

AMENDED IN SENATE JUNE 15, 2010

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2498

Introduced by Assembly Member Skinner

February 19, 2010

~~An act to amend Section 2840.2 of the Public Utilities Code, relating to energy.~~ *An act to amend Sections 5100 and 22250 of, and to add Section 6106.3 to, the Business and Professions Code, and to amend Sections 19116, 19164, 19164.5, 19178, 19504, and 19777 of, to add Sections 18407.5 and 19775 to, and to repeal and amend Sections 19751, 19752, 19753, 19754, 19755, and 19778 of, the Revenue and Taxation Code, relating to income taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2498, as amended, Skinner. ~~Combined heat and power systems.~~ *Income taxation: abusive tax avoidance transactions: voluntary compliance initiative.*

(1) Existing law requires the Franchise Tax Board to suspend the imposition of any interest, penalty, addition to the tax, or additional amounts for an individual who files a tax return on or before the due date, including extensions, if the board has not provided notice, with certain exceptions.

This bill, on or after January 1, 2011, would add interest, penalty, addition to tax, or additional amount relating to any abusive tax avoidance transaction, as defined, to the list of exceptions for which additional interest, penalties, and amounts may be charged.

(2) Existing law imposes various taxes and fees and certain penalties for underpayments, including an accuracy-related penalty and a reportable transaction accuracy-related penalty. Existing law establishes a reasonable cause exception for underpayments. Existing law also imposes penalties on a person who aids or assists, procures, or advises with respect to the preparation or presentation of any portion of a tax return and who knows or has reason to believe that the portion will be used in a material matter and that the portion, if so used, will result in an underpayment. Existing law sets the penalty in the amount of \$1,000 generally and \$10,000 in the case of corporate tax liability.

This bill would remove the reasonable cause exception for avoiding the underpayment penalties if the underpayment is a result of an abusive tax avoidance transaction for specified taxpayers. The bill would extend the penalty for aiding and abetting to a person who should have known that the portion would be used in connection with a material matter and who should have known that the portion prepared by them would result in an underpayment of tax liability unless the person fulfills specified requirements. The bill would also increase the penalties to \$10,000 and \$100,000, respectively.

(3) Under existing law, the Franchise Tax Board was required to develop and administer a voluntary compliance initiative, as specified, to be operative during the period of January 1, 2004, to April 15, 2004, for taxpayers to avoid specified penalties and tax liabilities for the use of abusive tax avoidance transactions if the taxpayer files an amended return and pays the tax due for transactions that occurred in taxable years beginning before January 1, 2003.

This bill would require a similar voluntary compliance initiative, to be operative during the period of January 1, 2011, and April 15, 2011, and relating to transactions that occurred in taxable years beginning before January 1, 2011.

(4) Under existing law, if a taxpayer has been contacted by the Franchise Tax Board regarding a specified reportable transaction, an amount equal to 100% of the interest payable is added to the tax amount.

This bill would make this provision, instead, applicable to abusive tax avoidance transactions, as defined, where the taxpayer has a deficiency. The bill would also reduce the amount of additional tax added for taxpayers who take specified actions.

(5) Existing law defines “reportable transaction” for purposes of income tax.

This bill would include in that definition a transaction of interest, as defined by the Franchise Tax Board.

(6) Under existing law various state agencies license and regulate professions, including accountants, attorneys, and tax preparers.

This bill would make a penalty imposed by the Franchise Tax Board for promoting abusive tax shelters and aiding and abetting an understatement of tax liability grounds for revocation, suspension, or refusal to renew a license of a registered public accounting firm, any person associated with a public accounting firm, or a holder of a permit, certificate, or license to practice in the state.

This bill would make a penalty imposed by the Franchise Tax Board for promoting abusive tax shelters and aiding and abetting understatement of tax liability grounds for disbarment or suspension of an attorney.

The bill would prohibit a tax preparer upon whom a penalty is imposed by the Franchise Tax Board for promoting abusive tax shelters and aiding and abetting understatement of tax liability from conducting business for 5 years from the date the penalty is finalized.

~~The existing Waste Heat and Carbon Emissions Reduction Act authorizes the Public Utilities Commission to require an electrical corporation to purchase excess electricity, as defined, from an eligible customer, as defined, of the electrical corporation that is delivered by a combined heat and power system, as defined, that complies with the sizing, energy efficiency, and air pollution control requirements of the act.~~

~~This bill would redefine combined heat and power system and greenhouse gas or greenhouse gases for purposes of the act.~~

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

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

- 1 *SECTION 1. Section 5100 of the Business and Professions*
- 2 *Code is amended to read:*
- 3 *5100. After notice and hearing the board may revoke, suspend,*
- 4 *or refuse to renew ~~any~~ a permit or certificate granted under Article*
- 5 *4 (commencing with Section 5070) and Article 5 (commencing*
- 6 *with Section 5080), or may censure the holder of that permit or*
- 7 *certificate for unprofessional conduct that includes, but is not*
- 8 *limited to, one or any combination of the following causes:*

- 1 (a) Conviction of ~~any~~ a crime substantially related to the
2 qualifications, functions, and duties of a certified public accountant
3 or a public accountant.
- 4 (b) A violation of Section 478, 498, or 499 dealing with false
5 statements or omissions in the application for a license, in obtaining
6 a certificate as a certified public accountant, in obtaining
7 registration under this chapter, or in obtaining a permit to practice
8 public accountancy under this chapter.
- 9 (c) Dishonesty, fraud, gross negligence, or repeated negligent
10 acts committed in the same or different engagements, for the same
11 or different clients, or ~~any~~ a combination of engagements or clients,
12 each resulting in a violation of applicable professional standards
13 that indicate a lack of competency in the practice of public
14 accountancy or in the performance of the bookkeeping operations
15 described in Section 5052.
- 16 (d) Cancellation, revocation, or suspension of a certificate or
17 other authority to practice as a certified public accountant or a
18 public accountant, refusal to renew the certificate or other authority
19 to practice as a certified public accountant or a public accountant,
20 or any other discipline by any other state or foreign country.
- 21 (e) Violation of Section 5097.
- 22 (f) Violation of Section 5120.
- 23 (g) Willful violation of this chapter or any rule or regulation
24 promulgated by the board under the authority granted under this
25 chapter.
- 26 (h) Suspension or revocation of the right to practice before any
27 governmental body or agency.
- 28 (i) Fiscal dishonesty or breach of fiduciary responsibility of any
29 kind.
- 30 (j) Knowing preparation, publication, or dissemination of false,
31 fraudulent, or materially misleading financial statements, reports,
32 or information.
- 33 (k) Embezzlement, theft, misappropriation of funds or property,
34 or obtaining money, property, or other valuable consideration by
35 fraudulent means or false pretenses.
- 36 (l) The imposition of any discipline, penalty, or sanction on a
37 registered public accounting firm or any associated person of such
38 firm, or both, or on any other holder of a permit, certificate, license,
39 or other authority to practice in this state, by the Public Company
40 Accounting Oversight Board or the United States Securities and

1 Exchange Commission, or their designees under the
2 Sarbanes-Oxley Act of 2002 or other federal legislation.

3 (m) Unlawfully engaging in the practice of public accountancy
4 in another state.

