

AMENDED IN ASSEMBLY MAY 18, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1369

Introduced by Assembly ~~Member~~ *Members Gatto and Perea*

February 18, 2011

An act to amend Sections 17282 and 24436.1 of, and to repeal Sections 17281 and 24436 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1369, as amended, Gatto. Personal and corporate income taxes: deductions: illegal activities.

The Personal Income Tax Law and the Corporation Tax Law allow various deductions in computing the income that is subject to the taxes imposed by those laws. Those laws, in modified conformity to federal income tax laws, disallow any deduction from gross income if that income is directly derived from, or directly tends to promote or further, illegal activities relating to lotteries, gaming, or horse racing, and other specified illegal activities.

This bill would instead disallow a deduction for expenses attributable to income derived by a taxpayer from any criminal profiteering activity, specified illegal activities relating to drug trafficking, and insurance fraud, as provided.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax 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 17281 of the Revenue and Taxation Code
2 is repealed.
- 3 SEC. 2. Section 17282 of the Revenue and Taxation Code is
4 amended to read:
- 5 17282. (a) In computing taxable income, deductions, including
6 deductions for cost of goods sold, shall not be allowed to any
7 taxpayer from any of his or her gross income directly derived from
8 any act or omission of criminal profiteering activity, as defined in
9 Section 186.2 of the Penal Code, or as defined in Chapter 6
10 (commencing with Section 11350) of Division 10 of the Health
11 and Safety Code, or Article 5 (commencing with Section 750) of
12 Chapter 1 of Part 2 of Division 1 of the Insurance Code; and
13 deductions shall not be allowed to any taxpayer from any of his
14 or her gross income derived from any other activities which directly
15 tend to promote or to further, or are directly connected or associated
16 with, those acts or omissions.
- 17 (b) A prior, final determination by a court of competent
18 jurisdiction of this state in any criminal proceedings or any
19 proceeding in which the state, county, city and county, city, or
20 other political subdivision was a party thereto on the merits of the
21 legality of the activities of a taxpayer, or predecessor in interest
22 of a taxpayer, shall be required in order for subdivision (a) to apply
23 and shall be binding upon the Franchise Tax Board and the State
24 Board of Equalization.
- 25 ~~(c) This section, including amendments made by the act~~
26 ~~amending this subdivision, shall be applied with respect to taxable~~
27 ~~years which have not been closed by a statute of limitations, res~~
28 ~~judicata, or otherwise.~~
- 29 (c) (1) *Except as provided in paragraphs (2) and (3), this*
30 *section shall be applied with respect to taxable years that have*
31 *not been closed by a statute of limitations, res judicata, or*
32 *otherwise as of September 14, 1982.*
- 33 (2) *The amendments made to this section by Chapter 962 of the*
34 *Statutes of 1984 shall be applied with respect to taxable years that*

1 *have not been closed by a statute of limitations, res judicata, or*
2 *otherwise as of January 1, 1985.*

3 *(3) The amendments made to this section by the act adding this*
4 *paragraph shall be applied with respect to taxable years that have*
5 *not been closed by a statute of limitations, res judicata, or*
6 *otherwise as of the effective date of that act.*

7 SEC. 3. Section 24436 of the Revenue and Taxation Code is
8 repealed.

9 SEC. 4. Section 24436.1 of the Revenue and Taxation Code
10 is amended to read:

11 24436.1. (a) In computing net income, deductions, including
12 deductions for cost of goods sold, shall not be allowed to any
13 taxpayer from any of its gross income directly derived from any
14 act or omission of criminal profiteering activity, as defined in
15 Section 186.2 of the Penal Code, or as defined in Chapter 6
16 (commencing with Section 11350) of Division 10 of the Health
17 and Safety Code, or Article 5 (commencing with Section 750) of
18 Chapter 1 of Part 2 of Division 1 of the Insurance Code; and
19 deductions shall not be allowed to any taxpayer on any of its gross
20 income derived from any other activities which directly tend to
21 promote or to further, or are directly connected or associated with,
22 those acts or omissions.

23 (b) A prior, final determination by a court of competent
24 jurisdiction of this state in any criminal proceedings or any
25 proceeding in which the state, county, city and county, city, or
26 other political subdivision was a party thereto on the merits of the
27 legality of the activities of a taxpayer, or predecessor in interest
28 of a taxpayer, shall be required in order for subdivision (a) to apply
29 and shall be binding upon the Franchise Tax Board and the State
30 Board of Equalization.

31 ~~(e) This section, including amendments made by the act~~
32 ~~amending this subdivision, shall be applied with respect to taxable~~
33 ~~years which have not been closed by a statute of limitations, res~~
34 ~~judicata, or otherwise.~~

35 (c) (1) *Except as provided in paragraphs (2) and (3), this*
36 *section shall be applied with respect to taxable years that have*
37 *not been closed by a statute of limitations, res judicata, or*
38 *otherwise as of September 14, 1982.*

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1 *have not been closed by a statute of limitations, res judicata, or*
2 *otherwise as of January 1, 1985.*

3 *(3) The amendments made to this section by the act adding this*
4 *paragraph shall be applied with respect to taxable years that have*
5 *not been closed by a statute of limitations, res judicata, or*
6 *otherwise as of the effective date of that act.*

7 SEC. 5. This act provides for a tax levy within the meaning of
8 Article IV of the Constitution and shall go into immediate effect.