

ASSEMBLY BILL

No. 132

Introduced by Assembly Member Holden

January 16, 2013

An act to amend Section 17085 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 132, as introduced, Holden. Personal income taxes: retirement plans: early distributions.

The Personal Income Tax Law, in modified conformity to federal income tax laws, imposes an additional tax upon early distributions from specified retirement plans, as provided.

This bill would, for taxable years, beginning on or after January 1, 2014, and before January 1, 2017, exclude from that additional tax the first \$6,000 distributed to an individual for the purpose of paying qualified costs, as defined, with respect to acquisition indebtedness for a principal residence, as provided.

This bill would take effect immediately as a tax levy.

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 17085 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 17085. Section 72 of the Internal Revenue Code, relating to
- 4 annuities, certain proceeds of endowment and life insurance
- 5 contracts, is modified as follows:

1 (a) The amendments and transitional rules made by Public Law
 2 99-514 shall be applicable to this part for the same transactions
 3 and the same years as they are applicable for federal purposes,
 4 except that the repeal of Section 72(d) of the Internal Revenue
 5 Code, relating to repeal of special rule for employees' annuities,
 6 shall apply only to the following:

7 (1) Any individual whose annuity starting date is after December
 8 31, 1986.

9 (2) At the election of the taxpayer, any individual whose annuity
 10 starting date is after July 1, 1986, and before January 1, 1987.

11 (b) The amount of a distribution from an individual retirement
 12 account or annuity or employee trust or employee annuity that is
 13 includable in gross income for federal purposes shall be reduced
 14 for purposes of this part by the lesser of either of the following:

15 (1) An amount equal to the amount includable in federal gross
 16 income for the taxable year.

17 (2) An amount equal to the basis in the account or annuity
 18 allowed by Section 17507 (relating to individual retirement
 19 accounts and simplified employee pensions), the increased basis
 20 allowed by Sections 17504 and 17506 (relating to plans of
 21 self-employed individuals), the increased basis allowed by Section
 22 17501, or the increased basis allowed by Section 17551 that is
 23 remaining after adjustment for reductions in gross income under
 24 this provision in prior taxable years.

25 (c) (1) Except as provided in paragraph (2), the amount of the
 26 additional tax imposed under this part shall be computed in
 27 accordance with Sections 72(m), (q), (t), and (v) of the Internal
 28 Revenue Code, as applicable for federal income tax purposes for
 29 the same taxable year, using a rate of 2½ percent, in lieu of the
 30 rate provided in those sections.

31 (2) In the case where Section 72(t)(6) of the Internal Revenue
 32 Code, relating to special rules for simple retirement accounts, as
 33 applicable for federal income tax purposes for the same taxable
 34 year, applies, the rate in paragraph (1) shall be 6 percent in lieu of
 35 the 2½ percent rate specified therein.

36 (3) (A) *Notwithstanding paragraphs (1) and (2), for taxable*
 37 *years beginning on or after January 1, 2014, and before January*
 38 *1, 2017, an individual shall not pay the additional tax described*
 39 *in paragraph (1) for early withdrawal of a qualified principal*

1 *residence payment distribution from his or her retirement account*
2 *when the moneys are used to reduce qualified costs.*

3 *(B) For the purposes of this paragraph:*

4 *(i) "Acquisition indebtedness" shall have the same meaning as*
5 *in Section 163(h)(3)(B) of the Internal Revenue Code, except that*
6 *the dollar limitation in Section 163(h)(3)(B)(ii) of the Internal*
7 *Revenue Code shall not apply.*

8 *(ii) "Qualified costs" means either of the following:*

9 *(I) Amounts paid as principal or interest on acquisition*
10 *indebtedness.*

11 *(II) Amounts paid as part of a loan modification that either*
12 *reduces the principal or interest of acquisition indebtedness.*

13 *(iii) "Qualified principal residence payment distribution" means*
14 *any payment or distribution received by an individual to the extent*
15 *that the payment or distribution is used by the individual before*
16 *the close of the 60th day after the day on which that payment or*
17 *distribution is received to pay qualified costs with respect to a*
18 *principal residence of the individual or spouse of the individual.*

19 *(C) This paragraph shall only apply to an individual that meets*
20 *both of the following requirements:*

21 *(i) The individual only owns one home, occupied by the*
22 *individual as his or her principal residence, that has a market*
23 *value that is less than the amount the individual owes on his or*
24 *her acquisition indebtedness on that home.*

25 *(ii) The individual receives, and provides certification of,*
26 *counseling from a counseling agency approved by the United States*
27 *Department of Housing and Urban Development, as provided in*
28 *Subpart B of Part 214 of Title 24 of the Code of Federal*
29 *Regulations. The certification shall be signed by the individual*
30 *and the agency counselor, and shall include the date of the*
31 *counseling and the name, address, and telephone number of both*
32 *the counselor and the individual.*

33 *(iii) The counseling agency shall not receive any compensation,*
34 *either directly or indirectly, from the lender or from any other*
35 *person involved in originating or servicing the acquisition*
36 *indebtedness.*

37 *(D) The aggregate amount of qualified principal residence*
38 *payment distributions received by an individual for all taxable*
39 *years shall not exceed six thousand dollars (\$6,000).*

1 (E) *The Franchise Tax Board may promulgate regulations as*
2 *necessary or appropriate to carry out the purposes of this*
3 *paragraph.*

4 (d) Section 72(f)(2) of the Internal Revenue Code shall be
5 applicable without applying the exceptions which immediately
6 follow that paragraph.

7 ~~(e) The amendments made by Section 844 of the federal Pension~~
8 ~~Protection Act of 2006 (P.L. 109-280) to Section 72(e) of the~~
9 ~~Internal Revenue Code, shall not apply. Section 72(e)(II) of the~~
10 ~~Internet Revenue Code shall not apply.~~

11 SEC. 2. This act provides for a tax levy within the meaning of
12 Article IV of the Constitution and shall go into immediate effect.