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**Introduced by Senator Ducheny**

January 26, 2009

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An act to amend Sections 17041 and 17062 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 96, as introduced, Ducheny. Personal income tax: amt: rates.

Under the Personal Income Tax Law, taxes are imposed at specified rates, up to a maximum of 9.3%, based on the amount of the taxpayer's taxable income and a maximum of 7% based on the taxpayer's alternative minimum taxable income.

This bill would, for taxable years beginning on or after January 1, 2009, in lieu of the maximum rate of 9.3%, impose rates of 9%, 9.5%, 10%, 10.5%, and 11% for taxpayers with taxable income over certain amounts, and impose an 8.5% maximum rate based upon the taxpayer's alternative minimum taxable income.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of  $\frac{2}{3}$  of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 17041 of the Revenue and Taxation Code
- 2 is amended to read:

1 17041. (a) (1) There shall be imposed for each taxable year  
 2 upon the entire taxable income of every resident of this state who  
 3 is not a part-year resident, except the head of a household as  
 4 defined in Section 17042, taxes in the following amounts and at  
 5 the following rates upon the amount of taxable income computed  
 6 for the taxable year as if the resident were a resident of this state  
 7 for the entire taxable year and for all prior taxable years for any  
 8 carryover items, deferred income, suspended losses, or suspended  
 9 deductions:

10	11 If the taxable income is:	12 The tax is:
12	Not over \$3,650.....	1% of the taxable income
13	Over \$3,650 but not	
14	over \$8,650.....	\$36.50 plus 2% of the excess
15		over \$3,650
16	Over \$8,650 but not	
17	over \$13,650.....	\$136.50 plus 4% of the excess
18		over \$8,650
19	Over \$13,650 but not	
20	over \$18,950.....	\$336.50 plus 6% of the excess
21		over \$13,650
22	Over \$18,950 but not	
23	over \$23,950.....	\$654.50 plus 8% of the excess
24		over \$18,950
25	Over \$23,950.....	\$1,054.50 plus 9.3% of the excess
26		over \$23,950

27  
 28  
 29 (2) (A) For taxable years beginning on or after January 1,  
 30 2009, the income tax brackets and rates set forth in paragraph  
 31 (1), as adjusted by subdivision (h), shall be modified by each of  
 32 the following:

33 (i) "Nine percent" shall be substituted for "9.3 percent" as  
 34 applied to taxable income over forty-seven thousand fifty-five  
 35 dollars (\$47,055) but not over sixty thousand dollars (\$60,000).

36 (ii) For that portion of taxable income that is over sixty thousand  
 37 dollars (\$60,000) but not over one hundred twenty-five thousand  
 38 dollars (\$125,000), the tax rate shall be 9.5 percent of the excess  
 39 over sixty thousand dollars (\$60,000).

1 (iii) For that portion of taxable income that is over one hundred  
 2 twenty-five thousand dollars (\$125,000) but not over two hundred  
 3 fifty thousand dollars (\$250,000), the tax rate shall be 10 percent  
 4 of the excess over one hundred twenty-five thousand dollars  
 5 (\$125,000).

6 (iv) For that portion of taxable income that is over two hundred  
 7 fifty thousand dollars (\$250,000) but not over five hundred  
 8 thousand dollars (\$500,000), the tax rate shall be 10.5 percent of  
 9 the excess over two hundred fifty thousand dollars (\$250,000).

10 (v) For that portion of taxable income that is over five hundred  
 11 thousand dollars (\$500,000), the tax rate shall be 11 percent of  
 12 the excess over five hundred thousand dollars (\$500,000).

13 (B) The income tax brackets specified in this paragraph shall  
 14 be recomputed, as provided in subdivision (h), only for taxable  
 15 years beginning on or after January 1, 2009.

16 (b) (1) There shall be imposed for each taxable year upon the  
 17 taxable income of every nonresident or part-year resident, except  
 18 the head of a household as defined in Section 17042, a tax as  
 19 calculated in paragraph (2).

20 (2) The tax imposed under paragraph (1) shall be calculated by  
 21 multiplying the “taxable income of a nonresident or part-year  
 22 resident,” as defined in subdivision (i), by a rate (expressed as a  
 23 percentage) equal to the tax computed under subdivision (a) on  
 24 the entire taxable income of the nonresident or part-year resident  
 25 as if the nonresident or part-year resident were a resident of this  
 26 state for the taxable year and as if the nonresident or part-year  
 27 resident were a resident of this state for all prior taxable years for  
 28 any carryover items, deferred income, suspended losses, or  
 29 suspended deductions, divided by the amount of that income.

