

Senate Bill No. 86

CHAPTER 14

An act to amend Sections 6452.1, 17052.6, 18510, 19116, 19164, 19504, 19774, and 19777 of, to add Sections 19266 and 19560.5 to, to add the headings of Article 1 (commencing with Section 19751), Article 2 (commencing with Section 19755), and Article 4 (commencing with Section 19772) to, and to add Article 3 (commencing with Section 19761) to, Chapter 9.5 of Part 10.2 of Division 2 of, and to repeal and amend Sections 19751, 19752, 19753, 19754, and 19755 of, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor March 24, 2011. Filed with
Secretary of State March 24, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

SB 86, Committee on Budget and Fiscal Review. Tax administration: Franchise Tax Board: State Board of Equalization.

(1) The Sales and Use Tax Law generally provides, for a transaction not subject to sales tax, that every person storing, using, or otherwise consuming in this state tangible personal property purchased from a retailer for storage, use, or other consumption in this state is liable for use tax, and must pay the use tax to the State Board of Equalization, unless that person has paid the use tax to a retailer registered to collect the tax. Existing law authorizes an eligible person to make an irrevocable election to report qualified use tax, as defined, on that person's income tax return.

This bill would, for taxable years beginning on or after January 1, 2011, authorize an eligible person, for one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than \$1,000, to either report the estimated amount of use tax due based on the person's California adjusted gross income as reflected in the use tax table shown in the accompanying instructions of the acceptable tax return or the actual amount of use tax that was not paid to a registered retailer. This bill would require the Franchise Tax Board to revise the accompanying instructions for the income tax forms to include the use tax table.

(2) The Personal Income Tax Law, in modified informality with federal income tax laws, authorizes a refundable credit against the taxes imposed by that law for household and dependent care expenses necessary for gainful employment, as provided.

This bill would make that credit nonrefundable.

(3) Existing law imposes various duties on the Franchise Tax Board with respect to the imposition of penalties in connection with tax avoidance, and

partially conforms to federal income tax laws with respect to the penalties imposed.

This bill, in modified conformity with federal income tax laws, would revise the penalties imposed on underpayments, as specified.

The bill would also require the Franchise Tax Board to develop and administer a voluntary compliance initiative, as specified, to be conducted during the period from August 1, 2011, to October 31, 2011, inclusive, and to apply to tax liabilities attributable to the use of abusive tax avoidance transactions and unreported income from the use of offshore financial arrangements, as specified, for taxable years beginning before January 1, 2011. The bill would require the Franchise Tax Board to issue forms and instructions, and to publicize the initiative to maximize public awareness and participation. The bill would authorize any taxpayer meeting the requirements to elect to participate in the voluntary compliance initiative, subject to specified requirements and limitations. For a taxpayer who elects to comply, this bill would waive or abate all penalties, including criminal penalties, as a result of the unreported tax liabilities, except as specified.

The bill would extend the timeframe in which a notice of a proposed deficiency assessment for an abusive tax avoidance transaction may be mailed to a taxpayer from within 8 to 12 years after the return was filed, for notices mailed on or after August 1, 2011.

(4) Existing laws require the Franchise Tax Board to administer specified taxes and collect those taxes from delinquent tax debtors.

This bill would require the board, in coordination with financial institutions doing business in this state, to operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible in order to allow the board to match its list of delinquent tax debtors with the lists provided by the financial institutions. The bill would authorize the board to disclose specified taxpayer information for purposes of data matching, to institute civil proceedings to enforce specified provisions of the bill, and would impose specified penalties on financial institutions for failure to provide records in connection with the match system, as provided. This bill would provide that the specified use of certain data is a misdemeanor.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) This bill would appropriate \$1,000 from the General Fund to the State Board of Equalization for administrative operations.

(6) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his

proclamation supersedes the earlier proclamation for purpose of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(7) This bill would declare that it is to take effect immediately as a bill providing for appropriations related to the Budget Bill.

Appropriation: yes.

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

SECTION 1. Section 6452.1 of the Revenue and Taxation Code is amended to read:

6452.1. (a) Notwithstanding Section 6451, every person that purchases tangible personal property, the storage, use, or other consumption of which is subject to qualified use tax, as defined in subdivision (d), that is otherwise required to report and remit that tax pursuant to this part, may elect to report and remit qualified use tax on an acceptable tax return.

(b) (1) A person that reports qualified use tax on an acceptable tax return is deemed to have made the election authorized by this section.

(2) (A) In the case of a married individual filing a separate California personal income tax return, an election may be made to report either one-half of the qualified use tax or the entire qualified use tax on his or her separate California personal income tax return.

(B) If an individual elects to report one-half of the qualified use tax, that election will not be binding with respect to the remaining one-half of the qualified use tax owed by that individual and that individual's spouse.

(c) An election to report qualified use tax on an acceptable tax return shall be irrevocable. An acceptable tax return that contains use tax shall be considered a tax return for purposes of this part.

(d) For purposes of this section:

(1) "Acceptable tax return" means a timely filed original return that is filed pursuant to Article 1 (commencing with Section 18501), Article 2 (commencing with Section 18601), Section 18633, Section 18633.5 of Chapter 2 (commencing with Section 18501) of Part 10.2, or Article 3 (commencing with Section 23771) of Chapter 4 of Part 11.

(2) (A) Except as provided in subparagraph (B), "qualified use tax" means either of the following:

(i) For one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000), either of the following:

(I) The use tax imposed under this part, Article XIII of the California Constitution, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing

with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(II) The estimated amount of use tax as calculated by the board. The board shall annually calculate the estimated amount of use tax due according to a person's adjusted gross income and by July 30 of each calendar year make available to Franchise Tax Board such amounts in the form of a use tax table as part of the accompanying instructions of the acceptable tax return.

