

AMENDED IN ASSEMBLY AUGUST 6, 2002

AMENDED IN ASSEMBLY JUNE 25, 2002

**SENATE BILL**

**No. 1849**

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**Introduced by Committee on Budget and Fiscal Review**

February 22, 2002

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~~An act to amend Sections 17276.3, 23457, 24348, 24416.3, 24449, and 40016 of, to add Article 4 (commencing with Section 30133) to Chapter 2 of Part 13 of Division 2 of, and to add and repeal Sections 17041.1 and 19444 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 17052.2, 17053.84, 17276, 17276.3, 18662, 18663, 19136.8, 23457, 23684, 24348, 24416, 24416.3, and 24449 of, to add Article 4 (commencing with Section 30133) to Chapter 2 of Part 13 of Division 2 of, to add Part 14.5 (commencing with Section 33001) to Division 2 of, and to add and repeal Sections 7093.8 and 19444 of, the Revenue and Taxation Code, and to amend Section 13043 of the Unemployment Insurance Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1849, as amended, Committee on Budget and Fiscal Review. ~~Taxation~~ Sales and use taxes: personal income and corporation taxes: cigarette taxes: satellite television subscription tax.

*The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. Any unpaid taxes due and payable under that law are subject to penalties, interest, and any expenses and fees associated with the collection of the taxes owed.*

*This bill, for the period beginning on October 1, 2002, and ending on June 30, 2003, would authorize the State Board of Equalization to forgive any penalties and interest on unpaid taxes owed by eligible taxpayers, as defined, to the extent that the underlying tax liability is reduced by an eligible amount, as defined.*

*The Personal Income Tax Law imposes a tax measured by the income of residents and part-year residents. Any unpaid taxes due and payable under that law are subject to penalties, interest, and any expenses and fees associated with the collection of the taxes owed.*

*This bill, for the period beginning on October 1, 2002, and ending on June 30, 2003, would authorize the Franchise Tax Board to forgive any penalties, interest, and fees on unpaid taxes owed by eligible taxpayers, as defined, to the extent that the underlying tax liability is reduced by an eligible amount, as defined.*

*The Personal Income Tax Law authorizes various credits against the tax imposed by that law, including a credit for credentialed teachers in an amount equal to the lesser of (1) the applicable of specified amounts based upon years of service as a teacher, or (2) 50% of the amount of tax imposed upon the taxpayer's income that is attributable to service as a teacher at a qualifying educational institution.*

*This bill would suspend the credit for taxable years beginning on or after January 1, 2002, and before January 1, 2003.*

*The Personal Income Tax Law and the Bank and Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for each taxable year beginning on or after January 1, 2001, and before January 1, 2006, in an amount equal to the lesser of 15% of certain costs paid or incurred by a taxpayer during the taxable year for the purchase and installation of any solar energy system installed on property in this state, or the applicable dollar amount per rated watt of that solar energy system.*

*This bill would disallow the solar energy system tax credit for each taxable year beginning on or after January 1, 2002, and before January 1, 2004.*

*Existing law allows individual and corporate taxpayers to utilize net operating loss carryovers for purposes of offsetting their individual and corporate tax liabilities.*

*This bill would disallow the deduction for specified net operating loss carryovers in the 2002 and 2003 taxable years. The bill would extend the carryover period for the net operating losses, thus allowing the taxpayers to have the same number of years to utilize the deduction as*



*they would have if the change had not been enacted. For net operating losses incurred in taxable years beginning on and after January 1, 2004, this bill would allow a net operating loss carryforward deduction in an amount equal to 80% of the net operating loss incurred.*

*Existing law requires the transferee of real property to withhold 3<sup>1</sup>/<sub>3</sub>% of the purchase price of the property if the property was either acquired from a person, who is not a resident, or who after the transfer of the real property, will no longer be a resident of this state or from a corporation, if after the transfer that corporation has no permanent place of business in this state.*

*This bill, for taxable years beginning on or after January 1, 2003, would extend this 3<sup>1</sup>/<sub>3</sub>% withholding requirement to specified transfers of real property acquired from an individual.*

*Existing law requires the Franchise Tax Board to prepare wage withholding tables to be used by employers for purposes of withholding taxes on wages paid, but allows withholding at a rate of 6% with respect to supplemental wages in lieu of the withholding tables.*

*This bill would allow withholding at a rate of 9.3% with respect to stock options and bonus payments, in lieu of the withholding tables or the specified withholding rate with respect to supplemental wages, and would also make related conforming changes.*

*Existing law, with respect to the administration of income and corporate taxes, imposes penalties with respect to the underpayment of taxes.*

*This bill would provide for the waiver of certain penalties imposed for the underpayment of tax with respect to any law enacted during the 2002 calendar year.*

*The Bank and Corporation Tax Law, in specified conformity to federal income tax laws allows a deduction for bad debts, except that, among other things, the deduction of a savings and loan association, or bank or financial corporation is determined in accordance with special rules that allow a deduction for a reasonable addition to a reserve for bad debts.*

*This bill would, with respect to banks, modify that special rule to provide additional conformity to federal income tax laws relating to reserves for losses on loans of banks, except as otherwise provided. This bill would also make related changes with respect to the alternative minimum tax.*

*The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes and tobacco products at specified rates,*



*including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), and the California Families and Children Act of 1998 (Proposition 10).*

*This bill would, beginning 10 working days following the enactment of the bill, impose an additional tax on the distribution of cigarettes at the rate of \$0.1065 for each cigarette distributed. The revenues collected from this additional tax would be deposited in the General Fund.*

*Existing law imposes various taxes with respect to the sale, use, or distribution of various products sold in this state.*

*This bill would impose a tax at the rate of 5% on the total gross charges incurred by a subscriber for direct broadcast satellite television service, as provided.*

*This bill would declare that it is to take effect immediately as an urgency statute.*

~~The California Income Tax Law and Bank and Corporation Tax Law impose a tax measured by income, as specified. Any unpaid taxes due and payable under those laws are subject to penalties, interest, and any expenses and fees associated with the collection of the taxes owed.~~

~~This bill for the period beginning on October 1, 2002, and ending on June 30, 2003, would authorize the Franchise Tax Board to forgive any penalties, interests, or fees on unpaid taxes owed by eligible taxpayers, as defined, to the extent that the underlying tax liability is reduced by an eligible amount, as defined.~~

~~Existing law allows individual and corporate taxpayers to utilize net operating loss carryovers for purposes of offsetting their individual and corporate tax liabilities.~~

~~This bill would prevent these taxpayers from utilizing net operating loss carryovers in the 2002 and 2003 taxable years. The bill would extend the carryover period for the net operating losses, allowing the taxpayers to have the same number of years to utilize the loss as they would have if the change had not been enacted.~~

~~Under the Personal Income Tax Law, taxes are imposed at specified rates up to a maximum of 9.3% based on the amount of the taxpayer's taxable income and a maximum of 7% based on the taxpayer's alternative minimum taxable income.~~

~~This bill would, for taxable years beginning on or after January 1, 2002, and before a specified fiscal threshold is reached, impose 10% and 11% maximum rates for taxpayers with taxable incomes over~~



~~certain amounts, and impose an 8.5% maximum rate based upon the taxpayer's alternative minimum taxable income.~~

~~The Bank and Corporation Tax Law, in specified conformity to federal income tax laws allows a deduction for bad debts, except that, among other things, the deduction of a savings and loan association, or bank or financial corporation is determined in accordance with special rules that allow a deduction for a reasonable addition to a reserve for bad debts.~~

~~This bill would, with respect to banks, modify that special rule to provide additional conformity to federal income tax laws relating to reserves for losses on loans of banks, except as otherwise provided. This bill would also make related changes with respect to the alternative minimum tax.~~

~~The Energy Surcharge Law imposes a surcharge on the consumption of electrical energy purchased from an electric utility at a rate fixed by the State Board of Equalization, as specified.~~

~~This bill would, with respect to electrical energy purchased from an electric utility on or after January 1, 2003, require that the rate not exceed \$0.0003 per kilowatt hour, or a lower rate fixed by the Energy Commission at a public meeting held each November for the following calendar year.~~

~~The Cigarette and Tobacco Products Tax Law imposes a tax on every distributor of cigarettes and tobacco products at specified rates, including additional taxes imposed under the Tobacco Tax and Health Protection Act of 1988 (Proposition 99), and the California Families and Children Act of 1998 (Proposition 10).~~

~~This bill would, beginning on September 1, 2002, impose an additional tax on the distribution of cigarettes at the rate of 25 mills for each cigarette distributed. The revenues collected from this additional tax would be deposited in the General Fund.~~

~~This bill would result in a change in state taxes for the purpose of increasing revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

~~Vote:  $\frac{2}{3}$ . 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 17041.1 is added to the Revenue and~~  
2     SECTION 1. Section 7093.8 is added to the Revenue and  
3     Taxation Code, to read:  
4     7093.8. (a) (1) For the period beginning on October 1,  
5     2002, and ending on June 30, 2003, an eligible taxpayer’s liability,  
6     with respect to any unpaid taxes, may be satisfied by the payment  
7     of an eligible amount. The authority granted by this section is  
8     limited to an unpaid tax liability that has been determined by the  
9     State Board of Equalization to be a high-risk collection account.  
10    (2) The liability of an eligible taxpayer for any unpaid penalties  
11    and interest included in the computation of the unpaid tax liability  
12    shall be extinguished only upon receipt by the State Board of  
13    Equalization of all payments equal to the eligible amount on or  
14    before the final due date for payment established by the State  
15    Board of Equalization.  
16    (b) For purposes of this section, the following definitions  
17    apply:  
18    (1) “Eligible taxpayer” means any person that receives  
19    notification from the State Board of Equalization that the  
20    taxpayer’s unpaid tax liability may be satisfied by the payment of  
21    an eligible amount.  
22    (2) “Eligible amount” means an amount equal to any unpaid  
23    tax liability, excluding penalties and interest, owed by the eligible  
24    taxpayer that is paid in one or more installments, as determined by  
25    the State Board of Equalization, on or before the due date  
26    established by the State Board of Equalization, but in no event  
27    later than June 30, 2004.  
28    (3) “High-risk collection account” means any unpaid tax  
29    liability of a taxpayer where satisfaction of that liability under this  
30    section would be in the best interest of the state, and shall include  
31    any unpaid tax liability for which the State Board of Equalization  
32    has made either of the following determinations:  
33    (A) Under the State Board of Equalization’s collection  
34    modeling policies, practices, and procedures, efforts to collect the  
35    unpaid tax liability would not be economical.  
36    (B) The unpaid tax liability would not be paid in full within a  
37    reasonable period of time.



1 (4) “Unpaid tax liability” means any final liability under Part  
2 1 (commencing with Section 6001), including tax, penalties, and  
3 interest, that are owed by a person and, as of October 1, 2002, are  
4 unpaid.

5 (c) No refund or credit shall be granted with respect to any  
6 penalty or interest paid or collected with respect to an unpaid tax  
7 liability prior to October 1, 2002.

8 (d) The determinations made by the State Board of  
9 Equalization pursuant to this section shall be final and conclusive  
10 and shall not be subject to review by any other officer, employee,  
11 or agent of the state, or by any court.

12 (e) Nothing in Section 7056, or in any other provision of law,  
13 shall be construed to require the disclosure of standards used or to  
14 be used in connection with any determinations made by the State  
15 Board of Equalization for purposes of this section, or the data used  
16 or to be used for determining those standards if the State Board of  
17 Equalization determines that the disclosure will seriously impair  
18 assessment, collection, or enforcement under this part.

19 (f) Nothing in this section shall authorize the State Board of  
20 Equalization to compromise any final tax liability.

21 (g) The Legislature finds that it is essential for fiscal purposes  
22 that the special collection efforts authorized by this section be  
23 expeditiously implemented. Accordingly, Chapter 3.5  
24 (commencing with Section 11340) of Part 1 of Division 3 of Title  
25 2 of the Government Code shall not apply to any standard,  
26 criterion, procedure, determination, rule, notice, or guideline  
27 established or issued in implementing and administering the  
28 program required by this section.

29 (h) This section shall be operative with respect to unpaid tax  
30 liabilities of high-risk collection accounts that are the subject of  
31 notifications made to eligible taxpayers on or after October 1,  
32 2002, and before July 1, 2003.

