

AMENDED IN SENATE SEPTEMBER 2, 2009

AMENDED IN SENATE JULY 15, 2009

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 759**

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**Introduced by Assembly Member Ma**

February 26, 2009

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An act to amend Section 10286.1 of the Public Contract Code, and to amend Sections 24411 and 25110 of, and to add Section 25117 to, the Revenue and Taxation Code, relating to corporations.

LEGISLATIVE COUNSEL'S DIGEST

AB 759, as amended, Ma. Public contracts with expatriate corporations: corporation tax law water's-edge election.

(1) Existing law regarding contracting between state agencies and private contractors sets forth requirements for the procurement of materials, supplies, equipment, and services by state agencies. Existing law sets out the various responsibilities of the Department of General Services, and other state agencies, in overseeing and implementing state contracting procedures and policies.

Existing law prohibits a state agency from entering into any contract with an expatriate corporation, as defined, or its subsidiary, unless certain conditions are met. Existing law defines an expatriate corporation as a foreign incorporated entity that is publicly traded in the United States and that meets specified criteria.

This bill would revise the definition of an expatriate corporation to also require that the entity be domiciled in a jurisdiction that does not have an income tax treaty in force with the United States.

(2) Existing law provides that, in the case of a business with income derived from, or attributable to, sources both within and without this state, the income is apportioned between this state and other states and foreign countries for tax purposes in accordance with a specified formula based on the property, payroll, and sales within and without this state, except as otherwise provided. Existing law permits certain taxpayers, as provided, to elect to determine their income under a ~~water's-edge~~ *water's-edge* election and specifies certain requirements under that election.

This bill would conform specified provisions relating to, among other things, the ~~water's-edge~~ election to specified federal income tax laws relating to the taxation of certain shareholders of controlled foreign corporations, as provided.

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. It is the intent of the Legislature in enacting this
- 2 statute to clarify that an expatriate corporation located in a foreign
- 3 jurisdiction that does not have an income tax treaty with the United
- 4 States shall not enter into any contracts with a state agency.
- 5 SEC. 2. Section 10286.1 of the Public Contract Code is
- 6 amended to read:
- 7 10286.1. (a) For purposes of this part, except as otherwise
- 8 provided in subdivisions (b) and (c), a state agency shall not enter
- 9 into any contract with an expatriate corporation or its subsidiaries.
- 10 (b) (1) For purposes of this article, an "expatriate corporation"
- 11 means a foreign incorporated entity that is publicly traded in the
- 12 United States to which all of the following apply:
- 13 (A) The United States is the principal market for the public
- 14 trading of the foreign incorporated entity.
- 15 (B) The foreign incorporated entity has no substantial business
- 16 activities in the place of incorporation.
- 17 (C) The foreign incorporated entity is domiciled in a jurisdiction
- 18 that does not have an income tax treaty in force with the United
- 19 States.

1 (D) Either clause (i) or clause (ii) applies:

2 (i) The foreign entity was established in connection with a  
3 transaction or series of related transactions pursuant to which (I)  
4 the foreign entity directly or indirectly acquired substantially all  
5 of the properties held by a domestic corporation or all of the  
6 properties constituting a trade or business of a domestic partnership  
7 or related foreign partnership, and (II) immediately after the  
8 acquisition, more than 50 percent of the publicly traded stock, by  
9 vote or value, of the foreign entity is held by former shareholders  
10 of the domestic corporation or by former partners of the domestic  
11 partnership or related foreign partnership. For purposes of  
12 subclause (II), any stock sold in a public offering related to the  
13 transaction or a series of transactions is disregarded.

14 (ii) The foreign entity was established in connection with a  
15 transaction or series of related transactions pursuant to which (I)  
16 the foreign entity directly or indirectly acquired substantially all  
17 of the properties held by a domestic corporation or all of the  
18 properties constituting a trade or business of a domestic partnership  
19 or related foreign partnership, and (II) the acquiring foreign entity  
20 is more than 50 percent owned, by vote or value, by domestic  
21 shareholders or partners.

22 (iii) For purposes of this subparagraph, indirect acquisition of  
23 property includes the acquisition of a stock share, or any portion  
24 thereof, of the owner of that property.