(ii) For one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of one thousand dollars (\$1,000) or more, or for any tangible personal property purchased for use in a trade or business, the amount of use tax imposed under this part, Article XIII of the California Constitution, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)) that has not been paid to a retailer holding a seller's permit or certificate of registration-use tax.

(B) "Qualified use tax" does not include:

(i) Use tax imposed on the storage, use, or other consumption of a mobilehome or a commercial coach that is required to be registered annually pursuant to the Health and Safety Code or use tax imposed on the storage, use, or other consumption of a vehicle subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, or a vehicle that qualifies under the permanent trailer identification plate program pursuant to subdivision (a) of Section 5014.1 of the Vehicle Code.

(ii) Use tax imposed on the storage, use, or other consumption of a vehicle, vessel, or aircraft.

(iii) Use tax imposed on a lease of tangible personal property.

(iv) Use tax imposed on the storage, use, or other consumption of cigarettes, tobacco products, or cigarettes and tobacco products for which the purchaser is registered with the board as a cigarette consumer, a tobacco products consumer, or a cigarette and tobacco products consumer.

(e) (1) If a person elects to report qualified use tax on an acceptable tax return, that person shall report and remit the qualified use tax by reporting the amount due based on all taxable purchases of tangible personal property made during the taxable year for which the acceptable tax return is required to be filed. A person that has made one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000) may satisfy his or her tax liability for those purchases by using the use tax table shown in the accompanying instructions of the acceptable tax return.

(2) The qualified use tax shall be reported on and remitted with an acceptable tax return that is required to be filed for the taxable year in which the liability for the qualified use tax was incurred.

(f) (1) The penalties and interest imposed under this part, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), or in accordance with the Transactions

and Use Tax Law (Part 1.6 (commencing with Section 7251)) shall apply to use tax reported as qualified use tax on an acceptable return.

(2) Any claims for refunds or credits of any use tax reported as qualified use tax on an acceptable tax return shall be made in accordance with Chapter 7 (commencing with Section 6901) of this part.

(3) Qualified use tax shall be considered to be timely reported and remitted for purposes of this part, in conformity with the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)), and in accordance with the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), if the qualified use tax is timely reported on and remitted with an acceptable tax return in accordance with the provisions of this section.

(g) Notwithstanding a person's payment of qualified use tax on an acceptable tax return, the board is not precluded from making any determinations for understatements of qualified use tax against that person in accordance with this chapter. However, with respect to one or more single nonbusiness purchases of individual items of tangible personal property each with a sales price of less than one thousand dollars (\$1,000), the board shall be precluded from making any such determination against any person who uses the use tax table for purposes of satisfying his or her use tax liability when the person uses that table in accordance with the accompanying instructions.

(h) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under Part 10.2 (commencing with Section 18401).

(2) Qualified use tax reported on the acceptable tax return in accordance with this section.

(i) (1) This section does not apply to a person who is otherwise required to hold a seller's permit or to register with the State Board of Equalization pursuant to Part 1 (commencing with Section 6001) of this division.

(2) This section applies to purchases of tangible personal property made on or after January 1, 2010, in taxable years beginning on or after January 1, 2010.

(3) The amendments made by the act adding this paragraph shall apply to purchases of tangible personal property made on or after January 1, 2011, in taxable years beginning on or after January 1, 2011.

SEC. 2. Section 17052.6 of the Revenue and Taxation Code is amended to read:

17052.6. (a) For each taxable year beginning on or after January 1, 2000, there shall be allowed as a credit against the "net tax", as defined in Section 17039, an amount determined in accordance with Section 21 of the Internal Revenue Code, except that the amount of the credit shall be a

percentage, as provided in subdivision (b) of the allowable federal credit without taking into account whether there is a federal tax liability.

(b) For the purposes of subdivision (a), the percentage of the allowable federal credit shall be determined as follows:

(1) For taxable years beginning before January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
\$40,000 or less.....	63%
Over \$40,000 but not over \$70,000.....	53%
Over \$70,000 but not over \$100,000.....	42%
Over \$100,000.....	0%

(2) For taxable years beginning on or after January 1, 2003:

If the adjusted gross income is:	The percentage of credit is:
\$40,000 or less.....	50%
Over \$40,000 but not over \$70,000.....	43%
Over \$70,000 but not over \$100,000.....	34%
Over \$100,000.....	0%

(c) For purposes of this section, “adjusted gross income” means adjusted gross income as computed for purposes of paragraph (2) of subdivision (h) of Section 17024.5.

(d) The credit authorized by this section shall be limited, as follows:

(1) Employment-related expenses, within the meaning of Section 21 of the Internal Revenue Code, shall be limited to expenses for household services and care provided in this state.

(2) Earned income, within the meaning of Section 21(d) of the Internal Revenue Code, shall be limited to earned income subject to tax under this part. For purposes of this paragraph, compensation received by a member of the armed forces for active services as a member of the armed forces, other than pensions or retired pay, shall be considered earned income subject to tax under this part, whether or not the member is domiciled in this state.

(e) For purposes of this section, Section 21(b)(1) of the Internal Revenue Code, relating to a qualifying individual, is modified to additionally provide that a child, as defined in Section 151(c)(3) of the Internal Revenue Code, shall be treated, for purposes of Section 152 of the Internal Revenue Code, as applicable for purposes of this section, as receiving over one-half of his or her support during the calendar year from the parent having custody for a greater portion of the calendar year, that parent shall be treated as a “custodial parent,” within the meaning of Section 152(e) of the Internal Revenue Code, as applicable for purposes of this section, and the child shall be treated as a qualifying individual under Section 21(b)(1) of the Internal Revenue Code, as applicable for purposes of this section, if both of the following apply:

(1) The child receives over one-half of his or her support during the calendar year from his or her parents who never married each other and who lived apart at all times during the last six months of the calendar year.