33 (i) Whenever a “high-risk collection account” is forgiven of  
34 any penalties and interest pursuant to this section, the public  
35 record shall include all of the following information:

36 (1) The name of the taxpayer.

37 (2) The amount of related penalties and interest relieved.

38 (3) A summary of the reason why the relief is in the best interest  
39 of the state.



1 (j) *This section shall remain in effect only until December 31,*  
2 *2004, and as of that date is repealed.*

3 *SEC. 2. Section 17052.2 of the Revenue and Taxation Code is*  
4 *amended to read:*

5 17052.2. (a) For each taxable year beginning on or after  
6 January 1, 2000, and before January 1, 2002, and for each taxable  
7 year beginning on or after January 1, 2003, there shall be allowed  
8 as a credit against the “net tax” (as defined by Section 17039) to  
9 a credentialed teacher an amount equal to the amount determined  
10 in subdivision (b).

11 (b) The amount of the credit shall be the lesser of the amounts  
12 computed under paragraph (1) or (2):

13 (1) In the case of any credentialed teacher who has, as of the last  
14 day of the taxable year:

15 (A) Completed at least four but less than six years of service as  
16 a credentialed teacher, the credit shall be two hundred fifty dollars  
17 (\$250).

18 (B) Completed at least six but less than 11 years of service as  
19 a credentialed teacher, the credit shall be five hundred dollars  
20 (\$500).

21 (C) Completed at least 11 but less than 20 years of service as a  
22 credentialed teacher, the credit shall be one thousand dollars  
23 (\$1,000).

24 (D) Completed 20 or more years of service as a credentialed  
25 teacher, the credit shall be one thousand five hundred dollars  
26 (\$1,500).

27 (E) For purposes of determining years of service, years of  
28 service performed as a teacher in a qualified education institution,  
29 which otherwise meets the criteria specified in subdivision (d)  
30 except that the qualified education institution is not located in this  
31 state, in another state shall qualify for each year the teacher was  
32 credentialed by the public education agency in that state.

33 (2) Fifty percent of the amount determined as follows:

34 (A) Divide the amount received by the taxpayer as wages and  
35 salary for services as a credentialed teacher, as defined in  
36 paragraph (3) of subdivision (c), by the taxpayer’s total adjusted  
37 gross income from all sources.

38 (B) Multiply the taxpayer’s total tax, as defined in paragraph  
39 (4) of subdivision (c), by a ratio, not to exceed 1.00, that is



1 otherwise equal to the ratio determined for the taxpayer under  
2 subparagraph (A).

3 (c) For purposes of this section, all of the following definitions  
4 apply:

5 (1) “Credentialed teacher” means a person who holds a  
6 preliminary or professional clear credential as determined by the  
7 Commission on Teacher Credentialing pursuant to Article 1  
8 (commencing with Section 44200) of Chapter 2 of Part 25 of  
9 Division 2 of Title 2 of the Education Code and who teaches at a  
10 qualifying educational institution.

11 (2) “Qualifying educational institution” means any  
12 elementary, secondary, or vocational-technical school located in  
13 this state providing education for kindergarten, grades 1 to 12,  
14 inclusive, or any part thereof. “Qualifying educational  
15 institution” includes an agency or instrumentality of the federal  
16 government providing education for grades kindergarten, grades  
17 1 to 12, inclusive, or any part thereof, at any location within this  
18 state, including an Indian reservation or a military installation  
19 located within the geographical borders of this state, where a  
20 credentialed teacher is employed by the federal government or an  
21 agency or instrumentality thereof. “Qualifying educational  
22 institution” includes any elementary, secondary, or vocational  
23 technical school located in California, that files an affidavit  
24 pursuant to Section 33190 and 33191 of the Education Code, and  
25 provides education for kindergarten and grades 1 to 12, inclusive,  
26 or any part thereof.

27 (3) “Wages and salaries for services as a credentialed teacher”  
28 includes only those amounts received with respect to services  
29 performed as a credentialed teacher, but does not include pensions  
30 or other deferred compensation.

31 (4) “Total tax” means the tax imposed under this part for the  
32 taxable year, before the application under Section 19007 of any  
33 payment of estimated tax or any installment thereof, less all credits  
34 allowed for the taxable year except for the following:

35 (A) The credit allowed under this section.

36 (B) The credit allowed under Section 17061 (relating to  
37 refunds under the Unemployment Insurance Code).

38 (C) The credit allowed under Section 19002 (relating to tax  
39 withholding).

40 (D) Any refundable credit that is allowed under this part.



1 SEC. 3. Section 17053.84 of the Revenue and Taxation Code  
2 is amended to read:

3 17053.84. (a) For each taxable year beginning on or after  
4 January 1, 2001, and before January 1, ~~2004~~ 2002, there shall be  
5 allowed as a credit against the “net tax,” as defined in Section  
6 17039, an amount equal to the lesser of 15 percent of the cost that  
7 is paid or incurred by a taxpayer, after deducting the value of any  
8 other municipal, state, or federal sponsored financial incentives,  
9 during the taxable year for the purchase and installation of any  
10 solar energy system installed on property in this state, or the  
11 applicable dollar amount per rated watt of that solar energy system,  
12 as determined by the Franchise Tax Board in consultation with the  
13 State Energy Resources Conservation and Development  
14 Commission.

15 (b) For each taxable year beginning on or after January 1, 2004,  
16 and before January 1, 2006, there shall be allowed as a credit  
17 against the “net tax,” as defined in Section 17039, an amount  
18 equal to the lesser of 7.5 percent of the cost that is paid or incurred  
19 by a taxpayer, after deducting the value of any other municipal,  
20 state, or federal sponsored financial incentives, during the taxable  
21 year for the purchase and installation of any solar energy system  
22 installed on property in this state, or the applicable dollar amount  
23 per rated watt of that solar energy system, as determined by the  
24 Franchise Tax Board in consultation with the State Energy  
25 Resources Conservation and Development Commission.

26 (c) For purposes of this section:

27 (1) “Applicable dollar amount” means four dollars and fifty  
28 cents (\$4.50) for any taxable year beginning on or after January 1,  
29 2001, and before January 1, 2002, and for any taxable year  
30 beginning on or after January 1, 2004, and before January 1, 2006.

31 (2) “Solar energy system” means a solar energy device, in the  
32 form of either a photovoltaic or wind-driven system, with a peak  
33 generating capacity of up to, but not more than 200 kilowatts, used  
34 for the individual function of generating electricity, that is certified  
35 by the State Energy Resources Conservation and Development  
36 Commission and installed with a five-year warranty against  
37 breakdown or undue degradation.

38 (3) A credit may be allowed under this section with respect to  
39 only one solar energy system per each separate legal parcel of  
40 property or per each address of the taxpayer in the state.



1 (4) No credit may be allowed under this section unless the solar  
2 energy system is actually used for purposes of producing  
3 electricity and primarily used to meet the taxpayer's own energy  
4 needs.

5 (d) No other credit and no deduction may be allowed under this  
6 part for any cost for which a credit is allowed by this section. The  
7 basis of the solar energy system shall be reduced by the amount  
8 allowed as a credit under subdivision (a) or (b).

9 (e) No credit shall be allowed to any taxpayer engaged in those  
10 lines of business described in Sector 22 of the North American  
11 Industry Classification System (NAICS) Manual published by the  
12 United States Office of Management and Budget, 1997 edition.

13 (f) If any solar energy system for which a credit is allowed  
14 pursuant to this section is thereafter sold or removed from this state  
15 within one year from the date the solar energy system is first placed  
16 in service in this state, the amount of credit allowed by this section  
17 for that solar energy system shall be recaptured by adding that  
18 credit amount to the net tax of the taxpayer for the taxable year in  
19 which the solar energy system is sold or removed.

20 (g) In the case where the credit allowed by this section exceeds  
21 the "net tax," the excess may be carried over to reduce the "net  
22 tax" in the following year, and the succeeding seven years if  
23 necessary, until the credit is exhausted.

24 (h) This section shall remain in effect only until December 1,  
25 2006, and as of that date is repealed.

26 *SEC. 4. Section 17276 of the Revenue and Taxation Code is*  
27 *amended to read:*

28 17276. Except as provided in Sections 17276.1, 17276.2,  
29 17276.4, 17276.5, 17276.6, and 17276.7, the deduction provided  
30 by Section 172 of the Internal Revenue Code, relating to a net  
31 operating loss deduction, shall be modified as follows:

32 (a) (1) Net operating losses attributable to taxable years  
33 beginning before January 1, 1987, shall not be allowed.

34 (2) A net operating loss shall not be carried forward to any  
35 taxable year beginning before January 1, 1987.

36 (b) (1) Except as provided in paragraphs (2) and (3), the  
37 provisions of Section 172(b)(2) of the Internal Revenue Code,  
38 relating to the amount of carryovers, shall be modified so that the  
39 applicable percentage of the entire amount of the net operating loss  
40 for any taxable year shall be eligible for carryover to any



1 subsequent taxable year. For purposes of this subdivision, the  
2 applicable percentage shall be:

3 (A) Fifty percent for any taxable year beginning before January  
4 1, 2000.

5 (B) Fifty-five percent for any taxable year beginning on or after  
6 January 1, 2000, and before January 1, 2002.

7 (C) Sixty percent for any taxable year beginning on or after  
8 January 1, 2002, and before January 1, 2004.

9 (D) ~~Sixty-five~~ *Eighty* percent for any taxable year beginning  
10 on or after January 1, 2004.

11 (2) In the case of a taxpayer who has a net operating loss in any  
12 taxable year beginning on or after January 1, 1994, and who  
13 operates a new business during that taxable year, each of the  
14 following shall apply to each loss incurred during the first three  
15 taxable years of operating the new business:

16 (A) If the net operating loss is equal to or less than the net loss  
17 from the new business, 100 percent of the net operating loss shall  
18 be carried forward as provided in subdivision (d).

19 (B) If the net operating loss is greater than the net loss from the  
20 new business, the net operating loss shall be carried over as  
21 follows:

22 (i) With respect to an amount equal to the net loss from the new  
23 business, 100 percent of that amount shall be carried forward as  
24 provided in subdivision (d).

25 (ii) With respect to the portion of the net operating loss ~~which~~  
26 *that* exceeds the net loss from the new business, the applicable  
27 percentage of that amount shall be carried forward as provided in  
28 subdivision (d).

29 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
30 Code, the amount described in clause (ii) of subparagraph (B) shall  
31 be absorbed before the amount described in clause (i) of  
32 subparagraph (B).

33 (3) In the case of a taxpayer who has a net operating loss in any  
34 taxable year beginning on or after January 1, 1994, and who  
35 operates an eligible small business during that taxable year, each  
36 of the following shall apply:

37 (A) If the net operating loss is equal to or less than the net loss  
38 from the eligible small business, 100 percent of the net operating  
39 loss shall be carried forward to the taxable years specified in  
40 subdivision (d).



1 (B) If the net operating loss is greater than the net loss from the  
2 eligible small business, the net operating loss shall be carried over  
3 as follows:

4 (i) With respect to an amount equal to the net loss from the  
5 eligible small business, 100 percent of that amount shall be carried  
6 forward as provided in subdivision (d).

7 (ii) With respect to that portion of the net operating loss that  
8 exceeds the net loss from the eligible small business, the applicable  
9 percentage of that amount shall be carried forward as provided in  
10 subdivision (d).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
12 Code, the amount described in clause (ii) of subparagraph (B) shall  
13 be absorbed before the amount described in clause (i) of  
14 subparagraph (B).

15 (4) In the case of a taxpayer who has a net operating loss in a  
16 taxable year beginning on or after January 1, 1994, and who  
17 operates a business that qualifies as both a new business and an  
18 eligible small business under this section, that business shall be  
19 treated as a new business for the first three taxable years of the new  
20 business.

21 (5) In the case of a taxpayer who has a net operating loss in a  
22 taxable year beginning on or after January 1, 1994, and who  
23 operates more than one business, and more than one of those  
24 businesses qualifies as either a new business or an eligible small  
25 business under this section, paragraph (2) shall be applied first,  
26 except that if there is any remaining portion of the net operating  
27 loss after application of clause (i) of subparagraph (B) of that  
28 paragraph, paragraph (3) shall be applied to the remaining portion  
29 of the net operating loss as though that remaining portion of the net  
30 operating loss constituted the entire net operating loss.

