

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1591

Introduced by Assembly Member Ma
(Coauthor: Assembly Member Mullin Coauthors: Assembly Members
De Leon, Garcia, and Mullin)

February 23, 2007

An act to amend Section ~~25120~~ 25128 of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1591, as amended, Ma. The Corporation Tax Law: allocation and apportionment: ~~definitions.~~

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from, or attributable to, sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula, except as otherwise provided. ~~That law distinguishes between business income, as defined, that is subject to apportionment by formula, and nonbusiness income, as defined, that is not subject to apportionment by formula, but, rather, is subject to allocation to either the commercial domicile, as defined, of the taxpayer in the case of income from intangible property, or to the physical location of the property in the case of income from tangible property.~~

This bill, *for taxable years beginning on or after January 1, 2007,* would make technical, nonsubstantive changes to those provisions that define, among other terms, "business income," "commercial domicile," and "nonbusiness income." *allow a taxpayer that is a member of the apportioning trade or business to elect, by contracting with the*

Franchise Tax Board, as provided, to apportion its business income to this state by utilizing one of the revised apportionment formulas, as specified.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. Section 25128 of the Revenue and Taxation Code
2 is amended to read:

3 25128. (a) Notwithstanding Section 38006, all business income
4 shall be apportioned to this state by multiplying the business
5 income by a fraction, the numerator of which is the property factor
6 plus the payroll factor plus twice the sales factor, and the
7 denominator of which is four, except as provided in subdivision
8 (b) or (c).

9 (b) (1) If an apportioning trade or business derives more than
10 50 percent of its “gross business receipts” from conducting one or
11 more qualified business activities, all business income of the
12 apportioning trade or business shall be apportioned to this state by
13 multiplying business income by a fraction, the numerator of which
14 is the property factor plus the payroll factor plus the sales factor,
15 and the denominator of which is three.

16 ~~(e)~~

17 (2) For purposes of this section, a “qualified business activity”
18 means the following:

19 ~~(1)~~

20 (A) An agricultural business activity.

21 ~~(2)~~

22 (B) An extractive business activity.

23 ~~(3)~~

24 (C) A savings and loan activity.

25 ~~(4)~~

26 (D) A banking or financial business activity.

27 (c) (1) Notwithstanding any other provision of law, for taxable
28 years beginning on or after January 1, 2007, a taxpayer that is a
29 member of an apportioning trade or business may, on behalf of
30 the apportioning trade or business or a subgroup thereof, elect to
31 adjust, as provided in paragraph (2), the fraction described in

1 subdivision (a) or (b), as applicable, by utilizing one of the
2 following alternative methods:

3 (A) (i) In calculating its business income apportioned to this
4 state, the apportioning trade or business, or a subgroup thereof,
5 may add an additional sales factor to the numerator of the fraction
6 described in subdivision (a) or (b), whichever is applicable, and
7 may increase the denominator of that fraction by one in each
8 taxable year for each two hundred fifty million dollars
9 (\$250,000,000) of qualified expenditures made on or after January
10 1, 2007.

11 (ii) The apportioning trade or business, or a subgroup thereof,
12 must submit and certify, with each tax return filed with the
13 Franchise Tax Board, a summary of the qualified expenditures.

14 (B) (i) The apportioning trade or business, or a subgroup
15 thereof, may adjust the property factor and the payroll factor used
16 in the fraction described in subdivision (a) or (b), whichever is
17 applicable, as follows:

18 (I) Property, otherwise includable in the calculations of the
19 property factor, as defined in Section 25129, shall be excluded
20 from the numerator of that property factor if it is in excess of the
21 value of the taxpayer's real and tangible personal property owned
22 or rented and used in this state in the base year.

23 (II) (aa) The amount of compensation paid by the taxpayer, in
24 a taxable year that is in excess of the amount of total compensation
25 paid in this state in the base year and otherwise includable in the
26 computations of the payroll factor, as defined in Section 25132,
27 shall be excluded from the numerator of that payroll factor.

28 (ab) For purposes of this section, "compensation in the base
29 year" does not include extraordinary events such as deferred
30 compensation payouts or stock option exercises.

31 (ii) The apportioning trade or business, or a subgroup thereof,
32 must submit and certify, with each tax return filed with the
33 Franchise Tax Board, a summary of the new investment made in
34 this state.

35 (2) (A) On or after January 1, 2007, a taxpayer may elect to
36 adjust the fraction described in subdivision (a) or (b), whichever
37 is applicable. The election shall be made by attaching a statement
38 to the original return identifying the apportioning trade or
39 business, or a subgroup thereof, specifying the method of adjusting
40 the apportionment factor as described in subdivision (a) or (b),

1 *and designating the member of the apportioning trade or business,*
2 *or a subgroup thereof, that will be required to submit and certify*
3 *the information, as required by paragraph (1).*

4 *(B) The election may be terminated either by the taxpayer, with*
5 *the permission of the Franchise Tax Board, or by the Franchise*
6 *Tax Board, if the taxpayer fails to submit a certification signed by*
7 *an officer, as required by paragraph (1). The election shall remain*
8 *in effect until terminated.*

9 *(C) This subdivision shall not be construed to terminate the*
10 *water's-edge election made by a taxpayer pursuant to Section*
11 *25113, nor shall it be construed to allow any change in, or*
12 *adjustments to, that election.*

13 *(D) The Franchise Tax Board shall prescribe rules and*
14 *regulations to implement the provisions of this subdivision.*

15 (d) For purposes of this section:

16 (1) "Gross business receipts" means gross receipts described in
17 subdivision (e) of Section 25120 (other than gross receipts from
18 sales or other transactions within an apportioning trade or business
19 between members of a group of corporations whose income and
20 apportionment factors are required to be included in a combined
21 report under Section 25101, limited, if applicable, by Section
22 25110), whether or not the receipts are excluded from the sales
23 factor by operation of Section 25137.