(2) The child is in the custody of one or both of his or her parents for more than one-half of the calendar year.

(f) The amendments to this section made by Section 1.5 of Chapter 824 of the Statutes of 2002 shall apply only to taxable years beginning on or after January 1, 2002.

(g) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2011.

SEC. 3. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, and Article 3 (commencing with Section 23771) of Chapter 4 of Part 11, and the accompanying instructions for filing those returns, in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns and instructions described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and instructions and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns and instructions that shall be incorporated before the State Board of Equalization approves the form and manner of the returns and instructions.

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), including penalties and interest, if any, imposed under this part.

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, and any information the State Board of Equalization deems necessary for its administration of the use tax, to the State Board of Equalization within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

(d) This section shall be operative for returns filed for taxable years beginning on and after January 1, 2010.

(e) The amendments made by the act adding this subdivision shall apply to returns filed for taxable years beginning on and after January 1, 2011.

SEC. 4. Section 19116 of the Revenue and Taxation Code is amended to read:

19116. (a) In the case of an individual who files a return of tax imposed under Part 10 (commencing with Section 17001) for a taxable year on or before the due date for the return, including extensions, if the Franchise Tax Board does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis of the liability before the close of the notification period, the Franchise Tax Board shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

(b) For purposes of this section:

(1) Except as provided in subdivision (e), "notification period" means the 36-month period beginning on the later of either of the following:

(A) The date on which the return is filed.

(B) The due date of the return without regard to extensions.

(2) "Suspension period" means the period beginning on the day after the close of the notification period and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(3) If, after the return for a taxable year is filed, the taxpayer provides to the Franchise Tax Board one or more signed written documents showing that the taxpayer owes an additional amount of tax for the taxable year, paragraph (1) shall be applied by substituting the date the last of the documents was provided for the date on which the return was filed.

(c) This section shall be applied separately with respect to each item or adjustment.

(d) This section shall not apply to any of the following:

(1) Any penalty imposed by Section 19131.

(2) Any penalty imposed by Section 19132.

(3) Any interest, penalty, addition to tax, or additional amount involving fraud.

(4) Any interest, penalty, addition to tax, or additional amount with respect to any tax liability shown on the return.

(5) Any criminal penalty.

(6) Any interest, penalty, addition to tax, or additional amount with respect to any gross misstatement.

(7) Any interest, penalty, addition to tax, or additional amount relating to any reportable transaction with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, and any listed transaction, as defined in Section 6707A(c) of the Internal Revenue Code.

(8) Any interest, penalty, addition to tax, or additional amount relating to any abusive tax avoidance transaction, as defined in Section 19777, as amended by the act adding this paragraph.

(e) For taxpayers required by subdivision (a) of Section 18622 to report a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority the following rules shall apply:

(1) The notification period under subdivision (a) shall be either of the following:

(A) One year from the date the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if the taxpayer or the Internal Revenue Service reports that change or correction within six months after the final federal determination.

(B) Two years from the date when the notice required by Section 18622 is filed with the Franchise Tax Board by the taxpayer or the Internal Revenue Service, if after the six-month period required in Section 18622, a taxpayer or the Internal Revenue Service reports a change or correction.

(2) The suspension period under subdivision (a) shall mean the period beginning on the day after the close of the notification period under paragraph (1) and ending on the date which is 15 days after the date on which notice described in subdivision (a) is provided by the Franchise Tax Board.

(f) For notices sent after January 1, 2004, this section does not apply to taxpayers with taxable income greater than two hundred thousand dollars (\$200,000) that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter as defined by Section 19777, as added by Chapter 656 of the Statutes of 2003 and amended by Section 331 of Chapter 183 of the Statutes of 2004.

(g) This section shall apply to taxable years ending after October 10, 1999.

(h) The amendments made to this section by Chapter 691 of the Statutes of 2005 shall apply to notices sent after January 1, 2005.

(i) (1) The amendments made to paragraph (1) of subdivision (b) by Chapter 14 of the Statutes of 2010 shall apply to notices provided after January 1, 2011.

(2) Paragraph (3) of subdivision (b), as added by Chapter 14 of the Statutes of 2010, shall apply to documents provided on or after January 1, 2011.

(3) Paragraph (8) of subdivision (d), as added by the act adding this paragraph, shall apply to notices provided, or amended returns filed, on or after January 1, 2012.

SEC. 5. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) (A) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty on underpayments, as amended by Section 1409(b) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), except as otherwise provided.

(B) (i) Except for understatements relating to reportable transactions to which Section 19164.5 applies, in the case of any proposed deficiency assessment issued after the last date of the amnesty period specified in Chapter 9.1 (commencing with Section 19730) for any taxable year beginning prior to January 1, 2003, the penalty specified in Section 6662(a) of the Internal Revenue Code shall be computed by substituting “40 percent” for “20 percent.”

(ii) Clause (i) shall not apply to any taxable year of a taxpayer beginning prior to January 1, 2003, if, as of the start date of the amnesty program period specified in Section 19731, the taxpayer is then under audit by the Franchise Tax Board, or the taxpayer has filed a protest under Section 19041, or the taxpayer has filed an appeal under Section 19045, or the taxpayer is engaged in settlement negotiations under Section 19442, or the taxpayer has a pending judicial proceeding in any court of this state or in any federal court relating to the tax liability of the taxpayer for that taxable year.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(3) Section 6662(d)(1)(B) of the Internal Revenue Code is modified to provide that in the case of a corporation, other than an “S” corporation, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:

(A) Ten percent of the tax required to be shown on the return for the taxable year (or, if greater, two thousand five hundred dollars (\$2,500)).

