

Introduced by Senator WolkFebruary 15, 2011

An act to amend Sections 19116, 19164, and 19504 of, to add Sections 18407.5 and 19165 to, to add Article 3 (commencing with Section 19761) to Chapter 9.5 of Part 10.2 of Division 2 of, to add the headings of Article 1 (commencing with Section 19751) to, Article 2 (commencing with Section 19755) to, and Article 4 (commencing with Section 19772) 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.

LEGISLATIVE COUNSEL'S DIGEST

SB 342, as introduced, Wolk. Income taxation: abusive avoidance transactions: voluntary compliance initiative.

(1) Existing law requires the Franchise Tax Board to suspend the imposition of any interest, penalty, addition to the tax, or additional amounts for an individual who files a tax return on or before the due date, including extensions, if the board has not provided notice, with certain exceptions.

This bill would add interest, penalty, addition to tax, or additional amount relating to any abusive tax avoidance transaction, as defined, to the list of exceptions for which additional interest, penalties, and amounts may be charged.

(2) Under existing law, the Franchise Tax Board was required to develop and administer a voluntary compliance initiative, as specified, to be operative during the period of January 1, 2004, to April 15, 2004, for taxpayers to avoid specified penalties and tax liabilities for the use of abusive tax avoidance transactions if the taxpayer files an amended

return and pays the tax due for transactions that occurred in taxable years beginning before January 1, 2003.

This bill would require a similar voluntary compliance initiative, to be operative during the period of April 1, 2011, to June 15, 2011, and relating to transactions that occurred in taxable years beginning before January 1, 2010.

(3) Under existing law, if a taxpayer has been contacted by the Franchise Tax Board regarding a specified reportable transaction, an amount equal to 100% of the interest payable is added to the tax amount.

This bill would make this provision, instead, applicable to abusive tax avoidance transactions, as defined, where the taxpayer has a deficiency. The bill would also reduce the amount of additional tax added for taxpayers who take specified actions.

(4) Existing law imposes various taxes and fees, and certain penalties in connection with tax avoidance and abusive tax shelters, including reportable transactions.

This bill would expand the definition of reportable transactions to include abusive tax avoidance transactions, as defined, and transactions of interest, as defined. This bill would also make technical, nonsubstantive changes to conform to the expansion of this definition.

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

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

1 SECTION 1. Section 18407.5 is added to the Revenue and
2 Taxation Code, to read:

3 18407.5. (a) "Reportable Transaction," as that term is defined
4 in paragraph (3) of subdivision (a) of Section 18407, shall also
5 include a transaction of a type that the Secretary of the Treasury
6 under Section 6011 of the Internal Revenue Code for federal
7 income tax purposes or the Franchise Tax Board under this section
8 for California income or franchise tax purposes determines is a
9 transaction of interest, and shall be reported on the return or
10 statement required to be made.

11 (b) A transaction of interest is a transaction that is the same or
12 substantially similar to one of the types of transactions that the
13 Franchise Tax Board has identified by notice or regulation as a
14 transaction of interest. Transactions of interest identified and

1 published to the preceding sentence shall also be published on the
2 Franchise Tax Board’s Internet Web site.

3 (c) This section shall apply to transactions of interest published
4 on or after the effective date of the act adding this section and only
5 with respect to taxable years beginning on or after that date.

6 SEC. 2. Section 19116 of the Revenue and Taxation Code, as
7 amended by Section 43 of Chapter 14 of the Statutes of 2010, is
8 amended to read:

9 19116. (a) In the case of an individual who files a return of
10 tax imposed under Part 10 (commencing with Section 17001) for
11 a taxable year on or before the due date for the return, including
12 extensions, if the Franchise Tax Board does not provide a notice
13 to the taxpayer specifically stating the taxpayer’s liability and the
14 basis of the liability before the close of the notification period, the
15 Franchise Tax Board shall suspend the imposition of any interest,
16 penalty, addition to tax, or additional amount with respect to any
17 failure relating to the return which is computed by reference to the
18 period of time the failure continues to exist and which is properly
19 allocable to the suspension period.

