

Assembly Bill No. 2892

CHAPTER 863

An act to amend Sections 18505, 18508, 18528, 18532, 18631, 18633, 18633.5, 18639, 19101, 19104, 19105, 19183, and 23802 of, to amend and renumber Sections 18503, 18547, 18552, and 19524 of, to add Sections 18505.3, 18531.5, 18635.5, 19120, and 19368 to, and to repeal Sections 18504, 18507, 18636, 18637, 18638, 18641, 18643, 18645, 18647, 19102, 19103, 19106, 19111, 19115, and 23810 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 28, 2000. Filed
with Secretary of State September 29, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2892, Committee on Revenue and Taxation. Income and bank and corporation taxes: federal conformity: clarifications.

The Personal Income Tax Law, the Bank and Corporation Tax Law, and related administrative laws provide specified conformity to federal income tax law with respect to information returns and returns of individuals and fiduciaries.

This bill would provide additional conformity to those federal provisions, consolidate filing requirement provisions, delete obsolete provisions, and make related clarifying and technical changes.

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

SECTION 1. Section 18503 of the Revenue and Taxation Code is amended and renumbered to read:

18505.6. If an individual is unable to make a return required under Section 18501, the return of that individual shall be made by a duly authorized agent, his or her committee, guardian, fiduciary, or other person charged with the care of the person or property of the individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

SEC. 2. Section 18504 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 18505 of the Revenue and Taxation Code is amended to read:

18505. Every fiduciary (except a receiver appointed by authority of law in possession of only a part of the property of an individual) taxable under Part 10 (commencing with Section 17001) shall make a return, which shall contain or be verified by a written declaration that it is made under the penalties of perjury, for any of the following



taxpayers for whom he or she acts, stating specifically the items of gross income of the taxpayer and the deductions and credits allowed for the taxable year:

(a) Every individual having an adjusted gross income from all sources in excess of eight thousand dollars (\$8,000), if single.

(b) Every individual having an adjusted gross income from all sources in excess of sixteen thousand dollars (\$16,000), if married.

(c) Every individual having a gross income from all sources in excess of ten thousand dollars (\$10,000), if single, and twenty thousand dollars (\$20,000), if married, regardless of the amount of adjusted gross income.

(d) Every estate having a net income from all sources in excess of one thousand dollars (\$1,000).

(e) Every trust (not treated as a corporation under Section 23038) having a net income from all sources in excess of one hundred dollars (\$100).

(f) Every estate or trust (not treated as a corporation under Section 23038) having a gross income from all sources in excess of ten thousand dollars (\$10,000), regardless of the amount of the net income.

(g) Every decedent, for the year in which death occurred, and for prior years, if returns for those years should have been filed but have not been filed by the decedent, under the rules and regulations that the Franchise Tax Board may prescribe.

SEC. 4. Section 18505.3 is added to the Revenue and Taxation Code, to read:

18505.3. If an individual is deceased, the return of that individual required under Section 18501 shall be made by his or her executor, administrator, or other person charged with property of that decedent.

SEC. 5. Section 18507 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 18508 of the Revenue and Taxation Code is amended to read:

18508. (a) Returns of an estate, a trust, or an estate of an individual under Chapter 7 or Chapter 11 of Title 11 of the United States Code shall be made by the fiduciary thereof.

(b) Under the rules and regulations that the Franchise Tax Board may prescribe, a return made by one of two or more joint fiduciaries shall be sufficient compliance with the requirements of Section 18501. A return made pursuant to this subdivision shall contain a statement that the fiduciary has sufficient knowledge of the affairs of the person for whom the return is made to enable him or her to make the return, and that the return is, to the best of his or her knowledge and belief, true and correct.

SEC. 7. Section 18528 of the Revenue and Taxation Code is amended to read:



18528. (a) For the purposes of Sections 19057 to 19067, inclusive (relating to period of limitations upon assessment and collection), and for the purposes of Section 19131 (relating to delinquent returns), a joint return made under Section 18522 shall be deemed to have been filed as follows:

(1) Where both spouses filed separate returns prior to making the joint return, on the date the last separate return was filed (but not earlier than the last date prescribed by this part for filing the return of either spouse).

