

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 797**

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**Introduced by Senator Anderson**

February 22, 2013

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~~An act to amend Section 206.1 of the Revenue and Taxation Code, relating to taxation. An act to amend Sections 17276.21 and 24416.21 of, and to add Sections 17207.1, 19057.5, 19306.5, and 24347.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 797, as amended, Anderson. ~~Property taxation: exemption: parking: religious activities. Income taxation: net operating losses: fraudulent investment arrangement losses.~~

*The Personal Income Tax Law and the Corporation Tax Law, in modified conformity with federal income tax laws, allow a deduction for losses sustained during the taxable year and not compensated for by insurance or otherwise. Those state laws conform to specified revenue rulings and revenue procedures of the Internal Revenue Service regarding treatment of losses due to investment arrangements discovered to be criminally fraudulent, except that, among other things, net operating loss carrybacks and carryforwards are not allowed.*

*This bill would provide a safe harbor for determining the year in which those losses attributable to criminal fraud occurred, as described in a specified revenue procedure of the Internal Revenue Service, and would allow a net operating loss carryover or carryback of any resulting deduction from the losses in conformity with federal income tax law.*

*This bill would make a legislative finding and declaration relating to the public purpose served by the bill.*

*This bill would take effect immediately as a tax levy.*

~~Existing property tax law exempts from tax any real property that is reasonably and necessarily required for the parking of automobiles by persons engaged in religious activities, as specified.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

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

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

1     SECTION 1. Section 17207.1 is added to the Revenue and  
2     Taxation Code, to read:

3     17207.1. (a) (1) For each taxable year beginning on or after  
4     January 1, 2008, if a taxpayer that is a qualified investor, as  
5     defined in the Internal Revenue Service’s Revenue Procedure  
6     2009-20, follows the procedures described in Section 6 of that  
7     Revenue Procedure for federal income tax purposes, and follows  
8     the same procedures for purposes of this part, the Franchise Tax  
9     Board shall not challenge the treatment described in paragraph  
10    (2) by the qualified investor with respect to the qualified loss.

11    (2) The treatment described in this paragraph means all of the  
12    following:

13    (A) The loss is deducted as a theft loss.

14    (B) The taxable year in which the theft was discovered within  
15    the meaning of Section 165(e) of the Internal Revenue Code is the  
16    discovery year described in Section 4.04 of the Internal Revenue  
17    Service’s Revenue Procedure 2009-20.

18    (C) The amount of the deduction is the amount specified in  
19    Section 5.02 of the Internal Revenue Service’s Revenue Procedure  
20    2009-20.

21    (b) To the extent a deduction resulting from the application of  
22    this section results in a net operating loss, Section 172 of the  
23    Internal Revenue Code, as applicable for federal income tax  
24    purposes for a taxable year, shall be applicable for purposes of  
25    this section for the same taxable year, without regard to Section  
26    17276.20.

27    SEC. 2. Section 17276.21 of the Revenue and Taxation Code  
28    is amended to read:

1 17276.21. (a) Notwithstanding Sections 17276, 17276.1,  
2 17276.2, 17276.4, 17276.5, 17276.6, 17276.7, and 17276.20 of  
3 this code and Section 172 of the Internal Revenue Code, no net  
4 operating loss deduction shall be allowed for any taxable year  
5 beginning on or after January 1, 2008, and before January 1, 2012.

6 (b) For any net operating loss or carryover of a net operating  
7 loss for which a deduction is denied by subdivision (a), the  
8 carryover period under Section 172 of the Internal Revenue Code  
9 shall be extended as follows:

10 (1) By one year, for losses incurred in taxable years beginning  
11 on or after January 1, 2010, and before January 1, 2011.

12 (2) By two years, for losses incurred in taxable years beginning  
13 on or after January 1, 2009, and before January 1, 2010.

14 (3) By three years, for losses incurred in taxable years beginning  
15 on or after January 1, 2008, and before January 1, 2009.

