

AMENDED IN ASSEMBLY MARCH 31, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 713**

---

---

**Introduced by Assembly Member Caldera**

February 26, 1997

---

---

An act to amend Sections 18640, 18648, 19008, 19049, 19064, 19104, 19111, 19132, 19280, 19290, 19503, 19717, 21013, 21016, and 21019 of, to add Sections 21022, 21023, 21024, 21025, 21026, and 21027 to, and to repeal Section 18525 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 713, as amended, Caldera. Taxpayers' rights: conformity.

Existing federal tax law includes a Taxpayers' Bill of Rights with respect to those taxes collected and administered pursuant to the Internal Revenue Code. Existing state law also includes the Katz-Harris Taxpayer Bill of Rights Act, that applies with respect to those taxes collected and administered by the Franchise Tax Board under the Personal Income Tax Law and the Bank and Corporation Tax Law.

This bill would partially conform state tax law to the most recent amendments to federal taxpayers' rights provisions by modifying and adding to the provisions of the Katz-Harris Taxpayer Bill of Rights, and by amending or repealing certain provisions of the Personal Income Tax Law, the Bank and Corporation Tax Law, and state statutes governing the administration of those laws, in specific regard to the

following subjects: the filing of a joint tax return after the filing of separate tax returns; the phone numbers of persons filing certain information returns; installment payment agreements; the extension of interest-free periods after a notice and demand for the payment of deficiencies; service of subpoenas on 3rd-party recordkeepers; the abatement of interest for errors and delays resulting from ministerial or managerial acts of the Franchise Tax Board; relief from the retroactive application of regulations; reimbursements of the litigation or hearing costs and expenses, including attorney's fees, of taxpayers; releases of levies and liens; unauthorized actions taken by tax officials to secure the disclosure of information about taxpayers; the burden of proof in protest hearings and refund appeals as to the accuracy of tax information; notices to taxpayers for unassociated payments; notices of outstanding delinquent accounts; and the authorized use of private delivery services in filing items with tax agencies.

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 18525 of the Revenue and  
 2 Taxation Code is repealed.  
 3 SEC. 2. Section 18640 of the Revenue and Taxation  
 4 Code is amended to read:  
 5 18640. (a) Any corporation allocating amounts as  
 6 patronage dividends, rebates, or refunds (whether in  
 7 cash, merchandise, capital stock, revolving fund  
 8 certificates, retain certificates, certificates of  
 9 indebtedness, letters of advice, or in some other manner  
 10 that discloses to each patron the amount of the dividend,  
 11 refund, or rebate) shall render a correct return, that shall  
 12 contain or be verified by a written declaration that it is  
 13 made under the penalties of perjury, stating both of the  
 14 following:  
 15 (1) The name and address of each patron to whom it  
 16 has made those allocations amounting to one hundred  
 17 dollars (\$100) or more during the calendar year.



1 (2) The amount of those allocations to each patron.

2 If required by the Franchise Tax Board, any  
3 corporation described in this subdivision shall render a  
4 correct return, which shall contain or be verified by a  
5 written declaration that it is under penalties of perjury,  
6 of all patronage dividends, rebates, or refunds made  
7 during the calendar year to its patrons. This section shall  
8 not apply in the case of any corporation exempt from tax  
9 under Article 1 (commencing with Section 23701) of  
10 Chapter 4 of Part 11.

11 (b) Every cooperative required to make a return  
12 under subdivision (a) shall furnish to each person whose  
13 name is required to be set forth in that return a written  
14 statement showing both of the following:

15 (1) The name, address, and telephone number of the  
16 cooperative required to make that return.

17 (2) The aggregate amount of the allocations required  
18 to be made to the person as shown on that return.

19 (c) The written statement required under subdivision  
20 (b) shall be furnished (either in person or in a separate  
21 mailing by first-class mail which includes adequate notice  
22 that the statement is enclosed) to the person on or before  
23 January 31 of the year following the calendar year for  
24 which the return under subdivision (a) was required to  
25 be made, and shall be in the form which the Franchise  
26 Tax Board may prescribe.

27 (d) The amendments made by this act adding this  
28 subdivision are operative for information returns  
29 required to be filed on or after January 1, 1999.

30 SEC. 3. Section 18648 of the Revenue and Taxation  
31 Code is amended to read:

32 18648. (a) Any person who is a promoter of tax  
33 shelters, as defined in subdivision (c), shall, within 60 days  
34 of a request, make a complete return to the Franchise Tax  
35 Board containing the full identification of each  
36 investment sold during the reporting period. For each  
37 investment, all of the following information shall be  
38 provided:

39 (1) Name of investment.



1 (2) Description of the business activities of the  
2 investment.

3 (3) Form of investment, such as limited partnership,  
4 limited liability company, investment plan, or  
5 arrangement.

6 (4) A list of investors showing full name, address, social  
7 security number, and the amount invested by each  
8 investor in the investment during the reporting period.

9 (5) The total amount invested by all investors during  
10 the reporting period in the investment.

11 (6) Any other related information which the  
12 Franchise Tax Board may request.

13 The return shall be verified by a written declaration  
14 that it is made under penalty of perjury.

15 (b) Every person making a return under subdivision  
16 (a) shall furnish, within 60 days of the request, to each  
17 investor whose name is set forth in the return a written  
18 statement showing all of the following:

19 (1) The name, address, and telephone number of the  
20 person making the return.

21 (2) The aggregate amount of investments of each  
22 investor as shown on that return for each reporting  
23 period.

24 (c) For purposes of this section, the term “a promoter  
25 of tax shelters” shall mean any person who:

26 (1) (A) Organizes (or assists in the organization of)  
27 any entity, any investment plan or arrangement, or any  
28 other plan or arrangement which generates a loss for any  
29 investor in excess of his or her cash investment from an  
30 activity described in Section 465(c) of the Internal  
31 Revenue Code.

32 (B) Participates in the sale of any interest in any entity  
33 or plan or arrangement referred to in subparagraph (A).