(2) Where one spouse filed a separate return prior to the making of the joint return, and the other spouse had eight thousand dollars (\$8,000) or less of adjusted gross income from all sources and ten thousand dollars (\$10,000) or less of gross income from all sources for the taxable year, on the date of the filing of the separate return (but not earlier than the last date prescribed by this part for the filing of the separate return).

(3) Where only one spouse filed a separate return prior to the making of a joint return and the other spouse had an adjusted gross income from all sources in excess of eight thousand dollars (\$8,000) or a gross income from all sources in excess of ten thousand dollars (\$10,000) for the taxable year, on the date of the filing of the joint return.

(b) For purposes of Article 1 (commencing with Section 19301) of Chapter 6, a joint return made under Section 18522 shall be deemed to have been filed on the later of the last date prescribed by this part for filing the return for the taxable year (determined without regard to any extension of time granted to either spouse) or the date the later timely filed separate return was filed.

SEC. 8. Section 18531.5 is added to the Revenue and Taxation Code, to read:

18531.5. For purposes of Section 443 of the Internal Revenue Code, where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

SEC. 9. Section 18532 of the Revenue and Taxation Code is amended to read:

18532. For the purposes of this article, each of the following shall apply:

(a) The status as husband and wife of two individuals having taxable years beginning on the same day shall be determined as follows:

(1) If both have the same taxable year, then as of the close of that year.

(2) If one dies before the close of the taxable year of the other, then as of the time of the death.



(b) An individual who is legally separated from his or her spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(c) If a joint return is made, the tax shall be computed on the aggregate income and the liability with respect to the tax shall be joint and several.

SEC. 10. Section 18547 of the Revenue and Taxation Code is amended and renumbered to read:

18628. (a) Any person required to register a tax shelter with the Secretary of the Treasury under Section 6111 of the Internal Revenue Code shall, if that tax shelter is organized in California, be required to send a duplicate of that registration information to the Franchise Tax Board not later than the day on which the first offering for sale of interests in that tax shelter occurs.

(b) Any person required to register under Section 6111 of the Internal Revenue Code who receives a tax registration number from the Secretary of the Treasury shall, within 30 days after request by the Franchise Tax Board, file a statement of that registration number.

(c) Section 6111(b) of the Internal Revenue Code, relating to inclusion of tax shelter identification numbers on returns, shall be applicable.

SEC. 11. Section 18552 of the Revenue and Taxation Code is amended and renumbered to read:

18408. The Franchise Tax Board is authorized to require that information with respect to persons subject to the taxes imposed by Article 5 (commencing with Section 18661) of Chapter 2 (relating to tax withheld at source) as is necessary or helpful in securing proper identification of those persons.

SEC. 12. Section 18631 of the Revenue and Taxation Code is amended to read:

18631. (a) This article does not apply to any payment of interest obligations not taxable under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(b) Except as otherwise provided, every person required to file an information return with the Secretary of the Treasury under any of the federal sections listed in subdivision (c) may be required to file a copy of the federal information return with the Franchise Tax Board at the time and in the manner as it may, by forms and instructions, require.

(c) Subdivision (b) shall apply to each of the following:

(1) Section 6034A of the Internal Revenue Code, relating to information to beneficiaries of estates and trusts.

(2) Section 6039 of the Internal Revenue Code, relating to information required in connection with certain options.

(3) Section 6039C of the Internal Revenue Code, relating to returns with respect to foreign persons holding direct investments in



United States real property interests, if that person holds a direct investment in a California real property as defined in Section 18662.

(4) Section 6041 of the Internal Revenue Code, relating to information at source.

(5) Section 6041A of the Internal Revenue Code, relating to returns regarding payments of remuneration for services and direct sales, except that no return or statement shall be required with respect to direct sales pursuant to Section 6041A(b) of the Internal Revenue Code.

