AMENDED IN SENATE JULY 16, 2009

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 692

Introduced by Assembly Member Charles Calderon

February 26, 2009

An act to amend Sections 17024.5 and 23051.5 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 692, as amended, Charles Calderon. ~~Taxation: corporate reorganizations: built-in losses.~~ *Income and corporation taxes: federal tax conformity.*

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~~ *Personal Income Tax Law and the Corporation Tax Law impose income and corporation taxes in specified conformity to federal income tax laws*.

This bill would clarify ~~that a specified federal administrative notice relating to those limitations does not apply for purposes of California law. This bill would also clarify~~ the applicability of specified federal income tax interpretations.

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

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

~~SECTION 1. The Legislature finds and declares the following:~~

~~(a) 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.~~

~~(b) 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.~~

~~(c) 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.~~

~~(d) 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.~~

~~(e) On September 30, 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 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."~~

~~(f) 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.~~

~~(g) 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.~~

~~(h) (1) Section 1261 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), which was signed by President Barack Obama on February 17, 2009, made the following congressional findings:~~

~~(A) The delegation of authority to the Secretary of the Treasury under Section 382(m) of the Internal Revenue Code of 1986 does not authorize the secretary to provide exemptions or special rules that are restricted to particular industries or classes of taxpayers.~~

~~(B) Internal Revenue Service Notice 2008-83 is inconsistent with the congressional intent in enacting such Section 382(m).~~

~~(C) The legal authority to prescribe Internal Revenue Service Notice 2008-83 is doubtful.~~

~~(D) However, as taxpayers should generally be able to rely on guidance issued by the Secretary of the Treasury, legislation is necessary to clarify the force and effect of Internal Revenue Service Notice 2008-83 and restore the proper application under the Internal Revenue Code of 1986 of the limitation on built-in losses following an ownership change of a bank.~~

~~(2) Based on these congressional findings, Section 1261 limits the force and effect of Internal Revenue Code Notice 2008-83 to the period commencing with the date the notice was issued and ending on January 16, 2009, as provided.~~

~~(3) The congressional findings provide additional confirmation that California did not, and should not, conform to the substantive changes to Section 382 of the Internal Revenue Code that were attempted to be made by Internal Revenue Service Notice 2008-83.~~

~~SEC. 2.~~

SECTION 1. Section 17024.5 of the Revenue and Taxation Code is amended to read:

17024.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto as enacted on the specified date for the applicable taxable year as follows:

Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986	January 1, 1986
(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988	January 1, 1987
(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989	January 1, 1989
(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990	January 1, 1990
(H) For taxable years beginning on or after January 1, 1991, and on or before December 31, 1991	January 1, 1991
(I) For taxable years beginning on or after January 1, 1992, and on or before December 31, 1992	January 1, 1992
(J) For taxable years beginning on or after January 1, 1993, and on or before December 31, 1996	January 1, 1993
(K) For taxable years beginning on or after January 1, 1997, and on or before December 31, 1997	January 1, 1997

(L) For taxable years beginning on or after January 1, 1998, and on or before December 31, 2001	January 1, 1998
(M) For taxable years beginning on or after January 1, 2002, and on or before December 31, 2004	January 1, 2001
(N) For taxable years beginning on or after January 1, 2005	January 1, 2005

(2) (A) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part shall be applicable to the same taxable years as the incorporated provisions.

(B) In the case where Section 901 of the Economic Growth and Tax Relief Act of 2001 (Public Law 107-16) applies to any provision of the Internal Revenue Code that is incorporated for purposes of this part, Section 901 of the Economic Growth and Tax Relief Act of 2001 shall apply for purposes of this part in the same manner and to the same taxable years as it applies for federal income tax purposes.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying any provision of the Internal Revenue Code for purposes of this part, a reference to any of the following is not applicable for purposes of this part:

(1) Except as provided in Chapter 4.5 (commencing with Section 23800) of Part 11 of Division 2, an electing small business corporation, as defined in Section 1361(b) of the Internal Revenue Code.

