AMENDED IN SENATE JUNE 30, 2009

AMENDED IN ASSEMBLY MAY 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1546

Introduced by Committee on Revenue and Taxation (Charles Calderon (Chair), Beall, Coto, Ma, Portantino, and Saldana)

March 5, 2009

An act to amend Section 15902.09 of the Corporations Code, and to amend Sections ~~19136.1 and 19591~~ *17054, 19136, 19136.1, 19136.8, 19591, 25128, and 25128.5* of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1546, as amended, Committee on Revenue and Taxation. Taxation: limited partnerships: *income tax:* estimated ~~payments.~~ *payments: dependent exemption credit: corporation tax apportionment.*

~~Existing~~

(1) The Personal Income Tax Law and the Corporation Tax Law impose a penalty for underpayment of estimated income tax. Existing law provides for a credit based on taxes withheld on wages, in modified conformity with federal income tax laws, against the estimated tax payments, including a provision that "an equal part" of that amount is deemed paid on each due date for a taxable year.

This bill would substitute "the applicable percentage," as defined, for "an equal part" under this provision, as provided.

This bill would also make technical, nonsubstantive changes to provisions of personal and corporation income tax laws relating to penalties, dependent exemption credit, and apportionment of income.

(2) Existing law sets forth rules of organization and governance for limited partnerships. Current law allows a canceled domestic limited partnership to revive by accompanying a certificate of revival, filed with the Secretary of State, with specified information confirmed by the Franchise Tax Board, including confirmation that all taxes owed by the partnership have been paid to the Franchise Tax Board.

This bill would require the partnership, on or after January 1, 2010, to accompany the certificate of revival with written confirmation, obtained from the Franchise Tax Board, that all required tax returns have been filed by the partnership. This bill would further authorize the Franchise Tax Board to assess a specialized tax service fee of $100 for a limited partnership revival confirmation letter request, until January 1, 2011, after which the amount of the fee shall be set by regulation.

Existing income tax laws require specified individuals to pay estimated income taxes in installments and impose additional liability for underpayments.

This bill would adjust the amount of those installments under specified circumstances.

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

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

SECTION 1. Section 15902.09 of the Corporations Code is amended to read:

15902.09. (a) A domestic limited partnership whose certificate of limited partnership has been canceled pursuant to Section 15902.03 may be revived by filing with, and on a form prescribed by, the Secretary of State a certificate of revival. The certificate of revival shall be accompanied by written confirmation by the Franchise Tax Board that all of the following have occurred:

(1) All of the following have been paid to the Franchise Tax Board:

(A) The annual tax due under Section 17935 of the Revenue and Taxation Code.

(B) All fees and penalties, and interest thereof, for each year for which the domestic limited partnership failed to pay such annual tax, including each year between the cancellation of its certificate of limited partnership and its revival.

(2) All required tax returns have been filed, including returns for each taxable year between the cancellation of its certificate of limited partnership and its revival.

(b) The certificate of revival shall set forth all of the following:

(1) The name of the limited partnership at the time its certificate of limited partnership was ~~cancelled~~ *canceled*, and if the name is not available at the time of revival, the name under which the limited partnership is to be revived.

(2) The date of filing of the original certificate of limited partnership.

(3) The address of the limited partnership's designated office.

(4) The name and address of the initial agent for service of process in accordance with paragraph (1) of subdivision (d) of Section 15901.16.

(5) A statement that the certificate of revival is filed by one or more general partners of the limited partnership authorized to execute and file the certificate of revival to revive the limited partnership.

(6) The Secretary of State's file number for the original limited partnership.

(7) The name and address of each general partner.

(8) Any other matters the general partner or partners executing the certificate of revival determine to include therein.

(c) The certificate of revival should be deemed to be an amendment to the certificate of limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership pursuant to Section 15902.02 with respect to the matter set forth in the certificate of revival.