25 (2) Notwithstanding subdivision (a), a state agency may contract  
26 with an expatriate corporation, or its subsidiary, if it was an  
27 expatriate corporation before January 1, 2004, to which both of  
28 the following apply:

29 (A) The foreign entity provides, by operation of law, by  
30 provisions of its governing documents, by resolution of its board  
31 of directors, or in any other manner, at least the following  
32 shareholders' rights:

33 (i) Shareholders of the entity have the right to inspect, at a  
34 principal place of business in the United States, copies of the  
35 entity's books and records, including, but not limited to,  
36 shareholder names, addresses, and shareholdings in accordance  
37 with the corporation law, as amended from time to time and as  
38 that law is interpreted by the courts, of the United States  
39 jurisdiction in which the entity was previously incorporated, or, if  
40 the entity was not previously incorporated, in accordance with the

1 terms set forth in the Model Business Corporation Act, as that act  
2 may be amended from time to time, provided that, if the corporate  
3 law of the United States jurisdiction in which the entity was  
4 previously incorporated or the Model Business Corporation Act  
5 does not provide access to the shareholder names, addresses, and  
6 shareholdings, these books and records are available for inspection  
7 by shareholders for purposes properly related to their status as  
8 shareholders of the entity.

9 (ii) The entity permits its shareholders to bring derivative  
10 proceedings on behalf of the entity, provided that these derivative  
11 proceedings are brought on a basis and under the terms applicable  
12 under the law, as amended from time to time and as interpreted  
13 by, or required by, the courts of the United States jurisdiction in  
14 which the entity was previously incorporated, or, if the entity was  
15 not previously incorporated, on a basis and under the terms set  
16 forth in the Model Business Corporations Act as that act may be  
17 amended from time to time and as it is interpreted by, or required  
18 by, the courts.

19 (iii) Entity transactions in which any director is interested are  
20 approved in accordance with the applicable law, as amended from  
21 time to time and as interpreted by the courts, of the United States  
22 jurisdiction in which the entity was previously incorporated, or, if  
23 the entity was not previously incorporated, in accordance with the  
24 terms set forth in the Model Business Corporations Act, as may  
25 be amended from time to time and as interpreted by the courts.

26 (iv) The entity has consented to the jurisdiction, for any  
27 otherwise available cause of action by or on behalf of the entity's  
28 shareholders, including any pendent state causes of action, of all  
29 of the following courts:

30 (I) The state courts of one or more states.

31 (II) The United States federal courts in any state in which the  
32 entity consents to the jurisdiction of that state's courts pursuant to  
33 subclause (I).

34 (v) The entity has appointed an agent for service of process in  
35 the state or states in which the entity has consented to jurisdiction,  
36 as described in clause (iv), and the entity meets at least one of the  
37 following conditions:

38 (I) The entity has unencumbered assets in the United States,  
39 which assets may include equity or debt investments in United  
40 States companies, with a book value in excess of fifty million

1 dollars (\$50,000,000), and the entity delivers to the Secretary of  
2 State an opinion of an attorney licensed in the United States that  
3 judgments rendered against the entity may be satisfied by using  
4 these assets.

5 (II) The entity posts a bond or similar security in an amount of  
6 at least fifty million dollars (\$50,000,000).

7 (III) The entity has directors' and officers' insurance in an  
8 amount of at least fifty million dollars (\$50,000,000).

9 (vi) The entity agrees that, in connection with any lawsuit  
10 brought against it by its shareholders in any court in which the  
11 entity has consented to jurisdiction as described in clause (iv), the  
12 entity will provide to the court notice of the manner in which the  
13 entity complied with clause (v) and, if the entity complied with  
14 that clause in the manner specified in subclause (I) of clause (v),  
15 a copy of the opinion described in that subclause.

16 (vii) Shareholder approval is required for any sale of all or  
17 substantially all of the entity's assets in accordance with the law,  
18 as amended from time to time and as it is interpreted by the courts,  
19 of the United States jurisdiction in which it was previously  
20 incorporated, or, if it was not previously incorporated, in  
21 accordance with the terms set forth in the Model Business  
22 Corporations Act, as it may be amended from time to time.

23 (viii) The directors and officers of the entity occupy a fiduciary  
24 relationship with the entity and its shareholders and these directors  
25 and officers, in performing their duties, act in good faith in a  
26 manner that a director or officer believes to be in the best interests  
27 of the entity and its shareholders, as that standard of care is  
28 interpreted by the courts.

