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AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1412

**Introduced by ~~Committee on Revenue and Taxation (Bocanegra (Chair), Gordon, Mullin, Pan, V. Manuel Pérez, and Ting)~~
Assembly Members Bocanegra and Gatto
(Coauthors: Assembly Members Gorell, Perea, and Wieckowski)
(Principal coauthor: Senator Lieu)**

March 19, 2013

An act to amend ~~Section 6901 of~~ and repeal Sections 18038.5 and 18152.5 of, and to add and repeal Section 18153 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1412, as amended, ~~Committee on Revenue and Taxation Bocanegra. Sales and use taxes: claim for refund: customer refunds. Income taxes: exclusion: deferral: qualified small business stock.~~

The Personal Income Tax Law, in modified conformity with federal law, provides various exclusions from gross income in computing tax liability.

This bill would, in reference to specified federal income tax laws, provide that gross income does not include 50% of any gain from the sale or exchange of qualified small business stock, as defined, held for more than 5 years, for taxable years beginning on or after January 1,

2008, and before January 1, 2013, as provided. The provisions would be repealed on January 1, 2016.

The bill, with regard to personal income tax, would provide that a penalty shall not be imposed with respect to the additional tax, as defined, of a taxpayer, and interest shall not accrue with respect to the additional tax of that taxpayer due for the taxable year. The bill would require the Franchise Tax Board, in the case of a liability for additional tax of a taxpayer, notwithstanding certain other eligibility requirements, to enter into an agreement to accept the full payment of the additional tax in installments over a period not to exceed 5 years. These provisions would be repealed on January 1, 2018.

The bill would authorize any claim for credit or refund pursuant to the bill to be filed within 180 days of its effective date, as provided.

The bill would make a legislative finding and declaration regarding the public purpose served by the bill. The bill would state that its provisions are not severable, except as provided.

~~Under the Sales and Use Tax Law, any amount collected or paid in excess of what is due under that law is required to be credited by the State Board of Equalization against any other amounts due and payable from the person from whom the excess amount was collected or by whom it was paid, and the balance refunded to the person, as provided. Under existing law, when an amount represented by a person to a customer as constituting reimbursement for taxes due under the Sales and Use Tax Law is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount paid is required to be returned by the person to the customer upon notification by the board or by the customer that this excess has been ascertained.~~

~~This bill would authorize a person to make an irrevocable election to assign to the customer the right to receive the amount that would be refunded to the person, provided specified conditions are met, and would authorize the board to make that payment to the customer, 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 18038.5 of the Revenue and Taxation
- 2 Code is amended to read:

1 18038.5. (a) In the case of any sale of qualified small business
2 stock held by a taxpayer other than a corporation for more than
3 six months and with respect to which that taxpayer elects the
4 application of this section, gain from that sale shall be recognized
5 only to the extent that the amount realized on that sale exceeds:

6 (1) The cost of any qualified small business stock purchased by
7 the taxpayer during the 60-day period beginning on the date of
8 that sale, reduced by

9 (2) Any portion of the cost previously taken into account under
10 this section.

11 This section shall not apply to any gain that is treated as ordinary
12 income for purposes of this part.

13 (b) For purposes of this section:

14 (1) The term “qualified small business stock” has the meaning
15 given that term by subdivision (c) of Section 18152.5.

16 (2) A taxpayer shall be treated as having purchased any property
17 if, but for paragraph (3), the unadjusted basis of that property in
18 the hands of the taxpayer would be its cost (within the meaning
19 of Section 1012 of the Internal Revenue Code).

20 (3) If gain from any sale is not recognized by reason of
21 subdivision (a), that gain shall be applied to reduce (in the order
22 acquired) the basis for determining gain or loss of any qualified
23 small business stock that is purchased by the taxpayer during the
24 60-day period described in subdivision (a).

25 (4) For purposes of determining whether the nonrecognition of
26 gain under subdivision (a) applies to stock that is sold, both of the
27 following shall apply:

28 (A) The taxpayer’s holding period for that stock and the stock
29 referred to in paragraph (1) of subdivision (a) shall be determined
30 without regard to Section 1223 of the Internal Revenue Code.

31 (B) Only the first six months of the taxpayer’s holding period
32 for the stock referred to in paragraph (1) of subdivision (a) shall
33 be taken into account for purposes of applying paragraph (2) of
34 subdivision (c) of Section 18152.5.

