid from the~~
5 ~~Tax Relief and Refund Account and refunded to the taxpayer.~~

6 ~~(d) For purposes of this section, California adjusted gross~~
7 ~~income means California adjusted gross income as computed for~~
8 ~~purposes of Section 17041.~~

9 ~~(e) The credit authorized by this section shall be limited to~~
10 ~~those taxpayers who, during the taxable year, maintain a~~
11 ~~household, within the meaning of Section 21(e)(1) of the Internal~~
12 ~~Revenue Code, that is located within this state.~~

13 ~~SEC. 2.—~~

14 *SECTION 1.* Section 17085 of the Revenue and Taxation
15 Code is amended to read:

16 17085. Section 72 of the Internal Revenue Code, as amended
17 by Section 402 and Title VI of the Economic Growth and Tax
18 Relief Reconciliation Act of 2001 (P.L. 107-16), relating to
19 annuities and certain proceeds of life insurance contracts, is
20 modified as follows:

21 (a) The amendments and transitional rules made by Public Law
22 99-514 shall be applicable to this part for the same transactions and
23 the same years as they are applicable for federal purposes, except
24 that the repeal of Section 72(d) of the Internal Revenue Code,
25 relating to repeal of special rule for employees' annuities, shall
26 apply only to the following:

27 (1) Any individual whose annuity starting date is after
28 December 31, 1986.

29 (2) At the election of the taxpayer, any individual whose
30 annuity starting date is after July 1, 1986, and before January 1,
31 1987.

32 (b) The amount of a distribution from an individual retirement
33 account or annuity or employees' trust or employee annuity that
34 is includable in gross income for federal purposes shall be reduced
35 for purposes of this part by the lesser of either of the following:

36 (1) An amount equal to the amount includable in federal gross
37 income for the taxable year.

38 (2) An amount equal to the basis in the account or annuity
39 allowed by Section 17507 (relating to individual retirement
40 accounts and simplified employee pensions), the increased basis



1 allowed by Sections 17504 and 17506 (relating to plans of
2 self-employed individuals), the increased basis allowed by
3 Section 17501, or the increased basis allowed by Section 17551
4 that is remaining after adjustment for reductions in gross income
5 under this provision in prior taxable years.

6 (c) (1) Except as provided in paragraph (2), the amount of the
7 penalty imposed under this part shall be computed in accordance
8 with Sections 72(m), (q), (t), and (v) of the Internal Revenue Code
9 using a rate of 2¹/₂ percent, in lieu of the rate provided in those
10 sections.

11 (2) In the case where Section 72(t)(6) of the Internal Revenue
12 Code, relating to special rules for simple retirement accounts,
13 applies, the rate in paragraph (1) shall be 6 percent in lieu of the
14 2¹/₂ percent rate specified therein.

15 (d) Section 72(f)(2) of the Internal Revenue Code, relating to
16 special rules for computing employees' contributions, shall be
17 applicable without applying the exceptions which immediately
18 follow that paragraph.

19 ~~SEC. 3.—~~

20 *SEC. 2.* Section 17140 of the Revenue and Taxation Code is
21 amended to read:

22 17140. (a) For purposes of this section, the following terms
23 have the following meanings as provided in the Golden State
24 Scholarshare Trust Act (Article 19 (commencing with Section
25 69980) of Chapter 2 of Part 42 of the Education Code):

26 (1) "Beneficiary" has the meaning set forth in subdivision (c)
27 of Section 69980 of the Education Code.

28 (2) "Benefit" has the meaning set forth in subdivision (d) of
29 Section 69980 of the Education Code.

30 (3) "Participant" has the meaning set forth in subdivision (h)
31 of Section 69980 of the Education Code.

32 (4) "Participation agreement" has the meaning set forth in
33 subdivision (i) of Section 69980 of the Education Code.

34 (5) "Scholarshare trust" has the meaning set forth in
35 subdivision (f) of Section 69980 of the Education Code.

36 (b) Except as otherwise provided in subdivision (c), gross
37 income of a beneficiary or a participant does not include any of the
38 following:



1 (1) Any distribution or earnings under a Scholarshare trust
2 participation agreement, as provided in Article 19 (commencing
3 with Section 69980) of Chapter 2 of Part 42 of the Education Code.

