

AMENDED IN ASSEMBLY APRIL 23, 2009

AMENDED IN ASSEMBLY MARCH 9, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 11

Introduced by Assembly Member De Leon
(Coauthors: Assembly Members Beall, Carter, Eng, Evans, Hill,
Jones, Lieu, and Salas)
(Coauthor: Senator DeSaulnier)

December 1, 2008

An act relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 11, as amended, 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:

(1) The Personal Income Tax Law (Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code) and the Corporation Tax Law (Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code) provide for specified conformity to various referenced provisions of the federal Internal Revenue Code, as enacted as of a specified date.

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

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

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

(5) On ~~October 20~~ *September 30*, 2008, the Internal Revenue Service issued Notice 2008-83, 2008-42 I.R.B. 905, stating that “for purposes of section 382(h), any deduction properly allowed after an ownership change (as defined in section 382(g)) to a bank with respect to losses on loans or bad debts (including any deduction for a reasonable addition to a reserve for bad debts) shall not be treated as a built-in loss or a deduction that is attributable to periods before the change date.”

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

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

(8) On February 17, 2009, President Barack Obama signed the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), which in part asserts that Internal Revenue Service Notice 2008-83 is inconsistent with the congressional intent in enacting Section 382 of the Internal Revenue Code. While questioning the legal authority of Notice 2008-83, Congress grandfathered in transactions that occurred after the Notice was issued and on or

1 before January 16, 2009, in order to protect the reliability of
2 guidance letters generally, and avoid punishing taxpayers that rely
3 on this guidance.

4 (9) California should not conform to the construction of Section
5 382 of the Internal Revenue Code as described in Notice 2008-83
6 inasmuch as the legality of that construction has been questioned
7 in federal statute.

8 ~~(b) Inasmuch as this state has not conformed to the changes set~~
9 ~~forth in Notice 2008-83 or otherwise modified the application of~~
10 ~~Section 382 of the Internal Revenue Code for purposes of state~~
11 ~~income and corporation tax laws, the Franchise Tax Board is~~
12 ~~directed not to apply the provisions of Notice 2008-83 for purposes~~
13 ~~of the Personal Income Tax Law or the Corporation Tax Law.~~

14 *(b) Inasmuch as the Legislature has determined that the changes*
15 *set forth in Notice 2008-83 are inconsistent with, and in conflict*
16 *with, the intent of the Legislature in conforming with Section 382*
17 *of the Internal Revenue Code, the Legislature makes both of the*
18 *following findings for purposes of the Personal Income Tax Law*
19 *and the Corporation Tax Law:*

20 *(1) Notice 2008-83, relating to the application of Section 382(h)*
21 *of the Internal Revenue Code to banks, and any other*
22 *administrative guidance issued by the Internal Revenue Service*
23 *after September 30, 2008, and any federal Treasury regulations*
24 *promulgated after September 30, 2008, which have the same or*
25 *similar effect regarding the application of Section 382(h) of the*
26 *Internal Revenue Code to banks, shall not apply for purposes of*
27 *the Personal Income Tax Law and the Corporation Tax Law.*

28 *(2) Paragraph (1) shall apply to the same taxable periods to*
29 *which any federal guidance described in that paragraph is*
30 *applicable.*