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AMENDED IN ASSEMBLY JANUARY 21, 1998
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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 ~~Dueheny~~
(Coauthor: Assembly Member Takasugi) ~~Ortiz~~**

February 28, 1997

An act ~~relating to taxation~~ *to amend Sections 17039, 17507.6, 18533, 18534, 19705, and 25110 of, and to add Sections 17152.5, 18673, 19315, 19382.5, and 19443 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1469, as amended, ~~Dueheny Ortiz. Bank—and~~
~~corporation taxes: administrative relief~~ *Income and bank and*
corporation taxes: IRS restructuring and reform.

The Personal Income Tax Law and the Bank and Corporation Tax Law impose taxes on income and, among other things, provide for specified conformity to federal income tax laws. In this connection, the recently enacted federal Internal Revenue Service Restructuring and Reform Act of 1998 provides for, among other things, changes to the way the Internal Revenue Service (IRS) is organized,

additional taxpayer rights, including a shifting of the burden of proof, and changes to the rules as to how taxes are computed.

This bill would provide for specified conformity to that federal act with respect to innocent spouse rules, tolling of the running of the statute of limitations on refunds during the period an individual is disabled, correction to rules relating to the proration of the exclusion in the case where a taxpayer does not meet the ownership and use requirements pertaining to a sale of his or her principal residence, early withdrawals of certain amounts converted from IRAs to Roth IRAs, the determination of the 5-year holding period with respect to the conversion of the Roth IRAs, certain ordering rules to determine amounts that are withdrawn in the case where a Roth IRA contains conversion amounts and other contributions, corrections of erroneous conversions and due dates pertaining to Roth IRAs, and clarification of the contribution limit to a Roth IRA. This bill would also provide the Franchise Tax Board with the authority to compromise a tax debt, modify rules pertaining to taxpayer tax credit and employer deficiency assessments for the issuance of an earnings withholding order for taxes, make technical corrections relating to Subpart F rules, allow a taxpayer to make payment of taxes by making a deposit in the nature of a cash bond to stop the running of interest and preserve the taxpayer's right to file a claim for refund, and provide that the personal and exemption tax credits are not limited by the tentative minimum tax.

This bill would take effect immediately as a tax levy.

~~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 require the Franchise Tax Board to develop a method of waiving penalties and perfecting water's edge elections for all taxpayers, as specified, by recommending legislation that prescribes specific conditions that are evidence of substantial unintentional compliance. The bill would also make a specified statement of legislative intent regarding fair and consistent administration of specified provisions and validation of a taxpayer's water's-edge election, as provided.~~

~~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. The Franchise Tax Board shall develop~~
- 2 ~~a method for waiving penalties and perfecting water's~~
- 3 ~~edge elections for all taxpayers that minimizes allowing~~
- 4 ~~relief benefits on a case-by-case basis by recommending~~
- 5 ~~legislation that prescribes specific conditions that are~~
- 6 ~~evidence of "substantial unintentional compliance."~~
- 7 ~~SEC. 2. The Legislature finds and declares that there~~
- 8 ~~is an important public necessity of ensuring fair and~~
- 9 ~~consistent administration of provisions of the Revenue~~
- 10 ~~and Taxation Code. It is the intent of the Legislature in~~
- 11 ~~enacting this act that a taxpayer's water's-edge election~~
- 12 ~~be validated where any noncompliance is, among other~~



1 ~~things, not due to the act or omission of the taxpayer, but~~
 2 ~~rather to the act or omission of another entity.~~

3 *SECTION 1. This act shall be known and may be cited*
 4 *as the “Taxpayer’s Bill of Rights Act of 1998.”*

5 *SEC. 2. Section 17039 of the Revenue and Taxation*
 6 *Code, as amended by Chapter 7 of the Statutes of 1998, is*
 7 *amended to read:*

8 17039. (a) Notwithstanding any provision in this part
 9 to the contrary, for the purposes of computing tax credits,
 10 the term “net tax” means the tax imposed under either
 11 Section 17041 or 17048 plus the tax imposed under Section
 12 17504 (relating to lump-sum distributions) less the credits
 13 allowed by Section 17054 (relating to personal exemption
 14 credits) and any amount imposed under paragraph (1) of
 15 subdivision (d) and paragraph (1) of subdivision (e) of
 16 Section 17560. Notwithstanding the preceding sentence,
 17 the “net tax” shall not be less than the tax imposed under
 18 Section 17504 (relating to the separate tax on lump-sum
 19 distributions), if any. Credits shall be allowed against “net
 20 tax” in the following order:

21 (1) Credits that do not contain carryover or
 22 refundable provisions, except those described in
 23 paragraphs (4) and (5).

24 (2) Credits that contain carryover provisions but do
 25 not contain refundable provisions.

26 (3) Credits that contain both carryover and
 27 refundable provisions.

28 (4) The minimum tax credit allowed by Section 17063
 29 (relating to the alternative minimum tax).

30 (5) Credits for taxes paid to other states allowed by
 31 Chapter 12 (commencing with Section 18001).

32 (6) Credits that contain refundable provisions but do
 33 not contain carryover provisions.

34 The order within each paragraph shall be determined
 35 by the Franchise Tax Board.

36 (b) Notwithstanding the provisions of Sections 17053.5
 37 (relating to the renter’s credit), 17061 (relating to
 38 refunds pursuant to the Unemployment Insurance
 39 Code), and 19002 (relating to tax withholding), the



1 credits provided in those sections shall be allowed in the
2 order provided in paragraph (6) of subdivision (a).

3 (c) (1) Notwithstanding any other provision of this
4 part, no tax credit shall reduce the tax imposed under
5 Section 17041 or 17048 plus the tax imposed under Section
6 17504 (relating to the separate tax on lump-sum
7 distributions) below the tentative minimum tax, as
8 defined by Section 17062, except the following credits,
9 but only after allowance of the credit allowed by Section
10 17063:

11 (A) The credit allowed by former Section 17052.4
12 (relating to solar energy).

13 (B) The credit allowed by former Section 17052.5
14 (relating to solar energy).

15 (C) The credit allowed by Section 17052.5 (relating to
16 solar energy).

17 (D) The credit allowed by Section 17052.12 (relating
18 to research expenses).

19 (E) The credit allowed by former Section 17052.13
20 (relating to sales and use tax credit).

21 (F) The credit allowed by Section 17052.15 (relating to
22 Los Angeles Revitalization Zone sales tax credit).

23 (G) The credit allowed by Section 17053.5 (relating to
24 the renter's credit).

25 (H) The credit allowed by former Section 17053.8
26 (relating to enterprise zone hiring credit).

27 (I) The credit allowed by Section 17053.10 (relating to
28 Los Angeles Revitalization Zone hiring credit).

29 (J) The credit allowed by former Section 17053.11
30 (relating to program area hiring credit).

31 (K) For each taxable year beginning on or after
32 January 1, 1994, the credit allowed by Section 17053.17
33 (relating to Los Angeles Revitalization Zone hiring
34 credit).

35 (L) The credit allowed by Section 17053.33 (relating to
36 targeted tax area sales or use tax credit).

37 (M) The credit allowed by Section 17053.34 (relating
38 to targeted tax area hiring credit).

39 (N) The credit allowed by Section 17053.49 (relating
40 to qualified property).



1 (O) The credit allowed by Section 17053.70 (relating
2 to enterprise zone sales or use tax credit).

3 (P) The credit allowed by Section 17053.74 (relating to
4 enterprise zone hiring credit).

5 (Q) *The credit allowed by Section 17054 (relating to*
6 *credits for personal exemption).*

7 (R) The credit allowed by Section 17057 (relating to
8 clinical testing expenses).

9 ~~(R)~~

10 (S) The credit allowed by Section 17058 (relating to
11 low-income housing).

12 ~~(S)~~

13 (T) The credit allowed by Section 17061 (relating to
14 refunds pursuant to the Unemployment Insurance
15 Code).

16 ~~(T)~~

17 (U) Credits for taxes paid to other states allowed by
18 Chapter 12 (commencing with Section 18001).

19 ~~(U)~~

20 (V) The credit allowed by Section 19002 (relating to
21 tax withholding).