35 (5) Rules similar to the rules of subdivisions (f), (g), (h), (i), (j),
36 and (k) of Section 18152.5 shall apply.

37 (c) This section shall apply to sales made after August 5, 1997,
38 *and before January 1, 2013.*

1 (d) *This section shall remain in effect only until January 1, 2016,*
2 *and as of that date is repealed, unless a later enacted statute, that*
3 *is enacted before January 1, 2016, deletes or extends that date.*

4 SEC. 2. *Section 18152.5 of the Revenue and Taxation Code is*
5 *amended to read:*

6 18152.5. (a) For purposes of this part, gross income shall not
7 include 50 percent of any gain from the sale or exchange of
8 qualified small business stock held for more than five years.

9 (b) (1) If the taxpayer has eligible gain for the taxable year
10 from one or more dispositions of stock issued by any corporation,
11 the aggregate amount of the gain from dispositions of stock issued
12 by the corporation which may be taken into account under
13 subdivision (a) for the taxable year shall not exceed the greater of
14 either of the following:

15 (A) Ten million dollars (\$10,000,000) reduced by the aggregate
16 amount of eligible gain taken into account by the taxpayer under
17 subdivision (a) for prior taxable years and attributable to
18 dispositions of stock issued by the corporation.

19 (B) Ten times the aggregate adjusted bases of qualified small
20 business stock issued by the corporation and disposed of by the
21 taxpayer during the taxable year. For purposes of subparagraph
22 (B), the adjusted basis of any stock shall be determined without
23 regard to any addition to basis after the date on which the stock
24 was originally issued.

25 (2) For purposes of this subdivision, the term “eligible gain”
26 means any gain from the sale or exchange of qualified small
27 business stock held for more than five years.

28 (3) (A) In the case of a married individual filing a separate
29 return, subparagraph (A) of paragraph (1) shall be applied by
30 substituting five million dollars (\$5,000,000) for ten million dollars
31 (\$10,000,000).

32 (B) In the case of a married taxpayer filing a joint return, the
33 amount of gain taken into account under subdivision (a) shall be
34 allocated equally between the spouses for purposes of applying
35 this subdivision to subsequent taxable years.

36 (C) For purposes of this subdivision, marital status shall be
37 determined under Section 7703 of the Internal Revenue Code.

38 (c) For purposes of this section:

39 (1) Except as otherwise provided in this section, the term
40 “qualified small business stock” means any stock in a C corporation

1 which is originally issued after August 10, 1993, if both of the
2 following apply:

3 (A) As of the date of issuance, the corporation is a qualified
4 small business.

5 (B) Except as provided in subdivisions (f) and (h), the stock is
6 acquired by the taxpayer at its original issue (directly or through
7 an underwriter) in either of the following manners:

8 (i) In exchange for money or other property (not including
9 stock).

10 (ii) As compensation for services provided to the corporation
11 (other than services performed as an underwriter of the stock).

12 (2) (A) Stock in a corporation shall not be treated as qualified
13 small business stock unless, during substantially all of the
14 taxpayer's holding period for the stock, the corporation meets the
15 active business requirements of subdivision (e) and the corporation
16 is a C corporation.

17 (B) (i) Notwithstanding subdivision (e), a corporation shall be
18 treated as meeting the active business requirements of subdivision
19 (e) for any period during which the corporation qualifies as a
20 specialized small business investment company.

21 (ii) For purposes of clause (i), the term "specialized small
22 business investment company" means any eligible corporation (as
23 defined in paragraph (4) of subdivision (e)) that is licensed to
24 operate under Section 301(d) of the Small Business Investment
25 Act of 1958 (as in effect on May 13, 1993).

26 (3) (A) Stock acquired by the taxpayer shall not be treated as
27 qualified small business stock if, at any time during the four-year
28 period beginning on the date two years before the issuance of the
29 stock, the corporation issuing the stock purchased (directly or
30 indirectly) any of its stock from the taxpayer or from a related
31 person (within the meaning of Section 267(b) or 707(b)) to the
32 taxpayer.

33 (B) Stock issued by a corporation shall not be treated as qualified
34 small business stock if, during the two-year period beginning on
35 the date one year before the issuance of the stock, the corporation
36 made one or more purchases of its stock with an aggregate value
37 (as of the time of the respective purchases) exceeding 5 percent
38 of the aggregate value of all of its stock as of the beginning of the
39 two-year period.