16 (4) By four years, for losses incurred in taxable years beginning  
17 before January 1, 2008.

18 (c) Notwithstanding subdivision (a), a net operating loss  
19 deduction shall be allowed for carryback of a net operating loss  
20 attributable to a taxable year beginning on or after January 1, 2013.

21 (d) The provisions of this section shall not apply to the following  
22 taxpayers:

23 (1) For any taxable year beginning on or after January 1, 2008,  
24 and before January 1, 2010, this section shall not apply to a  
25 taxpayer with net business income of less than five hundred  
26 thousand dollars (\$500,000) for the taxable year. For purposes of  
27 this paragraph, business income means:

28 (A) Income from a trade or business, whether conducted by the  
29 taxpayer or by a passthrough entity owned directly or indirectly  
30 by the taxpayer. For purposes of this paragraph, the term  
31 “passthrough entity” means a partnership or an “S” corporation.

32 (B) Income from rental activity.

33 (C) Income attributable to a farming business.

34 (2) For any taxable year beginning on or after January 1, 2010,  
35 and before January 1, 2012, this section shall not apply to a  
36 taxpayer with modified adjusted gross income of less than three  
37 hundred thousand dollars (\$300,000) for the taxable year. For  
38 purposes of this paragraph, “modified adjusted gross income”  
39 means the amount described in paragraph (2) of subdivision (h)  
40 of Section 17024.5, determined without regard to the deduction

1 allowed under Section 172 of the Internal Revenue Code, relating  
2 to net operating loss deduction.

3 *(e) This section shall not apply to a loss resulting from the*  
4 *application of Section 17207.1.*

5 *SEC. 3. Section 19057.5 is added to the Revenue and Taxation*  
6 *Code, to read:*

7 *19057.5. Section 6501(h) of the Internal Revenue Code, relating*  
8 *to limitations on credit or refund with respect to the special period*  
9 *of limitation with respect to net operating loss or capital loss*  
10 *carrybacks, shall apply to a net operating loss resulting from the*  
11 *application of Section 17207.1 or Section 24347.1, except as*  
12 *otherwise provided.*

13 *SEC. 4. Section 19306.5 is added to the Revenue and Taxation*  
14 *Code, to read:*

15 *19306.5. Section 6511(d)(2) of the Internal Revenue Code,*  
16 *relating to the limitations on credit or refund with respect to the*  
17 *special period of limitation with respect to net operating loss or*  
18 *capital loss carrybacks, shall apply to a net operating loss resulting*  
19 *from the application of Section 17207.1 or Section 24347.1, except*  
20 *as otherwise provided.*

21 *SEC. 5. Section 24347.1 is added to the Revenue and Taxation*  
22 *Code, to read:*

23 *24347.1. (a) (1) For each taxable year beginning on or after*  
24 *January 1, 2008, if a taxpayer that is a qualified investor, as*  
25 *defined in the Internal Revenue Service's Revenue Procedure*  
26 *2009-20, follows the procedures described in Section 6 of that*  
27 *Revenue Procedure for federal income tax purposes, and follows*  
28 *the same procedures for purposes of this part, the Franchise Tax*  
29 *Board shall not challenge the treatment described in paragraph*  
30 *(2) by the qualified investor with respect to the qualified loss.*

31 *(2) The treatment described in this paragraph means all of the*  
32 *following:*

33 *(A) The loss is deducted as a theft loss.*

34 *(B) The taxable year in which the theft was discovered within*  
35 *the meaning of Section 165(e) of the Internal Revenue Code is the*  
36 *discovery year described in Section 4.04 of the Internal Revenue*  
37 *Service's Revenue Procedure 2009-20.*

38 *(C) The amount of the deduction is the amount specified in*  
39 *Section 5.02 of the Internal Revenue Service's Revenue Procedure*  
40 *2009-20.*

1 (b) To the extent a deduction resulting from the application of  
2 this section results in a net operating loss, Section 172 of the  
3 Internal Revenue Code, as applicable for federal income tax  
4 purposes for a taxable year, shall be applicable for purposes of  
5 this section for the same taxable year, without regard to Section  
6 24416.20.