22 (2) Any credit that is partially or totally denied under
23 paragraph (1) shall be allowed to be carried over and
24 applied to the net tax in succeeding taxable years, if the
25 provisions relating to that credit include a provision to
26 allow a carryover when that credit exceeds the net tax.

27 (d) Unless otherwise provided, any remaining
28 carryover of a credit allowed by a section that has been
29 repealed or made inoperative shall continue to be
30 allowed to be carried over under the provisions of that
31 section as it read immediately prior to being repealed or
32 becoming inoperative.

33 (e) (1) Unless otherwise provided, if two or more
34 taxpayers (other than husband and wife) share in costs
35 that would be eligible for a tax credit allowed under this
36 part, each taxpayer shall be eligible to receive the tax
37 credit in proportion to his or her respective share of the
38 costs paid or incurred.

39 (2) In the case of a partnership, the credit shall be
40 allocated among the partners pursuant to a written



1 partnership agreement in accordance with Section 704 of
2 the Internal Revenue Code, relating to partner's
3 distributive share.

4 (3) In the case of a husband and wife who file separate
5 returns, the credit may be taken by either or equally
6 divided between them.

7 (f) Unless otherwise provided, in the case of a
8 partnership, any credit allowed by this part shall be
9 computed at the partnership level, and any limitation on
10 the expenses qualifying for the credit or limitation upon
11 the amount of the credit shall be applied to the
12 partnership and to each partner.

13 (g) (1) With respect to any taxpayer that directly or
14 indirectly owns an interest in a business entity that is
15 disregarded for tax purposes pursuant to Section 23038
16 and any regulations thereunder, the amount of any credit
17 or credit carryforward allowable for any taxable year
18 attributable to the disregarded business entity shall be
19 limited in accordance with paragraphs (2) and (3).

20 (2) The amount of any credit otherwise allowed under
21 this part, including any credit carryover from prior years,
22 that may be applied to reduce the taxpayer's "net tax," as
23 defined in subdivision (a), for the taxable year shall be
24 limited to an amount equal to the excess of the taxpayer's
25 regular tax (as defined in Section 17062), determined by
26 including income attributable to the disregarded business
27 entity that generated the credit or credit carryover, over
28 the taxpayer's regular tax (as defined in Section 17062),
29 determined by excluding the income attributable to that
30 disregarded business entity. No credit shall be allowed if
31 the taxpayer's regular tax (as defined in Section 17062),
32 determined by including the income attributable to the
33 disregarded business entity, is less than the taxpayer's
34 regular tax (as defined in Section 17062), determined by
35 excluding the income attributable to the disregarded
36 business entity.

37 (3) If the amount of a credit allowed pursuant to the
38 section establishing the credit exceeds the amount
39 allowable under this subdivision in any taxable year, the



1 excess amount may be carried over to subsequent taxable
2 years pursuant to subdivisions (c) and (d).

3 *SEC. 3. Section 17152.5 is added to the Revenue and*
4 *Taxation Code, to read:*

5 *17152.5. (a) (1) For taxable years beginning in 1997,*
6 *paragraph (2) of subdivision (d) of Section 17152 as in*
7 *effect for 1997 shall not apply and in-lieu thereof—*

8 *(A) Paragraph (1) of subdivision (d) of Section 17152,*
9 *as in effect, for 1997 shall be applied by substituting five*
10 *hundred thousand dollars (\$500,000) for two hundred*
11 *fifty thousand dollars (\$250,000) if all of the following*
12 *conditions are met:*

13 *(i) Either spouse meets the ownership requirements*
14 *of subdivision (c) of Section 17152 as in effect for 1997*
15 *with respect to the property.*

16 *(ii) Both spouses meet the use requirements of*
17 *subdivision (c) of Section 17152, as in effect for 1997, with*
18 *respect to the property.*

19 *(iii) Neither spouse is ineligible for the benefits of*
20 *subdivision (c) of Section 17152 as in effect for 1997 with*
21 *respect to the property by reason of paragraph (3) of*
22 *subdivision (d) of Section 17152 as in effect in 1997.*

23 *(B) If the spouses do not meet the requirements of*
24 *subparagraph (A), the limitation under paragraph (1) of*
25 *subdivision (d) of Section 17152, as in effect for 1997, shall*
26 *be the sum of the limitations under paragraph (1) of*
27 *subdivision (d) of Section 17152, as in effect for 1997, to*
28 *which each spouse would be entitled if the spouses had*
29 *not been married. For purposes of the preceding*
30 *sentence, each spouse shall be treated as owning the*
31 *property during the period that either spouse owned the*
32 *property.*

33 *(2) For taxable years beginning on or after January 1,*
34 *1998, Section 121(b)(2) of the Internal Revenue Code*
35 *shall not apply and in-lieu thereof—*

36 *(A) Section 121(b)(1) of the Internal Revenue Code*
37 *shall be applied by substituting five hundred thousand*
38 *dollars (\$500,000) for two hundred fifty thousand dollars*
39 *(\$250,000) if all of the following conditions are met:*



1 (i) Either spouse meets the ownership requirements
2 of Section 121(a) of the Internal Revenue Code with
3 respect to the property.

4 (ii) Both spouses meet the use requirements of Section
5 121(a) of the Internal Revenue Code with respect to the
6 property.

7 (iii) Neither spouse is ineligible for the benefits of
8 Section 121(a) of the Internal Revenue Code with respect
9 to the property by reason of Section 121(b)(3) of the
10 Internal Revenue Code.

11 (B) If the spouses do not meet the requirements of
12 subparagraph (A), the limitation under Section
13 121(b)(1) of the Internal Revenue Code shall be the sum
14 of the limitations under Section 121(b)(1) of the Internal
15 Revenue Code to which each spouse would be entitled if
16 the spouses had not been married. For purposes of the
17 preceding sentence, each spouse shall be treated as
18 owning the property during the period that either spouse
19 owned the property.

20 (b) (1) For taxable years beginning in 1997,
21 paragraph (1) of subdivision (e) of Section 17152, as in
22 effect for 1997, shall not apply and in-lieu thereof, in the
23 case of a sale or exchange that is subject to subdivision (e)
24 of Section 17152, as in effect in 1997, in accordance with
25 paragraph (2) of subdivision (e) of Section 17152, as in
26 effect in 1997, the ownership and use requirements of
27 subdivision (c) of Section 17152, as in effect in 1997, and
28 paragraph (3) of subdivision (d) of Section 17152, as in
29 effect in 1997, shall not apply but the dollar limitation
30 under paragraph (1) or (2) of subdivision (d) of Section
31 17152, as in effect for 1997, whichever is applicable, shall
32 be equal to—

33 (A) The amount which bears the same ratio to that
34 limitation (determined without regard to this
35 paragraph) as

36 (B) (i) The shorter of—

37 (I) The aggregate periods, during the five-year period
38 ending on the date of the sale or exchange, the property
39 has been owned and used by the taxpayer as the
40 taxpayer's principal residence, or



1 (II) The period after the date of the most recent prior
2 sale or exchange by the taxpayer to which subdivision (c)
3 of Section 17152, as in effect for 1997, applied and before
4 the date of the sale or exchange, bears to

5 (ii) Two years.

6 (2) For taxable years beginning on or after January 1,
7 1998, Section 121(c)(1) of the Internal Revenue Code
8 shall not apply and in-lieu thereof, in the case of a sale or
9 exchange to which Section 121(c) of the Internal
10 Revenue Code applies, the ownership and use
11 requirements of Section 121(a) of the Internal Revenue
12 Code, and Section 121(b)(3) of the Internal Revenue
13 Code, shall not apply but the dollar limitation under
14 Section 121(b)(1) or (2) of the Internal Revenue Code,
15 whichever is applicable, shall be equal to—

16 (A) The amount which bears the same ratio to that
17 limitation (determined without regard to this
18 paragraph) as

19 (B) (i) The shorter of—

20 (I) The aggregate periods, during the five-year period
21 ending on the date of the sale or exchange, the property
22 has been owned and used by the taxpayer as the
23 taxpayer's principal residence, or

24 (II) The period after the date of the most recent prior
25 sale or exchange by the taxpayer to which Section 121 of
26 the Internal Revenue Code applied and before the date
27 of the sale or exchange, bears to

28 (ii) Two years.

29 (c) This section shall apply to sales or exchanges on
30 and after May 7, 1997.

