
Introduced by Senator Alpert

February 28, 1997

An act to amend Section 19141.6 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as introduced, Alpert. Franchise and income tax laws.

Existing law pertaining to the administration of franchise and income taxes requires all apportioning taxpayers to maintain specified information.

This bill would make a technical, nonsubstantive change to those provisions by deleting an obsolete code section reference.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 19141.6 of the Revenue and
2 Taxation Code is amended to read:
3 19141.6. (a) Each taxpayer determining its income
4 subject to tax pursuant to Section 25101 or electing to file
5 pursuant to Section 25110 shall, for income years
6 beginning on or after January 1, 1994, maintain (in the
7 location, in the manner, and to the extent prescribed in
8 regulations which shall be promulgated by the Franchise
9 Tax Board on or before December 31, 1995) and make
10 available upon request all of the following:

1 (1) Any records as may be appropriate to determine
2 the correct treatment of the components that are a part
3 of one or more unitary businesses for purposes of
4 determining the income derived from or attributable to
5 this state pursuant to Section 25101 or 25110.

6 (2) Any records as may be appropriate to determine
7 the correct treatment of amounts that are attributable to
8 the classification of an item as business or nonbusiness
9 income for purposes of Article 2 (commencing with
10 Section 25120) of Chapter 17 of Part 11.

11 (3) Any records as may be appropriate to determine
12 the correct treatment of the apportionment factors for
13 purposes of Article 2 (commencing with Section 25120)
14 of Chapter 17 of Part 11.

15 (4) Documents and information, including any
16 questionnaires completed and submitted to the Internal
17 Revenue Service that are necessary to audit issues
18 involving attribution of income to the United States or
19 foreign jurisdictions under Section 882 or Subpart F of
20 Part III of Subchapter N, or similar sections, of the
21 Internal Revenue Code.

22 (b) For purposes of this section:

23 (1) Information for any year shall be retained for that
24 period of time in which the taxpayers' income or
25 franchise tax liability to this state may be subject to
26 adjustment, including all periods in which additional
27 income or franchise taxes may be assessed, not to exceed
28 eight years from the due date or extended due date of the
29 return, or during which a protest is pending before the
30 Franchise Tax Board, or an appeal is pending before the
31 State Board of Equalization or a lawsuit is pending in the
32 courts of this state or the United States with respect to
33 California franchise or income tax.

34 (2) "Related party" means banks and corporations
35 that are related because one owns or controls directly or
36 indirectly more than 50 percent of the stock of the other
37 or because more than 50 percent of the voting stock of
38 each is owned or controlled, directly or indirectly, by the
39 same interests.



1 (3) "Records" includes any books, papers, or other
2 data.

3 (c) (1) If a bank or corporation subject to this section
4 fails to maintain or fails to cause another to maintain
5 records as required by subdivision (a), ~~or willfully fails to~~
6 ~~comply substantially with Section 18634 requiring the~~
7 ~~filing of an information return~~, that bank or corporation
8 shall pay a penalty of ten thousand dollars (\$10,000) for
9 each income year with respect to which the failure
10 occurs.

11 (2) If any failure described in paragraph (1) continues
12 for more than 90 days after the day on which the
13 Franchise Tax Board mails notice of the failure to the
14 bank or corporation, that bank or corporation shall pay a
15 penalty (in addition to the amount required under
16 paragraph (1)) of ten thousand dollars (\$10,000) for each
17 30-day period (or fraction thereof) during which the
18 failure continues after the expiration of the 90-day period.
19 The additional penalty imposed by this subdivision shall
20 not exceed a maximum of fifty thousand dollars (\$50,000)
21 if the failure to maintain or the failure to cause another
22 to maintain is not willful. This maximum shall apply with
23 respect to income years beginning on or after January 1,
24 1994, and before the earlier of the first day of the month
25 following the month in which regulations are adopted
26 pursuant to this section or December 31, 1995.

27 (3) For purposes of this section, the time prescribed by
28 regulations to maintain records (and the beginning of the
29 90-day period after notice by the Franchise Tax Board)
30 shall be treated as not earlier than the last day on which
31 (as shown to the satisfaction of the Franchise Tax Board)
32 reasonable cause existed for failure to maintain the
33 records.

34 (d) (1) The Franchise Tax Board may apply the rules
35 of paragraph (2) whether or not the board begins a
36 proceeding to enforce a subpoena, or subpoena duces
37 tecum, if subparagraphs (A), (B), and (C) apply:

38 (A) For purposes of determining the correct
39 treatment under Part 11 (commencing with Section
40 23001) of the items described in subdivision (a), the



1 Franchise Tax Board issues a subpoena or subpoena duces
2 tecum to a bank or corporation to produce (either
3 directly or as agent for the related party) any records or
4 testimony.

5 (B) The subpoena or subpoena duces tecum is not
6 quashed in a proceeding begun under paragraph (3) and
7 is not determined to be invalid in a proceeding begun
8 under Section 19504 to enforce the subpoena or subpoena
9 duces tecum.