(d) Upon the filing of the certificate of revival, the limited partnership shall be revived with the same force and effect as if the certificate of limited partnership had not been canceled pursuant to Section 15902.03. The revival shall validate all contracts, acts, matters, and things made, done, and performed by the limited partnership, its partners, employees, and agents following the time its certificate of limited partnership was canceled pursuant to Section 15902.03 with the same force and effect and all intents and purposes as if the certificate of limited partnership had remained in full force and effect. This provision shall apply provided that third parties are relying on the acts of the partnership, its partners, employees, and agents. All real and personal property, and all rights and interests, that belong to a limited partnership at the time its certificate of limited partnership was ~~cancelled~~ *canceled* pursuant to Section 15902.03 or that were acquired by the limited partnership following the cancellation of the certificate of limited partnership, that were not disposed of prior to the time of its revival, shall be vested in the limited partnership after its revival as fully as if they were held by the limited partnership at, and during the time after, as the case may be, the time the certificate of limited partnership was ~~cancelled~~ *canceled*. After its revival, the limited partnership and its partners shall have all of the same liability for contracts, acts, matters, and things made, done, or performed in the limited partnership's name and on behalf of its partners, employees, and agents, as the limited partnership and its partners would have had if the limited partnership's certificate of limited partnership had at all times remained in full force and effect.

(e) The amendments made to this section by the act adding this subdivision shall apply to written confirmations made by the Franchise Tax Board on or after January 1, 2010.

SEC. 2. Section 17054 of the Revenue and Taxation Code is amended to read:

17054. In the case of individuals, the following credits for personal exemption may be deducted from the tax imposed under Section 17041 or 17048, less any increases imposed under paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e), or both, of Section 17560.

(a) In the case of a single individual, a head of household, or a married individual making a separate return, a credit of fifty-two dollars ($52).

(b) In the case of a surviving spouse (as defined in Section 17046), or a husband and wife making a joint return, a credit of one hundred four dollars ($104). If one spouse was a resident for the entire taxable year and the other spouse was a nonresident for all or any portion of the taxable year, the personal exemption shall be divided equally.

(c) In addition to any other credit provided in this section, in the case of an individual who is 65 years of age or over by the end of the taxable year, a credit of fifty-two dollars ($52).

(d) (1) A credit of two hundred twenty-seven dollars ($227) for each dependent (as defined in Section 17056) for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code, relating to additional exemption for dependents. The credit allowed under this subdivision for taxable years beginning on or after January 1, 1999, shall not be adjusted pursuant to subdivision (i) for any taxable year beginning before January 1, 2000.

(2) The credit allowed under paragraph (1) may not be denied on the basis that the identification number of the dependent, as defined in Section 17056, for whom an exemption is allowable under Section 151(c) of the Internal Revenue Code, relating to additional exemption for dependents, is not included on the return claiming the credit.

(3) (A) For taxable years beginning on or after January 1, 2009, the credit allowed under paragraph (1) for each dependent shall be equal to the credit allowed under subdivision (a). This subparagraph shall cease to be operative ~~on~~ *for taxable years beginning on or after* January 1, 2011, unless the Director of Finance makes the notification pursuant to Section 99040 of the Government Code, in which case this subparagraph shall cease to be operative ~~on~~ *for taxable years beginning on or after* January 1, 2013.

(B) ~~Commencing on the date~~ *For taxable years* that subparagraph (A) ceases to be operative, the credit allowed under paragraph (1) for each dependent shall be equal to the amount that would be allowed if subparagraph (A) had never been operative.

(e) A credit for personal exemption of fifty-two dollars ($52) for the taxpayer if he or she is blind at the end of his or her taxable year.

(f) A credit for personal exemption of fifty-two dollars ($52) for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(g) For the purposes of this section, an individual is blind only if either (1) his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or (2) his or her visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

(h) In the case of an individual with respect to whom a credit under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the credit amount applicable to that individual for that individual's taxable year is zero.

(i) For each taxable year beginning on or after January 1, 1989, the Franchise Tax Board shall compute the credits prescribed in this section. That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall add 100 percent to the percentage change figure which is furnished to them pursuant to paragraph (1), and divide the result by 100.

(3) The Franchise Tax Board shall multiply the immediately preceding taxable year credits by the inflation adjustment factor determined in paragraph (2), and round off the resulting products to the nearest one dollar ($1).

(4) In computing the credits pursuant to this subdivision, the credit provided in subdivision (b) shall be twice the credit provided in subdivision (a).

SEC. 3. Section 19136 of the Revenue and Taxation Code is amended to read:

19136. (a) Section 6654 of the Internal Revenue Code, relating to failure by an individual to pay estimated income tax, shall apply, except as otherwise provided.

