

AMENDED IN ASSEMBLY MAY 1, 2014

AMENDED IN ASSEMBLY APRIL 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1984

Introduced by Assembly Member Harkey

February 19, 2014

An act to amend ~~Section 19362~~ *Sections 19057, 19306, and 19340* of, and to add Sections ~~19022 and 19367~~ *19001.5, 19051.5, and 19307.5* to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1984, as amended, Harkey. Income taxes: net operating losses: carrybacks: overpayments: estimated tax.

The Personal Income Tax Law and the Corporation Tax Law, in modified conformity to federal law, allow taxpayers to utilize net operating losses and carryovers and carrybacks of those losses for purposes of offsetting their tax liabilities. Existing law allows net operating losses attributable to taxable years beginning on or after January 1, 2013, to be carrybacks to each of the preceding 2 taxable years, as provided. *Existing law allows for a credit against estimated tax of an overpayment of tax for a preceding year.* Federal income tax law includes ~~procedures~~ *provisions* that allow a taxpayer with net operating loss carrybacks to obtain a tentative refund of taxes paid in prior tax years by filing a tentative carryback adjustment application and allow a corporation to apply to extend the time for payment of taxes for the immediately preceding taxable year.

This bill would *additionally* conform to those federal provisions, *as provided*.

Existing law provides for the establishment of the Franchise Tax Board and prescribes its various powers and duties regarding the administration of state personal income taxes and corporation franchise and income taxes, including an authorization to prescribe regulations providing for the crediting against the estimated tax of the amount determined to be an overpayment of tax for a preceding taxable year.

This bill would require the Franchise Tax Board to prescribe the above-described regulations on or before January 1, 2016.

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 ~~19022~~19001.5 is added to the Revenue
- 2 and Taxation Code, to read:
- 3 ~~19022.~~
- 4 19001.5. (a) Section 6164 of the Internal Revenue Code,
- 5 relating to extension of time for payment of taxes by corporations
- 6 expecting carrybacks shall apply.
- 7 (b) (1) Section 6164 of the Internal Revenue Code is modified
- 8 by substituting the phrase “Secretary or the Franchise Tax Board”
- 9 for the word “Secretary” in each place it appears.
- 10 (2) Section 6164(a) of the Internal Revenue Code, relating to
- 11 in general, is modified by substituting the phrase “Part 11
- 12 (commencing with Section 23001)” in lieu of the phrase “subtitle
- 13 A”.
- 14 (3) Section 6164(b) of the Internal Revenue Code, relating to
- 15 contents of statement, is modified by substituting the phrase
- 16 “Section 24416.20” in lieu of the phrase “section 172(b)”.
- 17 (4) Section 6164(d)(2) of the Internal Revenue Code is modified
- 18 by substituting the phrase “Section ~~19367~~ 19307.5” in lieu of the
- 19 phrase “section 6411”.
- 20 (5) Section 6164(h) of the Internal Revenue Code, relating to
- 21 jeopardy, is modified as follows:
- 22 (A) By substituting the phrase “he or the Franchise Tax Board”
- 23 for the word “he” in each place it appears.
- 24 (B) By substituting the phrase “him or the Franchise Tax Board”
- 25 for the word “him” in each place it appears.
- 26 (6) Section 6164(i) of the Internal Revenue Code, relating to
- 27 consolidated returns, is modified by substituting the phrase

1 “combined report” in lieu of the phrase “consolidated return” in
2 each place it appears.

3 SEC. 2. Section 19051.5 is added to the Revenue and Taxation
4 Code, to read:

5 19051.5. If the Franchise Tax Board determines that the
6 amount applied, credited, or refunded under Section 19307.5 is
7 in excess of the over assessment attributable to the carryback with
8 respect to which that amount was applied, credited, or refunded,
9 the Franchise Tax Board may assess the amount of the excess as
10 an overstatement of a credit pursuant to Section 19054.

11 SEC. 3. Section 19057 of the Revenue and Taxation Code is
12 amended to read:

13 19057. (a) Except in the case of a false or fraudulent return
14 and except as otherwise expressly provided in this part, every
15 notice of a proposed deficiency assessment shall be mailed to the
16 taxpayer within four years after the return was filed. No deficiency
17 shall be assessed or collected with respect to the year for which
18 the return was filed unless the notice is mailed within the four-year
19 period or the period otherwise provided. For purposes of this
20 chapter, the term “return” means the return required to be filed by
21 the taxpayer and does not include a return of any person from
22 whom the taxpayer has received an item of income, gain, loss,
23 deduction, or credit.

24 (b) The running of the period of limitations provided in
25 subdivision (a) on mailing a notice of proposed deficiency
26 assessment shall, in a case under Title 11 of the United States
27 Code, be suspended for any period during which the Franchise
28 Tax Board is prohibited by reason of that case from mailing the
29 notice of proposed deficiency assessment and for 60 days
30 thereafter.