34 (2) Makes or furnishes (in connection with that  
35 organization or sale):

36 (A) A statement with respect to the allowability of any  
37 deduction or credit, the excludability of any income, or  
38 the securing of any other tax benefit by reason of holding  
39 an interest in the entity or participating in the plan or  
40 arrangement.



1 (B) A statement as to the value of any property or  
2 services.

3 (d) A promoter of tax shelters shall keep records  
4 necessary to substantiate the information required to be  
5 contained on a return.

6 (e) "Reporting period," as used in subdivision (a),  
7 shall mean each calendar year specified on the request  
8 from the Franchise Tax Board.

9 (f) A return filed by a partnership or limited liability  
10 company classified as a partnership for California income  
11 tax purposes under this part shall be deemed to have  
12 satisfied the reporting requirement of this section for the  
13 reporting period covered by the partnership or limited  
14 liability company return with respect to the investors in  
15 the partnership.

16 (g) The Franchise Tax Board shall establish a review  
17 process for all requests for information under this section  
18 comparable to the process of obtaining an administrative  
19 subpoena, including the requirement that a member of  
20 the Franchise Tax Board shall approve each request.

21 (h) The amendments made by the act adding this  
22 subdivision are operative for information returns  
23 required to be filed on or after January 1, 1999.

24 SEC. 4. Section 19008 of the Revenue and Taxation  
25 Code is amended to read:

26 19008. (a) The Franchise Tax Board may, in cases of  
27 financial hardship, as determined by the Franchise Tax  
28 Board, allow an individual or fiduciary to enter into  
29 installment payment agreements with the Franchise Tax  
30 Board to pay taxes due, plus applicable interest and  
31 penalties over the life of the installment period. Failure  
32 by an individual or fiduciary to comply fully with the  
33 terms of the installment payment agreement shall render  
34 the agreement null and void, unless the Franchise Tax  
35 Board determines that the failure was due to a reasonable  
36 cause, and the total amount of tax, interest, and all  
37 penalties shall be immediately due and payable.

38 (b) Except in any case where the Franchise Tax Board  
39 finds collection of the tax to which an installment  
40 payment agreement relates to be in jeopardy, or there is



1 a mutual consent to terminate, alter, or modify the  
2 agreement, the agreement shall not be considered null  
3 and void, or otherwise terminated, unless both of the  
4 following occur:

5 (1) A notice of termination is provided to the  
6 individual or fiduciary not later than 30 days before the  
7 date of termination.

8 (2) The notice includes an explanation of why the  
9 Franchise Tax Board intends to terminate the agreement.

10 (c) The Taxpayers' Advocate shall establish  
11 procedures for an independent *departmental*  
12 administrative review for installment payment  
13 agreements that are rendered null and void, or otherwise  
14 terminated under this section, for individuals or  
15 fiduciaries who request that review. This administrative  
16 review shall not stay collection of the tax to which the  
17 installment payment agreement relates.

18 (d) The amendments made by the act adding this  
19 subdivision are operative January 1, 1998.

20 SEC. 5. Section 19049 of the Revenue and Taxation  
21 Code is amended to read:

22 19049. (a) When a deficiency is determined and the  
23 assessment becomes final, the Franchise Tax Board shall  
24 mail notice and demand to the taxpayer for the payment  
25 thereof. The deficiency assessed is due and payable at the  
26 expiration of 15 days from the date of the notice and  
27 demand.

28 (b) The amendments made by the act adding this  
29 subdivision are operative for notices issued on or after  
30 January 1, 1998.

31 SEC. 6. Section 19064 of the Revenue and Taxation  
32 Code is amended to read:

33 19064. (a) If any person initiates a motion to quash a  
34 subpoena, as provided by Sections 7465 to 7476, inclusive,  
35 of the Government Code, and that person is the person  
36 with respect to whose liability the subpoena is issued (or  
37 is the agent, nominee, or other person acting under the  
38 direction or control of that person), then the running of  
39 any period of limitations under Section 19057 (relating to  
40 deficiency assessments), Section 19087 (relating to false



1 or fraudulent returns), or Section 19704 (relating to  
2 criminal prosecutions) with respect to that person shall  
3 be suspended for the period during which a proceeding,  
4 and appeals therein, with respect to the enforcement of  
5 the subpoena is pending.

6 (b) In the absence of the resolution of a response to a  
7 subpoena served to a third-party recordkeeper (as  
8 defined in Section 7609(a)(3) of the Internal Revenue  
9 Code, as amended by Section 1001 of Public Law 104-168)  
10 issued under Section 19504 (power of examination) the  
11 running of any period of limitations under Section 19057  
12 (relating to deficiency assessments), Section 19087  
13 (relating to false or fraudulent returns), or Section 19704  
14 (relating to criminal prosecutions) with respect to any  
15 person whose liability the subpoena was issued (other  
16 than a person taking action as provided by subdivision  
17 (a)) shall be suspended for the period beginning on the  
18 date which is six months after the service of the subpoena  
19 and ending with the final resolution of that response.

20 SEC. 7. Section 19104 of the Revenue and Taxation  
21 Code is amended to read:

22 19104. (a) Interest upon the amount assessed as a  
23 deficiency shall be assessed, collected, and paid in the  
24 same manner as the tax at the adjusted annual rate  
25 established pursuant to Section 19521 from the date  
26 prescribed for the payment of the tax or, if the tax is paid  
27 in installments, from the date prescribed for payment of  
28 the first installment, until the date the tax is paid. If any  
29 portion of the deficiency is paid prior to the date it is  
30 assessed, interest shall accrue on such portion only to the  
31 date paid.

32 (b) If the Franchise Tax Board makes or allows a  
33 refund or credit which it determines to be erroneous, in  
34 whole or in part, the amount erroneously made or  
35 allowed may be assessed and collected after notice and  
36 demand pursuant to Section 19051 (pertaining to  
37 mathematical errors), except that the rights of protest  
38 and appeal shall apply with respect to amounts assessable  
39 as deficiencies without regard to the running of any  
40 period of limitations provided elsewhere in this part.



