

AMENDED IN SENATE APRIL 20, 1999

AMENDED IN SENATE APRIL 7, 1999

**SENATE BILL**

**No. 1222**

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**Introduced by Senator Knight**

*(Coauthor: Senator Rainey)*

*(Coauthors: Assembly Members Ackerman, Cox, House,  
and Pescetti)*

February 26, 1999

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An act to add Section 19394 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1222, as amended, Knight. Taxation: judicial relief: burden of proof.

Existing law pertaining to the administration of franchise and income tax laws prohibits the issuance of any injunction, writ of mandate, or other legal or equitable process to prevent or enjoin the assessment or collection of those taxes, but permits an action to be maintained after the tax is paid to recover the tax claimed to be illegal.

This bill would provide that if, in any court proceeding to recover the tax claimed to be illegal, a taxpayer introduces credible evidence with respect to any factual issue relevant to ascertaining the liability for that tax, the Franchise Tax Board shall have the burden of proof with respect to that issue, as specified.

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

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

1 SECTION 1. Section 19394 is added to the Revenue  
2 and Taxation Code, to read:

3 19394. (a) (1) If, in any court proceeding under  
4 Section 19381 or Section 19382, a taxpayer introduces  
5 credible evidence *that is both relevant and material* with  
6 respect to any factual issue relevant to ascertaining the  
7 liability of the taxpayer for any tax imposed by Part 10  
8 (commencing with Section 17001), Part 11 (commencing  
9 with Section 23001), or this part, the Franchise Tax Board  
10 shall have the burden of proof with respect to that issue.

11 (2) Paragraph (1) shall apply with respect to an issue  
12 only if the taxpayer has established all of the following:

13 (A) The taxpayer has complied with the requirements  
14 under Part 10 (commencing with Section 17001), Part 11  
15 (commencing with Section 23001), or this part to  
16 substantiate any item.

17 (B) The taxpayer has maintained all records required  
18 under Part 10 (commencing with Section 17001), Part 11  
19 (commencing with Section 23001), or this part and has  
20 cooperated with reasonable requests by the Franchise  
21 Tax Board for witnesses, information, documents,  
22 meetings, and interviews.

23 (C) In the case of a partnership, corporation, or trust,  
24 the taxpayer is described in Section 7430(c)(4)(A)(ii) of  
25 the Internal Revenue Code. This paragraph shall not  
26 apply to any qualified revocable trust (as defined in  
27 Section 645(b)(1) of the Internal Revenue Code) with  
28 respect to liability for tax for any taxable year ending after  
29 the date of the decedent's death and before the  
30 applicable date (as defined in Section 645(b)(2) of the  
31 Internal Revenue Code).

32 (3) (A) Paragraph (1) shall not apply to any issue if  
33 any other provision of Part 10 (commencing with Section  
34 17001), Part 10.7 (commencing with Section 21001), Part  
35 11 (commencing with Section 23001), or this part  
36 provides for a specific burden of proof with respect to that  
37 issue.



1 (B) Paragraph (1) shall not apply to any issue resulting  
2 from a change or correction by the Commissioner of  
3 Internal Revenue or other officer of the United States or  
4 other competent authority required to be reported under  
5 subdivision (a) of Section 18622.

6 (C) Paragraph (1) shall not apply to any issue  
7 contained in an amended return filed with the  
8 Commissioner of Internal Revenue required to be  
9 reported under subdivision (b) of Section 18622.

10 (D) Paragraph (1) shall not apply to any issue unless  
11 the taxpayer has exhausted all administrative remedies  
12 available to that party under this part, including the filing  
13 of an appeal as provided in Section 19045, 19324, or 19331,  
14 and the obtaining of a final determination by the board  
15 as provided in Sections 19047 and 19048, or Sections 19333  
16 and 19334, as applicable.

17 (b) In the case of an individual taxpayer, the Franchise  
18 Tax Board shall have the burden of proof in any court  
19 proceeding under Section 19381 or Section 19382 with  
20 respect to any item of income which was reconstructed  
21 by the Franchise Tax Board solely through the use of  
22 statistical information on unrelated taxpayers.

23 (c) Notwithstanding any other provision of Part 10  
24 (commencing with Section 17001), Part 10.7  
25 (commencing with Section 21001), Part 11 (commencing  
26 with Section 23001), or this part, the Franchise Tax Board  
27 shall have the burden of production in any court  
28 proceeding under Section 19381 or Section 19382 with  
29 respect to the liability of any individual for any penalty or  
30 addition to tax imposed under Article 7 of Chapter 4  
31 (commencing with Section 19131).

32 (d) (1) This section shall apply to court proceedings  
33 under Section 19381 or Section 19382 arising in  
34 connection with examinations commencing after the  
35 effective date of the act adding this section.

36 (2) In any case in which there is no examination, this  
37 section shall apply to court proceedings under Section  
38 19381 or Section 19382 arising in connection with taxable



- 1 periods beginning or events occurring after the effective
- 2 date of the act adding this section.

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