

**ASSEMBLY BILL**

**No. 1304**

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**Introduced by Assembly Member Waldron**

February 22, 2013

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An act to amend Section 23036 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1304, as introduced, Waldron. Taxation: corporation taxes: credits.

The Corporation Tax Law imposes a tax according to, or measured by, income derived from or attributable to sources within this state and authorizes various credits against the taxes imposed by that law. That law provides that, in the case of a taxpayer that is eligible for more than one credit, the credits are allowable in a specified order.

This bill would make technical, nonsubstantive changes to the provision that provides for the ordering of tax credits.

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

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

- 1 SECTION 1. Section 23036 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 23036. (a) (1) The term "tax" includes any of the following:
- 4 (A) The tax imposed under Chapter 2 (commencing with Section
- 5 23101).
- 6 (B) The tax imposed under Chapter 3 (commencing with Section
- 7 23501).

- 1 (C) The tax on unrelated business taxable income, imposed
- 2 under Section 23731.
- 3 (D) The tax on ~~S~~-corporations an “S” corporation imposed
- 4 under Section 23802.
- 5 (2) The term “tax” does not include any amount imposed under
- 6 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
- 7 of subdivision (f) of Section 24667.
- 8 (b) For purposes of Article 5 (commencing with Section 18661)
- 9 of Chapter 2, Article 3 (commencing with Section 19031) of
- 10 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
- 11 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
- 12 and for purposes of Sections 18601, 19001, and 19005, the term
- 13 “tax” also includes all of the following:
- 14 (1) The tax on limited partnerships, imposed under Section
- 15 17935, the tax on limited liability companies, imposed under
- 16 Section 17941, and the tax on registered limited liability
- 17 partnerships and foreign limited liability partnerships imposed
- 18 under Section 17948.
- 19 (2) The alternative minimum tax imposed under Chapter 2.5
- 20 (commencing with Section 23400).
- 21 (3) The tax on built-in gains of ~~S~~-corporations an “S”
- 22 corporation, imposed under Section 23809.
- 23 (4) The tax on excess passive investment income of ~~S~~
- 24 corporations, an “S” corporation, imposed under Section 23811.
- 25 (c) Notwithstanding any other provision of this part, credits are
- 26 allowed against the “tax” in the following order:
- 27 (1) Credits that do not contain carryover provisions.
- 28 (2) Credits that, when the credit exceeds the “tax,” allow the
- 29 excess to be carried over to offset the “tax” in succeeding taxable
- 30 years, except for those credits that are allowed to reduce the “tax”
- 31 below the tentative minimum tax, as defined by Section 23455.
- 32 The order of credits within this paragraph shall be determined by
- 33 the Franchise Tax Board.
- 34 (3) The minimum tax credit allowed by Section 23453.
- 35 (4) Credits that are allowed to reduce the “tax” below the
- 36 tentative minimum tax, as defined by Section 23455.
- 37 (5) Credits for taxes withheld under Section 18662.
- 38 (d) Notwithstanding any other provision of this part, each of
- 39 the following applies:

- 1 (1) No credit may reduce the “tax” below the tentative minimum  
2 tax (as defined by paragraph (1) of subdivision (a) of Section  
3 23455), except the following credits:
- 4 (A) The credit allowed by former Section 23601 (relating to  
5 solar energy).
  - 6 (B) The credit allowed by former Section 23601.4 (relating to  
7 solar energy).
  - 8 (C) The credit allowed by former Section 23601.5 (relating to  
9 solar energy).
  - 10 (D) The credit allowed by Section 23609 (relating to research  
11 expenditures).
  - 12 (E) The credit allowed by former Section 23609.5 (relating to  
13 clinical testing expenses).
  - 14 (F) The credit allowed by Section 23610.5 (relating to  
15 low-income housing).
  - 16 (G) The credit allowed by former Section 23612 (relating to  
17 sales and use tax credit).
  - 18 (H) The credit allowed by Section 23612.2 (relating to enterprise  
19 zone sales or use tax credit).
  - 20 (I) The credit allowed by former Section 23612.6 (relating to  
21 Los Angeles Revitalization Zone sales tax credit).
  - 22 (J) The credit allowed by former Section 23622 (relating to  
23 enterprise zone hiring credit).
  - 24 (K) The credit allowed by Section 23622.7 (relating to enterprise  
25 zone hiring credit).
  - 26 (L) The credit allowed by former Section 23623 (relating to  
27 program area hiring credit).
  - 28 (M) The credit allowed by former Section 23623.5 (relating to  
29 Los Angeles Revitalization Zone hiring credit).
  - 30 (N) The credit allowed by former Section 23625 (relating to  
31 Los Angeles Revitalization Zone hiring credit).
  - 32 (O) The credit allowed by Section 23633 (relating to targeted  
33 tax area sales or use tax credit).
  - 34 (P) The credit allowed by Section 23634 (relating to targeted  
35 tax area hiring credit).
  - 36 (Q) The credit allowed by Section 23649 (relating to qualified  
37 property).
- 38 (2) No credit against the tax may reduce the minimum franchise  
39 tax imposed under Chapter 2 (commencing with Section 23101).

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

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

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

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

19 (i) (1) With respect to any taxpayer that directly or indirectly  
 20 owns an interest in a business entity that is disregarded for tax  
 21 purposes pursuant to Section 23038 and any regulations thereunder,  
 22 the amount of any credit or credit carryforward allowable for any  
 23 taxable year attributable to the disregarded business entity is limited  
 24 in accordance with paragraphs (2) and (3).

25 (2) The amount of any credit otherwise allowed under this part,  
 26 including any credit carryover from prior years, that may be applied  
 27 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for  
 28 the taxable year is limited to an amount equal to the excess of the  
 29 taxpayer’s regular tax (as defined in Section 23455), determined  
 30 by including income attributable to the disregarded business entity  
 31 that generated the credit or credit carryover, over the taxpayer’s  
 32 regular tax (as defined in Section 23455), determined by excluding  
 33 the income attributable to that disregarded business entity. No  
 34 credit is allowed if the taxpayer’s regular tax (as defined in Section  
 35 23455), determined by including the income attributable to the  
 36 disregarded business entity is less than the taxpayer’s regular tax  
 37 (as defined in Section 23455), determined by excluding the income  
 38 attributable to the disregarded business entity.

39 (3) If the amount of a credit allowed pursuant to the section  
 40 establishing the credit exceeds the amount allowable under this

1 subdivision in any taxable year, the excess amount may be carried  
2 over to subsequent taxable years pursuant to subdivisions (d), (e),  
3 and (f).

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

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

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