4 (2) Any contribution to the Scholarshare trust on behalf of a
5 beneficiary shall not be includable as gross income of that
6 beneficiary.

7 (c) (1) Any distribution under a Scholarshare trust
8 participation agreement shall be includable in the gross income of
9 the distributee in the manner as provided under Section 72 of the
10 Internal Revenue Code, as modified by Section 17085, to the
11 extent not excluded from gross income under this part. For
12 purposes of applying Section 72 of the Internal Revenue Code, the
13 following apply:

14 (A) All Scholarshare trust accounts of which an individual is a
15 beneficiary shall be treated as one account, except as otherwise
16 provided.

17 (B) All distributions during a taxable year shall be treated as
18 one distribution.

19 (C) The value of the participation agreement, income on the
20 participation agreement, and investment in the participation
21 agreement shall be computed as of the close of the calendar year
22 in which the taxable year begins.

23 (2) A contribution by a for-profit or nonprofit entity, or by a
24 state or local government agency, for the benefit of an owner or
25 employee of that entity or a beneficiary whom the owner or
26 employee has the power to designate, including the owner or
27 employee's minor children, shall be included in the gross income
28 of that owner or employee in the year the contribution is made.

29 (3) For purposes of this subdivision, "distribution" includes
30 any benefit furnished to a beneficiary under a participation
31 agreement, as provided in Article 19 (commencing with Section
32 69980) of Chapter 2 of Part 42 of the Education Code.

33 (4) (A) Paragraph (1) shall not apply to that portion of any
34 distribution that, within 60 days of distribution, is transferred to
35 the credit of another beneficiary under the Scholarshare trust who
36 is a "member of the family," as that term is used in Section
37 529(e)(2) of the Internal Revenue Code, as amended by Section
38 211 of the Taxpayer Relief Act of 1997 (P.L. 105-34), of the former
39 beneficiary of that Scholarshare trust.



1 (B) Any change in the beneficiary of an interest in the
2 Scholarshare trust shall not be treated as a distribution for purposes
3 of paragraph (1) if the new beneficiary is a “member of the
4 family,” as that term is used in Section 529(e)(2) of the Internal
5 Revenue Code, as amended by Section 211 of the Taxpayer Relief
6 Act of 1997 (P.L. 105-34), of the former beneficiary of that
7 Scholarshare trust.

8 (d) For taxable years beginning on or after January 1, 2002,
9 Sections 529(c) and 529(e) of the Internal Revenue Code, as
10 amended by Section 402 of the Economic Growth and Tax Relief
11 Reconciliation Act of 2001 (P.L. 107-16), shall apply in lieu of
12 subdivisions (b) and (c) of this section.

13 ~~SEC. 4.—~~

14 *SEC. 3.* Section 17140.3 of the Revenue and Taxation Code
15 is amended to read:

16 17140.3. Section 529 of the Internal Revenue Code, as
17 amended by Section 402 of the Economic Growth and Tax Relief
18 Reconciliation Act of 2001 (P.L. 107-16), relating to qualified
19 state tuition programs, shall apply, except as otherwise provided.

20 (a) Section 529 (a) of the Internal Revenue Code is modified as
21 follows:

22 (1) By substituting the phrase “under this part and Part 11
23 (commencing with Section 23001)” in lieu of the phrase “under
24 this subtitle.”

25 (2) By substituting “Article 2 (commencing with Section
26 23731)” in lieu of “Section 511.”

27 (b) A copy of the report required to be filed with the Secretary
28 of the Treasury under Section 529(d) of the Internal Revenue Code
29 shall be filed with the Franchise Tax Board at the same time and
30 in the same manner as specified in that section.

31 ~~SEC. 5.—~~

32 *SEC. 4.* Section 17144.5 is added to the Revenue and Taxation
33 Code, to read:

34 17144.5. Section 132 of the Internal Revenue Code, as
35 amended by Title VI of the Economic Growth and Tax Relief
36 Reconciliation Act of 2001 (P.L. 106-17), relating to employee
37 benefits, shall apply, except as otherwise provided.