10 (C) The bank or corporation does not substantially
11 comply in a timely manner with the subpoena or
12 subpoena duces tecum and the Franchise Tax Board has
13 sent by certified or registered mail a notice to that bank
14 or corporation that it has not substantially complied.

15 (D) If the bank or corporation fails to maintain or fails
16 to cause another to maintain records as required by
17 subdivision (a), and by reason of that failure, the
18 subpoena, or subpoena duces tecum, is quashed in a
19 proceeding described in subparagraph (B) or the bank or
20 corporation is not able to provide the records requested
21 in the subpoena or subpoena duces tecum, the Franchise
22 Tax Board may apply the rules of paragraph (2) to any of
23 the items described in subdivision (a) to which the
24 records relate.

25 (2) (A) All of the following shall be determined by the
26 Franchise Tax Board in the Franchise Tax Board's sole
27 discretion from the Franchise Tax Board's own
28 knowledge or from information the Franchise Tax Board
29 may obtain through testimony or otherwise:

30 (i) The components that are a part of one or more
31 unitary businesses for purposes of determining the
32 income derived from or attributable to this state pursuant
33 to Section 25101 or 25110.

34 (ii) Amounts that are attributable to the classification
35 of an item as business or nonbusiness income for purposes
36 of Article 2 (commencing with Section 25120) of Chapter
37 17 of Part 11.

38 (iii) The apportionment factors for purposes of Article
39 2 (commencing with Section 25120) of Chapter 17 of Part
40 11.



1 (iv) The correct amount of income under Section 882
2 of, or Subpart F of Part III of, Subchapter N of, or similar
3 sections of, the Internal Revenue Code.

4 (B) This paragraph shall apply to determine the
5 correct treatment of the items described in subdivision
6 (a) unless the bank or corporation is authorized by its
7 related parties (in the manner and at the time as the
8 Franchise Tax Board shall prescribe) to act as the related
9 parties' limited agent solely for purposes of applying
10 Section 19504 with respect to any request by the
11 Franchise Tax Board to examine records or produce
12 testimony related to any item described in subdivision (a)
13 or with respect to any subpoena or subpoena duces tecum
14 for the records or testimony. The appearance of persons
15 or the production of records by reason of the bank or
16 corporation being an agent shall not subject those persons
17 or records to legal process for any purpose other than
18 determining the correct treatment under Part 11 of the
19 items described in subdivision (a).

20 (C) Determinations made in the sole discretion of the
21 Franchise Tax Board pursuant to this paragraph may be
22 appealed to the State Board of Equalization, in the
23 manner and at a time, as provided by Section 19045 or
24 19324, or may be the subject of an action to recover tax,
25 in the manner and at a time, as provided by Section 19382.
26 The review of determinations by the board or the court
27 shall be limited to whether the determinations were
28 arbitrary or capricious, or are not supported by
29 substantial evidence.

30 (3) (A) Notwithstanding any other law or rule of law,
31 any reporting bank or corporation to which the Franchise
32 Tax Board issues a subpoena or subpoena duces tecum
33 referred to in subparagraph (A) of paragraph (1) shall
34 have the right to begin a proceeding to quash the
35 subpoena or subpoena duces tecum not later than the
36 90th day after the subpoena or subpoena duces tecum was
37 issued. In that proceeding, the Franchise Tax Board may
38 seek to compel compliance with the subpoena or
39 subpoena duces tecum.



1 (B) Notwithstanding any other law or rule of law, any
2 reporting bank or corporation that has been notified by
3 the Franchise Tax Board that it has determined that the
4 bank or corporation has not substantially complied with
5 a subpoena or subpoena duces tecum referred to in
6 paragraph (1) shall have the right to begin a proceeding
7 to review the determination not later than the 90th day
8 after the day on which the notice referred to in
9 subparagraph (C) of paragraph (1) was mailed. If the
10 proceeding is not begun on or before the 90th day, the
11 determination by the Franchise Tax Board shall be
12 binding and shall not be reviewed by any court.

13 (C) The superior courts of the State of California for
14 the Counties of Los Angeles, Sacramento, and San Diego,
15 and for the City and County of San Francisco shall have
16 jurisdiction to hear any proceeding brought under
17 subparagraphs (A) and (B). Any order or other
18 determination in the proceeding shall be treated as a final
19 order that may be appealed.

20 (D) If any bank or corporation takes any action as
21 provided in subparagraphs (A) and (B), the running of
22 any period of limitations under Sections 19057 to 19064,
23 inclusive (relating to the assessment and collection of
24 tax), or under Section 19704 (relating to criminal
25 prosecutions) with respect to that bank or corporation
26 shall be suspended for the period during which the
27 proceedings, and appeals therein, are pending. In no
28 event shall any period expire before the 90th day after the
29 day on which there is a final determination in the
30 proceeding.

