

Introduced by Senator Alquist

February 22, 2008

An act to amend Section 17039 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1750, as introduced, Alquist. Net tax: credits.

The Personal Income Tax Law allows for the computation of, and order of allowance of, various credits against the "net tax," as defined.

This bill would make a technical, nonsubstantive change to those provisions.

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

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

1 SECTION 1. Section 17039 of the Revenue and Taxation Code
2 is amended to read:
3 17039. (a) Notwithstanding any provision in this part to the
4 contrary, for the purposes of computing tax credits, the term "net
5 tax" means the tax imposed under either Section 17041 or 17048
6 plus the tax imposed under Section 17504 (relating to lump-sum
7 distributions) less the credits allowed by Section 17054 (relating
8 to personal exemption credits) and any amount imposed under
9 paragraph (1) of subdivision (d) and paragraph (1) of subdivision
10 (e) of Section 17560. Notwithstanding the preceding sentence, the
11 "net tax" shall not be less than the tax imposed under Section
12 17504 (relating to the separate tax on lump-sum distributions), if

1 any. Credits shall be allowed against “net tax” in the following
2 order:

3 (1) Credits that do not contain carryover or refundable
4 provisions, except those described in paragraphs (4) and (5).

5 (2) Credits that contain carryover provisions but do not contain
6 refundable provisions, except for those that are allowed to reduce
7 “net tax” below the tentative minimum tax, as defined by Section
8 17062.

9 (3) Credits that contain both carryover and refundable
10 provisions.

11 (4) The minimum tax credit allowed by Section 17063 (relating
12 to the alternative minimum tax).

13 (5) Credits that are allowed to reduce “net tax” below the
14 tentative minimum tax, as defined by Section 17062.

15 (6) Credits for taxes paid to other states allowed by Chapter 12
16 (commencing with Section 18001).

17 (7) Credits that contain refundable provisions but do not contain
18 carryover provisions.

19 The order within each paragraph shall be determined by the
20 Franchise Tax Board.

21 (b) Notwithstanding the provisions of Sections 17061 (relating
22 to refunds pursuant to the Unemployment Insurance Code) and
23 19002 (relating to tax withholding), the credits provided in those
24 sections shall be allowed in the order provided in paragraph (6) of
25 subdivision (a).

26 (c) (1) Notwithstanding any other provision of this part, no tax
27 credit shall reduce the tax imposed under Section 17041 or 17048
28 plus the tax imposed under Section 17504 (relating to the separate
29 tax on lump-sum distributions) below the tentative minimum tax,
30 as defined by Section 17062, except the following credits:

31 (A) The credit allowed by Section 17052.2 (relating to teacher
32 retention tax credit).

33 (B) The credit allowed by former Section 17052.4 (relating to
34 solar energy).

35 (C) The credit allowed by former Section 17052.5 (relating to
36 solar energy, repealed on January 1, 1987).

37 (D) The credit allowed by former Section 17052.5 (relating to
38 solar energy, repealed on December 1, 1994).

39 (E) The credit allowed by Section 17052.12 (relating to research
40 expenses).

- 1 (F) The credit allowed by former Section 17052.13 (relating to
2 sales and use tax credit).
- 3 (G) The credit allowed by former Section 17052.15 (relating to
4 Los Angeles Revitalization Zone sales tax credit).
- 5 (H) The credit allowed by Section 17052.25 (relating to the
6 adoption costs credit).
- 7 (I) The credit allowed by Section 17053.5 (relating to the
8 renter's credit).
- 9 (J) The credit allowed by former Section 17053.8 (relating to
10 enterprise zone hiring credit).
- 11 (K) The credit allowed by former Section 17053.10 (relating to
12 Los Angeles Revitalization Zone hiring credit).
- 13 (L) The credit allowed by former Section 17053.11 (relating to
14 program area hiring credit).
- 15 (M) For each taxable year beginning on or after January 1, 1994,
16 the credit allowed by former Section 17053.17 (relating to Los
17 Angeles Revitalization Zone hiring credit).
- 18 (N) The credit allowed by Section 17053.33 (relating to targeted
19 tax area sales or use tax credit).
- 20 (O) The credit allowed by Section 17053.34 (relating to targeted
21 tax area hiring credit).
- 22 (P) The credit allowed by Section 17053.49 (relating to qualified
23 property).
- 24 (Q) The credit allowed by Section 17053.70 (relating to
25 enterprise zone sales or use tax credit).
- 26 (R) The credit allowed by Section 17053.74 (relating to
27 enterprise zone hiring credit).
- 28 (S) The credit allowed by Section 17054 (relating to credits for
29 personal exemption).
- 30 (T) The credit allowed by Section 17054.5 (relating to the credits
31 for a qualified joint custody head of household and a qualified
32 taxpayer with a dependent parent).
- 33 (U) The credit allowed by Section 17054.7 (relating to the credit
34 for a senior head of household).
- 35 (V) The credit allowed by former Section 17057 (relating to
36 clinical testing expenses).
- 37 (W) The credit allowed by Section 17058 (relating to
38 low-income housing).
- 39 (X) The credit allowed by Section 17061 (relating to refunds
40 pursuant to the Unemployment Insurance Code).

