

AMENDED IN SENATE JUNE 16, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2754

**Introduced by Committee on Revenue and Taxation (Bocanegra
(Chair), Gordon, Mullin, Pan, V. Manuel Pérez, and Ting)**

March 24, 2014

An act to amend ~~Section 17054~~ Sections 17039, 17054, and 23036 of, and to add Sections 18621.10 and 19171 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2754, as amended, Committee on Revenue and Taxation. Franchise Tax Board: ~~administration: dependent credit credits:~~ electronic filing.

The Personal Income Tax Law allows for the computation of, and the order of allowance of, various credits against the "net tax," as defined. The Corporation Tax 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, for taxable years beginning on or after January 1, 2014, include the specified tax credit allocated by GO-Biz in the order of credits allowed against the "net tax." This bill would also, for taxable years beginning on or after January 1, 2014, additionally allow the specified credit under the Corporation Tax Law allocated by GO-Biz to reduce the tentative minimum tax.

The Personal Income Tax Law allows a credit for each dependent of a taxpayer and does not require a tax identification number of the dependent to be included on the return filed with the Franchise Board.

This bill would require, for taxable years beginning on or after January 1, 2015, the tax identification number of a dependent to be included on the taxpayer’s return and would allow the taxpayer who did not provide the taxpayer identification number on the return to thereafter claim a credit or refund of that amount, as provided.

Existing law requires every taxpayer subject to the Personal Income Tax Law or the Corporation Tax Law to timely file a return with the Franchise Tax Board, unless exempt, on a form prescribed by the Franchise Tax Board.

This bill, for taxable years beginning on or after January 1, 2014, would require an acceptable return, as defined, of a business entity, as defined, that was prepared using a tax preparation software to be filed using electronic technology in a form and manner prescribed by the Franchise Tax Board. This bill would require a business entity that fails to comply with that filing requirement for returns filed for taxable years beginning on or after January 1, 2017, to pay specified penalties for each failure unless the failure is due to reasonable cause, and not willful neglect. This bill would require the Franchise Tax Board to conduct programs to educate business entities on these requirements and liberally interpret and grant waivers of the penalty, as specified.

This bill would incorporate additional changes in Section 23036 of the Revenue and Taxation Code, proposed by AB 1839, to be operative only if AB 1839 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

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 17039 of the Revenue and Taxation Code*
- 2 *is amended to read:*
- 3 17039. (a) Notwithstanding any provision in this part to the
- 4 contrary, for the purposes of computing tax credits, the term “net
- 5 tax” means the tax imposed under either Section 17041 or 17048
- 6 plus the tax imposed under Section 17504 (relating to lump-sum
- 7 distributions) less the credits allowed by Section 17054 (relating
- 8 to personal exemption credits) and any amount imposed under

1 paragraph (1) of subdivision (d) and paragraph (1) of subdivision
2 (e) of Section 17560. Notwithstanding the preceding sentence, the
3 “net tax” shall not be less than the tax imposed under Section
4 17504 (relating to the separate tax on lump-sum distributions), if
5 any. Credits shall be allowed against “net tax” in the following
6 order:

7 (1) Credits that do not contain carryover or refundable
8 provisions, except those described in paragraphs (4) and (5).

9 (2) Credits that contain carryover provisions but do not contain
10 refundable provisions, except for those that are allowed to reduce
11 “net tax” below the tentative minimum tax, as defined by Section
12 17062.

13 (3) Credits that contain both carryover and refundable
14 provisions.

15 (4) The minimum tax credit allowed by Section 17063 (relating
16 to the alternative minimum tax).

17 (5) Credits that are allowed to reduce “net tax” below the
18 tentative minimum tax, as defined by Section 17062.

19 (6) Credits for taxes paid to other states allowed by Chapter 12
20 (commencing with Section 18001).

21 (7) Credits that contain refundable provisions but do not contain
22 carryover provisions.

23 The order within each paragraph shall be determined by the
24 Franchise Tax Board.

25 (b) Notwithstanding the provisions of Sections 17061 (relating
26 to refunds pursuant to the Unemployment Insurance Code) and
27 19002 (relating to tax withholding), the credits provided in those
28 sections shall be allowed in the order provided in paragraph (6) of
29 subdivision (a).

30 (c) (1) Notwithstanding any other provision of this part, no tax
31 credit shall reduce the tax imposed under Section 17041 or 17048
32 plus the tax imposed under Section 17504 (relating to the separate
33 tax on lump-sum distributions) below the tentative minimum tax,
34 as defined by Section 17062, except the following credits:

35 (A) The credit allowed by Section 17052.2 (relating to teacher
36 retention tax credit).

