

AMENDED IN SENATE AUGUST 17, 2009

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 17054, ~~19136, 19136.1, 19136.8, 19591, 25128, and 25128.5 of 19591, and 25128 of~~, and to amend and repeal Sections ~~19136.8 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:~~ dependent exemption credit: corporation tax apportionment.

(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 various taxes, and provide for various credits and penalties and for apportionment of income.

~~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~~ *would* 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:

1 SECTION 1. Section 15902.09 of the Corporations Code is
2 amended to read:
3 15902.09. (a) A domestic limited partnership whose certificate
4 of limited partnership has been canceled pursuant to Section
5 15902.03 may be revived by filing with, and on a form prescribed
6 by, the Secretary of State a certificate of revival. The certificate
7 of revival shall be accompanied by written confirmation by the
8 Franchise Tax Board that all of the following have occurred:
9 (1) All of the following have been paid to the Franchise Tax
10 Board:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (d) Upon the filing of the certificate of revival, the limited
36 partnership shall be revived with the same force and effect as if
37 the certificate of limited partnership had not been canceled pursuant
38 to Section 15902.03. The revival shall validate all contracts, acts,
39 matters, and things made, done, and performed by the limited
40 partnership, its partners, employees, and agents following the time

1 its certificate of limited partnership was canceled pursuant to
2 Section 15902.03 with the same force and effect and all intents
3 and purposes as if the certificate of limited partnership had
4 remained in full force and effect. This provision shall apply
5 provided that third parties are relying on the acts of the partnership,
6 its partners, employees, and agents. All real and personal property,
7 and all rights and interests, that belong to a limited partnership at
8 the time its certificate of limited partnership was canceled pursuant
9 to Section 15902.03 or that were acquired by the limited
10 partnership following the cancellation of the certificate of limited
11 partnership, that were not disposed of prior to the time of its
12 revival, shall be vested in the limited partnership after its revival
13 as fully as if they were held by the limited partnership at, and
14 during the time after, as the case may be, the time the certificate
15 of limited partnership was canceled. After its revival, the limited
16 partnership and its partners shall have all of the same liability for
17 contracts, acts, matters, and things made, done, or performed in
18 the limited partnership's name and on behalf of its partners,
19 employees, and agents, as the limited partnership and its partners
20 would have had if the limited partnership's certificate of limited
21 partnership had at all times remained in full force and effect.

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

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

27 17054. In the case of individuals, the following credits for
28 personal exemption may be deducted from the tax imposed under
29 Section 17041 or 17048, less any increases imposed under
30 paragraph (1) of subdivision (d) or paragraph (1) of subdivision
31 (e), or both, of Section 17560.

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

35 (b) In the case of a surviving spouse (as defined in Section
36 17046), or a husband and wife making a joint return, a credit of
37 one hundred four dollars (\$104). If one spouse was a resident for
38 the entire taxable year and the other spouse was a nonresident for
39 all or any portion of the taxable year, the personal exemption shall
40 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 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 for taxable years beginning on or after January 1, 2013.

(B) 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

1 acuity is greater than 20/200 but is accompanied by a limitation
2 in the fields of vision such that the widest diameter of the visual
3 field subtends an angle no greater than 20 degrees.

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

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

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

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

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

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

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

29 ~~19136. (a) Section 6654 of the Internal Revenue Code, relating~~
30 ~~to failure by an individual to pay estimated income tax, shall apply,~~
31 ~~except as otherwise provided.~~

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

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

37 ~~(2) No addition to the tax shall be imposed under this section~~
38 ~~if the tax imposed under Section 17041 or 17048 and the tax~~
39 ~~imposed under Section 17062 for the preceding taxable year, minus~~
40 ~~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 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. 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

1 specified in that section, the amount of required installments shall
2 instead be as follows:

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

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

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

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

13 ~~SEC. 5.~~

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

17 ~~SEC. 6.~~

18 *SEC. 4.* Section 19136.8 of the Revenue and Taxation Code,
19 as added by Section 5 of Chapter 17 of the 3rd Extraordinary
20 Session of the Statutes of 2009, is amended to read:

21 19136.8. (a) No addition to tax shall be made under Section
22 19136 with respect to any underpayment of an installment to the
23 extent that the underpayment was created or increased by the
24 disallowance of a credit under subdivision (g) of Section 17053.80.

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

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

32 ~~SEC. 7.~~

33 *SEC. 5.* Section 19591 of the Revenue and Taxation Code is
34 amended to read:

35 19591. (a) Specialized tax services fees shall be imposed upon
36 the following services provided by the board:

37 (1) Installment payment programs.

38 (2) Expedited services for:

39 (A) Corporation revivor requests.

40 (B) Tax clearance certificate requests.

1 (C) Tax-exempt status requests.

2 (D) Limited partnership revival confirmation letter requests.

3 (b) (1) For periods on or after the effective date of this section
4 and prior to January 1, 2006, the Franchise Tax Board shall publish
5 by notice a schedule of specialized tax services fees to be imposed,
6 which notice shall be exempt from the requirements of Chapter
7 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
8 Title 2 of the Government Code. The amounts of these fees under
9 this paragraph shall be calculated in the same general manner as
10 required under paragraph (2).

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

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

26 ~~SEC. 8.~~

27 *SEC. 6.* Section 25128 of the Revenue and Taxation Code is
28 amended to read:

29 25128. (a) Notwithstanding Section 38006, all business income
30 shall be apportioned to this state by multiplying the business
31 income by a fraction, the numerator of which is the property factor
32 plus the payroll factor plus twice the sales factor, and the
33 denominator of which is four, except as provided in subdivision
34 (b) or (c).

35 (b) If an apportioning trade or business derives more than 50
36 percent of its "gross business receipts" from conducting one or
37 more qualified business activities, all business income of the
38 apportioning trade or business shall be apportioned to this state by
39 multiplying business income by a fraction, the numerator of which

1 is the property factor plus the payroll factor plus the sales factor,
2 and the denominator of which is three.

3 (c) For purposes of this section, a “qualified business activity”
4 means the following:

5 (1) An agricultural business activity.

6 (2) An extractive business activity.

7 (3) A savings and loan activity.

8 (4) A banking or financial business activity.

9 (d) For purposes of this section:

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

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

29 (3) “Extractive business activity” means activities relating to
30 the production, refining, or processing of oil, natural gas, or mineral
31 ore.

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

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

38 (6) “Apportioning trade or business” means a distinct trade or
39 business whose business income is required to be apportioned
40 under Sections 25101 and 25120, limited, if applicable, by Section

1 25110, using the same denominator for each of the applicable
2 payroll, property, and sales factors.

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

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

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

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

19 ~~SEC. 9.~~

20 *SEC. 7.* Section 25128.5 of the Revenue and Taxation Code,
21 as added by Section 11 of Chapter 10 of the 3rd Extraordinary
22 Session of the Statutes of 2009, is repealed.

23 ~~SEC. 10.~~

24 *SEC. 8.* Section 25128.5 of the Revenue and Taxation Code,
25 as added by Section 11 of Chapter 17 of the 3rd Extraordinary
26 Session of the Statutes of 2009, is amended to read:

27 25128.5. (a) Notwithstanding Section 38006, for taxable years
28 beginning on or after January 1, 2011, any apportioning trade or
29 business, other than an apportioning trade or business described
30 in subdivision (b) of Section 25128, may make an irrevocable
31 annual election on an original timely filed return, in the manner
32 and form prescribed by the Franchise Tax Board to apportion its
33 income in accordance with this section, and not in accordance with
34 Section 25128.

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

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