(b) Section 6654(a)(1) of the Internal Revenue Code is modified to refer to the rate determined under Section 19521 in lieu of Section 6621 of the Internal Revenue Code.

(c) (1) Section 6654(e)(1) of the Internal Revenue Code, relating to exceptions where the tax is a small amount, does not apply.

(2) No addition to the tax shall be imposed under this section if the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, or the tax computed

under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, is less than five hundred dollars ($500), except in the case of a separate return filed by a married person the amount shall be less than two hundred fifty dollars ($250).

(d) Section 6654(f) of the Internal Revenue Code does not apply and for purposes of this section the term "tax" means the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 less any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, other than the credit provided by subdivision (a) of Section 19002.

(e) *(1)* The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, shall be the credit allowed under subdivision (a) of Section 19002.

(2) (A) Section 6654(g)(1) of the Internal Revenue Code is modified by substituting the phrase "the applicable percentage" for the phrase "an equal part."

(B) For purposes of this paragraph, "applicable percentage" means the percentage amount prescribed under Section 6654(d)(1)(A) of the Internal Revenue Code, as modified by paragraph (1) of subdivision (a) of Section 19136.1.

(f) This section shall apply to a nonresident individual.

(g) (1) No addition to tax shall be imposed under this section to the extent that the underpayment was created or increased by any provision of law that is chaptered during and operative for the taxable year of the underpayment.

(2) Notwithstanding Section 18415, this section applies to penalties imposed under this section on and after January 1, 2005.

(h) The amendments made to this section by ~~the act adding this subdivision~~ *Section 5 of Chapter 305 of the Statutes of 2008* shall apply to taxable years beginning on or after January 1, 2009.

(i) The amendment made to this section by the act adding this subdivision shall apply to amounts withheld on wages beginning on or after January 1, 2009.

~~SEC. 2.~~

SEC. 4. Section 19136.1 of the Revenue and Taxation Code is amended to read:

19136.1. (a) (1) Section 6654(d)(1)(A) of the Internal Revenue Code is modified to provide that in lieu of the required installments specified in that section, the amount of required installments shall instead be as follows:

(A) For the 1st and 2nd required installments, 30 percent of the required annual payment.

(B) For the 3rd and 4th required installments, 20 percent of the required annual payment.

(2) Section 6654(d)(2)(C)(ii) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting “27” for “22.5,” “54” for “45,” and “72” for “67.5.”

(b) This section, including paragraph (2) of subdivision (a), shall apply to installments due for each taxable year beginning on or after January 1, 2009.

SEC. 5. Section 19136.8 of the Revenue and Taxation Code, as added by Section 5 of Chapter 10 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

~~19136.8. (a) No addition to tax shall be made under Section 19136 with respect to any underpayment of an installment to the extent that the underpayment was created or increased by the disallowance of a credit under subdivision (f) of Section 17053.80.~~

~~(b) No addition to tax shall be made under Section 19142 with respect to any underpayment of an installment to the extent that the underpayment was created or increased by the disallowance of a credit under subdivision (f) of Section 23623.~~

~~(c) The Franchise Tax Board shall adopt procedures, forms, and instructions necessary to implement this section in a reasonable manner.~~

SEC. 6. Section 19136.8 of the Revenue and Taxation Code, as added by Section 5 of Chapter 17 of the 3rd Extraordinary Session of the Statutes of 2009, is amended to read:

19136.8. (a) No addition to tax shall be made under Section 19136 with respect to any underpayment of an installment to the extent that the underpayment was created or increased by the disallowance of a credit under subdivision ~~(f)~~ *(g)* of Section 17053.80.

(b) No addition to tax shall be made under Section 19142 with respect to any underpayment of an installment to the extent that the underpayment was created or increased by the disallowance of a credit under subdivision ~~(f)~~ *(g)* of Section 23623.

(c) The Franchise Tax Board shall adopt procedures, forms, and instructions necessary to implement this section in a reasonable manner.

~~SEC. 3.~~

SEC. 7. Section 19591 of the Revenue and Taxation Code is amended to read:

19591. (a) Specialized tax services fees shall be imposed upon the following services provided by the board:

(1) Installment payment programs.