37 (B) The credit allowed by former Section 17052.4 (relating to
38 solar energy).

39 (C) The credit allowed by former Section 17052.5 (relating to
40 solar energy, repealed on January 1, 1987).

- 1 (D) The credit allowed by former Section 17052.5 (relating to
2 solar energy, repealed on December 1, 1994).
- 3 (E) The credit allowed by Section 17052.12 (relating to research
4 expenses).
- 5 (F) The credit allowed by former Section 17052.13 (relating to
6 sales and use tax credit).
- 7 (G) The credit allowed by former Section 17052.15 (relating to
8 Los Angeles Revitalization Zone sales tax credit).
- 9 (H) The credit allowed by Section 17052.25 (relating to the
10 adoption costs credit).
- 11 (I) The credit allowed by Section 17053.5 (relating to the
12 renter's credit).
- 13 (J) The credit allowed by former Section 17053.8 (relating to
14 enterprise zone hiring credit).
- 15 (K) The credit allowed by former Section 17053.10 (relating to
16 Los Angeles Revitalization Zone hiring credit).
- 17 (L) The credit allowed by former Section 17053.11 (relating to
18 program area hiring credit).
- 19 (M) For each taxable year beginning on or after January 1, 1994,
20 the credit allowed by former Section 17053.17 (relating to Los
21 Angeles Revitalization Zone hiring credit).
- 22 (N) The credit allowed by Section 17053.33 (relating to targeted
23 tax area sales or use tax credit).
- 24 (O) The credit allowed by Section 17053.34 (relating to targeted
25 tax area hiring credit).
- 26 (P) The credit allowed by Section 17053.49 (relating to qualified
27 property).
- 28 (Q) The credit allowed by Section 17053.70 (relating to
29 enterprise zone sales or use tax credit).
- 30 (R) The credit allowed by Section 17053.74 (relating to
31 enterprise zone hiring credit).
- 32 (S) The credit allowed by Section 17054 (relating to credits for
33 personal exemption).
- 34 (T) The credit allowed by Section 17054.5 (relating to the credits
35 for a qualified joint custody head of household and a qualified
36 taxpayer with a dependent parent).
- 37 (U) The credit allowed by Section 17054.7 (relating to the credit
38 for a senior head of household).
- 39 (V) The credit allowed by former Section 17057 (relating to
40 clinical testing expenses).

1 (W) The credit allowed by Section 17058 (relating to
2 low-income housing).

3 *(X) For taxable years beginning on or after January 1, 2014,*
4 *the credit allowed by Section 17059.2 (relating to GO-Biz*
5 *California Competes Credit).*

6 ~~(X)~~

7 (Y) The credit allowed by Section 17061 (relating to refunds
8 pursuant to the Unemployment Insurance Code).

9 ~~(Y)~~

10 (Z) Credits for taxes paid to other states allowed by Chapter 12
11 (commencing with Section 18001).

12 ~~(Z)~~

13 (AA) The credit allowed by Section 19002 (relating to tax
14 withholding).

15 (2) Any credit that is partially or totally denied under paragraph
16 (1) shall be allowed to be carried over and applied to the net tax
17 in succeeding taxable years, if the provisions relating to that credit
18 include a provision to allow a carryover when that credit exceeds
19 the net tax.

20 (d) Unless otherwise provided, any remaining carryover of a
21 credit allowed by a section that has been repealed or made
22 inoperative shall continue to be allowed to be carried over under
23 the provisions of that section as it read immediately prior to being
24 repealed or becoming inoperative.

25 (e) (1) Unless otherwise provided, if two or more taxpayers
26 (other than husband and wife) share in costs that would be eligible
27 for a tax credit allowed under this part, each taxpayer shall be
28 eligible to receive the tax credit in proportion to his or her
29 respective share of the costs paid or incurred.

30 (2) In the case of a partnership, the credit shall be allocated
31 among the partners pursuant to a written partnership agreement in
32 accordance with Section 704 of the Internal Revenue Code, relating
33 to partner's distributive share.

34 (3) In the case of a husband and wife who file separate returns,
35 the credit may be taken by either or equally divided between them.

36 (f) Unless otherwise provided, in the case of a partnership, any
37 credit allowed by this part shall be computed at the partnership
38 level, and any limitation on the expenses qualifying for the credit
39 or limitation upon the amount of the credit shall be applied to the
40 partnership and to each partner.