31 SEC. 4. Section 17507.6 of the Revenue and Taxation
32 Code, as amended by AB 2797 of the 1997-98 Regular
33 Session, is amended to read:

34 17507.6. Section 408A of the Internal Revenue Code,
35 relating to Roth IRAs, is modified to additionally provide
36 all of the following:

37 ~~(a) Section 408A(d)(3) of the Internal Revenue Code,~~
38 ~~relating to rollovers from an IRA other than a Roth IRA,~~
39 ~~shall not apply if any distribution which is not a qualified~~
40 ~~distribution under Section 408A(d)(2) of the Internal~~



1 Revenue Code is made from a Roth IRA within the
2 five taxable year period beginning with the taxable year
3 in which a distribution to which Section 408A(d)(3) of
4 the Internal Revenue Code would otherwise apply is
5 made.

6 (b) In the case of any distribution to which subdivision
7 (a) applies:

8 (1) There shall be included in gross income in the
9 taxable year in which the disqualifying distribution
10 described in subdivision (a) is made any amount that has
11 not been previously included in gross income under
12 Section 408A(d)(3)(A)(iii) of the Internal Revenue
13 Code and which would be includable in income were it
14 not treated as part of a qualified rollover contribution.

15 (2) In the taxable year in which the disqualifying
16 distribution described in subdivision (a) is made, Section
17 72(t) of the Internal Revenue Code shall be applied to the
18 amount which was treated as includable in gross income
19 under Section 408A(d)(3)(A)(i) of the Internal Revenue
20 Code.

21 (a) Section 408A(c) (3) of the Internal Revenue Code
22 is modified as follows:

23 (1) By substituting the phrase “shall not exceed an
24 amount equal to the amount determined under
25 paragraph (2)(A) for such taxable year, reduced” in-lieu
26 of the phrase “shall be reduced” in Section
27 408A(c)(3)(A) of the Internal Revenue Code.

28 (2) By substituting the phrase “in the case of a joint
29 return or a married individual filing a separate return”
30 in-lieu of the phrase “in the case of a joint return” in
31 Section 408A(c)(3)(A)(ii) of the Internal Revenue
32 Code.

33 (3) By substituting the phrase “taxable year if, for the
34 taxable year of the distribution to which such
35 contribution relates” in-lieu of the phrase “taxable year
36 if” in Section 408A(c)(3)(B) of the Internal Revenue
37 Code.

38 (4) By substituting the phrase “adjusted gross income
39 exceeds” in-lieu of the phrase “adjusted gross income for



1 *such taxable year exceeds” in Section 408A(c)(3)(B)(i)*
2 *of the Internal Revenue Code.*

3 (5) *By substituting the phrase “any amount included*
4 *in gross income under subsection (d)(3) shall not be*
5 *taken into account” in-lieu of the phrase “any amount*
6 *included in gross income under subsection (d)(3) shall*
7 *not be taken into account and the deduction under*
8 *Section 219 shall be taken into account” in Section*
9 *408A(c)(3)(C)(i) of the Internal Revenue Code.*

10 (b) (1) *Section 408A(d)(1) of the Internal Revenue*
11 *Code shall not apply and in-lieu thereof any qualified*
12 *distribution from a Roth IRA shall not be includible in*
13 *gross income.*

14 (2) *Section 408A(d)(2)(B) of the Internal Revenue*
15 *Code shall not apply and in-lieu thereof:*

16 (A) *A payment or distribution from a Roth IRA shall*
17 *not be treated as a qualified distribution under Section*
18 *408A(d)(2)(A) of the Internal Revenue Code if the*
19 *payment or distribution is made within the five-taxable*
20 *year period beginning with the first taxable year for*
21 *which the individual made a contribution to a Roth IRA*
22 *(or the individual’s spouse made a contribution to a Roth*
23 *IRA) established for that individual.*

24 (B) *The term “qualified distribution” shall not include*
25 *any distribution of any contribution described in*
26 *subdivision (g) and any net income allocable to the*
27 *contribution.*

28 (c) (1) *If a taxpayer has, at any time, made an election*
29 *for federal purposes under Section 408A(d)(3)(A)(iii) of*
30 *the Internal Revenue Code, as amended by Public Law*
31 *105-206, to not have Section 408A(d)(3)(A)(iii) of the*
32 *Internal Revenue Code, as amended by Public Law*
33 *105-206, apply to any distributions during a taxable year,*
34 *Section 408A(d)(3)(A)(iii) of the Internal Revenue*
35 *Code, as amended by Public Law 105-206, shall not apply*
36 *to those distributions for state purposes, a separate*
37 *election for state purposes shall not be allowed under*
38 *paragraph (3) of subdivision (e) of Section 17024.5, the*
39 *federal election shall be binding for purposes of this part,*
40 *and that election shall be treated as an election to include*



1 *in gross income for purposes of this part all amounts*
2 *required to be included in gross income for the taxable*
3 *year by reason of Section 408A(d)(3) of the Internal*
4 *Revenue Code.*

5 (2) *If a taxpayer fails to make an election for federal*
6 *purposes under Section 408A(d)(3)(A)(iii) of the*
7 *Internal Revenue Code, as amended by Public Law*
8 *105-206, to not have Section 408A(d)(3)(A)(iii) of the*
9 *Internal Revenue Code, as amended by Public Law*
10 *105-206, apply to any distributions during a taxable year,*
11 *Section 408A(d)(3)(A)(iii) of the Internal Revenue*
12 *Code, as amended by Public Law 105-206, shall apply to*
13 *those distributions for state purposes except that no*
14 *election under Section 408A(d)(3)(A)(iii) of the*
15 *Internal Revenue Code, as amended by Public Law*
16 *105-206, shall be allowed for state purposes, and a separate*
17 *election for state purposes shall not be allowed under*
18 *paragraph (3) of subdivision (e) of Section 17024.5.*

19 (d) *In the case of a qualified rollover contribution to*
20 *a Roth IRA of a distribution to which Section*
21 *408A(d)(3)(A)(iii) of the Internal Revenue Code, as*
22 *amended by Public Law 105-206, applied, the following*
23 *rules shall apply:*

24 (1) (A) *The amount required to be included in gross*
25 *income for each of the first three taxable years in the*
26 *four-year period under Section 408A(d)(3)(A)(iii) of the*
27 *Internal Revenue Code, as amended by Public Law*
28 *105-206, shall be increased by the aggregate distributions*
29 *from Roth IRAs for the taxable year which are allocable*
30 *under Section 408A(d)(4) of the Internal Revenue Code*
31 *to the portion of the qualified rollover contribution*
32 *required to be included in gross income under Section*
33 *408A(d)(3)(A)(i) of the Internal Revenue Code.*

34 (B) *The amount required to be included in gross*
35 *income for any taxable year under Section*
36 *408A(d)(3)(A)(iii) of the Internal Revenue Code, as*
37 *amended by Public Law 105-206, shall not exceed the*
38 *aggregate amount required to be included in gross*
39 *income under Section 408A(d)(3)(A)(iii) of the Internal*
40 *Revenue Code, as amended by Public Law 105-206, for all*



1 taxable years in the four-year period (without regard to
2 subparagraph (A)) reduced by amounts included for all
3 preceding taxable years.

4 (2) (A) If the individual required to include amounts
5 in gross income under Section 408A(d)(3)(A)(iii) of the
6 Internal Revenue Code, as amended by Public Law
7 105-206, dies before all the amounts are included, all
8 remaining amounts shall be included in gross income for
9 the taxable year which includes the date of death.

10 (B) (i) If the spouse of the individual described in
11 subparagraph (A) acquires the individual's entire
12 interest in any Roth IRA to which the qualified rollover
13 contribution is properly allocable and makes an election
14 for federal purposes under Section 408A(d)(3)(E) of the
15 Internal Revenue Code, as amended by Public Law
16 105-206, to treat the remaining amounts described in
17 subparagraph (A) as includible in the spouse's gross
18 income in the taxable years of the spouse ending with or
19 within the taxable years of the individual in which the
20 amounts would otherwise have been includible,
21 subparagraph (A) shall not apply for state purposes, a
22 separate election for state purposes shall not be allowed
23 under paragraph (3) of subdivision (e) of Section 17024.5,
24 the federal election shall be binding for purposes of this
25 part and that election shall be treated as an election to
26 treat the remaining amounts described in subparagraph
27 (A) as includible in the spouse's gross income for state
28 purposes in the taxable years of the spouse ending with
29 or within the taxable years of the individual in which the
30 amounts would otherwise have been includible.