20 (b) For purposes of this section:

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

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

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

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

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

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

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

39 (1) Any penalty imposed by Section 19131.

40 (2) Any penalty imposed by Section 19132.

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

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

5 (5) Any criminal penalty.

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

8 (7) Any interest, penalty, addition to tax, or additional amount
9 relating to any reportable transaction with respect to which the
10 requirements of Section 6664(d)(2)(A) of the Internal Revenue
11 Code are not met, and any listed transaction, as defined in Section
12 6707A(c) of the Internal Revenue Code.

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

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

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

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

27 (B) Two years from the date when the notice required by Section
28 18622 is filed with the Franchise Tax Board by the taxpayer or the
29 Internal Revenue Service, if after the six-month period required
30 in Section 18622, a taxpayer or the Internal Revenue Service
31 reports a change or correction.

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

37 (f) For notices sent after January 1, 2004, this section does not
38 apply to taxpayers with taxable income greater than two hundred
39 thousand dollars (\$200,000) that have been contacted by the
40 Franchise Tax Board regarding the use of a potentially abusive tax

1 shelter ~~(within the meaning of Section 19777)~~, as defined by
2 Section 19777, as added by Chapter 656 of the Statutes of 2003
3 and amended by Section 331 of Chapter 183 of the Statutes of
4 2004.

5 (g) This section shall apply to taxable years ending after October
6 10, 1999.

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

9 (i) (1) The amendments made to paragraph (1) of subdivision
10 (b) ~~by the act adding this subdivision Chapter 14 of the Statutes~~
11 ~~of 2010~~ shall apply to notices provided after January 1, 2011.

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

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

18 SEC. 3. Section 19164 of the Revenue and Taxation Code, as
19 amended by Section 46 of Chapter 14 of the Statutes of 2010, is
20 amended to read:

21 19164. (a) (1) (A) An accuracy-related penalty shall be
22 imposed under this part and shall be determined in accordance
23 with Section 6662 of the Internal Revenue Code, relating to
24 imposition of accuracy-related penalty on underpayments, as
25 amended by Section 1409(b) of the Health Care and Education
26 Reconciliation Act of 2010 (Public Law 111-152), except as
27 otherwise provided.

28 (B) (i) Except for understatements relating to reportable
29 transactions to which Section 19164.5 applies, in the case of any
30 proposed deficiency assessment issued after the last date of the
31 amnesty period specified in Chapter 9.1 (commencing with Section
32 19730) for any taxable year beginning prior to January 1, 2003,
33 the penalty specified in Section 6662(a) of the Internal Revenue
34 Code shall be computed by substituting “40 percent” for “20
35 percent.”

36 (ii) Clause (i) shall not apply to any taxable year of a taxpayer
37 beginning prior to January 1, 2003, if, as of the start date of the
38 amnesty program period specified in Section 19731, the taxpayer
39 is then under audit by the Franchise Tax Board, or the taxpayer
40 has filed a protest under Section 19041, or the taxpayer has filed

1 an appeal under Section 19045, or the taxpayer is engaged in
2 settlement negotiations under Section 19442, or the taxpayer has
3 a pending judicial proceeding in any court of this state or in any
4 federal court relating to the tax liability of the taxpayer for that
5 taxable year.

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

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

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

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

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

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

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

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

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

38 (b) For purposes of Section 6662(d) of the Internal Revenue
39 Code, Section 6664 of the Internal Revenue Code, Section
40 6694(a)(1) of the Internal Revenue Code, and this part, the

1 Franchise Tax Board may prescribe a list of positions for which
2 the Franchise Tax Board believes there is not substantial authority
3 or there is no reasonable belief that the tax treatment is more likely
4 than not the proper tax treatment. That list (and any revisions
5 thereof) shall be published through the use of Franchise Tax Board
6 Notices or other published positions. In addition, the “listed
7 transactions” identified and published pursuant to the preceding
8 sentence shall be published on the Web site of the Franchise Tax
9 Board.