(6) Section 6042 of the Internal Revenue Code, relating to returns regarding payments of dividends and corporate earnings and profits.

(7) Section 6045 of the Internal Revenue Code, relating to returns of brokers.

(8) Section 6049 of the Internal Revenue Code, relating to returns regarding payments of interest.

(9) Section 6050H of the Internal Revenue Code, relating to returns of mortgage interest received in trade or business from individuals.

(10) (A) Section 6050I of the Internal Revenue Code, relating to cash received in trade or business, etc., except that Section 6050I(g) of the Internal Revenue Code, relating to cash received by criminal court, shall not apply.

(B) (i) The Attorney General shall, upon court order following a showing ex parte to a magistrate of an articulable suspicion that an individual or entity has committed a felony offense to which a federal information return is related, be provided a copy of a federal information return filed with the Franchise Tax Board under this paragraph. The Attorney General may make a return or information therefrom available to a district attorney subject to regulations promulgated by the Attorney General. The regulations shall require the district attorney seeking the return or information to specify in writing the specific reasons for believing that a felony offense has been committed to which the return or information is related.

(ii) Any information or return obtained by the Attorney General or a district attorney pursuant to this subparagraph shall be confidential and used only for investigative or prosecutorial purposes.

(11) Section 6050J of the Internal Revenue Code, relating to returns of foreclosures and abandonments of security.

(12) (A) Section 6050K of the Internal Revenue Code, relating to returns of exchanges of certain partnership interests.

(B) In addition to the general requirement under subparagraph (A), a transferor of a partnership interest shall be required to notify the partnership of that exchange in accordance with Section 6050K(c) of the Internal Revenue Code.

(13) Section 6050L of the Internal Revenue Code, relating to returns of certain dispositions of donated property.



(14) Section 6050N of the Internal Revenue Code, relating to returns regarding payments of royalties.

(15) Section 6050P of the Internal Revenue Code, relating to returns of cancellation of indebtedness by certain entities.

(16) Section 6050Q of the Internal Revenue Code, relating to certain long-term care benefits.

(17) Section 6050R of the Internal Revenue Code, relating to returns of certain purchases of fish.

(18) Section 6050S of the Internal Revenue Code, relating to higher education tuition and related expenses.

(19) Section 6052 of the Internal Revenue Code, relating to returns regarding payment of wages in the form of group-term life insurance.

(d) Every person required to make a return under subdivision (b) shall also furnish a statement to each person whose name is required to be set forth in the return, as required to do so by the Internal Revenue Code.

SEC. 13. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) (1) Every partnership, on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the partners.

(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17935, on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, containing the information identified in paragraph (1). In the case of a limited partnership not doing business in this state, the Franchise Tax Board shall prescribe the manner and extent to which the information identified in paragraph (1) shall be included with the return required by this paragraph.

(b) Each partnership required to file a return under subdivision (a) for any taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for another person at any time during that taxable year a copy of the information required to be shown on that return as may be required by regulations.



(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

SEC. 14. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return on or before the fifteenth day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the limited liability company members. In the case of a limited liability company not doing business in this state, and subject to the tax imposed by subdivision (b) of Section 17941, the Franchise Tax Board shall, for returns required to be filed on or after January 1, 1998, prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable or income year shall, on or before the day on which the return for that taxable or income year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable or income year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and



taxpayer identification number of that person, and any other information for that taxable or income year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails to timely file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041, in the case of members which are individuals, estates, or trusts, and Section 23151, in the case of members which are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay the tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.



(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 10.6 (commencing with Section 17941).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf an agreement described in subdivision (e) has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001) including Section 23221 relating to the prepayment of the minimum tax to the Secretary of State.

(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (e) is not attached to the return of the limited liability company.

(3) The return required under paragraph (1) shall be filed on or before the fifteenth day of the fourth month after the close of the taxable year of the owner or on or before the fifteenth day of the third month after the close of the income year of the owner, whichever is applicable.

(4) For limited liability companies disregarded pursuant to Section 23038, "taxable or income year of the owner" shall be substituted for "taxable year" in Sections 17941 and 17942.