31 (ii) If the spouse of the individual described in
32 subparagraph (A) acquires the individual's entire
33 interest in any Roth IRA to which the qualified rollover
34 contribution is properly allocable and fails to make an
35 election for federal purposes under Section
36 408A(d)(3)(E) of the Internal Revenue Code, as
37 amended by Public Law 105-206, or revokes an election
38 previously made for federal purposes under Section
39 408A(d)(3)(E) of the Internal Revenue Code, as
40 amended by Public Law 105-206, to treat the remaining



1 amounts described in subparagraph (A) as includible in
2 the spouse's gross income in the taxable years of the
3 spouse ending with or within the taxable years of the
4 individual in which the amounts would otherwise have
5 been includible, no election under Section
6 408A(d)(3)(E) of the Internal Revenue Code, as
7 amended by Public Law 105-206, shall be allowed for state
8 purposes, subparagraph (A) shall apply for state
9 purposes, and a separate election for state purposes shall
10 not be allowed under paragraph (3) of subdivision (e) of
11 Section 17024.5.

12 (e) (1) If--

13 (A) Any portion of a distribution from a Roth IRA is
14 properly allocable to a qualified rollover contribution
15 described in Section 408A(d)(3) of the Internal Revenue
16 Code, and

17 (B) The distribution is made within the five-taxable
18 year period beginning with the taxable year in which the
19 contributions were made, then Section 72(t) of the
20 Internal Revenue Code shall be applied as if that portion
21 were includible in gross income.

22 (2) Paragraph (1) shall apply only to the extent of the
23 amount of the qualified rollover contribution includible
24 in gross income under Section 408A(d)(3)(A)(i) of the
25 Internal Revenue Code.

26 (f) Section 408A(d)(3)(D) of the Internal Revenue
27 Code shall not apply.

28 (g) Section 408A(d)(4) of the Internal Revenue Code
29 shall not apply and in-lieu thereof:

30 (1) (A) Section 408(d)(2) of the Internal Revenue
31 Code shall be applied separately with respect to Roth
32 IRAs and other individual retirement plans.

33 (B) For purposes of applying Section 408A of the
34 Internal Revenue Code, as amended by Public Law
35 105-206, this section and Section 72 of the Internal
36 Revenue Code to any distribution from a Roth IRA, the
37 distribution shall be treated as made--

38 (i) From contributions to the extent that the amount
39 of the distribution, when added to all previous



1 distributions from the Roth IRA, does not exceed the
2 aggregate contributions to the Roth IRA, and

3 (ii) From the contributions in the following order:

4 (I) Contributions other than qualified rollover
5 contributions to which Section 408A(d)(3) of the
6 Internal Revenue Code, as amended by Public Law
7 105-206, applies.

8 (II) Qualified rollover contributions to which Section
9 408A(d)(3) of the Internal Revenue Code, as amended
10 by Public Law 105-206, applies on a first-in, first-out basis.
11 Any distribution allocated to a qualified rollover
12 contribution under clause (ii)(II) shall be allocated first
13 to the portion of the contribution required to be included
14 in gross income.

15 (h) (1) Except as provided by the Franchise Tax
16 Board, if, on or before the due date for any taxable year,
17 a taxpayer transfers in a trustee-to-trustee transfer any
18 contribution to an individual retirement plan made
19 during the taxable year from that plan to any other
20 individual retirement plan, then, for purposes of this part,
21 the contribution shall be treated as having been made to
22 the transferee plan (and not the transferor plan).

23 (2) (A) Paragraph (1) shall not apply to the transfer
24 of any contribution unless the transfer is accompanied by
25 any net income allocable to that contribution.

26 (B) Paragraph (1) shall apply to the transfer of any
27 contribution only to the extent no deduction was allowed
28 with respect to the contribution to the transferor plan.

29 (i) For purposes of Section 408A(d) of the Internal
30 Revenue Code, the due date for any taxable year is the
31 date prescribed by law (including extensions of time) for
32 filing the taxpayer's return for that taxable year.

33 (j) For purposes of Section 408A of the Internal
34 Revenue Code--

35 (1) A simplified employee pension or a simple
36 retirement account may not be designated as a Roth IRA,
37 and

38 (2) Contributions to that pension or account shall not
39 be taken into account for purposes of Section
40 408A(c)(2)(B) of the Internal Revenue Code.



1 SEC. 5. Section 18533 of the Revenue and Taxation
2 Code is amended to read:

3 18533. (a) (1) Notwithstanding subdivision (a) and
4 the first sentence of subdivision (b) of Section 19006:

5 (A) An individual who has made a joint return may
6 elect to seek relief under the procedures prescribed
7 under subdivision (b), and

8 (B) If the individual is eligible to elect the application
9 of subdivision (c), the individual may, in addition to any
10 election under subparagraph (A), elect to limit the
11 individual's liability for any deficiency with respect to the
12 joint return in the manner prescribed under subdivision
13 (c).

14 (2) Any determination under this section shall be
15 made without regard to community property laws.

16 (b) (1) Under ~~regulations~~ procedures prescribed by
17 the Franchise Tax Board, if—

18 ~~(1)–~~

19 (A) A joint return has been made under this chapter
20 for a taxable year ~~and on that return taxable income~~
21 ~~was understated by either the omission of an amount~~
22 ~~properly includable therein, or by erroneous~~
23 ~~deductions or credits, which is attributable to one~~
24 ~~spouse;~~

25 ~~—(2)–~~

26 (B) On that return there is an understatement of
27 tax attributable to erroneous items of one individual
28 filing the joint return,

29 (C) The other ~~spouse~~ individual filing the joint
30 return establishes that in signing the return he or she
31 did not know of, and had no reason to know of, that
32 understatement, ~~and~~

33 ~~—(3)–~~

34 (D) Taking into account ~~whether or not the other~~
35 ~~spouse significantly benefited directly or indirectly~~
36 ~~from the understatement of taxable income and taking~~
37 ~~into account~~ all other facts and circumstances, it is
38 inequitable to hold the other ~~spouse~~ liable for the
39 deficiency in tax for that taxable year attributable to
40 that understatement, *and*



1 (E) *The other individual elects (in the form and*
2 *manner as the Franchise Tax Board may prescribe) the*
3 *benefits of this subdivision not later than the date that*
4 *is two years after the date the Franchise Tax Board has*
5 *begun collection activities with respect to the*
6 *individual making the election,*

7
8 then the other spouse shall be relieved of liability for tax
9 (including interest, penalties, and other amounts) for
10 that taxable year to the extent that the liability is
11 attributable to that understatement of taxable income.

12 ~~(b) For purposes of this section, the determination of~~
13 ~~the spouse to whom items of taxable income~~
14 ~~understatement are attributable shall be made without~~
15 ~~regard to community property laws.~~

16 ~~(c) This section shall apply to all taxable years, but shall~~
17 ~~not apply to a year which has been closed by a statute of~~
18 ~~limitations, res judicata or otherwise.~~

19 ~~(d) For purposes of paragraph (2) of subdivision (a),~~
20 ~~“reason to know” means whether or not a reasonably~~
21 ~~prudent person would have had reason to know of the~~
22 ~~understatement.~~

23 ~~(e) For purposes of this section, with respect to an~~
24 ~~omission of an item from income, “attributable to one~~
25 ~~spouse” may be determined by whether a spouse~~
26 ~~rendered substantial service in producing the item of~~
27 ~~income to which the understatement is attributable. If~~
28 ~~neither spouse rendered substantial services in producing~~
29 ~~that income, then the attribution of applicable items of~~
30 ~~understatement shall be treated as community property.~~
31 ~~An erroneous deduction or credit shall be attributable to~~
32 ~~the spouse who caused that deduction or credit to be~~
33 ~~entered on the return.~~

34 *(2) If an individual who, but for subparagraph (C) of*
35 *paragraph (1), would be relieved of liability under*
36 *paragraph (1), establishes that in signing the return the*
37 *individual did not know, and had no reason to know, the*
38 *extent of the understatement, then the individual shall be*
39 *relieved of liability for tax (including interest, penalties,*
40 *and other amounts) for that taxable year to the extent*



1 that the liability is attributable to the portion of the
2 understatement of which that individual did not know
3 and had no reason to know.

