

**ASSEMBLY BILL**

**No. 11**

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**Introduced by Assembly Member De Leon  
(Coauthors: Assembly Members Beall, Carter, and Hill)**

December 1, 2008

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An act relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 11, as introduced, De Leon. Corporate reorganization: built-in losses.

The Corporation Tax Law, in specified conformity to federal income tax laws, imposes certain limitations on the use of built-in losses in conjunction with corporate reorganizations.

This bill would clarify that a specified federal administrative notice relating to those limitations does not apply for purposes of California law.

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. (a) The Legislature finds and declares the
- 2 following:
- 3 (1) The Personal Income Tax Law (Part 10 (commencing with
- 4 Section 17001) of Division 2 of the Revenue and Taxation Code)
- 5 and the Corporation Tax Law (Part 11 (commencing with Section
- 6 23001) of Division 2 of the Revenue and Taxation Code) provide
- 7 for specified conformity to various referenced provisions of the
- 8 federal Internal Revenue Code, as enacted as of a specified date.

1 (2) Those laws provide that for taxable years beginning on or  
2 after January 1, 2005, the conformity date specified in California  
3 law for those referenced Internal Revenue Code sections is January  
4 1, 2005, except as otherwise specifically provided.

5 (3) Included among the federal provisions conformed to as  
6 enacted as of January 1, 2005, are the provisions of Section 382  
7 of the Internal Revenue Code, relating to limitations on net  
8 operating loss carryforwards and certain built-in losses following  
9 ownership change.

10 (4) As enacted as of January 1, 2005, Section 382 of the Internal  
11 Revenue Code applied to financial institutions.

12 (5) On October 20, 2008, the Internal Revenue Service issued  
13 Notice 2008–83, 2008-42 I.R.B. 905, stating that “for purposes of  
14 section 382(h), any deduction properly allowed after an ownership  
15 change (as defined in section 382(g)) to a bank with respect to  
16 losses on loans for bad debts (including any deduction for a  
17 reasonable addition to a reserve for bad debts) shall not be treated  
18 as a built-in loss or a deduction that is attributable to periods before  
19 the change date.”

20 (6) Notice 2008–83, which precludes the application of  
21 provisions of Section 382 of the Internal Revenue Code to financial  
22 institutions, constitutes a substantive change to Section 382 of the  
23 Internal Revenue Code, as enacted as of January 1, 2005.

24 (7) This state conformed to Section 382 of the Internal Revenue  
25 Code, as enacted as of January 1, 2005, but has not conformed to  
26 any changes to Section 382 of the Internal Revenue Code set forth  
27 in Notice 2008–83.

28 (b) Inasmuch as this state has not conformed to the changes set  
29 forth in Notice 2008–83 or otherwise modified the application of  
30 Section 382 of the Internal Revenue Code for purposes of state  
31 income and corporation tax laws, the Franchise Tax Board is  
32 directed not to apply the provisions of Notice 2008–83 for purposes  
33 of the Personal Income Tax Law or the Corporation Tax Law.