

Assembly Bill No. 1369

Passed the Assembly June 2, 2011

Chief Clerk of the Assembly

Passed the Senate September 6, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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.

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

SECTION 1. Section 17281 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 17282 of the Revenue and Taxation Code is amended to read:

17282. (a) In computing taxable income, deductions, including deductions for cost of goods sold, shall not be allowed to any taxpayer from any of his or her gross income directly derived from any act or omission of criminal profiteering activity, as defined in

Section 186.2 of the Penal Code, or as defined in Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code, or Article 5 (commencing with Section 750) of Chapter 1 of Part 2 of Division 1 of the Insurance Code; and deductions shall not be allowed to any taxpayer from any of his or her gross income derived from any other activities which directly tend to promote or to further, or are directly connected or associated with, those acts or omissions.

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

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

(2) The amendments made to this section by Chapter 962 of the Statutes of 1984 shall be applied with respect to taxable years that have not been closed by a statute of limitations, res judicata, or otherwise as of January 1, 1985.

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

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

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

24436.1. (a) In computing net income, deductions, including deductions for cost of goods sold, shall not be allowed to any taxpayer from any of its gross income directly derived from any act or omission of criminal profiteering activity, as defined in Section 186.2 of the Penal Code, or as defined in Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code, or Article 5 (commencing with Section 750) of Chapter 1 of Part 2 of Division 1 of the Insurance Code; and

deductions shall not be allowed to any taxpayer on any of its gross income derived from any other activities which directly tend to promote or to further, or are directly connected or associated with, those acts or omissions.

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

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

(2) The amendments made to this section by Chapter 962 of the Statutes of 1984 shall be applied with respect to taxable years that have not been closed by a statute of limitations, res judicata, or otherwise as of January 1, 1985.

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

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

Approved _____, 2011

Governor