31 (6) For purposes of this section, the term “net loss” means the  
32 amount of net loss after application of Sections 465 and 469 of the  
33 Internal Revenue Code.

34 (c) Net operating loss carrybacks shall not be allowed.

35 (d) (1) (A) For a net operating loss for any taxable year  
36 beginning on or after January 1, 1987, and before January 1, 2000,  
37 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to  
38 years to which net operating losses may be carried, is modified to  
39 substitute “five taxable years” in lieu of “20 taxable years”  
40 except as otherwise provided in paragraphs (2) and (3).



1 (B) For a net operating loss for any taxable year beginning on  
2 or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal  
3 Revenue Code, relating to years to which net operating losses may  
4 be carried, is modified to substitute “10 taxable years” in lieu of  
5 “20 taxable years.”

6 (2) For any taxable year beginning before January 1, 2000, in  
7 the case of a “new business,” the “five taxable years” in  
8 paragraph (1) shall be modified to read as follows:

9 (A) “Eight taxable years” for a net operating loss attributable  
10 to the first taxable year of that new business.

11 (B) “Seven taxable years” for a net operating loss attributable  
12 to the second taxable year of that new business.

13 (C) “Six taxable years” for a net operating loss attributable to  
14 the third taxable year of that new business.

15 (3) For any carryover of a net operating loss for which a  
16 deduction is denied by Section 17276.3, the carryover period  
17 specified in this subdivision shall be extended as follows:

18 (A) By one year for a net operating loss attributable to taxable  
19 years beginning in 1991.

20 (B) By two years for a net operating loss attributable to taxable  
21 years beginning prior to January 1, 1991.

22 (4) The net operating loss attributable to taxable years  
23 beginning on or after January 1, 1987, and before January 1, 1994,  
24 shall be a net operating loss carryover to each of the 10 taxable  
25 years following the year of the loss if it is incurred by a taxpayer  
26 that is under the jurisdiction of the court in a Title 11 or similar case  
27 at any time during the income year. The loss carryover provided  
28 in the preceding sentence shall not apply to any loss incurred after  
29 the date the taxpayer is no longer under the jurisdiction of the court  
30 in a Title 11 or similar case.

31 (e) For purposes of this section:

32 (1) “Eligible small business” means any trade or business that  
33 has gross receipts, less returns and allowances, of less than one  
34 million dollars (\$1,000,000) during the taxable year.

35 (2) Except as provided in subdivision (f), “new business”  
36 means any trade or business activity that is first commenced in this  
37 state on or after January 1, 1994.

38 (3) “Title 11 or similar case” shall have the same meaning as  
39 in Section 368(a)(3) of the Internal Revenue Code.



1 (4) In the case of any trade or business activity conducted by a  
2 partnership or ~~S-corporation~~, “*S corporation*,” paragraphs (1) and  
3 (2) shall be applied to the partnership or ~~S-corporation~~. “*S*  
4 *corporation*.”

5 (f) For purposes of this section, in determining whether a trade  
6 or business activity qualifies as a new business under paragraph (2)  
7 of subdivision (e), the following rules shall apply:

8 (1) In any case where a taxpayer purchases or otherwise  
9 acquires all or any portion of the assets of an existing trade or  
10 business (irrespective of the form of entity) that is doing business  
11 in this state (within the meaning of Section 23101), the trade or  
12 business thereafter conducted by the taxpayer (or any related  
13 person) shall not be treated as a new business if the aggregate fair  
14 market value of the acquired assets (including real, personal,  
15 tangible, and intangible property) used by the taxpayer (or any  
16 related person) in the conduct of its trade or business exceeds 20  
17 percent of the aggregate fair market value of the total assets of the  
18 trade or business being conducted by the taxpayer (or any related  
19 person). For purposes of this paragraph only, the following rules  
20 shall apply:

21 (A) The determination of the relative fair market values of the  
22 acquired assets and the total assets shall be made as of the last day  
23 of the first taxable year in which the taxpayer (or any related  
24 person) first uses any of the acquired trade or business assets in its  
25 business activity.

26 (B) Any acquired assets that constituted property described in  
27 Section 1221(1) of the Internal Revenue Code in the hands of the  
28 transferor shall not be treated as assets acquired from an existing  
29 trade or business, unless those assets also constitute property  
30 described in Section 1221(1) of the Internal Revenue Code in the  
31 hands of the acquiring taxpayer (or related person).

32 (2) In any case where a taxpayer (or any related person) is  
33 engaged in one or more trade or business activities in this state, or  
34 has been engaged in one or more trade or business activities in this  
35 state within the preceding 36 months (“prior trade or business  
36 activity”), and thereafter commences an additional trade or  
37 business activity in this state, the additional trade or business  
38 activity shall only be treated as a new business if the additional  
39 trade or business activity is classified under a different division of  
40 the Standard Industrial Classification (SIC) Manual published by



1 the United States Office of Management and Budget, 1987 edition,  
2 than are any of the taxpayer's (or any related person's) current or  
3 prior trade or business activities.

4 (3) In any case where a taxpayer, including all related persons,  
5 is engaged in trade or business activities wholly outside of this  
6 state and the taxpayer first commences doing business in this state  
7 (within the meaning of Section 23101) after December 31, 1993  
8 (other than by purchase or other acquisition described in paragraph  
9 (1)), the trade or business activity shall be treated as a new business  
10 under paragraph (2) of subdivision (e).

11 (4) In any case where the legal form under which a trade or  
12 business activity is being conducted is changed, the change in form  
13 shall be disregarded and the determination of whether the trade or  
14 business activity is a new business shall be made by treating the  
15 taxpayer as having purchased or otherwise acquired all or any  
16 portion of the assets of an existing trade or business under the rules  
17 of paragraph (1) of this subdivision.

18 (5) "Related person" shall mean any person that is related to  
19 the taxpayer under either Section 267 or 318 of the Internal  
20 Revenue Code.

21 (6) "Acquire" shall include any gift, inheritance, transfer  
22 incident to divorce, or any other transfer, whether or not for  
23 consideration.

24 (7) (A) For taxable years beginning on or after January 1,  
25 1997, the term "new business" shall include any taxpayer that is  
26 engaged in biopharmaceutical activities or other biotechnology  
27 activities that are described in Codes 2833 to 2836, inclusive, of  
28 the Standard Industrial Classification (SIC) Manual published by  
29 the United States Office of Management and Budget, 1987 edition,  
30 and as further amended, and that has not received regulatory  
31 approval for any product from the United States Food and Drug  
32 Administration.

33 (B) For purposes of this paragraph:

34 (i) "Biopharmaceutical activities" means those activities  
35 ~~which~~ *that* use organisms or materials derived from organisms,  
36 and their cellular, subcellular, or molecular components, in order  
37 to provide pharmaceutical products for human or animal  
38 therapeutics and diagnostics. Biopharmaceutical activities make  
39 use of living organisms to make commercial products, as opposed



1 to pharmaceutical activities ~~which~~ *that* make use of chemical  
2 compounds to produce commercial products.

3 (ii) “Other biotechnology activities” means activities  
4 consisting of the application of recombinant DNA technology to  
5 produce commercial products, as well as activities regarding  
6 pharmaceutical delivery systems designed to provide a measure of  
7 control over the rate, duration, and site of pharmaceutical delivery.

8 (g) In computing the modifications under Section 172(d)(2) of  
9 the Internal Revenue Code, relating to capital gains and losses of  
10 taxpayers other than corporations, the exclusion provided by  
11 Section 18152.5 shall not be allowed.

12 (h) Notwithstanding any provisions of this section to the  
13 contrary, a deduction shall be allowed to a “qualified taxpayer”  
14 as provided in Sections 17276.1, 17276.2, 17276.4, 17276.5,  
15 17276.6, and 17276.7.

16 (i) The Franchise Tax Board may prescribe appropriate  
17 regulations to carry out the purposes of this section, including any  
18 regulations necessary to prevent the avoidance of the purposes of  
19 this section through splitups, shell corporations, partnerships,  
20 tiered ownership structures, or otherwise.

21 (j) The Franchise Tax Board may reclassify any net operating  
22 loss carryover determined under either paragraph (2) or (3) of  
23 subdivision (b) as a net operating loss carryover under paragraph  
24 (1) of subdivision (b) upon a showing that the reclassification is  
25 necessary to prevent evasion of the purposes of this section.

26 (k) Except as otherwise provided, the amendments made by ~~the~~  
27 ~~act adding this subdivision~~ *Chapter 107 of the Statutes of 2000*  
28 shall apply to net operating losses for taxable years beginning on  
29 or after January 1, 2000.

30 *SEC. 5. Section 17276.3 of the Revenue and Taxation Code is*  
31 *amended to read:*

32 17276.3. (a) Notwithstanding—~~Section~~ *Sections* 17276,  
33 *17276.1, 17276.2, 17276.4, 17276.5, 17276.6, and 17276.7* of this  
34 code and Section 172 of the Internal Revenue Code, no net  
35 operating loss deduction shall be allowed for ~~all taxable years~~  
36 ~~beginning in the 1991 and 1992 calendar years~~ *any taxable year*  
37 *beginning on or after January 1, 2002, and before January 1,*  
38 *2004.*

39 (b) For any carryover of a net operating loss for which a  
40 deduction is denied by subdivision (a), the carryover period under



1 Section 172 of the Internal Revenue Code shall be extended as  
2 follows:

3 ~~(1) By one year, for losses sustained in taxable years beginning~~  
4 ~~in 1991.~~

5 ~~(2) By two years, for losses sustained in taxable years~~  
6 ~~beginning prior to January 1, 1991.~~

7 ~~(c) Notwithstanding any other provision of this section, a~~  
8 ~~deduction shall be allowed to a “qualified taxpayer” as provided~~  
9 ~~in Sections 17276.1 and 17276.2 for taxable years beginning in the~~  
10 ~~1991 and 1992 calendar years.~~

11 *(1) By one year, for losses incurred in taxable years beginning*  
12 *on or after January 1, 2002, and before January 1, 2003.*

13 *(2) By two years, for losses incurred in taxable years beginning*  
14 *before January 1, 2002.*

15 *SEC. 6. Section 18662 of the Revenue and Taxation Code is*  
16 *amended to read:*

17 18662. (a) The Franchise Tax Board may, by regulation,  
18 require any person, in whatever capacity acting (including lessees  
19 or mortgagors of real or personal property, fiduciaries, employers,  
20 and any officer or department of the state or any political  
21 subdivision or agency of the state, or any city organized under a  
22 freeholder’s charter, or any political body not a subdivision or  
23 agency of the state), having the control, receipt, custody, disposal,  
24 or payment of items of income specified in subdivision (b), to  
25 withhold an amount, determined by the Franchise Tax Board to  
26 reasonably represent the amount of tax due when the items of  
27 income are included with other income of the taxpayer, and to  
28 transmit the amount withheld to the Franchise Tax Board at the  
29 time as it may designate.

30 (b) The items of income referred to in subdivision (a) are  
31 interest, dividends, rents, prizes and winnings, premiums,  
32 annuities, emoluments, compensation for services, including  
33 bonuses, partnership income or gains, and other fixed or  
34 determinable annual or periodical gains, profits, and income.

35 (c) The Franchise Tax Board may authorize the tax under  
36 subdivision (a) to be deducted and withheld from the interest upon  
37 any securities the owners of which are not known to the  
38 withholding agent.

39 (d) Any person failing to withhold from any payments any  
40 amounts required by subdivision (a) to be withheld is liable for the



1 amount withheld or the amount of taxes due from the person to  
2 whom the payments are made to an extent not in excess of the  
3 amounts required to be withheld, whichever is greater, unless it is  
4 shown that the failure to withhold is due to reasonable cause.