1 (g) (1) With respect to any taxpayer that directly or indirectly
2 owns an interest in a business entity that is disregarded for tax
3 purposes pursuant to Section 23038 and any regulations thereunder,
4 the amount of any credit or credit carryforward allowable for any
5 taxable year attributable to the disregarded business entity shall
6 be limited in accordance with paragraphs (2) and (3).

7 (2) The amount of any credit otherwise allowed under this part,
8 including any credit carryover from prior years, that may be applied
9 to reduce the taxpayer's "net tax," as defined in subdivision (a),
10 for the taxable year shall be limited to an amount equal to the
11 excess of the taxpayer's regular tax (as defined in Section 17062),
12 determined by including income attributable to the disregarded
13 business entity that generated the credit or credit carryover, over
14 the taxpayer's regular tax (as defined in Section 17062), determined
15 by excluding the income attributable to that disregarded business
16 entity. No credit shall be allowed if the taxpayer's regular tax (as
17 defined in Section 17062), determined by including the income
18 attributable to the disregarded business entity, is less than the
19 taxpayer's regular tax (as defined in Section 17062), determined
20 by excluding the income attributable to the disregarded business
21 entity.

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

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

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

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

4 ~~SECTION 1.~~

5 *SEC. 2.* Section 17054 of the Revenue and Taxation Code is
6 amended to read:

7 17054. In the case of individuals, the following credits for
8 personal exemption may be deducted from the tax imposed under
9 Section 17041 or 17048, less any increases imposed under
10 paragraph (1) of subdivision (d) or paragraph (1) of subdivision
11 (e), or both, of Section 17560.

12 (a) In the case of a single individual, a head of household, or a
13 married individual making a separate return, a credit of fifty-two
14 dollars (\$52).

15 (b) In the case of a surviving spouse (as defined in Section
16 17046), or a husband and wife making a joint return, a credit of
17 one hundred four dollars (\$104). If one spouse was a resident for
18 the entire taxable year and the other spouse was a nonresident for
19 all or any portion of the taxable year, the personal exemption shall
20 be divided equally.

21 (c) In addition to any other credit provided in this section, in
22 the case of an individual who is 65 years of age or over by the end
23 of the taxable year, a credit of fifty-two dollars (\$52).

24 (d) (1) A credit of two hundred twenty-seven dollars (\$227)
25 for each dependent (as defined in Section 17056) for whom an
26 exemption is allowable under Section 151(c) of the Internal
27 Revenue Code, relating to additional exemption for dependents.
28 The credit allowed under this subdivision for taxable years
29 beginning on or after January 1, 1999, shall not be adjusted
30 pursuant to subdivision (i) for any taxable year beginning before
31 January 1, 2000.

32 (2) (A) For taxable years beginning on or after January 1, 2015,
33 a credit shall not be allowed under paragraph (1) with respect to
34 any individual unless the identification number, as defined in
35 Section 6109 of the Internal Revenue Code, of that individual is
36 included on the return claiming the credit.

37 (B) A disallowance of a credit due to the omission of a correct
38 identification number required under this paragraph, may be
39 assessed by the Franchise Tax Board in the same manner as is
40 provided by Section 19051 in the case of a mathematical error

1 appearing on the return. A claimant shall have the right to claim
2 a credit or refund of adjusted amounts within the period provided
3 in Section 19306, 19307, 19308, or 19311, whichever period
4 expires later.

5 (3) (A) For taxable years beginning on or after January 1, 2009,
6 the credit allowed under paragraph (1) for each dependent shall
7 be equal to the credit allowed under subdivision (a). This
8 subparagraph shall cease to be operative for taxable years beginning
9 on or after January 1, 2011, unless the Director of Finance makes
10 the notification pursuant to Section 99040 of the Government
11 Code, in which case this subparagraph shall cease to be operative
12 for taxable years beginning on or after January 1, 2013.

13 (B) For taxable years that subparagraph (A) ceases to be
14 operative, the credit allowed under paragraph (1) for each
15 dependent shall be equal to the amount that would be allowed if
16 subparagraph (A) had never been operative.

17 (e) A credit for personal exemption of fifty-two dollars (\$52)
18 for the taxpayer if he or she is blind at the end of his or her taxable
19 year.