29 (ix) The entity agrees to hold no more than one of every four  
30 annual shareholder meetings in a location outside the United States  
31 and, in the event that the entity holds an annual meeting outside  
32 the United States, the entity agrees to provide access to that meeting  
33 through a Web cast or other technology that allows the entity's  
34 shareholders to do both of the following:

35 (I) Listen to the meeting, watch the meeting, or both.

36 (II) Send questions that will be addressed at the meeting.

37 (x) The entity provides a description of the shareholder rights  
38 described in clauses (i) to (ix), inclusive, and any subsequent  
39 changes to these rights, on the entity's *Internet* Web site or in its

1 10K filings with the United States Securities and Exchange  
2 Commission.

3 (B) The entity uses worldwide combined reporting to calculate  
4 the income on which it pays taxes to the state.

5 (c) The chief executive officer of a state agency or his or her  
6 designee may waive the prohibition specified in subdivision (a) if  
7 the executive officer or his or her designee has made a written  
8 finding that the contract is necessary to meet a compelling public  
9 interest. For purposes of this section, a “compelling public interest”  
10 includes, but is not limited to, ensuring the provision of essential  
11 services, ensuring the public health and safety, or an emergency  
12 as defined in Section 1102. If a waiver is granted to a vendor  
13 pursuant to this subdivision, the requirement to submit a declaration  
14 of compliance, as set forth in paragraph (1) of subdivision (d),  
15 does not apply to that vendor.

16 (d) (1) For purposes of this chapter, “state agency” means every  
17 state office, department, division, bureau, board, commission, and  
18 the California State University, but does not include the University  
19 of California, the Legislature, the courts, or any agency in the  
20 judicial branch of government.

21 (2) On or after January 1, 2004, all state agencies shall, as a  
22 condition of the contract, require any vendor that is offered a  
23 contract to do business with the state to submit a declaration stating  
24 that the vendor is eligible to contract with the state pursuant to this  
25 section.

26 (3) A vendor that declares as true any material matter in a  
27 declaration described in this subdivision that he or she knows to  
28 be false is guilty of a misdemeanor.

29 (e) (1) Except as provided in paragraph (2) and subdivision (f),  
30 this section applies to contracts that are entered into on or after  
31 January 1, 2004.

32 (2) With respect to an entity that was an expatriate corporation,  
33 as defined in paragraph (1) of subdivision (b), before January 1,  
34 2004, this section applies to contracts that are entered into on or  
35 after April 1, 2004.

36 (f) (1) The declaration requirement set forth in subdivision (d)  
37 does not apply to a credit card purchase of goods of two thousand  
38 five hundred dollars (\$2,500) or less.

39 (2) The total amount of exemption authorized herein shall not  
40 exceed seven thousand five hundred dollars (\$7,500) per year for

1 each company from which a state agency is purchasing goods by  
2 credit card. It shall be the responsibility of each state agency to  
3 monitor the use of this exemption and adhere to these restrictions  
4 on these purchases.

5 ~~SEC. 2.~~

6 *SEC. 3.* Section 24411 of the Revenue and Taxation Code is  
7 amended to read:

8 24411. (a) For purposes of those taxpayers electing to compute  
9 income under Section 25110, to the extent not otherwise allowed  
10 as a deduction or eliminated from income:

11 (1) One hundred percent of the qualifying dividends described  
12 in subdivision (d).

13 (2) Twenty-seven percent of qualifying dividends described in  
14 Section 25117.

15 (3) Seventy-five percent of qualifying dividends, other than  
16 those referred to in paragraph (1) or (2).

17 (b) “Qualifying dividends” means those received by the  
18 water’s-edge group from corporations if both of the following  
19 conditions are satisfied:

20 (1) The average of the property, payroll, and sales factors within  
21 the United States for the corporation is less than 20 percent.

22 (2) More than 50 percent of the total combined voting power  
23 of all classes of stock entitled to vote is owned directly or indirectly  
24 by the water’s-edge group.

25 (c) The water’s-edge group consists of corporations whose  
26 income and apportionment factors are taken into account pursuant  
27 to Section 25110.

28 (d) Dividends derived from a construction project, the location  
29 of which is not subject to the taxpayer’s control.

30 For purposes of this subdivision:

31 (1) “Construction project” means any activity which meets the  
32 following requirements:

33 (A) Is undertaken for any entity, including a governmental  
34 entity, which is not affiliated with the taxpayer.