(2) Domestic international sales corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust, as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Section 911 of the Internal Revenue Code, relating to United States citizens living abroad.

(9) A foreign corporation, except that Section 367 of the Internal Revenue Code shall be applicable.

(10) Federal tax credits and carryovers of federal tax credits.

(11) Nonresident aliens.

(12) Deduction for personal exemptions, as provided in Section 151 of the Internal Revenue Code.

(13) The tax on generation-skipping transfers imposed by Section 2601 of the Internal Revenue Code.

(14) The tax, relating to estates, imposed by Section 2001 or 2101 of the Internal Revenue Code.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and Section 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(3) For each taxable year beginning on or after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) (1) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by “the secretary” shall be applicable as regulations under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(2) (A) Federal administrative guidance regarding an interpretation of a provision of the Internal Revenue Code that is applicable for purposes of this part shall be applicable as administrative guidance issued by the Franchise Tax Board under this part to the extent it does not conflict with this part or with regulations issued by the Franchise Tax Board.

(B) For purposes of this paragraph, “federal administrative guidance” means federal revenue rulings, notices, revenue procedures, announcements, and other published administrative guidance promulgated by the Commissioner of Internal Revenue or the Chief Counsel of the Internal Revenue Service, but does not include a private letter ruling or any other administrative guidance issued by the Commissioner of Internal Revenue or the Chief Counsel of the Internal Revenue Service with respect to a particular taxpayer.

(3) Unless otherwise specifically provided, final or temporary federal regulations and any federal administrative guidance shall not apply for purposes of this part prior to the applicable specified date in subdivision (a).

(4) For purposes of this subdivision, the phrase “conflict with this part” shall include, but not be limited to, any temporary or final federal regulation or any federal administrative guidance that, except as otherwise specifically provided in this part, constitutes a substantive change in federal law that is inconsistent with the statute or statutes to which such advice relates or is beyond the scope of the Secretary of the Treasury’s authority.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by “the secretary” shall be deemed to be a proper election for purposes of this part, unless otherwise provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) (A) Except as provided in subparagraph (B), in order to obtain treatment other than that elected for federal purposes, a

separate election shall be filed at the time and in the manner required by the Franchise Tax Board.

(B) (i) If a taxpayer makes a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to the tax imposed under this part or Part 11 (commencing with Section 23001), that taxpayer is deemed to have made the same election for purposes of the tax imposed by this part, Part 10.2 (commencing with Section 18401), and Part 11 (commencing with Section 23001), as applicable, and that taxpayer may not make a separate election for California tax purposes unless that separate election is expressly authorized by this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), or by regulations issued by the Franchise Tax Board.

(ii) If a taxpayer has not made a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to tax under this part or Part 11 (commencing with Section 23001), that taxpayer may not make a separate California election for purposes of this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), unless that separate election is expressly authorized by this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), or by regulations issued by the Franchise Tax Board.

(iii) This subparagraph applies only to the extent that the provisions of the Internal Revenue Code or the regulation issued by “the secretary” authorizing an election for federal income tax purposes apply for purposes of this part, Part 10.2 (commencing with Section 18401) or Part 11 (commencing with Section 23001).

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall be applicable with respect to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) References to “adjusted gross income” shall mean the amount computed in accordance with Section 17072, except as provided in paragraph (2).

(2) (A) Except as provided in subparagraph (B), references to "adjusted gross income" for purposes of computing limitations based upon adjusted gross income, shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year.

(B) In the case of registered domestic partners and former registered domestic partners, adjusted gross income, for the purposes of computing limitations based upon adjusted gross income, shall mean the adjusted gross income on a federal tax return computed as if the registered domestic partner or former registered domestic partner was treated as a spouse or former spouse, respectively, for federal income tax purposes, and used the same filing status that was used on the state tax return for the same taxable year.

