

Assembly Bill No. 1469

Passed the Assembly August 28, 1998

Chief Clerk of the Assembly

Passed the Senate August 26, 1998

Secretary of the Senate

This bill was received by the Governor this ____ day
of _____, 1998, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act 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, Ortiz. 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holding period with respect to the conversion of the Roth IRAs, certain ordering rules to determine amounts that are withdrawn in the case where a Roth IRA contains conversion amounts and other contributions, corrections of erroneous conversions and due dates pertaining to Roth IRAs,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 people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the "Taxpayer's Bill of Rights Act of 1998."

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

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

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

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

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

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



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

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

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

(b) Notwithstanding the provisions of Sections 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs



that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

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

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

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

(2) The amount of any credit otherwise allowed under this part, including any credit carryover from prior years, that may be applied to reduce the taxpayer's "net tax," as defined in subdivision (a), for the taxable year shall be limited to an amount equal to the excess of the taxpayer's regular tax (as defined in Section 17062), determined by including income attributable to the disregarded business entity that generated the credit or credit carryover, over the taxpayer's regular tax (as defined in Section 17062), determined by excluding the income attributable to that disregarded business entity. No credit shall be allowed if the taxpayer's regular tax (as defined in Section 17062), determined by including the income attributable to the disregarded business entity, is less than the taxpayer's regular tax (as defined in Section 17062), determined by



excluding the income attributable to the disregarded business entity.

(3) If the amount of a credit allowed pursuant to the section establishing the credit exceeds the amount allowable under this subdivision in any taxable year, the excess amount may be carried over to subsequent taxable years pursuant to subdivisions (c) and (d).

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

(B) (i) The shorter of—



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

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

(ii) Two years.

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

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

(B) (i) The shorter of—

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

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

(ii) Two years.

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

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

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



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

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

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

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

(4) By substituting the phrase “adjusted gross income exceeds” in-lieu of the phrase “adjusted gross income for such taxable year exceeds” in Section 408A(c)(3)(B)(i) of the Internal Revenue Code.

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

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

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

(A) A payment or distribution from a Roth IRA shall not be treated as a qualified distribution under Section 408A(d)(2)(A) of the Internal Revenue Code if the payment or distribution is made within the five-taxable year period beginning with the first taxable year for which the individual made a contribution to a Roth IRA



(or the individual's spouse made a contribution to a Roth IRA) established for that individual.

(B) The term "qualified distribution" shall not include any distribution of any contribution described in subdivision (g) and any net income allocable to the contribution.

(c) (1) If a taxpayer has, at any time, made an election for federal purposes under Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, to not have Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, apply to any distributions during a taxable year, Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, shall not apply to those distributions for state purposes, a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, the federal election shall be binding for purposes of this part, and that election shall be treated as an election to include in gross income for purposes of this part all amounts required to be included in gross income for the taxable year by reason of Section 408A(d)(3) of the Internal Revenue Code.

(2) If a taxpayer fails to make an election for federal purposes under Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, to not have Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, apply to any distributions during a taxable year, Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to those distributions for state purposes except that no election under Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, shall be allowed for state purposes, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5.

(d) In the case of a qualified rollover contribution to a Roth IRA of a distribution to which Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as



amended by Public Law 105-206, applied, the following rules shall apply:

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

(B) The amount required to be included in gross income for any taxable year under Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, shall not exceed the aggregate amount required to be included in gross income under Section 408A(d)(3)(A)(iii) of the Internal Revenue Code, as amended by Public Law 105-206, for all taxable years in the four-year period (without regard to subparagraph (A)) reduced by amounts included for all preceding taxable years.

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

(B) (i) If the spouse of the individual described in subparagraph (A) acquires the individual's entire interest in any Roth IRA to which the qualified rollover contribution is properly allocable and makes an election for federal purposes under Section 408A(d)(3)(E) of the Internal Revenue Code, as amended by Public Law 105-206, to treat the remaining amounts described in subparagraph (A) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of the individual in which the amounts would otherwise have been includible, subparagraph (A) shall not apply for state purposes, a



separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5, the federal election shall be binding for purposes of this part and that election shall be treated as an election to treat the remaining amounts described in subparagraph (A) as includible in the spouse's gross income for state purposes in the taxable years of the spouse ending with or within the taxable years of the individual in which the amounts would otherwise have been includible.

