

AMENDED IN ASSEMBLY FEBRUARY 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1500

Introduced by ~~Committee on Budget (Blumenfield (Chair), Alejo, Bonilla, Brownley, Buchanan, Butler, Cedillo, Chesbro, Dickinson, Feuer, Gordon, Huffman, Mitchell, Monning, and Swanson)~~ Assembly Member John A. Pérez

(Coauthors: Assembly Members Alejo, Allen, Ammiano, Atkins, Beall, Block, Blumenfield, Bonilla, Bradford, Brownley, Buchanan, Butler, Charles Calderon, Campos, Carter, Cedillo, Chesbro, Davis, Dickinson, Eng, Feuer, Fuentes, Furutani, Galgiani, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mitchell, Monning, Pan, Perea, V. Manuel Pérez, Skinner, Solorio, Torres, Wieckowski, Williams, and Yamada)

January 10, 2012

An act relating to the Budget Act of 2012 to add Article 21.7 (commencing with Section 70200) to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, and to amend Sections 23101 and 25128 of, to amend and repeal Section 25128.5 of, to amend, repeal, and add Section 25136 of, and to add Sections 25128.7 and 25136.1 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1500, as amended, ~~Committee on Budget~~ John A. Pérez. ~~Budget Act of 2012.~~ Corporation taxes: single sales factor: Middle Class Scholarship Fund.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to apportion its income in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That law also provides that sales of tangible personal property and sales of other than tangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning on or after January 1, 2012, revise the rules that determine whether a taxpayer is doing business in this state, revise the provisions that determine whether sales other than tangible personal property occur in this state, including specific provisions for cable systems or networks, and require a taxpayer, except as provided, to apportion its income in accordance with a single sales factor.

This bill would require any aggregate increase in revenues derived from its provisions, as provided, to be deposited into the Middle Class Scholarship Fund, which the bill would establish, and, upon appropriation by the Legislature, allocate those revenues for the purpose of increasing the affordability of higher education.

This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2012.~~

Vote: ~~majority~~ 2/3. 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. Article 21.7 (commencing with Section 70200) is
- 2 added to Chapter 2 of Part 42 of Division 5 of Title 3 of the
- 3 Education Code, to read:

1 Article 21.7. Middle Class Scholarship Fund

2
3 70200. (a) *The Franchise Tax Board shall report to the*
4 *Department of Finance, pursuant to a time schedule prescribed*
5 *by the Director of Finance, the estimated increase or decrease in*
6 *revenues for the 2012–13 fiscal year, and each subsequent fiscal*
7 *year, as the result of the amendment, addition, or repeal of Sections*
8 *23101, 25128, 25128.5, 25128.7, 25136, and 25136.1 of the*
9 *Revenue and Taxation Code by the act adding this section.*

10 (b) *The Franchise Tax Board shall report to the Department of*
11 *Finance, pursuant to a time schedule prescribed by the Director*
12 *of Finance, the actual increase or decrease in revenues for the*
13 *2012–13 fiscal year and each subsequent fiscal year, as a result*
14 *of the amendment, addition, or repeal of Sections 23101, 25128,*
15 *25128.5, 25128.7, 25136, and 25136.1 of the Revenue and Taxation*
16 *Code by the act adding this section.*

17 (c) *The Director of Finance shall direct the Controller to make*
18 *the following deposits in the Middle Class Scholarship Fund:*

19 (1) *On or before September 1, 2012, an amount equal to the*
20 *estimated increase in revenues provided pursuant to subdivision*
21 *(a) for the 2012–13 fiscal year.*

22 (2) *On or before September 1, 2013, an amount equal to the*
23 *estimated increase in revenues provided pursuant to subdivision*
24 *(a) for the 2013–14 fiscal year.*

25 (3) *On or before September 1, 2014, an amount equal to the*
26 *estimated increase in revenues provided pursuant to subdivision*
27 *(a) for the 2014–15 fiscal year.*

28 (4) *On or before September 1, 2015, an amount equal to the*
29 *estimated increase in revenues provided pursuant to subdivision*
30 *(a) for the 2015–16 fiscal year.*

31 (5) *On or before September 1, 2016, and each September 1*
32 *thereafter, an amount equal to the estimated increase in revenues*
33 *provided pursuant to subdivision (a) for the preceding fiscal year,*
34 *as adjusted by that amount calculated pursuant to subdivision (d).*

35 (d) *The Director of Finance shall, on or before September 1,*
36 *2016, and each September 1 thereafter, calculate the difference*
37 *between the estimated increase in revenues for the fiscal year*
38 *enduring four years previously provided pursuant to subdivision*
39 *(a) and the actual increase in revenues for that fiscal year provided*
40 *pursuant to subdivision (b).*

1 70201. *The Middle Class Scholarship Fund is hereby*
2 *established in the State Treasury. Moneys in the fund shall be*
3 *allocated, upon appropriation by the Legislature, for the purpose*
4 *of increasing the affordability of higher education.*

5 SEC. 2. *Section 23101 of the Revenue and Taxation Code is*
6 *amended to read:*

7 23101. (a) “Doing business” means actively engaging in any
8 transaction for the purpose of financial or pecuniary gain or profit.

