

Senate Bill No. 93

CHAPTER 8

An act to amend Section 17507.6 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor April 12, 1999. Filed with
Secretary of State April 12, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 93, Chesbro. 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 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 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holding period with respect to the conversion of the Roth IRAs, certain ordering rules to determine amounts that are withdrawn in the case where a Roth IRA contains conversion amounts and other contributions, corrections of erroneous conversions and due dates pertaining to Roth IRAs,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 apply these changes to taxable years beginning on or after January 1, 1998.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 17507.6 of the Revenue and Taxation Code 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 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 the 1998 taxable year, 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. A separate election for state purposes may not be made under paragraph (3) of subdivision (e) of Section 17024.5 and the federal election shall be binding for purposes of this part.

(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 shall apply to those distributions for state purposes, 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 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 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 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 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 includable 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 includable, 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 includable 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 includable.

(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 includable 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 includable, no election under this paragraph 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 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 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 includable in gross income.

(2) Paragraph (1) shall apply only to the extent of the amount of the qualified rollover contribution includable 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 this clause shall be allocated first to the portion of the contribution required to be included in gross income.

(h) (1) Except as provided by the Secretary of the Treasury (unless the Franchise Tax Board provides otherwise), 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. 2 The amendments made to Section 17507.6 of the Revenue and Taxation Code by this act shall be operative for taxable years beginning on or after January 1, 1998.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

