

Assembly Bill No. 1173

CHAPTER 536

An act to amend Sections 19565, 23036, 23701, and 23701d of, and to add Section 17508.2 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 4, 2013. Filed with
Secretary of State October 4, 2013.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1173, Bocanegra. Personal Income and Corporation Tax Law: nonqualified deferred compensation plan: tentative minimum tax: credits: exempt organizations.

The Personal Income Tax Law conforms to the federal income tax law that includes in gross income the compensation from nonqualified deferred compensation plans that fail to meet specified requirements. These laws require the amount of tax imposed to be increased by the amount of interest at the underpayment rate, as specified, and 20% of the compensation that is required to be included in gross income.

This bill would substitute 5% in lieu of 20% for taxable years beginning on or after January 1, 2013.

The Corporation Tax Law provides various credits against the taxes imposed by that law, including a credit for qualified expenditures for the production of qualified motion pictures in the state. Existing law provides for a tentative minimum tax and further provides that, except for specified credits, no other credit shall reduce the tax imposed below the tentative minimum tax.

This bill would additionally allow, for taxable years beginning on or after January 1, 2011, the credit for qualified expenditures for the production of qualified motion pictures to reduce the tentative minimum tax. This bill would make findings related to the public purpose served by the bill.

The Corporation Tax Law, in modified conformity with federal income tax laws, exempts various types of organizations from state income taxes imposed by that law. Existing law establishes a streamlined method by which organizations that have obtained a ruling or determination from the Internal Revenue Service that it is exempt from federal income taxes as an organization described in Section 501(c)(3) of the Internal Revenue Code may obtain exemption from state income taxes, as provided.

This bill would allow an organization that has obtained a ruling or determination from the Internal Revenue Service that it is exempt from federal income taxes as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code to use this streamlined method.

This bill would also make conforming changes.

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

SECTION 1. Section 17508.2 is added to the Revenue and Taxation Code, to read:

17508.2. For taxable years beginning on or after January 1, 2013, Section 409A of the Internal Revenue Code is modified as follows:

(a) By substituting the phrase “five percent” in lieu of the phrase “20 percent” in Section 409A(a)(1)(B)(i)(II) of the Internal Revenue Code.

(b) By substituting the phrase “five percent” in lieu of the phrase “20 percent” in Section 409A(b)(5)(A)(ii) of the Internal Revenue Code.

SEC. 2. Section 19565 of the Revenue and Taxation Code is amended to read:

19565. (a) (1) If an organization is exempt from taxation under Section 23701 for any taxable year, the application filed by the organization with respect to which the Franchise Tax Board made its determination that the organization was entitled to exemption under Section 23701, together with any papers submitted in support of the application, any letter or other document issued by the Franchise Tax Board, with respect to the application, and any copy of the notification issued by the Internal Revenue Service approving the organization’s tax-exempt status pursuant to the Internal Revenue Code which is submitted by the organization to the Franchise Tax Board, shall be open to public inspection. After the application of any organization has been opened to public inspection under this subdivision, the Franchise Tax Board shall, on the request of any person with respect to the organization, furnish a statement indicating the section which it has been determined describes the organization.

(2) Any inspection under paragraph (1) may be made at times, and in the manner, as the Franchise Tax Board shall by regulation prescribe.

(b) Upon request of the organization submitting any supporting papers described in subdivision (a), the Franchise Tax Board shall withhold from public inspection any information contained therein which it determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if it determines that public disclosure of the information would adversely affect the organization. The Franchise Tax Board shall withhold from public inspection any information contained in supporting papers described in subdivision (a) the public disclosure of which it determines would adversely affect the national defense.

(c) The Franchise Tax Board may impose a reasonable charge for supplying any information the disclosure of which is permitted under this section.

SEC. 3. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term “tax” includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term “tax” does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term “tax” also includes all of the following:

(1) The tax on limited partnerships, imposed under Section 17935, the tax on limited liability companies, imposed under Section 17941, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits are allowed against the “tax” in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the “tax,” allow the excess to be carried over to offset the “tax” in succeeding taxable years, except for those credits that are allowed to reduce the “tax” below the tentative minimum tax, as defined by Section 23455. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits that are allowed to reduce the “tax” below the tentative minimum tax, as defined by Section 23455.

(5) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following applies:

(1) A credit may not reduce the “tax” below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by former Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by former Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by former Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) The credit allowed by former Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by former Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23633 (relating to targeted tax area sales or use tax credit).

(P) The credit allowed by Section 23634 (relating to targeted tax area hiring credit).

(Q) The credit allowed by former Section 23649 (relating to qualified property).

(R) For taxable years beginning on or after January 1, 2011, the credit allowed by Section 23685 (relating to qualified motion pictures).

(2) A credit against the tax may not reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) is allowed to be carried over to reduce the “tax” in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative is allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer is eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part is computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit applies to the S corporation and to each shareholder.

(i) (1) With respect to any taxpayer that directly or indirectly owns an interest in a business entity that is disregarded for tax purposes pursuant to Section 23038 and any regulations thereunder, the amount of any credit or credit carryforward allowable for any taxable year attributable to the

disregarded business entity is limited in accordance with paragraphs (2) and (3).

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "tax," as defined in subdivision (a), for the taxable year is limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 23455), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to that disregarded business entity. A credit is not allowed if the taxpayer's regular tax (as defined in Section 23455), determined by including the income attributable to the disregarded business entity is less than the taxpayer's regular tax (as defined in Section 23455), determined by excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (d), (e), and (f).

