

AMENDED IN SENATE AUGUST 22, 2014

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 Sections 17039, 17054, and 23036 of, ~~and to add~~ Sections 18621.10 and 19171 to, *and to repeal and add Section 17755 of*, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2754, as amended, Committee on Revenue and Taxation. ~~Franchise Tax Board: Income taxes:~~ credits: electronic ~~filing:~~ *filing:* *charitable remainder trusts.*

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.

The Personal Income Tax Law does not conform to specified provisions of federal law relating to the taxation of specified trusts. Existing law exempts from tax for the taxable year any charitable remainder annuity trust or charitable remainder unitrust unless that trust has unrelated business taxable income for the taxable year, in which case that trust shall be subject to tax, as provided.

This bill, for taxable years beginning on or after January 1, 2014, would conform, as modified, to the federal provisions for a charitable remainder annuity trust and a charitable remainder unitrust by providing that a trust shall remain tax-exempt, even if that trust has unrelated business taxable income, in which case that income shall be taxed as provided.

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
9 paragraph (1) of subdivision (d) and paragraph (1) of subdivision
10 (e) of Section 17560. Notwithstanding the preceding sentence, the
11 “net tax” shall not be less than the tax imposed under Section
12 17504 (relating to the separate tax on lump-sum distributions), if
13 any. Credits shall be allowed against “net tax” in the following
14 order:
15 (1) Credits that do not contain carryover or refundable
16 provisions, except those described in paragraphs (4) and (5).
17 (2) Credits that contain carryover provisions but do not contain
18 refundable provisions, except for those that are allowed to reduce
19 “net tax” below the tentative minimum tax, as defined by Section
20 17062.
21 (3) Credits that contain both carryover and refundable
22 provisions.
23 (4) The minimum tax credit allowed by Section 17063 (relating
24 to the alternative minimum tax).
25 (5) Credits that are allowed to reduce “net tax” below the
26 tentative minimum tax, as defined by Section 17062.
27 (6) Credits for taxes paid to other states allowed by Chapter 12
28 (commencing with Section 18001).
29 (7) Credits that contain refundable provisions but do not contain
30 carryover provisions.
31 The order within each paragraph shall be determined by the
32 Franchise Tax Board.
33 (b) Notwithstanding the provisions of Sections 17061 (relating
34 to refunds pursuant to the Unemployment Insurance Code) and
35 19002 (relating to tax withholding), the credits provided in those

1 sections shall be allowed in the order provided in paragraph (6) of
2 subdivision (a).

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

8 (A) The credit allowed by Section 17052.2 (relating to teacher
9 retention tax credit).

10 (B) The credit allowed by former Section 17052.4 (relating to
11 solar energy).

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

14 (D) The credit allowed by former Section 17052.5 (relating to
15 solar energy, repealed on December 1, 1994).

16 (E) The credit allowed by Section 17052.12 (relating to research
17 expenses).

18 (F) The credit allowed by former Section 17052.13 (relating to
19 sales and use tax credit).

20 (G) The credit allowed by former Section 17052.15 (relating to
21 Los Angeles Revitalization Zone sales tax credit).

22 (H) The credit allowed by Section 17052.25 (relating to the
23 adoption costs credit).

24 (I) The credit allowed by Section 17053.5 (relating to the
25 renter's credit).

26 (J) The credit allowed by former Section 17053.8 (relating to
27 enterprise zone hiring credit).

28 (K) The credit allowed by former Section 17053.10 (relating to
29 Los Angeles Revitalization Zone hiring credit).

30 (L) The credit allowed by former Section 17053.11 (relating to
31 program area hiring credit).

32 (M) For each taxable year beginning on or after January 1, 1994,
33 the credit allowed by former Section 17053.17 (relating to Los
34 Angeles Revitalization Zone hiring credit).

35 (N) The credit allowed by Section 17053.33 (relating to targeted
36 tax area sales or use tax credit).

37 (O) The credit allowed by Section 17053.34 (relating to targeted
38 tax area hiring credit).

39 (P) The credit allowed by Section 17053.49 (relating to qualified
40 property).

1 (Q) The credit allowed by Section 17053.70 (relating to
2 enterprise zone sales or use tax credit).

3 (R) The credit allowed by Section 17053.74 (relating to
4 enterprise zone hiring credit).

5 (S) The credit allowed by Section 17054 (relating to credits for
6 personal exemption).

7 (T) The credit allowed by Section 17054.5 (relating to the credits
8 for a qualified joint custody head of household and a qualified
9 taxpayer with a dependent parent).

