

ASSEMBLY BILL

No. 2114

Introduced by Assembly Members Villines and Ma

February 20, 2008

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2114, as introduced, Villines. The Corporation Tax Law: allocation and apportionment.

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.

This bill, for taxable years beginning on or after January 1, 2008, would 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: 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:

1 25128. (a) Notwithstanding Section 38006, all business income
 2 shall be apportioned to this state by multiplying the business
 3 income by a fraction, the numerator of which is the property factor
 4 plus the payroll factor plus twice the sales factor, and the
 5 denominator of which is four, except as provided in subdivision
 6 (b) or (c).

7 (b) (1) If an apportioning trade or business derives more than
 8 50 percent of its “gross business receipts” from conducting one or
 9 more qualified business activities, all business income of the
 10 apportioning trade or business shall be apportioned to this state by
 11 multiplying business income by a fraction, the numerator of which
 12 is the property factor plus the payroll factor plus the sales factor,
 13 and the denominator of which is three.

14 (e)

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

17 (1)

18 (A) An agricultural business activity.

19 (2)

20 (B) An extractive business activity.

21 (3)

22 (C) A savings and loan activity.

23 (4)

24 (D) A banking or financial business activity.

25 (c) (1) *Notwithstanding any other provision of law, for taxable*
 26 *years beginning on or after January 1, 2008, a taxpayer that is a*
 27 *member of an apportioning trade or business may, on behalf of*
 28 *the apportioning trade or business or a subgroup thereof, elect to*
 29 *adjust, as provided in paragraph (2), the fraction described in*
 30 *subdivision (a) or (b), as applicable, by utilizing one of the*
 31 *following alternative methods:*

32 (A) (i) *In calculating its business income apportioned to this*
 33 *state, the apportioning trade or business, or a subgroup thereof,*
 34 *may add an additional sales factor to the numerator of the fraction*
 35 *described in subdivision (a) or (b), whichever is applicable, and*
 36 *may increase the denominator of that fraction by one for each two*
 37 *hundred fifty million dollars (\$250,000,000) of qualified*
 38 *expenditures made on or after January 1, 2008.*

1 (ii) The apportioning trade or business, or a subgroup thereof,
2 shall submit and certify, with each tax return filed with the
3 Franchise Tax Board, a summary of the qualified expenditures.

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

8 (I) (ia) The value of real and tangible personal property
9 acquired or rented by the taxpayer on or after January 1, 2008,
10 that is in excess of the value of the taxpayer's real and tangible
11 personal property owned or rented and used in this state in the
12 base year and otherwise includable in the computations of the
13 property factor, as defined in Section 25129, shall be excluded
14 from the numerator of that property factor until the election is
15 terminated.

16 (ib) For purposes of this section, if real and tangible personal
17 property acquired or rented by a taxpayer in this state in a taxable
18 year is disposed of by the taxpayer within one year or less of the
19 date the property was first available for use in this state, the value
20 of that property shall be included in the numerator of the
21 taxpayer's property factor for such period.

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

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

31 (ic) For purposes of this section, sales or other transactions
32 between members of an apportioning trade or business shall not
33 be considered a qualified expenditure or new investment made in
34 this state.

35 (ii) The apportioning trade or business, or a subgroup thereof,
36 shall submit and certify, with each tax return filed with the
37 Franchise Tax Board, a summary of the new investment made in
38 this state.

39 (2) (A) On or after January 1, 2008, a taxpayer may elect to
40 adjust the fraction described in subdivision (a) or (b), whichever

1 *is applicable. The election shall be made by attaching a statement*
2 *to the original, timely filed return identifying the apportioning*
3 *trade or business, or a subgroup thereof, specifying the method of*
4 *adjusting the apportionment factor as described in subdivision (a)*
5 *or (b), and designating the member of the apportioning trade or*
6 *business, or a subgroup thereof, that will be required to submit*
7 *and certify the information, as required by paragraph (1).*

8 *(B) The election may be terminated without the consent of the*
9 *Franchise Tax Board after it has been in effect for a least 84*
10 *months. The termination shall be made on an original, timely filed*
11 *return for the first year in which the election is to be terminated.*

12 *(C) The election may be terminated before the 84-month period*
13 *described in subparagraph (B) has elapsed either by the taxpayer,*
14 *with the permission of the Franchise Tax Board, or by the*
15 *Franchise Tax Board, if the taxpayer fails to submit a certification*
16 *signed by an officer, as required by paragraph (1).*

17 *(D) The election shall remain in effect until terminated.*

18 *(E) This subdivision shall not be construed to terminate the*
19 *water's-edge election made by a taxpayer pursuant to Section*
20 *25113, nor shall it be construed to allow any change in, or*
21 *adjustments to, that election.*

22 *(F) The Franchise Tax Board may prescribe any regulations*
23 *that may be necessary or appropriate to implement the provisions*
24 *of this subdivision.*

25 (d) For purposes of this section:

26 (1) "Gross business receipts" means gross receipts described in
27 subdivision (e) of Section 25120 (other than gross receipts from
28 sales or other transactions within an apportioning trade or business
29 between members of a group of corporations whose income and
30 apportionment factors are required to be included in a combined
31 report under Section 25101, limited, if applicable, by Section
32 25110), whether or not the receipts are excluded from the sales
33 factor by operation of Section 25137.