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

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

17 (2) ~~Section 6664(e)(2)~~ *Section 6664(c)(3)* of the Internal
18 Revenue Code shall apply to returns filed on or after January 1,
19 2010.

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

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

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

29 (e)

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

32 (h) *The amendments made to this section by the act adding this*
33 *subdivision shall apply to notices mailed on or after January 1,*
34 *2012.*

35 SEC. 4. Section 19165 is added to the Revenue and Taxation
36 Code, to read:

37 19165. (a) A penalty shall be imposed under this part for a
38 claim or credit made for an excessive amount and shall be
39 determined in accordance with Section 6676 of the Internal

1 Revenue Code, relating to erroneous claim for refund or credit,
2 except as otherwise provided.

3 (b) (1) The penalty under this section shall not apply to an
4 individual with an adjusted gross income shown on the original
5 return for that taxable year that is equal to or less than the threshold
6 amount specified in paragraph (2).

7 (2) “Threshold amount” means:

8 (A) One hundred fifty thousand dollars (\$150,000) in the case
9 of an individual filing a joint return under Section 18521, or a
10 surviving spouse, as defined in Section 17046.

11 (B) Seventy-five thousand dollars (\$75,000) in the case of any
12 individual not described in subparagraph (A).

13 (c) Article 3 (commencing with Section 19031), relating to
14 deficiency assessments, shall not apply with respect to the
15 assessment or collection of any penalty imposed by subdivision
16 (a).

17 (d) This section shall apply to any claim filed or submitted after
18 the effective date of the act adding this section.

19 SEC. 5. Section 19504 of the Revenue and Taxation Code is
20 amended to read:

21 19504. (a) The Franchise Tax Board, for the purpose of
22 administering its duties under this part, including ascertaining the
23 correctness of any return; making a return where none has been
24 made; determining or collecting the liability of any person in
25 respect of any liability imposed by Part 10 (commencing with
26 Section 17001), Part 11 (commencing with Section 23001), or this
27 part (or the liability at law or in equity of any transferee in respect
28 of that liability); shall have the power to require by demand, that
29 an entity of any kind including, but not limited to, employers,
30 persons, or financial institutions provide information or make
31 available for examination or copying at a specified time and place,
32 or both, any book, papers, or other data which may be relevant to
33 that purpose. Any demand to a financial institution shall comply
34 with the California Right to Financial Privacy Act set forth in
35 Chapter 20 (commencing with Section 7460) of Division 7 of Title
36 1 of the Government Code. Information that may be required upon
37 demand includes, but is not limited to, any of the following:

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

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

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

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

13 (2) For taxpayers that have been contacted by the Franchise Tax
14 Board regarding the use of a ~~potentially abusive tax shelter (within~~
15 ~~the meaning of Section 19777)~~ *an abusive tax avoidance*
16 *transaction, as defined in Section 19777 as amended by the act*
17 *amending this paragraph*, the subpoena may be signed by any
18 member of the Franchise Tax Board, the Executive Officer of the
19 Franchise Tax Board, or any designee.

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

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

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

34 SEC. 6. The heading of Article 1 (commencing with Section
35 19751) is added to Chapter 9.5 of Part 10.2 of Division 2 of the
36 Revenue and Taxation Code, immediately preceding Section
37 19751, to read:

38

39

Article 1. Voluntary Compliance Initiative One

40

1 SEC. 7. Section 19751 of the Revenue and Taxation Code, as
2 added by Section 13 of Chapter 654 of the Statutes of 2003, is
3 repealed.

4 ~~19751. (a) The Franchise Tax Board shall develop and~~
5 ~~administer a voluntary compliance initiative for taxpayers subject~~
6 ~~to Part 10 (commencing with Section 17001) and Part 11~~
7 ~~(commencing with Section 23001), as provided in this chapter.~~

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

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

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

21 ~~(e) Any correspondence mailed by the Franchise Tax Board to~~
22 ~~a taxpayer at the taxpayer's last known address outlining the~~
23 ~~voluntary compliance initiative under this chapter constitutes~~
24 ~~"contact" within the meaning of Treasury Regulation Section~~
25 ~~1.6664-2(e)(3), relating to qualified amended returns, and~~
26 ~~paragraph (3) of subdivision (c) of Section 19773 and Section~~
27 ~~19777, regarding increased interest rate.~~