(3) Any reference to "subtitle" or "chapter" shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

~~SEC. 3.~~

SEC. 2. Section 23051.5 of the Revenue and Taxation Code is amended to read:

23051.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto, as enacted on the specified date for the applicable taxable year as defined in paragraph (1) of subdivision (a) of Section 17024.5.

(2) (A) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part, shall be applicable to the same taxable years as the incorporated provisions.

(B) In the case where Section 901 of the Economic Growth and Tax Relief Act of 2001 (Public Law 107-16) applies to any provision of the Internal Revenue Code that is incorporated for purposes of this part, Section 901 of the Economic Growth and Tax Relief Act of 2001 (Public Law 107-16) shall apply for purposes of this part in the same manner and to the same taxable years as it applies for federal income tax purposes.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying the Internal Revenue Code for purposes of this part, a reference to any of the following is not applicable for purposes of this part:

(1) Domestic International Sales Corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(2) Foreign Sales Corporations (FSC), as defined in Section 922(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Federal tax credits and carryovers of federal tax credits.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and Section 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, is not applicable for taxable years beginning before January 1, 1987.

(3) For taxable years beginning on and after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) (1) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by "the secretary" shall be applicable as regulations issued under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(2) (A) Federal administrative guidance regarding an interpretation of a provision of the Internal Revenue Code that is applicable for purposes of this part shall be applicable as administrative guidance issued by the Franchise Tax Board under this part to the extent it does not conflict with this part or with regulations issued by the Franchise Tax Board.

(B) For purposes of this paragraph, "federal administrative guidance" means federal revenue rulings, notices, revenue procedures, announcements, and other published administrative guidance promulgated by the Commissioner of Internal Revenue or the Chief Counsel of the Internal Revenue Service, but does not include a private letter ruling or any other administrative guidance issued by the Commissioner of Internal Revenue or the Chief Counsel of the Internal Revenue Service with respect to a particular taxpayer.

(3) Unless otherwise specifically provided, final or temporary federal regulations and any federal administrative guidance shall not apply for purposes of this part prior to the applicable specified date in subdivision (a).

(4) For purposes of this subdivision, the phrase "conflict with this part" shall include, but not be limited to, any temporary or final federal regulation or any federal administrative guidance that,

except as otherwise specifically provided in this part, constitutes a substantive change in federal law that is inconsistent with the statute or statutes to which such advice relates or is beyond the scope of the Secretary of the Treasury's authority.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise expressly provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) (A) Except as provided in subparagraph (B), in order to obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board at the time and in the manner that may be required by the Franchise Tax Board.

(B) (i) If a taxpayer makes a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to the tax imposed under this part or Part 10 (commencing with Section 17001), that taxpayer is deemed to have made the same election for purposes of the tax imposed by this part, Part 10 (commencing with Section 17001), and Part 10.2 (commencing with Section 18401), as applicable, and that taxpayer may not make a separate election for California tax purposes unless that separate election is expressly authorized by this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401), or by regulations issued by the Franchise Tax Board.

(ii) If a taxpayer has not made a proper election for federal income tax purposes prior to the time that taxpayer becomes subject to tax under this part or Part 10 (commencing with Section 17001), that taxpayer may not make a separate California election for purposes of this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401), unless that separate election is expressly authorized by this part, Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), or by regulations issued by the Franchise Tax Board.

(iii) This subparagraph applies only to the extent that the provisions of the Internal Revenue Code or regulations issued by "the secretary" authorizing an election for federal income tax purposes apply for purposes of this part, Part 10 (commencing with Section 17001), or Part 10.2 (commencing with Section 18401).

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall apply to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) For purposes of Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), and Chapter 3 (commencing with Section 23501), the term "taxable income" shall mean "net income."

(2) For purposes of Article 2 (commencing with Section 23731) of Chapter 4, the term "taxable income" shall mean "unrelated business taxable income," as defined by Section 23732.

(3) Any reference to "subtitle," "Chapter 1," or "chapter" shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(8) Any provision of the Internal Revenue Code that refers to a "corporation" shall, when applicable for purposes of this part, include a "bank," as defined by Section 23039.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

O