35 (B) The majority of its cost of performance is attributable to an  
36 addition to real property or an alteration of land or any  
37 improvement thereto as those terms are utilized for purposes of  
38 this code.

1 “Construction project” does not include the operation, rental,  
2 leasing, or depletion of real property, land, or any improvement  
3 thereto.

4 (2) “Location of which is not subject to the taxpayer’s control”  
5 means that the place at which the majority of the construction takes  
6 place results from the nature or character of the construction project  
7 and not as a result of the terms of the contract or agreement  
8 governing the construction project.

9 ~~SEC. 3.~~

10 *SEC. 4.* Section 25110 of the Revenue and Taxation Code, as  
11 amended by Section 1 of Chapter 22 of the Statutes of 2006, is  
12 amended to read:

13 25110. (a) Notwithstanding Section 25101, a qualified  
14 taxpayer, as defined in paragraph (2) of subdivision (b), that is  
15 subject to the tax imposed under this part, may elect to determine  
16 its income derived from or attributable to sources within this state  
17 pursuant to a water’s-edge election in accordance with the  
18 provisions of this part, as modified by this article. A taxpayer, that  
19 made a water’s-edge election prior to January 1, 2006, shall take  
20 into account the income and apportionment factors of the following  
21 affiliated entities only:

22 (1) Domestic international sales corporations, as described in  
23 Sections 991 to 994, inclusive, of the Internal Revenue Code and  
24 foreign sales corporations as described in Sections 921 to 927,  
25 inclusive, of the Internal Revenue Code.

26 (2) Any corporation (other than a bank), regardless of the place  
27 where it is incorporated if the average of its property, payroll, and  
28 sales factors within the United States is 20 percent or more.

29 (3) Corporations that are incorporated in the United States,  
30 excluding corporations making an election pursuant to Sections  
31 931 to 936, inclusive, of the Internal Revenue Code, of which more  
32 than 50 percent of their voting stock is owned or controlled directly  
33 or indirectly by the same interests.

34 (4) A corporation that is not described in paragraphs (1) to (3),  
35 inclusive, or paragraph (5), but only to the extent of its income  
36 derived from or attributable to sources within the United States  
37 and its factors assignable to a location within the United States in  
38 accordance with paragraph (3) of subdivision (b). Income of that  
39 corporation derived from or attributable to sources within the  
40 United States as determined by federal income tax laws shall be



1 limited to and determined from the books of account maintained  
2 by the corporation with respect to its activities conducted within  
3 the United States.

4 (5) Export trade corporations, as described in Sections 970 to  
5 972, inclusive, of the Internal Revenue Code.

6 (6) (A) The income and factors of the above-enumerated  
7 corporations shall be taken into account only if the income and  
8 factors would have been taken into account under Section 25101  
9 if this section had not been enacted.

10 (B) The income and factors of a corporation that is not described  
11 in paragraphs (1) to (3), inclusive, and paragraph (5) and that is  
12 an electing taxpayer under this subdivision shall be taken into  
13 account in determining its income only to the extent set forth in  
14 paragraph (4).

15 (b) For purposes of this article and Section 24411 all of the  
16 following definitions apply:

17 (1) An “affiliated corporation” means a corporation that is a  
18 member of a commonly controlled group as defined in Section  
19 25105.

20 (2) A “qualified taxpayer” means a corporation which does both  
21 of the following:

22 (A) Files with the state tax return on which the water’s-edge  
23 election is made a consent to the taking of depositions at the time  
24 and place most reasonably convenient to all parties from key  
25 domestic corporate individuals and to the acceptance of subpoenas  
26 duces tecum requiring reasonable production of documents to the  
27 Franchise Tax Board as provided in Section 19504 or by the State  
28 Board of Equalization as provided in Title 18, California Code of  
29 Regulations, Section 5005, or by the courts of this state as provided  
30 in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4  
31 of, and Chapter 9 (commencing with Section 2025.010) of Title  
32 4 of Part 4 of, the Code of Civil Procedure. The consent relates to  
33 issues of jurisdiction and service and does not waive any defenses  
34 a taxpayer may otherwise have. The consent shall remain in effect  
35 so long as the water’s-edge election is in effect and shall be limited  
36 to providing that information necessary to review or to adjust  
37 income or deductions in a manner authorized under Sections 482,  
38 861, Subpart F of Part III of Subchapter N, or similar provisions  
39 of the Internal Revenue Code, together with the regulations adopted  
40 pursuant to those provisions, and for the conduct of an investigation

1 with respect to any unitary business in which the taxpayer may be  
2 involved.