10 (U) The credit allowed by Section 17054.7 (relating to the credit
11 for a senior head of household).

12 (V) The credit allowed by former Section 17057 (relating to
13 clinical testing expenses).

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

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

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

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

23 (AA) The credit allowed by Section 19002 (relating to tax
24 withholding).

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

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

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

1 (2) In the case of a partnership, the credit shall be allocated
 2 among the partners pursuant to a written partnership agreement in
 3 accordance with Section 704 of the Internal Revenue Code, relating
 4 to partner’s distributive share.

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

7 (f) Unless otherwise provided, in the case of a partnership, any
 8 credit allowed by this part shall be computed at the partnership
 9 level, and any limitation on the expenses qualifying for the credit
 10 or limitation upon the amount of the credit shall be applied to the
 11 partnership and to each partner.

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

18 (2) The amount of any credit otherwise allowed under this part,
 19 including any credit carryover from prior years, that may be applied
 20 to reduce the taxpayer’s “net tax,” as defined in subdivision (a),
 21 for the taxable year shall be limited to an amount equal to the
 22 excess of the taxpayer’s regular tax (as defined in Section 17062),
 23 determined by including income attributable to the disregarded
 24 business entity that generated the credit or credit carryover, over
 25 the taxpayer’s regular tax (as defined in Section 17062), determined
 26 by excluding the income attributable to that disregarded business
 27 entity. No credit shall be allowed if the taxpayer’s regular tax (as
 28 defined in Section 17062), determined by including the income
 29 attributable to the disregarded business entity, is less than the
 30 taxpayer’s regular tax (as defined in Section 17062), determined
 31 by excluding the income attributable to the disregarded business
 32 entity.

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

38 (h) (1) Unless otherwise specifically provided, in the case of a
 39 taxpayer that is a partner or shareholder of an eligible ~~pass-through~~
 40 *pass-thru* entity described in paragraph (2), any credit passed

1 through to the taxpayer in the taxpayer's first taxable year
2 beginning on or after the date the credit is no longer operative may
3 be claimed by the taxpayer in that taxable year, notwithstanding
4 the repeal of the statute authorizing the credit prior to the close of
5 that taxable year.

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

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

14 SEC. 2. Section 17054 of the Revenue and Taxation Code is
15 amended to read:

16 17054. In the case of individuals, the following credits for
17 personal exemption may be deducted from the tax imposed under
18 Section 17041 or 17048, less any increases imposed under
19 paragraph (1) of subdivision (d) or paragraph (1) of subdivision
20 (e), or both, of Section 17560.

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

24 (b) In the case of a surviving spouse (as defined in Section
25 17046), or a husband and wife making a joint return, a credit of
26 one hundred four dollars (\$104). If one spouse was a resident for
27 the entire taxable year and the other spouse was a nonresident for
28 all or any portion of the taxable year, the personal exemption shall
29 be divided equally.

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

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

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

6 (B) A disallowance of a credit due to the omission of a correct
7 identification number required under this paragraph, may be
8 assessed by the Franchise Tax Board in the same manner as is
9 provided by Section 19051 in the case of a mathematical error
10 appearing on the return. A claimant shall have the right to claim
11 a credit or refund of adjusted amounts within the period provided
12 in Section 19306, 19307, 19308, or 19311, whichever period
13 expires later.

14 (3) (A) For taxable years beginning on or after January 1, 2009,
15 the credit allowed under paragraph (1) for each dependent shall
16 be equal to the credit allowed under subdivision (a). This
17 subparagraph shall cease to be operative for taxable years beginning
18 on or after January 1, 2011, unless the Director of Finance makes
19 the notification pursuant to Section 99040 of the Government
20 Code, in which case this subparagraph shall cease to be operative
21 for taxable years beginning on or after January 1, 2013.

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

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

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

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

1 (h) In the case of an individual with respect to whom a credit
2 under this section is allowable to another taxpayer for a taxable
3 year beginning in the calendar year in which the individual's
4 taxable year begins, the credit amount applicable to that individual
5 for that individual's taxable year is zero.

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

9 (1) The California Department of Industrial Relations shall
10 transmit annually to the Franchise Tax Board the percentage change
11 in the California Consumer Price Index for all items from June of
12 the prior calendar year to June of the current calendar year, no
13 later than August 1 of the current calendar year.

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

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

21 (4) In computing the credits pursuant to this subdivision, the
22 credit provided in subdivision (b) shall be twice the credit provided
23 in subdivision (a).