1 Notice and demand for repayment must be made within  
2 two years after the refund or credit was made or allowed,  
3 or during the period within which the Franchise Tax  
4 Board may mail a notice of proposed deficiency  
5 assessment, whichever period expires the later. Interest  
6 on amounts erroneously made or allowed shall not accrue  
7 until 30 days from the date the Franchise Tax Board mails  
8 a notice and demand for repayment as provided by this  
9 subdivision.

10 (c) (1) In the case of any assessment of interest, the  
11 Franchise Tax Board may abate the assessment of all or  
12 any part of that interest for any period in either of the  
13 following circumstances:

14 (A) Any deficiency attributable in whole or in part to  
15 any unreasonable error or delay by an officer or employee  
16 of the Franchise Tax Board (acting in his or her official  
17 capacity) in performing a ministerial or managerial act.

18 (B) Any payment of any tax described in Section 19033  
19 to the extent that any delay in that payment is  
20 attributable to that officer or employee being dilatory in  
21 performing a ministerial or managerial act.

22 (C) For purposes of this paragraph

23 (i) An error or delay shall be taken into account only  
24 if no significant aspect of that error or delay can be  
25 attributed to the taxpayer involved, and after the  
26 Franchise Tax Board has contacted the taxpayer in  
27 writing with respect to that deficiency or payment.

28 (ii) Within 180 days after the Franchise Tax Board  
29 mails its notice of determination not to abate interest, a  
30 taxpayer may appeal the Franchise Tax Board's  
31 determination to the State Board of Equalization. The  
32 State Board of Equalization shall have jurisdiction over  
33 the appeal to determine whether the Franchise Tax  
34 Board's failure to abate interest under this section was an  
35 abuse of discretion, and may order an abatement.

36 (iii) Except for the amendment adding clause (ii), the  
37 amendments made by the act adding this clause are  
38 operative with respect to taxable or income years  
39 beginning on or after January 1, 1998. The amendment



1 adding clause (ii) is operative for requests for abatement  
2 made on or after January 1, 1998.

3 (2) The Franchise Tax Board shall abate the  
4 assessment of all interest on any erroneous refund for  
5 which an action for recovery is provided under Section  
6 19411 until 30 days after the date demand for repayment  
7 is made, unless either of the following has occurred:

8 (A) The taxpayer (or a related party) has in any way  
9 caused that erroneous refund.

10 (B) That erroneous refund exceeds fifty thousand  
11 dollars (\$50,000).

12 SEC. 8. Section 19111 of the Revenue and Taxation  
13 Code is amended to read:

14 19111. (a) If notice is made for payment of any  
15 amount, and if that amount is paid within 15 days after the  
16 date of the notice, interest under this article on the  
17 amount so paid shall not be imposed for the period after  
18 the date of the notice.

19 (b) The amendments made by the act adding this  
20 subdivision are operative for notices issued on or after  
21 January 1, 1998.

22 SEC. 9. Section 19132 of the Revenue and Taxation  
23 Code is amended to read:

24 19132. (a) (1) Unless it is shown that the failure is  
25 due to reasonable cause and not due to willful neglect, a  
26 penalty computed in accordance with paragraph (2) is  
27 hereby imposed in the case of failure to pay any of the  
28 following:

29 (A) The amount shown as tax on any return on or  
30 before the date prescribed for payment of that tax  
31 determined with regard to any extension of time for  
32 payment.

33 (B) Any amount in respect of any tax required to be  
34 shown on a return which is not so shown including an  
35 assessment made pursuant to Section 19051 within 15 days  
36 of the date of the notice and demand therefor.

37 (C) The amount required to be paid by Section 19021,  
38 if applicable, that is not paid.

39 (D) The amount required to be paid by Section 17941  
40 or 23091, if applicable, that is not paid.



1 (E) The amount required to be paid by Section 17951  
2 or 23097, if applicable, that is not paid.

3 (2) The penalty imposed under paragraph (1) shall  
4 consist of both of the following:

5 (A) Five percent of the total tax unpaid as defined in  
6 subdivision (c).

7 (B) An amount computed at the rate of 0.5 percent per  
8 month of the “remaining tax” as defined in subdivision  
9 (d) for each additional month or fraction thereof not to  
10 exceed 40 months during which the “remaining tax” is  
11 greater than zero.

12 (3) The aggregate amount of penalty imposed by this  
13 subdivision shall not exceed 25 percent of the total unpaid  
14 tax and shall be due and payable upon notice and demand  
15 by the Franchise Tax Board. The tender of a check or  
16 money order does not constitute payment of the tax for  
17 purposes of this section unless the check or money order  
18 is paid on presentment.

19 (b) The penalty prescribed by subdivision (a) shall not  
20 be assessed if, for the same taxable year, the sum of any  
21 penalties imposed under Section 19131 relating to failure  
22 to file return and Section 19133 relating to failure to file  
23 return after demand is equal to or greater than the  
24 subdivision (a) penalty. In the event the penalty imposed  
25 under subdivision (a) is greater than the sum of any  
26 penalties imposed under Sections 19131 and 19133, the  
27 penalty imposed under subdivision (a) shall be the  
28 amount which exceeds the sum of any penalties imposed  
29 under Sections 19131 and 19133.

30 (c) For purposes of this section, total tax unpaid means  
31 the amount of tax shown on the return reduced by both  
32 of the following:

33 (1) The amount of any part of the tax which is paid on  
34 or before the date prescribed for payment of the tax.

35 (2) The amount of any credit against the tax which  
36 may be claimed upon the return.

37 (d) For purposes of this section, “remaining tax”  
38 means total tax unpaid reduced by the amount of any  
39 payment of the tax.



1 (e) If the amount required to be shown as a tax on a  
2 return is less than the amount shown as tax on that return,  
3 subdivisions (a), (c), and (d) shall be applied by  
4 substituting that lower amount.

5 (f) No interest shall accrue on the portion of the  
6 penalty prescribed in subparagraph (B) of paragraph (2)  
7 of subdivision (a).