5 (e) (1) *In the case of any disposition of a California real*  
6 *property interest by an individual, the transferee (including for this*  
7 *purpose any intermediary or accommodator in a deferred*  
8 *exchange) shall be required to withhold an amount equal to 3<sup>1</sup>/<sub>3</sub>*  
9 *percent of the sales price of the California real property conveyed.*

10 (2) *Notwithstanding any other provision of this subdivision, all*  
11 *of the following shall apply:*

12 (A) *No transferee shall be required to withhold any amount*  
13 *under this subdivision unless the sales price of the California real*  
14 *property conveyed exceeds one hundred thousand dollars*  
15 *(\$100,000).*

16 (B) *No transferee shall be required to withhold any amount*  
17 *under this subdivision unless written notification of the*  
18 *withholding requirements of this subdivision has been provided by*  
19 *the real estate escrow person.*

20 (C) *No transferee shall be required to withhold under this*  
21 *subdivision when the transferee is a corporate beneficiary under*  
22 *a mortgage or beneficiary under a deed of trust and the California*  
23 *real property is acquired in judicial or nonjudicial foreclosure or*  
24 *by a deed in lieu of foreclosure.*

25 (D) *No transferee shall be required to withhold any amount*  
26 *under this subdivision if the transferee, in good faith and based*  
27 *upon all the information of which he or she has knowledge, relies*  
28 *on a written certificate executed by the transferor, certifying under*  
29 *penalty of perjury, that the California real property being*  
30 *conveyed is the principal residence of the transferor (within the*  
31 *meaning of Section 121 of the Internal Revenue Code).*

32 (E) (i) *No transferee (including for this purpose any*  
33 *intermediary or accommodator in a deferred exchange) shall be*  
34 *required to withhold any amount under this subdivision if the*  
35 *transferee, in good faith and based on all the information of which*  
36 *he or she has knowledge, relies on a written certificate executed by*  
37 *the transferor, certifying under penalty of perjury, that the*  
38 *California real property being conveyed is exchanged, or will be*  
39 *exchanged, for property of like kind (within the meaning of Section*  
40 *1031 of the Internal Revenue Code), but only to the extent of the*



1 amount of the gain not required to be recognized for California  
2 income tax purposes under Section 1031 of the Internal Revenue  
3 Code.

4 (ii) Clause (i) shall not apply to the extent that any exchange  
5 does not qualify for nonrecognition treatment for California  
6 income tax purposes under Section 1031 of the Internal Revenue  
7 Code, in whole or in part, due to the failure of the transaction to  
8 comply with the provisions of Section 1031(a)(3) of the Internal  
9 Revenue Code, relating to requirement that property be identified  
10 and that exchange be completed not more than 180 days after  
11 transfer of exchanged property.

12 (iii) In any case where clause (ii) applies, the transferee  
13 (including for this purpose any intermediary or accommodator in  
14 a deferred exchange) shall be required to notify the Franchise Tax  
15 Board in writing within 10 days of the expiration of the statutory  
16 periods specified in Section 1031(a)(3) of the Internal Revenue  
17 Code and shall thereafter remit the applicable withholding  
18 amounts determined under this subdivision in accordance with  
19 paragraph (5).

20 (F) No transferee shall be required to withhold any amount  
21 under this subdivision if the transferee, in good faith and based on  
22 all the information of which he or she has knowledge, relies on a  
23 written certificate executed by the transferor, certifying under  
24 penalty of perjury, that the California real property has been  
25 compulsorily or involuntarily converted (within the meaning of  
26 Section 1033 of the Internal Revenue Code) and that the transferor  
27 intends to acquire property similar or related in service or use so  
28 as to be eligible for nonrecognition of gain for California income  
29 tax purposes under Section 1033 of the Internal Revenue Code.

30 (3) (A) If the transferor provides documentation sufficient for  
31 the Franchise Tax Board to determine the transaction will result  
32 in a loss for California income tax purposes, the Franchise Tax  
33 Board may authorize a waiver from withholding under this  
34 subdivision.

35 (B) Within 45 days after receiving a request for a waiver from  
36 withholding, the Franchise Tax Board shall either authorize or  
37 deny the request.

38 (C) In the case where the parties to the transaction are  
39 requesting a waiver from withholding, and the response by the  
40 Franchise Tax Board to the request has not been received at the



1 *time title to the California real property is transferred, the parties*  
2 *may direct the real estate escrow person to hold in trust for 45 days*  
3 *the amount required to be withheld under this subdivision. The*  
4 *parties shall instruct the real estate escrow person that upon*  
5 *expiration of the 45-day time period, the real estate escrow person*  
6 *shall remit the amount withheld to the Franchise Tax Board in*  
7 *accordance with this section, unless the Franchise Tax Board has*  
8 *authorized a waiver from withholding prior to that date.*

9 (4) (A) *In the case of any transaction otherwise subject to this*  
10 *subdivision that qualifies as an “installment sale” (within the*  
11 *meaning of Section 453(b) of the Internal Revenue Code) for*  
12 *California income tax purposes, the provisions of this subdivision*  
13 *may, upon the irrevocable written election of the transferee, be*  
14 *separately applied to each payment to be made under the terms of*  
15 *the installment sale agreement between the parties.*

16 (B) *For purposes of subparagraph (A), subparagraph (A) of*  
17 *paragraph (2) shall not apply to each individual payment to be*  
18 *received under the terms of the installment sale agreement.*

19 (C) *The election under this paragraph shall be made at the*  
20 *time, and in the form and manner, specified by the Franchise Tax*  
21 *Board in forms and instructions, except that the form shall, at a*  
22 *minimum, include the requirement specified in subparagraph (D)*  
23 *of this paragraph.*

24 (D) *The election under this paragraph shall only be valid if the*  
25 *transferee agrees to withhold and remit from each installment*  
26 *payment the amount specified under this subdivision in the form*  
27 *and manner, and at the time, specified in paragraph (5).*

28 (5) *Amounts withheld and payments made in accordance with*  
29 *this subdivision shall be reported and remitted to the Franchise*  
30 *Tax Board in the form and manner and at the time specified by the*  
31 *Franchise Tax Board.*

32 (6) *For purposes of this subdivision, “California real property*  
33 *interest” means an interest in real property located in California*  
34 *and defined in Section 897(c)(1)(A)(i) of the Internal Revenue*  
35 *Code.*

36 (7) *For purposes of this subdivision, “real estate escrow*  
37 *person” means any of the following persons involved in the real*  
38 *estate transaction:*

39 (A) *The person (including any attorney, escrow company, or*  
40 *title company) responsible for closing the transaction.*



1 (B) If no other person described in subparagraph (A) is  
2 responsible for closing the transaction, then any other person who  
3 receives and disburses the consideration or value for the interest  
4 or property conveyed.

5 (8) (A) Unless the real estate escrow person provides  
6 “assistance,” it shall be unlawful for any real estate escrow person  
7 to charge any customer for complying with the requirements of this  
8 subdivision.

9 (B) For purposes of this paragraph, “assistance” includes, but  
10 is not limited to, helping the parties clarify with the Franchise Tax  
11 Board the issue of whether withholding is required under this  
12 subdivision, helping the parties request that the Franchise Tax  
13 Board authorize that no amount be withheld under this  
14 subdivision, or, upon request of the parties, withholding an amount  
15 under this subdivision and remitting that amount to the Franchise  
16 Tax Board.

17 (C) For purposes of this paragraph, “assistance” does not  
18 include providing the written notification of the withholding  
19 requirements of this subdivision.

20 (D) In a case where the real estate escrow person provides  
21 “assistance” in complying with the withholding requirements of  
22 this subdivision, it shall be unlawful for the real estate escrow  
23 person to charge any customer a fee that exceeds forty-five dollars  
24 (\$45).

25 (9) For purposes of this subdivision, “sales price” means the  
26 sum of all of the following:

27 (A) The cash paid, or to be paid, but excluding for this purpose  
28 any stated or unstated interest or original issue discount (as  
29 determined under Sections 1271 through 1275, inclusive, of the  
30 Internal Revenue Code).

31 (B) The fair market value of other property transferred, or to be  
32 transferred.

33 (C) The outstanding amount of any liability assumed by the  
34 transferee or to which the California real property interest is  
35 subject immediately before and after the transfer.

36 (f) (1) In the case of any disposition of a California real  
37 property interest by a person (but not a partnership as determined  
38 in accordance with Subchapter K of Chapter 1 of Subtitle A of the  
39 Internal Revenue Code, or a corporation), when the return required  
40 to be filed with the Secretary of the Treasury under Section



1 6045(e) of the Internal Revenue Code indicates, or the  
2 authorization for the disbursement of the transaction's funds  
3 instructs, that the funds be disbursed either to a transferor with a  
4 last known street address outside the boundaries of this state at the  
5 time of the transfer of the title to the California real property or to  
6 the financial intermediary of the transferor, the transferee shall be  
7 required to withhold an amount equal to  $3\frac{1}{3}$  percent of the sales  
8 price of the California real property conveyed.

9 (2) In the case of any disposition of a California real property  
10 interest by a corporation, the transferee shall be required to  
11 withhold an amount equal to  $3\frac{1}{3}$  percent of the sales price of the  
12 California real property conveyed, if the corporation immediately  
13 after the transfer of the title to the California real property has no  
14 permanent place of business in California. For purposes of this  
15 subdivision, a corporation has no permanent place of business in  
16 California if all of the following apply:

17 (A) It is not organized and existing under the laws of  
18 California.

19 (B) It does not qualify with the office of the Secretary of State  
20 to transact business in California.

21 (C) It does not maintain and staff a permanent office in  
22 California.

23 (3) Notwithstanding any other provision of this subdivision, all  
24 of the following shall apply:

25 (A) No transferee shall be required to withhold any amount  
26 under this subdivision if the sales price of the California real  
27 property conveyed does not exceed one hundred thousand dollars  
28 (\$100,000).

29 (B) No transferee shall be required to withhold any amount  
30 under this subdivision unless written notification of the  
31 withholding requirements of this subdivision has been provided by  
32 the real estate escrow person.

33 (C) No transferee shall be required to withhold under this  
34 subdivision when the transferor is a bank acting as trustee other  
35 than a trustee of a deed of trust.

36 (D) No transferee shall be required to withhold under this  
37 subdivision when the transferee is a corporate beneficiary under  
38 a mortgage or beneficiary under a deed of trust and the California  
39 real property is acquired in judicial or nonjudicial foreclosure or  
40 by a deed in lieu of foreclosure.



1 (E) No transferee shall be required to withhold any amount  
2 under this subdivision if the transferee, in good faith and based on  
3 all the information of which he or she has knowledge, relies on a  
4 written certificate executed by the transferor, certifying under  
5 penalty of perjury, any of the following:

6 (i) That the transferor is a resident of California.

7 ~~(ii) That the California real property being conveyed is the~~  
8 ~~principal residence of the transferor, within the meaning of Section~~  
9 ~~121 of the Internal Revenue Code.~~

10 ~~(iii) The transferor, if a corporation, has a permanent place of~~  
11 ~~business in California.~~

12 (4) (A) At the request of the transferor, the Franchise Tax  
13 Board may authorize that a reduced amount or no amount be  
14 withheld under this subdivision if the Franchise Tax Board  
15 determines that to substitute a reduced amount or no amount shall  
16 not jeopardize the collection of tax imposed by Part 10  
17 (commencing with Section 17001) or Part 11 (commencing with  
18 Section 23001). If the transferor provides documentation  
19 sufficient for the Franchise Tax Board to determine the actual gain  
20 required to be recognized on the transaction, the Franchise Tax  
21 Board may authorize a reduced amount based on the amount of the  
22 gain, as determined, which will result in a sum which is  
23 substantially equivalent to the amount of tax reasonably estimated  
24 to be due under Part 10 (commencing with Section 17001) or Part  
25 11 (commencing with Section 23001) from the inclusion of the  
26 gain in the gross amount of the transferor.

27 (B) Within 45 days after receiving a request that a reduced  
28 amount or no amount be withheld, the Franchise Tax Board shall  
29 either authorize a reduced amount or no amount, or deny the  
30 request.

31 (C) In the case where the parties to the transaction are  
32 requesting that a reduced amount or no amount be withheld and the  
33 response by the Franchise Tax Board to the request has not been  
34 received at the time title to the California real property is  
35 transferred, the parties may direct the real estate escrow person to  
36 hold in trust for 45 days the amount required to be withheld under  
37 this subdivision. The parties shall instruct the real estate escrow  
38 person that at the end of 45 days the real estate escrow person shall  
39 remit the amount withheld to the Franchise Tax Board in



1 accordance with this section, unless the Franchise Tax Board has  
2 authorized that a reduced amount or no amount be withheld.

3 (5) Amounts withheld and payments made in accordance with  
4 this subdivision shall be reported and remitted to the Franchise Tax  
5 Board in the form and at the time as the Franchise Tax Board shall  
6 determine.