30 (c) (1) There shall be imposed for each taxable year upon the  
 31 entire taxable income of every resident of this state who is not a  
 32 part-year resident for that taxable year, when the resident is the  
 33 head of a household, as defined in Section 17042, taxes in the  
 34 following amounts and at the following rates upon the amount of  
 35 taxable income computed for the taxable year as if the resident  
 36 were a resident of the state for the entire taxable year and for all  
 37 prior taxable years for carryover items, deferred income, suspended  
 38 losses, or suspended deductions:

39

40 If the taxable income is:

The tax is:

1	Not over \$7,300.....	1% of the taxable income
2	Over \$7,300 but not	
3	over \$17,300.....	\$73 plus 2% of the excess
4		over \$7,300
5	Over \$17,300 but not	
6	over \$22,300.....	\$273 plus 4% of the excess
7		over \$17,300
8	Over \$22,300 but not	
9	over \$27,600.....	\$473 plus 6% of the excess
10		over \$22,300
11	Over \$27,600 but not	
12	over \$32,600.....	\$791 plus 8% of the excess
13		over \$27,600
14	Over \$32,600.....	\$1,191 plus 9.3% of the excess
15		over \$32,600

16

17 (2) (A) For taxable years beginning on or after January 1,  
18 2009, the income tax brackets and rates set forth in paragraph  
19 (1), as adjusted by subdivision (h), shall be modified by each of  
20 the following:

21 (i) “Nine percent” shall be substituted for “9.3 percent” for  
22 that portion of taxable income over sixty-four thousand fifty dollars  
23 (\$64,050) but not over eighty-one thousand six hundred seventy  
24 dollars (\$81,670).

25 (ii) For that portion of taxable income that is over eighty-one  
26 thousand six hundred seventy dollars (\$81,670) but not over one  
27 hundred seventy thousand one hundred forty-five dollars  
28 (\$170,145), the tax rate shall be 9.5 percent of the excess over  
29 eighty-one thousand six hundred seventy dollars (\$81,670).

30 (iii) For that portion of taxable income that is over one hundred  
31 seventy thousand one hundred forty-five dollars (\$170,145) but  
32 not over three hundred forty thousand two hundred ninety dollars  
33 (\$340,290), the tax rate shall be 10 percent of the excess over one  
34 hundred seventy thousand one hundred forty-five dollars  
35 (\$170,145).

36 (iv) For that portion of taxable income that is over three hundred  
37 forty thousand two hundred ninety dollars (\$340,290) but not over  
38 six hundred eighty thousand five hundred eighty dollars (\$680,580),  
39 the tax rate shall be 10.5 percent of the excess over three hundred  
40 forty thousand two hundred ninety dollars (\$340,290).

1 (v) For that portion of taxable income that is over six hundred  
2 eighty thousand five hundred eighty dollars (\$680,580), the tax  
3 rate shall be 11 percent of the excess over six hundred eighty  
4 thousand five hundred eighty dollars (\$680,580).

5 (B) The income tax brackets specified in this paragraph shall  
6 be recomputed, as provided in subdivision (h), only for taxable  
7 years beginning on or after January 1, 2009.

8 (d) (1) There shall be imposed for each taxable year upon the  
9 taxable income of every nonresident or part-year resident when  
10 the nonresident or part-year resident is the head of a household,  
11 as defined in Section 17042, a tax as calculated in paragraph (2).

12 (2) The tax imposed under paragraph (1) shall be calculated by  
13 multiplying the “taxable income of a nonresident or part-year  
14 resident,” as defined in subdivision (i), by a rate (expressed as a  
15 percentage) equal to the tax computed under subdivision (c) on  
16 the entire taxable income of the nonresident or part-year resident  
17 as if the nonresident or part-year resident were a resident of this  
18 state for the taxable year and as if the nonresident or part-year  
19 resident were a resident of this state for all prior taxable years for  
20 any carryover items, deferred income, suspended losses, or  
21 suspended deductions, divided by the amount of that income.

22 (e) There shall be imposed for each taxable year upon the taxable  
23 income of every estate, trust, or common trust fund taxes equal to  
24 the amount computed under subdivision (a) for an individual  
25 having the same amount of taxable income.

26 (f) The tax imposed by this part is not a surtax.

27 (g) (1) Section 1(g) of the Internal Revenue Code, relating to  
28 certain unearned income of minor children taxed as if the parent’s  
29 income, shall apply, except as otherwise provided.

