

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 132

Introduced by Assembly Member Holden
(Coauthor: Assembly Member Morrell)

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 amended, 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:

1 17085. Section 72 of the Internal Revenue Code, relating to
2 annuities, certain proceeds of endowment and life insurance
3 contracts, is modified as follows:

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

10 (1) Any individual whose annuity starting date is after December
11 31, 1986.

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

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

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

20 (2) An amount equal to the basis in the account or annuity
21 allowed by Section 17507 (relating to individual retirement
22 accounts and simplified employee pensions), the increased basis
23 allowed by Sections 17504 and 17506 (relating to plans of
24 self-employed individuals), the increased basis allowed by Section
25 17501, or the increased basis allowed by Section 17551 that is
26 remaining after adjustment for reductions in gross income under
27 this provision in prior taxable years.

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

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

39 ~~(3) (A) Notwithstanding paragraphs (1) and (2), for taxable~~
40 ~~years beginning on or after January 1, 2014, and before January~~

1 ~~1, 2017, an individual shall not pay the additional tax described~~
2 ~~in paragraph (1) for early withdrawal of a qualified principal~~
3 ~~residence payment distribution from his or her retirement account~~
4 ~~when the moneys are used to reduce qualified costs.~~

5 *(3) (A) For taxable years beginning on or after January 1,*
6 *2014, and before January 1, 2017, Section 72(t)(2) of the Internal*
7 *Revenue Code, relating to subsection not to apply to certain*
8 *distributions, is modified to additionally provide that Section*
9 *72(t)(1) of the Internal Revenue Code, relating to imposition of*
10 *additional tax, shall not apply to distributions made to an*
11 *individual from a qualified retirement plan to the extent such*
12 *distributions do not exceed the aggregate amount of qualified*
13 *principal residence payment distributions.*

14 (B) For the purposes of this paragraph:

15 (i) “Acquisition indebtedness” shall have the same meaning as
16 in Section 163(h)(3)(B) of the Internal Revenue Code, except that
17 the dollar limitation in Section 163(h)(3)(B)(ii) of the Internal
18 Revenue Code shall not apply.

19 (ii) “Qualified costs” means either of the following:

20 (I) Amounts paid as principal or interest on acquisition
21 indebtedness.

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

24 (iii) “Qualified principal residence payment distribution” means
25 any payment or distribution received by an individual to the extent
26 that the payment or distribution is used by the individual before
27 the close of the 60th day after the day on which that payment or
28 distribution is received to pay qualified costs with respect to a
29 principal residence of the individual or spouse of the individual.

30 ~~(C) This paragraph shall only apply to an individual that meets~~
31 ~~both of the following requirements:~~

32 ~~(i) The individual only owns one home, occupied by the~~
33 ~~individual as his or her principal residence, that has a market value~~
34 ~~that is less than the amount the individual owes on his or her~~
35 ~~acquisition indebtedness on that home.~~

36 ~~(ii) The individual receives, and provides certification of,~~
37 ~~counseling from a counseling agency approved by the United States~~
38 ~~Department of Housing and Urban Development, as provided in~~
39 ~~Subpart B of Part 214 of Title 24 of the Code of Federal~~
40 ~~Regulations. The certification shall be signed by the individual~~

1 and the agency counselor, and shall include the date of the
2 counseling and the name, address, and telephone number of both
3 the counselor and the individual.

4 (iii) ~~The counseling agency shall not receive any compensation,
5 either directly or indirectly, from the lender or from any other
6 person involved in originating or servicing the acquisition
7 indebtedness.~~

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

11 (C) *This paragraph shall apply only if:*

12 (i) *The individual and, if married, the spouse of the individual,
13 collectively own no more than one residence that is used by either
14 the individual or the spouse of the individual, or by both, as a
15 principal residence (within the meaning of Section 121 of the
16 Internal Revenue Code, relating to exclusion of gain or sale of
17 principal residence) and neither the individual nor, if married, the
18 spouse of the individual, own any other residence that is used by
19 either the individual or spouse of the individual, or by both, as a
20 residence that is not a principal residence within the meaning of
21 Section 280A(d)(1) of the Internal Revenue Code, relating to use
22 as a residence.*

23 (ii) *The principal residence has a market value that is less than
24 the unpaid balance of acquisition indebtedness on that residence.*

25 (D) *The aggregate amount of distributions received by an
26 individual that may be treated as qualified principal residence
27 payment distributions under this paragraph shall not exceed a
28 total of six thousand dollars (\$6,000) for all taxable years.*

29 (E) The Franchise Tax Board may promulgate regulations as
30 necessary or appropriate to carry out the purposes of this paragraph.

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

34 (e) Section 72(e)(II) of the Internal Revenue Code shall not
35 apply.

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

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