5 (n) *The imposition, by the Franchise Tax Board, of the penalty*
6 *pursuant to Section 19177 or 19178 of the Revenue and Taxation*
7 *Code that has been assessed and finalized in accordance with*
8 *subdivision (c) of Section 19180 of the Revenue and Taxation Code*
9 *on a registered public accounting firm, or any other holder of a*
10 *permit, certificate, license, or other authority to practice in this*
11 *state.*

12 *SEC. 2. Section 6106.3 is added to the Business and Professions*
13 *Code, to read:*

14 *6106.3. It shall constitute cause for disbarment or suspension*
15 *for an attorney to engage in conduct that results in the imposition*
16 *of the penalty pursuant to Section 19177 or 19178 of the Revenue*
17 *and Taxation Code, when that penalty has been assessed and*
18 *finalized in accordance with subdivision (c) of Section 19180 of*
19 *the Revenue and Taxation Code.*

20 *SEC. 3. Section 22250 of the Business and Professions Code*
21 *is amended to read:*

22 22250. (a) A tax preparer shall maintain a bond issued by a
23 surety company admitted to do business in this state for each
24 individual preparing tax returns for another person. The principal
25 sum of the bond shall be five thousand dollars (\$5,000). A tax
26 preparer subject to this section shall provide to the surety company
27 proof that the individual is at least 18 years of age before a surety
28 bond may be issued.

29 (b) The bond required by this section shall be in favor of, and
30 payable to, the people of the State of California and shall be for
31 the benefit of any person or persons damaged by any fraud,
32 dishonesty, misstatement, misrepresentation, deceit, or any
33 unlawful acts or omissions by the tax preparer, or the tax preparers
34 employed or associated with it to provide tax preparation services.

35 (c) The tax preparer filing the bond shall identify all tax
36 preparers employed or associated with the tax preparer and shall
37 provide for each employee or associate the evidence required by
38 subdivision (a) to the surety company. A tax preparer employed
39 or associated with a tax preparer shall be covered by the bond of
40 the tax preparer with which he or she is employed or associated.

1 However, in no event shall the total bond required for ~~any~~ a single
2 tax preparer and the tax preparers employed or associated with it
3 be required to exceed one hundred twenty-five thousand dollars
4 (\$125,000). The aggregate liability of the surety to ~~any~~ and all
5 persons regardless of the number of claims against the bond or the
6 number of years the bond remains in force shall not exceed five
7 thousand dollars (\$5,000) for any one tax preparer. ~~Any revision~~
8 *Revision* of the bond amount shall not be cumulative. The liability
9 of the surety on the bond shall not include payment of ~~any~~ civil
10 penalties, fines, attorneys' fees, or any other cost provided by
11 statute or regulation.

12 (d) The tax preparer shall file an amendment to the bond within
13 30 days of a change in information contained in the bond, including
14 a change in the tax preparers employed or associated with the tax
15 preparer.

16 (e) (1) A tax preparer may not conduct business without having
17 a current surety bond in the amount prescribed by this section.

18 (2) Thirty days prior to the cancellation or termination of ~~any~~
19 a surety bond required by this section, the surety shall send a
20 written notice of that cancellation or termination to the tax preparer
21 and the California Tax Education Council, identifying the bond
22 and the date of cancellation or termination.

23 (3) If a tax preparer fails to obtain a new bond by the effective
24 date of the cancellation or termination of the former bond, the tax
25 preparer shall cease to conduct business until that time as a new
26 surety bond is obtained.

27 (f) Notwithstanding Section 995.710 of the Code of Civil
28 Procedure, a tax preparer may not make a deposit in lieu of bond.

29 (g) A tax preparer shall furnish evidence of the bond required
30 by this section upon the request of any state, federal agency or any
31 law enforcement agency or the California Tax Education Council.

32 (h) *A tax preparer for which the penalty pursuant to Section*
33 *19177 or 19178 of the Revenue and Taxation Code has been*
34 *assessed and finalized pursuant to subdivision (c) of Section 19180*
35 *of the Revenue and Taxation Code is prohibited from conducting*
36 *the business subject to regulation pursuant to this chapter for five*
37 *years from the date the penalty is finalized.*

38 *SEC. 4. Section 18407.5 is added to the Revenue and Taxation*
39 *Code, to read:*

1 18407.5. (a) The term “reportable transaction,” as defined
2 in paragraph (3) of subdivision (a) of Section 18407, shall also
3 include a transaction of a type that the Secretary of the Treasury
4 under Section 6011 of the Internal Revenue Code for federal
5 income tax purposes or the Franchise Tax Board under this section
6 for California income or franchise tax purposes determines is a
7 transaction of interest, and shall be reported on the return or
8 statement required to be made.

9 (b) A transaction of interest is a transaction that is the same or
10 substantially similar to one of the types of transactions that the
11 Franchise Tax Board has identified by notice or regulation as a
12 transaction of interest. Transactions of interest identified and
13 published to the preceding sentence shall also be published on the
14 Franchise Tax Board’s Internet Web site.

15 (c) This section shall apply to transactions of interest published
16 on or after the effective date of the act adding this section and only
17 with respect to taxable years beginning on or after that date.

18 SEC. 5. Section 19116 of the Revenue and Taxation Code, as
19 amended by Section 43 of Chapter 14 of the Statutes of 2010, is
20 amended to read:

21 19116. (a) In the case of an individual who files a return of
22 tax imposed under Part 10 (commencing with Section 17001) for
23 a taxable year on or before the due date for the return, including
24 extensions, if the Franchise Tax Board does not provide a notice
25 to the taxpayer specifically stating the taxpayer’s liability and the
26 basis of the liability before the close of the notification period, the
27 Franchise Tax Board shall suspend the imposition of any interest,
28 penalty, addition to tax, or additional amount with respect to any
29 failure relating to the return which is computed by reference to the
30 period of time the failure continues to exist and which is properly
31 allocable to the suspension period.

32 (b) For purposes of this section:

33 (1) Except as provided in subdivision (e), “notification period”
34 means the 36-month period beginning on the later of either of the
35 following:

36 (A) The date on which the return is filed.

37 (B) The due date of the return without regard to extensions.

38 (2) “Suspension period” means the period beginning on the day
39 after the close of the notification period and ending on the date

1 which is 15 days after the date on which notice described in
2 subdivision (a) is provided by the Franchise Tax Board.

3 (3) If, after the return for a taxable year is filed, the taxpayer
4 provides to the Franchise Tax Board one or more signed written
5 documents showing that the taxpayer owes an additional amount
6 of tax for the taxable year, paragraph (1) shall be applied by
7 substituting the date the last of the documents was provided for
8 the date on which the return was filed.

9 (c) This section shall be applied separately with respect to each
10 item or adjustment.

11 (d) This section shall not apply to any of the following:

12 (1) Any penalty imposed by Section 19131.

13 (2) Any penalty imposed by Section 19132.

14 (3) Any interest, penalty, addition to tax, or additional amount
15 involving fraud.

16 (4) Any interest, penalty, addition to tax, or additional amount
17 with respect to any tax liability shown on the return.

18 (5) Any criminal penalty.

19 (6) Any interest, penalty, addition to tax, or additional amount
20 with respect to any gross misstatement.

21 (7) Any interest, penalty, addition to tax, or additional amount
22 relating to any reportable transaction with respect to which the
23 requirements of Section 6664(d)(2)(A) of the Internal Revenue
24 Code are not met, and any listed transaction, as defined in Section
25 6707A(c) of the Internal Revenue Code.

26 (8) *Any interest, penalty, addition to tax, or additional amount*
27 *relating to an abusive tax avoidance transaction, as defined in*
28 *Section 19777, as amended by the act adding this paragraph.*

29 (e) For taxpayers required by subdivision (a) of Section 18622
30 to report a change or correction by the Commissioner of Internal
31 Revenue or other officer of the United States or other competent
32 authority the following rules shall apply:

33 (1) The notification period under subdivision (a) shall be either
34 of the following:

35 (A) One year from the date the notice required by Section 18622
36 is filed with the Franchise Tax Board by the taxpayer or the Internal
37 Revenue Service, if the taxpayer or the Internal Revenue Service
38 reports that change or correction within six months after the final
39 federal determination.