4 (3) For purposes of this subdivision, the term
5 “understatement” has the meaning given to that term by
6 Section 6662(d)(2)(A) of the Internal Revenue Code.

7 (c) (1) Except as provided in this subdivision, if an
8 individual who has made a joint return for any taxable
9 year elects the application of this subdivision, the
10 individual’s liability for any deficiency which is assessed
11 with respect to the return shall not exceed the portion of
12 the deficiency properly allocable to the individual under
13 subdivision (d).

14 (2) Except as provided in clause (ii) of subparagraph
15 (A) of paragraph (3) or subparagraph (C) of paragraph
16 (3), each individual who elects the application of this
17 subdivision shall have the burden of proof with respect to
18 establishing the portion of any deficiency allocable to that
19 individual.

20 (3) (A) (i) An individual shall only be eligible to
21 elect the application of this subdivision if—

22 (I) At the time the election is filed, that individual is
23 no longer married to, or is legally separated from, the
24 individual with whom that individual filed the joint
25 return to which the election relates, or

26 (II) That individual was not a member of the same
27 household as the individual with whom the joint return
28 was filed at any time during the 12-month period ending
29 on the date the election is filed.

30 (ii) If the Franchise Tax Board demonstrates that
31 assets were transferred between individuals filing a joint
32 return as part of a fraudulent scheme by those individuals,
33 an election under this subdivision by either individual
34 shall be invalid (and subdivision (a) and the first sentence
35 of subdivision (b) of Section 19006 shall apply to the joint
36 return).

37 (B) An election under this subdivision for any taxable
38 year shall be made not later than two years after the date
39 on which the Franchise Tax Board has begun collection



1 activities with respect to the individual making the
2 election.

3 (C) If the Franchise Tax Board demonstrates that an
4 individual making an election under this subdivision had
5 actual knowledge, at the time the individual signed the
6 return, of any item giving rise to a deficiency (or portion
7 thereof) which is not allocable to the individual under
8 subdivision (d), that election shall not apply to that
9 deficiency (or portion). This subparagraph shall not
10 apply where the individual with actual knowledge
11 establishes that the individual signed the return under
12 duress.

13 (4) (A) Notwithstanding any other provision of this
14 subdivision, the portion of the deficiency for which the
15 individual electing the application of this subdivision is
16 liable (without regard to this paragraph) shall be
17 increased by the value of any disqualified asset
18 transferred to the individual.

19 (B) For purposes of this paragraph—

20 (i) The term “disqualified asset” means any property
21 or right to property transferred to an individual making
22 the election under this subdivision with respect to a joint
23 return by the other individual filing the joint return if the
24 principal purpose of the transfer was the avoidance of tax
25 or payment of tax.

26 (ii) (I) For purposes of clause (i), except as provided
27 in subclause (II), any transfer that is made after the date
28 that is one year before the date on which the first notice
29 of proposed assessment under Article 3 (commencing
30 with Section 19031) of Chapter 4 is sent shall be presumed
31 to have as its principal purpose the avoidance of tax or
32 payment of tax.

33 (II) Subclause (I) shall not apply to any transfer
34 pursuant to a decree of divorce or separate maintenance
35 or a written instrument incident to that decree or to any
36 transfer that an individual establishes did not have as its
37 principal purpose the avoidance of tax or payment of tax.

38 (d) For purpose of subdivision (c)—

39 (1) The portion of any deficiency on a joint return
40 allocated to an individual shall be the amount which bears



1 *the same ratio to the deficiency as the net amount of items*
2 *taken into account in computing the deficiency and*
3 *allocable to the individual under paragraph (3) bears to*
4 *the net amount of all items taken into account in*
5 *computing the deficiency.*

6 (2) *If a deficiency (or portion thereof) is attributable*
7 *to—*

8 (A) *The disallowance of a credit, or*

9 (B) *Any tax (other than tax imposed by Section 17041*
10 *or 17062) required to be included with the joint return,*
11 *and the item is allocated to one individual under*
12 *paragraph (3), that deficiency (or portion) shall be*
13 *allocated to that individual. Any item so allocated shall*
14 *not be taken into account under paragraph (1).*

15 (3) *For purposes of this subdivision—*

16 (A) *Except as provided in paragraphs (4) and (5), any*
17 *item giving rise to a deficiency on a joint return shall be*
18 *allocated to individuals filing the return in the same*
19 *manner as it would have been allocated if the individuals*
20 *had filed separate returns for the taxable year.*

21 (B) *Under rules prescribed by the Franchise Tax*
22 *Board, an item otherwise allocable to an individual under*
23 *subparagraph (A) shall be allocated to the other*
24 *individual filing the joint return to the extent the item*
25 *gave rise to a tax benefit on the joint return to the other*
26 *individual.*

27 (C) *The Franchise Tax Board may provide for an*
28 *allocation of any item in a manner not prescribed by*
29 *subparagraph (A) if the Franchise Tax Board establishes*
30 *that the allocation is appropriate due to fraud of one or*
31 *both individuals.*

32 (4) *If an item of deduction or credit is disallowed in its*
33 *entirety solely because a separate return is filed, the*
34 *disallowance shall be disregarded and the item shall be*
35 *computed as if a joint return had been filed and then*
36 *allocated between the spouses appropriately.*

37 (5) *If the liability of a child of a taxpayer is included on*
38 *a joint return, that liability shall be disregarded in*
39 *computing the separate liability of either spouse and that*



1 liability shall be allocated appropriately between the
2 spouses.

3 (e) (1) In the case of an individual who elects to have
4 subdivision (b) or (c) apply—

5 (A) (i) The determination of the Franchise Tax
6 Board as to whether the liability is to be revised as to one
7 individual filing the joint return shall be made not less
8 than 30 days after notification of the other individual
9 filing the joint return.

10 (ii) Any action taken under this section shall be
11 treated as though it were action on a protest taken under
12 Section 19044 and shall become final upon the expiration
13 of 30 days from the date that notice of the action is mailed
14 to both individuals filing the joint return, unless, within
15 that 30-day period, the individual making the election
16 under subdivision (b) or (c) appeals the determination
17 to the board as provided in clause (iii) or the other
18 individual filing the joint return appeals the
19 determination to the board as provided in Section 19045.

20 (iii) The individual making the election under
21 subdivision (b) or (c) may appeal the determination of
22 the Franchise Tax Board of the appropriate relief
23 available to the individual under this section if that appeal
24 is filed during the 30-day period prescribed in clause (ii)
25 and the appeal shall be treated as an appeal to the board
26 under Section 19045. Notwithstanding the preceding
27 sentence, the individual making the election under
28 subdivision (b) or (c) may appeal to the board at any time
29 after the date which is six months after the date the
30 election is filed with the Franchise Tax Board and before
31 the close of the 30-day period prescribed in clause (ii).

32 (B) No judgment for tax under Article 1 (commencing
33 with Section 19200) of Chapter 5, lien of tax under Article
34 2 (commencing with Section 19221) of Chapter 5,
35 warrant for collection of tax under Article 3
36 (commencing with Section 19231) of Chapter 5, or
37 proceeding in court shall be made, begun, or prosecuted
38 against the individual making an election under
39 subdivision (b) or (c) for collection of any assessment to
40 which the election relates until the expiration of the



1 30-day period described in clause (ii) of subparagraph
2 (A), or, if an appeal to the board has been filed under
3 clause (iii) or Section 19045, until the decision of the
4 board has become final.

5 (2) The running of the period of limitations in Section
6 19371 on the collection of the assessment to which the
7 petition under subparagraph (A) of paragraph (1) relates
8 shall be suspended for the period during which the
9 Franchise Tax Board is prohibited by subparagraph (B)
10 of paragraph (1) from collecting by levy or a proceeding
11 in court and for 60 days thereafter.

12 (3) (A) Except as provided in subparagraph (B),
13 notwithstanding any other law or rule of law (other than
14 Article 6 (commencing with Section 19441) of Chapter
15 6), a credit or refund shall be allowed or made to the
16 extent attributable to the application of this section.