9 (b) For taxable years beginning on or after January 1, 2011, a
10 taxpayer is doing business in this state for a taxable year if any of
11 the following conditions has been satisfied:

12 (1) The taxpayer is organized or commercially domiciled in this
13 state.

14 (2) Sales, as defined in subdivision (e) or (f) of Section 25120
15 as applicable for the taxable year, of the taxpayer in this state
16 exceed the lesser of five hundred thousand dollars (\$500,000) or
17 25 percent of the taxpayer’s total sales. For purposes of this
18 paragraph, sales of the taxpayer include sales by an agent or
19 independent contractor of the taxpayer. For purposes of this
20 paragraph, sales in this state shall be determined using the rules
21 for assigning sales under ~~Section~~ *Sections 25135 and subdivision*
22 ~~(b) of Section 25136~~, and the regulations thereunder, as modified
23 by regulations under Section 25137.

24 (3) The real property and tangible personal property of the
25 taxpayer in this state exceed the lesser of fifty thousand dollars
26 (\$50,000) or 25 percent of the taxpayer’s total real property and
27 tangible personal property. The value of real and tangible personal
28 property and the determination of whether property is in this state
29 shall be determined using the rules contained in Sections 25129
30 to 25131, inclusive, and the regulations thereunder, as modified
31 by ~~regulation~~ *regulations* under Section 25137.

32 (4) The amount paid in this state by the taxpayer for
33 compensation, as defined in subdivision (c) of Section 25120,
34 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent
35 of the total compensation paid by the taxpayer. Compensation in
36 this state shall be determined using the rules for assigning payroll
37 contained in Section 25133 and the regulations thereunder, as
38 modified by regulations under Section 25137.

1 (c) (1) The Franchise Tax Board shall annually revise the
2 amounts in paragraphs (2), (3), and (4) of subdivision (b) in
3 accordance with subdivision (h) of Section 17041.

4 (2) For purposes of the adjustment required by paragraph (1),
5 subdivision (h) of Section 17041 shall be applied by substituting
6 “2012” in lieu of “1988.”

7 (d) The sales, property, and payroll of the taxpayer include the
8 taxpayer’s pro rata or distributive share of ~~pass-through entities a~~
9 ~~pass-thru entity~~. For purposes of this subdivision, ~~“pass-through~~
10 ~~entities”~~ a “pass-thru entity” means a partnership or an “S”
11 corporation.

12 *SEC. 3. Section 25128 of the Revenue and Taxation Code is*
13 *amended to read:*

14 25128. (a) (1) Notwithstanding Section 38006, for taxable
15 years beginning before January 1, 2012, all business income shall
16 be apportioned to this state by multiplying the business income
17 by a fraction, the numerator of which is the property factor plus
18 the payroll factor plus twice the sales factor, and the denominator
19 of which is four, except as provided in subdivision (b) or (c).

20 (2) Notwithstanding Section 38006, for taxable years beginning
21 on or after January 1, 2012, all business income of an apportioning
22 trade or business shall be apportioned to this state by multiplying
23 the business income by the sales factor, unless the trade or business
24 meets the criteria of subdivision (b) or makes an election to
25 apportion its income in accordance with Section 25128.7.

26 (b) If an apportioning trade or business derives more than 50
27 percent of its “gross business receipts” from conducting one or
28 more qualified business activities, all business income of the
29 apportioning trade or business shall be apportioned to this state by
30 multiplying business income by a fraction, the numerator of which
31 is the property factor plus the payroll factor plus the sales factor,
32 and the denominator of which is three.

33 (c) For purposes of this section, a “qualified business activity”
34 means the following:

- 35 (1) An agricultural business activity.
- 36 (2) An extractive business activity.
- 37 (3) A savings and loan activity.
- 38 (4) A banking or financial business activity.
- 39 (d) For purposes of this section:

1 (1) “Gross business receipts” means gross receipts described in
2 subdivision (e) or (f) of Section 25120 (other than gross receipts
3 from sales or other transactions within an apportioning trade or
4 business between members of a group of corporations whose
5 income and apportionment factors are required to be included in
6 a combined report under Section 25101, limited, if applicable, by
7 Section 25110), whether or not the receipts are excluded from the
8 sales factor by operation of Section 25137.

