

AMENDED IN ASSEMBLY SEPTEMBER 8, 2011

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

CALIFORNIA LEGISLATURE—2011–12 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 40

**Introduced by Assembly Member Allen Members Fuentes and
Fletcher
(Coauthors: Assembly Members Allen, Blumenfield, Feuer, Ma, and
Smyth)**

August 29, 2011

~~An act to amend Sections 23101 and 25128 of, to amend and repeal Section 25128.5 of, to amend and repeal Section 25136 of, to add Sections 6377, 25128.7, 25136.1, and 25136.2 to, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to amend Sections 17062, 23101, 23151, 23153, and 25128 of, to amend and repeal Section 25128.5 of, to amend, repeal, and add Sections 17073.5 and 25136 of, and to add Sections 6377, 17137, 25128.7, and 25136.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, ~~Allen Fuentes~~. Income taxes: ~~hire credit: single sales factor: sales and use taxes: manufacturing exemption: exclusions: deductions: sales: single sales factor: sales and use taxes: manufacturing exemption.~~

(1) *The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in*

this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

On and after March 1, 2012, this bill would provide partial exemptions equal to specified percentages of state sales and use taxes imposed at a combined rate of 5% for the sale of, and the storage, use, or other consumption in this state of, tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of tangible personal property; in research and development; to maintain, repair, measure, or test specified tangible personal property; and by a contractor for use in a construction contract with a qualified person, as specified. The bill would require the Franchise Tax Board and the State Board of Equalization to provide specified information to the Director of Finance and would require the director to make certain determinations regarding whether this act has caused or will cause a net increase or decrease in the amount of revenues and to correspondingly increase or decrease the exemption to certain taxpayers that received only a limited exemption, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.

This bill would specify that this exemption does not apply to local sales and use taxes and transactions and use taxes.

(2) The Personal Income Tax Law imposes taxes based upon taxable income. That law also allows specified credits, exemptions, and exclusions, and imposes an alternative minimum tax with respect to certain items of tax preferences.

This bill would, for taxable years beginning on or after January 1, 2012, exclude from taxable income under this law an amount equal to 10% of the business income of a taxpayer, not to exceed \$5,000, as specified, but would require the amount excluded to be included as an item of tax preferences for purposes of the alternative minimum tax.

(3) The Personal Income Tax Law allows a standard deduction, as defined, in computing the income subject to tax.

This bill would, for taxable years beginning on or after January 1, 2012, increase the standard deduction by 27%, as specified.

(4) The Corporation Tax Law imposes taxes measured by income at a rate of 8.84%, as specified. The Corporation Tax Law imposes a minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and a tax in an amount equal to the minimum franchise tax on every limited liability company registered, qualified to transact business, or doing business in this state, as specified.

This bill would, for taxable years beginning on and after January 1, 2012, reduce that rate to 8.34% on the amount of net income that is less than or equal to \$50,000 for the taxable year, except as specified. The bill would reduce the annual minimum franchise tax to \$750 for taxable years beginning on or after January 1, 2012.

(5) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning on or after January 1, 2012, revise the rules which determine whether a taxpayer is doing business within this state, revise the provisions which determine whether specific sales occur in this state, and require a taxpayer, except as provided, to apportion its income in accordance with a single sales factor.

(6) This bill would include a change in state statute that would result in a taxpayer paying a higher tax the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for

passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

(7) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(8) This bill would take effect immediately as a tax levy.

~~(1) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.~~

~~On and after January 1, 2012, this bill would provide partial exemptions equal to specified percentages of state sales and use taxes imposed at a combined rate of 5% for the sale of, and the storage, use, or other consumption in this state, of tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of tangible personal property; in research and development; to maintain, repair, measure, or test specified tangible personal property; and by a contractor for use in a construction contract with a qualified person, as specified.~~

~~The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.~~

~~This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.~~

~~(2) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer, until a cut-off date on which a maximum cumulative credit of \$400,000,000 has been reached for all taxable years. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.~~

~~This bill would, under both laws, for taxable years beginning on or after January 1, 2012, and before January 1, 2014, authorize a credit in the amount of \$4,000 for each full-time employee, as specified, and expand the definition of “qualified employer” to mean a taxpayer that employed 50 or fewer employees as of the last day of the preceding taxable year. This bill would also provide that the credit, under both laws, would be repealed as of December 31, 2014.~~