24 *SEC. 3. Section 17755 of the Revenue and Taxation Code is*
25 *repealed.*

26 ~~17755. Section 664(c) of the Internal Revenue Code, relating~~
27 ~~to the taxation of trusts, shall not apply and, in lieu thereof, a~~
28 ~~charitable remainder annuity trust and a charitable remainder~~
29 ~~unitrust shall, for any taxable year, not be subject to any tax~~
30 ~~imposed under this part, unless that trust, for the taxable year, has~~
31 ~~unrelated business taxable income, within the meaning of Section~~
32 ~~23732, determined as if Chapter 4 (commencing with Section~~
33 ~~23701) of Part 11, applied to that trust.~~

34 *SEC. 4. Section 17755 is added to the Revenue and Taxation*
35 *Code, to read:*

36 *17755. For taxable years beginning on or after January 1,*
37 *2014, Section 664(c)(2) of the Internal Revenue Code, relating to*
38 *excise tax, shall not apply and, in lieu thereof, the unrelated*
39 *business taxable income, as defined in Section 23732, of every*

1 *charitable remainder annuity trust or charitable remainder unitrust*
2 *shall be subject to tax under Section 17651.*

3 ~~SEC. 3.~~

4 *SEC. 5.* Section 18621.10 is added to the Revenue and Taxation
5 Code, to read:

6 18621.10. (a) For taxable years beginning on or after January
7 1, 2014, if an acceptable return of a business entity was prepared
8 using a tax preparation software, that return shall be filed using
9 electronic technology in a form and manner prescribed by the
10 Franchise Tax Board.

11 (b) For purposes of this section:

12 (1) “Acceptable return” means any original or amended return
13 that is required to be filed pursuant to Article 2 (commencing with
14 Section 18601), Section 18633, Section 18633.5, or Article 3
15 (commencing with Section 23771) of Chapter 4 of Part 11, other
16 than the return for unrelated business taxable income required by
17 Section 23771.

18 (2) “Business entity” means a corporation, including an “S”
19 corporation, an organization exempt from tax pursuant to Chapter
20 4 (commencing with Section 23701) of Part 11, a partnership, or
21 a limited liability company.

22 (3) “Tax preparation software” means any computer software
23 program used to prepare an acceptable return or for use in tax
24 compliance.

25 (4) “Electronic technology” includes, but is not limited to, the
26 Internet, cloud computing, or an electronic information delivery
27 system.

28 (5) “Technology constraints” means an inability of the tax
29 preparation software used by a business entity to electronically
30 file the acceptable return as required by this section as a result of
31 the complex nature of the return or inadequacy of the software.

32 (c) Any business entity required to file a return electronically
33 under this section may annually request a waiver of the
34 requirements of this section from the Franchise Tax Board with
35 respect to an acceptable return filed for a taxable year. The
36 Franchise Tax Board may grant a waiver if it determines the
37 business entity is unable to comply with the requirements of this
38 section due to, but not limited to, technology constraints, where
39 compliance would result in undue financial burden, or due to
40 circumstances that constitute reasonable cause, and not willful

1 neglect, as applicable with respect to the penalty imposed under
2 Section 19171.

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

5 ~~SEC. 4.~~

6 *SEC. 6.* Section 19171 is added to the Revenue and Taxation
7 Code, to read:

8 19171. (a) A business entity required to electronically file a
9 return pursuant to Section 18621.10 that files a return in a manner
10 that fails to comply with Section 18621.10, shall be subject to a
11 penalty in the amount of one hundred dollars (\$100) for an initial
12 failure and a penalty in the amount of five hundred dollars (\$500)
13 for each subsequent failure unless the failure is due to reasonable
14 cause, and not willful neglect.

15 (b) If a group return is filed on behalf of eligible electing
16 taxpayer members of a combined reporting group, the penalties
17 described in subdivision (a) shall apply to the combined reporting
18 group and not to a taxpayer member of the combined reporting
19 group.

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

22 ~~SEC. 5.~~

23 *SEC. 7.* Section 23036 of the Revenue and Taxation Code is
24 amended to read:

25 23036. (a) (1) The term “tax” includes any of the following:

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

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

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

32 (D) The tax on ~~S~~ “S” corporations imposed under Section
33 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~~ “S” corporations, imposed
11 under Section 23809.