SEC. 15. Section 18635.5 is added to the Revenue and Taxation Code, to read:

18635.5. (a) Section 6034A of the Internal Revenue Code, relating to information to beneficiaries of estates and trusts, shall apply, except as otherwise provided.

(b) Section 6034A(a) is modified to refer to Section 18505 in lieu of Section 6012(a) of the Internal Revenue Code.

(c) Section 6034A(c)(3) is modified to refer to Section 19051 in lieu of Section 6213(b)(1) of the Internal Revenue Code.

(d) Section 6034A(c)(5) is modified to refer to Article 7 of Chapter 4 of this part in lieu of Part II of Subchapter A of Chapter 68 of the Internal Revenue Code.

SEC. 16. Section 18636 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 18637 of the Revenue and Taxation Code is repealed.

SEC. 18. Section 18638 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 18639 of the Revenue and Taxation Code is amended to read:

18639. (a) (1) In addition to those reports required under paragraph (8) of subdivision (c) of Section 18631, information returns shall be required, at the time and in the form and manner and to the extent that the Franchise Tax Board may prescribe, from both of the following:

(A) Every person who makes payments of exempt-interest dividends, as described in Section 852(b)(5) of the Internal Revenue Code, that are not exempt-interest dividends, as described in Section 17145 of the Revenue and Taxation Code, aggregating ten dollars (\$10) or more to any person, other than to any person described in paragraph (2), during any calendar year.

(B) Every person who receives payments of interest as a nominee and who makes payments aggregating ten dollars (\$10) or more during any calendar year to any other person, other than to any person described in paragraph (2), with respect to the interest so received. For purposes of this paragraph, “interest” is limited to interest on any obligation if the interest is exempt from tax under Section 103(a) of the Internal Revenue Code or if the interest is exempt from tax, without regard to the identity of the holder, under any other provision of Title 26 of the United States Code, but which is not exempt from income tax under Part 10 (commencing with Section 17001).

(2) For purposes of this subdivision, a person shall not be required to make a report pursuant to paragraph (1) if the person receiving the payment is any of the following:

(A) A corporation.



(B) An organization exempt from taxation under Section 23701 or an individual retirement plan.

(C) The United States or any wholly owned agency or instrumentality thereof.

(D) A state, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing.

(E) A foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing.

(F) An international organization or any wholly owned agency or instrumentality thereof.

(G) A foreign central bank of issue.

(H) A dealer in securities or commodities required to register under the laws of the United States or a state, the District of Columbia, or possession of the United States.

(I) A real estate investment trust, as defined in Section 856 of the Internal Revenue Code.

(J) An investment company, as defined in Section 80a-3 of the United States Code, registered at all times during the taxable year under the Investment Company Act of 1940.

(K) A common trust fund, as defined in Section 17671.

(L) Any trust that is exempt from tax under Section 664(c) of Title 15 of the Internal Revenue Code.

(b) Every person required to make a return under this section shall also furnish a statement to each person whose name is set forth in the return, as required to do so by the Internal Revenue Code.

SEC. 20. Section 18641 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 18643 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 18645 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 18647 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 19101 of the Revenue and Taxation Code is amended to read:

19101. (a) If any amount of tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), is not paid on or before the last date prescribed for payment, interest on that amount at the adjusted annual rate established under Section 19521 shall be paid for the period from that last date to the date paid.

(b) For purposes of this article, the last date prescribed for payment of the tax shall be determined under Chapter 4 (commencing with Section 19001), with the application of the following rules:



(1) The last date prescribed for payment shall be determined without regard to any extension of time for payment or any installment agreement entered into under Section 19008.

(2) The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy as provided in Article 5 (commencing with Section 19081), prior to the last date otherwise prescribed for that payment.

(3) In all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Franchise Tax Board).

(c) Except as provided in this article:

(1) Interest prescribed under this article on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part (except Article 3 (commencing with Section 19031), relating to deficiency assessments) to any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) shall be deemed also to refer to interest imposed by this article on that tax.