3 (B) Agrees that for purposes of this article, dividends received  
4 by any corporation whose income and apportionment factors are  
5 taken into account pursuant to subdivision (a) from either of the  
6 following are functionally related dividends and shall be presumed  
7 to be business income:

8 (i) A corporation of which more than 50 percent of the voting  
9 stock is owned, directly or indirectly, by members of the unitary  
10 group and which is engaged in the same general line of business.

11 (ii) Any corporation that is either a significant source of supply  
12 for the unitary business or a significant purchaser of the output of  
13 the unitary business, or that sells a significant part of its output or  
14 obtains a significant part of its raw materials or input from the  
15 unitary business. “Significant,” as used in this subparagraph, means  
16 an amount of 15 percent or more of either input or output.

17 All other dividends shall be classified as business or nonbusiness  
18 income without regard to this subparagraph.

19 (3) The definitions and locations of property, payroll, and sales  
20 shall be determined under the laws and regulations that set forth  
21 the apportionment formulas used by the individual states to assign  
22 net income subject to taxes on or measured by net income in that  
23 state. If a state does not impose a tax on or measured by net income  
24 or does not have laws or regulations with respect to the assignment  
25 of property, payroll, and sales, the laws and regulations provided  
26 in Article 2 (commencing with Section 25120) shall apply.

27 Sales shall be considered to be made to a state only if the  
28 corporation making the sale may otherwise be subject to a tax on  
29 or measured by net income under the Constitution or laws of the  
30 United States, and shall not include sales made to a corporation  
31 whose income and apportionment factors are taken into account  
32 pursuant to subdivision (a) in determining the amount of income  
33 of the taxpayer derived from or attributable to sources within this  
34 state.

35 (4) “The United States” means the 50 states of the United States  
36 and the District of Columbia.

37 (c) All references in this part to income determined pursuant to  
38 Section 25101 shall also mean income determined pursuant to this  
39 section.

1 (d) (1) This section shall apply only to a taxable year of a  
2 taxpayer that determines its income derived from or attributable  
3 to sources within this state pursuant to a water's-edge election  
4 made prior to January 1, 2006, where that election may not be  
5 terminated for that taxable year without the consent of the  
6 Franchise Tax Board pursuant to paragraph (9) of subdivision (c)  
7 of Section 25113.

8 (2) This section shall be repealed on January 1, 2014.

9 ~~SEC. 4.~~

10 *SEC. 5.* Section 25110 of the Revenue and Taxation Code, as  
11 added by Section 2 of Chapter 22 of the Statutes of 2006, is  
12 amended to read:

13 25110. (a) Notwithstanding Section 25101, a qualified  
14 taxpayer, as defined in paragraph (2) of subdivision (b), that is  
15 subject to the tax imposed under this part, may elect to determine  
16 its income derived from or attributable to sources within this state  
17 pursuant to a water's-edge election in accordance with the  
18 provisions of this part, as modified by this article. A taxpayer, that  
19 makes a water's-edge election on or after January 1, 2006, shall  
20 take into account that portion of its own income and apportionment  
21 factors and the income and apportionment factors of its affiliated  
22 entities to the extent provided below:

23 (1) The entire income and apportionment factors of any of the  
24 following corporations:

25 (A) Domestic international sales corporations, as described in  
26 Sections 991 to 994, inclusive, of the Internal Revenue Code and  
27 foreign sales corporations as described in Sections 921 to 927,  
28 inclusive, of the Internal Revenue Code.

29 (B) Any corporation (other than a bank), regardless of the place  
30 where it is incorporated if the average of its property, payroll, and  
31 sales factors within the United States is 20 percent or more.

32 (C) Corporations that are incorporated in the United States,  
33 excluding corporations making an election pursuant to Sections  
34 931 to 936, inclusive, of the Internal Revenue Code.

35 (D) Export trade corporations, as described in Sections 970 to  
36 972, inclusive, of the Internal Revenue Code.