20 (f) A credit for personal exemption of fifty-two dollars (\$52)
21 for the spouse of the taxpayer if a separate return is made by the
22 taxpayer, and if the spouse is blind and, for the calendar year in
23 which the taxable year of the taxpayer begins, has no gross income
24 and is not the dependent of another taxpayer.

25 (g) For the purposes of this section, an individual is blind only
26 if either (1) his or her central visual acuity does not exceed 20/200
27 in the better eye with correcting lenses, or (2) his or her visual
28 acuity is greater than 20/200 but is accompanied by a limitation
29 in the fields of vision such that the widest diameter of the visual
30 field subtends an angle no greater than 20 degrees.

31 (h) In the case of an individual with respect to whom a credit
32 under this section is allowable to another taxpayer for a taxable
33 year beginning in the calendar year in which the individual's
34 taxable year begins, the credit amount applicable to that individual
35 for that individual's taxable year is zero.

36 (i) For each taxable year beginning on or after January 1, 1989,
37 the Franchise Tax Board shall compute the credits prescribed in
38 this section. That computation shall be made as follows:

39 (1) The California Department of Industrial Relations shall
40 transmit annually to the Franchise Tax Board the percentage change

1 in the California Consumer Price Index for all items from June of
2 the prior calendar year to June of the current calendar year, no
3 later than August 1 of the current calendar year.

4 (2) The Franchise Tax Board shall add 100 percent to the
5 percentage change figure which is furnished to them pursuant to
6 paragraph (1), and divide the result by 100.

7 (3) The Franchise Tax Board shall multiply the immediately
8 preceding taxable year credits by the inflation adjustment factor
9 determined in paragraph (2), and round off the resulting products
10 to the nearest one dollar (\$1).

11 (4) In computing the credits pursuant to this subdivision, the
12 credit provided in subdivision (b) shall be twice the credit provided
13 in subdivision (a).

14 ~~SEC. 2.~~

15 *SEC. 3.* Section 18621.10 is added to the Revenue and Taxation
16 Code, to read:

17 18621.10. (a) For taxable years beginning on or after January
18 1, 2014, if an acceptable return of a business entity was prepared
19 using a tax preparation software, that return shall be filed using
20 electronic technology in a form and manner prescribed by the
21 Franchise Tax Board.

22 (b) For purposes of this section:

23 (1) "Acceptable return" means any original or amended return
24 that is required to be filed pursuant to Article 2 (commencing with
25 Section 18601), Section 18633, Section 18633.5, or Article 3
26 (commencing with Section 23771) of Chapter 4 of Part 11, other
27 than the return for unrelated business taxable income required by
28 Section 23771.

29 (2) "Business entity" means a corporation, including an "S"
30 corporation, an organization exempt from tax pursuant to Chapter
31 4 (commencing with Section 23701) of Part 11, a partnership, or
32 a limited liability company.

33 (3) "Tax preparation software" means any computer software
34 program used to prepare an acceptable return or for use in tax
35 compliance.

36 (4) "Electronic technology" includes, but is not limited to, the
37 Internet, cloud computing, or an electronic information delivery
38 system.

39 (5) "Technology constraints" means an inability of the tax
40 preparation software used by a business entity to electronically

1 file the acceptable return as required by this section as a result of
2 the complex nature of the return or inadequacy of the software.

3 (c) Any business entity required to file a return electronically
4 under this section may annually request a waiver of the
5 requirements of this section from the Franchise Tax Board with
6 respect to an acceptable return filed for a taxable year. The
7 Franchise Tax Board may grant a waiver if it determines the
8 business entity is unable to comply with the requirements of this
9 section due to, but not limited to, technology constraints, where
10 compliance would result in undue financial burden, or due to
11 circumstances that constitute reasonable cause, and not willful
12 neglect, as applicable with respect to the penalty imposed under
13 Section 19171.

14 (d) This section applies to an acceptable return required to be
15 filed on or after January 1, 2015.

16 ~~SEC. 3.~~

17 *SEC. 4.* Section 19171 is added to the Revenue and Taxation
18 Code, to read:

19 19171. (a) A business entity required to electronically file a
20 return pursuant to Section 18621.10 that files a return in a manner
21 that fails to comply with Section 18621.10, shall be subject to a
22 penalty in the amount of one hundred dollars (\$100) for an initial
23 failure and a penalty in the amount of five hundred dollars (\$500)
24 for each subsequent failure unless the failure is due to reasonable
25 cause, and not willful neglect.