9 (2) “Agricultural business activity” means activities relating to
10 any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
11 plantation, ranch, nursery, or range. “Agricultural business activity”
12 also includes activities relating to cultivating the soil or raising or
13 harvesting any agricultural or horticultural commodity, including,
14 but not limited to, the raising, shearing, feeding, caring for, training,
15 or management of animals on a farm as well as the handling,
16 drying, packing, grading, or storing on a farm any agricultural or
17 horticultural commodity in its unmanufactured state, but only if
18 the owner, tenant, or operator of the farm regularly produces more
19 than one-half of the commodity so treated.

20 (3) “Extractive business activity” means activities relating to
21 the production, refining, or processing of oil, natural gas, or mineral
22 ore.

23 (4) “Savings and loan activity” means any activities performed
24 by savings and loan associations or savings banks which have been
25 chartered by federal or state law.

26 (5) “Banking or financial business activity” means activities
27 attributable to dealings in money or moneyed capital in substantial
28 competition with the business of national banks.

29 (6) “Apportioning trade or business” means a distinct trade or
30 business whose business income is required to be apportioned
31 under Sections 25101 and 25120, limited, if applicable, by Section
32 25110, using the same denominator for each of the applicable
33 payroll, property, and sales factors.

34 (7) Paragraph (4) of subdivision (c) shall apply only if the
35 Franchise Tax Board adopts the Proposed Multistate Tax
36 Commission Formula for the Uniform Apportionment of Net
37 Income from Financial Institutions, or its substantial equivalent,
38 and shall become operative upon the same operative date as the
39 adopted formula.

1 (8) In any case where the income and apportionment factors of
2 two or more savings associations or corporations are required to
3 be included in a combined report under Section 25101, limited, if
4 applicable, by Section 25110, both of the following shall apply:

5 (A) The application of the more than 50 percent test of
6 subdivision (b) shall be made with respect to the “gross business
7 receipts” of the entire apportioning trade or business of the group.

8 (B) The entire business income of the group shall be apportioned
9 in accordance with either subdivision (a) or (b), or ~~subdivision (b)~~
10 ~~of Section 25128.5~~ 25128.7, as applicable.

11 *SEC. 4. Section 25128.5 of the Revenue and Taxation Code is*
12 *amended to read:*

13 25128.5. (a) Notwithstanding Section 38006, for taxable years
14 beginning on or after January 1, 2011, *and before January 1, 2012*,
15 any apportioning trade or business, other than an apportioning
16 trade or business described in subdivision (b) of Section 25128,
17 may make an irrevocable annual election on an original timely
18 filed return, in the manner and form prescribed by the Franchise
19 Tax Board to apportion its income in accordance with this section,
20 and not in accordance with Section 25128.

21 (b) Notwithstanding Section 38006, for taxable years beginning
22 on or after January 1, 2011, *and before January 1, 2012*, all
23 business income of an apportioning trade or business making an
24 election described in subdivision (a) shall be apportioned to this
25 state by multiplying the business income by the sales factor.

26 (c) The Franchise Tax Board is authorized to issue regulations
27 necessary or appropriate regarding the making of an election under
28 this section, including regulations that are consistent with rules
29 prescribed for making an election under Section 25113.

30 (d) *This section shall not apply to taxable years beginning on*
31 *or after January 1, 2012, and as of December 1, 2012, is repealed.*

32 *SEC. 5. Section 25128.7 is added to the Revenue and Taxation*
33 *Code, to read:*

34 25128.7. (a) *Notwithstanding Section 38006, for taxable years*
35 *beginning on or after January 1, 2012, any apportioning trade or*
36 *business, other than an apportioning trade or business described*
37 *in subdivision (b) of Section 25128, may make an irrevocable*
38 *annual election on an original timely filed return, in the manner*
39 *and form prescribed by the Franchise Tax Board, to apportion its*
40 *income in accordance with this section, and not in accordance*

1 with Section 25128, if the “tax,” as defined in Section 23036 before
 2 the application of any credits, using this section to apportion its
 3 business income, is not less than the “tax,” as defined in Section
 4 23036 before the application of any credits, using paragraph (2)
 5 of subdivision (a) of Section 25128 to apportion its business
 6 income.

7 (b) Notwithstanding Section 38006, for taxable years beginning
 8 on or after January 1, 2012, all business income of an apportioning
 9 trade or business making an election under subdivision (a) shall
 10 be apportioned to this state by multiplying the business income by
 11 a fraction, the numerator of which is the property factor plus the
 12 payroll factor plus twice the sales factor, and the denominator of
 13 which is four.

