

AMENDED IN SENATE APRIL 4, 2011

SENATE BILL

No. 357

Introduced by Senator Dutton

February 15, 2011

~~An act to add Section 11343.10 to the Government Code, and to add Sections 17053.91 and 23649.1 to the Revenue and Taxation Code, relating to taxation. An act to add Section 11346.47 to the Government Code, relating to regulations.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 357, as amended, Dutton. ~~Personal and corporate income tax: tax credit: depreciable property. Regulations: obsolete equipment.~~

The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. The act requires that an agency identify, in the notice of proposed action for a regulation, an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to a state agency.

This bill would additionally require an agency to estimate the cost to the state in revenues that are lost as a result of a regulation that would make equipment obsolete, where that equipment would otherwise have a remaining depreciable life. The bill would require the Franchise Tax Board to provide to each state agency, and update every 5 years, the average tax rate to be applied to the amount of the estimated accelerated deduction due to reduced asset life attributable to the regulation for an increase in business depreciation.

~~The Personal Income Tax Law and the Corporation Tax Law authorize various deductions in computing the income that is subject to the taxes~~

imposed by those laws, and authorizes credits against the taxes imposed by those laws. Existing law authorizes a taxpayer to deduct from income any remaining depreciation amount whenever depreciable property becomes obsolete, including as the result of regulatory or legislative action.

~~This bill would allow a refundable credit in the amount equal to the depreciation deduction a taxpayer would otherwise be entitled should a state agency regulation render depreciable property obsolete. This bill would condition payment of any refundable portion of the credit upon a future appropriation by the Legislature, and prohibit the state agency regulation regarding depreciable property from taking effect until such appropriation is made, as provided.~~

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 11346.47 is added to the Government*
2 *Code, to read:*

3 *11346.47. (a) For purposes of the estimate of costs and savings*
4 *to a state agency reported pursuant to paragraph (6) of subdivision*
5 *(a) of Section 11346.5, and in addition to information required by*
6 *the Department of Finance pursuant to Section 11357, the agency's*
7 *estimate shall include an estimate of the cost to the state in*
8 *revenues that are lost as a result of a regulation that makes*
9 *equipment obsolete, where that equipment would otherwise have*
10 *a remaining depreciable life.*

11 *(b) For purposes of this section, the Franchise Tax Board shall*
12 *provide to each state agency, and update every five years, the*
13 *average tax rate to be applied to the amount of the estimated*
14 *accelerated deduction due to reduced asset life attributable to the*
15 *regulation for an increase in business depreciation.*

16 ~~SECTION 1. Section 11343.10 is added to the Government~~
17 ~~Code, to read:~~

18 ~~11343.10. (a) A state agency shall not promulgate any new~~
19 ~~regulation that would render tangible property obsolete unless an~~
20 ~~appropriation has been made for a tax credit pursuant to Sections~~
21 ~~17053.91 and 23649.1 of the Revenue and Taxation Code.~~

22 ~~(b) For purposes of this section, "tangible property" means~~
23 ~~property described in Section 167(a) of the Internal Revenue Code.~~

1 SEC. 2. ~~Section 17053.91 is added to the Revenue and Taxation~~
2 ~~Code, to read:~~

3 ~~17053.91. (a) There shall be allowed as a credit against the~~
4 ~~“net tax,” as defined in Section 17039, an amount equal to the~~
5 ~~depreciation deduction for the taxable year to which a taxpayer~~
6 ~~would have otherwise been entitled under this part had a state~~
7 ~~agency not promulgated a regulation, described in Section 11343.10~~
8 ~~of the Government Code, that rendered the tangible property~~
9 ~~obsolete.~~

10 ~~(b) For purposes of this section, “tangible property” means~~
11 ~~property described in Section 167(a) of the Internal Revenue Code.~~

12 ~~(c) In the case of a taxpayer whose credit provided under this~~
13 ~~section exceeds the taxpayer’s tax liability computed under this~~
14 ~~part, the excess shall be credited against other amounts due, if any,~~
15 ~~from the taxpayer and the balance, if any, shall, upon appropriation~~
16 ~~by the Legislature, be refunded to the taxpayer.~~

17 SEC. 3. ~~Section 23649.1 is added to the Revenue and Taxation~~
18 ~~Code, to read:~~

19 ~~23649.1. (a) There shall be allowed as a credit against the “net~~
20 ~~tax,” as defined in Section 23036, an amount equal to the~~
21 ~~depreciation deduction for the taxable year to which a taxpayer~~
22 ~~would have otherwise been entitled under this part had a state~~
23 ~~agency not promulgated a regulation, described in Section 11343.10~~
24 ~~of the Government Code, that rendered the tangible property~~
25 ~~obsolete.~~

26 ~~(b) For purposes of this section, “tangible property” means~~
27 ~~property described in Section 167(a) of the Internal Revenue Code.~~

28 ~~(c) In the case of a taxpayer whose credit provided under this~~
29 ~~section exceeds the taxpayer’s tax liability computed under this~~
30 ~~part, the excess shall be credited against other amounts due, if any,~~
31 ~~from the taxpayer and the balance, if any, shall, upon appropriation~~
32 ~~by the Legislature, be refunded to the taxpayer.~~