38 ~~SEC. 6.—~~

39 *SEC. 5.* Section 17205 is added to the Revenue and Taxation
40 Code, to read:



1 17205. Section 219 of the Internal Revenue Code, as amended
2 by Title VI of the Economic Growth and Tax Relief Reconciliation
3 Act of 2001 (P.L. 107-16), relating to retirement savings, shall
4 apply, except as otherwise provided.

5 ~~SEC. 7.—~~

6 *SEC. 6.* Section 17501 of the Revenue and Taxation Code is
7 amended to read:

8 17501. (a) Subchapter D of Chapter 1 of Subtitle A of the
9 Internal Revenue Code, relating to deferred compensation, shall
10 apply, except as otherwise provided.

11 (b) The provisions of Subchapter D of Chapter 1 of Subtitle A
12 of the Internal Revenue Code, as amended by Title IV of the
13 Economic Growth and Tax Relief Act of 2001 (Public Law
14 107-16), that relate to deferred compensation of state and local
15 governments and tax-exempt organizations under Section 457 of
16 the Internal Revenue Code, shall apply except as otherwise
17 provided.

18 ~~SEC. 8.—~~

19 *SEC. 7.* Section 17551 of the Revenue and Taxation Code is
20 amended to read:

21 17551. (a) Subchapter E of Chapter 1 of Subtitle A of the
22 Internal Revenue Code, relating to accounting periods and
23 methods of accounting, shall apply, except as otherwise provided.

24 (b) Section 444(c)(1) of the Internal Revenue Code, relating to
25 the effect of an election to adopt a taxable year other than a
26 required taxable year, shall not apply.

27 (c) Section 457 of the Internal Revenue Code, as amended by
28 Title VI of the Economic Growth and Tax Relief Reconciliation
29 Act of 2001 (Public Law 107-16), relating to deferred
30 compensation plans of state and local governments and
31 tax-exempt organizations, shall apply, except as otherwise
32 provided.

33 ~~SEC. 9.—~~

34 *SEC. 8.* Section 23701s of the Revenue and Taxation Code is
35 amended to read:

36 23701s. (a) An employee-funded pension trust described in
37 Section 501(c)(18) of the Internal Revenue Code, as amended by
38 Title VI of the Economic Growth and Tax Relief Reconciliation
39 Act of 2001 (P.L. 107-16), except as otherwise provided.



1 (b) The last sentence in Section 501(c)(18) of the Internal
2 Revenue Code, relating to excess contributions under Section
3 4979, shall not apply.

4 ~~SEC. 10.~~

5 *SEC. 9.* Section 23705 of the Revenue and Taxation Code is
6 amended to read:

7 23705. (a) (1) An organization described in Section 23701i
8 (voluntary employee's beneficiary associations) or 23701q
9 (qualified group legal service plans) which is part of a plan of an
10 employer shall not be exempt from tax under Section 23701,
11 unless that plan meets the requirements of Section 505(b) of the
12 Internal Revenue Code, as amended by Title VI of the Economic
13 Growth and Tax Relief Reconciliation Act of 2001 (P.L. 107-16).

14 (2) Paragraph (1) shall not apply to any organization described
15 in Section 505(a)(2) of the Internal Revenue Code.

16 (b) A copy of any notice filed with the Secretary of the
17 Treasury, pursuant to Section 505(c) of the Internal Revenue Code,
18 relating to application for tax-exempt status, shall be filed at the
19 same time and in the same manner with the Franchise Tax Board.

20 ~~SEC. 11.~~

21 *SEC. 10.* Section 23711 of the Revenue and Taxation Code is
22 amended to read:

23 23711. Section 529 of the Internal Revenue Code, as amended
24 by Section 402 of the Economic Growth and Tax Relief
25 Reconciliation Act of 2001 (P.L. 107-16), relating to qualified
26 state tuition programs, shall apply, except as otherwise provided.

27 (a) Section 529(a) of the Internal Revenue Code is modified as
28 follows:

29 (1) By substituting the phrase "under Part 10 (commencing
30 with Section 17001) and this part" in lieu of the phrase "under this
31 subtitle."

32 (2) By substituting "Article 2 (commencing with Section
33 23731)" in lieu of "section 511."