37 (2) With respect to a corporation that is not described in  
38 subparagraphs (A), (B), (C), and (D) of paragraph (1) the income  
39 and apportionment factors of that corporation to the extent of its  
40 income derived from or attributable to sources within the United

1 States and its factors assignable to a location within the United  
2 States in accordance with paragraph (3) of subdivision (b). Income  
3 of that corporation derived from or attributable to sources within  
4 the United States as determined by federal income tax laws shall  
5 be limited to, and determined from, the books of account  
6 maintained by the corporation with respect to its activities  
7 conducted within the United States.

8 (3) The income and apportionment factors of the corporations  
9 described in this subdivision shall be taken into account only to  
10 the extent that they would have been taken into account had no  
11 election under this section been made.

12 (b) For purposes of this article and Section 24411, all of the  
13 following definitions apply:

14 (1) An “affiliated corporation” means a corporation that is a  
15 member of a commonly controlled group as defined in Section  
16 25105.

17 (2) A “qualified taxpayer” means a corporation that does both  
18 of the following:

19 (A) Files with the state tax return, on which the water’s-edge  
20 election is made, a consent to the taking of depositions, at the time  
21 and place most reasonably convenient to all parties, from key  
22 domestic corporate individuals and to the acceptance of subpoenas  
23 duces tecum requiring reasonable production of documents to the  
24 Franchise Tax Board, as provided in Section 19504, by the State  
25 Board of Equalization, as provided in Section 5005 of Title 18 of  
26 the California Code of Regulations, or by the courts of this state,  
27 as provided in Chapter 2 (commencing with Section 1985) of Title  
28 3 of Part 4 of, and Chapter 9 (commencing with Section 2025.010)  
29 of Title 4 of Part 4 of, the Code of Civil Procedure. The consent  
30 relates to issues of jurisdiction and service and does not waive any  
31 defenses that a taxpayer may otherwise have. The consent shall  
32 remain in effect as long as the water’s-edge election is in effect,  
33 and shall be limited to providing that information necessary to  
34 review or adjust income or deductions in a manner authorized by  
35 Section 482, 861, Subpart F of Part III of Subchapter N, or similar  
36 provisions, of the Internal Revenue Code, together with the  
37 regulations adopted pursuant to those provisions, and for the  
38 conduct of an investigation with respect to any unitary business  
39 in which the taxpayer may be involved.

1 (B) Agrees that, for purposes of this article, dividends received  
2 by any corporation whose income and apportionment factors are  
3 taken into account pursuant to subdivision (a) from either of the  
4 following are functionally related dividends and shall be presumed  
5 to be business income:

6 (i) A corporation of which more than 50 percent of the voting  
7 stock is owned, directly or indirectly, by members of the unitary  
8 group and which is engaged in the same general line of business.

9 (ii) Any corporation that is either a significant source of supply  
10 for the unitary business or a significant purchaser of the output of  
11 the unitary business, or that sells a significant part of its output or  
12 obtains a significant part of its raw materials or input from the  
13 unitary business. “Significant,” as used in this subparagraph, means  
14 an amount of 15 percent or more of either input or output.

15 All other dividends shall be classified as business or nonbusiness  
16 income without regard to this subparagraph.

17 (3) The definitions and locations of property, payroll, and sales  
18 shall be determined under the laws and regulations that set forth  
19 the apportionment formulas used by the individual states to assign  
20 net income subject to taxes on, or measured by, net income in that  
21 state. If a state does not impose a tax on, or measured by, net  
22 income or does not have laws or regulations with respect to the  
23 assignment of property, payroll, and sales, the laws and regulations  
24 provided in Article 2 (commencing with Section 25120) shall  
25 apply.

26 Sales shall be considered to be made to a state only if the  
27 corporation making the sale may otherwise be subject to a tax on,  
28 or measured by, net income under the Constitution or laws of the  
29 United States, and shall not include sales made to a corporation  
30 whose income and apportionment factors are taken into account  
31 pursuant to subdivision (a) in determining the amount of income  
32 of the taxpayer derived from or attributable to sources within this  
33 state.

34 (4) “The United States” means the 50 states of the United States  
35 and the District of Columbia.

36 (c) All references in this part to income determined pursuant to  
37 Section 25101 shall also mean income determined pursuant to this  
38 section.