7 (6) “California real property interest” means an interest in real  
8 property located in California and defined in Section  
9 897(c)(1)(A)(i) of the Internal Revenue Code.

10 (7) For purposes of this subdivision, “financial intermediary”  
11 means an agent for the purpose of receiving and transferring funds  
12 to a principal.

13 (8) For purposes of this subdivision, “real estate escrow  
14 person” means any of the following persons involved in the real  
15 estate transaction:

16 (A) The person (including any attorney, escrow company, or  
17 title company) responsible for closing the transaction.

18 (B) If no other person described in subparagraph (A) is  
19 responsible for closing the transaction, then any other person who  
20 receives and disburses the consideration or value for the interest  
21 or property conveyed.

22 (9) (A) Unless the real estate escrow person provides  
23 “assistance,” it shall be unlawful for any real estate escrow person  
24 to charge any customer for complying with the requirements of  
25 this subdivision.

26 (B) For purposes of this paragraph, “assistance” includes, but  
27 is not limited to, helping the parties clarify with the Franchise Tax  
28 Board the issue of whether withholding is required under this  
29 subdivision, helping the parties request that the Franchise Tax  
30 Board authorize a reduced amount or no amount be withheld under  
31 this subdivision, or, upon request of the parties, withholding an  
32 amount under this subdivision and remitting the amount to the  
33 Franchise Tax Board.

34 (C) For purposes of this paragraph, “assistance” does not  
35 include providing the written notification of the withholding  
36 requirements of this subdivision, or providing the certification that  
37 either:

38 (i) The transferor is a resident of California ~~or that the~~  
39 ~~California real property being conveyed is the transferor’s~~  
40 ~~principal residence.~~



1 (ii) The transferor, if a corporation, has a permanent place of  
2 business in California.

3 (D) In a case where the real estate escrow person provides  
4 “assistance” in complying with the withholding requirements of  
5 this subdivision, it shall be unlawful for the real estate escrow  
6 person to charge any customer a fee that exceeds forty-five dollars  
7 (\$45).

8 (10) For purposes of this subdivision, “sales price” means the  
9 sum of all of the following:

10 (A) The cash paid, or to be paid. The term “cash paid, or to be  
11 paid” does not include stated or unstated interest or original issue  
12 discount (as determined by Sections 1271 to 1275, inclusive, of the  
13 Internal Revenue Code).

14 (B) The fair market value of other property transferred, or to be  
15 transferred.

16 (C) The outstanding amount of any liability assumed by the  
17 transferee or to which the California real property interest is  
18 subject immediately before and after the transfer.

19 ~~(F)~~

20 (g) Whenever any person has withheld any amount pursuant to  
21 this section, the amount so withheld shall be held in trust for the  
22 State of California. The amount of the fund shall be assessed,  
23 collected, and paid in the same manner and subject to the same  
24 provisions and limitations (including penalties) as are applicable  
25 with respect to the taxes imposed by Part 10 (commencing with  
26 Section 17001), Part 11 (commencing with Section 23001), or this  
27 part.

28 ~~(g)~~

29 (h) Withholding shall not be required under this section with  
30 respect to wages, salaries, fees, or other compensation paid by a  
31 corporation for services performed in California for that  
32 corporation to a nonresident corporate director for director  
33 services, including attendance at a board of directors’ meeting.

34 ~~(h)~~

35 (i) In the case of any payment described in subdivision ~~(g)~~ (h),  
36 the person making the payment shall do each of the following:

37 (1) File a return with the Franchise Tax Board at the time and  
38 in the form and manner specified by the Franchise Tax Board.

39 (2) Provide the payee with a statement at the time and in the  
40 form and manner specified by the Franchise Tax Board.



1 (j) (1) *The amendments to this section made by the act adding*  
2 *this subdivision shall only apply to dispositions of California real*  
3 *property interests that occur on or after January 1, 2003.*

4 (2) *In the case of any payments received on or after January 1,*  
5 *2003, pursuant to an installment sale agreement relating to a*  
6 *disposition occurring before January 1, 2003, the amendments to*  
7 *this section made by the act adding this subdivision shall not apply*  
8 *to those payments.*

9 *SEC. 7. Section 18663 of the Revenue and Taxation Code is*  
10 *amended to read:*

11 18663. (a) The Franchise Tax Board shall annually (or more  
12 often if necessary) prepare and make available to the Employment  
13 Development Department, wage withholding tables ~~which~~ *that*  
14 shall be used by every employer making payment of any wages to  
15 a resident employee for services performed either within or  
16 without this state; or to a nonresident employee for services  
17 performed in this state, to deduct and withhold from those wages  
18 for each payroll period, a tax computed in a manner as to produce,  
19 so far as practicable, with due regard to the credits for personal  
20 exemptions allowable under Section 17054, a sum ~~which~~ *that* is  
21 substantially equivalent to the amount of tax reasonably estimated  
22 to be due under Part 10 (commencing with Section 17001)  
23 resulting from the inclusion in the gross income of the employee  
24 the wages which were subject to withholding.

25 (b) (1) For supplemental wages paid on or after January 1,  
26 1992, the rate of withholding that may be applied to supplemental  
27 wages in lieu of the wage withholding tables specified in  
28 subdivision (a) shall be 6 percent.

29 (2) For purposes of this subdivision, “supplemental wages”  
30 includes, but is not limited to, bonus payments, overtime  
31 payments, commissions, sales awards, back pay including  
32 retroactive wage increases, and reimbursements for nondeductible  
33 moving expenses that are paid for the same or a different period,  
34 or without regard to a particular period.

35 (c) *For stock options and bonus payments that constitute wages*  
36 *paid on or after January 1, 2002, the rate of withholding that may*  
37 *be applied to those stock options and bonus payments in lieu of the*  
38 *wage withholding tables specified in subdivision (a) shall,*  
39 *notwithstanding subdivision (b), be 9.3 percent.*



1 SEC. 8. Section 19136.8 of the Revenue and Taxation Code is  
2 amended to read:

3 19136.8. (a) No addition to tax shall be made under Section  
4 19136 for any period before April 15, 2003, with respect to any  
5 underpayment of an installment for the 2002 taxable year, to the  
6 extent that the underpayment was created or increased by any  
7 provision of ~~the act adding this section~~ law enacted or amended by  
8 an act chaptered during the 2002 calendar year.

9 (b) No addition of tax shall be made under Section 19142 for  
10 any period before April 15, 2003, with respect to any  
11 underpayment of an installment for the 2002 taxable year, to the  
12 extent that the underpayment was created or increased by any  
13 provision of ~~the act adding this section~~ law enacted or amended by  
14 an act chaptered during the 2002 calendar year.

15 (c) The Franchise Tax Board shall implement this section in a  
16 reasonable manner.

17 SEC. 9. Section 19444 is added to the Revenue and Taxation  
18 Code, to read:

19 19444. (a) (1) For the period beginning on October 1, 2002,  
20 and ending on June 30, 2003, an eligible taxpayer's liability, with  
21 respect to any unpaid taxes, may be satisfied by the payment of an  
22 eligible amount. The authority granted by this section is limited to  
23 an unpaid tax liability that has been determined by the Franchise  
24 Tax Board to be a high-risk collection account.

25 (2) The liability of an eligible taxpayer for any unpaid  
26 penalties, interest, and fees included in the computation of the  
27 unpaid tax liability shall be extinguished only upon receipt by the  
28 Franchise Tax Board of all payments equal to the eligible amount  
29 on or before the final due date for payment established by the  
30 Franchise Tax Board.

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

33 (1) "Eligible taxpayer" means any individual that receives  
34 notification from the Franchise Tax Board that the taxpayer's  
35 unpaid tax liability may be satisfied by the payment of an eligible  
36 amount.

37 (2) "Eligible amount" means an amount equal to any unpaid  
38 tax liability, excluding penalties, interest, and fees, owed by the  
39 eligible taxpayer that is paid in one or more installments, as  
40 determined by the Franchise Tax Board, on or before the due date



1 established by the Franchise Tax Board, but in no event later than  
2 June 30, 2004.

3 (3) “High-risk collection account” means any unpaid tax  
4 liability of a taxpayer where satisfaction of that liability under this  
5 section would be in the best interest of the state, and shall include  
6 any unpaid tax liability for which the Franchise Tax Board has  
7 made either of the following determinations:

8 (A) Under the Franchise Tax Board’s collection modeling  
9 policies, practices, and procedures, efforts to collect the unpaid  
10 tax liability would not be economical.

11 (B) The unpaid tax liability would not be paid in full within a  
12 reasonable period of time.

13 (4) “Unpaid tax liability” means any final assessment of  
14 liability under Part 10 (commencing with Section 17001),  
15 including tax, penalties, interest, and fees (other than an  
16 assessment resulting from a proposed assessment issued under the  
17 authority of Section 19087) that are owed by an individual and, as  
18 of October 1, 2002, are unpaid.

19 (c) No refund or credit shall be granted with respect to any  
20 penalty or interest paid or collected with respect to an unpaid tax  
21 liability prior to October 1, 2002.

22 (d) The determinations made by the Franchise Tax Board  
23 pursuant to this section shall be final and conclusive and shall not  
24 be subject to review by any other officer, employee, or agent of the  
25 state, or by any court.

26 (e) Nothing in Section 19542, or in any other provision of law,  
27 shall be construed to require the disclosure of standards used or to  
28 be used in connection with any determinations made by the  
29 Franchise Tax Board for purposes of this section, or the data used  
30 or to be used for determining those standards if the Franchise Tax  
31 Board determines that the disclosure will seriously impair  
32 assessment, collection, or enforcement under this part.

33 (f) Nothing in this section shall authorize the Franchise Tax  
34 Board to compromise any final tax liability.

35 (g) The Legislature finds that it is essential for fiscal purposes  
36 that the special collection efforts authorized by this section be  
37 expeditiously implemented. Accordingly, Chapter 3.5  
38 (commencing with Section 11340) of Part 1 of Division 3 of Title  
39 2 of the Government Code shall not apply to any standard,  
40 criterion, procedure, determination, rule, notice, or guideline



1 established or issued in implementing and administering the  
2 program required by this section.

3 (h) This section shall be operative with respect to unpaid tax  
4 liabilities of high-risk collection accounts that are the subject of  
5 notifications made to eligible taxpayers on or after October 1,  
6 2002, and before July 1, 2003.

7 (i) Whenever a “high-risk collection account” is forgiven of  
8 any penalties, interest, or fees pursuant to this section, the public  
9 record shall include all of the following information:

10 (1) The name of the taxpayer.

11 (2) The amount of related fees, penalties, and interest relieved.

12 (3) A summary of the reason why the relief is in the best interest  
13 of the state.

14 (j) This section shall remain in effect only until December 31,  
15 2004, and as of that date is repealed.

16 SEC. 10. Section 23457 of the Revenue and Taxation Code, as  
17 amended by Section 37 of Chapter 35 of the Statutes of 2002, is  
18 amended to read:

19 23457. For purposes of this part, Section 57 of the Internal  
20 Revenue Code is modified as follows:

21 (a) Section 57(a)(5) of the Internal Revenue Code, relating to  
22 tax-exempt interest, shall not be applicable.

23 ~~(b) Section 57(a) of the Internal Revenue Code, relating to~~  
24 ~~items of tax preference, is modified to include as an item of tax~~  
25 ~~preference the amount by which the deduction allowable under~~  
26 ~~Section 24348 for the taxable year for a reasonable addition to a~~  
27 ~~reserve for bad debts exceeds the amount that would have been~~  
28 ~~allowable had the taxpayer maintained its bad debt reserve for all~~  
29 ~~taxable years on the basis of actual experience.~~

30 ~~(c) Section 57(a)(6) of the Internal Revenue Code, relating to~~  
31 ~~accelerated depreciation or amortization on certain property~~  
32 ~~placed in service before January 1, 1987, is modified to read: With~~  
33 ~~respect to each property as described in Section 1250(c) of the~~  
34 ~~Internal Revenue Code as that provision read on April 1, 1970, the~~  
35 ~~amount by which the deduction allowable for the taxable year for~~  
36 ~~exhaustion, wear, tear, obsolescence, or amortization exceeds the~~  
37 ~~depreciation deduction that would have been allowable for the~~  
38 ~~taxable year, had the taxpayer depreciated the property under the~~  
39 ~~straight line method for each taxable year of its useful life~~



1 (determined without regard to Section 24354.2 or 24381) for  
2 which the taxpayer has held the property.