(B) Five million dollars (\$5,000,000).

(4) Section 6662(d)(2)(A) of the Internal Revenue Code is modified to additionally provide that the excess determined under Section 6662(d)(2)(A) of the Internal Revenue Code shall be determined without regard to items to which Section 19164.5 applies and without regard to items with respect to which a penalty is imposed by Section 19774.

(5) The provisions of Sections 6662(e)(1) and 6662(h)(2) of the Internal Revenue Code shall apply to returns filed on or after January 1, 2010.

(b) For purposes of Section 6662(d) of the Internal Revenue Code, Section 6664 of the Internal Revenue Code, Section 6694(a)(1) of the Internal Revenue Code, and this part, the Franchise Tax Board may prescribe a list of positions for which the Franchise Tax Board believes there is not substantial authority or there is no reasonable belief that the tax treatment

is more likely than not the proper tax treatment. That list (and any revisions thereof) shall be published through the use of Franchise Tax Board Notices or other published positions. In addition, the “listed transactions” identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty, except as otherwise provided.

(d) (1) Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply, except as otherwise provided.

(2) Section 6664(c)(3) of the Internal Revenue Code shall apply to returns filed on or after January 1, 2010.

(3) Section 6664(c)(4) of the Internal Revenue Code shall apply to appraisals prepared with respect to returns or submissions filed on or after January 1, 2010.

(e) Except for purposes of subdivision (e) of Section 19774, Section 6662(b)(6) of the Internal Revenue Code shall not apply.

(f) Except for purposes of subdivision (e) of Section 19774, Section 6662(i) of the Internal Revenue Code, relating to increase in penalty in case of nondisclosed noneconomic substance transactions, shall not apply.

(g) Section 6665 of the Internal Revenue Code, relating to applicable rules, shall apply, except as otherwise provided.

(h) The amendments made to this section by the act adding this subdivision shall apply to notices mailed on or after January 1, 2012.

SEC. 6. Section 19266 is added to the Revenue and Taxation Code, to read:

19266. (a) (1) The Franchise Tax Board, in coordination with financial institutions doing business in this state, shall operate a Financial Institution Record Match System utilizing automated data exchanges to the maximum extent feasible.

(2) The Franchise Tax Board shall prescribe any rules and regulations that may be necessary or appropriate to implement this section. These rules and regulations shall include all of the following:

(A) A structure by which financial institutions, or their designated data-processing agents, shall receive from the Franchise Tax Board the file or files of delinquent debtors that the institution shall match with its own list of accountholders to identify delinquent tax debtor accountholders at the institution.

(B) An option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third-party data processor to process the data exchange, may forward to the Franchise Tax Board a list of all accountholders and their social security numbers or other taxpayer identification numbers, so that the Franchise Tax Board shall match that list with the file or files of delinquent tax debtors.

(C) Authority for the Franchise Tax Board to exempt a financial institution from the requirements of this section if the Franchise Tax Board

determines that the financial institution participation would not generate sufficient revenue to be cost effective for the Franchise Tax Board.

(D) Authority for the Franchise Tax Board to temporarily suspend the requirements of this section for a financial institution if the financial institution provides the Franchise Tax Board with a written notice from its supervisory banking authority that it is determined to be undercapitalized, significantly undercapitalized, or critically undercapitalized as defined by FDIC Regulation 325.103(b)(3), (4), and (5) or NCUA Regulation 702.102. The notice provided pursuant to this subparagraph shall be subject to the protections of Section 19542.

(b) The Financial Institution Record Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. However, any use of the information provided pursuant to this section for any purpose other than the collection of delinquent franchise or income tax or other debts referred to the Franchise Tax Board for collection, as imposed under Part 5 (commencing with Section 10701), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001) shall be a violation of Section 19542.

(c) (1) To effectuate the Financial Institution Record Match System, financial institutions subject to this section shall provide to the Franchise Tax Board on a quarterly basis the name, record address, and other addresses, social security number or other taxpayer identification number, and other identifying information for each delinquent tax debtor, as identified by the Franchise Tax Board by name and social security number or other taxpayer identification number, who maintains an account at the institution.

(2) The first data file created by the Franchise Tax Board for purposes of matching tax debtor records to financial institution accountholder records shall be limited to 600,000 tax debtor records. The number of tax debtor records included in a subsequent data file created by the Franchise Tax Board may be increased by no more than 600,000 tax debtor records greater than the number of tax debtor records included in the immediately preceding data file until all eligible tax debtor records are included in the data match file.

(d) Unless otherwise required by law, a financial institution furnishing a report or providing information to the Franchise Tax Board pursuant to this section shall not disclose to a depositor or an accountholder, or a codepositor or coaccountholder, that the name, address, social security number or other taxpayer identification number, or other identifying information of that delinquent tax debtor has been received from or furnished to the Franchise Tax Board.

(e) A financial institution shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the Franchise Tax Board as required by this section.

(2) Failing to disclose to a depositor or accountholder that the name, address, social security number or other taxpayer identification number, or

other identifying information of that delinquent tax debtor was included in the data exchange with the Franchise Tax Board required by this section.

(3) Any other action taken in good faith to comply with the requirements of this section.

(f) The Franchise Tax Board may institute civil proceedings to enforce this section.