31 (c) Where, within the 60-day period ending on the day on which
32 the time prescribed in this section for the assessment of any tax
33 imposed under Part 10 (commencing with Section 17001) or Part
34 11 (commencing with Section 23001) for any taxable year would
35 otherwise expire, the Franchise Tax Board receives a written
36 document, other than an amended return or a report required by
37 Section 18622, signed by the taxpayer showing that the taxpayer
38 owes an additional amount of that tax for that taxable year, the
39 period for the assessment of an additional amount in excess of the
40 amount shown on either an original or amended return shall not

1 expire before the day 60 days after the day on which the Franchise
2 Tax Board receives that document.

3 (d) If a taxpayer determines in good faith that it is an exempt
4 organization and files a return as an exempt organization under
5 Section 23772, and if the taxpayer is thereafter held to be a taxable
6 organization for the taxable year for which the return is filed, that
7 return shall be deemed the return of the organization for the
8 purposes of this section.

9 (e) *In the case of a deficiency attributable to the application to*
10 *the taxpayer of a net operating loss carryback, a notice of proposed*
11 *assessment may be mailed at any time before the expiration of the*
12 *period within which a deficiency for the taxable year of the net*
13 *operating loss which results in that carryback may be proposed.*

14 (f) *In a case where an amount has been applied, credited, or*
15 *refunded under Section 19307.5 by reason of a net operating loss*
16 *carryback to a prior taxable year, the period described in*
17 *subdivision (a) for mailing a notice of proposed deficiency*
18 *assessment for that prior taxable year shall be extended to include*
19 *the period described in subdivision (e), except that the amount*
20 *that may be proposed to be assessed solely by reason of this*
21 *subdivision shall not exceed the amount so applied, credited, or*
22 *refunded under Section 19307.5, reduced by any amount that may*
23 *be proposed to be assessed solely by reason of subdivision (e).*

24 ~~SEC. 2. Section 19362 of the Revenue and Taxation Code is~~
25 ~~amended to read:~~

26 ~~19362. (a) On or before January 1, 2016, the Franchise Tax~~
27 ~~Board shall prescribe regulations providing for the crediting against~~
28 ~~the estimated tax for any taxable year of the amount determined~~
29 ~~by the taxpayer or the Franchise Tax Board to be an overpayment~~
30 ~~of the tax for a preceding taxable year.~~

31 ~~SEC. 4. Section 19306 of the Revenue and Taxation Code is~~
32 ~~amended to read:~~

33 19306. (a) No credit or refund shall be allowed or made after
34 a period ending four years from the date the return was filed (if
35 filed within the time prescribed by Section 18567 or 18604,
36 whichever is applicable), four years from the last day prescribed
37 for filing the return (determined without regard to any extension
38 of time for filing the return), or after one year from the date of the
39 overpayment, whichever period expires later, unless before the
40 expiration of that period a claim therefor is filed by the taxpayer,

1 or unless before the expiration of that period the Franchise Tax
2 Board allows a credit, makes a refund, or mails a notice of proposed
3 overpayment on a preprinted form prescribed by the Franchise
4 Tax Board.

5 (b) The amendments to this section by the act adding this
6 subdivision shall be applied to all claims and refunds, without
7 regard to taxable year, for which the statute of limitations has not
8 expired on the date that this act takes effect.

9 (c) *If the claim for credit or refund relates to an overpayment*
10 *attributable to a net operating loss carryback allowed under*
11 *subdivision (c) of Section 17276.20 or subdivision (d) of Section*
12 *24416.20, in lieu of the four year period of limitation prescribed*
13 *in subdivision (a), the period shall be that period that ends four*
14 *years after the date the return was filed, if filed within the time*
15 *prescribed by Section 18567 or 18604, whichever is applicable,*
16 *or four years from the last date provided for filing the return,*
17 *determined without regard to extension of time for filing the return,*
18 *for the taxable year of the net operating loss that results in the*
19 *carryback.*

20 (d) (1) *If the allowance of a credit or refund of an overpayment*
21 *of tax attributable to a net operating loss carryback is otherwise*
22 *prevented by the operation of any law or rule of law other than*
23 *Section 19443, the credit or refund may be allowed or made if the*
24 *claim therefor is filed within the period provided in subdivision*
25 *(c).*

26 (2) *If the allowance of an application, credit, or refund of a*
27 *decrease in tax determined under Section 19307.5 is otherwise*
28 *prevented by the operation of any law or rule of law other than*
29 *Section 19443, that application, credit, or refund may be allowed*
30 *or made if application for a tentative carryback adjustment is made*
31 *within the period provided in Section 19307.5.*