1 (B) Two years from the date when the notice required by Section
2 18622 is filed with the Franchise Tax Board by the taxpayer or the
3 Internal Revenue Service, if after the six-month period required
4 in Section 18622, a taxpayer or the Internal Revenue Service
5 reports a change or correction.

6 (2) The suspension period under subdivision (a) shall mean the
7 period beginning on the day after the close of the notification
8 period under paragraph (1) and ending on the date which is 15
9 days after the date on which notice described in subdivision (a) is
10 provided by the Franchise Tax Board.

11 (f) For notices sent after January 1, 2004, this section does not
12 apply to taxpayers with taxable income greater than two hundred
13 thousand dollars (\$200,000) that have been contacted by the
14 Franchise Tax Board regarding the use of a potentially abusive tax
15 shelter ~~(within the meaning of Section 19777), as defined by~~
16 *Section 19777, as added by Chapter 656 of the Statutes of 2003*
17 *and amended by Section 331 of Chapter 183 of the Statutes of*
18 *2004.*

19 (g) This section shall apply to taxable years ending after October
20 10, 1999.

21 (h) The amendments made to this section by Chapter 691 of the
22 Statutes of 2005 shall apply to notices sent after January 1, 2005.

23 (i) (1) The amendments made to paragraph (1) of subdivision
24 (b) ~~by the act adding this subdivision~~ *Chapter 14 of the Statutes*
25 *of 2010* shall apply to notices provided after January 1, 2011.

26 (2) Paragraph (3) of subdivision (b), as added by ~~the act adding~~
27 ~~this subdivision~~ *Chapter 14 of the Statutes of 2010*, shall apply to
28 documents provided on or after January 1, 2011.

29 (3) *Paragraph (8) of subdivision (d), as added by the act adding*
30 *this paragraph, shall apply to notices provided, or amended returns*
31 *filed, on or after January 1, 2011.*

32 *SEC. 6. Section 19164 of the Revenue and Taxation Code, as*
33 *amended by Section 46 of Chapter 14 of the Statutes of 2010, is*
34 *amended to read:*

35 19164. (a) (1) (A) An accuracy-related penalty shall be
36 imposed under this part and shall be determined in accordance
37 with Section 6662 of the Internal Revenue Code, relating to
38 imposition of accuracy-related penalty on underpayments, *as*
39 *amended by Section 1409(b) of the Health Care and Education*

1 *Reconciliation Act of 2010 (Public Law 111-152)*, except as
2 otherwise provided.

3 (B) (i) Except for understatements relating to reportable
4 transactions to which Section 19164.5 applies, in the case of any
5 proposed deficiency assessment issued after the last date of the
6 amnesty period specified in Chapter 9.1 (commencing with Section
7 19730) for any taxable year beginning prior to January 1, 2003,
8 the penalty specified in Section 6662(a) of the Internal Revenue
9 Code shall be computed by substituting “40 percent” for “20
10 percent.”

11 (ii) Clause (i) shall not apply to any taxable year of a taxpayer
12 beginning prior to January 1, 2003, if, as of the start date of the
13 amnesty program period specified in Section 19731, the taxpayer
14 is then under audit by the Franchise Tax Board, or the taxpayer
15 has filed a protest under Section 19041, or the taxpayer has filed
16 an appeal under Section 19045, or the taxpayer is engaged in
17 settlement negotiations under Section 19442, or the taxpayer has
18 a pending judicial proceeding in any court of this state or in any
19 federal court relating to the tax liability of the taxpayer for that
20 taxable year.

21 (2) With respect to corporations, this subdivision shall apply to
22 all of the following:

23 (A) All taxable years beginning on or after January 1, 1990.

24 (B) Any other taxable year for which an assessment is made
25 after July 16, 1991.

26 (C) For purposes of this section, references in Section 6662(e)
27 of the Internal Revenue Code and the regulations thereunder,
28 relating to treatment of an affiliated group that files a consolidated
29 federal return, are modified to apply to those entities required to
30 be included in a combined report under Section 25101 or 25110.
31 For these purposes, entities included in a combined report pursuant
32 to paragraph (4) or (6) of subdivision (a) of Section 25110 shall
33 be considered only to the extent required to be included in the
34 combined report.

35 (3) Section 6662(d)(1)(B) of the Internal Revenue Code is
36 modified to provide that in the case of a corporation, other than
37 an “S” corporation, there is a substantial understatement of tax for
38 any taxable year if the amount of the understatement for the taxable
39 year exceeds the lesser of:

1 (A) Ten percent of the tax required to be shown on the return
2 for the taxable year (or, if greater, two thousand five hundred
3 dollars (\$2,500)).

4 (B) Five million dollars (\$5,000,000).

5 (4) Section 6662(d)(2)(A) of the Internal Revenue Code is
6 modified to additionally provide that the excess determined under
7 Section 6662(d)(2)(A) of the Internal Revenue Code shall be
8 determined without regard to items to which Section 19164.5
9 applies and without regard to items with respect to which a penalty
10 is imposed by Section 19774.

11 (5) The provisions of Sections 6662(e)(1) and 6662(h)(2) of the
12 Internal Revenue Code shall apply to returns filed on or after
13 January 1, 2010.

14 (b) For purposes of Section 6662(d) of the Internal Revenue
15 Code, Section 6664 of the Internal Revenue Code, Section
16 6694(a)(1) of the Internal Revenue Code, and this part, the
17 Franchise Tax Board may prescribe a list of positions for which
18 the Franchise Tax Board believes there is not substantial authority
19 or there is no reasonable belief that the tax treatment is more likely
20 than not the proper tax treatment. That list (and any revisions
21 thereof) shall be published through the use of Franchise Tax Board
22 Notices or other published positions. In addition, the “listed
23 transactions” identified and published pursuant to the preceding
24 sentence shall be published on the Web site of the Franchise Tax
25 Board.

26 (c) A fraud penalty shall be imposed under this part and shall
27 be determined in accordance with Section 6663 of the Internal
28 Revenue Code, relating to imposition of fraud penalty, except as
29 otherwise provided.

30 (d) (1) Section 6664 of the Internal Revenue Code, relating to
31 definitions and special rules, shall apply, except as otherwise
32 provided.

33 (2) *Section 6664(c) of the Internal Revenue Code, relating to*
34 *reasonable cause exception for underpayments, does not apply to*
35 *an underpayment attributable to an abusive tax avoidance*
36 *transaction, as defined in Section 19777, as amended by the act*
37 *adding this paragraph, in one or more of the following situations:*

38 (A) *The taxpayer was eligible to participate in the voluntary*
39 *compliance initiative as described in Chapter 9.5 (commencing*

1 with Section 19751) of Part 10.2, as amended by the act adding
 2 this paragraph.

3 (B) The taxpayer failed to provide, upon notice and demand, a
 4 true, accurate, and complete copy of an opinion letter, legal
 5 memorandum, or other document provided to the taxpayer that
 6 was related to the transactions resulting in the understatement.

7 (C) The taxpayer failed to meet the requirements of Section
 8 18622 with respect to the abusive tax avoidance transaction.

9 ~~(2)~~

10 (3) Section 6664(c)(2) of the Internal Revenue Code shall apply
 11 to returns filed on or after January 1, 2010.