3 *SEC. 11. Section 23684 of the Revenue and Taxation Code is*  
4 *amended to read:*

5 23684. (a) For each taxable year beginning on or after  
6 January 1, 2001, and before January 1, ~~2004~~ 2002, there shall be  
7 allowed as a credit against the “tax,” as defined in Section 23036,  
8 an amount equal to the lesser of 15 percent of the cost that is paid  
9 or incurred by a taxpayer, after deducting the value of any other  
10 municipal, state, or federal sponsored financial incentives, during  
11 the taxable year for the purchase and installation of any solar  
12 energy system installed on property in this state, or the applicable  
13 dollar amount per rated watt of that solar energy system, as  
14 determined by the Franchise Tax Board in consultation with the  
15 State Energy Resources Conservation and Development  
16 Commission.

17 (b) For each taxable year beginning on or after January 1, 2004,  
18 and before January 1, 2006, there shall be allowed as a credit  
19 against the “net tax,” as defined in Section 17039, an amount  
20 equal to the lesser of 7.5 percent of the cost that is paid or incurred  
21 by a taxpayer, after deducting the value of any other municipal,  
22 state, or federal sponsored financial incentives, during the taxable  
23 year for the purchase and installation of any solar energy system  
24 installed on property in this state, or the applicable dollar amount  
25 per rated watt of that solar energy system, as determined by the  
26 Franchise Tax Board in consultation with the State Energy  
27 Resources Conservation and Development Commission.

28 (c) For purposes of this section:

29 (1) “Applicable dollar amount” means four dollars and fifty  
30 cents (\$4.50) for any taxable year beginning on or after January 1,  
31 2001, *and before January 1, 2002, and for any taxable year*  
32 *beginning on or after January 1, 2004,* and before January 1, 2006.

33 (2) “Solar energy system” means a solar energy device, in the  
34 form of either a photovoltaic or wind-driven system, with a peak  
35 generating capacity of up to, but not more than 200 kilowatts, used  
36 for the individual function of generating electricity, that is certified  
37 by the State Energy Resources Conservation and Development  
38 Commission and installed with a five-year warranty against  
39 breakdown or undue degradation.



1 (3) A credit may be allowed under this section with respect to  
2 only one solar energy system per each separate legal parcel of  
3 property or per each address of the taxpayer in the state.

4 (4) No credit may be allowed under this section unless the solar  
5 energy system is actually used for purposes of producing  
6 electricity and is primarily used to meet the taxpayer's own energy  
7 needs.

8 (d) No other credit and no deduction may be allowed under this  
9 part for any cost for which a credit is allowed by this section. The  
10 basis of the solar energy system shall be reduced by the amount  
11 allowed as a credit under subdivision (a) or (b).

12 (e) No credit may be allowed to any taxpayer engaged in those  
13 lines of business described in Sector 22 of the North American  
14 Industry Classification System (NAICS) Manual published by the  
15 United States Office of Management and Budget, 1997 edition.

16 (f) If any solar energy system for which a credit is allowed  
17 pursuant to this section is thereafter sold or removed from this state  
18 within one year from the date the solar energy system is first placed  
19 in service in this state, the amount of credit allowed by this section  
20 for that solar energy system shall be recaptured by adding that  
21 credit amount to the tax of the taxpayer for the taxable year in  
22 which the solar energy system is sold or removed.

23 (g) In the case where the credit allowed by this section exceeds  
24 the "tax," the excess may be carried over to reduce the "tax" in  
25 the following year, and the succeeding seven years if necessary,  
26 until the credit is exhausted.

27 (h) This section shall remain in effect only until December 1,  
28 2006, and as of that date is repealed.

29 *SEC. 12. Section 24348 of the Revenue and Taxation Code is*  
30 *amended to read:*

31 24348. (a) ~~(1)~~—There shall be allowed as a deduction either  
32 of the following:

33 ~~(A)~~—

34 (1) Debts which become worthless within the taxable year in an  
35 amount not in excess of the part charged off within that taxable  
36 year.

37 ~~(B)~~—

38 (2) In the case of a ~~savings and loan association~~, bank (as  
39 defined in Section 581 of the Internal Revenue Code), or financial  
40 corporation, in lieu of any deduction under subparagraph (A)



1 *paragraph (1)*, in the discretion of the Franchise Tax Board, a  
2 reasonable addition to a reserve for bad debts *determined in*  
3 *accordance with Section 585 of the Internal Revenue Code,*  
4 *relating to reserves for losses on loans of banks, except as*  
5 *otherwise provided.*

6 ~~(2)–~~

7 (b) When satisfied that a debt is recoverable in part only, the  
8 Franchise Tax Board may allow that debt, in an amount not in  
9 excess of the part charged off within the taxable year, as a  
10 deduction; provided, however, that if a portion of a debt is claimed  
11 and allowed as a deduction in any year, no deduction shall be  
12 allowed in any subsequent year for any portion of the debt which  
13 in any prior year was charged off, regardless of whether claimed  
14 as a deduction in that prior year.

15 ~~(b) (1) The amendments to this section made during the~~  
16 ~~1985–86 Regular Session by the act adding this subdivision shall~~  
17 ~~apply only to taxable years beginning after December 31, 1987.~~

18 ~~(2) In the case of any taxpayer who maintained a reserve for bad~~  
19 ~~debts for that taxpayer’s last taxable year beginning before January~~  
20 ~~1, 1988, and who is required by the amendments to this section to~~  
21 ~~change its method of accounting for any taxable year, all of the~~  
22 ~~following shall apply:~~

23 ~~(A) That change shall be treated as initiated by the taxpayer.~~

24 ~~(B) That change shall be treated as made with the consent of the~~  
25 ~~Franchise Tax Board.~~

26 ~~(C) The net amount of adjustments required by Article 6~~  
27 ~~(commencing with Section 24721) of Chapter 13, to be taken into~~  
28 ~~account by the taxpayer shall:~~

29 ~~(i) In the case of a taxpayer maintaining a reserve under former~~  
30 ~~subdivision (b) (prior to the amendments made during the~~  
31 ~~1985–86 Regular Session by the act adding this subdivision), be~~  
32 ~~reduced by the balance in the suspense account under paragraph~~  
33 ~~(4) of that subdivision as of the close of such last taxable year; and~~

34 ~~(ii) Be taken into account ratably in each of the first four~~  
35 ~~taxable years beginning after December 31, 1987.~~

36 (c) (1) *The amendments to this section made by the act adding*  
37 *this subdivision shall apply only to taxable years beginning on or*  
38 *after January 1, 2002.*

39 (2) *In the case of any bank, savings and loan association, or*  
40 *financial corporation (whether a taxpayer or a member of a*



1 combined reporting group) that maintained a reserve for bad debts  
2 for the last taxable year beginning before January 1, 2002, and  
3 that is required by the amendments to this section made by the act  
4 adding this subdivision to change its method of computing reserves  
5 for bad debts, all of the following shall apply:

6 (A) That change shall be treated as a change in a method of  
7 accounting.

8 (B) That change shall be treated as initiated by the bank,  
9 savings and loan association, or financial corporation (whether a  
10 taxpayer or a member of a combined reporting group).

11 (C) That change shall be treated as made with the consent of the  
12 Franchise Tax Board.

13 (D) The net amount of adjustments required by Article 6  
14 (commencing with Section 24721) of Chapter 13 to be taken into  
15 account by the bank, savings and loan association, or financial  
16 corporation (whether a taxpayer or a member of a combined  
17 reporting group):

18 (i) Shall be determined by taking into account only 50 percent  
19 of the “applicable excess reserves” (as defined in subdivision (d)),  
20 and

21 (ii) As so determined, shall be taken into account on the last day  
22 of the first taxable year beginning on or after January 1, 2002.

23 (iii) The amount of “applicable excess reserves” in excess of  
24 the amount taken into account under clause (i) of this  
25 subparagraph shall be reduced to zero and shall not be taken into  
26 account for purposes of this part.

27 (d) (1) In the case of a large bank (as defined in Section  
28 585(c)(2) of the Internal Revenue Code), or a financial  
29 corporation that is not allowed to use the reserve for bad debts  
30 under Section 585 of the Internal Revenue Code, the term  
31 “applicable excess reserves” means the balance of the reserves  
32 described in former subparagraph (B) of paragraph (1) of  
33 subdivision (a) (prior to the amendments made by the act adding  
34 this subdivision) as of the close of the last taxable year beginning  
35 before January 1, 2002.

36 (2) In all other cases, the term “applicable excess reserves”  
37 shall be zero and shall not be taken into account for purposes of  
38 this part.

39 (e) The amount of “applicable excess reserves” not taken into  
40 account pursuant to clause (iii) of subparagraph (D) of paragraph



1 (2) of subdivision (c) or paragraph (2) of subdivision (d) shall not  
2 affect the amount of the allowable deduction under paragraph (1)  
3 of subdivision (a).

4 SEC. 13. Section 24416 of the Revenue and Taxation Code is  
5 amended to read:

6 24416. Except as provided in Sections 24416.1, 24416.2,  
7 24416.4, 24416.5, 24416.6, and 24416.7, a net operating loss  
8 deduction shall be allowed in computing net income under Section  
9 24341 and shall be determined in accordance with Section 172 of  
10 the Internal Revenue Code, except as otherwise provided.

11 (a) (1) Net operating losses attributable to taxable years  
12 beginning before January 1, 1987, shall not be allowed.

13 (2) A net operating loss shall not be carried forward to any  
14 taxable year beginning before January 1, 1987.

15 (b) (1) Except as provided in paragraphs (2) and (3), the  
16 provisions of Section 172(b)(2) of the Internal Revenue Code,  
17 relating to the amount of carryovers, shall be modified so that the  
18 applicable percentage of the entire amount of the net operating loss  
19 for any taxable year shall be eligible for carryover to any  
20 subsequent taxable year. For purposes of this subdivision, the  
21 applicable percentage shall be:

22 (A) Fifty percent for any taxable year beginning before January  
23 1, 2000.

24 (B) Fifty-five percent for any taxable year beginning on or after  
25 January 1, 2000, and before January 1, 2002.

26 (C) Sixty percent for any taxable year beginning on or after  
27 January 1, 2002, and before January 1, 2004.

28 (D) ~~Sixty-five~~ Eighty percent for any taxable year beginning  
29 on or after January 1, 2004.

30 (2) In the case of a taxpayer who has a net operating loss in any  
31 taxable year beginning on or after January 1, 1994, and who  
32 operates a new business during that taxable year, each of the  
33 following shall apply to each loss incurred during the first three  
34 taxable years of operating the new business:

35 (A) If the net operating loss is equal to or less than the net loss  
36 from the new business, 100 percent of the net operating loss shall  
37 be carried forward as provided in subdivision (e).

38 (B) If the net operating loss is greater than the net loss from the  
39 new business, the net operating loss shall be carried over as  
40 follows:

1 (i) With respect to an amount equal to the net loss from the new  
2 business, 100 percent of that amount shall be carried forward as  
3 provided in subdivision (e).

4 (ii) With respect to the portion of the net operating loss that  
5 exceeds the net loss from the new business, the applicable  
6 percentage of that amount shall be carried forward as provided in  
7 subdivision (d).

8 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
9 Code, the amount described in clause (ii) of subparagraph (B) shall  
10 be absorbed before the amount described in clause (i) of  
11 subparagraph (B).

12 (3) In the case of a taxpayer who has a net operating loss in any  
13 taxable year beginning on or after January 1, 1994, and who  
14 operates an eligible small business during that taxable year, each  
15 of the following shall apply:

16 (A) If the net operating loss is equal to or less than the net loss  
17 from the eligible small business, 100 percent of the net operating  
18 loss shall be carried forward to the taxable years specified in  
19 paragraph (1) of subdivision (e).

20 (B) If the net operating loss is greater than the net loss from the  
21 eligible small business, the net operating loss shall be carried over  
22 as follows:

23 (i) With respect to an amount equal to the net loss from the  
24 eligible small business, 100 percent of that amount shall be carried  
25 forward as provided in subdivision (e).

26 (ii) With respect to that portion of the net operating loss that  
27 exceeds the net loss from the eligible small business, the applicable  
28 percentage of that amount shall be carried forward as provided in  
29 subdivision (e).