(ii) If the spouse of the individual described in subparagraph (A) acquires the individual's entire interest in any Roth IRA to which the qualified rollover contribution is properly allocable and fails to make an election for federal purposes under Section 408A(d)(3)(E) of the Internal Revenue Code, as amended by Public Law 105-206, or revokes an election previously made for federal purposes under Section 408A(d)(3)(E) of the Internal Revenue Code, as amended by Public Law 105-206, to treat the remaining amounts described in subparagraph (A) as includible in the spouse's gross income in the taxable years of the spouse ending with or within the taxable years of the individual in which the amounts would otherwise have been includible, no election under Section 408A(d)(3)(E) of the Internal Revenue Code, as amended by Public Law 105-206, shall be allowed for state purposes, subparagraph (A) shall apply for state purposes, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5.

(e) (1) If—

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

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



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

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

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

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

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

(i) From contributions to the extent that the amount of the distribution, when added to all previous distributions from the Roth IRA, does not exceed the aggregate contributions to the Roth IRA, and

(ii) From the contributions in the following order:

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

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

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



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

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

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

(j) For purposes of Section 408A of the Internal Revenue Code—

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

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

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

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

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

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

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

(b) (1) Under procedures prescribed by the Franchise Tax Board, if—

(A) A joint return has been made under this chapter for a taxable year,



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

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

(D) Taking into account all facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for that taxable year attributable to that understatement, and

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

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

(2) If an individual who, but for subparagraph (C) of paragraph (1), would be relieved of liability under paragraph (1), establishes that in signing the return the individual did not know, and had no reason to know, the extent of the understatement, then the individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to the portion of the understatement of which that individual did not know and had no reason to know.

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

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual’s liability for any deficiency which is assessed with respect to the return shall not exceed the portion of



the deficiency properly allocable to the individual under subdivision (d).

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

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

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

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

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

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

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



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

(B) For purposes of this paragraph—

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

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

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

(d) For purpose of subdivision (c)—

(1) The portion of any deficiency on a joint return allocated to an individual shall be the amount which bears the same ratio to the deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

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

(A) The disallowance of a credit, or

(B) Any tax (other than tax imposed by Section 17041 or 17062) required to be included with the joint return, and the item is allocated to one individual under paragraph (3), that deficiency (or portion) shall be



allocated to that individual. Any item so allocated shall not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

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

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

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

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

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

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

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

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed



to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

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

(B) No judgment for tax under Article 1 (commencing with Section 19201) of Chapter 5, lien of tax under Article 2 (commencing with Section 19221) of Chapter 5, warrant for collection of tax under Article 3 (commencing with Section 19231) of Chapter 5, or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or (c) for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

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

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than



Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

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

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

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

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

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

(2) It is the intent of the Legislature that, in construing this section and any other sections which are specifically cross-referenced in this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

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



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

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

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

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

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

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

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

Under procedures prescribed by the Franchise Tax Board, if, taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, the Franchise Tax Board may relieve the individual of that liability.

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



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

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

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

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

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

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



the first day that the unremitted amount, in the aggregate, was first withheld.

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

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

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

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

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

(g) This section shall not apply to debts, obligations, or other amounts for which an earnings withholding order or assignment is issued by the Franchise Tax Board pursuant to Article 5, 5.5, or 6 of Chapter 5 or Section 10878.

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

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

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

(b) (1) For purposes of subdivision (a), an individual is financially disabled if the individual is unable to manage his or her financial affairs by reason of medically



determinable physical or mental impairment of the individual which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the Franchise Tax Board may require.

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

(c) This section applies to periods of disability commencing before, on, or after the effective date of this bill, but does not apply to any claim or refund that (without regard to this section) is barred by the operation or rule of law, including *res judicata*, as of the effective date of the act adding this section.

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

19382.5. (a) Notwithstanding any other provision of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001), any amount paid as a tax or in respect of a tax that is paid after the mailing of a notice of proposed deficiency assessment and designated by the taxpayer as a deposit in the nature of a cash bond made to stop the running of interest, shall not deprive the taxpayer of his or her rights under Section 19382 with respect to that deficiency. In that case, the amount of the cash bond shall constitute an amount paid as a tax or in respect of a tax only upon the expiration of the time specified in Section 19049, and an action for refund may be commenced under Section 19382 with respect to that amount within the period otherwise specified by Section 19384.