28 SEC. 8. Section 19751 of the Revenue and Taxation Code, as
29 added by Section 13 of Chapter 656 of the Statutes of 2003, is
30 amended to read:

31 19751. (a) The Franchise Tax Board shall develop and
32 administer a voluntary compliance initiative for taxpayers subject
33 to Part 10 (commencing with Section 17001) and Part 11
34 (commencing with Section 23001), as provided in this ~~chapter~~
35 *article*.

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

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

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

9 (e) Any correspondence mailed by the Franchise Tax Board to
10 a taxpayer at the taxpayer's last known address outlining the
11 voluntary compliance initiative under this ~~chapter~~ *article*
12 constitutes "contact" within the meaning of Treasury Regulation
13 Section 1.6664-2(c)(3), relating to qualified amended returns, and
14 paragraph (3) of subdivision (e) of *former* Section 19773 and
15 Section 19777, ~~regarding increased interest rate~~.

16 SEC. 9. Section 19752 of the Revenue and Taxation Code, as
17 added by Section 13 of Chapter 654 of the Statutes of 2003, is
18 repealed.

19 ~~19752. Any taxpayer who meets the requirements of Section~~
20 ~~19754 may elect the application of either, but not both, of the~~
21 ~~following:~~

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

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

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

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

36 ~~(4) Notwithstanding Chapter 6 (commencing with Section~~
37 ~~19301) of this part, the taxpayer may not file a claim for refund~~
38 ~~for the amounts paid in connection with abusive tax avoidance~~
39 ~~transactions under this chapter.~~

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

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

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

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

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

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

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

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

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

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

31 ~~(A) The penalty may be assessed:~~

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

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

37 ~~(B) In determining the amount of the underpayment of tax,~~
38 ~~Treasury Regulation Section 1.6664-2(e)(2), as promulgated under~~
39 ~~Section 6664 of the Internal Revenue Code, relating to qualified~~
40 ~~amended returns, shall not apply. The amount of the underpayment~~

1 is the difference between the amount of tax shown on the original
2 return and the correct amount of tax for the taxable year. The
3 underpayment amount shall not be less than the amount of the
4 claim for refund filed by the taxpayer under paragraph (4) that was
5 denied.

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

12 ~~(e) A taxpayer's election under this section shall be made for~~
13 ~~all taxable years of the taxpayer governed by this chapter. A~~
14 ~~separate election for each taxable year governed by this chapter is~~
15 ~~not allowed.~~

16 SEC. 10. Section 19752 of the Revenue and Taxation Code,
17 as amended by Section 13 of Chapter 656 of the Statutes of 2003,
18 is amended to read:

19 19752. Any taxpayer who meets the requirements of Section
20 19754 may elect the application of either, but not both, of the
21 following:

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

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

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

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

36 (4) Notwithstanding Chapter 6 (commencing with Section
37 19301) of this part, the taxpayer may not file a claim for refund
38 for the amounts paid in connection with abusive tax avoidance
39 transactions under this ~~chapter article.~~

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

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

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

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

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

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

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

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

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

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

31 (A) The penalty may be assessed:

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

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

37 (B) In determining the amount of the underpayment of tax,
38 Treasury Regulation Section 1.6664-2(c)(2), as promulgated under
39 Section 6664 of the Internal Revenue Code, relating to qualified
40 amended returns, shall not apply. The amount of the underpayment

1 is the difference between the amount of tax shown on the original
2 return and the correct amount of tax for the taxable year. The
3 underpayment amount shall not be less than the amount of the
4 claim for refund filed by the taxpayer under paragraph (4) that was
5 denied.

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

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

16 SEC. 11. Section 19753 of the Revenue and Taxation Code,
17 as added by Section 13 of Chapter 654 of the Statutes of 2003, is
18 repealed.