12 (4) The tax on excess passive investment income of ~~S~~ “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, the
31 credit allowed by Section 23689 (relating to GO-Biz California
32 Competes Credit).
- 33 (2) A credit against the tax may not reduce the minimum
34 franchise tax imposed under Chapter 2 (commencing with Section
35 23101).
- 36 (e) Any credit which is partially or totally denied under
37 subdivision (d) is allowed to be carried over to reduce the “tax”
38 in the following year, and succeeding years if necessary, if the
39 provisions relating to that credit include a provision to allow a
40 carryover of the unused portion of that credit.

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

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

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

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

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

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

39 (j) (1) Unless otherwise specifically provided, in the case of a
40 taxpayer that is a partner or shareholder of an eligible pass-thru

1 entity described in paragraph (2), any credit passed through to the
2 taxpayer in the taxpayer's first taxable year beginning on or after
3 the date the credit is no longer operative may be claimed by the
4 taxpayer in that taxable year, notwithstanding the repeal of the
5 statute authorizing the credit prior to the close of that taxable year.

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

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

13 ~~SEC. 5.5.~~

14 *SEC. 7.5.* Section 23036 of the Revenue and Taxation Code is
15 amended to read:

16 23036. (a) (1) The term "tax" includes any of the following:

17 (A) The tax imposed under Chapter 2 (commencing with Section
18 23101).

19 (B) The tax imposed under Chapter 3 (commencing with Section
20 23501).

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

23 (D) The tax on ~~S~~ "S" corporations imposed under Section
24 23802.

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

28 (b) For purposes of Article 5 (commencing with Section 18661)
29 of Chapter 2, Article 3 (commencing with Section 19031) of
30 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
31 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
32 and for purposes of Sections 18601, 19001, and 19005, the term
33 "tax" also includes all of the following:

34 (1) The tax on limited partnerships, imposed under Section
35 17935, the tax on limited liability companies, imposed under
36 Section 17941, and the tax on registered limited liability
37 partnerships and foreign limited liability partnerships imposed
38 under Section 17948.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (T) For taxable years beginning on or after January 1, 2016, the
24 credit allowed by Section 23695 (relating to qualified motion
25 pictures).

26 (2) A credit against the tax may not reduce the minimum
27 franchise tax imposed under Chapter 2 (commencing with Section
28 23101).

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

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

38 (g) Unless otherwise provided, if two or more taxpayers share
39 in costs that would be eligible for a tax credit allowed under this

1 part, each taxpayer is eligible to receive the tax credit in proportion
2 to his or her respective share of the costs paid or incurred.

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

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

14 (2) The amount of any credit otherwise allowed under this part,
15 including any credit carryover from prior years, that may be applied
16 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for
17 the taxable year is limited to an amount equal to the excess of the
18 taxpayer’s regular tax (as defined in Section 23455), determined
19 by including income attributable to the disregarded business entity
20 that generated the credit or credit carryover, over the taxpayer’s
21 regular tax (as defined in Section 23455), determined by excluding
22 the income attributable to that disregarded business entity. A credit
23 is not allowed if the taxpayer’s regular tax (as defined in Section
24 23455), determined by including the income attributable to the
25 disregarded business entity is less than the taxpayer’s regular tax
26 (as defined in Section 23455), determined by excluding the income
27 attributable to the disregarded business entity.

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

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

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

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

8 ~~SEC. 6.~~

9 *SEC. 8.* The Franchise Tax Board shall conduct a robust
10 education program advising business entities affected by Section
11 18621.10 of the Revenue and Taxation Code of the requirements
12 of that section and liberally interpret and grant waivers of the
13 penalty imposed under Section 19171 of the Revenue and Taxation
14 Code to minimize any unnecessary adverse impacts to business
15 entities that experience difficulty complying with these new
16 requirements.

17 ~~SEC. 7.~~

18 *SEC. 9.* ~~Section 5.5~~ 7.5 of this bill incorporates amendments
19 to Section 23036 of the Revenue and Taxation Code proposed by
20 this bill and Assembly Bill 1839. It shall only become operative
21 if (1) both bills are enacted and become effective on or before
22 January 1, 2015, (2) each bill amends Section 23036 of the
23 Revenue and Taxation Code, and (3) this bill is enacted after
24 Assembly Bill 1839, in which case Section 23036 of the Revenue
25 and Taxation Code, as amended by Assembly Bill 1839, shall
26 remain operative only until the operative date of this bill, at which
27 time ~~Section 5.5~~ 7.5 of this bill shall become operative, and Section
28 5 7 of this bill shall not become operative.