(2) (A) Interest shall be imposed under subdivision (a) in respect to any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under Section 19131, 19132, or 19164) only if that assessable penalty, additional amount, or addition to the tax is not paid within 15 calendar days from the date of notice and demand therefor, and in that case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(B) Interest shall be imposed under this article with respect to any addition to tax imposed by Section 19131 (relating to failure to file a return on or before the due date), Section 19132 (relating to underpayment of tax), or Section 19164 (relating to imposition of the accuracy-related penalty), for the period that:

(i) Begins on the date on which the return of the tax with respect to which that addition to tax is imposed is required to be filed (including any extensions), and

(ii) Ends on the date of payment of that addition to tax.

(3) If notice and demand is made for payment of any amount and if that amount is paid within 15 calendar days after the date of the notice and demand, interest under this article on the amount so paid shall not be imposed for the period after the date of the notice and demand.

(d) This article shall not apply to any failure to pay estimated tax required by Section 19025 or 19136.



SEC. 25. Section 19102 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 19103 of the Revenue and Taxation Code is repealed.

SEC. 27. Section 19104, as amended by Chapter 183 of the Statutes of 2000, of the Revenue and Taxation Code is amended to read:

19104. (a) The Franchise Tax Board may abate all or any part of any of the following:

(1) Any interest on a deficiency or related to a proposed deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay by an officer or employee of the Franchise Tax Board (acting in his or her official capacity) in performing a ministerial or managerial act.

(2) Any interest on a payment of any tax described in Section 19033 to the extent that any delay in that payment is attributable to an officer or employee of the Franchise Tax Board (acting in his or her official capacity) being dilatory in performing a ministerial or managerial act.

(3) Any interest accruing from a deficiency based on a final federal determination of tax, for the same period that interest was abated on the related federal deficiency amount under Section 6404(e) of the Internal Revenue Code, and the error or delay occurred on or before the issuance of the final federal determination. This subparagraph shall apply to any ministerial act for which the interest accrued after September 25, 1987, or for any managerial act applicable to a taxable or income year beginning on or after January 1, 1998, for which the Franchise Tax Board may propose an assessment or allow a claim for refund.

(b) For purposes of subdivision (a):

(1) Except as provided in paragraph (3), an error or delay shall be taken into account only if no significant aspect of that error or delay can be attributed to the taxpayer involved and after the Franchise Tax Board has contacted the taxpayer in writing with respect to that deficiency or payment.

(2) (A) Except as provided in paragraph (4), after the Franchise Tax Board mails its notice of determination not to abate interest, a taxpayer may appeal the Franchise Tax Board's determination to the State Board of Equalization within the following periods:

(i) Thirty days in the case of any unpaid interest described under subdivision (a).

(ii) Ninety days in the case of any paid interest described under subdivision (a).

(B) The State Board of Equalization shall have jurisdiction over the appeal to determine whether the Franchise Tax Board's failure to abate interest under this section was an abuse of discretion, and may order an abatement.



(C) Except for clauses (i) and (ii) of subparagraph (A), the provisions of this paragraph are operative for requests for abatement of interest made on or after January 1, 1998. The provisions of clauses (i) and (ii) of subparagraph (A) shall apply to requests for abatement of interest made on or after January 1, 2001, in accordance with subdivision (d).

(3) If the Franchise Tax Board fails to mail its notice of determination on a request to abate interest within six months after the request is filed, the taxpayer may consider that the Franchise Tax Board has determined not to abate interest and appeal that determination to the board. This paragraph shall not apply to requests for abatement of interest made pursuant to paragraph (4).

(4) A request for abatement of interest related to a proposed deficiency may be made with the written protest of the underlying proposed deficiency filed pursuant to Section 19041 or with an appeal to the board under Section 19045 in the form and manner required by the Franchise Tax Board. The action of the Franchise Tax Board denying any portion of the request for abatement of interest relating to the proposed deficiency shall be considered as part of the appeal of the action of the Franchise Tax Board on the protest of the proposed deficiency. If the taxpayer filed an appeal from the Franchise Tax Board's action on the protest of a proposed deficiency and the deficiency is final pursuant to Section 19048, the taxpayer may not thereafter request an abatement of interest accruing prior to the time the deficiency is final. However, the taxpayer may thereafter request an abatement pursuant to this section limited to interest accruing after the deficiency is final.