8 (g) The amendments made by the act adding this  
9 subdivision are operative for notices issued on or after  
10 January 1, 1998.

11 SEC. 10. Section 19280 of the Revenue and Taxation  
12 Code is amended to read:

13 19280. (a) Fines, state or local penalties, forfeitures,  
14 restitution fines, or restitution orders imposed by a  
15 superior, municipal, or justice court of the State of  
16 California upon a person or any other entity that is in an  
17 amount totaling no less than two hundred fifty dollars  
18 (\$250), in the aggregate, and due a county or the state for  
19 criminal offenses, including all offenses involving a  
20 violation of the Vehicle Code except offenses relating to  
21 parking or registration or offenses by pedestrians or  
22 bicyclists, may, no sooner than 90 days after payment of  
23 that amount becomes delinquent, be referred by the  
24 county or the state to the Franchise Tax Board for  
25 collection under guidelines prescribed by the Franchise  
26 Tax Board. The Franchise Tax Board shall establish  
27 criteria for referral, which shall include setting forth a  
28 minimum dollar amount subject to referral and  
29 collection.

30 (b) For the period January 1, 1995, to December 31,  
31 1997, inclusive, for purposes of a manageable  
32 implementation and evaluation of the program  
33 authorized by this article, the Franchise Tax Board may  
34 limit referrals to nine counties.

35 (c) Upon written notice to the obligor from the  
36 Franchise Tax Board, any amount referred to the  
37 Franchise Tax Board under subdivision (a) and any  
38 interest thereon, including any interest on the amount  
39 referred under subdivision (a) that accrued prior to the  
40 date of referral, shall be treated as final and due and



1 payable to the State of California, and shall be collected  
2 from the obligor by the Franchise Tax Board in any  
3 manner authorized under the law for collection of a  
4 delinquent personal income tax liability, including, but  
5 not limited to, issuance of an order and levy under Article  
6 4 (commencing with Section 706.070) of Chapter 5 of  
7 Division 2 of Title 9 of Part 2 of the Code of Civil  
8 Procedure in the manner provided for earnings  
9 withholding orders for taxes.

10 (d) (1) Part 10 (commencing with Section 17001),  
11 this part, Part 10.7 (commencing with Section 21001), and  
12 Part 11 (commencing with Section 23001) shall apply to  
13 amounts referred under this article in the same manner  
14 and with the same force and effect and to the full extent  
15 as if the language of those laws had been incorporated in  
16 full into this article, except to the extent that any  
17 provision is either inconsistent with this article or is not  
18 relevant to this article.

19 (2) Any information, information sources, or  
20 enforcement remedies and capabilities available to the  
21 court referring the amount due described in subdivision  
22 (a), shall be available to the Franchise Tax Board to be  
23 used in conjunction with, or independent of, the  
24 information, information sources, or remedies and  
25 capabilities available to the Franchise Tax Board for  
26 purposes of administering Part 10 (commencing with  
27 Section 17001), this part, Part 10.7 (commencing with  
28 Section 21001), or Part 11 (commencing with Section  
29 23001).

30 (e) The activities required to implement and  
31 administer this part shall not interfere with the primary  
32 mission of the Franchise Tax Board to administer Part 10  
33 (commencing with Section 17001) and Part 11  
34 (commencing with Section 23001).

35 (f) For amounts referred for collection under  
36 subdivision (a), interest shall accrue at the greater of the  
37 rate applicable to the amount due being collected or the  
38 rate provided under Section 19521. When notice of the  
39 amount due includes interest and is mailed to the obligor  
40 and the amount is paid within 15 days after the date of



1 notice, interest shall not be imposed for the period after  
2 the date of notice.

3 (g) In no event shall a collection under this article be  
4 construed as a payment of income taxes imposed under  
5 Part 10 (commencing with Section 17001) or Part 11  
6 (commencing with Section 23001).

7 (h) The amendments made by the act adding this  
8 subdivision are operative for notices issued on or after  
9 January 1, 1998.

10 SEC. 11. Section 19290 of the Revenue and Taxation  
11 Code is amended to read:

12 19290. (a) The Department of Industrial Relations  
13 shall enter into an agreement with the Franchise Tax  
14 Board that transfers responsibility from the department  
15 to the Franchise Tax Board for the collection of  
16 delinquent fees, wages, penalties, and costs, and any  
17 interest thereon, effective July 1, 1995. Under the  
18 agreement, the Franchise Tax Board shall collect  
19 unsatisfied judgments that are issued pursuant to Sections  
20 98.2, 226.5, 1023, 1289, 2681, and 6650 of the Labor Code.  
21 The agreement shall also provide for the collection of  
22 delinquent debts that result from a final determination by  
23 the department after the exhaustion of appeal remedies  
24 pursuant to Sections 98.3, 210, 1174.5, 1193.6, 1194, 1194.2,  
25 1197.1, 1197.5, 1771, 1774, 3722, 7314, 7350, 7721, and 7904  
26 of the Labor Code. The agreement shall specify the terms  
27 under which fees, wages, penalties, and costs, and any  
28 interest thereon, become subject to collection by the  
29 Franchise Tax Board.

30 The agreement may also provide for reimbursement to  
31 the Franchise Tax Board on the basis of a percentage of  
32 the amount of revenue realized as a result of the  
33 Franchise Tax Board's services, provided that the amount  
34 of any reimbursement shall not exceed the actual costs of  
35 collection, including court costs and reasonable attorney's  
36 fees. Wherever possible the collection costs shall be borne  
37 by the judgment debtor. Any fee for the recovery of  
38 wages shall not be paid by the workers. The department  
39 shall adopt rules and regulations to provide for a  
40 reasonable fee to cover actual collection costs. The



1 Franchise Tax Board shall be entitled to court costs and  
2 reasonable attorney’s fees as a judgment creditor under  
3 subdivision (i) of Section 98.2 of the Labor Code.