12 ~~(3)~~

13 (4) Section 6664(c)(3) of the Internal Revenue Code shall apply
 14 to appraisals prepared with respect to returns or submissions filed
 15 on or after January 1, 2010.

16 (e) Section 6665 of the Internal Revenue Code, relating to
 17 applicable rules, shall apply, except as otherwise provided.

18 SEC. 7. Section 19164.5 of the Revenue and Taxation Code is
 19 amended to read:

20 19164.5. (a) A reportable transaction accuracy-related penalty
 21 shall be imposed under this part and shall be determined in
 22 accordance with Section 6662A of the Internal Revenue Code,
 23 relating to the imposition of an accuracy-related penalty on
 24 understatements with respect to reportable transactions, except as
 25 otherwise provided.

26 ~~(b) (1) The reportable transaction understatement, as determined~~
 27 ~~under Section 6662A(b) of the Internal Revenue Code, is modified~~
 28 ~~to not include amounts to which the penalty of Section 19774 is~~
 29 ~~imposed.~~

30 ~~(2)~~

31 (b) (1) Section 6662A(b)(1)(A)(ii) of the Internal Revenue
 32 Code is modified to substitute the phrase “Sections 17041, 23151,
 33 23181, or 23501” for “section 1 (section 11 in the case of a
 34 taxpayer which is a corporation).”

35 ~~(3)~~

36 (2) Section 6662A(b)(1)(B) of the Internal Revenue Code is
 37 modified to substitute the phrase “Part 10 (commencing with
 38 Section 17001) or Part 11 (commencing with Section 23001)” for
 39 “subtitle A.”

40 ~~(4)~~

1 (3) Section 6662A(b)(2)(B) of the Internal Revenue Code is
2 modified to substitute the phrase “income or franchise tax” for
3 “Federal income tax.”

4 ~~(5)~~

5 (4) Section 6662A(e)(1) of the Internal Revenue Code is
6 modified to additionally provide that the amount of the
7 understatement is increased by noneconomic transaction
8 understatements, as defined in Section 19774.

9 ~~(e) Section 6662A(e)(2) of the Internal Revenue Code is~~
10 ~~modified to additionally provide that Section 6662A of the Internal~~
11 ~~Revenue Code does not apply to amounts to which a penalty is~~
12 ~~imposed under Section 19774.~~

13 (c) Section 6664(d) of the Internal Revenue Code, relating to
14 reasonable cause exception for reportable transactions
15 understatements, does not apply to any reportable transaction
16 understatement in the following situations:

17 (1) The taxpayer was eligible to participate in the voluntary
18 compliance initiative as described in Chapter 9.5 (commencing
19 with Section 19751) of Part 10.2, as amended by the act adding
20 this paragraph.

21 (2) The taxpayer failed to provide, upon notice and demand, a
22 true, accurate, and complete copy of an opinion letter, legal
23 memorandum, or other document provided to the taxpayer that
24 was related to the transactions resulting in the understatement.

25 (3) The taxpayer failed to meet the requirements of Section
26 18622 with respect to the abusive tax avoidance transaction.

27 (d) The provisions of subdivision (f) of Section 19772, relating
28 to the rescission of the penalty by the Chief Counsel, shall apply
29 to any penalty imposed by this section.

30 SEC. 8. Section 19178 of the Revenue and Taxation Code is
31 amended to read:

32 19178. (a) A penalty shall be imposed for aiding and abetting
33 understatement of tax liability. The penalty shall be determined in
34 accordance with Section 6701 of the Internal Revenue Code, unless
35 otherwise provided.

36 (b) For purposes of this section:

37 (1) The phrase “or should have known” shall be substituted for
38 the phrase “or has reason to believe” in Section 6701(a)(2) of the
39 Internal Revenue Code.

1 (2) The phrase “should have known” shall be substituted for
2 the word “knows” in Section 6701(a)(3) of the Internal Revenue
3 Code.

4 (3) Section 6701(b)(1) of the Internal Revenue Code shall be
5 modified by substituting “\$10,000” for “\$1,000.”

6 (4) Section 6701(b)(2) of the Internal Revenue Code shall be
7 modified by substituting “\$100,000” for “\$10,000.”

8 (c) Sections 6701(f)(2) and 6701(f)(3) of the Internal Revenue
9 Code, relating to coordination of penalties, shall not apply.

10 (d) This section does not apply to understatements of any
11 taxpayer who properly fulfills the requirements of Section 18648
12 no later than April 15, 2011.

13 (e) The amendments made by the act adding this subdivision
14 apply to conduct occurring on or after the effective date of that
15 act.

16 SEC. 9. Section 19504 of the Revenue and Taxation Code is
17 amended to read:

18 19504. (a) The Franchise Tax Board, for the purpose of
19 administering its duties under this part, including ascertaining the
20 correctness of any return; making a return where none has been
21 made; determining or collecting the liability of any person in
22 respect of any liability imposed by Part 10 (commencing with
23 Section 17001), Part 11 (commencing with Section 23001), or this
24 part (or the liability at law or in equity of any transferee in respect
25 of that liability); shall have the power to require by demand, that
26 an entity of any kind including, but not limited to, employers,
27 persons, or financial institutions provide information or make
28 available for examination or copying at a specified time and place,
29 or both, any book, papers, or other data which may be relevant to
30 that purpose. Any demand to a financial institution shall comply
31 with the California Right to Financial Privacy Act set forth in
32 Chapter 20 (commencing with Section 7460) of Division 7 of Title
33 1 of the Government Code. Information that may be required upon
34 demand includes, but is not limited to, any of the following:

35 (1) Addresses and telephone numbers of persons designated by
36 the Franchise Tax Board.

37 (2) Information contained on Federal Form W-2 (Wage and Tax
38 Statement), Federal Form W-4 (Employee’s Withholding
39 Allowance Certificate), or State Form DE-4 (Employee’s
40 Withholding Allowance Certificate).

1 (b) The Franchise Tax Board may require the attendance of the
2 taxpayer or of any other person having knowledge in the premises
3 and may take testimony and require material proof for its
4 information and administer oaths to carry out this part.

5 (c) (1) The Franchise Tax Board may issue subpoenas or
6 subpoenas duces tecum, which subpoenas must be signed by any
7 member of the Franchise Tax Board, and may be served on any
8 person for any purpose.

9 (2) For taxpayers that have been contacted by the Franchise Tax
10 Board regarding the use of a ~~potentially abusive tax shelter (within~~
11 ~~the meaning of Section 19777)~~ *an abusive tax avoidance*
12 *transaction, as defined in Section 19777*, the subpoena may be
13 signed by any member of the Franchise Tax Board, the Executive
14 Officer of the Franchise Tax Board, or any designee.

15 (d) Obedience to subpoenas or subpoenas duces tecum issued
16 in accordance with this section may be enforced by application to
17 the superior court as set forth in Article 2 (commencing with
18 Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of
19 the Government Code.

20 (e) When examining a return, the Franchise Tax Board shall
21 not use financial status or economic reality examination techniques
22 to determine the existence of unreported income of any taxpayer
23 unless the Franchise Tax Board has a reasonable indication that
24 there is a likelihood of unreported income. This subdivision applies
25 to any examination beginning on or after October 10, 1999.