19 ~~19753. (a) This chapter does not apply to violations of this~~
20 ~~part for which, as of December 31, 2003, any of the following~~
21 ~~applies:~~

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

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

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

31 ~~(c) For purposes of this chapter, an "abusive tax avoidance~~
32 ~~transaction" means a plan or arrangement devised for the principal~~
33 ~~purpose of avoiding tax. Abusive tax avoidance transactions~~
34 ~~include, but are not limited to, "listed transactions" as described~~
35 ~~in subdivision (a) of Section 18407.~~

36 SEC. 12. Section 19753 of the Revenue and Taxation Code,
37 as added by Section 13 of Chapter 656 of the Statutes of 2003, is
38 amended to read:

1 19753. (a) This ~~chapter~~ *article* does not apply to violations of
2 this part for which, as of December 31, 2003, any of the following
3 applies:

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

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

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

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

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

21 ~~19754. (a) The voluntary compliance initiative described in
22 this chapter applies to any taxpayer who was not eligible to
23 participate in the Internal Revenue Service’s Offshore Voluntary
24 Compliance Initiative described in Revenue Procedure 2003-11,
25 and during the period from January 1, 2004, to April 15, 2004,
26 does both of the following:~~

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

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

35 ~~(b) The Franchise Tax Board may enter into an installment
36 payment agreement in lieu of the full payment required under
37 paragraph (2) of subdivision (a). Any installment payment
38 agreement authorized by this subdivision shall include interest on
39 the unpaid amount at the rate prescribed in Section 19521. Failure
40 by the taxpayer to fully comply with the terms of the installment~~

1 ~~payment agreement shall render the waiver of penalties null and~~
2 ~~void, and the total amount of tax, interest, and all penalties shall~~
3 ~~be immediately due and payable.~~

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

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

21 SEC. 14. Section 19754 of the Revenue and Taxation Code,
22 as added by Section 13 of Chapter 656 of the Statutes of 2003, is
23 amended to read:

24 19754. (a) The voluntary compliance initiative described in
25 this ~~chapter~~ *article* applies to any taxpayer who was not eligible
26 to participate in the Internal Revenue Service's Offshore Voluntary
27 Compliance Initiative described in Revenue Procedure 2003-11,
28 and, during the period from January 1, 2004, to April 15, 2004,
29 does both of the following:

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

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

38 (b) The Franchise Tax Board may enter into an installment
39 payment agreement in lieu of the full payment required under
40 paragraph (2) of subdivision (a). Any installment payment

1 agreement authorized by this subdivision shall include interest on
 2 the unpaid amount at the rate prescribed in Section 19521. Failure
 3 by the taxpayer to fully comply with the terms of the installment
 4 payment agreement shall render the waiver of penalties null and
 5 void, and the total amount of tax, interest, and all penalties shall
 6 be immediately due and payable.

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

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

24 SEC. 15. The heading of Article 2 (commencing with Section
 25 19755) is added to Chapter 9.5 of Part 10.2 of Division 2 of the
 26 Revenue and Taxation Code, immediately preceding Section
 27 19755, to read:

28
 29 Article 2. Statute of Limitations for Abusive Tax Avoidance
 30 Transactions

31
 32 SEC. 16. Section 19755 of the Revenue and Taxation Code,
 33 as added by Section 13 of Chapter 654 of the Statutes of 2003, is
 34 repealed.

35 ~~19755. (a) Notwithstanding Section 19057, with respect to~~
 36 ~~proposed deficiency assessments related to an abusive tax~~
 37 ~~avoidance transaction, as defined in subdivision (c) of Section~~
 38 ~~19753, a notice of a proposed deficiency assessment may be mailed~~
 39 ~~to the taxpayer within eight years after the return was filed, or~~
 40 ~~within the period otherwise provided in Article 3 (commencing~~

1 with Section 19031) of Chapter 4 of this part, whichever expires
2 later.

