

ASSEMBLY BILL

No. 692

Introduced by Assembly Member Charles Calderon

February 26, 2009

An act relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 692, as introduced, Charles Calderon. Taxation: corporate reorganizations: 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.

(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, and Section 382 included no specific authority for regulatory actions by the Internal Revenue Service or the Department of the Treasury to exempt banks or other financial institutions from its provisions.

(5) On October 20, 2008, the Internal Revenue Service issued Notice 2008-83, 2008-42 I.R.B. 905, stating that “[f]or 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 for 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 the application of 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 the Legislature’s action in conforming to Section 382 of the Internal Revenue Code did not contemplate the substantive change in application of these provisions set forth in Notice 2008-83.

(b) Inasmuch as the Legislature has determined that the changes set forth in Notice 2008-83 are inconsistent with, and in conflict with, the intent of the Legislature in conforming with Section 382 of the Internal Revenue Code, the Legislature makes the following finding and directs the Franchise Tax Board to apply it for purposes of the Personal Income Tax Law and the Corporation Tax Law:

(1) Notice 2008-83, relating to application of Section 382(h) of the Internal Revenue Code to banks, and any other administrative

1 guidance issued by the Internal Revenue Service after October 20,
2 2008, and any federal Treasury regulations promulgated after
3 October 20, 2008, which have the same or similar effect regarding
4 the application of Section 382 of the Internal Revenue Code to
5 banks, shall not apply for purposes of the Personal Income Tax
6 Law and the Corporation Tax Law.

7 (2) Paragraph (1) shall apply to the same taxable periods to
8 which any federal guidance described in that subdivision is
9 applicable.

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