26 (f) *The amendments made to this section by the act adding this*
27 *subdivision shall apply to subpoenas issued on or after the effective*
28 *date of the act adding this subdivision.*

29 *SEC. 10. Section 19751 of the Revenue and Taxation Code, as*
30 *added by Section 13 of Chapter 654 of the Statutes of 2003, is*
31 *repealed.*

32 ~~19751. (a) The Franchise Tax Board shall develop and~~
33 ~~administer a voluntary compliance initiative for taxpayers subject~~
34 ~~to Part 10 (commencing with Section 17001) and Part 11~~
35 ~~(commencing with Section 23001), as provided in this chapter.~~

36 ~~(b) The voluntary compliance initiative shall be conducted~~
37 ~~during the period from January 1, 2004, to April 15, 2004,~~
38 ~~inclusive, pursuant to Section 19754. This initiative shall apply to~~
39 ~~tax liabilities attributable to the use of abusive tax avoidance~~
40 ~~transactions for taxable years beginning before January 1, 2003.~~

1 ~~(e) The Franchise Tax Board shall issue forms and instructions~~
2 ~~and may take any other actions necessary, including the use of~~
3 ~~closing agreements, to implement this chapter.~~

4 ~~(d) The Franchise Tax Board shall publicize the voluntary~~
5 ~~compliance initiative so as to maximize public awareness of and~~
6 ~~participation in the initiative. The Franchise Tax Board shall~~
7 ~~coordinate to the highest degree possible its publicity efforts and~~
8 ~~other actions taken in implementing this chapter.~~

9 ~~(e) Any correspondence mailed by the Franchise Tax Board to~~
10 ~~a taxpayer at the taxpayer's last known address outlining the~~
11 ~~voluntary compliance initiative under this chapter constitutes~~
12 ~~"contact" within the meaning of Treasury Regulation Section~~
13 ~~1.6664-2(e)(3), relating to qualified amended returns, and~~
14 ~~paragraph (3) of subdivision (e) of Section 19773 and Section~~
15 ~~19777, regarding increased interest rate.~~

16 *SEC. 11. Section 19751 of the Revenue and Taxation Code, as*
17 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*
18 *amended to read:*

19 19751. (a) The Franchise Tax Board shall develop and
20 administer a voluntary compliance initiative for taxpayers subject
21 to Part 10 (commencing with Section 17001) and Part 11
22 (commencing with Section 23001), as provided in this chapter.

23 (b) The voluntary compliance initiative shall be conducted
24 during the period from January 1, ~~2004~~ 2011, to April 15, ~~2004~~
25 2011, inclusive, pursuant to Section 19754. This initiative shall
26 apply to tax liabilities attributable to the use of abusive tax
27 avoidance transactions for taxable years beginning before January
28 1, ~~2003~~ 2011.

29 (c) The Franchise Tax Board shall issue forms and instructions
30 and may take any other actions necessary, including the use of
31 closing agreements, to implement this chapter.

32 (d) The Franchise Tax Board shall publicize the voluntary
33 compliance initiative so as to maximize public awareness of and
34 participation in the initiative. The Franchise Tax Board shall
35 coordinate to the highest degree possible its publicity efforts and
36 other actions taken in implementing this chapter.

37 (e) Any correspondence mailed by the Franchise Tax Board to
38 a taxpayer at the taxpayer's last known address outlining the
39 voluntary compliance initiative under this chapter constitutes
40 "contact" within the meaning of Treasury Regulation Section

1 1.6664-2(c)(3), relating to qualified amended returns, and
2 paragraph (3) of subdivision (e) of Section 19773 and Section
3 19777, regarding increased interest rate (2) of subdivision (c) of
4 Section 19504, and Sections 19164.5 and 19777.

5 *SEC. 12. Section 19752 of the Revenue and Taxation Code, as*
6 *added by Section 13 of Chapter 654 of the Statutes of 2003, is*
7 *repealed.*

8 19752. Any taxpayer who meets the requirements of Section
9 19754 may elect the application of either, but not both, of the
10 following:

11 (a) Voluntary compliance without appeal. If this option is
12 elected, then each of the following shall apply:

13 (1) The Franchise Tax Board shall waive or abate all penalties
14 imposed by this part, for all taxable years where the taxpayer elects
15 to participate in the initiative, as a result of the underreporting of
16 tax liabilities attributable to the use of abusive tax avoidance
17 transactions.

18 (2) Except as provided in Section 19753, no criminal action
19 shall be brought against the taxpayer for the taxable years with
20 respect to issues for which the taxpayer voluntarily complies under
21 this chapter.

22 (3) No penalty may be waived or abated under this chapter if
23 the penalty imposed is attributable to an assessment of taxes that
24 became final prior to December 31, 2003.

25 (4) Notwithstanding Chapter 6 (commencing with Section
26 19301) of this part, the taxpayer may not file a claim for refund
27 for the amounts paid in connection with abusive tax avoidance
28 transactions under this chapter.

29 (b) Voluntary compliance with appeal. If this option is elected,
30 then each of the following shall apply:

31 (1) The Franchise Tax Board shall waive or abate all penalties,
32 except the accuracy-related penalty under Section 19164 (as in
33 effect immediately before enactment of the act adding this section),
34 imposed by this part, for each of the taxable years for which the
35 taxpayer elects to participate in the initiative, that are owed as a
36 result of the underreporting of tax liabilities attributable to the use
37 of abusive tax avoidance transactions.

38 (2) Except as provided in Section 19753, no criminal action
39 may be brought against the taxpayer for each of the taxable years
40 for which the taxpayer voluntarily complies under this section.

1 ~~(3) No penalty may be waived under this chapter if the penalty~~
2 ~~imposed is attributable to an assessment of taxes that became due~~
3 ~~and payable prior to December 31, 2003.~~
4 ~~(4) The taxpayer may file a claim for refund under Chapter 6~~
5 ~~(commencing with Section 19301) of this part. Notwithstanding~~
6 ~~Section 19331, the taxpayer may not file an appeal to the board~~
7 ~~until after either of the following:~~
8 ~~(A) The date the Franchise Tax Board takes action on the claim~~
9 ~~for refund for the tax year to which this chapter applies.~~
10 ~~(B) The later of either of the following dates:~~
11 ~~(i) The date that is 180 days after the date of a final~~
12 ~~determination by the Internal Revenue Service with respect to the~~
13 ~~transaction or transactions to which this chapter applies.~~
14 ~~(ii) The date that is four years after the date the claim for refund~~
15 ~~was filed or one year after full payment of all tax, including penalty~~
16 ~~and interest was made, whichever date is later.~~
17 ~~(5) The taxpayer shall be subject to the accuracy-related penalty~~
18 ~~under Section 19164.~~
19 ~~(A) The penalty may be assessed:~~
20 ~~(i) When the Franchise Tax Board takes action on the claim for~~
21 ~~refund.~~
22 ~~(ii) When a federal determination becomes final for the same~~
23 ~~issue, in which case the penalty shall be assessed (and may not be~~
24 ~~abated) if the penalty was assessed at the federal level.~~
25 ~~(B) In determining the amount of the underpayment of tax,~~
26 ~~Treasury Regulation Section 1.6664-2(c)(2), as promulgated under~~
27 ~~Section 6664 of the Internal Revenue Code, relating to qualified~~
28 ~~amended returns, shall not apply. The amount of the underpayment~~
29 ~~is the difference between the amount of tax shown on the original~~
30 ~~return and the correct amount of tax for the taxable year. The~~
31 ~~underpayment amount shall not be less than the amount of the~~
32 ~~claim for refund filed by the taxpayer under paragraph (4) that was~~
33 ~~denied.~~
34 ~~(C) The penalty is due and payable upon notice and demand~~
35 ~~pursuant to Section 19049. Only after the taxpayer has paid all~~
36 ~~amounts due, including the penalty, and the claim is denied in~~
37 ~~whole or in part, may the taxpayer file an appeal under Chapter 6~~
38 ~~(commencing with Section 19301), of this part in conjunction with~~
39 ~~the appeal filed under paragraph (4).~~

1 ~~(e) A taxpayer's election under this section shall be made for~~
2 ~~all taxable years of the taxpayer governed by this chapter. A~~
3 ~~separate election for each taxable year governed by this chapter is~~
4 ~~not allowed.~~

5 *SEC. 13. Section 19752 of the Revenue and Taxation Code, as*
6 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*
7 *amended to read:*

8 19752. (a) Any taxpayer who meets the requirements of
9 Section 19754 may elect the application of either, but not both, of
10 the following: *participate in the voluntary compliance initiative.*

11 ~~(a) Voluntary compliance without appeal. If this option is~~
12 ~~elected, then each of the following shall apply:~~

13 *(b) For taxpayers participating in the voluntary compliance*
14 *initiative, all of the following shall apply:*

15 (1) The Franchise Tax Board shall waive or abate all penalties
16 imposed by this part, for all taxable years where the taxpayer elects
17 to participate in the initiative, as a result of the underreporting of
18 tax liabilities attributable to the use of abusive tax avoidance
19 transactions.