14 (c) The Franchise Tax Board is authorized to issue regulations
 15 necessary or appropriate regarding the making of an election
 16 under this section, including regulations that are consistent with
 17 rules prescribed for making an election under Section 25113.

18 SEC. 6. Section 25136 of the Revenue and Taxation Code is
 19 amended to read:

20 25136. (a) For taxable years beginning before January 1, 2011,
 21 and for taxable years beginning on or after January 1, 2011, and
 22 before January 1, 2012, for which Section 25128.5 is operative
 23 and an election under subdivision (a) of Section 25128.5 has not
 24 been made, sales, other than sales of tangible personal property,
 25 are in this state if:

26 (1) The income-producing activity is performed in this state; or

27 (2) The income-producing activity is performed both in and
 28 outside this state and a greater proportion of the income-producing
 29 activity is performed in this state than in any other state, based on
 30 costs of performance.

31 (3) This subdivision shall apply, and subdivision (b) shall not
 32 apply, for any taxable year beginning on or after January 1, 2011,
 33 and before January 1, 2012, for which Section 25128.5 is not
 34 operative for any taxpayer subject to the tax imposed under this
 35 part.

36 (b) For taxable years beginning on or after January 1, 2011, and
 37 before January 1, 2012:

38 (1) Sales from services are in this state to the extent the
 39 purchaser of the service received the benefit of the service in this
 40 state.

1 (2) Sales from intangible property are in this state to the extent
2 the property is used in this state. In the case of marketable
3 securities, sales are in this state if the customer is in this state.

4 (3) Sales from the sale, lease, rental, or licensing of real property
5 are in this state if the real property is located in this state.

6 (4) Sales from the rental, lease, or licensing of tangible personal
7 property are in this state if the property is located in this state.

8 (5) *For taxable years beginning on or after January 1, 2011,*
9 *and before January 1, 2012:*

10 ~~(5)(A)~~

11 (A) If Section 25128.5 is operative, then this subdivision shall
12 apply in lieu of subdivision (a) for any taxable year for which an
13 election has been made under subdivision (a) of Section 25128.5.

14 (B) If Section 25128.5 is not operative, then this subdivision
15 shall not apply and subdivision (a) shall apply for any taxpayer
16 subject to the tax imposed under this part.

17 (C) Notwithstanding subparagraphs (A) or (B), this subdivision
18 shall apply for purposes of paragraph (2) of subdivision (b) of
19 Section 23101.

20 (c) The Franchise Tax Board may prescribe those regulations
21 as necessary or appropriate to carry out the purposes of subdivision
22 (b).

23 (d) *This section shall not apply to taxable years beginning on*
24 *or after January 1, 2012, and as of December 1, 2012, is repealed.*

25 *SEC. 7. Section 25136 is added to the Revenue and Taxation*
26 *Code, to read:*

27 *25136. (a) Notwithstanding Section 38006, for taxable years*
28 *beginning on or after January 1, 2012, sales, other than sales of*
29 *tangible personal property, are in this state if:*

30 (1) *Sales from services are in this state to the extent the*
31 *purchaser of the service received the benefit of the services in this*
32 *state.*

33 (2) *Sales from intangible property are in this state to the extent*
34 *the property is used in this state. In the case of marketable*
35 *securities, sales are in this state if the customer is in this state.*

36 (3) *Sales from the sale, lease, rental, or licensing of real*
37 *property are in this state if the real property is located in this state.*

38 (4) *Sales from the rental, lease, or licensing of tangible personal*
39 *property are in this state if the property is located in this state.*

1 (b) *The Franchise Tax Board may prescribe regulations as*
2 *necessary or appropriate to carry out the purposes of this section.*

3 *SEC. 8. Section 25136.1 is added to the Revenue and Taxation*
4 *Code, to read:*

5 *25136.1. (a) For taxable years beginning on or after January*
6 *1, 2012, a qualified taxpayer that apportions its business income*
7 *under Section 25128 shall apply the following provisions:*

8 *(1) Notwithstanding Section 25137, qualified sales assigned to*
9 *this state shall be equal to 50 percent of the amount of qualified*
10 *sales that would be assigned to this state pursuant to Section 25136*
11 *but for the application of this section. The remaining 50 percent*
12 *shall not be assigned to this state.*

13 *(2) All other sales shall be assigned pursuant to Section 25135*
14 *or 25136.*

