

ASSEMBLY BILL

No. 1469

Introduced by Assembly Member Ducheny

February 28, 1997

An act to amend Section 18405 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1469, as introduced, Ducheny. Bank and corporation taxes: administrative relief.

The Bank and Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, the business income is apportioned between this state and other jurisdictions for tax purposes in accordance with a specified formula based on the property, payroll, and sales of the business within and without this state. That law permits a qualified taxpayer, as defined, to elect to determine its income under a water's-edge election.

Existing law also provides that in the case of a specified new statutory provision, as defined, the Franchise Tax Board itself is authorized to grant relief relating to waiving penalties or perfecting elections, as provided. That law also provides that relief under these provisions may be granted only for the first taxable or income year for which the new statutory provision is operative and only when substantial unintentional noncompliance with the new provision has occurred by a class of affected taxpayers. Existing law provides that substantial unintentional noncompliance includes any case in which the

taxpayer filed a water’s-edge contract with a timely filed original return and other specified conditions are met.

This bill would additionally provide that substantial unintentional noncompliance includes specified circumstances in connection with a failure to perfect a water’s-edge election by reason of a prior act or omission of an affiliated corporation that was included in a combined return, as specified.

This bill would take effect immediately as a tax levy.

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 18405 of the Revenue and
2 Taxation Code is amended to read:

3 18405. (a) In the case of a new statutory provision in
4 Part 7.5 (commencing with Section 13201), Part 10
5 (commencing with Section 17001), Part 10.2
6 (commencing with Section 18401), or Part 11
7 (commencing with Section 23001), or the addition of a
8 new part, the Franchise Tax Board itself is authorized to
9 grant relief as set forth in subdivision (b) from the
10 requirements of the new statutory provision in a manner
11 as provided in subdivision (c).

12 (b) The relief provided in subdivision (a) may be
13 granted only for the first taxable or income year for which
14 the new statutory provision is operative and only when
15 substantial unintentional noncompliance with the new
16 provision has occurred by a class of affected taxpayers.
17 The relief is limited to waiving penalties or perfecting
18 elections and may be granted only to taxpayers who
19 timely paid taxes and other required amounts shown on
20 the return consistent with the election and who timely
21 filed their return (with regard to extension).

22 (c) The relief granted in this section shall, upon the
23 recommendation of the executive officer of the Franchise
24 Tax Board, be made by resolution of the Franchise Tax
25 Board which sets forth the conditions, time, and manner
26 as the Franchise Tax Board determines are necessary.



1 The resolution shall be adopted only by an affirmative
2 vote of each of the three members of the Franchise Tax
3 Board.

4 (d) For purposes of this section:

5 (1) “New statutory provision” means a complete,
6 newly established tax program, tax credit, exemption,
7 deduction, exclusion, penalty, or reporting or payment
8 requirement and does not mean amendments made to
9 existing tax provisions that make minor modifications or
10 technical changes.

11 (2) “Perfecting elections” includes correcting
12 omissions or errors only when substantial evidence is
13 present with the filed return that the taxpayer intended
14 to make the election and does not include making an
15 election where one was not previously attempted to be
16 made.

17 (3) “Substantial unintentional noncompliance,” for
18 purposes of Part 11 (commencing with Section 23001),
19 includes ~~any~~ *either of the following*:

20 (A) *Any* case in which the taxpayer filed a
21 water’s-edge contract with a timely filed original return
22 and timely paid all taxes and other required amounts
23 shown on the return consistent with the water’s-edge
24 election, but where the taxpayer’s election is or might be
25 invalidated by reason of the act or omission of an affiliated
26 corporation that is not the parent or a subsidiary of the
27 taxpayer. In that case, notwithstanding anything to the
28 contrary in this section, relief shall be deemed granted to
29 validate the taxpayer’s water’s-edge election,
30 conditioned only upon an agreement by the affiliated
31 corporation to either ~~(A)~~ (i) file a water’s-edge contract
32 and pay all taxes and other required amounts consistent
33 with that election, or ~~(B)~~ (ii) waive any right, with
34 respect to any income year for which the corporation did
35 not make a water’s-edge election on its own timely filed
36 return, to determine its income derived from or
37 attributable to sources within this state pursuant to that
38 election, whichever measure produces the greater
39 amount of tax.



1 (B) Any case in which the taxpayer filed a water's edge
 2 contract with a timely filed original combined return for
 3 itself and its affiliated corporations included in its
 4 water's-edge group for any part of the year, and timely
 5 paid all taxes and other required amounts shown on the
 6 return consistent with the water's-edge election, but
 7 where the taxpayer's election is or might be invalidated
 8 by reason of a prior act or omission of an affiliated
 9 corporation that was included in the combined return
 10 and that is not the parent or subsidiary of the taxpayer. In
 11 that case, notwithstanding anything to the contrary in this
 12 section, relief shall be deemed granted to validate the
 13 taxpayer's water's-edge election for itself and its affiliated
 14 corporations included in the combined return.

15 (e) This section shall apply to any Franchise Tax Board
 16 resolution adopted after the effective date of this section
 17 with respect to any taxable or income year which is
 18 subject to an open statute of limitations on the date of the
 19 resolution.

20 (f) On or before March 1, ~~1995~~ 1998, the Franchise Tax
 21 Board shall report to the Legislature on the utilization of
 22 this section. The report shall describe the class or classes
 23 of taxpayers provided relief, the issue involved and the
 24 number of taxpayers affected, and, where applicable, the
 25 aggregate amount of penalty relieved for each class of
 26 taxpayers.

27 SEC. 2. The Legislature finds that an important
 28 public necessity of ensuring fair and consistent
 29 administration of the Revenue and Taxation Code exists
 30 for this act. It is the intent of the Legislature in enacting
 31 this act that a taxpayer's water's-edge election should be
 32 validated where any noncompliance is not due to the act
 33 or omission of the taxpayer, but rather to the act or
 34 omission of another entity.

35 SEC. 3. This act provides for a tax levy within the
 36 meaning of Article IV of the Constitution and shall go into
 37 immediate effect.

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