

AMENDED IN SENATE APRIL 7, 2014

SENATE BILL

No. 997

Introduced by Senator ~~Knight~~ Morrell

February 13, 2014

An act to amend Section ~~23663~~ 18724 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 997, as amended, ~~Knight~~ Morrell. ~~Corporate taxes: credits: assignment.~~ *Voluntary contributions: California Fund for Senior Citizens.*

Under the Personal Income Tax Law, taxpayers are allowed to contribute amounts in excess of their tax liability for the support of the California Fund for Senior Citizens until the year in which the minimum contribution is not received, or January 1, 2020, whichever occurs first.

This bill would eliminate the requirement that these contributions reach the minimum contribution amount.

~~The Corporation Tax Law allows various credits against the taxes imposed by that law. That law allows, for each taxable year beginning on or after July 1, 2008, any credit that is an eligible credit, as defined, to be assigned to any eligible assignee, as defined.~~

~~This bill would make technical, nonsubstantive changes to this 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 18724 of the Revenue and Taxation Code~~
2 ~~is amended to read:~~

3 ~~18724. (a) Except as otherwise provided in subdivision (b),~~
4 ~~this article shall remain in effect only for taxable years beginning~~
5 ~~before January 1, 2020, and as of December 1, 2020, is repealed.~~

6 ~~(b) (1) By September 1, 2006, and by September 1 of each~~
7 ~~subsequent calendar year that the California Fund for Senior~~
8 ~~Citizens appears on a tax return, the Franchise Tax Board shall~~
9 ~~determine whether the amount of contributions estimated to be~~
10 ~~received during the calendar year will equal or exceed two hundred~~
11 ~~fifty thousand dollars (\$250,000). The Franchise Tax Board shall~~
12 ~~estimate the amount of contributions to be received by using the~~
13 ~~actual amounts received and an estimate of the contributions that~~
14 ~~will be received by the end of that calendar year.~~

15 ~~(2) The Franchise Tax Board shall provide written notification~~
16 ~~to the California Senior Legislature of the amount determined~~
17 ~~pursuant to paragraph (1).~~

18 ~~(3) If the Franchise Tax Board determines the amount of~~
19 ~~contributions estimated to be received during a calendar year will~~
20 ~~not at least equal the minimum contribution amount for the calendar~~
21 ~~year, this article shall become inoperative for taxable years~~
22 ~~beginning on or after January 1 of that calendar year, and shall be~~
23 ~~repealed on December 1 of that calendar year.~~

24 ~~(4) For purposes of this section, the minimum contribution~~
25 ~~amount for a calendar year means two hundred fifty thousand~~
26 ~~dollars (\$250,000).~~

27 ~~(e)~~

28 ~~(b) Notwithstanding the repeal of this article, any contribution~~
29 ~~amounts designated pursuant to this article prior to its repeal shall~~
30 ~~continue to be transferred and disbursed in accordance with this~~
31 ~~article as in effect immediately prior to that repeal.~~

32 ~~SECTION 1. Section 23663 of the Revenue and Taxation Code~~
33 ~~is amended to read:~~

34 ~~23663. (a) (1) Notwithstanding any other law, for each taxable~~
35 ~~year beginning on or after July 1, 2008, any credit allowed to a~~
36 ~~taxpayer under this chapter that is an eligible credit may be~~
37 ~~assigned by that taxpayer to any eligible assignee.~~

1 ~~(2) A credit assigned under paragraph (1) may be applied by~~
2 ~~the eligible assignee only against the “tax,” as defined in Section~~
3 ~~23036, of the eligible assignee in a taxable year beginning on or~~
4 ~~after January 1, 2010.~~

5 ~~(3) Except as specifically provided in this section, following an~~
6 ~~assignment of any eligible credit under this section, the eligible~~
7 ~~assignee shall be treated as if it originally earned the assigned~~
8 ~~credit.~~

9 ~~(b) For purposes of this section, the following definitions shall~~
10 ~~apply:~~

11 ~~(1) “Affiliated corporation” means a corporation that is a~~
12 ~~member of a commonly controlled group as defined in Section~~
13 ~~25105.~~

14 ~~(2) “Eligible credit” shall mean:~~

15 ~~(A) Any credit earned by the taxpayer in a taxable year~~
16 ~~beginning on or after July 1, 2008, or~~

17 ~~(B) Any credit earned in any taxable year beginning before July~~
18 ~~1, 2008, that is eligible to be carried forward to the taxpayer’s first~~
19 ~~taxable year beginning on or after July 1, 2008, under the~~
20 ~~provisions of this part.~~

21 ~~(3) “Eligible assignee” shall mean any affiliated corporation~~
22 ~~that is properly treated as a member of the same combined~~
23 ~~reporting group pursuant to Section 25101 or 25110 as the taxpayer~~
24 ~~assigning the eligible credit as of:~~

25 ~~(A) In the case of credits earned in taxable years beginning~~
26 ~~before July 1, 2008:~~

27 ~~(i) June 30, 2008, and~~

28 ~~(ii) The last day of the taxable year of the assigning taxpayer~~
29 ~~in which the eligible credit is assigned.~~