20 (2) Except as provided in Section 19753, no criminal action
21 shall be brought against the taxpayer for the taxable years with
22 respect to issues for which the taxpayer voluntarily complies under
23 this chapter.

24 (3) No penalty may be waived or abated under this chapter if
25 the penalty imposed is attributable to an assessment of taxes that
26 became final prior to December 31, ~~2003~~ 2010.

27 (4) Notwithstanding Chapter 6 (commencing with Section
28 19301) of this part, the taxpayer may not file a claim for refund
29 for the amounts paid in connection with abusive tax avoidance
30 transactions under this chapter.

31 ~~(b) Voluntary compliance with appeal. If this option is elected,~~
32 ~~then each of the following shall apply:~~

33 ~~(1) The Franchise Tax Board shall waive or abate all penalties,~~
34 ~~except the accuracy related penalty under Section 19164 (as in~~
35 ~~effect immediately before enactment of the act adding this section),~~
36 ~~imposed by this part, for each of the taxable years for which the~~
37 ~~taxpayer elects to participate in the initiative, that are owed as a~~
38 ~~result of the underreporting of tax liabilities attributable to the use~~
39 ~~of abusive tax avoidance transactions.~~

- 1 ~~(2) Except as provided in Section 19753, no criminal action~~
2 ~~may be brought against the taxpayer for each of the taxable years~~
3 ~~for which the taxpayer voluntarily complies under this section.~~
4 ~~(3) No penalty may be waived under this chapter if the penalty~~
5 ~~imposed is attributable to an assessment of taxes that became due~~
6 ~~and payable prior to December 31, 2003.~~
7 ~~(4) The taxpayer may file a claim for refund under Chapter 6~~
8 ~~(commencing with Section 19301) of this part. Notwithstanding~~
9 ~~Section 19331, the taxpayer may not file an appeal to the board~~
10 ~~until after either of the following:~~
11 ~~(A) The date the Franchise Tax Board takes action on the claim~~
12 ~~for refund for the tax year to which this chapter applies.~~
13 ~~(B) The later of either of the following dates:~~
14 ~~(i) The date that is 180 days after the date of a final~~
15 ~~determination by the Internal Revenue Service with respect to the~~
16 ~~transaction or transactions to which this chapter applies.~~
17 ~~(ii) The date that is four years after the date the claim for refund~~
18 ~~was filed or one year after full payment of all tax, including penalty~~
19 ~~and interest was made, whichever date is later.~~
20 ~~(5) The taxpayer shall be subject to the accuracy related penalty~~
21 ~~under Section 19164.~~
22 ~~(A) The penalty may be assessed:~~
23 ~~(i) When the Franchise Tax Board takes action on the claim for~~
24 ~~refund.~~
25 ~~(ii) When a federal determination becomes final for the same~~
26 ~~issue, in which case the penalty shall be assessed (and may not be~~
27 ~~abated) if the penalty was assessed at the federal level.~~
28 ~~(B) In determining the amount of the underpayment of tax,~~
29 ~~Treasury Regulation Section 1.6664-2(c)(2), as promulgated under~~
30 ~~Section 6664 of the Internal Revenue Code, relating to qualified~~
31 ~~amended returns, shall not apply. The amount of the underpayment~~
32 ~~is the difference between the amount of tax shown on the original~~
33 ~~return and the correct amount of tax for the taxable year. The~~
34 ~~underpayment amount shall not be less than the amount of the~~
35 ~~claim for refund filed by the taxpayer under paragraph (4) that was~~
36 ~~denied.~~
37 ~~(C) The penalty is due and payable upon notice and demand~~
38 ~~pursuant to Section 19049. Only after the taxpayer has paid all~~
39 ~~amounts due, including the penalty, and the claim is denied in~~
40 ~~whole or in part, may the taxpayer file an appeal under Chapter 6~~

1 ~~(commencing with Section 19301), of this part in conjunction with~~
2 ~~the appeal filed under paragraph (4).~~

3 ~~(e) A taxpayer's election under this section shall be made for~~
4 ~~all taxable years of the taxpayer governed by this chapter. A~~
5 ~~separate election for each taxable year governed by this chapter is~~
6 ~~not allowed.~~

7 *SEC. 14. Section 19753 of the Revenue and Taxation Code, as*
8 *added by Section 13 of Chapter 654 of the Statutes of 2003, is*
9 *repealed.*

10 ~~19753. (a) This chapter does not apply to violations of this~~
11 ~~part for which, as of December 31, 2003, any of the following~~
12 ~~applies:~~

13 ~~(1) A criminal complaint was filed against the taxpayer in~~
14 ~~connection with an abusive tax avoidance transaction or~~
15 ~~transactions.~~

16 ~~(2) The taxpayer is the subject of a criminal investigation in~~
17 ~~connection with an abusive tax avoidance transaction or~~
18 ~~transactions.~~

19 ~~(b) No refund or credit shall be granted with respect to any~~
20 ~~penalty paid prior to the time the taxpayer participates in the~~
21 ~~voluntary compliance initiative authorized by this chapter.~~

22 ~~(e) For purposes of this chapter, an "abusive tax avoidance~~
23 ~~transaction" means a plan or arrangement devised for the principal~~
24 ~~purpose of avoiding tax. Abusive tax avoidance transactions~~
25 ~~include, but are not limited to, "listed transactions" as described~~
26 ~~in subdivision (a) of Section 18407.~~

27 *SEC. 15. Section 19753 of the Revenue and Taxation Code, as*
28 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*
29 *amended to read:*

30 ~~19753. (a) This chapter does not apply to violations of this~~
31 ~~part for which, as of December 31, 2003, any of the following~~
32 ~~applies:~~

33 ~~(1) A criminal complaint was filed against the taxpayer in~~
34 ~~connection with an abusive tax avoidance transaction or~~
35 ~~transactions.~~

36 ~~(2) The taxpayer is the subject of a criminal investigation in~~
37 ~~connection with an abusive tax avoidance transaction or~~
38 ~~transactions.~~

1 (b) No refund or credit shall be granted with respect to any
 2 penalty paid prior to the time the taxpayer participates in the
 3 voluntary compliance initiative authorized by this chapter.