30 (2) Section 1(g)(7)(B)(ii)(II) of the Internal Revenue Code,  
31 relating to income included on parent’s return, is modified, for  
32 purposes of this part, by substituting “1 percent” for “15 percent.”

33 (h) For each taxable year beginning on or after January 1, 1988,  
34 the Franchise Tax Board shall recompute the income tax brackets  
35 prescribed in subdivisions (a) and (c). That computation shall be  
36 made as follows:

37 (1) The California Department of Industrial Relations shall  
38 transmit annually to the Franchise Tax Board the percentage change  
39 in the California Consumer Price Index for all items from June of

1 the prior calendar year to June of the current calendar year, no  
2 later than August 1 of the current calendar year.

3 (2) The Franchise Tax Board shall do both of the following:

4 (A) Compute an inflation adjustment factor by adding 100  
5 percent to the percentage change figure that is furnished pursuant  
6 to paragraph (1) and dividing the result by 100.

7 (B) Multiply the preceding taxable year income tax brackets by  
8 the inflation adjustment factor determined in subparagraph (A)  
9 and round off the resulting products to the nearest one dollar (\$1).

10 (i) (1) For purposes of this part, the term “taxable income of a  
11 nonresident or part-year resident” includes each of the following:

12 (A) For any part of the taxable year during which the taxpayer  
13 was a resident of this state (as defined by Section 17014), all items  
14 of gross income and all deductions, regardless of source.

15 (B) For any part of the taxable year during which the taxpayer  
16 was not a resident of this state, gross income and deductions  
17 derived from sources within this state, determined in accordance  
18 with Article 9 of Chapter 3 (commencing with Section 17301) and  
19 Chapter 11 (commencing with Section 17951).

20 (2) For purposes of computing “taxable income of a nonresident  
21 or part-year resident” under paragraph (1), the amount of any net  
22 operating loss sustained in any taxable year during any part of  
23 which the taxpayer was not a resident of this state shall be limited  
24 to the sum of the following:

25 (A) The amount of the loss attributable to the part of the taxable  
26 year in which the taxpayer was a resident.

27 (B) The amount of the loss which, during the part of the taxable  
28 year the taxpayer is not a resident, is attributable to California  
29 source income and deductions allowable in arriving at taxable  
30 income of a nonresident or part-year resident.

31 (3) For purposes of computing “taxable income of a nonresident  
32 or part-year resident” under paragraph (1), any carryover items,  
33 deferred income, suspended losses, or suspended deductions shall  
34 only be includable or allowable to the extent that the carryover  
35 item, deferred income, suspended loss, or suspended deduction  
36 was derived from sources within this state, calculated as if the  
37 nonresident or part-year resident, for the portion of the year he or  
38 she was a nonresident, had been a nonresident for all prior years.

39 SEC. 2. Section 17062 of the Revenue and Taxation Code is  
40 amended to read:

1 17062. (a) In addition to the other taxes imposed by this part,  
2 there is hereby imposed for each taxable year, a tax equal to the  
3 excess, if any, of—

4 (1) The tentative minimum tax for the taxable year, over

5 (2) The regular tax for the taxable year.

6 (b) For purposes of this chapter, each of the following shall  
7 apply:

8 (1) The tentative minimum tax shall be computed in accordance  
9 with Sections 55 to 59, inclusive, of the Internal Revenue Code,  
10 except as otherwise provided in this part.

11 (2) The regular tax shall be the amount of tax imposed by  
12 Section 17041 or 17048, before reduction for any credits against  
13 the tax, less any amount imposed under paragraph (1) of  
14 subdivision (d) and paragraph (1) of subdivision (e) of Section  
15 17560.

16 (3) (A) The provisions of Section 55(b)(1) of the Internal  
17 Revenue Code shall be modified to provide that the tentative  
18 minimum tax for the taxable year shall be equal to the following  
19 percent of so much of the alternative minimum taxable income for  
20 the taxable year as exceeds the exemption amount, before reduction  
21 for any credits against the tax:

22 (i) For any taxable year beginning on or after January 1, 1991,  
23 and before January 1, 1996, 8.5 percent.

24 (ii) For any taxable year beginning on or after January 1, 1996,  
25 *and before January 1, 2009*, 7 percent.

26 (iii) *For any taxable year beginning on or after January 1, 2009*,  
27 8.5 percent.