30 ~~(B) In the case of credits earned in taxable years beginning on~~
31 ~~or after July 1, 2008:~~

32 ~~(i) The last day of the first taxable year in which the credit was~~
33 ~~allowed to the taxpayer, and~~

34 ~~(ii) The last day of the taxable year of the assigning taxpayer~~
35 ~~in which the eligible credit is assigned.~~

36 ~~(c) (1) The election to assign any credit under subdivision (a)~~
37 ~~shall be irrevocable once made, and shall be made by the taxpayer~~
38 ~~allowed that credit on its original return for the taxable year in~~
39 ~~which the assignment is made.~~

1 ~~(2) The taxpayer assigning any credit under this section shall~~
2 ~~reduce the amount of its unused credit by the face amount of any~~
3 ~~credit assigned under this section, and the amount of the assigned~~
4 ~~credit shall not be available for application against the assigning~~
5 ~~taxpayer's "tax" in any taxable year, nor shall it thereafter be~~
6 ~~included in the amount of any credit carryover of the assigning~~
7 ~~taxpayer.~~

8 ~~(3) The eligible assignee of any credit under this section may~~
9 ~~apply all or any portion of the assigned credits against the "tax"~~
10 ~~of the eligible assignee for the taxable year in which the assignment~~
11 ~~occurs, or any subsequent taxable year, subject to any carryover~~
12 ~~period limitations that apply to the assigned credit and also subject~~
13 ~~to the limitation in paragraph (2) of subdivision (a).~~

14 ~~(4) The eligible assignee shall not sell, otherwise transfer, or~~
15 ~~thereafter assign the assigned credit to any other taxpayer.~~

16 ~~(d) (1) Consideration shall not be required to be paid by the~~
17 ~~eligible assignee to the assigning taxpayer for assignment of any~~
18 ~~credit under this section.~~

19 ~~(2) In the event that any consideration is paid by the eligible~~
20 ~~assignee to the assigning taxpayer for the transfer of an eligible~~
21 ~~credit under this section, then:~~

22 ~~(A) A deduction shall not be allowed to the eligible assignee~~
23 ~~under this part with respect to any amounts so paid, and~~

24 ~~(B) Any amount so received by the assigning taxpayer shall not~~
25 ~~be includable in gross income under this part.~~

26 ~~(e) (1) The Franchise Tax Board shall specify the form and~~
27 ~~manner in which the election required under this section shall be~~
28 ~~made, as well as any necessary information that shall be required~~
29 ~~to be provided by the taxpayer assigning the credit to the eligible~~
30 ~~assignee.~~

31 ~~(2) Any taxpayer who assigns any credit under this section shall~~
32 ~~report any information, in the form and manner specified by the~~
33 ~~Franchise Tax Board, necessary to substantiate any credit assigned~~
34 ~~under this section and verify the assignment and subsequent~~
35 ~~application of any assigned credit.~~

36 ~~(3) Chapter 3.5 (commencing with Section 11340) of Part 1 of~~
37 ~~Division 3 of Title 2 of the Government Code shall not apply to~~
38 ~~any standard, criterion, procedure, determination, rule, notice, or~~
39 ~~guideline established or issued by the Franchise Tax Board~~
40 ~~pursuant to paragraphs (1) and (2).~~

1 ~~(4) The Franchise Tax Board may issue any regulation necessary~~
2 ~~to implement the purposes of this section, including any regulation~~
3 ~~necessary to specify the treatment of any assignment that does not~~
4 ~~comply with this section (including, for example, if the taxpayer~~
5 ~~and eligible assignee are not properly treated as members of the~~
6 ~~same combined reporting group on any of the dates specified in~~
7 ~~paragraph (3) of subdivision (b).~~

8 ~~(f) (1) The taxpayer and the eligible assignee shall be jointly~~
9 ~~and severally liable for any tax, addition to tax, or penalty that~~
10 ~~results from the disallowance, in whole or in part, of any eligible~~
11 ~~credit assigned under this section.~~

12 ~~(2) This section shall not limit the authority of the Franchise~~
13 ~~Tax Board to audit either the assigning taxpayer or the eligible~~
14 ~~assignee with respect to any eligible credit assigned under this~~
15 ~~section.~~

16 ~~(g) On or before June 30, 2013, the Franchise Tax Board shall~~
17 ~~report to the Joint Legislative Budget Committee, the Legislative~~
18 ~~Analyst, and the relevant policy committees of both houses on the~~
19 ~~effects of this section. The report shall include, but need not be~~
20 ~~limited to, the following:~~

21 ~~(1) An estimate of use of credits in the 2010 and 2011 taxable~~
22 ~~years by eligible taxpayers.~~

23 ~~(2) An analysis of effect of this section on expanding business~~
24 ~~activity in the state related to these credits.~~

25 ~~(3) An estimate of the resulting tax revenue loss to the state.~~

26 ~~(4) The report shall cover all credits covered in this section, but~~
27 ~~focus on the credits related to research and development, economic~~
28 ~~incentive areas, and low-income housing.~~