24 (2) "Agricultural business activity" means activities relating to
25 any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
26 plantation, ranch, nursery, or range. "Agricultural business activity"
27 also includes activities relating to cultivating the soil or raising or
28 harvesting any agricultural or horticultural commodity, including,
29 but not limited to, the raising, shearing, feeding, caring for, training,
30 or management of animals on a farm as well as the handling,
31 drying, packing, grading, or storing on a farm any agricultural or
32 horticultural commodity in its unmanufactured state, but only if
33 the owner, tenant, or operator of the farm regularly produces more
34 than one-half of the commodity so treated.

35 (3) "Extractive business activity" means activities relating to
36 the production, refining, or processing of oil, natural gas, or mineral
37 ore.

38 (4) "Savings and loan activity" means any activities performed
39 by savings and loan associations or savings banks which have been
40 chartered by federal or state law.

1 (5) “Banking or financial business activity” means activities
2 attributable to dealings in money or moneyed capital in substantial
3 competition with the business of national banks.

4 (6) “Apportioning trade or business” means a distinct trade or
5 business whose business income is required to be apportioned
6 under Sections 25101 and 25120, limited, if applicable, by Section
7 25110, using the same denominator for each of the applicable
8 payroll, property, and sales factors.

9 (7) “Base year” means the year immediately preceding the year
10 of election.

11 (8) “Qualified expenditures” means, in whole or in part, all of
12 the following expenditures:

13 (A) Capital expenditures for real and tangible personal property
14 located in this state.

15 (B) Expenses incurred to acquire, develop, or license intellectual
16 property in this state.

17 (C) Research and development expenses, as defined in Section
18 174 of the Internal Revenue Code, incurred in this state.

19 (D) Expenses incurred to develop, enhance, or maintain real
20 property and tangible personal property located in this state.

21 (E) Capitalized rent paid in this state in excess of the prior year.

22 (F) Compensation and benefits paid to employees in this state
23 in excess of the prior year.

24 (G) Payments to independent contractors and payroll companies
25 for work performed in this state in excess of the prior year.

26 (H) Training costs incurred in this state.

27 (I) Costs incurred in providing a basic level of health care to
28 employees in this state, as defined in the Knox-Keene Act, in excess
29 of the prior year.

30 (J) Expenditures incurred in connection with funding research
31 at a four-year public or private college or university located in
32 California.

33 ~~(7)~~

34 (9) Paragraph (4) of subdivision (c) shall apply only if the
35 Franchise Tax Board adopts the Proposed Multistate Tax
36 Commission Formula for the Uniform Apportionment of Net
37 Income from Financial Institutions, or its substantial equivalent,
38 and shall become operative upon the same operative date as the
39 adopted formula.

40 ~~(8)~~

1 (10) In any case where the income and apportionment factors
 2 of two or more savings associations or corporations are required
 3 to be included in a combined report under Section 25101, limited,
 4 if applicable, by Section 25110, both of the following shall apply:

5 (A) The application of the more than 50 percent test of
 6 subdivision (b) shall be made with respect to the “gross business
 7 receipts” of the entire apportioning trade or business of the group.

8 (B) The entire business income of the group shall be apportioned
 9 in accordance with either subdivision (a) or (b), as applicable.

10 (e) *The provisions of this section are severable. If any provision*
 11 *of this section or its application is held invalid, that invalidity shall*
 12 *not affect other provisions or applications that can be given effect*
 13 *without the invalid provision or application.*

14 (f) *The amendments made to this section by the act adding this*
 15 *subdivision shall apply to taxable years beginning on or after*
 16 *January 1, 2007.*

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

19 SEC. 3. *It is the intent of the Legislature that Section 1 of this*
 20 *act does not modify the sales factor, as defined in Section 25134*
 21 *of the Revenue and Taxation Code, used in any special*
 22 *apportionment formulas contained in the regulations promulgated*
 23 *by the Franchise Tax Board pursuant to Section 25137 of the*
 24 *Revenue and Taxation Code.*

25 ~~SECTION 1. Section 25120 of the Revenue and Taxation Code~~
 26 ~~is amended to read:~~

27 ~~25120. As used in Sections 25120 to 25139, inclusive, hereafter~~
 28 ~~referred to as “this act,” unless the context otherwise requires:~~

29 ~~(a) “Business income” means income arising from transactions~~
 30 ~~and activity in the regular course of the taxpayer’s trade or business~~
 31 ~~and includes income from tangible and intangible property if the~~
 32 ~~acquisition, management, and disposition of the property constitute~~
 33 ~~integral parts of the taxpayer’s regular trade or business operations.~~

34 ~~(b) “Commercial domicile” means the principal place from~~
 35 ~~which the trade or business of the taxpayer is directed or managed.~~

36 ~~(c) “Compensation” means wages, salaries, commissions, and~~
 37 ~~any other form of remuneration paid to employees for personal~~
 38 ~~services.~~

39 ~~(d) “Nonbusiness income” means all income other than business~~
 40 ~~income.~~

- 1 (e) ~~“Sales” means all gross receipts of the taxpayer not allocated~~
2 ~~under Sections 25123 through 25127 of this code.~~
- 3 (f) ~~“State” means any state of the United States, the District of~~
4 ~~Columbia, the Commonwealth of Puerto Rico, any territory or~~
5 ~~possession of the United States, and any foreign country or political~~
6 ~~subdivision thereof.~~

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