

AMENDED IN ASSEMBLY MAY 23, 1997

AMENDED IN ASSEMBLY MAY 15, 1997

AMENDED IN ASSEMBLY MAY 1, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1469

Introduced by Assembly Member Ducheny

February 28, 1997

An act to amend Section 18405 of the Revenue and Taxation Code, and to amend Section 9 of Chapter 490 of the Statutes of 1995, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1469, as amended, 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 *and requires the Franchise Tax Board to make a specified report to the Legislature on or before March 1, 1998, on the utilization of these relief provisions.* 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, and certain circumstances in connection with a failure to include a water's-edge contract, and would provide relief under those circumstances upon compliance, as specified, on or before December 31, 1997. *The bill would also extend to March 1, 2000, the period during which the Franchise Tax Board is required to file its report on the utilization of these provisions.*

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



1 requirements of the new statutory provision in a manner
2 as provided in subdivision (c).

3 (b) The relief provided in subdivision (a) may be
4 granted only for the first taxable or income year for which
5 the new statutory provision is operative and only when
6 substantial unintentional noncompliance with the new
7 provision has occurred by a class of affected taxpayers.
8 The relief is limited to waiving penalties or perfecting
9 elections and may be granted only to taxpayers who
10 timely paid taxes and other required amounts shown on
11 the return consistent with the election and who timely
12 filed their return (with regard to extension).

13 (c) The relief granted in this section shall, upon the
14 recommendation of the executive officer of the Franchise
15 Tax Board, be made by resolution of the Franchise Tax
16 Board which sets forth the conditions, time, and manner
17 as the Franchise Tax Board determines are necessary.
18 The resolution shall be adopted only by an affirmative
19 vote of each of the three members of the Franchise Tax
20 Board.

21 (d) For purposes of this section:

22 (1) "New statutory provision" means a complete,
23 newly established tax program, tax credit, exemption,
24 deduction, exclusion, penalty, or reporting or payment
25 requirement and does not mean amendments made to
26 existing tax provisions that make minor modifications or
27 technical changes.

28 (2) "Perfecting elections" includes correcting
29 omissions or errors only when substantial evidence is
30 present with the filed return that the taxpayer intended
31 to make the election and does not include making an
32 election where one was not previously attempted to be
33 made.

34 (3) "Substantial unintentional noncompliance," for
35 purposes of Part 11 (commencing with Section 23001),
36 includes any of the following:

37 (A) Any case in which the taxpayer filed a
38 water's-edge contract with a timely filed original return
39 and timely paid all taxes and other required amounts
40 shown on the return consistent with the water's-edge



1 election, but where the taxpayer's election is or might be
2 invalidated by reason of the act or omission of an affiliated
3 corporation that is not the parent or a subsidiary of the
4 taxpayer. In that case, notwithstanding anything to the
5 contrary in this section, relief shall be deemed granted to
6 validate the taxpayer's water's-edge election,
7 conditioned only upon an agreement by the affiliated
8 corporation to either (i) file a water's-edge contract and
9 pay all taxes and other required amounts consistent with
10 that election, or (ii) waive any right, with respect to any
11 income year for which the corporation did not make a
12 water's-edge election on its own timely filed return, to
13 determine its income derived from or attributable to
14 sources within this state pursuant to that election,
15 whichever measure produces the greater amount of tax.

16 (B) Any case in which the taxpayer filed a
17 water's-edge contract with a timely filed original
18 combined return for itself and its affiliated corporations
19 included in its water's-edge group for any part of the year,
20 and timely paid all taxes and other required amounts
21 shown on the return consistent with the water's-edge
22 election, but the taxpayer's election is or might be
23 invalidated by reason of a prior act or prior omission of an
24 affiliated corporation that was included in the combined
25 return and that is not the parent or subsidiary of the
26 taxpayer. In that case, notwithstanding anything to the
27 contrary in this section, relief shall be deemed granted to
28 validate the taxpayer's water's-edge election for itself and
29 its affiliated corporations included in the combined
30 return.