1 (Y) Credits for taxes paid to other states allowed by Chapter 12
2 (commencing with Section 18001).

3 (Z) The credit allowed by Section 19002 (relating to tax
4 withholding).

5 (2) Any credit that is partially or totally denied under paragraph
6 (1) shall be allowed to be carried over and applied to the net tax
7 in succeeding taxable years, if the provisions relating to that credit
8 include a provision to allow a carryover when that credit exceeds
9 the net tax.

10 (d) Unless otherwise provided, any remaining carryover of a
11 credit allowed by a section that has been repealed or made
12 inoperative shall continue to be allowed to be carried over under
13 the provisions of that section as it read immediately prior to being
14 repealed or becoming inoperative.

15 (e) (1) Unless otherwise provided, if two or more taxpayers
16 (other than husband and wife) share in costs that would be eligible
17 for a tax credit allowed under this part, each taxpayer shall be
18 eligible to receive the tax credit in proportion to his or her
19 respective share of the costs paid or incurred.

20 (2) In the case of a partnership, the credit shall be allocated
21 among the partners pursuant to a written partnership agreement in
22 accordance with Section 704 of the Internal Revenue Code, relating
23 to partner's distributive share.

24 (3) In the case of a husband and wife who file separate returns,
25 the credit may be taken by either or equally divided between them.

26 (f) Unless otherwise provided, in the case of a partnership, any
27 credit allowed by this part shall be computed at the partnership
28 level, and any limitation on the expenses qualifying for the credit
29 or limitation upon the amount of the credit shall be applied to the
30 partnership and to each partner.

31 (g) (1) With respect to any taxpayer that directly or indirectly
32 owns an interest in a business entity that is disregarded for tax
33 purposes pursuant to Section 23038 and any regulations thereunder,
34 the amount of any credit or credit carryforward allowable for any
35 taxable year attributable to the disregarded business entity shall
36 be limited in accordance with paragraphs (2) and (3).

37 (2) The amount of any credit otherwise allowed under this part,
38 including any credit carryover from prior years, that may be applied
39 to reduce the taxpayer's "net tax," as defined in subdivision (a),
40 for the taxable year shall be limited to an amount equal to the

1 excess of the taxpayer’s regular tax (as defined in Section 17062),
2 determined by including income attributable to the disregarded
3 business entity that generated the credit or credit carryover, over
4 the taxpayer’s regular tax (as defined in Section 17062), determined
5 by excluding the income attributable to that disregarded business
6 entity. No credit shall be allowed if the taxpayer’s regular tax (as
7 defined in Section 17062), determined by including the income
8 attributable to the disregarded business entity, is less than the
9 taxpayer’s regular tax (as defined in Section 17062), determined
10 by excluding the income attributable to the disregarded business
11 entity.

12 (3) If the amount of a credit allowed pursuant to the section
13 establishing the credit exceeds the amount allowable under this
14 subdivision in any taxable year, the excess amount may be carried
15 over to subsequent taxable years pursuant to subdivisions (c) and
16 (d).

17 (h) (1) Unless otherwise specifically provided, in the case of a
18 taxpayer that is a partner or shareholder of an eligible ~~pass-through~~
19 *passthrough* entity described in paragraph (2), any credit passed
20 through to the taxpayer in the taxpayer’s first taxable year
21 beginning on or after the date the credit is no longer operative may
22 be claimed by the taxpayer in that taxable year, notwithstanding
23 the repeal of the statute authorizing the credit prior to the close of
24 that taxable year.

25 (2) For purposes of this subdivision, “eligible ~~pass-through~~
26 *passthrough* entity” means any partnership or ~~S~~ corporation “S”
27 *corporation* that files its return on a fiscal year basis pursuant to
28 Section 18566, and that is entitled to a credit pursuant to this part
29 for the taxable year that begins during the last year the credit is
30 operative.

31 (3) This subdivision shall apply to credits that become
32 inoperative on or after the operative date of the act adding this
33 subdivision.