15 *(b) For purposes of this section:*

16 *(1) "Qualified taxpayer" means a member, as defined in*
17 *paragraph (10) of subdivision (b) of Section 25106.5 of Title 18*
18 *of the California Code of Regulations, as in effect on the effective*
19 *date of the act adding this section, of a combined reporting group*
20 *that is also a qualified group.*

21 *(2) "Qualified group" means a combined reporting group, as*
22 *defined in paragraph (3) of subdivision (b) of Section 25106.5 of*
23 *Title 18 of the California Code of Regulations, as in effect on the*
24 *effective date of the act adding this section, that satisfies the*
25 *following conditions:*

26 *(A) Has satisfied the minimum investment requirement for the*
27 *taxable year.*

28 *(B) For the combined reporting group's taxable year beginning*
29 *in the 2006 calendar year, the combined reporting group derived*
30 *more than 50 percent of its United States network gross business*
31 *receipts from the operation of one or more cable systems.*

32 *(C) For purposes of satisfying the requirements of subparagraph*
33 *(B), the following rules shall apply:*

34 *(i) If a member of the combined reporting group for the taxable*
35 *year was not a member of the same combined reporting group for*
36 *the taxable year beginning in the 2006 calendar year, the gross*
37 *business receipts of that nonincluded member shall be included*
38 *in determining the combined reporting group's gross business*
39 *receipts for its taxable year beginning in the 2006 calendar year*
40 *as if the nonincluded member were a member of the combined*

1 reporting group for the taxable year beginning in the 2006
2 calendar year.

3 (ii) The gross business receipts shall include the gross business
4 receipts of a qualified partnership, but only to the extent of a
5 member's interest in the partnership.

6 (3) "Cable system" and "network" shall have the same meaning
7 as defined in Section 5830 of the Public Utilities Code, as in effect
8 on the effective date of the act adding this section. "Network
9 services" means video, cable, voice, or data services.

10 (4) "Gross business receipts" means gross receipts as defined
11 in paragraph (2) of subdivision (f) of Section 25120 (other than
12 gross receipts from sales or other transactions between or among
13 members of a combined reporting group, limited, if applicable, by
14 Section 25110).

15 (5) "Minimum investment requirement" means qualified
16 expenditures of not less than two hundred fifty million dollars
17 (\$250,000,000) by a combined reporting group during the calendar
18 year that includes the beginning of the taxable year.

19 (6) "Qualified expenditures" means any combination of
20 expenditures attributable to this state for tangible property, payroll,
21 services, franchise fees, or any intangible property distribution or
22 other rights, paid or incurred by or on behalf of a member of a
23 combined reporting group.

24 (A) An expenditure for other than tangible property shall be
25 attributable to this state if the member of the combined reporting
26 group received the benefit of the purchase or expenditure in this
27 state.

28 (B) A purchase of or expenditure for tangible property shall be
29 attributable to this state if the property is placed in service in this
30 state.

31 (C) Qualified expenditures shall include expenditures by a
32 combined reporting group for property or services purchased,
33 used, or rendered by independent contractors in this state.

34 (D) Qualified expenditures shall also include expenditures by
35 a qualified partnership, but only to the extent of the member's
36 interest in the partnership.

37 (7) "Qualified partnership" means a partnership if the
38 partnership's income and apportionment factors are included in
39 the income and apportionment factors of a member of the combined

1 reporting group, but only to the extent of the member’s interest in
2 the partnership.

3 (8) “Qualified sales” means gross business receipts from the
4 provision of any network services, other than gross business
5 receipts from the sale or rental of customer premises equipment.
6 “Qualified sales” shall include qualified sales by a qualified
7 partnership, but only to the extent of a member’s interest in the
8 partnership.

9 (c) The requirements in this section with respect to qualified
10 sales by a qualified partnership are intended to be consistent with
11 the rules for partnerships under paragraph (3) of subdivision (f)
12 of Section 25137-1 of Title 18 of the California Code of
13 Regulations.

14 SEC. 9. This act shall become operative only if Assembly Bill
15 1501 of the 2011–12 Regular Session is chaptered and establishes
16 a middle-class scholarship program.

17 SEC. 10. This act is an urgency statute necessary for the
18 immediate preservation of the public peace, health, or safety within
19 the meaning of Article IV of the Constitution and shall go into
20 immediate effect. The facts constituting the necessity are:

21 In order to provide urgently needed financial aid to California
22 public postsecondary students in time for the beginning of the
23 2012–13 academic year, it is necessary for this act to take effect
24 immediately.

25 SECTION 1. ~~It is the intent of the Legislature to enact statutory~~
26 ~~changes relating to the Budget Act of 2012.~~

27
28 _____
29 CORRECTIONS:
30 **Heading—Coauthors—Page 1.**
31 _____