17 (B) In the case of any election under subdivision (b)
18 or (c), if a decision of the board in any prior proceeding
19 for the same taxable year has become final, such decision
20 shall be conclusive except with respect to the
21 qualification of the individual for relief which was not an
22 issue in that proceeding. The exception contained in the
23 preceding sentence shall not apply if the board
24 determines that the individual participated meaningfully
25 in the prior proceeding.

26 (f) Under procedures prescribed by the Franchise Tax
27 Board, if—

28 (1) Taking into account all the facts and
29 circumstances, it is inequitable to hold the individual
30 liable for any unpaid tax or any deficiency (or any portion
31 of either), and

32 (2) Relief is not available to the individual under
33 subdivision (b) or (c), the Franchise Tax Board may
34 relieve the individual of that liability.

35 (g) (1) The Franchise Tax Board may prescribe
36 regulations providing methods for allocation of items
37 other than the methods under paragraph (3) of
38 subdivision (d).

39 (2) It is the intent of the Legislature that, in construing
40 this section and any other sections which are specifically



1 *cross-referenced in this section, any regulations that may*
2 *be promulgated by the Secretary of the Treasury under*
3 *Section 6015 of the Internal Revenue Code, as amended*
4 *by Public Law 105-206, shall apply to the extent that those*
5 *regulations do not conflict with this section or with any*
6 *regulations that may be promulgated by the Franchise*
7 *Tax Board.*

8 *(h) (1) Except as provided in paragraph (2), the*
9 *amendments made by the act adding this subdivision*
10 *shall apply to any liability for tax arising after the date of*
11 *the enactment of the act adding this subdivision and any*
12 *liability for tax arising on or before that date but*
13 *remaining unpaid as of that date.*

14 *(2) The four-year period under subparagraph (E) of*
15 *paragraph (1) of subdivision (b) or subparagraph (B) of*
16 *paragraph (3) of subdivision (c) shall not expire before*
17 *the date which is four years after the date of the first*
18 *collection activity after the date of the enactment of the*
19 *act adding this subdivision.*

20 *SEC. 6. Section 18534 of the Revenue and Taxation*
21 *Code is amended to read:*

22 *18534. (a) Under regulations prescribed by the*
23 *Franchise Tax Board, if:*

24 *(1) An individual does not file a joint return for any*
25 *taxable year,*

26 *(2) That individual does not include in gross income*
27 *for that taxable year an item of community income*
28 *properly includable therein,*

29 *(3) The individual establishes that he or she did not*
30 *know of, and had no reason to know of, that item of*
31 *community income, and*

32 *(4) Taking into account all facts and circumstances, it*
33 *is inequitable to include that item of community income*
34 *in that individual's gross income, then, for purposes of*
35 *Part 10 (commencing with Section 17001) and this part,*
36 *that item of community income shall be included in the*
37 *gross income of the other spouse (and not in the gross*
38 *income of the individual).*

39 *Under procedures prescribed by the Franchise Tax*
40 *Board, if, taking into account all the facts and*



1 *circumstances, it is inequitable to hold the individual*
2 *liable for any unpaid tax or any deficiency (or any portion*
3 *of either) attributable to any item for which relief is not*
4 *available under the preceding sentence, the Franchise*
5 *Tax Board may relieve the individual of that liability.*

6 (b) The Franchise Tax Board may disallow the
7 benefits of any community property law to any taxpayer
8 with respect to any income if that taxpayer acted as if
9 solely entitled to that income and failed to notify the
10 taxpayer's spouse before the due date (including
11 extensions) for filing the return for the taxable year in
12 which the income was derived of the nature and amount
13 of that income.

14 (c) *It is the intent of the Legislature that, in construing*
15 *this section, any regulations that may be promulgated by*
16 *the Secretary of the Treasury under Section 66(c) of the*
17 *Internal Revenue Code, as amended by Public Law*
18 *105-206, shall apply to the extent that those regulations do*
19 *not conflict with this section or with any regulations that*
20 *may be promulgated by the Franchise Tax Board.*

21 (d) *The amendments made by the act adding this*
22 *subdivision shall apply to any liability for tax arising after*
23 *the date of the enactment of this act and any liability for*
24 *tax arising on or before that date but remaining unpaid*
25 *as of that date.*

26 SEC. 7. Section 18673 is added to the Revenue and
27 Taxation Code, to read:

28 18673. (a) *Notwithstanding Article 7 (commencing*
29 *with Section 706.151) of Chapter 5 of Title 9 of Part II of*
30 *the Code of Civil Procedure, if the Franchise Tax Board*
31 *determines upon receiving information from the*
32 *taxpayer that his or her employer withheld earnings for*
33 *taxes pursuant to Article 4 (commencing with Section*
34 *19251) of Chapter 5 and failed to remit the withheld*
35 *earnings to the Franchise Tax Board, the employer shall*
36 *be liable for the amount not remitted. The Franchise Tax*
37 *Board's determination shall be based on payroll*
38 *documents or other substantiating evidence furnished by*
39 *the taxpayer.*



1 (b) Upon its determination, the Franchise Tax Board
2 shall mail notice to the employer at its last known address
3 that upon failure to remit the withheld earnings to the
4 Franchise Tax Board within 15 days of the date of its
5 notice to the employer, the employer shall be liable for
6 that amount which was withheld and not remitted.

7 (c) If the employer fails to remit the amount withheld
8 to the Franchise Tax Board upon notice, that amount for
9 which the employer is liable shall be assessed, collected,
10 and paid as though it were a tax deficiency. The amount
11 may be assessed at any time prior to six years from the first
12 day that the unremitted amount, in the aggregate, was
13 first withheld. Interest shall accrue on that amount from
14 the first day that the unremitted amount, in the
15 aggregate, was first withheld.

16 (d) When the assessment against the employer is final
17 and due and payable, the taxpayer's account shall be
18 immediately credited with an amount equal to that
19 assessed amount as though it were a payment received by
20 the Franchise Tax Board on the first date that the
21 unremitted amount, in the aggregate, was first withheld
22 by the employer.

23 (e) Collection against the taxpayer is stayed for both
24 the following amount and period:

25 (1) An amount equal to the amount determined by the
26 Franchise Tax Board under subdivision (a).

27 (2) The earlier of the time the credit is applied to the
28 taxpayer's account pursuant to subdivision (d) or the
29 assessment against the employer is withdrawn or revised
30 and the taxpayer is notified by the Franchise Tax Board
31 thereof.

32 (f) If under this section an amount that was withheld
33 and not remitted to the Franchise Tax Board is final and
34 due and payable by the employer and credited to the
35 taxpayer's account, this remedy shall be the exclusive
36 remedy for the taxpayer to recover that amount from the
37 employer.

38 (g) This section shall not apply to debts, obligations, or
39 other amounts for which an earnings withholding order
40 or assignment is issued by the Franchise Tax Board



1 pursuant to Article 5, 5.5, or 6 of Chapter 5 or Section
2 10878.

3 (h) This section shall apply to determinations made by
4 the Franchise Tax Board on or after January 1, 1999.

5 SEC. 8. Section 19315 is added to the Revenue and
6 Taxation Code, to read:

7 19315. (a) In the case of an individual, the running of
8 the periods specified in Sections 19306, 19307, 19308, and
9 19311 shall be suspended during any period of the
10 individual's life that the individual is financially disabled.

11 (b) (1) For purposes of subdivision (a), an individual
12 is financially disabled if the individual is unable to manage
13 his or her financial affairs by reason of medically
14 determinable physical or mental impairment of the
15 individual which can be expected to result in death or
16 which has lasted or can be expected to last for a
17 continuous period of not less than 12 months. An
18 individual shall not be considered to have an impairment
19 unless proof of the existence thereof is furnished in the
20 form and manner as the Franchise Tax Board may
21 require.

22 (2) An individual shall not be treated as financially
23 disabled during any period that the individual's spouse or
24 any other person is authorized to act on behalf of the
25 individual in financial matters.

26 (c) This section shall not apply to any claim or refund
27 that (without regard to this section) is barred by the
28 operation or rule of law, including *res judicata*, as of the
29 date of enactment of the act adding this section.