34 (b) A copy of the report required to be filed with the Secretary
35 of the Treasury under Section 529(d) of the Internal Revenue Code
36 shall be filed with the Franchise Tax Board at the same time and
37 in the same manner as specified in that section.

38 ~~SEC. 12.~~

39 *SEC. 11.* Section 23712 of the Revenue and Taxation Code is
40 amended to read:



1 23712. Section 530 of the Internal Revenue Code, as amended
2 by Sections 401 and 402 of the Economic Growth and Tax Relief
3 Reconciliation Act of 2001 (P.L.107-16), relating to education
4 individual retirement accounts, shall apply, except as otherwise
5 provided.

6 (a) Section 530(a) of the Internal Revenue Code is modified as
7 follows:

8 (1) By substituting the phrase “under Part 10 (commencing
9 with Section 17001) and this part” in lieu of the phrase “under this
10 subtitle.”

11 (2) By substituting “Article 2 (commencing with Section
12 23731)” in lieu of “section 511.”

13 (b) For taxable years beginning before January 1, 2002,
14 Section 530(b)(1) of the Internal Revenue Code, relating to the
15 definition of education individual retirement account, is modified
16 to additionally require that upon the date that the designated
17 beneficiary becomes 30 years of age, any balance to the credit of
18 the beneficiary shall be distributed within 30 days after the date the
19 beneficiary becomes 30 years of age to that beneficiary.

20 (c) Section 530(d) of the Internal Revenue Code is modified as
21 follows:

22 (1) By substituting the phrase “under Part 10 (commencing
23 with Section 17001) in the manner as provided in Section 72(b) of
24 the Internal Revenue Code, as modified by Part 10” in lieu of the
25 phrase “in the manner as provided in Section 72(b)” in Section
26 530(d)(1) of the Internal Revenue Code.

27 (2) (A) A taxpayer that has elected to waive the application of
28 Section 530(d)(2) of the Internal Revenue Code for federal
29 purposes shall be treated as having waived the application of that
30 paragraph for state purposes, a separate election for state purposes
31 shall not be allowed under paragraph (3) of subdivision (e) of
32 Section 17024.5 or paragraph (3) of subdivision (e) of Section
33 23051.5, and the federal election shall be binding for purposes of
34 Part 10 (commencing with Section 17001) and this part.

35 (B) If a taxpayer fails to make an election under Section
36 530(d)(2)(C) of the Internal Revenue Code for federal purposes to
37 waive the application of Section 530(d)(2) of the Internal Revenue
38 Code, an election under Section 530(d)(2)(C) of the Internal
39 Revenue Code shall not be allowed for state purposes, Section
40 530(d)(2)(A) and (B) of the Internal Revenue Code shall apply for



1 state purposes, and a separate election for state purposes shall not
2 be allowed under paragraph (3) of subdivision (e) of Section
3 17024.5.

4 (3) (A) By substituting the phrase “tax imposed by Part 10
5 (commencing with Section 17001)” in lieu of the phrase “tax
6 imposed by this chapter” in Section 530(d)(4)(A) of the Internal
7 Revenue Code.

8 (B) By substituting the phrase “increased by 2¹/₂ percent” in
9 lieu of the phrase “increased by 10 percent” in Section
10 530(d)(4)(A) of the Internal Revenue Code.

11 (C) By substituting the phrase “shall be included in the
12 contributor’s gross income under Part 10 (commencing with
13 Section 17001) or this part” in lieu of the phrase “shall be included
14 in gross income” in Section 530(d)(4)(C) of the Internal Revenue
15 Code.

16 (d) For purposes of Part 10 (commencing with Section 17001)
17 and this part, in the case of a custodial account treated as a trust by
18 reason of Section 530(g) of the Internal Revenue Code, the
19 custodian of that account shall be treated as the trustee thereof.

20 (e) A copy of the report, which is required to be filed with the
21 Secretary of the Treasury under Section 530(h) of the Internal
22 Revenue Code, shall be filed with the Franchise Tax Board at the
23 same time and in the same manner as specified in that section.

24 ~~SEC. 13.—~~

25 *SEC. 12.* This act provides for a tax levy within the meaning
26 of Article IV of the Constitution and shall go into immediate
27 effect.

