

## Senate Bill No. 1239

### CHAPTER 4

An act to amend Section 23040.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor March 15, 2000. Filed with  
Secretary of State March 15, 2000.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1239, Burton. Corporations: partnership investment income.

The Bank and Corporation Tax Law provides that income from sources in this state is generally taxable. The law exempts from taxation the distributive share of interest, dividends, and gains from the sale or exchange of qualifying investment securities derived by a corporation that is a partner in a partnership that qualifies as an investment partnership, if the income from the partnership is the only income of the corporation derived from sources in this state. This exemption does not apply if the corporation participates in the management of investment activities or is engaged in a unitary business with another corporation that meets specified qualifications.

This bill would provide that the exemption shall also apply to income, gain, or loss from stocks or securities received by an alien corporation whose sole activities in this state involve trading in those stocks or securities for the corporation's own account, with specified exceptions.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 23040.1 of the Revenue and Taxation Code is amended to read:

23040.1. (a) Notwithstanding Sections 23040 and 25101, income derived from or attributable to sources within this state shall not include:

(1) The distributive share of interest, dividends, and gains from the sale or exchange of qualifying investment securities derived by a corporation that is a partner in a partnership that qualifies as an investment partnership under Section 17955, whether or not the partnership has a usual place of business in this state, if the income from the partnership is the corporation's only income derived from or attributable to sources within this state.

(2) Income, gain, or loss from stocks or securities received by an alien corporation whose sole activities in this state involve trading in those stocks or securities for the corporation's own account within the



meaning of Section 864(b)(2)(A)(ii) of the Internal Revenue Code, whether the trading is done by the corporation or its employees or through a resident broker, commission agent, custodian, or other agent, and whether or not any such employee or agent has discretionary authority to make decisions in effecting the transactions. This paragraph does not apply to a dealer in stocks or securities.

(b) (1) Paragraph (1) of subdivision (a) shall not apply to a corporation that participates in the management of the investment activities of the investment partnership or that is engaged in a unitary business with another corporation or partnership that participates in the management of the investment activities of the partnership or has income derived from or attributable to sources within this state other than income described in paragraph (1) of subdivision (a).

(2) Paragraph (2) of subdivision (a) does not apply to an alien corporation that itself has, or that is engaged in a unitary business with another corporation that has, income derived from or attributable to sources within this state other than income described in paragraph (2) of subdivision (a).

(c) An alien corporation (other than a dealer in stocks or securities) trading in stocks or securities for its own account, as described in paragraph (2) of subdivision (a), is not doing business in this state for purposes of Chapter 2 of this part.

(d) For purposes of this section:

(1) “Alien corporation” means a corporation organized under the laws of a country, or any political subdivision thereof, other than the United States.

(2) “Dealer in stocks or securities” means a dealer in stocks or securities for purposes of Section 864(b)(2)(A)(ii) of the Internal Revenue Code.

(3) “Investment partnership” means a partnership that meets both of the following requirements:

(A) No less than 90 percent of the partnership’s cost of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, and office space and equipment reasonably necessary to carry on its activities as an investment partnership.

(B) No less than 90 percent of its gross income consists of interest, dividends, and gains from the sale or exchange of qualifying investment securities.

(4) (A) “Qualifying investment securities” include all of the following:

(i) Common stock, including preferred or debt securities convertible into common stock, and preferred stock.

(ii) Bonds, debentures, and other debt securities.

(iii) Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.



(iv) Mortgage- or asset-backed securities secured by federal, state, or local governmental agencies.

(v) Repurchase agreements and loan participations.

(vi) Foreign currency exchange contracts and forward and futures contracts on foreign currencies.

(vii) Stock and bond index securities and futures contracts, and other similar financial securities and futures contracts on those securities.

(viii) Options for the purchase or sale of any of the securities, currencies, contracts, or financial instruments described in clauses (i) to (vii), inclusive.

(ix) Regulated futures contracts.

(B) “Qualifying investment securities” does not include an interest in a partnership unless that partnership is itself an investment partnership.

(5) “Stocks or securities” has the same meaning as applies to that phrase as used in Section 864(b)(2)(A)(ii) of the Internal Revenue Code.

(e) The amendments made to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1999.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