1 (C) If any transaction is treated under Section 304(a) of the
2 Internal Revenue Code as a distribution in redemption of the stock
3 of any corporation, for purposes of subparagraphs (A) and (B), the
4 corporation shall be treated as purchasing an amount of its stock
5 equal to the amount treated as a distribution in redemption of the
6 stock of the corporation under Section 304(a) of the Internal
7 Revenue Code.

8 (d) For purposes of this section:

9 (1) The term “qualified small business” means any domestic
10 corporation (as defined in Section 7701(a)(4) of the Internal
11 Revenue Code) which is a C corporation if all of the following
12 apply:

13 (A) The aggregate gross assets of the corporation (or any
14 predecessor thereof) at all times on or after July 1, 1993, and before
15 the issuance did not exceed fifty million dollars (\$50,000,000).

16 (B) The aggregate gross assets of the corporation immediately
17 after the issuance (determined by taking into account amounts
18 received in the issuance) do not exceed fifty million dollars
19 (\$50,000,000).

20 (C) At least 80 percent of the corporation’s payroll, as measured
21 by total dollar value, is attributable to employment located within
22 California.

23 (D) The corporation agrees to submit those reports to the
24 Franchise Tax Board and to shareholders as the Franchise Tax
25 Board may require to carry out the purposes of this section.

26 (2) (A) For purposes of paragraph (1), the term “aggregate
27 gross assets” means the amount of cash and the aggregate adjusted
28 basis of other property held by the corporation.

29 (B) For purposes of subparagraph (A), the adjusted basis of any
30 property contributed to the corporation (or other property with a
31 basis determined in whole or in part by reference to the adjusted
32 basis of property so contributed) shall be determined as if the basis
33 of the property contributed to the corporation immediately after
34 the contribution was equal to its fair market value as of the time
35 of the contribution.

36 (3) (A) All corporations which are members of the same
37 parent-subsidiary controlled group shall be treated as one
38 corporation for purposes of this subdivision.

39 (B) For purposes of subparagraph (A), the term
40 “parent-subsidiary controlled group” means any controlled group

1 of corporations as defined in Section 1563(a)(1) of the Internal
2 Revenue Code, except that both of the following shall apply:

3 (i) “More than 50 percent” shall be substituted for “at least 80
4 percent” each place it appears in Section 1563(a)(1) of the Internal
5 Revenue Code.

6 (ii) Section 1563(a)(4) of the Internal Revenue Code shall not
7 apply.

8 (e) (1) For purposes of paragraph (2) of subdivision (c), the
9 requirements of this subdivision are met by a corporation for any
10 period if during that period both of the following apply:

11 (A) At least 80 percent (by value) of the assets of the corporation
12 are used by the corporation in the active conduct of one or more
13 qualified trades or businesses ~~in California~~.

14 (B) The corporation is an eligible corporation.

15 (2) For purposes of paragraph (1), if, in connection with any
16 future qualified trade or business, a corporation is engaged in:

17 (A) Startup activities described in Section 195(c)(1)(A) of the
18 Internal Revenue Code,

19 (B) Activities resulting in the payment or incurring of
20 expenditures which may be treated as research and experimental
21 expenditures under Section 174 of the Internal Revenue Code, or

22 (C) Activities with respect to in-house research expenses
23 described in Section 41(b)(4) of the Internal Revenue Code, then
24 assets used in those activities shall be treated as used in the active
25 conduct of a qualified trade or business. Any determination under
26 this paragraph shall be made without regard to whether a
27 corporation has any gross income from those activities at the time
28 of the determination.

29 (3) For purposes of this subdivision, the term “qualified trade
30 or business” means any trade or business other than any of the
31 following:

32 (A) Any trade or business involving the performance of services
33 in the fields of health, law, engineering, architecture, accounting,
34 actuarial science, performing arts, consulting, athletics, financial
35 services, brokerage services, or any trade or business where the
36 principal asset of the trade or business is the reputation or skill of
37 one or more of its employees.

38 (B) Any banking, insurance, financing, leasing, investing, or
39 similar business.

1 (C) Any farming business (including the business of raising or
2 harvesting trees).

3 (D) Any business involving the production or extraction of
4 products of a character with respect to which a deduction is
5 allowable under Section 613 or 613A of the Internal Revenue
6 Code.

7 (E) Any business of operating a hotel, motel, restaurant, or
8 similar business.