(2) Expedited services for:

(A) Corporation revivor requests.

(B) Tax clearance certificate requests.

(C) Tax-exempt status requests.

(D) Limited partnership revival confirmation letter requests.

(b) (1) For periods on or after the effective date of this section and prior to January 1, 2006, the Franchise Tax Board shall publish by notice a schedule of specialized tax services fees to be imposed, which notice shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The amounts of these fees under this paragraph shall be calculated in the same general manner as required under paragraph (2).

(2) Commencing on January 1, 2006, the amount of the specialized tax services fees shall be established by the board through regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be established in the manner and in the amounts necessary to reimburse the board for the costs of administering the specialized services, including the board's direct and indirect costs for providing specialized tax services.

(3) For periods on or after the effective date of this section, and prior to January 1, 2011, the amount of the specialized tax service fee for limited partnership revival confirmation letter requests shall be one hundred dollars ($100). Commencing on January 1, 2011, the special tax service fee for limited partnership revival confirmation letter requests shall be calculated in the same general matter as required under paragraph (2).

SEC. 8. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) Notwithstanding Section 38006, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).

(b) If an apportioning trade or business derives more than 50 percent of its "gross business receipts" from conducting one or more qualified business activities, all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(c) For purposes of this section, a "qualified business activity" means the following:

(1) An agricultural business activity.

(2) An extractive business activity.

(3) A savings and loan activity.

(4) A banking or financial business activity.

(d) For purposes of this section:

(1) "Gross business receipts" means gross receipts described in subdivision (e) *or (f)* of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and apportionment factors are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110), whether or not the receipts are excluded from the sales factor by operation of Section 25137.

(2) "Agricultural business activity" means activities relating to any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch, nursery, or range. "Agricultural business activity" also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(3) "Extractive business activity" means activities relating to the production, refining, or processing of oil, natural gas, or mineral ore.

(4) "Savings and loan activity" means any activities performed by savings and loan associations or savings banks which have been chartered by federal or state law.

(5) "Banking or financial business activity" means activities attributable to dealings in money or moneyed capital in substantial competition with the business of national banks.

(6) "Apportioning trade or business" means a distinct trade or business whose business income is required to be apportioned under Sections 25101 and 25120, limited, if applicable, by Section 25110, using the same denominator for each of the applicable payroll, property, and sales factors.

(7) Paragraph (4) of subdivision (c) shall apply only if the Franchise Tax Board adopts the Proposed Multistate Tax Commission Formula for the Uniform Apportionment of Net Income from Financial Institutions, or its substantial equivalent, and shall become operative upon the same operative date as the adopted formula.

(8) In any case where the income and apportionment factors of two or more savings associations or corporations are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110, both of the following shall apply:

(A) The application of the more than 50 percent test of subdivision (b) shall be made with respect to the "gross business receipts" of the entire apportioning trade or business of the group.

(B) The entire business income of the group shall be apportioned in accordance with either subdivision (a) or (b), *or subdivision (b) of Section 25128.5,* as applicable.

SEC. 9. Section 25128.5 of the Revenue and Taxation Code, as added by Section 11 of Chapter 10 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

~~25128.5. (a) Notwithstanding Section 38006, any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board to apportion its income in accordance with this section, and not in accordance with Section 25128.~~

~~(b) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, all business income shall be apportioned to this state by multiplying the business income by the sales factor.~~

~~(c) The Franchise Tax Board is authorized to issue regulations necessary or appropriate regarding the making of an election under this section, including regulations that are consistent with rules prescribed for making an election under Section 25113.~~

SEC. 10. Section 25128.5 of the Revenue and Taxation Code, as added by Section 11 of Chapter 17 of the 3rd Extraordinary Session of the Statutes of 2009, is amended to read:

25128.5. (a) Notwithstanding Section 38006, *for taxable years beginning on or after January 1, 2011,* any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board to apportion its income in accordance with this section, and not in accordance with Section 25128.

(b) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, all business income *of an apportioning trade or business making an election described in subdivision (a)* shall be apportioned to this state by multiplying the business income by the sales factor.

(c) The Franchise Tax Board is authorized to issue regulations necessary or appropriate regarding the making of an election under this section, including regulations that are consistent with rules prescribed for making an election under Section 25113.

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