

ASSEMBLY BILL

No. 1746

Introduced by Committee on Revenue and Taxation (Charles Calderon (Chair), Arambula, Eng, Feuer, and Hayashi)

March 22, 2007

An act to amend Sections 17282 and 24436.1 of, and to repeal Sections 17281 and 24436 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1746, as introduced, Committee on Revenue and Taxation. Personal and corporate income taxes: deductions: illegal activities.

The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. Those laws, in modified conformity to federal income tax laws, disallow any deduction from gross income if that income is directly derived from, or directly tends to promote or further, illegal activities relating to lotteries, gaming, or horse racing, and other specified illegal activities.

This bill would instead disallow a deduction for expenses attributable to income derived by a taxpayer from any criminal activity punishable under the Penal Code, specified illegal activities relating to drug trafficking, and insurance fraud, as provided.

This bill would result in a change in state taxes for the purpose of increasing state 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 take effect immediately as a tax levy.

Vote: 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 17281 of the Revenue and Taxation Code
2 is repealed.

3 ~~17281. In computing taxable income, no deductions shall be~~
4 ~~allowed to any taxpayer on any of his or her gross income directly~~
5 ~~derived from illegal activities as defined in Chapter 9 (commencing~~
6 ~~with Section 319), 10 (commencing with Section 330), or 10.5~~
7 ~~(commencing with Section 337.1) of Title 9 of Part 1 of the Penal~~
8 ~~Code; nor shall any deductions be allowed to any taxpayer on any~~
9 ~~of his or her gross income derived from any other activities which~~
10 ~~directly tend to promote or to further, or are directly connected or~~
11 ~~associated with, those illegal activities. A prior, final determination~~
12 ~~by a court of competent jurisdiction of the state in any criminal~~
13 ~~proceeding or any proceeding in which the state, county, city and~~
14 ~~county, city, or other political subdivision was a party thereto on~~
15 ~~the merits of the legality of the activities of a taxpayer or~~
16 ~~predecessor in interest of a taxpayer shall be binding upon the~~
17 ~~Franchise Tax Board and State Board of Equalization.~~

18 SEC. 2. Section 17282 of the Revenue and Taxation Code is
19 amended to read:

20 17282. (a) In computing taxable income, no deductions
21 ~~(including, including deductions for cost of goods sold) sold,~~ shall
22 be allowed to any taxpayer ~~on~~ *from* any of his or her gross income
23 directly derived from illegal activities as defined in Sections 266h
24 or 266i of, or in Chapter 4 (commencing with Section 211) of Title
25 8 of, Chapter 7.5 (commencing with Section 311) of Title 9 of,
26 Chapter 8 (commencing with Section 314) of Title 9 of, or Chapter
27 2 (commencing with Section 459), Chapter 5 (commencing with
28 Section 484), or Chapter 6 (commencing with Section 503) of Title
29 13 of, Part 1 of the Penal Code, or as defined in *any act or omission*
30 *punishable under the Penal Code*, Chapter 6 (commencing with
31 Section 11350) of Division 10 of the Health and Safety Code, or
32 *Article 5 (commencing with Section 750) of Chapter 1 of Part 2*
33 *of Division 1 of the Insurance Code*; nor shall any deductions be
34 allowed to any taxpayer ~~on~~ *from* any of his or her gross income
35 derived from any other activities which directly tend to promote

1 or to further, or are directly connected or associated with, those
2 ~~illegal activities acts or omissions.~~

3 (b) A prior, final determination by a court of competent
4 jurisdiction of this state in any criminal proceedings or any
5 proceeding in which the state, county, city and county, city, or
6 other political subdivision was a party thereto on the merits of the
7 legality of the activities of a taxpayer or predecessor in interest of
8 a taxpayer shall be binding upon the Franchise Tax Board and the
9 State Board of Equalization.

10 (c) This section, *including amendments made by the act*
11 *amending this subdivision*, shall be applied with respect to taxable
12 years which have not been closed by a statute of limitations, res
13 judicata, or otherwise.

14 SEC. 3. Section 24436 of the Revenue and Taxation Code is
15 repealed.

16 ~~24436. In computing net income, no deductions shall be~~
17 ~~allowed to any taxpayer on any of its gross income directly derived~~
18 ~~from illegal activities as defined in Chapters 9, 10 or 10.5 of Title~~
19 ~~9 of Part 1 of the Penal Code of California; nor shall any deduction~~
20 ~~be allowed to any taxpayer on any of its gross income derived~~
21 ~~from any other activities which directly tend to promote or to~~
22 ~~further, or are directly connected or associated with, such illegal~~
23 ~~activities. A prior, final determination by a court of competent~~
24 ~~jurisdiction of this state in any criminal proceedings or any~~
25 ~~proceeding in which the state, county, city and county, city or other~~
26 ~~political subdivision was a party thereto on the merits of the legality~~
27 ~~of the activities of a taxpayer or predecessor in interest of a~~
28 ~~taxpayer shall be binding upon the Franchise Tax Board and State~~
29 ~~Board of Equalization.~~

30 SEC. 4. Section 24436.1 of the Revenue and Taxation Code
31 is amended to read:

32 24436.1. (a) In computing net income, no deductions
33 ~~(including, including deductions for cost of goods sold) sold~~, shall
34 be allowed to any taxpayer ~~on~~ from any of its gross income directly
35 derived from ~~illegal activities as defined in Sections 266h or 266i~~
36 ~~of, or in Chapter 4 (commencing with Section 211) of Title 8 of,~~
37 ~~Chapter 7.5 (commencing with Section 311) of Title 9 of, Chapter~~
38 ~~8 (commencing with Section 314) of Title 9 of, or Chapter 2~~
39 ~~(commencing with Section 459), Chapter 5 (commencing with~~
40 ~~Section 484), or Chapter 6 (commencing with Section 503) of Title~~

1 ~~13 of, Part 1 of the Penal Code, or as defined in~~ *any act or omission*
 2 *punishable under the Penal Code, Chapter 6 (commencing with*
 3 *Section 11350) of Division 10 of the Health and Safety Code, or*
 4 *Article 5 (commencing with Section 750) of Chapter 1 of Part 2*
 5 *of Division 1 of the Insurance Code; nor shall any deductions be*
 6 *allowed to any taxpayer ~~on~~ from any of its gross income derived*
 7 *from any other activities which directly tend to promote or to*
 8 *further, or are directly connected or associated with, those ~~illegal~~*
 9 *activities acts or omissions.*

10 (b) A prior, final determination by a court of competent
 11 jurisdiction of this state in any criminal proceedings or any
 12 proceeding in which the state, county, city and county, city, or
 13 other political subdivision was a party thereto on the merits of the
 14 legality of the activities of a taxpayer or predecessor in interest of
 15 a taxpayer shall be binding upon the Franchise Tax Board and the
 16 State Board of Equalization.

17 (c) This section, *including amendments made by the act*
 18 *amending this subdivision,* shall be applied with respect to taxable
 19 years which have not been closed by a statute of limitations, res
 20 judicata, or otherwise.

21 SEC. 5. This act provides for a tax levy within the meaning of
 22 Article IV of the Constitution and shall go into immediate effect.