4 (b) Upon written notice to the obligor from the  
5 Franchise Tax Board, any amount referred to the  
6 Franchise Tax Board under subdivision (a) and any  
7 interest thereon, including any interest on the amount  
8 referred under subdivision (a) that accrued prior to the  
9 date of referral and any fee imposed to cover collection  
10 costs as provided under subdivision (a), shall be treated  
11 as final and due and payable to the State of California, and  
12 shall be collected from the obligor by the Franchise Tax  
13 Board in any manner authorized under the law for  
14 collection of a delinquent personal income tax liability,  
15 including, but not limited to, issuance of an order and levy  
16 under Article 4 (commencing with Section 706.070) of  
17 Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of  
18 Civil Procedure, in the manner provided for earnings  
19 withholding orders for taxes.

20 (c) (1) Part 10 (commencing with Section 17001),  
21 this part, Part 10.7 (commencing with Section 21001), and  
22 Part 11 (commencing with Section 23001) shall apply to  
23 amounts referred under this article in the same manner  
24 and with the same force and effect and to the full extent  
25 as if the language of those laws had been incorporated in  
26 full into this article, except to the extent that any  
27 provision is either inconsistent with this article or is not  
28 relevant to this article.

29 (2) Any information, information sources, or  
30 enforcement remedies and capabilities available to the  
31 agency referring the amount due described in  
32 subdivision (a), shall be available to the Franchise Tax  
33 Board to be used in conjunction with, or independent of,  
34 the information, information sources, or remedies and  
35 capabilities available to the Franchise Tax Board for  
36 purposes of administering Part 10 (commencing with  
37 Section 17001), this part, Part 10.7 (commencing with  
38 Section 21001), or Part 11 (commencing with Section  
39 23001).



1 (d) The activities required to implement and  
2 administer this part shall not interfere with the primary  
3 mission of the Franchise Tax Board to administer Part 10  
4 (commencing with Section 17001) and Part 11  
5 (commencing with Section 23001).

6 (e) For amounts referred for collection under  
7 subdivision (a), interest shall accrue at the greater of the  
8 rate applicable to the amount due being collected or the  
9 rate provided under Section 19521. When notice of the  
10 amount due includes interest and is mailed to the obligor,  
11 and the amount is paid within 15 days after the date of  
12 notice, interest shall not be imposed for the period after  
13 the date of notice.

14 (f) In no event shall a collection under this article be  
15 construed as a payment of income taxes imposed under  
16 Part 10 (commencing with Section 17001) or Part 11  
17 (commencing with Section 23001).

18 (g) The amendments made by the act adding this  
19 subdivision are operative for notices issued on or after  
20 January 1, 1998.

21 SEC. 12. Section 19503 of the Revenue and Taxation  
22 Code is amended to read:

23 19503. (a) The Franchise Tax Board shall prescribe  
24 all rules and regulations necessary for the enforcement of  
25 Part 10 (commencing with Section 17001), Part 10.7  
26 (commencing with Section 21001), Part 11 (commencing  
27 with Section 23001), and this part and may prescribe the  
28 extent to which any ruling (including any judicial  
29 decision or any administrative determination other than  
30 by regulation) shall be applied without retroactive effect.

31 (b) (1) Except as otherwise provided in this  
32 subdivision, no regulation relating to Part 10  
33 (commencing with Section 17001), Part 10.7  
34 (commencing with Section 21001), Part 11 (commencing  
35 with Section 23001), or this part shall apply to any taxable  
36 or income year ending before the date on which any  
37 notice substantially describing the expected contents of  
38 any regulation is issued to the public.

39 (2) Paragraph (1) shall not apply to either of the  
40 following:



1 (A) Regulations issued within 24 months of the date of  
2 the enactment of the statutory provision to which the  
3 regulation relates.

4 (B) Regulations issued within 24 months of the date  
5 that temporary or final federal regulations with respect  
6 to statutory provisions to which California conforms are  
7 filed with the Federal Register.

8 (3) The Franchise Tax Board may provide that any  
9 regulation may take effect or apply retroactively to  
10 prevent abuse.

11 (4) The Franchise Tax Board may provide that any  
12 regulation may apply retroactively to correct a  
13 procedural defect in the issuance of any prior regulation.

14 (5) The limitation of paragraph (1) shall not apply to  
15 any regulation relating to the Franchise Tax Board's  
16 policies, practices, or procedures.

17 (6) The limitation of paragraph (1) may be  
18 superseded by a legislative grant of authority to the  
19 Franchise Tax Board to prescribe the effective date with  
20 respect to any regulation.

21 (7) The Franchise Tax Board may provide for any  
22 taxpayer to elect to apply any regulation before the dates  
23 specified in paragraph (1).

24 (c) The amendments made by the act adding this  
25 subdivision are operative with respect to regulations  
26 which relate to California statutory provisions enacted on  
27 or after January 1, 1998.

28 SEC. 13. Section 19717 of the Revenue and Taxation  
29 Code is amended to read:

30 19717. (a) The prevailing party may be awarded a  
31 judgment for reasonable litigation costs incurred, in the  
32 case of any civil proceeding brought by or against the  
33 State of California in a court of record of this state in  
34 connection with the determination, collection, or refund  
35 of any tax, interest, or penalty under this part.

36 (b) (1) A judgment for reasonable litigation costs  
37 shall not be awarded under subdivision (a) unless the  
38 court determines that the prevailing party has exhausted  
39 all administrative remedies available to that party under  
40 this part, including the filing of an appeal as provided in



1 Section 19324. Any failure to agree to an extension of the  
2 time for the assessment of any tax shall not be taken into  
3 account for purposes of determining whether the  
4 prevailing party meets the requirements of the  
5 preceding sentence.

6 (2) An award under subdivision (a) shall be made only  
7 for reasonable litigation costs which are allocable to the  
8 State of California and not to any other party to the action  
9 or proceeding.

10 (3) No award for reasonable litigation costs may be  
11 made under subdivision (a) with respect to any portion  
12 of the civil proceeding during which the prevailing party  
13 has unreasonably protracted that proceeding.