(g) Any financial institution that willfully fails to comply with the rules and regulations promulgated by the Franchise Tax Board for the administration of delinquent tax collections, unless it is shown to the satisfaction of the Franchise Tax Board that the failure is due to reasonable cause, shall be assessed a penalty upon notice and demand of the Franchise Tax Board and collected in the same manner as tax. The penalty imposed under this section shall be in an amount equal to fifty dollars (\$50) for each record not provided, but the total imposed on that financial institution for all such failures during any calendar year shall not exceed one hundred thousand dollars (\$100,000).

(h) For purposes of this section:

(1) “Account” means a demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or money market mutual fund account, regardless of whether the account bears interest.

(2) “Financial institution” means:

(A) A depository institution, as defined in Section 1813(c) of Title 12 of the United States Code.

(B) An institution-affiliated party, as defined in Section 1813(u) of Title 12 of the United States Code.

(C) A federal credit union or state credit union, as defined in Section 1752 of Title 12 of the United States Code, including an institution-affiliated party of a credit union, as defined in Section 1786(r) of Title 12 of the United States Code.

(D) A benefit association, insurance company, safe deposit company, money-market fund, or similar entity authorized to do business in this state.

(3) “Delinquent tax debtor” means any person liable for any income or franchise tax or other debt referred to the Franchise Tax Board for collection as imposed under Part 5 (commencing with Section 10701), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), including tax, penalties, interest, and fees, where the tax or debt, including the amount, if any, referred to the Franchise Tax Board for collection remains unpaid after 30 days from demand for payment by the Franchise Tax Board, and the person is not making current timely installment payments on the liability under an agreement pursuant to Section 19006.

(i) A financial institution shall be reimbursed by the Franchise Tax Board for actual costs incurred to implement the provisions of this section. Upon receipt of an invoice from the financial institution, cost reimbursement by the Franchise Tax Board shall be limited to the following:

(1) For one-time startup costs of a financial institution, no more than two thousand five hundred dollars (\$2,500).

(2) For data matching costs of a financial institution, other than one-time startup costs, no more than two hundred fifty dollars (\$250) per calendar quarter.

(j) The first data exchange for purposes of matching tax debtor records to financial institution accountholder records shall occur no earlier than April 1, 2012.

(k) This section shall be operative 120 days after the effective date of the act adding this section and shall apply with respect to persons that are delinquent tax debtors on and after that date.

SEC. 7. Section 19504 of the Revenue and Taxation Code is amended to read:

19504. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in respect of any liability imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part (or the liability at law or in equity of any transferee in respect of that liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified time and place, or both, any book, papers, or other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. Information that may be required upon demand includes, but is not limited to, any of the following:

(1) Addresses and telephone numbers of persons designated by the Franchise Tax Board.

(2) Information contained on Federal Form W-2 (Wage and Tax Statement), Federal Form W-4 (Employee's Withholding Allowance Certificate), or State Form DE-4 (Employee's Withholding Allowance Certificate).

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out this part.

(c) (1) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board, and may be served on any person for any purpose.

(2) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of an abusive tax avoidance transaction, as defined in Section 19777, the subpoena may be signed by any member of the Franchise Tax Board, the Executive Officer of the Franchise Tax Board, or any designee.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) When examining a return, the Franchise Tax Board shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Franchise Tax Board has a reasonable indication that there is a likelihood of unreported income. This subdivision applies to any examination beginning on or after October 10, 1999.

(f) The amendments made to this section by the act adding this subdivision shall apply to subpoenas issued on or after the effective date of the act adding this subdivision.

SEC. 8. Section 19560.5 is added to the Revenue and Taxation Code, to read:

19560.5. Notwithstanding any law to the contrary, to effectuate the Financial Institution Record Match System prescribed under Section 19266, the Franchise Tax Board may disclose the name and social security number or taxpayer identification number to designated financial institutions or their authorized processing agent for purposes of matching debtor records to accountholder records at the financial institution. Any use of the data provided by the Franchise Tax Board for a purpose other than those identified by Section 19266 is prohibited and considered a violation of Section 19542.

SEC. 9. The heading of Article 1 (commencing with Section 19751) is added to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, immediately preceding Section 19751, to read:

Article 1. Voluntary Compliance Initiative One

SEC. 10. Section 19751 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 11. Section 19751 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19751. (a) The Franchise Tax Board shall develop and administer a voluntary compliance initiative for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this article.

(b) The voluntary compliance initiative shall be conducted during the period from January 1, 2004, to April 15, 2004, inclusive, pursuant to Section 19754. This initiative shall apply to tax liabilities attributable to the use of abusive tax avoidance transactions for taxable years beginning before January 1, 2003.

(c) The Franchise Tax Board shall issue forms and instructions and may take any other actions necessary, including the use of closing agreements, to implement this article.

(d) The Franchise Tax Board shall publicize the voluntary compliance initiative so as to maximize public awareness of and participation in the initiative. The Franchise Tax Board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article.

(e) Any correspondence mailed by the Franchise Tax Board to a taxpayer at the taxpayer's last known address outlining the voluntary compliance initiative under this article constitutes "contact" within the meaning of Treasury Regulation Section 1.6664-2(c)(3), relating to qualified amended returns, and paragraph (3) of the former subdivision (e) of Section 19773 and Section 19777.

SEC. 12. Section 19752 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 13. Section 19752 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19752. Any taxpayer who meets the requirements of Section 19754 may elect the application of either, but not both, of the following:

(a) Voluntary compliance without appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties imposed by this part, for all taxable years where the taxpayer elects to participate in the initiative, as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action shall be brought against the taxpayer for the taxable years with respect to issues for which the taxpayer voluntarily complies under this article.