31 (C) (i) Any case in which the taxpayer timely filed an
32 original return that included substantial evidence with
33 the return that the taxpayer and all affiliated corporations
34 included in its water's-edge group for any part of the year
35 intended to make a water's-edge election and timely paid
36 all taxes and other required amounts shown on the return
37 consistent with the water's-edge election, other than the
38 water's-edge election fee, but the taxpayer's election is or
39 might be invalidated by its failure to include a
40 water's-edge contract with the return. For the purpose of



1 this clause, “substantial evidence” means attaching at
2 least one water’s-edge form to the return or checking one
3 of the boxes on the return that indicates an intent to make
4 a water’s-edge election.

5 (ii) A taxpayer described in clause (i) shall file with
6 the Franchise Tax Board the water’s-edge contract and all
7 other required forms, and shall pay all taxes, interest,
8 penalties, and the water’s-edge election fee to perfect the
9 water’s-edge election, on or before December 31, 1997, to
10 be eligible for the relief provided by this section.

11 (iii) Notwithstanding any other provision of this
12 section to the contrary, relief shall be deemed granted to
13 validate the taxpayer’s water’s-edge election upon the
14 fulfillment of the criteria in this subparagraph.

15 (iv) This subparagraph shall not apply to any taxpayer
16 or any member of the commonly controlled group that
17 has previously requested relief under this section and for
18 which any water’s-edge election was perfected for the
19 taxpayer or any member of the commonly controlled
20 group as a result of that request.

21 (e) This section shall apply to any Franchise Tax Board
22 resolution adopted after the effective date of this section
23 with respect to any taxable or income year which is
24 subject to an open statute of limitations on the date of the
25 resolution.

26 (f) On or before March 1, ~~1998~~ 2000, the Franchise Tax
27 Board shall report to the Legislature on the utilization of
28 this section. The report shall describe the class or classes
29 of taxpayers provided relief, the issue involved and the
30 number of taxpayers affected, and, where applicable, the
31 aggregate amount of penalty relieved for each class of
32 taxpayers.

33 SEC. 2. Section 9 of Chapter 490 of the Statutes of 1995
34 is amended to read:

35 SEC. 9. (a) Section 1 of this act shall apply only with
36 respect to a taxpayer or an affiliated corporation that
37 ~~either (1) requested~~ *meets one of the following criteria:*

38 (1) *Requested* relief under Section 18405 of the
39 Revenue and Taxation Code on or before December 31,
40 ~~1994, or (2) is 1994.~~



1 (2) Requested relief under Section 18405 of the
2 Revenue and Taxation Code on or before December 31,
3 1999, to perfect a water's-edge election under Section
4 25111 of the Revenue and Taxation Code.

5 (3) Is described in clause (i) of subparagraph (C) of
6 paragraph (3) of subdivision (d) of Section 18405 of the
7 Revenue and Taxation Code.

8 (b) Section 1 of this act shall not apply with respect to
9 a taxpayer that requested relief under Section 18405 of
10 the Revenue and Taxation Code after December 31, 1994,
11 to perfect an election if additional taxes or penalties have
12 been assessed against that taxpayer on account of the
13 invalidity of the election.

14 (c) For the purpose of this section, a taxpayer or an
15 affiliated corporation shall be deemed to have requested
16 relief in any case in which the taxpayer filed a
17 water's-edge contract with a timely filed combined
18 return and timely paid all taxes and other required
19 amounts shown on the return consistent with the
20 water's-edge election.

21 SEC. 3. The Legislature finds that an important
22 public necessity of ensuring fair and consistent
23 administration of the Revenue and Taxation Code exists
24 for this act. It is the intent of the Legislature in enacting
25 this act that a taxpayer's water's-edge election should be
26 validated where any noncompliance is not due to the act
27 or omission of the taxpayer, but rather to the act or
28 omission of another entity.

29 SEC. 4. This act provides for a tax levy within the
30 meaning of Article IV of the Constitution and shall go into
31 immediate effect.

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