7 SEC. 6. Section 24416.21 of the Revenue and Taxation Code  
8 is amended to read:

9 24416.21. (a) Notwithstanding Sections 24416, 24416.1,  
10 24416.2, 24416.4, 24416.5, 24416.6, 24416.7, and 24416.20 of  
11 this code and Section 172 of the Internal Revenue Code, no net  
12 operating loss deduction shall be allowed for any taxable year  
13 beginning on or after January 1, 2008, and before January 1, 2012.

14 (b) For any net operating loss or carryover of a net operating  
15 loss for which a deduction is denied by subdivision (a), the  
16 carryover period under Section 172 of the Internal Revenue Code  
17 shall be extended as follows:

18 (1) By one year, for losses incurred in taxable years beginning  
19 on or after January 1, 2010, and before January 1, 2011.

20 (2) By two years, for losses incurred in taxable years beginning  
21 on or after January 1, 2009, and before January 1, 2010.

22 (3) By three years, for losses incurred in taxable years beginning  
23 on or after January 1, 2008, and before January 1, 2009.

24 (4) By four years, for losses incurred in taxable years beginning  
25 before January 1, 2008.

26 (c) Notwithstanding subdivision (a), a net operating loss  
27 deduction shall be allowed for carryback of a net operating loss  
28 attributable to a taxable year beginning on or after January 1, 2013.

29 (d) The disallowance of any net operating loss deduction for  
30 any taxable year beginning on or after January 1, 2008, and before  
31 January 1, 2010, pursuant to subdivision (a) shall not apply to a  
32 taxpayer with income subject to tax under this part of less than  
33 five hundred thousand dollars (\$500,000) for the taxable year.

34 (e) (1) The disallowance of any net operating loss deduction  
35 for any taxable year beginning on or after January 1, 2010, and  
36 before January 1, 2012, pursuant to subdivision (a) shall not apply  
37 to a taxpayer with preapportioned income of less than three hundred  
38 thousand dollars (\$300,000) for the taxable year.

1 (2) For purposes of this subdivision, “preapportioned income”  
2 means net income after state adjustments, before the application  
3 of the apportionment and allocation provisions of this part.

4 (3) For taxpayers that are required to be included in a combined  
5 report under Section 25101 or authorized to be included in a  
6 combined report under Section 25101.15, the amount prescribed  
7 in paragraph (1) shall apply to the aggregate amount of  
8 preapportioned income for all members included in a combined  
9 report.

10 (f) Notwithstanding subdivision (a), this section shall not apply  
11 to a taxpayer that ceased to do business or has a final taxable year  
12 ending prior to August 28, 2008, that sold or transferred  
13 substantially all of its assets resulting in a gain on sale during a  
14 taxable year ending prior to August 28, 2008, for which the gain  
15 could be offset with existing net operating loss deductions and the  
16 sale or transfer occurred pursuant to a plan of reorganization under  
17 Chapter 11 of Title 11 of the United States Code. An amended tax  
18 return claiming net operating loss deductions allowed pursuant to  
19 this subdivision shall be treated as a timely filed original return.

20 (g) The Legislature finds and declares that the addition of  
21 subdivision (f) to this section by the act adding this subdivision  
22 fulfills a statewide public purpose by providing necessary tax relief  
23 for a taxpayer that ceased to do business or has a final taxable year  
24 ending prior to August 28, 2008, that sold or transferred  
25 substantially all of its assets resulting in a gain or sale during a  
26 taxable year prior to August 28, 2008, for which the gain could be  
27 offset with existing net operating loss deductions and the sale or  
28 transfer occurred pursuant to a plan of reorganization under Chapter  
29 11 of Title 11 of the United States Code, in order to ensure that  
30 these taxpayers are not permanently denied the net operating loss  
31 deduction.

