AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY MAY 8, 2012

AMENDED IN ASSEMBLY FEBRUARY 9, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1500

Introduced by 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, *Fong,* Fuentes, Furutani, Galgiani, Gatto, Gordon, Hall, Hayashi, Roger Hernández, Hill, Huber, Hueso, Huffman, Lara, Bonnie Lowenthal, Ma, Mitchell, Monning, Pan, Perea, V. Manuel Pérez, *Portantino,* Skinner, Solorio, *Swanson,* Torres, Wieckowski, Williams, and Yamada)
(Coauthors: Senators Alquist, Corbett, De Leon, DeSaulnier, Evans, Hancock, Lowenthal, Pavley, Price, and Yee)

January 10, 2012

An act 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 education, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1500, as amended, John A. Pérez. Corporation taxes: apportionment: 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, for taxable years beginning on or after January 1, 2012, would require a taxpayer, except as provided, to apportion its income in accordance with a single sale factor and would 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.

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 become operative only if a specified measure is chaptered and establishes a middle-class scholarship program.

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

Vote: ⅔. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

SECTION 1. Article 21.7 (commencing with Section 70200) is added to Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code, to read:

Article 21.7. Middle Class Scholarship Fund

70200. (a) The Franchise Tax Board shall report to the Department of Finance, pursuant to a time schedule prescribed by the Director of Finance, the preliminary estimated increase in revenues for the 2012−13, 2013–14, 2014–15, and 2015–16 fiscal years, as the result of the amendment, addition, or repeal of Sections 23101, 25128, 25128.5, 25128.7, 25136, and 25136.1 of the Revenue and Taxation Code by the act adding this section.

(b) On and after January 1, 2016, the Franchise Tax Board shall report to the Department of Finance, pursuant to a time schedule prescribed by the Director of Finance, the final estimated increase in revenues for the 2012–13 fiscal year and each of the three subsequent fiscal years, as the result of the amendment, addition, or repeal of Sections 23101, 25128, 25128.5, 25128.7, 25136, and 25136.1 of the Revenue and Taxation Code by the act adding this section. The final estimated increase in revenues for each fiscal year other than the 2012–13 fiscal year shall be computed by multiplying the final estimated increase in revenues for the 2012–13 fiscal year by a ratio of total California personal income, as determined by the Department of Finance for that fiscal year, divided by the total California personal income for the 2012–13 fiscal year, as revised by the quarter ending June 30, 2016.

(c) The Franchise Tax Board shall report to the Department of Finance for the 2016–17 fiscal year, and each fiscal year thereafter, pursuant to a time schedule prescribed by the Director of Finance, the estimated increase in revenues as the result of the amendment, addition, or repeal of Sections 23101, 25128, 25128.5, 25128.7, 25136, and 25136.1 of the Revenue and Taxation Code by the act adding this section. The estimated increase for each fiscal year shall be computed by multiplying the final estimated increase in revenues for the 2012–13 fiscal year by a ratio of the estimated total California personal income for the subject fiscal year, as determined by the Department of Finance, on an annual basis, revised for the quarter ending June 30 in the year the estimate is made, divided by the total California personal income for the 2012–13 fiscal year, as determined by the Department of Finance on an annual basis, as revised for the quarter ending June 30, 2016.

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

(1) On or before September 1, 2012, an amount equal to the preliminary estimated increase in revenues reported pursuant to subdivision (a) for the 2012–13 fiscal year.

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

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

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

(5) On or before September 1, 2016, an amount equal to the estimated increase in revenues reported pursuant to subdivision (c) for the 2016–17 fiscal year, plus an amount equal to the difference between the preliminary estimated increase in revenues determined pursuant to subdivision (a) and the final estimated increase in revenues determined pursuant to subdivision (b) for the 2012–13 fiscal year.

(6) On or before September 1, 2017, an amount equal to the estimated increase in revenues reported pursuant to subdivision (c) for the 2017–18 fiscal year, plus an amount equal to the difference between the preliminary estimated increase in revenues determined pursuant to subdivision (a) and the final estimated increase in revenues determined pursuant to subdivision (b) for the 2013–14 fiscal year.

(7) On or before September 1, 2018, an amount equal to the estimated increase in revenues reported pursuant to subdivision (c) for the 2018–19 fiscal year, plus an amount equal to the difference between the preliminary estimated increase in revenues determined pursuant to subdivision (a) and the final estimated increase in revenues determined pursuant to subdivision (b) for the 2014–15 fiscal year.

(8) On or before September 1, 2019, an amount equal to the estimated increase in revenues reported pursuant to subdivision (c) for the 2019–20 fiscal year, plus an amount equal to the difference between the preliminary estimated increase in revenues determined pursuant to subdivision (a) and the final estimated increase in revenues determined pursuant to subdivision (b) for the 2015–16 fiscal year.

(9) On or before September 1, 2020, and each September 1 thereafter, an amount equal to the estimated increase in revenues reported pursuant to subdivision (c) for the fiscal year in which each September 1 occurs.

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

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

23101. (a) "Doing business" means actively engaging in ~~any~~ *a* transaction for the purpose of financial or pecuniary gain or profit.

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

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

(2) Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars ($500,000) or 25 percent of the taxpayer's total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under Sections 25135 and 25136, and the regulations thereunder, as modified by regulations under Section 25137.

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

(4) The amount paid in this state by the taxpayer for compensation, as defined in subdivision (c) of Section 25120, exceeds the lesser of fifty thousand dollars ($50,000) or 25 percent of the total compensation paid by the taxpayer. Compensation in

this state shall be determined using the rules for assigning payroll contained in Section 25133 and the regulations thereunder, as modified by regulations under Section 25137.

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

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

(d) The sales, property, and payroll of the taxpayer include the taxpayer's pro rata or distributive share of a pass-thru entity. For purposes of this subdivision, a "pass-thru entity" means a partnership or an "S" corporation.

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

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

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

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

(c) For purposes of this section, a "qualified business activity" means the following:

(1) An agricultural business activity.

(2) An extractive business activity.

(3) A savings and loan activity.

(4) A banking or financial business activity.

(d) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 25128, if the "tax," as defined in Section 23036 before the application of any credits, using this section to apportion its business income, is not less than the "tax," as defined in Section 23036 before the application of any credits, using paragraph (2) of subdivision (a) of Section 25128 to apportion its business income.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) "Qualified partnership" means a partnership if the partnership's income and apportionment factors are included in the income and apportionment factors of a member of the combined reporting group, but only to the extent of the member's interest in the partnership.

(7) "Qualified sales" means gross business receipts from the provision of any network services, other than gross business receipts from the sale or rental of customer premises equipment. "Qualified sales" shall include qualified sales by a qualified

partnership, but only to the extent of a member's interest in the partnership.

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

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

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

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

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

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