28 (B) In the case of a nonresident or part-year resident, the  
29 tentative minimum tax shall be computed by multiplying the  
30 alternative minimum taxable income of the nonresident or part-year  
31 resident, as defined in subparagraph (C), by a rate (expressed as  
32 a percentage) equal to the tax computed under subdivision (b) on  
33 the alternative minimum taxable income of the nonresident or  
34 part-year resident as if the nonresident or part-year resident were  
35 a resident of this state for the taxable year and as if the nonresident  
36 or part-year resident were a resident of this state for all prior taxable  
37 years for any carryover items, deferred income, suspended losses,  
38 or suspended deductions, divided by the amount of that income.

1 (C) For purposes of this section, the term “alternative minimum  
2 taxable income of a nonresident or part-year resident” includes  
3 each of the following:

4 (i) For any period during which the taxpayer was a resident of  
5 this state (as defined by Section 17014), all items of alternative  
6 minimum taxable income (as modified for purposes of this chapter),  
7 regardless of source.

8 (ii) For any period during which the taxpayer was not a resident  
9 of this state, alternative minimum taxable income (as modified for  
10 purposes of this chapter) which were derived from sources within  
11 this state, determined in accordance with Article 9 of Chapter 3  
12 (commencing with Section 17301) and Chapter 11 (commencing  
13 with Section 17951).

14 (iii) For purposes of computing “alternative minimum taxable  
15 income of a nonresident or part-year resident,” any carryover items,  
16 deferred income, suspended losses, or suspended deductions shall  
17 only be allowable to the extent that the carryover item, suspended  
18 loss, or suspended deduction was derived from sources within this  
19 state.

20 (4) The provisions of Section 55(b)(2) of the Internal Revenue  
21 Code, relating to alternative minimum taxable income, shall be  
22 modified to provide that alternative minimum taxable income shall  
23 not include the income, adjustments, and items of tax preference  
24 attributable to any trade or business of a qualified taxpayer.

25 (A) For purposes of this paragraph, “qualified taxpayer” means  
26 a taxpayer who meets both of the following:

27 (i) Is the owner of, or has an ownership interest in, a trade or  
28 business.

29 (ii) Has aggregate gross receipts, less returns and allowances,  
30 of less than one million dollars (\$1,000,000) during the taxable  
31 year from all trades or businesses of which the taxpayer is the  
32 owner or has an ownership interest, in the amount of that taxpayer’s  
33 proportionate interest in each trade or business.

34 (B) For purposes of this paragraph, “aggregate gross receipts,  
35 less returns and allowances” means the sum of the gross receipts  
36 of the trades or businesses that the taxpayer owns and the  
37 proportionate interest of the gross receipts of the trades or  
38 businesses that the taxpayer owns and of pass-through entities in  
39 which the taxpayer holds an interest.

1 (C) For purposes of this paragraph, “gross receipts, less returns  
2 and allowances” means the sum of the gross receipts from the  
3 production of business income, as defined in subdivision (a) of  
4 Section 25120, and the gross receipts from the production of  
5 nonbusiness income, as defined in subdivision (d) of Section  
6 25120.

7 (D) For purposes of this paragraph, “proportionate interest”  
8 means:

9 (i) In the case of a pass-through entity that reports a profit for  
10 the taxable year, the taxpayer’s profit interest in the entity at the  
11 end of the taxpayer’s taxable year.

12 (ii) In the case of a pass-through entity that reports a loss for  
13 the taxable year, the taxpayer’s loss interest in the entity at the end  
14 of the taxpayer’s taxable year.

15 (iii) In the case of a pass-through entity that is sold or liquidates  
16 during the taxable year, the taxpayer’s capital account interest in  
17 the entity at the time of the sale or liquidation.

18 (E) (i) For purposes of this paragraph, “proportionate interest”  
19 includes an interest in a pass-through entity.

20 (ii) For purposes of this paragraph, “pass-through entity” means  
21 any of the following:

22 (I) A partnership, as defined by Section 17008.

23 (II) An ~~“S corporation,”~~ “S” corporation, as provided in Chapter  
24 4.5 (commencing with Section 23800) of Part 11.

25 (III) A regulated investment company, as provided in Section  
26 24871.

27 (IV) A real estate investment trust, as provided in Section 24872.

28 (V) A real estate mortgage investment conduit, as provided in  
29 Section 24874.

30 (5) For taxable years beginning on or after January 1, 1998,  
31 Section 55(d)(1) of the Internal Revenue Code, relating to  
32 exemption amount for taxpayers other than corporations is  
33 modified, for purposes of this part, to provide the following  
34 exemption amounts in lieu of those contained therein:

35 (A) Fifty-seven thousand two hundred sixty dollars (\$57,260)  
36 in the case of either of the following:

37 (i) A joint return.