4 (c) For purposes of this chapter, an “abusive tax avoidance
 5 transaction” means a plan or arrangement devised for the principal
 6 purpose of avoiding tax. ~~Abusive tax avoidance transactions~~
 7 ~~include, but are not limited to, “listed transactions” as described~~
 8 ~~in subdivision (a) of Section 18407 has the same meaning as in~~
 9 ~~Section 19777, as amended by the act amending this subdivision.~~

10 *SEC. 16. Section 19754 of the Revenue and Taxation Code, as*
 11 *added by Section 13 of Chapter 654 of the Statutes of 2003, is*
 12 *repealed.*

13 ~~19754. (a) The voluntary compliance initiative described in~~
 14 ~~this chapter applies to any taxpayer who was not eligible to~~
 15 ~~participate in the Internal Revenue Service’s Offshore Voluntary~~
 16 ~~Compliance Initiative described in Revenue Procedure 2003-11,~~
 17 ~~and during the period from January 1, 2004, to April 15, 2004,~~
 18 ~~does both of the following:~~

19 (1) ~~Files an amended tax return under this part for each taxable~~
 20 ~~year for which the taxpayer has previously filed a tax return using~~
 21 ~~an abusive tax avoidance transaction to underreport the taxpayer’s~~
 22 ~~tax liability for that taxable year. Each amended return shall report~~
 23 ~~all income from all sources, without regard to the abusive tax~~
 24 ~~avoidance transaction.~~

25 (2) ~~Except as provided in subdivision (b), pays in full all taxes~~
 26 ~~and interest due.~~

27 (b) ~~The Franchise Tax Board may enter into an installment~~
 28 ~~payment agreement in lieu of the full payment required under~~
 29 ~~paragraph (2) of subdivision (a). Any installment payment~~
 30 ~~agreement authorized by this subdivision shall include interest on~~
 31 ~~the unpaid amount at the rate prescribed in Section 19521. Failure~~
 32 ~~by the taxpayer to fully comply with the terms of the installment~~
 33 ~~payment agreement shall render the waiver of penalties null and~~
 34 ~~void, and the total amount of tax, interest, and all penalties shall~~
 35 ~~be immediately due and payable.~~

36 (c) ~~After April 15, 2004, the Franchise Tax Board may issue a~~
 37 ~~deficiency assessment upon an amended return filed pursuant to~~
 38 ~~subdivision (a), impose penalties, or initiate criminal action under~~
 39 ~~this part with respect to the difference between the amount shown~~

1 on that return and the correct amount of tax. This action shall not
2 invalidate any waivers granted under Section 19752.

3 ~~(d) In addition to any other authority to examine returns, for the
4 purpose of improving state tax administration, the Franchise Tax
5 Board may inquire into the facts and circumstances related to the
6 use of abusive tax avoidance transactions to underreport the tax
7 liabilities for which a taxpayer has participated in the voluntary
8 compliance initiative under this chapter. Taxpayers shall cooperate
9 fully with inquiries described in this subdivision. Failure by a
10 taxpayer to fully cooperate in an inquiry described in this
11 subdivision shall render the waiver of penalties under this chapter
12 null and void and the taxpayer may be assessed any penalties that
13 may apply.~~

14 *SEC. 17. Section 19754 of the Revenue and Taxation Code, as*
15 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*
16 *amended to read:*

17 19754. (a) The voluntary compliance initiative described in
18 this chapter applies to any taxpayer who ~~was not eligible to~~
19 ~~participate in the Internal Revenue Service's Offshore Voluntary~~
20 ~~Compliance Initiative described in Revenue Procedure 2003-11,~~
21 ~~and, during the period from January 1, 2004 2011, to April 15,~~
22 ~~2004 2011, does both of the following:~~

23 (1) Files an amended tax return under this part for each taxable
24 year for which the taxpayer has previously filed a tax return using
25 an abusive tax avoidance transaction to underreport the taxpayer's
26 tax liability for that taxable year. Each amended return shall report
27 all income from all sources, without regard to the abusive tax
28 avoidance transaction.

29 (2) Except as provided in subdivision (b), pays in full all taxes
30 and interest due.

31 (b) The Franchise Tax Board may enter into an installment
32 payment agreement in lieu of the full payment required under
33 paragraph (2) of subdivision (a). Any installment payment
34 agreement authorized by this subdivision shall include interest on
35 the unpaid amount at the rate prescribed in Section 19521. Failure
36 by the taxpayer to fully comply with the terms of the installment
37 payment agreement shall render the waiver of penalties null and
38 void, and the total amount of tax, interest, and all penalties shall
39 be immediately due and payable.

1 (c) After April 15, ~~2004~~ 2011, the Franchise Tax Board may
2 issue a deficiency assessment upon an amended return filed
3 pursuant to subdivision (a), impose penalties, or initiate criminal
4 action under this part with respect to the difference between the
5 amount shown on that return and the correct amount of tax. This
6 action shall not invalidate any waivers granted under Section
7 19752.

8 (d) In addition to any other authority to examine returns, for the
9 purpose of improving state tax administration, the Franchise Tax
10 Board may inquire into the facts and circumstances related to the
11 use of abusive tax avoidance transactions to underreport the tax
12 liabilities for which a taxpayer has participated in the voluntary
13 compliance initiative under this chapter. Taxpayers shall cooperate
14 fully with inquiries described in this subdivision. Failure by a
15 taxpayer to fully cooperate in an inquiry described in this
16 subdivision shall render the waiver of penalties under this chapter
17 null and void and the taxpayer may be assessed any penalties that
18 may apply.

19 *SEC. 18. Section 19755 of the Revenue and Taxation Code, as*
20 *added by Section 13 of Chapter 654 of the Statutes of 2003, is*
21 *repealed.*

22 ~~19755. (a) Notwithstanding Section 19057, with respect to~~
23 ~~proposed deficiency assessments related to an abusive tax~~
24 ~~avoidance transaction, as defined in subdivision (c) of Section~~
25 ~~19753, a notice of a proposed deficiency assessment may be mailed~~
26 ~~to the taxpayer within eight years after the return was filed, or~~
27 ~~within the period otherwise provided in Article 3 (commencing~~
28 ~~with Section 19031) of Chapter 4 of this part, whichever expires~~
29 ~~later.~~

30 ~~(b) This section shall apply to any return filed under this part~~
31 ~~on or after January 1, 2000.~~

32 *SEC. 19. Section 19755 of the Revenue and Taxation Code, as*
33 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*
34 *amended to read:*

35 19755. (a) Notwithstanding Section 19057, with respect to
36 proposed deficiency assessments related to an abusive tax
37 avoidance transaction, ~~as defined in subdivision (c) of Section~~
38 ~~19753,~~ a notice of a proposed deficiency assessment may be mailed
39 to the taxpayer within ~~eight~~ 12 years after the return was filed, or
40 within the period otherwise provided in Article 3 (commencing

1 with Section 19031) of Chapter 4 of this part, whichever expires
2 later.

3 (b) This section shall apply to any return filed under this part
4 on or after January 1, 2000.