30 (C) For purposes of Section 172(b)(2) of the Internal Revenue  
31 Code, the amount described in clause (ii) of subparagraph (B) shall  
32 be absorbed before the amount described in clause (i) of  
33 subparagraph (B).

34 (4) In the case of a taxpayer who has a net operating loss in a  
35 taxable year beginning on or after January 1, 1994, and who  
36 operates a business that qualifies as both a new business and an  
37 eligible small business under this section, that business shall be  
38 treated as a new business for the first three taxable years of the new  
39 business.



1 (5) In the case of a taxpayer who has a net operating loss in a  
2 taxable year beginning on or after January 1, 1994, and who  
3 operates more than one business, and more than one of those  
4 businesses qualifies as either a new business or an eligible small  
5 business under this section, paragraph (2) shall be applied first,  
6 except that if there is any remaining portion of the net operating  
7 loss after application of clause (i) of subparagraph (B) of  
8 paragraph (2), paragraph (3) shall be applied to the remaining  
9 portion of the net operating loss as though that remaining portion  
10 of the net operating loss constituted the entire net operating loss.

11 (6) For purposes of this section, “net loss” means the amount  
12 of net loss after application of Sections 465 and 469 of the Internal  
13 Revenue Code.

14 (c) For any taxable year in which the taxpayer has in effect a  
15 water’s-edge election under Section 25110, the deduction of a net  
16 operating loss carryover shall be denied to the extent that the net  
17 operating loss carryover was determined by taking into account the  
18 income and factors of an affiliated corporation in a combined  
19 report whose income and apportionment factors would not have  
20 been taken into account if a water’s-edge election under Section  
21 25110 had been in effect for the taxable year in which the loss was  
22 incurred.

23 (d) Net operating loss carrybacks shall not be allowed.

24 (e) (1) (A) For a net operating loss for any taxable year  
25 beginning on or after January 1, 1987, and before January 1, 2000,  
26 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to  
27 years to which net operating losses may be carried, is modified to  
28 substitute “five taxable years” in lieu of “20 years” except as  
29 otherwise provided in paragraphs (2), (3), and (4).

30 (B) For a net operating loss for any income year beginning on  
31 or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal  
32 Revenue Code, relating to years to which net operating losses may  
33 be carried, is modified to substitute “10 taxable years” in lieu of  
34 “20 taxable years.”

35 (2) For any income year beginning before January 1, 2000, in  
36 the case of a “new business,” the “five taxable years” referred to  
37 in paragraph (1) shall be modified to read as follows:

38 (A) “Eight taxable years” for a net operating loss attributable  
39 to the first taxable year of that new business.



1 (B) “Seven taxable years” for a net operating loss attributable  
2 to the second taxable year of that new business.

3 (C) “Six taxable years” for a net operating loss attributable to  
4 the third taxable year of that new business.

5 (3) For any carryover of a net operating loss for which a  
6 deduction is denied by Section 24416.3, the carryover period  
7 specified in this subdivision shall be extended as follows:

8 (A) By one year for a net operating loss attributable to taxable  
9 years beginning in 1991.

10 (B) By two years for a net operating loss attributable to taxable  
11 years beginning prior to January 1, 1991.

12 (4) The net operating loss attributable to taxable years  
13 beginning on or after January 1, 1987, and before January 1, 1994,  
14 shall be a net operating loss carryover to each of the 10 taxable  
15 years following the year of the loss if it is incurred by a corporation  
16 that was either of the following:

17 (A) Under the jurisdiction of the court in a Title 11 or similar  
18 case at any time prior to January 1, 1994. The loss carryover  
19 provided in the preceding sentence shall not apply to any loss  
20 incurred in an income year after the taxable year during which the  
21 corporation is no longer under the jurisdiction of the court in a Title  
22 11 or similar case.

23 (B) In receipt of assets acquired in a transaction that qualifies  
24 as a tax-free reorganization under Section 368(a)(1)(G) of the  
25 Internal Revenue Code.

26 (f) For purposes of this section:

27 (1) “Eligible small business” means any trade or business that  
28 has gross receipts, less returns and allowances, of less than one  
29 million dollars (\$1,000,000) during the income year.

30 (2) Except as provided in subdivision (g), “new business”  
31 means any trade or business activity that is first commenced in this  
32 state on or after January 1, 1994.

33 (3) “Title 11 or similar case” shall have the same meaning as  
34 in Section 368(a)(3) of the Internal Revenue Code.

35 (4) In the case of any trade or business activity conducted by a  
36 partnership or an ~~S-corporation~~, “*S corporation*,” paragraphs (1)  
37 and (2) shall be applied to the partnership or ~~S-corporation~~. “*S*  
38 *corporation*.”



1 (g) For purposes of this section, in determining whether a trade  
2 or business activity qualifies as a new business under paragraph (2)  
3 of subdivision (e), the following rules shall apply:

4 (1) In any case where a taxpayer purchases or otherwise  
5 acquires all or any portion of the assets of an existing trade or  
6 business (irrespective of the form of entity) that is doing business  
7 in this state (within the meaning of Section 23101), the trade or  
8 business thereafter conducted by the taxpayer (or any related  
9 person) shall not be treated as a new business if the aggregate fair  
10 market value of the acquired assets (including real, personal,  
11 tangible, and intangible property) used by the taxpayer (or any  
12 related person) in the conduct of its trade or business exceeds 20  
13 percent of the aggregate fair market value of the total assets of the  
14 trade or business being conducted by the taxpayer (or any related  
15 person). For purposes of this paragraph only, the following rules  
16 shall apply:

17 (A) The determination of the relative fair market values of the  
18 acquired assets and the total assets shall be made as of the last day  
19 of the first taxable year in which the taxpayer (or any related  
20 person) first uses any of the acquired trade or business assets in its  
21 business activity.

22 (B) Any acquired assets that constituted property described in  
23 Section 1221(1) of the Internal Revenue Code in the hands of the  
24 transferor shall not be treated as assets acquired from an existing  
25 trade or business, unless those assets also constitute property  
26 described in Section 1221(1) of the Internal Revenue Code in the  
27 hands of the acquiring taxpayer (or related person).

28 (2) In any case where a taxpayer (or any related person) is  
29 engaged in one or more trade or business activities in this state, or  
30 has been engaged in one or more trade or business activities in this  
31 state within the preceding 36 months (“prior trade or business  
32 activity”), and thereafter commences an additional trade or  
33 business activity in this state, the additional trade or business  
34 activity shall only be treated as a new business if the additional  
35 trade or business activity is classified under a different division of  
36 the Standard Industrial Classification (SIC) Manual published by  
37 the United States Office of Management and Budget, 1987 edition,  
38 than are any of the taxpayer’s (or any related person’s) current or  
39 prior trade or business activities.



1 (3) In any case where a taxpayer, including all related persons,  
2 is engaged in trade or business activities wholly outside of this  
3 state and the taxpayer first commences doing business in this state  
4 (within the meaning of Section 23101) after December 31, 1993  
5 (other than by purchase or other acquisition described in paragraph  
6 (1)), the trade or business activity shall be treated as a new business  
7 under paragraph (2) of subdivision (e).

8 (4) In any case where the legal form under which a trade or  
9 business activity is being conducted is changed, the change in form  
10 shall be disregarded and the determination of whether the trade or  
11 business activity is a new business shall be made by treating the  
12 taxpayer as having purchased or otherwise acquired all or any  
13 portion of the assets of an existing trade or business under the rules  
14 of paragraph (1) of this subdivision.

15 (5) “Related person” shall mean any person that is related to  
16 the taxpayer under either Section 267 or 318 of the Internal  
17 Revenue Code.

18 (6) “Acquire” shall include any transfer, whether or not for  
19 consideration.

20 (7) (A) For taxable years beginning on or after January 1,  
21 1997, the term “new business” shall include any taxpayer that is  
22 engaged in biopharmaceutical activities or other biotechnology  
23 activities that are described in Codes 2833 to 2836, inclusive, of  
24 the Standard Industrial Classification (SIC) Manual published by  
25 the United States Office of Management and Budget, 1987 edition,  
26 and as further amended, and that has not received regulatory  
27 approval for any product from the United States Food and Drug  
28 Administration.

29 (B) For purposes of this paragraph:

30 (i) “Biopharmaceutical activities” means those activities  
31 ~~which~~ *that* use organisms or materials derived from organisms,  
32 and their cellular, subcellular, or molecular components, in order  
33 to provide pharmaceutical products for human or animal  
34 therapeutics and diagnostics. Biopharmaceutical activities make  
35 use of living organisms to make commercial products, as opposed  
36 to pharmaceutical activities ~~which~~ *that* make use of chemical  
37 compounds to produce commercial products.

38 (ii) “Other biotechnology activities” means activities  
39 consisting of the application of recombinant DNA technology to  
40 produce commercial products, as well as activities regarding



1 pharmaceutical delivery systems designed to provide a measure of  
2 control over the rate, duration, and site of pharmaceutical delivery.

3 (h) For purposes of corporations whose net income is  
4 determined under Chapter 17 (commencing with Section 25101),  
5 Section 25108 shall apply to each of the following:

6 (1) The amount of net operating loss incurred in any taxable  
7 year ~~which~~ *that* may be carried forward to another taxable year.

8 (2) The amount of any loss carry forward ~~which~~ *that* may be  
9 deducted in any taxable year.

10 (i) The provisions of Section 172(b)(1)(D) of the Internal  
11 Revenue Code, relating to bad debt losses of commercial banks,  
12 shall not be applicable.

13 (j) The Franchise Tax Board may prescribe appropriate  
14 regulations to carry out the purposes of this section, including any  
15 regulations necessary to prevent the avoidance of the purposes of  
16 this section through splitups, shell corporations, partnerships,  
17 tiered ownership structures, or otherwise.

18 (k) The Franchise Tax Board may reclassify any net operating  
19 loss carryover determined under either paragraph (2) or (3) of  
20 subdivision (b) as a net operating loss carryover under paragraph  
21 (1) of subdivision (b) upon a showing that the reclassification is  
22 necessary to prevent evasion of the purposes of this section.

23 (l) Except as otherwise provided, the amendments made by ~~the~~  
24 ~~act adding this subdivision~~ *Chapter 107 of the Statutes of 2000*  
25 shall apply to net operating losses for taxable years beginning on  
26 or after January 1, 2000.

27 *SEC. 14. Section 24416.3 of the Revenue and Taxation Code*  
28 *is amended to read:*

29 24416.3. (a) Notwithstanding ~~Section~~ *Sections* 24416,  
30 *24416.1, 24416.2, 24416.4, 24416.5, 24416.6, and 24416.7* of this  
31 code and Section 172 of the Internal Revenue Code, no net  
32 operating loss deduction shall be allowed for ~~all income years~~  
33 ~~beginning in the 1991 and 1992 calendar years~~ *any taxable year*  
34 *beginning on or after January 1, 2002, and before January 1,*  
35 *2004.*

36 (b) For any carryover of a net operating loss for which a  
37 deduction is denied by subdivision (a), the carryover period under  
38 Section 172 of the Internal Revenue Code shall ~~be~~ be extended as  
39 follows:

1 ~~(1) By one year, for losses sustained in income years beginning~~  
2 ~~in 1991.~~

3 ~~(2) By two years, for losses sustained in income years~~  
4 ~~beginning prior to January 1, 1991.~~

5 ~~(e) Notwithstanding any other provision of this section, a~~  
6 ~~deduction shall be allowed to a “qualified taxpayer” as provided~~  
7 ~~in Sections 24416.1 and 24416.2 for income years beginning in the~~  
8 ~~1991 and 1992 calendar years.~~

9 *(1) By one year, for losses incurred in taxable years beginning*  
10 *on or after January 1, 2002, and before January 1, 2003.*

11 *(2) By two years, for losses incurred in taxable years beginning*  
12 *before January 1, 2002.*

13 *SEC. 15. Section 24449 of the Revenue and Taxation Code is*  
14 *amended to read:*

15 24449. (a) Section 291 of the Internal Revenue Code,  
16 relating to special rules relating to corporate preference items,  
17 shall apply, except as otherwise provided.

