

AMENDED IN ASSEMBLY JUNE 1, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1277

Introduced by Assembly Member Benoit

February 23, 2007

An act to amend Section 25106 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1277, as amended, Benoit. Corporate tax: combined reporting: dividend elimination.

The Corporation Tax Law imposes taxes measured by income and, in the case of a group of corporations that conduct a unitary business, as specified, generally requires or, in some cases, permits the members of the group to compute their tax by utilizing the "combined report" approach, as defined. Existing law provides that dividends paid by one member of a unitary group to another member of that group may be eliminated from the recipient corporation's taxable income, provided that the dividends are paid out of earnings and profits accumulated by the payer when the payer and recipient were members of the same combined unitary group, as specified.

This bill would clarify that the dividend elimination, as provided, is allowed regardless of whether the payer and payee are taxpayer members of the California combined unitary group return, or whether the payer or payee had previously filed California tax returns, as long as the payer and payee filed as members of a comparable unitary business outside of this state when the earnings and profits from which the dividends

were paid arose. ~~This~~*This bill would declare that these changes are declaratory of existing law.*

This bill would also specify that the dividend elimination provisions apply to dividends paid out of the specified income, as provided, by a member of a combined unitary group to a newly formed member, as defined.

~~This bill would declare that these changes are declaratory of existing law.~~

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

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

1 SECTION 1. Section 25106 of the Revenue and Taxation Code
2 is amended to read:

3 25106. (a) (1) In any case in which the income of a corporation
4 ~~is or has been determined under this chapter, or comparable rules~~
5 ~~of any other state if the corporation was not subject to tax in this~~
6 ~~state, with reference to the income and~~ *corporation is or has been*
7 *determined under this chapter, with reference to the income and*
8 appportionment factors of one or more other corporations with
9 which it is doing or has done a unitary business, all dividends paid
10 by one to another of any of those corporations shall, to the extent
11 those dividends are paid out of the income previously described
12 of the unitary business, be eliminated from the income of the
13 recipient and, except for purposes of applying Section 24345, shall
14 not be taken into account under Section 24344 or in any other
15 manner in determining the tax of any member of the unitary group.

16 (2) (A) For purposes of this section, the dividends described
17 in paragraph (1) include dividends paid out of the income
18 previously described of the unitary business by a member of the
19 unitary group to a corporation ~~that is a member of the group but~~
20 ~~was~~ formed subsequent to the accrual of that income, if the
21 recipient corporation was part of the unitary group during the
22 period from its formation to ~~the receipt of dividends~~ *its receipts*
23 *of those dividends.*

24 (B) The Franchise Tax Board may deny any dividend
25 elimination for the dividends described in this paragraph if the
26 board determines that a transaction is entered into or structured
27 with a principal purpose of evading the tax imposed by this part.

1 (3) For purposes of this section, “income previously described
2 of the unitary business” shall include income earned by members
3 of the unitary group during taxable years when no member of the
4 unitary group was taxable in this state to the extent that the income
5 of the unitary group would have been determined under this
6 chapter had any member of that corporation’s unitary group been
7 subject to tax in this state at the time that income was earned.

8 (b) The Franchise Tax Board may prescribe any regulations that
9 may be necessary or appropriate to carry out the purpose of this
10 section, which is to prevent taxation of dividends received by a
11 member of a unitary group where those dividends were paid from
12 the earnings and profits of income previously described of the
13 unitary business by another member of the same unitary group.

14 (c) ~~Except as provided in paragraph (2), the amendments made~~
15 ~~by the act adding this subdivision shall apply to taxable years~~
16 ~~beginning on or after January 1, 2007.~~

17 ~~SEC. 2. (a) The Legislature finds and declares that the~~
18 ~~amendments made to Section 25106 of the Revenue and Taxation~~
19 ~~Code by Section 1 of this act do not constitute a change in, but is~~
20 ~~declaratory of, existing law. It is the intent of the Legislature that~~
21 ~~no inference be drawn from those amendments as to whether, for~~
22 ~~any taxable year beginning before January 1, 2007, dividends~~
23 ~~received by a corporation are eligible for elimination under Section~~
24 ~~25106 of the Revenue and Taxation Code if the corporation was~~
25 ~~formed subsequent to the accrual of earnings and profits from~~
26 ~~which the dividends are paid.~~

27 *SEC. 2. (a) The Legislature finds and declares that the*
28 *amendments made to Section 25106 of the Revenue and Taxation*
29 *Code by Section 1 of this act that added and amended paragraph*
30 *(1) of subdivision (a) of, and added paragraph (3) of subdivision*
31 *(a) to, Section 25106 of the Revenue and Taxation Code do not*
32 *constitute a change in, but are declaratory of, existing law.*

33 *(b) (1) Both subdivision (b) and paragraph (2) of subdivision*
34 *(a) of Section 25106 of the Revenue and Taxation Code, added to*
35 *that section by this act, shall apply to taxable years beginning on*
36 *or after January 1, 2007.*

37 *(2) It is the intent of the Legislature that no inference be drawn*
38 *from the addition by this act of paragraph (2) of subdivision (a)*
39 *to Section 25106 of the Revenue and Taxation Code as to whether,*
40 *for any taxable year beginning before January 1, 2007, dividends*

- 1 *received by a corporation are eligible for elimination under Section*
- 2 *25106 of the Revenue and Taxation Code.*

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