26 (b) If a group return is filed on behalf of eligible electing
27 taxpayer members of a combined reporting group, the penalties
28 described in subdivision (a) shall apply to the combined reporting
29 group and not to a taxpayer member of the combined reporting
30 group.

31 (c) This section shall apply to returns filed for taxable years
32 beginning on or after January 1, 2017.

33 *SEC. 5. Section 23036 of the Revenue and Taxation Code is*
34 *amended to read:*

35 23036. (a) (1) The term “tax” includes any of the following:

36 (A) The tax imposed under Chapter 2 (commencing with Section
37 23101).

38 (B) The tax imposed under Chapter 3 (commencing with Section
39 23501).

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

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

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

7 (b) For purposes of Article 5 (commencing with Section 18661)
8 of Chapter 2, Article 3 (commencing with Section 19031) of
9 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
10 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
11 and for purposes of Sections 18601, 19001, and 19005, the term
12 “tax” also includes all of the following:

13 (1) The tax on limited partnerships, imposed under Section
14 17935, the tax on limited liability companies, imposed under
15 Section 17941, and the tax on registered limited liability
16 partnerships and foreign limited liability partnerships imposed
17 under Section 17948.

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

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

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

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

26 (1) Credits that do not contain carryover provisions.

27 (2) Credits that, when the credit exceeds the “tax,” allow the
28 excess to be carried over to offset the “tax” in succeeding taxable
29 years, except for those credits that are allowed to reduce the “tax”
30 below the tentative minimum tax, as defined by Section 23455.

31 The order of credits within this paragraph shall be determined by
32 the Franchise Tax Board.

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

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

36 (5) Credits for taxes withheld under Section 18662.

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

- 1 (1) A credit may not reduce the “tax” below the tentative
2 minimum tax (as defined by paragraph (1) of subdivision (a) of
3 Section 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 former Section 23649 (relating to
37 qualified property).
- 38 (R) For taxable years beginning on or after January 1, 2011, the
39 credit allowed by Section 23685 (relating to qualified motion
40 pictures).

1 (S) For taxable years beginning on or after January 1, 2014,
2 the credit allowed by Section 23689 (relating to GO-Biz California
3 Competes Credit).

4 (2) A credit against the tax may not reduce the minimum
5 franchise tax imposed under Chapter 2 (commencing with Section
6 23101).

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

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

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

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

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

31 (2) The amount of any credit otherwise allowed under this part,
32 including any credit carryover from prior years, that may be applied
33 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for
34 the taxable year is limited to an amount equal to the excess of the
35 taxpayer’s regular tax (as defined in Section 23455), determined
36 by including income attributable to the disregarded business entity
37 that generated the credit or credit carryover, over the taxpayer’s
38 regular tax (as defined in Section 23455), determined by excluding
39 the income attributable to that disregarded business entity. A credit
40 is not allowed if the taxpayer’s regular tax (as defined in Section

1 23455), determined by including the income attributable to the
2 disregarded business entity is less than the taxpayer's regular tax
3 (as defined in Section 23455), determined by excluding the income
4 attributable to the disregarded business entity.

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

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

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

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

24 *SEC. 5.5. Section 23036 of the Revenue and Taxation Code is*
25 *amended to read:*

26 23036. (a) (1) The term "tax" includes any of the following:

27 (A) The tax imposed under Chapter 2 (commencing with Section
28 23101).

29 (B) The tax imposed under Chapter 3 (commencing with Section
30 23501).

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

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

34 (2) The term "tax" does not include any amount imposed under
35 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
36 of subdivision (f) of Section 24667.

37 (b) For purposes of Article 5 (commencing with Section 18661)
38 of Chapter 2, Article 3 (commencing with Section 19031) of
39 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
40 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,

1 and for purposes of Sections 18601, 19001, and 19005, the term
2 “tax” also includes all of the following:

3 (1) The tax on limited partnerships, imposed under Section
4 17935, the tax on limited liability companies, imposed under
5 Section 17941, and the tax on registered limited liability
6 partnerships and foreign limited liability partnerships imposed
7 under Section 17948.

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

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

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

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

16 (1) Credits that do not contain carryover provisions.

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

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

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

26 (5) Credits for taxes withheld under Section 18662.