(3) No penalty may be waived or abated under this article if the penalty imposed is attributable to an assessment of taxes that became final prior to December 31, 2003.

(4) Notwithstanding Chapter 6 (commencing with Section 19301) of this part, the taxpayer may not file a claim for refund for the amounts paid in connection with abusive tax avoidance transactions under this article.

(b) Voluntary compliance with appeal. If this option is elected, then each of the following shall apply:

(1) The Franchise Tax Board shall waive or abate all penalties, except the accuracy related penalty under Section 19164 (as in effect immediately before enactment of the act adding this section), imposed by this part, for each of the taxable years for which the taxpayer elects to participate in the initiative, that are owed as a result of the underreporting of tax liabilities attributable to the use of abusive tax avoidance transactions.

(2) Except as provided in Section 19753, no criminal action may be brought against the taxpayer for each of the taxable years for which the taxpayer voluntarily complies under this section.

(3) No penalty may be waived under this article if the penalty imposed is attributable to an assessment of taxes that became due and payable prior to December 31, 2003.

(4) The taxpayer may file a claim for refund under Chapter 6 (commencing with Section 19301) of this part. Notwithstanding Section 19331, the taxpayer may not file an appeal to the board until after either of the following:

(A) The date the Franchise Tax Board takes action on the claim for refund for the tax year to which this article applies.

(B) The later of either of the following dates:

(i) The date that is 180 days after the date of a final determination by the Internal Revenue Service with respect to the transaction or transactions to which this article applies.

(ii) The date that is four years after the date the claim for refund was filed or one year after full payment of all tax, including penalty and interest was made, whichever date is later.

(5) The taxpayer shall be subject to the accuracy related penalty under Section 19164.

(A) The penalty may be assessed:

(i) When the Franchise Tax Board takes action on the claim for refund.

(ii) When a federal determination becomes final for the same issue, in which case the penalty shall be assessed (and may not be abated) if the penalty was assessed at the federal level.

(B) In determining the amount of the underpayment of tax, Treasury Regulation Section 1.6664-2(c)(2), as promulgated under Section 6664 of the Internal Revenue Code, relating to qualified amended returns, shall not apply. The amount of the underpayment is the difference between the amount of tax shown on the original return and the correct amount of tax for the taxable year. The underpayment amount shall not be less than the amount of the claim for refund filed by the taxpayer under paragraph (4) that was denied.

(C) The penalty is due and payable upon notice and demand pursuant to Section 19049. Only after the taxpayer has paid all amounts due, including the penalty, and the claim is denied in whole or in part, may the taxpayer file an appeal under Chapter 6 (commencing with Section 19301), of this part in conjunction with the appeal filed under paragraph (4).

(c) A taxpayer's election under this section shall be made for all taxable years of the taxpayer governed by this article. A separate election for each taxable year governed by this article is not allowed.

SEC. 14. Section 19753 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 15. Section 19753 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19753. (a) This article does not apply to violations of this part for which, as of December 31, 2003, any of the following applies:

(1) A criminal complaint was filed against the taxpayer in connection with an abusive tax avoidance transaction or transactions.

(2) The taxpayer is the subject of a criminal investigation in connection with an abusive tax avoidance transaction or transactions.

(b) No refund or credit shall be granted with respect to any penalty paid prior to the time the taxpayer participates in the voluntary compliance initiative authorized by this article.

(c) For purposes of this article, an “abusive tax avoidance transaction” means a plan or arrangement devised for the principal purpose of avoiding tax. Abusive tax avoidance transactions include, but are not limited to, “listed transactions” as described in paragraph (4) of subdivision (a) of Section 18407.

SEC. 16. Section 19754 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 17. Section 19754 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19754. (a) The voluntary compliance initiative described in this article applies to any taxpayer who was not eligible to participate in the Internal Revenue Service’s Offshore Voluntary Compliance Initiative described in Revenue Procedure 2003–11, and during the period from January 1, 2004, to April 15, 2004, does both of the following:

(1) Files an amended tax return under this part for each taxable year for which the taxpayer has previously filed a tax return using an abusive tax avoidance transaction to underreport the taxpayer’s tax liability for that taxable year. Each amended return shall report all income from all sources, without regard to the abusive tax avoidance transaction.

(2) Except as provided in subdivision (b), pays in full all taxes and interest due.

(b) The Franchise Tax Board may enter into an installment payment agreement in lieu of the full payment required under paragraph (2) of subdivision (a). Any installment payment agreement authorized by this subdivision shall include interest on the unpaid amount at the rate prescribed in Section 19521. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) After April 15, 2004, the Franchise Tax Board may issue a deficiency assessment upon an amended return filed pursuant to subdivision (a), impose penalties, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 19752.

(d) In addition to any other authority to examine returns, for the purpose of improving state tax administration, the Franchise Tax Board may inquire into the facts and circumstances related to the use of abusive tax avoidance transactions to underreport the tax liabilities for which a taxpayer has participated in the voluntary compliance initiative under this article. Taxpayers shall cooperate fully with inquiries described in this subdivision. Failure by a taxpayer to fully cooperate in an inquiry described in this subdivision shall render the waiver of penalties under this article null and void and the taxpayer may be assessed any penalties that may apply.

SEC. 18. The heading of Article 2 (commencing with Section 19755) is added to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, immediately preceding Section 19755, to read:

Article 2. Statute of Limitations for Abusive Tax Avoidance Transactions

SEC. 19. Section 19755 of the Revenue and Taxation Code, as added by Section 13 of Chapter 654 of the Statutes of 2003, is repealed.