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

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

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

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

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

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

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

(1) The taxpayer shall establish that the:

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

(B) Taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability



than the amount offered, within a reasonable period of time.

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

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

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

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

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

(1) The name of the taxpayer.

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

(3) The amount offered.

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

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



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

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

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

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

(2) The taxpayer fails to either:

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

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

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

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

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

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Bank and Corporation Tax Law,



of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

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

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

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

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

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

(b) In the case of a corporation, the fifty thousand dollars (\$50,000) limitation specified in subdivision (a)



shall be increased to two hundred thousand dollars (\$200,000).

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

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

(e) The changes made to this section by the act adding this subdivision apply to offers made on or after January 1, 1999.

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

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

(1) Domestic international sales corporations, as described in Sections 991 to 994, inclusive, of the Internal Revenue Code and foreign sales corporations as described in Sections 921 to 927, inclusive, of the Internal Revenue Code.

(2) Any corporation (other than a bank), regardless of the place where it is incorporated if the average of its



property, payroll, and sales factors within the United States is 20 percent or more.

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

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

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

(6) Any affiliated corporation which is a “controlled foreign corporation,” as defined in Section 957 of the Internal Revenue Code, if all or part of the income of that affiliate is defined in Section 952 of Subpart F of the Internal Revenue Code (“Subpart F income”). The income and apportionment factors of any affiliate to be included under this paragraph shall be determined by multiplying the income and apportionment factors of that affiliate without application of this paragraph by a fraction (not to exceed one), the numerator of which is the “Subpart F income” of that corporation for that income year and the denominator of which is the “earnings and profits” of that corporation for that income year, as defined in Section 964 of the Internal Revenue Code.

(7) (A) The income and factors of the above-enumerated corporations shall be taken into account only if the income and factors would have been



taken into account under Section 25101 if this section had not been enacted.

(B) The income and factors of a member of the water's-edge group that is not described in paragraphs (1) to (3), inclusive, and paragraph (5) shall be taken into account in determining its income only to the extent set forth in paragraphs (4) and (6). The Franchise Tax Board shall prescribe regulations to coordinate the provisions of paragraphs (4) and (6) to prevent the double counting of income and factors in situations where the same item of income is described in both paragraphs (4) and (6).

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

(1) An "affiliated corporation" means a corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) A "qualified taxpayer" means a corporation which does both of the following:

(A) Files with the state tax return on which the water's-edge election is made a consent to the taking of depositions at the time and place most reasonably convenient to all parties from key domestic corporate individuals and to the acceptance of subpoenas duces tecum requiring reasonable production of documents to the Franchise Tax Board as provided in Section 19504 or by the State Board of Equalization as provided in Title 18, California Code of Regulations, Section 5005, or by the courts of this state as provided in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of, and Section 2025 of, the Code of Civil Procedure. The consent relates to issues of jurisdiction and service and does not waive any defenses a taxpayer may otherwise have. The consent shall remain in effect so long as the water's-edge election is in effect and shall be limited to providing that information necessary to review or to adjust income or deductions in a manner authorized under Sections 482, 861, Subpart F of Part III of Subchapter N, or similar provisions of the Internal Revenue Code, together with the regulations adopted pursuant to those provisions, and for the conduct of an investigation with respect to any unitary business in which the taxpayer may be involved.



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

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

(ii) Any corporation that is either a significant source of supply for the unitary business or a significant purchaser of the output of the unitary business, or that sells a significant part of its output or obtains a significant part of its raw materials or input from the unitary business. “Significant,” as used in this subparagraph, means an amount of 15 percent or more of either input or output.

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

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

Sales shall be considered to be made to a state only if the corporation making the sale may otherwise be subject to a tax on or measured by net income under the Constitution or laws of the United States, and shall not include sales made to a corporation whose income and apportionment factors are taken into account pursuant to subdivision (a) in determining the amount of income of the taxpayer derived from or attributable to sources within this state.



(4) “The United States” means the 50 states of the United States and the District of Columbia.

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

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

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



Approved _____, 1998

Governor