14 (c) For purposes of this section:

15 (1) "Reasonable litigation costs" includes any of the  
16 following:

17 (A) Reasonable court costs.

18 (B) Based upon prevailing market rates for the kind or  
19 quality of services furnished any of the following:

20 (i) The reasonable expenses of expert witnesses in  
21 connection with the civil proceeding, except that no  
22 expert witness shall be compensated at a rate in excess of  
23 the highest rate of compensation for expert witnesses  
24 paid by the State of California.

25 (ii) The reasonable cost of any study, analysis,  
26 engineering report, test, or project which is found by the  
27 court to be necessary for the preparation of the party's  
28 case.

29 (iii) Reasonable fees paid or incurred for the services  
30 of attorneys in connection with the civil proceeding,  
31 except that those fees shall not be in excess of one  
32 hundred ten dollars (\$110) per hour unless the court  
33 determines that a special factor, such as the limited  
34 availability of qualified attorneys for the proceeding,  
35 justifies a higher rate. In the case of each calendar year  
36 beginning with calendar year ~~2000~~ 1999, the Franchise  
37 Tax Board shall recompute the dollar amount referred to  
38 in the preceding sentence. That computation shall be  
39 made by increasing the amount in this clause by an  
40 amount equal to the cost-of-living adjustment



1 determined under subdivision (h) of Section 17041. If any  
2 resulting dollar amount is not a multiple of ten dollars  
3 (\$10), that dollar amount shall be rounded to the nearest  
4 multiple of ten dollars (\$10).

5 (2) (A) “Prevailing party” means any party to any  
6 proceeding described in subdivision (a) (other than the  
7 State of California or any creditor of the taxpayer  
8 involved) that meets either of the following criteria:

9 (i) Has substantially prevailed with respect to the  
10 amount in controversy.

11 (ii) Has substantially prevailed with respect to the  
12 most significant issue or set of issues presented.

13 (B) (i) A party shall not be treated as the prevailing  
14 party in a proceeding to which subdivision (a) applies if  
15 the State of California establishes that its position in the  
16 proceeding was substantially justified.

17 (ii) For purposes of clause (i), the position of the State  
18 of California shall be ~~rebuttably~~ presumed not to be  
19 substantially justified if the Franchise Tax Board did not  
20 follow its applicable published guidance in the  
21 administrative proceeding. *This presumption may be*  
22 *rebutted.*

23 (iii) For purposes of clause (ii), the term “applicable  
24 published guidance” means either of the following:

25 (I) A regulation, legal ruling, notice, information  
26 release, or announcement.

27 (II) Any chief counsel ruling or determination letter  
28 issued to the taxpayer.

29 (C) Any determination under this paragraph as to  
30 whether a party is a prevailing party shall be made by  
31 either of the following:

32 (i) The court.

33 (ii) An agreement of the parties.

34 (3) The term “civil proceeding” includes a civil action.

35 (d) For purposes of this section, in the case of multiple  
36 actions which could have been joined or consolidated, or  
37 a case or cases involving a return or returns of the same  
38 taxpayer (including joint returns of married individuals)  
39 which could have been joined in a single proceeding in  
40 the same court, the actions or cases shall be treated as one



1 civil proceeding regardless of whether the joinder or  
2 consolidation actually occurs, unless the court in which  
3 the action is brought determines, in its discretion, that it  
4 would be inappropriate to treat the actions or cases as  
5 joined or consolidated for purposes of this section.

6 (e) An order granting or denying an award for  
7 reasonable litigation costs under subdivision (a), in whole  
8 or in part, shall be incorporated as a part of the decision  
9 or judgment in the case and shall be subject to appeal in  
10 the same manner as the decision or judgment.

11 (f) For purposes of this section, “position of the State  
12 of California” includes either of the following:

13 (1) The position taken by the State of California in the  
14 civil proceeding.

15 (2) Any administrative action or inaction by the  
16 Franchise Tax Board (and all subsequent administrative  
17 action or inaction) upon which that proceeding is based.

18 (g) The amendments made by the act adding this  
19 subdivision are operative for costs and expenses incurred  
20 in proceedings beginning on or after January 1, 1998.

21 SEC. 14. Section 21013 of the Revenue and Taxation  
22 Code is amended to read:

23 21013. (a) Every taxpayer is entitled to be  
24 reimbursed for any reasonable fees and expenses related  
25 to a hearing before the State Board of Equalization if all  
26 of the following conditions are met:

27 (1) The taxpayer files a claim for the fee and expenses  
28 with the State Board of Equalization.

29 (2) The State Board of Equalization, in its sole  
30 discretion, finds that the action taken by the Franchise  
31 Tax Board staff was unreasonable.

32 (b) (1) To determine whether the Franchise Tax  
33 Board staff has been unreasonable, the State Board of  
34 Equalization shall consider whether the board has  
35 established that its position in the hearing was  
36 substantially justified.

37 (2) For purposes of paragraph (1), the position of the  
38 board shall be ~~rebuttably~~ presumed not to be  
39 substantially justified if board staff did not follow its



1 applicable published guidance in the administrative  
2 proceeding hearing. *This presumption may be rebutted.*

3 (3) For purposes of paragraph (2), the term  
4 “applicable published guidance” means either of the  
5 following:

6 (A) A regulation, legal ruling, notice, information  
7 release, or announcement.

8 (B) Any chief counsel ruling or determination letter  
9 issued to a taxpayer.

10 (c) The amount of reimbursed fees and expenses shall  
11 be determined by the State Board of Equalization and  
12 shall be limited to the following:

13 (1) Fees and expenses incurred after the date of filing  
14 an appeal of a notice of action with respect to a deficiency  
15 assessment or jeopardy assessment, or denials of claims for  
16 refunds.

17 (2) If the State Board of Equalization finds that the  
18 Franchise Tax Board staff was unreasonable with respect  
19 to certain issues but reasonable with respect to other  
20 issues, the amount of reimbursed fees and expenses shall  
21 be limited to those which relate to the issues where the  
22 Franchise Tax Board staff was unreasonable.