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

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

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

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

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

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

- 1 (E) The credit allowed by former Section 23609.5 (relating to
- 2 clinical testing expenses).
- 3 (F) The credit allowed by Section 23610.5 (relating to
- 4 low-income housing).
- 5 (G) The credit allowed by former Section 23612 (relating to
- 6 sales and use tax credit).
- 7 (H) The credit allowed by Section 23612.2 (relating to enterprise
- 8 zone sales or use tax credit).
- 9 (I) The credit allowed by former Section 23612.6 (relating to
- 10 Los Angeles Revitalization Zone sales tax credit).
- 11 (J) The credit allowed by former Section 23622 (relating to
- 12 enterprise zone hiring credit).
- 13 (K) The credit allowed by Section 23622.7 (relating to enterprise
- 14 zone hiring credit).
- 15 (L) The credit allowed by former Section 23623 (relating to
- 16 program area hiring credit).
- 17 (M) The credit allowed by former Section 23623.5 (relating to
- 18 Los Angeles Revitalization Zone hiring credit).
- 19 (N) The credit allowed by former Section 23625 (relating to
- 20 Los Angeles Revitalization Zone hiring credit).
- 21 (O) The credit allowed by Section 23633 (relating to targeted
- 22 tax area sales or use tax credit).
- 23 (P) The credit allowed by Section 23634 (relating to targeted
- 24 tax area hiring credit).
- 25 (Q) The credit allowed by former Section 23649 (relating to
- 26 qualified property).
- 27 (R) For taxable years beginning on or after January 1, 2011, the
- 28 credit allowed by Section 23685 (relating to qualified motion
- 29 pictures).
- 30 *(S) For taxable years beginning on or after January 1, 2014,*
- 31 *the credit allowed by Section 23689 (relating to GO-Biz California*
- 32 *Competes Credit).*
- 33 *(T) For taxable years beginning on or after January 1, 2016,*
- 34 *the credit allowed by Section 23695 (relating to qualified motion*
- 35 *pictures).*
- 36 (2) A credit against the tax may not reduce the minimum
- 37 franchise tax imposed under Chapter 2 (commencing with Section
- 38 23101).
- 39 (e) Any credit which is partially or totally denied under
- 40 subdivision (d) is allowed to be carried over to reduce the “tax”

1 in the following year, and succeeding years if necessary, if the
2 provisions relating to that credit include a provision to allow a
3 carryover of the unused portion of that credit.

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

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

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

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

23 (2) The amount of any credit otherwise allowed under this part,
24 including any credit carryover from prior years, that may be applied
25 to reduce the taxpayer's "tax," as defined in subdivision (a), for
26 the taxable year is limited to an amount equal to the excess of the
27 taxpayer's regular tax (as defined in Section 23455), determined
28 by including income attributable to the disregarded business entity
29 that generated the credit or credit carryover, over the taxpayer's
30 regular tax (as defined in Section 23455), determined by excluding
31 the income attributable to that disregarded business entity. A credit
32 is not allowed if the taxpayer's regular tax (as defined in Section
33 23455), determined by including the income attributable to the
34 disregarded business entity is less than the taxpayer's regular tax
35 (as defined in Section 23455), determined by excluding the income
36 attributable to the disregarded business entity.

37 (3) If the amount of a credit allowed pursuant to the section
38 establishing the credit exceeds the amount allowable under this
39 subdivision in any taxable year, the excess amount may be carried

1 over to subsequent taxable years pursuant to subdivisions (d), (e),
 2 and (f).

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

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

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

17 ~~SEC. 4.~~

18 SEC. 6. The Franchise Tax Board shall conduct a robust
 19 education program advising business entities affected by Section
 20 18621.10 of the Revenue and Taxation Code of the requirements
 21 of that section and liberally interpret and grant waivers of the
 22 penalty imposed under Section 19171 of the Revenue and Taxation
 23 Code to minimize any unnecessary adverse impacts to business
 24 entities that experience difficulty complying with these new
 25 requirements.

26 *SEC. 7. Section 5.5 of this bill incorporates amendments to*
 27 *Section 23036 of the Revenue and Taxation Code proposed by this*
 28 *bill and Assembly Bill 1839. It shall only become operative if (1)*
 29 *both bills are enacted and become effective on or before January*
 30 *1, 2015, (2) each bill amends Section 23036 of the Revenue and*
 31 *Taxation Code, and (3) this bill is enacted after Assembly Bill*
 32 *1839, in which case Section 23036 of the Revenue and Taxation*
 33 *Code, as amended by Assembly Bill 1839, shall remain operative*
 34 *only until the operative date of this bill, at which time Section 5.5*
 35 *of this bill shall become operative, and Section 5 of this bill shall*
 36 *not become operative.*

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