5 *SEC. 20. Section 19775 is added to the Revenue and Taxation*
6 *Code, to read:*

7 *19775. Section 7701(o) of the Internal Revenue Code, relating*
8 *to clarification of economic substance, as added by Section 1409(a)*
9 *of the Health Care and Education Reconciliation Act of 2010*
10 *(Public Law 111-152), shall apply to returns filed on or after the*
11 *effective date of the act adding this section.*

12 *SEC. 21. Section 19777 of the Revenue and Taxation Code is*
13 *amended to read:*

14 *19777. (a) If a taxpayer has been contacted by the Franchise*
15 *Tax Board regarding a reportable transaction, as defined in Section*
16 *6707A(c)(1) of the Internal Revenue Code with respect to which*
17 *the requirements of Section 6664(d)(2)(A) of the Internal Revenue*
18 *Code are not met, any listed transaction, as defined in Section*
19 *6707A(c)(2) of the Internal Revenue Code, or a gross misstatement*
20 *within the meaning of Section 6404(g)(2)(D) of the Internal*
21 *Revenue Code, and has a deficiency an abusive tax avoidance*
22 *transaction and has a deficiency attributable to an abusive tax*
23 *avoidance transaction, there shall be added to the tax an amount*
24 *equal to 100 percent of the interest payable under Section 19101*
25 *for the period beginning on the last date prescribed by law for the*
26 *payment of that tax (determined without regard to extensions) and*
27 *ending on the date the notice of proposed assessment is mailed.*

28 *(b) For purposes of this section, “abusive tax avoidance*
29 *transaction” means any of the following:*

30 *(1) A tax shelter as defined in Section 6662(d)(2)(C) of the*
31 *Internal Revenue Code. For purposes of this chapter, Section*
32 *6662(d)(2)(C) of the Internal Revenue Code is modified by*
33 *substituting the phrase “income or franchise tax” for “federal*
34 *income tax.”*

35 *(2) A reportable transaction, as defined in Section 6707A(c)(1)*
36 *of the Internal Revenue Code, with respect to which the*
37 *requirements of Section 6664(d)(2)(A) of the Internal Revenue*
38 *Code are not met.*

39 *(3) A listed transaction, as defined in Section 6707A(c)(2) of*
40 *the Internal Revenue Code.*

1 (4) A gross misstatement within the meaning of Section
2 6404(g)(2)(D) of the Internal Revenue Code.

3 (5) Any transaction to which Section 19774 applies.

4 (6) Any transaction involving financial arrangements that in
5 any manner rely on the use of offshore payment cards (including
6 credit, debit, or charge cards) issued by banks in foreign
7 jurisdictions or offshore financial arrangements, including
8 arrangements with foreign banks, financial institutions,
9 corporations, partnerships, trusts, or other entities.

10 (b)

11 (c) The penalty imposed by this section is in addition to any
12 other penalty imposed under Part 10 (commencing with Section
13 17001), Part 11 (commencing with Section 23001), or this part.

14 (d) (1) If a taxpayer files an amended return reporting an
15 abusive tax avoidance transaction, described in subdivision (b),
16 after the taxpayer is contacted by the Franchise Tax Board
17 regarding that abusive tax avoidance transaction but before a
18 notice of proposed assessment is issued under Section 19033, then
19 the amount of the penalty under this section shall be 50 percent
20 of the interest payable under Section 19101 with respect to the
21 amount of any additional tax reflected in the amended return
22 attributable to that abusive tax avoidance transaction.

23 (2) If a notice of proposed assessment under Section 19033,
24 with respect to an abusive tax avoidance transaction as described
25 in subdivision (a), is issued after the amended return described in
26 paragraph (1) is filed, the penalty imposed pursuant to subdivision
27 (a) shall be applicable to the additional tax reflected in the notice
28 of proposed assessment attributable to that abusive tax avoidance
29 transaction.

30 (e) The amendments made to this section by the act adding this
31 subdivision shall apply to notices mailed on or after the effective
32 date of that act and to amended returns filed more than 180 days
33 after that effective date with respect to taxable years beginning on
34 or after the effective date of that act.

35 SEC. 22. Section 19778 of the Revenue and Taxation Code, as
36 added by Section 13 of Chapter 654 of the Statutes of 2003, is
37 repealed.

38 ~~19778. For any amended return filed after April 15, 2004, and~~
39 ~~before the taxpayer is contacted by the Internal Revenue Service~~
40 ~~or the Franchise Tax Board regarding a potentially abusive tax~~

1 shelter, then, for taxable years beginning after December 31, 1998,
2 with respect to any understatement of tax related to using reportable
3 transactions as defined in Section 18407, as added by the act adding
4 this section, the taxpayer is subject to interest as provided under
5 Section 19101 but at a rate of 150 percent of the adjusted annual
6 rate established under Section 19521.

7 *SEC. 23. Section 19778 of the Revenue and Taxation Code, as*
8 *added by Section 13 of Chapter 656 of the Statutes of 2003, is*
9 *amended to read:*

10 *19778. For any If an amended return filed after April 15, 2004,*
11 *and before the taxpayer is contacted by the Internal Revenue*
12 *Service or the Franchise Tax Board regarding a potentially abusive*
13 *tax shelter, then, for taxable years beginning after December 31,*
14 *1998, with respect to any understatement of tax related to using*
15 *reportable transactions as defined in Section 18407, as added by*
16 *the act adding this section, the taxpayer is subject to interest as*
17 *provided under Section 19101 but at a rate of 150 percent of the*
18 *adjusted annual rate established under Section 19521 January 1,*
19 *2011, has an underpayment resulting from an abusive tax*
20 *avoidance transaction, that underpayment shall be subject to*
21 *interest as provided under Section 19101, but that interest shall*
22 *be computed using a rate of 200 percent of the adjusted annual*
23 *rate established under Section 19521 and shall not be otherwise*
24 *subject to interest under this part.*

25 ~~SECTION 1. Section 2840.2 of the Public Utilities Code is~~
26 ~~amended to read:~~

27 ~~2840.2. For purposes of this article, the following terms have~~
28 ~~the following meanings:~~

29 ~~(a) “Combined heat and power system” means a system that~~
30 ~~produces both electricity and thermal energy for heating or cooling~~
31 ~~from a single fuel input that meets all of the following:~~

32 ~~(1) Is interconnected to, and operates in parallel with, the electric~~
33 ~~transmission and distribution grid.~~

34 ~~(2) Is sized to meet the eligible customer-generator’s onsite~~
35 ~~thermal demand.~~

36 ~~(3) Meets the efficiency standards of subdivisions (a) and (d)~~
37 ~~of Section 2843, the greenhouse gases emissions performance~~
38 ~~standard of subdivision (f) of Section 2843, and any applicable~~
39 ~~greenhouse gas emission reduction measure adopted by the State~~

- 1 Air Resources Board pursuant to Division 25.5 (commencing with
2 Section 38500) of the Health and Safety Code.
- 3 (b) ~~“Eligible customer-generator” means a customer of an~~
4 ~~electrical corporation that meets both of the following~~
5 ~~requirements:~~
- 6 (1) ~~Uses a combined heat and power system with a generating~~
7 ~~capacity of not more than 20 megawatts, that first commences~~
8 ~~operation on or after January 1, 2008.~~
- 9 (2) ~~Uses a time-of-use meter capable of registering the flow of~~
10 ~~electricity in two directions. If the existing electrical meter of an~~
11 ~~eligible customer-generator is not capable of measuring the flow~~
12 ~~of electricity in two directions, the eligible customer-generator~~
13 ~~shall be responsible for all expenses involved in purchasing and~~
14 ~~installing a meter that is able to measure electricity flow in two~~
15 ~~directions. If an additional meter or meters are installed, the~~
16 ~~electricity flow calculations shall yield a result identical to that of~~
17 ~~a time-of-use meter.~~
- 18 (c) ~~“Electrical corporation” has the same meaning as defined~~
19 ~~in Section 218.~~
- 20 (d) ~~“Energy Commission” means the State Energy Resources~~
21 ~~Conservation and Development Commission.~~
- 22 (e) ~~“Excess electricity” means the net electricity exported to the~~
23 ~~electrical grid, generated by a combined heat and power system~~
24 ~~that is in compliance with Section 2843.~~
- 25 (f) ~~“Greenhouse gas” or “greenhouse gases” shall have the same~~
26 ~~meanings as defined in Section 38505 of the Health and Safety~~
27 ~~Code.~~