1     ~~SEC. 5.~~

2     SEC. 6. Section 25117 is added to the Revenue and Taxation  
3 Code, to read:

4     25117. (a) Except as otherwise provided, income taken into  
5 account by all affiliated entities whose income and apportionment  
6 factors are determined pursuant to Section 25110 shall include  
7 income described in Subpart F of the Internal Revenue Code  
8 (commencing with Section 951). The income that is taken into  
9 account shall for all purposes be treated as a dividend actually  
10 paid, and be subject to any provision or limitation related to the  
11 treatment of dividends, including, but not limited to, Sections  
12 24344, 24410, 24411, and 25106. The amount taken into account  
13 shall be treated as business or nonbusiness income as defined in  
14 Section 25120, as the case may be.

15     (b) In the application of Subpart F of the Internal Revenue Code:

16     (1) Exclusions from gross income under Section 959 of the  
17 Internal Revenue Code, relating to previously taxed income, shall  
18 apply, including amounts related to income previously taxed under  
19 federal law in years prior to the water’s-edge election.

20     (2) Federal adjustments to stock basis made pursuant to Section  
21 961 of the Internal Revenue Code, relating to adjustments to basis  
22 of stock in controlled foreign corporations and of other property,  
23 including adjustments made prior to the water’s-edge election,  
24 shall apply.

25     (3) The provisions of and any reference to Section 1248 of the  
26 Internal Revenue Code, relating to gain from certain sales or  
27 exchanges of stock in certain foreign corporations, shall not apply.

28     (4) Section 960 of the Internal Revenue Code, relating to special  
29 rules for foreign tax credit, shall not apply.

30     (5) Section 965 of the Internal Revenue Code, relating to  
31 temporary dividends received deduction, shall not apply.

32     (6) For purposes of this section, a federal election to exclude  
33 from Subpart F income the income described in Section 954(b)(4)  
34 of the Internal Revenue Code shall apply, including amounts related  
35 to income previously taxed under federal law in years prior to the  
36 water’s-edge election. No election under this subparagraph shall  
37 be allowed for state purposes unless a valid election was made for  
38 federal purposes.

39     (c) In the event that a water’s-edge election is terminated, for  
40 taxable years thereafter, the following rules apply:

1 (1) Subpart F of the Internal Revenue Code shall not apply,  
2 except as provided in this subdivision.

3 (2) Section 959 of the Internal Revenue Code, relating to  
4 exclusion from gross income of previously taxed earnings and  
5 profits, shall apply, but only to the extent attributable to income  
6 that has been taken into account pursuant to subdivision (a) during  
7 the period of the water's-edge election.

8 (3) Stock basis shall be determined as if this section did not  
9 apply, except that stock basis shall be:

10 (A) Increased by income taken into account pursuant to  
11 subdivision (a) during the period of the water's-edge election.

12 (B) Reduced by both the following:

13 (i) That portion of amounts excluded from income under  
14 paragraph (2) of subdivision (b) that are attributable to income  
15 taken into account pursuant to subdivision (a) during the period  
16 of the water's-edge election.

17 (ii) Amounts described by paragraph (2) of subdivision (c)  
18 excluded from income after termination of the water's-edge  
19 election.

20 (d) (1) Except as provided in paragraph (2), this section shall  
21 apply to taxable years beginning on or after January 1, 2010.

22 (2) In the event that two or more taxpayers subject to the same  
23 election under Section 25110 have different taxable years, this  
24 section shall apply as of the first day of the first taxable year of  
25 those respective taxpayers that begins on or after January 1, 2010.

26 (e) *If a distribution with respect to earnings and profits from a*  
27 *given year is eligible for treatment as previously taxed income and*  
28 *would, without regard to the application of this section, be eligible*  
29 *for deduction, exclusion, or elimination under another section*  
30 *under this part, if paid as a dividend, in no event shall the*  
31 *combined effect of those sections and the rules relating to*  
32 *previously taxed income result in a deduction, exclusion, or*  
33 *elimination greater than the amount of the earnings and profits*  
34 *that apply to the distribution.*

35 (f) *Subdivision (f) of Section 24425 shall not apply to amounts*  
36 *excluded from gross income pursuant to this section or to amounts*  
37 *deducted pursuant to paragraph (2) of subdivision (a) of Section*  
38 *24411.*

39 (e)

1     (g) The Franchise Tax Board may prescribe regulations as may  
2     be necessary and appropriate to carry out the purposes of this  
3     section.

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