32 (h) *This section shall not apply to a loss resulting from the*  
33 *application of Section 24347.1.*

34 *SEC. 7. The Legislature finds and declares that this act fulfills*  
35 *a statewide public purpose by providing tax relief for taxpayers*  
36 *who are innocent victims of fraudulent investment schemes.*

37 *SEC. 8. This act provides for a tax levy within the meaning of*  
38 *Article IV of the Constitution and shall go into immediate effect.*

39 ~~SECTION 1. Section 206.1 of the Revenue and Taxation Code~~  
40 ~~is amended to read:~~

1     ~~206.1. (a) Pursuant to the authority in subdivision (d) of~~  
2 ~~Section 4 of Article XIII of the California Constitution, and in~~  
3 ~~accordance with subdivision (b) of this section, all real property~~  
4 ~~that is necessarily and reasonably required for the parking of~~  
5 ~~automobiles of persons who are attending religious services, or~~  
6 ~~are engaged in religious services or worship or any religious~~  
7 ~~activity, is exempt from taxation.~~

8     ~~(b) For purposes of the exemption established by subdivision~~  
9 ~~(a), all of the following apply:~~

10     ~~(1) “Real property” means land and improvements or a~~  
11 ~~possessory interest in land and improvements.~~

12     ~~(2) The real property is not required to be contiguous to the land~~  
13 ~~on which the church or other structure used for religious services~~  
14 ~~or as the place of worship or religious activity is located.~~

15     ~~(3) The real property is not at other times used for commercial~~  
16 ~~purposes. For purposes of this paragraph, “commercial purposes”~~  
17 ~~does not include use of the property for the parking of vehicles or~~  
18 ~~bicycles, the revenue from which does not exceed the ordinary~~  
19 ~~and necessary costs of maintaining the real property.~~

20     ~~(4) The exemption shall apply to otherwise qualifying land and~~  
21 ~~improvements regardless of whether the land and improvements~~  
22 ~~are owned by the church, religious denomination, or sect using the~~  
23 ~~land and improvements for the parking of automobiles by persons~~  
24 ~~described in subdivision (a). However, the exemption shall apply~~  
25 ~~to land and improvements that are not owned by the church,~~  
26 ~~religious denomination, or sect using the land and improvements~~  
27 ~~for the parking of automobiles by persons described in subdivision~~  
28 ~~(a) only as long as all of the following conditions are met:~~

29     ~~(A) The congregation of the church, religious denomination, or~~  
30 ~~sect is no greater than 500 members.~~

31     ~~(B) The church, religious denomination, or sect is engaged in~~  
32 ~~a lease of the land and improvements for the exclusive purpose of~~  
33 ~~the parking of automobiles by persons described in subdivision~~  
34 ~~(a).~~

35     ~~(C) The church, religious denomination, or sect is responsible,~~  
36 ~~under the terms of its lease with the fee owner of the land and~~  
37 ~~improvements, for paying the property taxes levied on the land~~  
38 ~~and improvements. For purposes of this subparagraph, paying~~  
39 ~~property taxes levied on land and improvements includes~~

1 reimbursement paid to the fee owner of the land and improvements  
2 for those taxes.

3 ~~(D) The real property is used exclusively for the parking of~~  
4 ~~automobiles by persons described in subdivision (a).~~

5 ~~(E) The fee owner of the real property and the county agree that~~  
6 ~~the fee owner shall pay the total amount of taxes that would be~~  
7 ~~levied on the real property for the current fiscal year and the first~~  
8 ~~two subsequent fiscal years in the absence of a grant of exemption~~  
9 ~~pursuant to this paragraph for the current fiscal year, if the real~~  
10 ~~property is used for any purpose other than that specified in~~  
11 ~~subparagraph (D) during either of those two subsequent fiscal~~  
12 ~~years.~~