9 (4) For purposes of this subdivision, the term “eligible
10 corporation” means any domestic corporation, except that the term
11 shall not include any of the following:

12 (A) A DISC or former DISC.

13 (B) A corporation with respect to which an election under
14 Section 936 of the Internal Revenue Code is in effect or which has
15 a direct or indirect subsidiary with respect to which the election
16 is in effect.

17 (C) A regulated investment company, real estate investment
18 trust (REIT), or real estate mortgage investment conduit (REMIC).

19 (D) A cooperative.

20 (5) (A) For purposes of this subdivision, stock and debt in any
21 subsidiary corporation shall be disregarded and the parent
22 corporation shall be deemed to own its ratable share of the
23 subsidiary’s assets, and to conduct its ratable share of the
24 subsidiary’s activities.

25 (B) A corporation shall be treated as failing to meet the
26 requirements of paragraph (1) for any period during which more
27 than 10 percent of the value of its assets (in excess of liabilities)
28 consists of stock or securities in other corporations which are not
29 subsidiaries of the corporation (other than assets described in
30 paragraph (6)).

31 (C) For purposes of this paragraph, a corporation shall be
32 considered a subsidiary if the parent owns more than 50 percent
33 of the combined voting power of all classes of stock entitled to
34 vote, or more than 50 percent in value of all outstanding stock, of
35 the corporation.

36 (6) For purposes of subparagraph (A) of paragraph (1), the
37 following assets shall be treated as used in the active conduct of
38 a qualified trade or business:

1 (A) Assets that are held as a part of the reasonably required
2 working capital needs of a qualified trade or business of the
3 corporation.

4 (B) Assets that are held for investment and are reasonably
5 expected to be used within two years to finance research and
6 experimentation in a qualified trade or business or increases in
7 working capital needs of a qualified trade or business. For periods
8 after the corporation has been in existence for at least two years,
9 in no event may more than 50 percent of the assets of the
10 corporation qualify as used in the active conduct of a qualified
11 trade or business by reason of this paragraph.

12 (7) A corporation shall not be treated as meeting the
13 requirements of paragraph (1) for any period during which more
14 than 10 percent of the total value of its assets consists of real
15 property that is not used in the active conduct of a qualified trade
16 or business. For purposes of the preceding sentence, the ownership
17 of, dealing in, or renting of, real property shall not be treated as
18 the active conduct of a qualified trade or business.

19 (8) For purposes of paragraph (1), rights to computer software
20 that produces active business computer software royalties (within
21 the meaning of Section 543(d)(1) of the Internal Revenue Code)
22 shall be treated as an asset used in the active conduct of a trade or
23 business.

24 ~~(9) A corporation shall not be treated as meeting the~~
25 ~~requirements of paragraph (1) for any period during which more~~
26 ~~than 20 percent of the corporation's total payroll expense is~~
27 ~~attributable to employment located outside of California.~~

28 (f) If any stock in a corporation is acquired solely through the
29 conversion of other stock in the corporation that is qualified small
30 business stock in the hands of the taxpayer, both of the following
31 shall apply:

32 (1) The stock so acquired shall be treated as qualified small
33 business stock in the hands of the taxpayer.

34 (2) The stock so acquired shall be treated as having been held
35 during the period during which the converted stock was held.

36 (g) (1) If any amount included in gross income by reason of
37 holding an interest in a ~~pass-through~~ *pass-thru* entity meets the
38 requirements of paragraph (2), then both of the following shall
39 apply:

1 (A) The amount shall be treated as gain described in subdivision
2 (a).

3 (B) For purposes of applying subdivision (b), the amount shall
4 be treated as gain from a disposition of stock in the corporation
5 issuing the stock disposed of by the ~~pass-through~~ *pass-thru* entity
6 and the taxpayer's proportionate share of the adjusted basis of the
7 ~~pass-through~~ *pass-thru* entity in the stock shall be taken into
8 account.

9 (2) An amount meets the requirements of this paragraph if both
10 of the following apply:

11 (A) The amount is attributable to gain on the sale or exchange
12 by the ~~pass-through~~ *pass-thru* entity of stock that is qualified small
13 business stock in the hands of the entity (determined by treating
14 the entity as an individual) and that was held by that entity for
15 more than five years.