23 (d) Any proposed determination by the State Board of  
24 Equalization pursuant to this section shall be available as  
25 a public record for at least 10 days prior to the effective  
26 date of that determination.

27 (e) The amendments made by the act adding this  
28 subdivision are operative for fees and expenses related to  
29 hearings beginning on or after January 1, 1998.

30 SEC. 15. Section 21016 of the Revenue and Taxation  
31 Code is amended to read:

32 21016. (a) The board shall release any levy issued  
33 pursuant to Part 10.2 (commencing with Section 18401)  
34 on any property in the event of any circumstances  
35 deemed appropriate by the board, including, but not  
36 limited to, the following:

37 (1) The expense of the sale process to the state exceeds  
38 the liability for which the levy is made.

39 (2) The Taxpayers’ Rights Advocate orders the release  
40 of the levy upon his or her finding that the levy threatens



1 the health or welfare of the taxpayer or his or her spouse  
2 and dependents or family.

3 (3) The proceeds from the sale would not result in a  
4 reasonable reduction of the debt.

5 (4) The levy was issued not in accordance with  
6 administrative procedures.

7 (5) The taxpayer has entered into an installment  
8 payment agreement under Section 19008 to satisfy the tax  
9 liability for which the levy was made, unless that or  
10 another agreement allows for the levy.

11 (6) The release of the levy will facilitate the collection  
12 of the tax liability or will be in the best interest of the  
13 taxpayer and the state.

14 (b) The board shall not sell any seized property until  
15 it has first notified the taxpayer in writing of the  
16 exemptions from levy under Chapter 4 (commencing  
17 with Section 703.010) of Title 9 of the Code of Civil  
18 Procedure.

19 (c) This section shall not apply to the seizure of any  
20 property as a result of a jeopardy assessment authorized  
21 by Article 5 (commencing with Section 19081) of Chapter  
22 4 of Part 10.2.

23 (d) The amendments made by the act adding this  
24 subdivision are operative on or after January 1, 1998.

25 SEC. 16. Section 21019 of the Revenue and Taxation  
26 Code is amended to read:

27 21019. (a) At least 30 days prior to the filing or  
28 recording of liens under Chapter 14 (commencing with  
29 Section 7150) or Chapter 14.5 (commencing with Section  
30 7220) of Division 7 of Title 1 of the Government Code, the  
31 board shall mail to the taxpayer a preliminary notice. The  
32 notice shall specify the statutory authority of the board for  
33 filing or recording the lien, indicate the earliest date on  
34 which the lien may be filed or recorded, and state the  
35 remedies available to the taxpayer to prevent the filing  
36 or recording of the lien. In the event tax liens are filed for  
37 the same liability in multiple counties, only one  
38 preliminary notice shall be sent.

39 (b) The lien shall not be filed or recorded if the  
40 taxpayer demonstrates to the board by substantial



1 evidence within 30 days after receiving the notice, that a  
2 filing or recording of a lien would be in error. The  
3 preliminary notice required by this section shall not apply  
4 to jeopardy assessments authorized by Article 5  
5 (commencing with Section 19081) of Chapter 4 of Part  
6 10.2.

7 (c) If after filing or recording the lien, the board  
8 determines that its action was in error, it shall mail a  
9 release to the taxpayer and the entity recording the lien  
10 as soon as possible, but not later than seven working days,  
11 after this determination or the receipt of the lien  
12 recording information, whichever is later. The release  
13 shall contain a statement that the lien was filed in error.  
14 If the erroneous lien is obstructing a lawful transaction,  
15 the board shall immediately issue a release of lien to the  
16 appropriate party. Upon the request of the taxpayer, a  
17 copy of the release shall be mailed to the major credit  
18 reporting companies in the county where the lien was  
19 filed.

20 (d) The procedures described in subdivision (c) shall  
21 apply to liens that are filed or recorded in either of the  
22 following ways:

23 (1) Not in accordance with administrative procedures.

24 (2) After the taxpayer has entered into an installment  
25 payment agreement under Section 19008 to satisfy the tax  
26 liability for which the lien was filed or recorded, unless  
27 the agreement provides for the filing or recording of the  
28 lien.

29 (e) If after filing or recording the lien, the board  
30 determines that a release of the lien will facilitate the  
31 collection of the tax liability or will be in the best interest  
32 of the taxpayer and the state, it shall mail a release of that  
33 lien to the taxpayer and the entity recording the lien. If  
34 the lien is obstructing a lawful transaction and *its release*  
35 will facilitate the collection of the tax liability, or will be  
36 in the best interest of the taxpayer and the state, the  
37 board shall immediately do both of the following:

38 (1) Issue a release of lien to the appropriate party.

39 (2) Upon the request of the taxpayer, mail a copy of  
40 the release to the credit reporting companies, financial



1 institutions, or any creditor whose name and address is  
2 provided by the taxpayer.

3 (f) This section shall not limit the circumstances in  
4 which the Franchise Tax Board may release a lien. The  
5 Franchise Tax Board may release a lien under any  
6 circumstances to facilitate the collection of the tax  
7 liability or, if that release is in the best interest of the  
8 taxpayer and state, and take any action associated with  
9 the release of that lien it deems appropriate.

10 (g) The amendments made by the act adding this  
11 subdivision are operative on or after January 1, 1998.

12 SEC. 17. Section 21022 is added to the Revenue and  
13 Taxation Code, to read:

14 21022. (a) Except as provided in subdivision (f), if  
15 any officer or employee of the board intentionally settles  
16 the determination or compromises the collection of any  
17 tax due from an attorney, certified public accountant, or  
18 tax preparer (as defined in subdivision (b) of Section  
19 19169) representing a taxpayer, in exchange for  
20 information conveyed by the taxpayer to the attorney,  
21 certified public accountant, or tax preparer for purposes  
22 of obtaining advice concerning the taxpayer's tax liability,  
23 the taxpayer may bring a civil action for damages against  
24 the State of California in superior court. The civil action  
25 shall be the exclusive remedy for recovering damages  
26 resulting from the acts described in this subdivision.