3 ~~(b) This section shall apply to any return filed under this part
4 on or after January 1, 2000.~~

5 SEC. 17. Section 19755 of the Revenue and Taxation Code,
6 as added by Section 13 of Chapter 656 of the Statutes of 2003, is
7 amended to read:

8 19755. (a) (1) Notwithstanding Section 19057, and except as
9 provided by paragraph (2), with respect to proposed deficiency
10 assessments related to an abusive tax avoidance transaction, ~~as~~
11 ~~defined in subdivision (c) of Section 19753~~, a notice of a proposed
12 deficiency assessment may be mailed to the taxpayer within eight
13 years after the return was filed, or within the period otherwise
14 provided in Article 3 (commencing with Section 19031) of Chapter
15 4 of this part, whichever expires later.

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

23 ~~(b) This (1) Except as provided in paragraph (2), this section~~
24 ~~shall apply to any return filed under this part on or after January~~
25 ~~1, 2000.~~

26 (2) *Paragraph (2) of subdivision (a) shall apply to taxable years*
27 *which have not been closed by a statute of limitations, res judicata,*
28 *or otherwise, as of April 1, 2011.*

29 SEC. 18. Article 3 (commencing with Section 19761) is added
30 to Chapter 9.5 of Part 10.2 of Division 2 of the Revenue and
31 Taxation Code, to read:

32

33

Article 3. Voluntary Compliance Initiative Two

34

35 19761. (a) The Franchise Tax Board shall develop and
36 administer a voluntary compliance initiative for taxpayers subject
37 to Part 10 (commencing with Section 17001) and Part 11
38 (commencing with Section 23001), as provided in this article.

39 (b) The voluntary compliance initiative shall be conducted
40 during the period from April 1, 2011, to June 15, 2011, inclusive,

1 pursuant to Section 19764. This initiative shall apply to tax
2 liabilities attributable to the use of abusive tax avoidance
3 transactions, and to unreported income from the use of offshore
4 financial arrangements, for taxable years beginning before January
5 1, 2010.

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

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

14 (e) Any correspondence mailed by the Franchise Tax Board to
15 a taxpayer at the taxpayer's last known address outlining the
16 voluntary compliance initiative under this article constitutes
17 "contact" within the meaning of Treasury Regulation Section
18 1.6664-2(c)(3), relating to qualified amended returns, and Sections
19 19164.5 and 19777.

20 19762. (a) Any taxpayer who meets the requirements of
21 Section 19764 may elect to participate in the voluntary compliance
22 initiative under this article.

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

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

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

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

38 (3) Any penalty assessed after March 31, 2011, shall not be
39 waived or abated under this article if the penalty imposed is
40 attributable to an assessment of taxes that became final prior to

1 December 31, 2010. For purposes of this paragraph, assessment
2 of taxes does not include taxes self-assessed on an original or
3 amended return filed before April 1, 2011.

4 (4) Notwithstanding Chapter 6 (commencing with Section
5 19301) of this part, no refund or credit shall be allowed for amounts
6 paid in connection with abusive tax avoidance transactions, or
7 unreported income from the use of offshore financial arrangements,
8 under this article.

9 19763. (a) This article shall not apply to violations of this part
10 for which, as of March 31, 2011, any of the following applies:

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

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

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

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

25 19764. (a) The voluntary compliance initiative described in
26 this article applies to any taxpayer who, during the period from
27 April 1, 2011, to June 15, 2011, inclusive, does both of the
28 following:

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

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

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

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

22 (c) After June 15, 2011, the Franchise Tax Board may issue a
23 deficiency assessment upon an amended return filed pursuant to
24 subdivision (a), impose penalties, or initiate criminal action under
25 this part with respect to the difference between the amount shown
26 on that return and the correct amount of tax. This action shall not
27 invalidate any waivers granted under Section 19762.

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

39 SEC. 19. The heading of Article 4 (commencing with Section
40 19772) is added to Chapter 9.5 of Part 10.2 of Division 2 of the

1 Revenue and Taxation Code, immediately preceding Section
2 19772, to read:

3

4

Article 4. Penalties and Interest

5

6 SEC. 20. Section 19774 of the Revenue and Taxation Code is
7 amended to read:

8

9 19774. (a) If a taxpayer has a noneconomic substance
10 transaction understatement for any taxable year, there shall be
11 added to the tax an amount equal to 40 percent of the amount of
12 that understatement.