38 (ii) A surviving spouse.

39 (B) Forty-two thousand nine hundred forty-five dollars (\$42,945)  
40 in the case of an individual who is both of the following:

- 1 (i) Not a married individual.  
2 (ii) Not a surviving spouse.  
3 (C) Twenty-eight thousand six hundred thirty dollars (\$28,630)  
4 in the case of either of the following:  
5 (i) A married individual who files a separate return.  
6 (ii) An estate or trust.  
7 (6) For taxable years beginning on or after January 1, 1998,  
8 Section 55(d)(3) of the Internal Revenue Code, relating to the  
9 phaseout of exemption amount for taxpayers other than  
10 corporations is modified, for purposes of this part, to provide the  
11 following phaseout of exemption amounts in lieu of those contained  
12 therein:  
13 (A) Two hundred fourteen thousand seven hundred twenty-five  
14 dollars (\$214,725) in the case of a taxpayer described in  
15 subparagraph (A) of paragraph (5).  
16 (B) One hundred sixty-one thousand forty-four dollars  
17 (\$161,044) in the case of a taxpayer described in subparagraph  
18 (B) of paragraph (5).  
19 (C) One hundred seven thousand three hundred sixty-two dollars  
20 (\$107,362) in the case of a taxpayer described in subparagraph  
21 (C) of paragraph (5).  
22 (7) For each taxable year beginning on or after January 1, 1999,  
23 the Franchise Tax Board shall recompute the exemption amounts  
24 prescribed in paragraph (5) and the phaseout of exemption amounts  
25 prescribed in paragraph (6). Those computations shall be made as  
26 follows:  
27 (A) The California Department of Industrial Relations shall  
28 transmit annually to the Franchise Tax Board the percentage change  
29 in the California Consumer Price Index for all items from June of  
30 the prior calendar year to June of the current calendar year, no  
31 later than August 1 of the current calendar year.  
32 (B) The Franchise Tax Board shall do both of the following:  
33 (i) Compute an inflation adjustment factor by adding 100 percent  
34 to the percentage change figure that is furnished pursuant to  
35 subparagraph (A) and dividing the result by 100.  
36 (ii) Multiply the preceding taxable year exemption amounts and  
37 the phaseout of exemption amounts by the inflation adjustment  
38 factor determined in clause (i) and round off the resulting products  
39 to the nearest one dollar (\$1).

1 (c) (1) (A) Section 56(a)(6) of the Internal Revenue Code as  
2 in effect on January 1, 1997, relating to installment sales of certain  
3 property, shall not apply to payments received in taxable years  
4 beginning on or after January 1, 1997, with respect to dispositions  
5 occurring in taxable years beginning after December 31, 1987.

6 (B) This paragraph shall not apply to taxable years beginning  
7 on or after January 1, 1998.

8 (2) Section 56(b)(1)(E) of the Internal Revenue Code, relating  
9 to standard deduction and deduction for personal exemptions not  
10 allowed, is modified, for purposes of this part, to deny the standard  
11 deduction allowed by Section 17073.5.

12 (3) Section 56(b)(3) of the Internal Revenue Code, relating to  
13 treatment of incentive stock options, shall be modified to  
14 additionally provide the following:

15 (A) Section 421 of the Internal Revenue Code shall not apply  
16 to the transfer of stock acquired pursuant to the exercise of a  
17 California qualified stock option under Section 17502.

18 (B) Section 422(c)(2) of the Internal Revenue Code shall apply  
19 in any case where the disposition and inclusion of a California  
20 qualified stock option for purposes of this chapter are within the  
21 same taxable year and that section shall not apply in any other  
22 case.

23 (C) The adjusted basis of any stock acquired by the exercise of  
24 a California qualified stock option shall be determined on the basis  
25 of the treatment prescribed by this paragraph.

26 (d) The provisions of Section 57(a)(5) of the Internal Revenue  
27 Code, relating to tax-exempt interest shall not apply.

28 (e) Section 57(a) of the Internal Revenue Code, relating to items  
29 of tax preference, is modified to include as an item of tax  
30 preference an amount equal to one-half of the amount excluded  
31 from gross income for the taxable year under Section 18152.5.

32 (f) The provisions of Section 59(a) of the Internal Revenue  
33 Code, relating to the alternative minimum tax foreign tax credit,  
34 shall not apply.

35 SEC. 3. This act provides for a tax levy within the meaning of  
36 Article IV of the Constitution and shall go into immediate effect.

O