16 (B) The amount is includable in the gross income of the taxpayer
17 by reason of the holding of an interest in the entity that was held
18 by the taxpayer on the date on which the ~~pass-through~~ *pass-thru*
19 entity acquired the stock and at all times thereafter before the
20 disposition of the stock by the ~~pass-through~~ *pass-thru* entity.

21 (3) Paragraph (1) shall not apply to any amount to the extent
22 the amount exceeds the amount to which paragraph (1) would have
23 applied if the amount was determined by reference to the interest
24 the taxpayer held in the ~~pass-through~~ *pass-thru* entity on the date
25 the qualified small business stock was acquired.

26 (4) For purposes of this subdivision, the term "~~pass-through~~
27 *pass-thru* entity" means any of the following:

- 28 (A) Any partnership.
- 29 (B) Any-~~S~~ "S" corporation.
- 30 (C) Any regulated investment company.
- 31 (D) Any common trust fund.

32 (h) For purposes of this section:

33 (1) In the case of a transfer described in paragraph (2), the
34 transferee shall be treated as meeting both of the following:

35 (A) Having acquired the stock in the same manner as the
36 transferor.

37 (B) Having held the stock during any continuous period
38 immediately preceding the transfer during which it was held (or
39 treated as held under this subdivision) by the transferor.

1 (2) A transfer is described in this subdivision if the transfer is
2 any of the following:

3 (A) By gift.

4 (B) At death.

5 (C) From a partnership to a partner of stock with respect to
6 which requirements similar to the requirements of subdivision (g)
7 are met at the time of the transfer (without regard to the five-year
8 holding period requirement).

9 (3) Rules similar to the rules of Section 1244(d)(2) of the
10 Internal Revenue Code shall apply for purposes of this section.

11 (4) (A) In the case of a transaction described in Section 351 of
12 the Internal Revenue Code or a reorganization described in Section
13 368 of the Internal Revenue Code, if qualified small business stock
14 is exchanged for other stock that would not qualify as qualified
15 small business stock but for this subparagraph, the other stock
16 shall be treated as qualified small business stock acquired on the
17 date on which the exchanged stock was acquired.

18 (B) This section shall apply to gain from the sale or exchange
19 of stock treated as qualified small business stock by reason of
20 subparagraph (A) only to the extent of the gain that would have
21 been recognized at the time of the transfer described in
22 subparagraph (A) if Section 351 or 368 of the Internal Revenue
23 Code had not applied at that time. The preceding sentence shall
24 not apply if the stock that is treated as qualified small business
25 stock by reason of subparagraph (A) is issued by a corporation
26 that (as of the time of the transfer described in subparagraph (A))
27 is a qualified small business.

28 (C) For purposes of this paragraph, stock treated as qualified
29 small business stock under subparagraph (A) shall be so treated
30 for subsequent transactions or reorganizations, except that the
31 limitation of subparagraph (B) shall be applied as of the time of
32 the first transfer to which the limitation applied (determined after
33 the application of the second sentence of subparagraph (B)).

34 (D) In the case of a transaction described in Section 351 of the
35 Internal Revenue Code, this paragraph shall apply only if
36 immediately after the transaction the corporation issuing the stock
37 owns directly or indirectly stock representing control (within the
38 meaning of Section 368(c) of the Internal Revenue Code) of the
39 corporation whose stock was exchanged.

40 (i) For purposes of this section:

1 (1) In the case where the taxpayer transfers property (other than
2 money or stock) to a corporation in exchange for stock in the
3 corporation, both of the following shall apply:

4 (A) The stock shall be treated as having been acquired by the
5 taxpayer on the date of the exchange.

6 (B) The basis of the stock in the hands of the taxpayer shall in
7 no event be less than the fair market value of the property
8 exchanged.

9 (2) If the adjusted basis of any qualified small business stock
10 is adjusted by reason of any contribution to capital after the date
11 on which the stock was originally issued, in determining the
12 amount of the adjustment by reason of the contribution, the basis
13 of the contributed property shall in no event be treated as less than
14 its fair market value on the date of the contribution.

15 (j) (1) If the taxpayer has an offsetting short position with
16 respect to any qualified small business stock, subdivision (a) shall
17 not apply to any gain from the sale or exchange of the stock unless
18 both of the following apply:

19 (A) The stock was held by the taxpayer for more than five years
20 as of the first day on which there was such a short position.

21 (B) The taxpayer elects to recognize gain as if the stock was
22 sold on that first day for its fair market value.