SEC. 20. Section 19755 of the Revenue and Taxation Code, as added by Section 13 of Chapter 656 of the Statutes of 2003, is amended to read:

19755. (a) (1) Notwithstanding Section 19057, and except as provided in paragraph (2), with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, a notice of a proposed deficiency assessment may be mailed to the taxpayer within eight years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.

(2) For notices mailed on or after August 1, 2011, with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, a notice of a proposed deficiency assessment may be mailed to the taxpayer within 12 years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.

(b) This section shall apply to any return filed under this part on or after January 1, 2000. Paragraph (2) of subdivision (a) shall apply to taxable years that have not been closed by a statute of limitations, res judicata, or otherwise, as of August 1, 2011.

SEC. 21. Article 3 (commencing with Section 19761) is added to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 3. Voluntary Compliance Initiative Two

19761. (a) The Franchise Tax Board shall develop and administer a voluntary compliance initiative for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this article.

(b) The voluntary compliance initiative shall be conducted during the period from August 1, 2011, to October 31, 2011, inclusive, pursuant to Section 19764. This initiative shall apply to tax liabilities attributable to the use of abusive tax avoidance transactions and to unreported income from the use of offshore financial arrangements for taxable years beginning before January 1, 2011.

(c) The Franchise Tax Board shall issue forms and instructions and may take any other actions necessary, including the use of closing agreements, to implement this article.

(d) The Franchise Tax Board shall publicize the voluntary compliance initiative so as to maximize public awareness of and participation in the

initiative. The Franchise Tax Board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article.

(e) Any correspondence mailed by the Franchise Tax Board to a taxpayer at the taxpayer's last known address outlining the voluntary compliance initiative under this article constitutes "contact" within the meaning of Treasury Regulation Section 1.6664-2(c)(3), relating to qualified amended returns, and Sections 19164.5 and 19777.

19762. (a) Any taxpayer who meets the requirements of Section 19764 may elect to participate in the voluntary compliance initiative under this article.

(b) For taxpayers electing to participate in the voluntary compliance initiative under this article, all of the following shall apply:

(1) (A) Except as provided in subparagraph (B), the Franchise Tax Board shall waive or abate all penalties imposed by this part, for all taxable years where the taxpayer elects to participate in the initiative, as a result of the unreported tax liabilities attributable to the use of abusive tax avoidance transactions and to unreported income from the use of offshore financial arrangements.

(B) The penalties imposed under Section 19138 or 19777.5 may not be waived.

(2) Except as provided in Section 19763, no criminal action shall be brought against the taxpayer for the taxable years with respect to issues for which the taxpayer voluntarily complies under this article.

(3) No penalty assessed after July 31, 2011, may be waived or abated under this article if the penalty imposed is attributable to an assessment of taxes that became final prior to July 31, 2011. For purposes of this paragraph, assessment of taxes does not include taxes self-assessed on an original or amended return filed before August 1, 2011.

(4) Notwithstanding Chapter 6 (commencing with Section 19301) of this part, no refund or credit shall be allowed for amounts paid in connection with abusive tax avoidance transactions or unreported income from the use of offshore financial arrangements under this article.

19763. (a) This article does not apply to violations of this part for which, as of July 31, 2011, any of the following applies:

(1) A criminal complaint was filed against the taxpayer in connection with an abusive tax avoidance transaction, transactions, or unreported income from the use of an offshore financial arrangement or arrangements.

(2) The taxpayer is the subject of a criminal investigation in connection with an abusive tax avoidance transaction, transactions, or unreported income from the use of an offshore financial arrangement or arrangements.

(b) No refund or credit shall be allowed with respect to any penalty paid prior to the time the taxpayer participates in the voluntary compliance initiative authorized by this article.

(c) For purposes of this article, an "abusive tax avoidance transaction" has the same meaning as in Section 19777, as amended by the act adding this section.

19764. (a) The voluntary compliance initiative described in this article applies to any taxpayer who, during the period from August 1, 2011, to October 31, 2011, makes an election as described in Section 19762 and does both of the following:

(1) (A) Files an amended tax return under this part for each taxable year for which the taxpayer has previously filed a tax return using an abusive tax avoidance transaction or an offshore financial arrangement to underreport the taxpayer's tax liability for that taxable year or failed to include income from the offshore financial arrangement. Each amended return shall report all income from all sources, without regard to the abusive tax avoidance transaction, including all income from offshore financial arrangements. No deduction shall be allowed for transaction costs associated with an abusive tax avoidance transaction or for transaction or other costs associated with unreported income from the use of an offshore financial arrangement.

(B) For purposes of this article, an "offshore financial arrangement" means any transaction involving financial arrangements that in any manner rely on the use of offshore payment cards, including credit, debit, or charge cards, issued by banks in foreign jurisdictions or offshore financial arrangements, including arrangements with foreign banks, financial institutions, corporations, partnerships, trusts, or other entities to avoid or evade income or franchise tax.

(2) Except as provided in subdivision (b), pays in full all taxes and interest due.

(b) The Franchise Tax Board may enter into an installment payment agreement in lieu of the full payment required by paragraph (2) of subdivision (a), but only if final payment under the terms of that installment payment agreement is due and paid no later than June 15, 2012. Any installment payment agreement authorized by this subdivision shall include interest on the unpaid amount at the rate prescribed in Section 19521. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) After October 31, 2011, the Franchise Tax Board may issue a deficiency assessment upon an amended return filed pursuant to subdivision (a), impose penalties, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers granted under Section 19762.

