

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 697

Introduced by Assembly Member Charles Calderon

February 26, 2009

An act to amend Section ~~64~~ 19136.8 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 697, as amended, Charles Calderon. ~~Property taxation.~~ *Income and corporation taxes: underpayments.*

~~Existing law requires the Franchise Tax Board to include specified questions on the income tax returns of specified entities regarding changes in ownership of the real property owned by the entity and requires the Franchise Tax Board to notify the State Board of Equalization if an entity responds affirmatively to these questions.~~

Existing income and corporation tax laws impose a penalty for specified underpayments of tax, except for, among other things, an underpayment created or increased by the disallowance of a specified hiring credit.

This bill would make ~~technical, nonsubstantive~~ *clarifying* changes to that provision.

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 19136.8 of the Revenue and Taxation
 2 Code, as added by Section 5 of Chapter 10 of the 3rd Extraordinary
 3 Session of the Statutes of 2009, is amended to read:

4 19136.8. (a) No addition to tax shall be made under Section
 5 19136 with respect to any underpayment of an installment to the
 6 extent that the underpayment was created or increased by the
 7 disallowance of a credit under subdivision~~(f)~~ (g) of Section
 8 17053.80.

9 (b) No addition to tax shall be made under Section 19142 with
 10 respect to any underpayment of an installment to the extent that
 11 the underpayment was created or increased by the disallowance
 12 of a credit under subdivision~~(f)~~ (g) of Section 23623.

13 (c) The Franchise Tax Board shall adopt procedures, forms, and
 14 instructions necessary to implement this section in a reasonable
 15 manner.

16 ~~SECTION 1. Section 64 of the Revenue and Taxation Code is~~
 17 ~~amended to read:~~

18 ~~64. (a) Except as provided in subdivision (i) of Section 61 and~~
 19 ~~subdivisions (c) and (d) of this section, the purchase or transfer of~~
 20 ~~ownership interests in legal entities, such as corporate stock or~~
 21 ~~partnership or limited liability company interests, shall not be~~
 22 ~~deemed to constitute a transfer of the real property of the legal~~
 23 ~~entity. This subdivision is applicable to the purchase or transfer~~
 24 ~~of ownership interests in a partnership without regard to whether~~
 25 ~~it is a continuing or a dissolved partnership.~~

26 ~~(b) Any corporate reorganization, where all of the corporations~~
 27 ~~involved are members of an affiliated group, and that qualifies as~~
 28 ~~a reorganization under Section 368 of the United States Internal~~
 29 ~~Revenue Code and that is accepted as a nontaxable event by similar~~
 30 ~~California statutes, or any transfer of real property among members~~
 31 ~~of an affiliated group, or a reorganization of farm credit institutions~~
 32 ~~pursuant to the federal Farm Credit Act of 1971 (Public Law~~
 33 ~~92-181), as amended, shall not be a change of ownership. The~~
 34 ~~taxpayer shall furnish proof, under penalty of perjury, to the~~
 35 ~~assessor that the transfer meets the requirements of this subdivision.~~

36 ~~For purposes of this subdivision, “affiliated group” means one~~
 37 ~~or more chains of corporations connected through stock ownership~~

1 with a common parent corporation if both of the following
2 conditions are met:

3 (1) One hundred percent of the voting stock, exclusive of any
4 share owned by directors, of each of the corporations, except the
5 parent corporation, is owned by one or more of the other
6 corporations.

7 (2) The common parent corporation owns, directly, 100 percent
8 of the voting stock, exclusive of any shares owned by directors,
9 of at least one of the other corporations.

10 (e) (1) When a corporation, partnership, limited liability
11 company, other legal entity, or other person obtains control through
12 direct or indirect ownership or control of more than 50 percent of
13 the voting stock of any corporation, or obtains a majority ownership
14 interest in a partnership, limited liability company, or other legal
15 entity through the purchase or transfer of corporate stock,
16 partnership, or limited liability company interest, or ownership
17 interests in other legal entities, including a purchase or transfer of
18 50 percent or less of the ownership interest through which control
19 or a majority ownership interest is obtained, the purchase or
20 transfer of that stock or other interest shall be a change of
21 ownership of the real property owned by the corporation,
22 partnership, limited liability company, or other legal entity in which
23 the controlling interest is obtained.

24 (2) On or after January 1, 1996, when an owner of a majority
25 ownership interest in any partnership obtains all of the remaining
26 ownership interests in that partnership or otherwise becomes the
27 sole partner, the purchase or transfer of the minority interests,
28 subject to the appropriate application of the step-transaction
29 doctrine, shall not be a change in ownership of the real property
30 owned by the partnership.

31 (d) If property is transferred on or after March 1, 1975, to a
32 legal entity in a transaction excluded from change in ownership
33 by paragraph (2) of subdivision (a) of Section 62, then the persons
34 holding ownership interests in that legal entity immediately after
35 the transfer shall be considered the "original coowners." Whenever
36 shares or other ownership interests representing cumulatively more
37 than 50 percent of the total interests in the entity are transferred
38 by any of the original coowners in one or more transactions, a
39 change in ownership of that real property owned by the legal entity
40 shall have occurred, and the property that was previously excluded

1 from change in ownership under the provisions of paragraph (2)
2 of subdivision (a) of Section 62 shall be reappraised.

3 The date of reappraisal shall be the date of the transfer of the
4 ownership interest representing individually or cumulatively more
5 than 50 percent of the interests in the entity.

6 A transfer of shares or other ownership interests that results in
7 a change in control of a corporation, partnership, limited liability
8 company, or any other legal entity is subject to reappraisal as
9 provided in subdivision (c) rather than this subdivision.

10 (e) To assist in the determination of whether a change of
11 ownership has occurred under subdivisions (c) and (d), the
12 Franchise Tax Board shall include a question in substantially the
13 following form on returns for partnerships, banks, and corporations
14 (except tax-exempt organizations):

15 If the corporation (or partnership or limited liability company)
16 owns real property in California, has cumulatively more than 50
17 percent of the voting stock (or more than 50 percent of total interest
18 in both partnership or limited liability company capital and
19 partnership or limited liability company profits) (1) been transferred
20 by the corporation (or partnership or limited liability company)
21 since March 1, 1975, or (2) been acquired by another legal entity
22 or person during the year? (See instructions.)

23 If the entity answers "yes" to (1) or (2) in the above question,
24 then the Franchise Tax Board shall furnish the names and addresses
25 of that entity and of the stock or partnership or limited liability
26 company ownership interest transferees to the State Board of
27 Equalization.

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