23 (2) For purposes of paragraph (1), the taxpayer shall be treated
24 as having an offsetting short position with respect to any qualified
25 small business stock if any of the following apply:

26 (A) The taxpayer has made a short sale of substantially identical
27 property.

28 (B) The taxpayer has acquired an option to sell substantially
29 identical property at a fixed price.

30 (C) To the extent provided in regulations, the taxpayer has
31 entered into any other transaction that substantially reduces the
32 risk of loss from holding the qualified small business stock. For
33 purposes of the preceding sentence, any reference to the taxpayer
34 shall be treated as including a reference to any person who is
35 related (within the meaning of Section 267(b) or 707(b) of the
36 Internal Revenue Code) to the taxpayer.

37 (k) The Franchise Tax Board may prescribe those regulations
38 as may be appropriate to carry out the purposes of this section,
39 including regulations to prevent the avoidance of the purposes of

1 this section through splitups, shell corporations, partnerships, or
2 otherwise.

3 (l) It is the intent of the Legislature that, in construing this
4 section, any regulations that may be promulgated by the Secretary
5 of the Treasury under Section 1202(k) of the Internal Revenue
6 Code shall apply to the extent that those regulations do not conflict
7 with this section or with any regulations that may be promulgated
8 by the Franchise Tax Board.

9 (m) *The amendments made to this section by the act adding this*
10 *subdivision shall apply to sales, including installment sales,*
11 *occurring in each taxable year beginning on or after January 1,*
12 *2008, and before January 1, 2013, and installment payments*
13 *received in taxable years beginning on or after January 1, 2008,*
14 *for sales of qualified small business stock made in taxable years*
15 *beginning before January 1, 2013.*

16 (n) *This section shall remain in effect only until January 1, 2016,*
17 *and as of that date is repealed, unless a later enacted statute, that*
18 *is enacted before January 1, 2016, deletes or extends that date.*

19 SEC. 3. *Section 18153 is added to the Revenue and Taxation*
20 *Code, to read:*

21 18153. (a) *In the case of a taxpayer subject to tax under this*
22 *part:*

23 (1) *A penalty shall not be imposed with respect to the additional*
24 *tax of that taxpayer.*

25 (2) *Interest shall not accrue with respect to the additional tax*
26 *of that taxpayer due for the taxable year.*

27 (3) *In the case of a liability for additional tax of a taxpayer*
28 *under this part, notwithstanding any other eligibility requirements*
29 *contained in Section 19008, the Franchise Tax Board shall enter*
30 *into an agreement under Section 19008 to accept the full payment*
31 *of the additional tax in installments over a period not to exceed*
32 *five years.*

33 (b) *For purposes of subdivision (a), the term “additional tax”*
34 *means:*

35 (1) *The increase in tax for a taxable year beginning on or after*
36 *January 1, 2008, and before January 1, 2013, to the extent that*
37 *the increase is attributable to the amendments made to Section*
38 *18152.5 by the act adding this section.*

39 (2) *If Section 18152.5, as amended by the act adding this section,*
40 *is for any reason held invalid, ineffective, or unconstitutional by*

1 *an appellate court of competent jurisdiction, the term “additional*
 2 *tax” means the increase in tax for a taxable year beginning on or*
 3 *after January 1, 2008, and before January 1, 2013, to the extent*
 4 *that the increase is attributable to the implementation of the*
 5 *appellate court holding invalidating Section 18152.5, as amended*
 6 *by the act adding this section, coupled with the implementation of*
 7 *the decision of the California Court of Appeal, Frank Cutler v.*
 8 *Franchise Tax Board, (2012) 208 Cal.App.4th 1247, as announced*
 9 *in Franchise Tax Board Notice 2012-03, dated December 21,*
 10 *2012.*

11 *(c) This section shall remain in effect only until January 1, 2018,*
 12 *and as of that date is repealed, unless a later enacted statute, that*
 13 *is enacted before January 1, 2018, deletes or extends that date.*

14 *SEC. 4. The Legislature finds and declares that the retroactive*
 15 *application of the amendments made to Section 18152.5 of the*
 16 *Revenue and Taxation Code and the addition of Section 18153 to*
 17 *the Revenue and Taxation Code by this act serve a public purpose*
 18 *by providing equitable tax treatment and fair tax relief to taxpayers*
 19 *that are stimulating the economy of the state and do not constitute*
 20 *a gift of public funds within the meaning of Section 6 of Article*
 21 *XVI of the California Constitution.*