27 (b) In any action brought under subdivision (a), upon  
28 the finding of liability on the part of the defendant, the  
29 defendant shall be liable to the plaintiff in an amount  
30 equal to the lesser of five hundred thousand dollars  
31 (\$500,000) or the sum of all the following:

32 (1) Actual, direct economic damages sustained by the  
33 plaintiff as a proximate result of the information  
34 disclosure.

35 (2) The costs of the action.

36 (c) Damages shall not include the taxpayer's liability  
37 for any civil or criminal penalties or other losses  
38 attributable to incarceration or the imposition of other  
39 criminal sanctions.



1 (d) Notwithstanding any other provision of law, an  
2 action to enforce liability created under this section may  
3 be brought without regard to the amount in controversy,  
4 and may be brought only within two years after the date  
5 the actions creating the liability would have been  
6 discovered by the exercise of reasonable care.

7 (e) Upon certification of the executive officer of the  
8 board, or the executive officer's delegate, that criminal  
9 charges have been filed against the taxpayer, the court  
10 before which an action under this section is pending shall  
11 stay all proceedings with respect to the action, pending  
12 the resolution of those criminal charges. Certification  
13 authorized by this subdivision shall comply with the  
14 requirements of Section 19542.

15 (f) Subdivision (a) shall not apply to information  
16 conveyed to an attorney, certified public accountant, or  
17 tax preparer for the purpose of perpetrating a fraud or  
18 crime.

19 (g) This section is operative for actions *taken* on or  
20 after January 1, 1998.

21 SEC. 18. Section 21023 is added to the Revenue and  
22 Taxation Code, to read:

23 21023. (a) Notwithstanding Article 2 (commencing  
24 with Section 19542) of Chapter 7 of Part 10.2, if any  
25 amount with respect to a joint return is due and payable  
26 and the individuals filing the return are no longer  
27 married or no longer reside in the same household, the  
28 board shall, upon request in writing by either of these  
29 individuals, disclose in writing to the requesting  
30 individual whether the board has attempted to collect the  
31 amount due from the other individual, the general nature  
32 of the collection activities, and the amount collected.

33 (b) This section is operative for requests made on or  
34 after January 1, 1998.

35 SEC. 19. Section 21024 is added to the Revenue and  
36 Taxation Code, to read:

37 21024. For appeals filed under Section 19045 or 19324,  
38 on or after January 1, 1998, the board shall have the  
39 burden of producing reasonable and probative  
40 information, *in addition to the information described in*



1 *subdivision (a)*, concerning the amount assessed if a  
2 taxpayer does both of the following:

3 (a) Asserts a reasonable dispute with respect to either  
4 of the following:

5 (1) An item of income reported on an information  
6 return filed with the board pursuant to Section 18637,  
7 18638, 18639, 18640, 18641, 18642, 18643, 18644, 18645,  
8 18646, or 18647 by a third party.

9 (2) Wage information reported or furnished to the  
10 Employment Development Department and accessible  
11 to the board under subdivision (g) of Section 1088 of, or  
12 subdivision (e) of Section 13050 of, the Unemployment  
13 Insurance Code or an exchange of information  
14 agreement.

15 (b) Fully cooperates with the board, including, but not  
16 limited to, providing, within a reasonable period of time,  
17 access to and inspection of all witnesses, information, and  
18 documents within the control of the taxpayer as  
19 reasonably requested by the board.

20 SEC. 20. Section 20125 is added to the Revenue and  
21 Taxation Code, to read:

22 20125. If any payment is received on or after January  
23 1, 1998, by the board from any taxpayer and the board  
24 cannot associate the payment with the taxpayer, the  
25 board shall make reasonable efforts to notify the taxpayer  
26 of the inability within 60 days after the receipt of the  
27 payment.

28 SEC. 21. Section 21026 is added to the Revenue and  
29 Taxation Code, to read:

30 21026. (a) Except as otherwise provided in  
31 subdivision (b), for income or taxable years beginning on  
32 or after January 1, 1998, the board shall, not less than  
33 annually, mail a written notice to each taxpayer who has  
34 a tax delinquent account of the amount of the tax  
35 delinquency as of the date of the notice.

36 (b) Subdivision (a) shall not apply to accounts where  
37 a previously mailed notice to the address of record was  
38 returned to the board as undeliverable, or to accounts  
39 that are discharged from accountability pursuant to



1 Chapter 3 (commencing with Section 13940) of Part 4 of  
2 Division 3 of Title 2 of the Government Code.

3 SEC. 22. Section 21027 is added to the Revenue and  
4 Taxation Code, to read:

5 21027. (a) For purposes of Part 10 (commencing  
6 with Section 17001), Part 11 (commencing with Section  
7 23001), or this part or any other law that is applicable to  
8 the mailing of any returns, payments, or any other items  
9 required to be filed under Part 10 (commencing with  
10 Section 17001), Part 11 (commencing with Section  
11 23001), or this part, any reference in Section 11003 of the  
12 Government Code to the United States mail shall be  
13 treated as including a reference to any designated  
14 delivery service, and any reference in that section to a  
15 post office cancellation mark shall be treated as including  
16 a reference to any date recorded electronically by a  
17 designated delivery service, kept in the regular course of  
18 the designated delivery service’s business, or marks on  
19 the cover in which any item is to be delivered to the board  
20 that indicate the date on which the item was given to the  
21 designated delivery service for delivery.

22 (b) For purposes of this section, “designated delivery  
23 service” means any delivery service provided by a trade  
24 or business if that service is designated by the Secretary  
25 of the Treasury under the authority of Section 7502(f) of  
26 the Internal Revenue Code, as amended by Public Law  
27 104-168.

28 (c) This section is operative for items given to  
29 designated delivery services on or after January 1, 1998.

30 SEC. 23. Section 1 of this act is operative for taxable  
31 years beginning on or after January 1, 1997.

O