(c) The Franchise Tax Board shall abate the assessment of all interest on any erroneous refund for which an action for recovery is provided under Section 19411 until 30 days after the date demand for repayment is made, unless either of the following has occurred:

(1) The taxpayer (or a related party) has in any way caused that erroneous refund.

(2) That erroneous refund exceeds fifty thousand dollars (\$50,000).

(d) The amendments made to this section by the act adding this subdivision shall apply to requests for abatement of interest and appeals made on or after January 1, 2001.

(e) Except as provided in subparagraph (C) of paragraph (2) of subdivision (b), the amendments made by Chapter 600 of the Statutes of 1997 are operative with respect to taxable or income years beginning on or after January 1, 1998.

SEC. 28. Section 19105 of the Revenue and Taxation Code is amended to read:

19105. In the case of an individual or fiduciary, the Franchise Tax Board shall not assess interest charges pursuant to Section 19101 for the period between 45 days after the date of final review of an audit



determining an additional amount is owed and the date a notice of proposed deficiency assessment is sent to the taxpayer.

SEC. 29. Section 19106 of the Revenue and Taxation Code is repealed.

SEC. 30. Section 19111 of the Revenue and Taxation Code is repealed.

SEC. 31. Section 19115 of the Revenue and Taxation Code is repealed.

SEC. 32. Section 19120 is added to the Revenue and Taxation Code, to read:

19120. Any portion of any amount which has been erroneously refunded and which is recoverable by suit pursuant to Section 19411 shall bear interest at the adjusted annual rate established pursuant to Section 19521 from the date that is 30 days after the Franchise Tax Board mails a notice and demand for repayment.

SEC. 33. Section 19183 of the Revenue and Taxation Code is amended to read:

19183. (a) (1) A penalty shall be imposed for failure to file correct information returns, as required by this part, and that penalty shall be determined in accordance with Section 6721 of the Internal Revenue Code.

(2) Section 6721(e) of the Internal Revenue Code is modified to the extent that the reference to Section 6041A(b) of the Internal Revenue Code shall not apply.

(b) (1) A penalty shall be imposed for failure to furnish correct payee statements as required by this part, and that penalty shall be determined in accordance with Section 6722 of the Internal Revenue Code.

(2) Section 6722(c) of the Internal Revenue Code is modified to the extent that the references to Sections 6041A(b) and 6041A(e) of the Internal Revenue Code shall not apply.

(c) A penalty shall be imposed for failure to comply with other information reporting requirements under this part, and that penalty shall be determined in accordance with Section 6723 of the Internal Revenue Code.

(d) (1) The provisions of Section 6724 of the Internal Revenue Code relating to waiver, definitions, and special rules, shall apply, except as otherwise provided.

(2) Section 6724(d)(1) is modified as follows:

(A) The following references are substituted:

(i) Subdivision (a) of Section 18640, in lieu of Section 6044(a)(1) of the Internal Revenue Code.

(ii) Subdivision (a) of Section 18644, in lieu of Section 6050A(a) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4), 4093(e), 4101(d), 6041(b), 6041A(b), 6045(d), 6051(d), and 6053(c)(1) of the Internal Revenue Code shall not apply.



(C) The term “information return” shall also include the return required by paragraph (1) of subdivision (h) of Section 18662.

(3) Section 6724(d)(2) is modified as follows:

(A) The following references are substituted:

(i) Subdivision (b) of Section 18640, in lieu of Section 6044(e) of the Internal Revenue Code.

(ii) Subdivision (b) of Section 18644, in lieu of Section 6050A(b) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4)(B), 6031(b), 6037(b), 6041A(e), 6045(d), 6051(d), 6053(b), and 6053(c) of the Internal Revenue Code shall not apply.