32 (3) *In the case of that claim for refund or that application for*
33 *a tentative carryback adjustment, the determination by any court*
34 *in any proceeding in which the decision of the court has become*
35 *final shall be conclusive, except with respect to the net operating*
36 *loss deduction and the effect of the deduction, to the extent that*
37 *deduction is affected by a carryback that was not an issue in that*
38 *proceeding.*

1 ~~SEC. 3.~~

2 *SEC. 5.* Section ~~19367~~19307.5 is added to the Revenue and
3 Taxation Code, to read:

4 ~~19367.~~

5 *19307.5.* (a) Section 6411 of the Internal Revenue Code,
6 relating to tentative carryback and refund adjustments, shall apply
7 only to an application for a tentative carryback adjustment of the
8 tax for a prior taxable years affected by a net operating loss
9 carryback.

10 (b) (1) Section 6411 of the Internal Revenue Code is modified
11 ~~by substituting the phrase “Secretary or the Franchise Tax Board”~~
12 ~~for the word “Secretary” in each place it appears.~~ *as follows:*

13 (A) *By substituting the phrase “Secretary or the Franchise Tax*
14 *Board” for the word “Secretary” in each place it appears.*

15 (B) *By substituting the number “180” for the number “90” in*
16 *each place it appears.*

17 (2) Section 6411(a) of the Internal Revenue Code, relating to
18 application for adjustment, is modified as follows:

19 (A) By substituting the phrase “Section 17276.20 or 24416.20”
20 in lieu of the phrase “section 172(b)”.

21 (B) By substituting the phrase “Section 18621” in lieu of the
22 phrase “section 6065”.

23 (3) Section 6411(b) of the Internal Revenue Code, relating to
24 allowance of adjustments, is modified by substituting the phrase
25 “Section 19022” in lieu of the phrase “section 6164”.

26 (c) *Notwithstanding Section 6411(a) of the Internal Revenue*
27 *Code, relating to application for adjustment, a taxpayer may file*
28 *an application for a tentative carryback adjustment for a net*
29 *operating loss attributable to the 2013 taxable year within 6 months*
30 *after the effective date of the act adding this section or within 12*
31 *months after the end of the taxpayer’s 2013 taxable year, whichever*
32 *is later.*

33 *SEC. 6.* Section 19340 of the Revenue and Taxation Code is
34 *amended to read:*

35 19340. Interest shall be allowed and paid on any overpayment
36 in respect of any tax, at the adjusted annual rate established
37 pursuant to Section 19521 as follows:

38 (a) In the case of a credit, from the date of the overpayment to
39 the due date of the amount for which the credit is allowed. Any
40 interest allowed on any credit shall first be credited on any amounts

1 due from the taxpayer under Part 10 (commencing with Section
2 17001), this part, or Part 11 (commencing with Section 23001).

3 (b) In the case of a refund, including a refund in excess of tax
4 liability as prescribed in subdivision (j) of Section 17053.5, from
5 the date of the overpayment to a date preceding the date of the
6 refund warrant by not more than 30 days, the date to be determined
7 by the Franchise Tax Board.

8 (c) *For purposes of this section, if any overpayment of the “net*
9 *tax” imposed under Part 10 (commencing with Section 19001) or*
10 *the “tax” imposed under Part 11 (commencing with Section 23001)*
11 *results from a net operating loss carryback allowed under*
12 *subdivision (c) of Section 17276.20 or subdivision (d) of Section*
13 *24416.20, that overpayment shall not be deemed to have been*
14 *made before the filing date for the taxable year in which that net*
15 *operating loss carryback arises.*

16 (d) (1) *For purposes of subdivision (c), the term “filing date”*
17 *means the last date prescribed for filing the return of “net tax”*
18 *imposed under Part 10 (commencing with Section 17001) or the*
19 *“tax” imposed under Part 11 (commencing with Section 23001)*
20 *for the taxable year, determined without regard to extensions.*

21 (2) (A) *For purposes of Section 19341, the following shall*
22 *apply:*

23 (i) *Any overpayment described in subdivision (c) shall be treated*
24 *as an overpayment for the loss year.*

25 (ii) *Subdivision (c) shall be applied with respect to the*
26 *overpayment by treating the return for the loss year as not filed*
27 *before a claim for that overpayment is filed.*

28 (B) *For purposes of this paragraph, the term “loss year” means*
29 *the taxable year in which that loss arises.*

30 (3) *For purposes of clause (ii) of subparagraph (A), if a taxpayer*
31 *files a claim for refund of any overpayment described in subdivision*
32 *(c) with respect to the taxable year to which a loss or credit is*
33 *carried back, and subsequently files an application under Section*
34 *19307.5 with respect to that overpayment, then the claim for*
35 *overpayment shall be treated as having been filed on the date the*
36 *application under Section 19307.5 was filed.*

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