(j) (1) Unless otherwise specifically provided, in the case of a taxpayer that is a partner or shareholder of an eligible pass-thru entity described in paragraph (2), any credit passed through to the taxpayer in the taxpayer's first taxable year beginning on or after the date the credit is no longer operative may be claimed by the taxpayer in that taxable year, notwithstanding the repeal of the statute authorizing the credit prior to the close of that taxable year.

(2) For purposes of this subdivision, "eligible pass-thru entity" means any partnership or S corporation that files its return on a fiscal year basis pursuant to Section 18566, and that is entitled to a credit pursuant to this part for the taxable year that begins during the last year a credit is operative.

(3) This subdivision applies to credits that become inoperative on or after the operative date of the act adding this subdivision.

SEC. 4. Section 23701 of the Revenue and Taxation Code is amended to read:

23701. Organizations which are organized and operated for nonprofit purposes within the provisions of a specific section of this article, or are defined in Section 23701h (relating to certain title-holding companies) or Section 23701x (relating to certain title-holding companies), are exempt from taxes imposed under this part, except as provided in this article or in Article 2 (commencing with Section 23731) of this chapter, if:

(a) An application for exemption is submitted in the form prescribed by the Franchise Tax Board; and

(b) A filing fee of twenty-five dollars (\$25) is paid with each application for exemption filed with the Franchise Tax Board after December 31, 1969; and

(c) The Franchise Tax Board issues a determination exempting the organization from tax.

(d) (1) Notwithstanding subdivisions (a), (b), and (c), an organization organized and operated for nonprofit purposes in accordance with Section 23701a, 23701d, 23701e, 23701f, or 23701g shall be exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 23731), upon its submission to the Franchise Tax Board of one of the following:

(A) A copy of the determination letter or ruling issued by the Internal Revenue Service recognizing the organization's exemption from federal income tax under Section 501(a) of the Internal Revenue Code, as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code.

(B) A copy of the group exemption letter issued by the Internal Revenue Service that states that both the central organization and all of its subordinates are tax-exempt under Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code and substantiation that the organization is included in the federal group exemption letter as a subordinate organization.

(2) (A) Upon receipt of the documents required in subparagraph (A) or (B) of paragraph (1), the Franchise Tax Board shall issue an acknowledgment that the organization is exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 23731). The acknowledgment may refer to the organization's recognition by the Internal Revenue Service of exemption from federal income tax as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code and, if applicable, the organization's subordinate organization status under a federal group exemption letter. The effective date of an organization's exemption from state income tax pursuant to this subdivision shall be no later than the effective date of the organization's recognition of exemption from federal income tax as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code, or its status as a subordinate organization under a federal group exemption letter, as applicable.

(B) Notwithstanding any other provision of this subdivision, an organization formed as a California corporation or qualified to do business in California that, as of the date of receipt by the Franchise Tax Board of the documents required under paragraph (1), is listed by the Secretary of the State or Franchise Tax Board as "suspended" or "forfeited" may not establish its exemption under paragraph (1) and shall not receive an acknowledgment referred to under subparagraph (A) from the Franchise Tax Board until that corporation is listed by the Secretary of State and the Franchise Tax Board as an "active" corporation.

(3) If, for federal income tax purposes, an organization's exemption from tax as an organization described in Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code is suspended or revoked, the organization shall notify the Franchise Tax Board of the suspension or revocation, in the form and manner prescribed by the Franchise Tax Board. Upon notification, the board shall suspend or revoke, whichever is applicable,

for state income tax purposes, the organization's exemption under paragraph (1).

(4) This subdivision shall not be construed to prevent the Franchise Tax Board from revoking the exemption of an organization that is not organized or operated in accordance with California law, this chapter, or Section 501(c)(3), (c)(4), (c)(5), (c)(6), or (c)(7) of the Internal Revenue Code.

(5) If the Franchise Tax Board suspends or revokes the exemption of an organization pursuant to paragraph (3) or (4), the exemption shall be reinstated only upon compliance with this section, regardless of whether the organization can establish exemption under paragraph (1).

(e) This section shall not prevent a determination from having retroactive effect and does not prevent the issuance of a determination with respect to a domestic organization which was in existence prior to January 1, 1970, and exempt under prior law without the submission of a formal application or payment of a filing fee. For the purpose of this section, the term "domestic" means created or organized under the laws of this state.

(f) The Franchise Tax Board may prescribe rules and regulations to implement the provisions of this article.

SEC. 5. Section 23701d of the Revenue and Taxation Code is amended to read:

23701d. (a) A corporation, community chest or trust, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation (except as otherwise provided in Section 23704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section or Section 501(c)(3) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board; that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. The irrevocable dedication requirement shall not be a sole basis for revocation

of an exempt determination made by the Franchise Tax Board prior to the effective date of this amendment.

(b) (1) In the case of a qualified amateur sports organization—

(A) The requirement of subdivision (a) that no part of its activities involves the provision of athletic facilities or equipment shall not apply.

(B) That organization shall not fail to meet the requirements of subdivision (a) merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, “qualified amateur sports organization” means any organization organized and operated exclusively to foster national or international amateur sports competition if that organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes for national or international competition in sports.

SEC. 6. The Legislature finds and declares that the retroactive application of the amendments made to Section 23036 by this act serves a public purpose by attracting equitable tax treatment to taxpayers that are stimulating the economy of the state and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.