30 SEC. 9. Section 19382.5 is added to the Revenue and
31 Taxation Code, to read:

32 19382.5. (a) Notwithstanding any other provision of
33 this part, Part 10 (commencing with Section 17001), or
34 Part 11 (commencing with Section 23001), any amount
35 paid as a tax or in respect of a tax that is paid after the
36 mailing of a notice of proposed deficiency assessment and
37 designated by the taxpayer as a deposit in the nature of
38 a cash bond made to stop the running of interest, shall not
39 deprive the taxpayer of his or her rights under Section
40 19382 with respect to that deficiency. In that case, the



1 amount of the cash bond shall constitute an amount paid
2 as a tax or in respect of a tax only upon the expiration of
3 the time specified in Section 19049, and an action for
4 refund may be commenced under Section 19382 with
5 respect to that amount within the period otherwise
6 specified by Section 19384.

7 (b) The Franchise Tax Board shall promulgate rules
8 and regulations to adopt provisions of federal Revenue
9 Procedure 84-58, 1984-2 C.B. 501, for purposes of this
10 section.

11 SEC. 10. Section 19443 is added to the Revenue and
12 Taxation Code, to read:

13 19443. (a) (1) Beginning January 1, 1999 (without
14 regard to the taxable or income year at issue), the
15 executive officer and chief counsel of the Franchise Tax
16 Board, jointly, or their delegates, may compromise any
17 final tax liability in which the reduction of tax is seven
18 thousand five hundred dollars (\$7,500) or less.

19 (2) Except as provided in paragraph (3), the
20 Franchise Tax Board, upon recommendation by its
21 executive officer and chief counsel, jointly, may
22 compromise a final tax liability involving a reduction in
23 tax in excess of seven thousand five hundred dollars
24 (\$7,500). Any recommendation for approval of an offer in
25 compromise that is not either approved or disapproved
26 by the Franchise Tax Board, itself, within 45 days of the
27 submission of the recommendation shall be deemed
28 approved.

29 (3) The Franchise Tax Board, itself, may by resolution
30 delegate to the executive officer and the chief counsel,
31 jointly, the authority to compromise a final tax liability in
32 which the reduction of tax is in excess of seven thousand
33 five hundred dollars (\$7,500) but less than ten thousand
34 dollars (\$10,000).

35 (b) For purposes of this section, "a final tax liability"
36 means any final tax liability arising under Part 10
37 (commencing with Section 17001) or Part 11
38 (commencing with Section 23001) or related interest,
39 additions to tax, penalties, or other amounts assessed
40 under this part.



1 (c) For an amount to be compromised under this
2 section, the following conditions shall exist:

3 (1) The taxpayer shall establish that the:

4 (A) Amount offered in payment is the most that can
5 be expected to be paid or collected from the taxpayer's
6 present assets or income, and

7 (B) Taxpayer does not have reasonable prospects of
8 acquiring increased income or assets that would enable
9 the taxpayer to satisfy a greater amount of the liability
10 than the amount offered, within a reasonable period of
11 time.

12 (2) The Franchise Tax Board shall have determined
13 that acceptance of the compromise is in the best interest
14 of the state.

15 (d) A determination by the Franchise Tax Board that
16 it would not be in the best interest of the state to accept
17 an offer in compromise in satisfaction of a final tax liability
18 shall not be subject to administrative appeal or judicial
19 review.

20 (e) When an offer in compromise is either accepted or
21 rejected, or the terms and conditions of a compromise
22 agreement are fulfilled, the Franchise Tax Board shall
23 notify the taxpayer in writing.

24 (f) In the case of a joint and several liability, the
25 acceptance of an offer in compromise from one liable
26 spouse shall not relieve the other spouse from paying the
27 entire liability, however, the amount of the liability shall
28 be reduced by the amount of the accepted offer.

29 (g) Whenever a compromise of tax or penalties or total
30 tax and penalties in excess of five hundred dollars (\$500)
31 is approved, there shall be placed on file for at least one
32 year in the office of the executive officer of the Franchise
33 Tax Board a public record with respect to that
34 compromise. The public record shall include all of the
35 following information:

36 (1) The name of the taxpayer.

37 (2) The amount of unpaid tax, and related penalties,
38 additions to tax, interest, or other amounts involved.

39 (3) The amount offered.



1 (4) A summary of the reason why the compromise is
2 in the best interest of the state.

3 The public record shall not include any information
4 that relates to any trade secret, patent, process, style of
5 work, apparatus, business secret, or organizational
6 structure, that if disclosed, would adversely affect the
7 taxpayer or the national defense. No list shall be prepared
8 and no releases distributed by the Franchise Tax Board in
9 connection with these statements.

10 (h) Any compromise made under this section may be
11 rescinded, all compromised liabilities may be
12 reestablished (without regard to any statute of limitations
13 that otherwise may be applicable), and no portion of the
14 amount offered in compromise refunded, if either of the
15 following occurs:

16 (1) The Franchise Tax Board determines that any
17 person did any of the following acts regarding the making
18 of the offer:

19 (A) Concealed from the Franchise Tax Board any
20 property belonging to the estate of any taxpayer or other
21 person liable for the tax;

22 (B) Received, withheld, destroyed, mutilated, or
23 falsified any book, document, or record or made any false
24 statement, relating to the estate or financial condition of
25 the taxpayer or other person liable for the tax;

26 (2) The taxpayer fails to either:

27 (A) Comply with any of the terms and conditions
28 relative to the offer;

29 (B) File subsequent required returns and pay
30 subsequent final tax liabilities within 20 days after the
31 Franchise Tax Board issues notice and demand to the
32 person stating that the continued failure to file or pay the
33 tax may result in rescission of the compromise.

34 SEC. 11. Section 19705 of the Revenue and Taxation
35 Code is amended to read:

36 19705. (a) Any person who does any of the following
37 shall be guilty of a felony and, upon conviction, shall be
38 fined not more than fifty thousand dollars (\$50,000) or
39 imprisoned not more than three years, or both, together
40 with the costs of investigation and prosecution:



1 (1) Willfully makes and subscribes any return,
2 statement, or other document, that contains or is verified
3 by a written declaration that it is made under penalty of
4 perjury, and he or she does not believe to be true and
5 correct as to every material matter.

6 (2) Willfully aids or assists in, or procures, counsels, or
7 advises the preparation or presentation under, or in
8 connection with any matter arising under, the Personal
9 Income Tax Law or the Bank and Corporation Tax Law,
10 of a return, affidavit, claim, or other document, that is
11 fraudulent or is false as to any material matter, whether
12 or not that falsity or fraud is with the knowledge or
13 consent of the person authorized or required to present
14 that return, affidavit, claim, or document.

15 (3) Simulates or falsely or fraudulently executes or
16 signs any bond, permit, entry, or other document
17 required by the provisions of the Personal Income Tax
18 Law or the Bank and Corporation Tax Law, or by any
19 regulation pursuant to that law, or procures the same to
20 be falsely or fraudulently executed or advises, aids in, or
21 connives at that execution.

22 (4) Removes, deposits, or conceals, or is concerned in
23 removing, depositing, or concealing, any goods or
24 commodities for or in respect whereof any tax is or shall
25 be imposed, or any property upon which levy is
26 authorized by Chapter 5 (commencing with Section
27 19201); or Chapter 8 (commencing with Section 688.010)
28 of Division 1 of, and Chapter 5 (commencing with Section
29 706.010) of Division 2 of, Title 9 of the Code of Civil
30 Procedure, with intent to evade or defeat the assessment
31 or collection of any tax, additions to tax, penalty, or
32 interest imposed by Part 10 (commencing with Section
33 17001), Part 11 (commencing with Section 23001), or this
34 part.

35 (5) In connection with any settlement under Section
36 19442, or offer of that settlement, or in connection with
37 any closing agreement under Section 19441 or offer to
38 enter into that agreement, *or compromise under Section*
39 *19443, or offer of that compromise*, willfully does any of
40 the following:



1 (A) Conceals from any officer or employee of this state
2 any property belonging to the estate of a taxpayer or
3 other person liable in respect of the tax.

4 (B) Receives, withholds, destroys, mutilates, or
5 falsifies any book, document, or record, or makes any false
6 statement, relating to the estate or financial condition of
7 the taxpayer or other person liable in respect of the tax.