18 (b) ~~For purposes of this section:~~

19 ~~(1) The reference in Section 291(a)(3) to “a deduction under~~  
20 ~~this chapter” shall be modified to mean the deduction under~~  
21 ~~Section 24348 of this part.~~

22 ~~(2) The reference in Section 291(b)(1) of the Internal Revenue~~  
23 ~~Code to “Section 263(c)” shall be modified to mean the deduction~~  
24 ~~under Section 24423 of this part.~~

25 *SEC. 16. Article 4 (commencing with Section 30133) is added*  
26 *to Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation*  
27 *Code, to read:*

28

29 *Article 4. General Fund Surtax on Tobacco*

30

31 *30133. In addition to the taxes imposed upon the distribution*  
32 *of cigarettes by Article 1 (commencing with Section 30101),*  
33 *Article 2 (commencing with Section 30121), Article 3*  
34 *(commencing with Section 30131), and any other taxes in this*  
35 *chapter, there shall be imposed an additional surtax upon every*  
36 *distributor of cigarettes at the rate of one hundred six and one-half*  
37 *mills (\$0.1065) for each cigarette distributed.*

38 *30135. (a) Every dealer and wholesaler, for the privilege of*  
39 *holding or storing cigarettes for sale, use, or consumption, shall*  
40 *pay a floor stock tax for each cigarette in his or her possession or*



1 *under his or her control in this state at 12:01 a.m. on the operative*  
2 *date of this article at the rate of one hundred six and one-half mills*  
3 *(\$0.1065) for each cigarette.*

4 *(b) Every dealer and wholesaler shall file a return with the*  
5 *board within 45 days following the operative date of this article on*  
6 *a form prescribed by the board, showing the number of cigarettes*  
7 *in his or her possession or under his or her control at 12:01 a.m.*  
8 *on the operative date of this article. The amount of tax shall be*  
9 *computed and shown on the return.*

10 *(c) Every licensed cigarette distributor, for the privilege of*  
11 *distributing cigarettes and for holding or storing cigarettes for*  
12 *sale, use, or consumption, shall pay a cigarette indicia adjustment*  
13 *tax for each California cigarette tax stamp that is affixed to any*  
14 *package of cigarettes and for each unaffixed California cigarette*  
15 *tax stamp in his or her possession or under his or her control at*  
16 *12:01 a.m. on the operative date of this article at the following*  
17 *rates:*

18 *(1) Two dollars and sixty-six and one-fourth cents (\$2.6625)*  
19 *for each stamp bearing the designation "25."*

20 *(2) Two dollars and thirteen cents (\$2.13) for each stamp*  
21 *bearing the designation "20."*

22 *(3) One dollar and six and one-half cents (\$1.065) for each*  
23 *stamp bearing the designation "10."*

24 *These amounts shall be reduced by a discount to a licensed*  
25 *distributor determined in accordance with Section 30166.*

26 *(d) Every licensed cigarette distributor shall file a return with*  
27 *the board within 45 days following the operative date of this article*  
28 *on a form prescribed by the board, showing the number of stamps*  
29 *in paragraphs (1), (2), and (3) of subdivision (c). The amount of*  
30 *tax shall be computed and shown on the return.*

31 *(e) The taxes required to be paid by this section are due and*  
32 *payable within 45 days following the operative date of this article.*  
33 *Payments shall be made by remittances payable to the board and*  
34 *the payments shall accompany the forms required to be filed by this*  
35 *section.*

36 *(f) Any amount required to be paid by this section that is not*  
37 *timely paid shall bear interest at the rate and by the method*  
38 *established pursuant to Section 30202 from the date that occurs 45*  
39 *days following the operative date of this article, until paid, and*  
40 *shall be subject to determination, and redetermination, and any*



1 penalties provided with respect to determinations and  
2 redeterminations.

3 30137. Except for payments of refunds made pursuant to  
4 Article 1 (commencing with Section 30361) of Chapter 6, and  
5 reimbursement of the State Board of Equalization for expenses  
6 incurred in the administration and collection of the taxes imposed  
7 by this article, all moneys raised pursuant to the taxes imposed by  
8 this article shall be transmitted by the board to the Treasurer for  
9 deposit in the General Fund.

10 30138. This article shall become operative 10 working days  
11 following the effective date of the act adding this article.

12 SEC. 17. Part 14.5 (commencing with Section 33001) is  
13 added to Division 2 of the Revenue and Taxation Code, to read:

14  
15 PART 14.5. SATELLITE TELEVISION SUBSCRIPTION TAX

16  
17

18 CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

19  
20 33001. This part is known and may be cited as the “Satellite  
21 Television Subscription Tax Law.”

22 33002. Except where the context otherwise requires, the  
23 definitions set forth in the Fee Collection Procedures Law (Part 30  
24 (commencing with Section 55001)) govern the construction of this  
25 part.

26  
27 CHAPTER 2. IMPOSITION OF TAX

28  
29 33003. (a) (1) In addition to any other tax imposed by this  
30 division, for the privilege of purchasing direct broadcast satellite  
31 television service, there is hereby imposed, in accordance with  
32 paragraph (2), a tax on each subscriber of direct broadcast  
33 satellite television service in this state at the rate of 5 percent of the  
34 total gross charges incurred by the subscriber for the direct  
35 broadcast satellite television service.

36 (2) The tax imposed by paragraph (1) applies to those total  
37 gross charges that are incurred by a subscriber on or after the  
38 earlier of the following dates:



1 (A) *The date upon which the board determines by resolution*  
2 *that the necessary procedures and criteria for the administration*  
3 *and enforcement of this part have been authorized and established.*

4 (B) *The date 90 days after the effective date of this part.*

5 (b) *For purposes of this section:*

6 (1) *“Direct broadcast satellite television service” means*  
7 *television programming transmitted or broadcast by satellite*  
8 *directly to the subscriber’s premises without the use of ground*  
9 *receiving or distribution equipment, except at the subscriber’s*  
10 *premises or in the uplink process to the satellite, regulated by the*  
11 *Federal Communications Commission.*

12 (2) *“Subscriber” means any person, firm, partnership,*  
13 *corporation, limited liability company, or other entity paying to*  
14 *receive direct broadcast satellite television service in this state.*

15 (3) *“Total gross charges” means any and all charges imposed*  
16 *on the subscriber related to transmissions, whether billed for a*  
17 *specific time period or as “pay-per-view” or other form by which*  
18 *the customer is billed for specific programs. Total gross charges*  
19 *shall not include the cost of equipment necessary to receive*  
20 *transmission services (whether by purchase, lease, or rent), tax on*  
21 *the cost of equipment necessary to receive transmission services,*  
22 *or any other taxes imposed on direct broadcast satellite television*  
23 *service.*

24 (c) *This section shall not apply to any community antenna*  
25 *television system, hotel or apartment antenna system, or*  
26 *educational television system, whether closed or open circuit.*

27  
28 **CHAPTER 3. COLLECTION AND ADMINISTRATION**

29  
30 33004. *The tax imposed by this part shall be collected from a*  
31 *subscriber by the provider of the direct broadcast satellite*  
32 *television service to the extent permitted by state or federal law. If*  
33 *the tax is not collected by the provider, the subscriber shall pay the*  
34 *tax directly to the board. The tax imposed by this part shall be*  
35 *collected and administered in the same manner as provided under*  
36 *the Fee Collection Procedures Law (Part 30 (commencing with*  
37 *Section 55001)).*

38 33005. *The board shall enforce the provisions of this part and*  
39 *may prescribe, adopt, and enforce rules and regulations, including*  
40 *emergency regulations, relating to the administration and*

1 *enforcement of this part. The board may prescribe the extent to*  
2 *which any ruling and regulation shall be applied without*  
3 *retroactive effect.*

4  
5 *CHAPTER 4. DISPOSITION OF PROCEEDS*

6  
7 *33006. All amounts required to be paid to the state under this*  
8 *part shall be paid to the board in the form of remittances payable*  
9 *to the State Board of Equalization. The board shall transmit the*  
10 *payments to the Treasurer for deposit in the General Fund.*

11 *SEC. 18. Section 13043 of the Unemployment Insurance Code*  
12 *is amended to read:*

13 13043. (a) The amount to be deducted and withheld under  
14 this division shall be prescribed pursuant to Section 18663 of the  
15 Revenue and Taxation Code when a payment of wages is made to  
16 an employee by an employer in any of the following cases:

17 (1) With respect to a payroll period or other period, any part of  
18 which is included in a payroll period or other period with respect  
19 to which wages are also paid to the employee by the employer.

20 (2) Without regard to any payroll period or other period, but on  
21 or prior to the expiration of a payroll period or other period with  
22 respect to which wages are also paid to the employee by the  
23 employer.

24 (3) With respect to a period beginning in one and ending in  
25 another calendar year.

26 (4) Through an agent, fiduciary, or other person who also has  
27 the control, receipt, custody, or disposal of, or pays, the wages  
28 payable by another employer to the employee.

29 (b) For purposes of this section, an employee's remuneration  
30 may consist of wages paid for a payroll period and supplemental  
31 wages.

32 Supplemental wages include, but are not limited to, bonus  
33 payments, overtime payments, commissions, sales awards, back  
34 pay including retroactive wage increases, and reimbursements for  
35 nondeductible moving expenses that are paid for the same or  
36 different period, or without regard to a particular period.

37 (c) When any supplemental wages are paid subsequent to the  
38 payment of regular wages, the employer may determine the  
39 personal income tax to be withheld from supplemental wages paid  
40 by (1) using a flat percentage rate pursuant to subdivision (b) of



1 Section 18663 of the Revenue and Taxation Code without  
2 allowance for exemptions and credits and without reference to any  
3 regular payment of wages, or (2) adding the supplemental wages  
4 to the regular wages paid the employee and computing the  
5 personal income tax to be withheld on the whole amount (the  
6 computed tax minus the tax withheld from the regular wages shall  
7 be withheld from the supplemental wages). Where supplemental  
8 wages are paid at the same time as regular wages, the personal  
9 income tax to be withheld shall be computed on the total of the  
10 supplemental and regular wages and shall be determined as if the  
11 total of the supplemental wages and the regular wages constituted  
12 a single wage payment for the regular payroll period.

13 *(d) For stock options and bonus payments that constitute wages*  
14 *paid on or after January 1, 2002, the employer may determine the*  
15 *personal income tax to be withheld from the stock options and*  
16 *bonus payments paid by either (1) using a flat percentage rate*  
17 *pursuant to subdivision (c) of Section 18663 of the Revenue and*  
18 *Taxation Code, without allowance for exemptions and credits and*  
19 *without reference to any regular payment of wages, or (2) adding*  
20 *the stock options and bonus payments to the regular wages paid the*  
21 *employee and computing the personal income tax to be withheld*  
22 *on the whole amount (the computed tax minus the tax withheld*  
23 *from the regular wages shall be withheld from the stock options*  
24 *and bonus payments). Where the stock options and bonus*  
25 *payments are paid at the same time as regular wages, the personal*  
26 *income tax to be withheld shall be computed on the total of the*  
27 *stock options and bonus payments and regular wages, and shall be*  
28 *determined as if the total of the stock options and bonus payments*  
29 *and the regular wages constituted a single wage payment for the*  
30 *regular payroll period.*

31 *SEC. 19. It is the intent of the Legislature that, in order to*  
32 *improve compliance with state tax laws and to accelerate the*  
33 *collection of accounts determined to be at high risk for collection,*  
34 *the staff of the Board of Equalization and the Franchise Tax Board*  
35 *shall, pursuant to Sections 7093.8 and 19444 of the Revenue and*  
36 *Taxation Code as added by this act, expeditiously institute special*  
37 *collection efforts to commence on October 1, 2002, and end on*  
38 *June 30, 2003.*

39 *SEC. 20. This act is an urgency statute necessary for the*  
40 *immediate preservation of the public peace, health, or safety*



1 *within the meaning of Article IV of the Constitution and shall go*  
2 *into immediate effect. The facts constituting the necessity are:*  
3 *In view of the fact that the State of California is experiencing a*  
4 *fiscal crisis, in order to improve compliance with state tax laws and*  
5 *to accelerate the collection of accounts that might not otherwise*  
6 *be collected, and in order to provide for sufficient revenues for the*  
7 *funding of the critical needs of the state, it is necessary that this act*  
8 *take effect immediately.*

9  
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**All matter omitted in this version of the bill appears in the bill as amended in the Assembly, June 25, 2002 (JR 11)**