22 *SEC. 5. Notwithstanding any other law, any claim for credit*
 23 *or refund for taxable years beginning on or after January 1, 2008,*
 24 *and ending before January 1, 2009, resulting from this act may*
 25 *be filed within 180 days of the effective date of this act.*

26 *SEC. 6. (a) Except as set forth in subdivision (b), the provisions*
 27 *of this act are not severable. If any provision of this act or its*
 28 *application is held invalid, that invalidity shall apply to the other*
 29 *provisions or applications of this act.*

30 *(b) The provisions of Section 18153 of the Revenue and Taxation*
 31 *Code as added by Section 3 of this act are severable from the*
 32 *remainder of this act. If any provision of the remainder of this act*
 33 *is held invalid, that invalidity shall not affect the provisions or*
 34 *applications of Section 18153 of the Revenue and Taxation Code*
 35 *as added by Section 3 of this act that can be given effect without*
 36 *the invalid provision or application.*

37 ~~SECTION 1. Section 6901 of the Revenue and Taxation Code~~
 38 ~~is amended to read:~~

39 ~~6901. (a) If the board determines that any amount, penalty, or~~
 40 ~~interest has been paid more than once or has been erroneously or~~

1 ~~illegally collected or computed, the board shall set forth that fact~~
2 ~~in the records of the board and shall certify the amount collected~~
3 ~~in excess of the amount legally due and the person from whom it~~
4 ~~was collected or by whom paid. The excess amount collected or~~
5 ~~paid shall be credited by the board on any amounts then due and~~
6 ~~payable from the person from whom the excess amount was~~
7 ~~collected or by whom it was paid under this part, and the balance~~
8 ~~shall be refunded to the person, or his or her successors,~~
9 ~~administrators, or executors, or customer as provided in subdivision~~
10 ~~(b), if a determination by the board is made in any of the following~~
11 ~~cases:~~

12 ~~(1) Any amount of tax, interest, or penalty was not required to~~
13 ~~be paid.~~

14 ~~(2) Any amount of prepayment of sales tax, interest, or penalty~~
15 ~~paid pursuant to Article 1.5 (commencing with Section 6480) of~~
16 ~~Chapter 5 was not required to be paid.~~

17 ~~(3) Any amount that is approved as a settlement pursuant to~~
18 ~~Section 7093.5.~~

19 ~~(b) A person may make an election to assign to the customer~~
20 ~~the right to receive the amount refunded if all of the following~~
21 ~~conditions are met:~~

22 ~~(1) The entire amount represents excess tax reimbursement that~~
23 ~~is required to be paid by the person to a single customer under~~
24 ~~Section 6901.5.~~

25 ~~(2) The amount to be refunded is fifty thousand dollars (\$50,000)~~
26 ~~or greater.~~

27 ~~(3) The election is irrevocable.~~

28 ~~(4) Contingency fees are not charged or paid in connection with~~
29 ~~the election, assignment, or claim for refund.~~

30 ~~(5) (A) The irrevocable election to assign to the customer the~~
31 ~~amount refunded is evidenced by a statement signed by the person~~
32 ~~and the customer authorizing the named customer to receive the~~
33 ~~amount refunded.~~

34 ~~(B) The signed statement described in subparagraph (A) is~~
35 ~~submitted to the board in conjunction with the person's claim for~~
36 ~~refund.~~

37 ~~(C) The signed statement described in subparagraph (A) shall~~
38 ~~be made on a form prescribed by the board, which shall include a~~
39 ~~statement that a contingency fee charged or paid in connection~~
40 ~~with the election, assignment, or claim for refund is contrary to~~

1 ~~public policy and any contingency fee charged or paid shall render~~
2 ~~the assignment null and void.~~

3 ~~(e) Any overpayment of the use tax by a purchaser to a retailer~~
4 ~~who is required to collect the tax and who gives the purchaser a~~
5 ~~receipt therefor pursuant to Article 1 (commencing with Section~~
6 ~~6201) of Chapter 3 shall be credited or refunded by the state to the~~
7 ~~purchaser.~~

8 ~~(d) Any proposed determination by the board pursuant to this~~
9 ~~section with respect to an amount in excess of fifty thousand dollars~~
10 ~~(\$50,000) shall be available as a public record for at least 10 days~~
11 ~~prior to the effective date of that determination.~~