34 (2) "Agricultural business activity" means activities relating to
35 any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
36 plantation, ranch, nursery, or range. "Agricultural business activity"
37 also includes activities relating to cultivating the soil or raising or
38 harvesting any agricultural or horticultural commodity, including,
39 but not limited to, the raising, shearing, feeding, caring for, training,
40 or management of animals on a farm as well as the handling,

1 drying, packing, grading, or storing on a farm any agricultural or
2 horticultural commodity in its unmanufactured state, but only if
3 the owner, tenant, or operator of the farm regularly produces more
4 than one-half of the commodity so treated.

5 (3) “Extractive business activity” means activities relating to
6 the production, refining, or processing of oil, natural gas, or mineral
7 ore.

8 (4) “Savings and loan activity” means any activities performed
9 by savings and loan associations or savings banks which have been
10 chartered by federal or state law.

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

14 (6) “Apportioning trade or business” means a distinct trade or
15 business whose business income is required to be apportioned
16 under Sections 25101 and 25120, limited, if applicable, by Section
17 25110, using the same denominator for each of the applicable
18 payroll, property, and sales factors.

19 ~~(7) Paragraph (4) of subdivision (c) shall apply only if the~~
20 ~~Franchise Tax Board adopts the Proposed Multistate Tax~~
21 ~~Commission Formula for the Uniform Apportionment of Net~~
22 ~~Income from Financial Institutions, or its substantial equivalent,~~
23 ~~and shall become operative upon the same operative date as the~~
24 ~~adopted formula.~~

25 (7) “Base year” means the year immediately preceding the year
26 of election.

27 (8) “Value of real and tangible personal property” means the
28 value of owned and rented property as described in Section 25130.

29 (9) “Amount of compensation” means compensation described
30 in Section 25132.

31 (10) (A) “Qualified expenditures” means, in whole or in part,
32 all of the following expenditures:

33 (i) Capital expenditures for real and tangible personal property
34 located in this state.

35 (ii) Expenses incurred to acquire, develop, or license intellectual
36 property in this state.

37 (iii) Research and development expenses, as defined in Section
38 174 of the Internal Revenue Code, incurred in this state.

39 (iv) Expenses incurred to develop, enhance, or maintain real
40 property and tangible personal property located in this state.

1 (v) Capitalized rent paid in this state in excess of the prior year.

2 (vi) Compensation and benefits paid to employees in this state
3 in excess of the prior year.

4 (vii) Payments to independent contractors and payroll
5 companies for work performed in this state in excess of the prior
6 year.

7 (viii) Training costs incurred in this state.

8 (ix) Costs incurred in providing a basic level of health care to
9 employees in this state, as defined in the Knox-Keene Health Care
10 Service Plan Act of 1975, in excess of the prior year.

11 (x) Expenditures incurred in connection with funding research
12 at a four-year public or private college or university located in
13 this state.

14 (B) "Qualified expenditures" does not include amounts paid to
15 acquire stock or other equity interests in a corporation or other
16 business entity.

17 (8)

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

22 (A) The application of the more than 50 percent test of
23 subdivision (b) shall be made with respect to the "gross business
24 receipts" of the entire apportioning trade or business of the group.

25 (B) The ~~entire~~ business income of the ~~group~~ apportioning trade
26 or business, or a subgroup thereof, shall be apportioned in
27 accordance with ~~either~~ subdivision (a) ~~or~~, (b), or (c), as applicable.

28 (e) The provisions of this section are severable. If any provision
29 of this section or its application is held invalid, that invalidity shall
30 not affect other provisions or applications that can be given effect
31 without the invalid provision or application.

32 (f) The amendments made to this section by the act adding this
33 subdivision shall apply to taxable years beginning on or after
34 January 1, 2008.

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

37 SEC. 3. It is the intent of the Legislature that Section 1 of this
38 act does not modify the sales factor, as defined in Section 25134
39 of the Revenue and Taxation Code, used in any special
40 apportionment formulas contained in the regulations promulgated

- 1 by the Franchise Tax Board pursuant to Section 25137 of the
- 2 Revenue and Taxation Code.

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