13

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

20

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

26

27 (c) For purposes of this section:
28 (1) The term “noneconomic substance transaction
29 understatement” means any amount which would be an
30 understatement under Section 6662A(b) of the Internal Revenue
31 Code, as modified by subdivision (b) of Section 19164.5 if Section
32 6662A(b) of the Internal Revenue Code were applied by taking
33 into account items attributable to noneconomic substance
34 transactions rather than items to which Section 6662A(b) applies.

35

36 (2) A “noneconomic substance transaction” includes ~~the~~
37 (A) *The* disallowance of any loss, deduction or credit, or addition
38 to income attributable to a determination that the disallowance or
39 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.

1 (B) Any disallowance of claimed tax benefits by reason of a
2 transaction lacking economic substance, within the meaning of
3 Section 7701(o) of the Internal Revenue Code, relating to
4 clarification of economic substance doctrine, as added by Section
5 1409(a) of the Health Care and Education Reconciliation Act of
6 2010 (Public Law 111-152), except as otherwise provided.

7 (i) For purposes of this subparagraph, the phrase “apart from
8 state income tax effects” shall be substituted for the phrase “apart
9 from federal income tax effects” in each place it appears in Section
10 7701(o)(1) of the Internal Revenue Code.

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

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

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

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

28 (e) (1) Notwithstanding anything to the contrary in this section,
29 if a penalty has been assessed for federal income tax purposes
30 pursuant to Section 6662(b)(6) of the Internal Revenue Code, as
31 added by Section 1409 of the Health Care and Education
32 Reconciliation Act of 2010 (Public Law 111-152), on an
33 underpayment attributable to the disallowance of claimed tax
34 benefits by reason of a transaction lacking economic substance,
35 then a penalty shall be imposed under this section for that portion
36 of an understatement attributable to that transaction.

37 (2) No court or administrative agency shall abate a penalty
38 imposed pursuant to paragraph (1) unless the taxpayer establishes,
39 by clear and convincing evidence, that the imposition of the federal
40 penalty under Section 6662 of the Internal Revenue Code for an

1 *underpayment attributable to that transaction was clearly*
2 *erroneous.*

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

6 SEC. 21. Section 19777 of the Revenue and Taxation Code is
7 amended to read:

8 19777. (a) If a taxpayer has been contacted by the Franchise
9 Tax Board regarding a reportable transaction, as defined in Section
10 6707A(c)(1) of the Internal Revenue Code with respect to which
11 the requirements of Section 6664(d)(2)(A) of the Internal Revenue
12 Code are not met, any listed transaction, as defined in Section
13 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement
14 within the meaning of Section 6404(g)(2)(D) of the Internal
15 Revenue Code, and has a deficiency *an abusive tax avoidance*
16 *transaction and has a deficiency attributable to an abusive tax*
17 *avoidance transaction*, there shall be added to the tax an amount
18 equal to 100 percent of the interest payable under Section 19101
19 for the period beginning on the last date prescribed by law for the
20 payment of that tax (determined without regard to extensions) and
21 ending on the date the notice of proposed assessment is mailed.

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

24 *(1) A tax shelter as defined in Section 6662(d)(2)(C) of the*
25 *Internal Revenue Code. For purposes of this chapter, Section*
26 *6662(d)(2)(C) of the Internal Revenue Code is modified by*
27 *substituting the phrase “income or franchise tax” for “federal*
28 *income tax.”*

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

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

35 *(4) A gross misstatement within the meaning of Section*
36 *6404(g)(2)(D) of the Internal Revenue Code.*

37 *(5) Any transaction to which Section 19774 applies.*

38 ~~(b)~~

1 (c) The penalty imposed by this section is in addition to any
2 other penalty imposed under Part 10 (commencing with Section
3 17001), Part 11 (commencing with Section 23001), or this part.

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

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

20 (e) *The amendments made to this section by the act adding this*
21 *subdivision shall apply to notices mailed and amended returns*
22 *filed on or after the effective date of the act.*