(C) The term “payee statement” shall also include the statement required by paragraph (2) of subdivision (h) of Section 18662.

(e) In the case of each failure to provide a written explanation as required by Section 402(f) of the Internal Revenue Code, at the time prescribed therefor, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Franchise Tax Board and in the same manner as tax, by the person failing to provide that written explanation, an amount equal to ten dollars (\$10) for each failure, but the total amount imposed on that person for all those failures during any calendar year shall not exceed five thousand dollars (\$5,000).

(f) Any penalty imposed by this part shall be paid on notice and demand by the Franchise Tax Board and in the same manner as tax.

SEC. 34. Section 19368 is added to the Revenue and Taxation Code, to read:

19368. If the Franchise Tax Board makes or allows a refund or credit that it determines to be erroneous, in whole or in part, the amount erroneously made or allowed may be assessed and collected after notice and demand pursuant to Section 19051 (pertaining to mathematical errors), except that the rights of protest and appeal shall apply with respect to amounts assessable as deficiencies without regard to the running of any period of limitations provided elsewhere in this part. Notice and demand for repayment must be made within two years after the refund or credit was made or allowed, or during the period within which the Franchise Tax Board may mail a notice of proposed deficiency assessment, whichever period expires the later. Interest on amounts erroneously made or allowed shall not accrue until 30 days from the date the Franchise Tax Board mails a notice and demand for repayment as provided by this section.

SEC. 35. Section 19524 of the Revenue and Taxation Code is amended and renumbered to read:

18409. (a) The Franchise Tax Board shall prescribe regulations providing standards for determining which returns shall be filed on magnetic media or in other machine-readable form. The Franchise Tax Board shall not require returns of any tax imposed by Part 10 (commencing with Section 17001) on individuals, estates, and trusts



to be other than on paper forms supplied by the Franchise Tax Board. In prescribing those regulations, the Franchise Tax Board shall take into account, among other relevant factors, the ability of the taxpayer to comply at a reasonable cost with that filing requirement.

(b) (1) Subdivision (a) is applicable only to taxpayers required to file returns on magnetic media or in other machine-readable form pursuant to Section 6011(e) of the Internal Revenue Code and the regulations adopted thereto.

(2) For purposes of paragraph (1), the last sentence of Section 6011(e)(2) of the Internal Revenue Code, shall not apply.

(3) In addition, the regulations under subdivision (a) shall not require that returns filed on magnetic media or in other machine-readable form contain more information than is required to be included in similar returns filed with the Internal Revenue Service under Section 6011(e) of the United States Internal Revenue Code and the regulations adopted thereto.

(c) In lieu of the magnetic media or other machine-readable form returns required by this section, a copy of the similar magnetic media or other machine-readable form returns filed with the Internal Revenue Service pursuant to Section 6011(e) of the Internal Revenue Code, and the regulations adopted thereto, may be filed with the Franchise Tax Board.

SEC. 36. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an “S corporation,” shall not be applicable.

(b) Corporations qualifying under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1\frac{1}{2}$ percent rather than the rate specified in those sections.

(2) In the case of an “S corporation” which is also a financial corporation, the rate of tax specified in paragraph (1) shall be increased by the excess of the rate imposed under Section 23183 over the rate imposed under Section 23151.

(c) An “S corporation” shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an “S corporation” shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation had in effect a valid election to be treated as an “S corporation” for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between “C years” and “S years,” shall apply for



purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision shall not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to passthrough items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an “S corporation,” to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an “S corporation” shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b):

(1) An “S corporation” shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) The provisions of Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) The provisions of Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held “C corporations” and personal service corporations.

(B) For purposes of this paragraph, the “adjusted gross income” of the “S corporation” shall be equal to its “net income,” as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 shall not be allowed to an “S corporation.”

(g) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19101 in lieu of Section 6601 of the Internal Revenue Code.



SEC. 37. Section 23810 of the Revenue and Taxation Code is repealed.

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