8 (b) In the case of a corporation, the fifty thousand
9 dollars (\$50,000) limitation specified in subdivision (a)
10 shall be increased to two hundred thousand dollars
11 (\$200,000).

12 (c) The fact that an individual's name is signed to a
13 return, statement, or other document filed, including a
14 return, statement, or other document filed using
15 electronic technology pursuant to Section 18621.5, shall
16 be prima facie evidence for all purposes that the return,
17 statement, or other document was actually signed by him
18 or her.

19 (d) For purposes of this section, "person" means the
20 taxpayer, any member of the taxpayer's family, any
21 corporation, agent, fiduciary, or representative of, or any
22 other individual or entity acting on behalf of, the
23 taxpayer, or any other corporation or entity owned or
24 controlled by the taxpayer, directly or indirectly, or
25 which owns or controls the taxpayer, directly or
26 indirectly.

27 *SEC. 12. Section 25110 of the Revenue and Taxation*
28 *Code is amended to read:*

29 25110. (a) Notwithstanding Section 25101, a qualified
30 taxpayer, as defined in paragraph (2) of subdivision (b),
31 that is subject to the tax imposed under this part, may
32 elect to determine its income derived from or
33 attributable to sources within this state pursuant to a
34 water's-edge election in accordance with the provisions
35 of this part, as modified by this article. A taxpayer that
36 makes a water's-edge election shall take into account the
37 income and apportionment factors of the following
38 affiliated entities only:

39 (1) Domestic international sales corporations, as
40 described in Sections 991 to 994, inclusive, of the Internal



1 Revenue Code and foreign sales corporations as
2 described in Sections 921 to 927, inclusive, of the Internal
3 Revenue Code.

4 (2) Any corporation (other than a bank), regardless of
5 the place where it is incorporated if the average of its
6 property, payroll, and sales factors within the United
7 States is 20 percent or more.

8 (3) Corporations that are incorporated in the United
9 States, excluding corporations making an election
10 pursuant to Sections 931 to 936, inclusive, of the Internal
11 Revenue Code, of which more than 50 percent of their
12 voting stock is owned or controlled directly or indirectly
13 by the same interests.

14 (4) A corporation that is not described in paragraphs
15 (1) to (3), inclusive, or paragraph (5), but only to the
16 extent of its income derived from or attributable to
17 sources within the United States and its factors assignable
18 to a location within the United States in accordance with
19 paragraph (3) of subdivision (b). Income of that
20 corporation derived from or attributable to sources
21 within the United States as determined by federal income
22 tax laws shall be limited to and determined from the
23 books of account maintained by the corporation with
24 respect to its activities conducted within the United
25 States.

26 (5) Export trade corporations, as described in Sections
27 970 to 972, inclusive, of the Internal Revenue Code.

28 (6) Any affiliated corporation which is a “controlled
29 foreign corporation,” as defined in Section 957 of the
30 Internal Revenue Code, if all or part of the income of that
31 affiliate is defined in Section 952 of Subpart F of the
32 Internal Revenue Code (“Subpart F income”). The
33 income and apportionment factors of any affiliate to be
34 included under this paragraph shall be determined by
35 multiplying the income and apportionment factors of
36 that affiliate without application of this paragraph by a
37 fraction (not to exceed one), the numerator of which is
38 the “Subpart F income” of that corporation for that
39 income year and the denominator of which is the
40 “earnings and profits” of that corporation for that income



1 year, as defined in Section 964 of the Internal Revenue
2 Code.

3 (7) (A) The income and factors of the
4 above-enumerated corporations shall be taken into
5 account only if the income and factors would have been
6 taken into account under Section 25101 if this section had
7 not been enacted.

8 (B) The income and factors of a ~~corporation~~ *member*
9 *of the water's-edge group* that is not described in
10 paragraphs (1) to (3), inclusive, and paragraph (5) ~~and~~
11 ~~that is an electing taxpayer under this subdivision~~ shall be
12 taken into account in determining its income only to the
13 extent set forth in ~~paragraph~~ *paragraphs (4) and (6)*. *The*
14 *Franchise Tax Board shall prescribe regulations to*
15 *coordinate the provisions of paragraphs (4) and (6) to*
16 *prevent the double counting of income and factors in*
17 *situations where the same item of income is described in*
18 *both paragraphs (4) and (6)*.

19 (b) For purposes of this article and Section 24411:

20 (1) An “affiliated corporation” means a corporation
21 that is a member of a commonly controlled group as
22 defined in Section 25105.

23 (2) A “qualified taxpayer” means a corporation which
24 does both of the following:

25 (A) Files with the state tax return on which the
26 water's-edge election is made a consent to the taking of
27 depositions at the time and place most reasonably
28 convenient to all parties from key domestic corporate
29 individuals and to the acceptance of subpoenas duces
30 tecum requiring reasonable production of documents to
31 the Franchise Tax Board as provided in Section 19504 or
32 by the State Board of Equalization as provided in Title 18,
33 California Code of Regulations, Section 5005, or by the
34 courts of this state as provided in Chapter 2 (commencing
35 with Section 1985) of Title 3 of Part 4 of, and Section 2025
36 of, the Code of Civil Procedure. The consent relates to
37 issues of jurisdiction and service and does not waive any
38 defenses a taxpayer may otherwise have. The consent
39 shall remain in effect so long as the water's-edge election
40 is in effect and shall be limited to providing that



1 information necessary to review or to adjust income or
2 deductions in a manner authorized under Sections 482,
3 861, Subpart F of Part III of Subchapter N, or similar
4 provisions of the Internal Revenue Code, together with
5 the regulations adopted pursuant to those provisions, and
6 for the conduct of an investigation with respect to any
7 unitary business in which the taxpayer may be involved.

8 (B) Agrees that for purposes of this article, dividends
9 received by any corporation whose income and
10 apportionment factors are taken into account pursuant to
11 subdivision (a) from either of the following are
12 functionally related dividends and shall be presumed to
13 be business income:

14 (i) A corporation of which more than 50 percent of the
15 voting stock is owned, directly or indirectly, by members
16 of the unitary group and which is engaged in the same
17 general line of business.

18 (ii) Any corporation that is either a significant source
19 of supply for the unitary business or a significant
20 purchaser of the output of the unitary business, or that
21 sells a significant part of its output or obtains a significant
22 part of its raw materials or input from the unitary
23 business. "Significant," as used in this subparagraph,
24 means an amount of 15 percent or more of either input
25 or output.

26 All other dividends shall be classified as business or
27 nonbusiness income without regard to this subparagraph.

28 (3) The definitions and locations of property, payroll,
29 and sales shall be determined under the laws and
30 regulations that set forth the apportionment formulas
31 used by the individual states to assign net income subject
32 to taxes on or measured by net income in that state. If a
33 state does not impose a tax on or measured by net income
34 or does not have laws or regulations with respect to the
35 assignment of property, payroll, and sales, the laws and
36 regulations provided in Article 2 (commencing with
37 Section 25120) shall apply.

38 Sales shall be considered to be made to a state only if the
39 corporation making the sale may otherwise be subject to
40 a tax on or measured by net income under the



1 Constitution or laws of the United States, and shall not
2 include sales made to a corporation whose income and
3 apportionment factors are taken into account pursuant to
4 subdivision (a) in determining the amount of income of
5 the taxpayer derived from or attributable to sources
6 within this state.

7 (4) "The United States" means the 50 states of the
8 United States and the District of Columbia.

9 (c) All references in this part to income determined
10 pursuant to Section 25101 shall also mean income
11 determined pursuant to this section.

12 *SEC. 13. It is the intent of the Legislature that the*
13 *amendments made by Section 17152.5, which clarify the*
14 *operation of the exclusion of gain from the sale of a*
15 *principal residence for sales and exchanges on and after*
16 *May 7, 1997, clarify, consistent with the Legislature's*
17 *intent in enacting Chapter 610 and Chapter 612 of the*
18 *Statutes of 1997, that California law conforms to federal*
19 *Internal Revenue Code provisions governing the*
20 *exclusion of gain from the sale of a principal residence.*

21 *SEC. 14. This act provides for a tax levy within the*
22 *meaning of Article IV of the Constitution and shall go into*
23 *immediate effect.*