(d) In addition to any other authority to examine returns, for the purpose of improving state tax administration, the Franchise Tax Board may inquire into the facts and circumstances related to the use of abusive tax avoidance transactions or offshore financial arrangements to underreport the tax liabilities for which a taxpayer has participated in the voluntary compliance initiative under this article. Taxpayers shall cooperate fully with inquiries described in this subdivision. Failure by a taxpayer to fully cooperate in an inquiry described in this subdivision shall render the waiver of penalties

under this article null and void and the taxpayer may be assessed any penalties that may apply.

SEC. 22. The heading of Article 4 (commencing with Section 19772) is added to Chapter 9.6 of Part 10.2 of Division 2 of the Revenue and Taxation Code, immediately preceding Section 19772, to read:

Article 4. Penalties and Interest

SEC. 23. Section 19774 of the Revenue and Taxation Code is amended to read:

19774. (a) If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of that understatement.

(b) (1) Subdivision (a) shall be applied by substituting “20 percent” for “40 percent” with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

(2) For taxable years beginning before January 1, 2003, “adequately disclosed” includes the disclosure of the tax shelter identification number on the taxpayer’s return as required by subdivision (c) of Section 18628, as applicable for the year in which the transaction was entered into.

(c) For purposes of this section:

(1) The term “noneconomic substance transaction understatement” means any amount which would be an understatement under Section 6662A(b) of the Internal Revenue Code, as modified by subdivision (b) of Section 19164.5 if Section 6662A(b) of the Internal Revenue Code were applied by taking into account items attributable to noneconomic substance transactions rather than items to which Section 6662A(b) applies.

(2) A “noneconomic substance transaction” includes:

(A) The disallowance of any loss, deduction or credit, or addition to income attributable to a determination that the disallowance or addition is attributable to a transaction or arrangement that lacks economic substance including a transaction or arrangement in which an entity is disregarded as lacking economic substance. A transaction shall be treated as lacking economic substance if the taxpayer does not have a valid nontax California business purpose for entering into the transaction.

(B) Any disallowance of claimed tax benefits by reason of a transaction lacking economic substance, within the meaning of Section 7701(o) of the Internal Revenue Code, relating to clarification of economic substance doctrine, as added by Section 1409(a) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), except as otherwise provided.

(i) For purposes of this subparagraph, the phrase “apart from state income tax effects” shall be substituted for the phrase “apart from Federal income

tax effects” in each place it appears in Section 7701(o)(1) of the Internal Revenue Code.

(ii) For purposes of this subparagraph, the phrase “any federal or local income tax effect which is related to a state income tax effect shall be treated in the same manner as a state income tax effect” is substituted for the phrase “any State or local income tax effect which is related to a Federal income tax effect shall be treated in the same manner as a Federal income tax effect” in Section 7701(o)(3) of the Internal Revenue Code.

(d) (1) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies, only the Chief Counsel of the Franchise Tax Board may compromise all or any portion of that penalty.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(e) Notwithstanding anything to the contrary in this section, if a penalty has been assessed for federal income tax purposes pursuant to Section 6662(b)(6) of the Internal Revenue Code, as added by Section 1409(b) of the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), on an underpayment attributable to the disallowance of claimed tax benefits by reason of a transaction lacking economic substance, then a penalty shall be imposed under this section for that portion of an understatement attributable to that transaction, and shall not be abated unless the taxpayer can establish that the imposition of the federal penalty under Section 6662 of the Internal Revenue Code for an underpayment attributable to that transaction was clearly erroneous.

(f) The amendments made to this section by the act adding this subdivision shall apply to notices mailed on or after the effective date of the act adding this subdivision.

SEC. 24. Section 19777 of the Revenue and Taxation Code is amended to read:

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding an abusive tax avoidance transaction, and has a deficiency attributable to an abusive tax avoidance transaction, there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the date the notice of proposed assessment is mailed.

(b) For purposes of this section, “abusive tax avoidance transaction” means any of the following:

(1) A tax shelter as defined in Section 6662(d)(2)(C) of the Internal Revenue Code. For purposes of this chapter, Section 6662(d)(2)(C) of the Internal Revenue Code is modified by substituting the phrase “income or franchise tax” for “Federal income tax.”

(2) A reportable transaction, as defined in Section 6707A(c)(1) of the Internal Revenue Code, with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met.

(3) A listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code.

(4) A gross misstatement, within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code.

(5) Any transaction to which Section 19774 applies.

(c) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(d) (1) If a taxpayer files an amended return reporting an abusive tax avoidance transaction, described in subdivision (b), after the taxpayer is contacted by the Franchise Tax Board regarding that abusive tax avoidance transaction but before a notice of proposed assessment is issued under Section 19033, then the amount of the penalty under this section shall be 50 percent of the interest payable under Section 19101 with respect to the amount of any additional tax reflected in the amended return attributable to that abusive tax avoidance transaction.

(2) If a notice of proposed assessment under Section 19033, with respect to an abusive tax avoidance transaction as described in subdivision (a), is issued after the amended return described in paragraph (1) is filed, the penalty imposed pursuant to subdivision (a) shall be applicable to the additional tax reflected in the notice of proposed assessment attributable to that abusive tax avoidance transaction in excess of the additional tax shown on the amended return.

(e) The amendments made to this section by the act adding this subdivision shall apply to notices mailed on or after the effective date of that act and to amended returns filed more than 90 days after that effective date with respect to taxable years for which the statute of limitations for mailing a notice of proposed assessment has not expired as of that date.

SEC. 25. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 26. The sum of one thousand dollars (\$1,000) is hereby appropriated from the General Fund to the State Board of Equalization for administrative operations.

SEC. 27. This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 28. This act is a bill providing for appropriations related to the Budget Bill within the meaning of subdivision (e) of Section 12 of Article

IV of the California Constitution, has been identified as related to the budget in the Budget Bill, and shall take effect immediately.

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