~~(3) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.~~

~~This bill would, for taxable years beginning on or after January 1, 2012, revise the rules which determine whether a taxpayer is doing business within this state, revise the provisions which determine whether specific sales occur in this state, and require a taxpayer, except as provided, to apportion its income in accordance with a single sales factor.~~

~~(4) This bill would include a change in state statute that would result in a taxpayer paying a higher tax the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.~~

~~(5) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.~~

~~This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.~~

~~(6) This bill would take effect immediately as a tax levy.~~

Vote: $\frac{2}{3}$. 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 6377 is added to the Revenue and
2 Taxation Code, to read:
3 6377. (a) (1) Except as provided in subdivision (e), on and
4 after March 1, 2012, there are exempted from 78 $\frac{3}{4}$ percent of the
5 taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 the
6 gross receipts from the sale of, and the storage, use, or other
7 consumption in this state of, any of the following:
8 (A) Tangible personal property purchased for use by a qualified
9 person to be used primarily in any stage of the manufacturing,
10 processing, refining, fabricating, or recycling of tangible personal
11 property, beginning at the point any raw materials are received
12 by the qualified person and introduced into the process and ending
13 at the point at which the manufacturing, processing, refining,
14 fabricating, or recycling has altered the tangible personal property
15 to its completed form, including packaging, if required.
16 (B) Tangible personal property purchased for use by a qualified
17 person to be used primarily in research and development.
18 (C) Tangible personal property purchased for use by a qualified
19 person to be used primarily to maintain, repair, measure, or test
20 any tangible personal property described in subparagraph (A) or
21 (B).
22 (D) Tangible personal property purchased by a contractor for
23 use in the performance of a construction contract for a qualified

1 person that will use the tangible personal property as an integral
2 part of the manufacturing, processing, refining, fabricating, or
3 recycling process, or as a research or storage facility for use in
4 connection with the manufacturing process.

5 (2) The exemption established by this section shall not apply to
6 the gross receipts from the sale of, or the storage, use, or other
7 consumption of, any of the following:

8 (A) Tangible personal property that is used primarily in
9 administration, general management, or marketing.

10 (B) Consumables with a useful life of less than one year.

11 (C) Furniture, inventory, equipment used in the extraction
12 process, or equipment used to store finished products that have
13 completed the manufacturing process.

14 (b) For purposes of this section:

15 (1) "Acquire" includes any gift, inheritance, transfer incident
16 to divorce, or any other transfer, whether or not for consideration.

17 (2) "Fabricating" means to make, build, create, produce, or
18 assemble components of tangible personal property to work in a
19 new or different manner.

20 (3) "Manufacturing" means the activity of converting or
21 conditioning tangible personal property by changing the form,
22 composition, quality, or character of the tangible personal property
23 for ultimate sale at retail or use in the manufacturing of a product
24 to be ultimately sold at retail. Manufacturing includes any
25 improvements to tangible personal property that result in a greater
26 service life or greater functionality than that of the original
27 tangible personal property. Manufacturing includes the generation
28 of electricity.

29 (4) "Primarily" means 50 percent or more of the time. For
30 purposes of subdivision (a), "primarily" means tangible personal
31 property used 50 percent or more of the time in an activity
32 described in subdivision (a).

33 (5) "Process" means the period beginning at the point at which
34 any raw materials are received by the qualified person and
35 introduced into the manufacturing, processing, refining,
36 fabricating, or recycling activity of the qualified person and ending
37 at the point at which the manufacturing, processing, refining,
38 fabricating, or recycling activity of the qualified person has altered
39 tangible personal property to its completed form, including
40 packaging, if required. Raw materials shall be considered to have

1 *been introduced into the process when the raw materials are stored*
2 *on the same premises where the qualified person's manufacturing,*
3 *processing, refining, fabricating, or recycling activity is conducted.*
4 *Raw materials that are stored on premises other than where the*
5 *qualified person's manufacturing, processing, refining, fabricating,*
6 *or recycling activity is conducted, shall not be considered to have*
7 *been introduced into the manufacturing, processing, refining,*
8 *fabricating, or recycling process.*

9 (6) "Processing" means the physical application of the materials
10 and labor necessary to modify or change the characteristics of
11 tangible personal property.

12 (7) "Qualified person" means a person that is either of the
13 following:

14 (A) A new trade or business that is primarily engaged in those
15 lines of business classified in Industry Groups 3111 to 3399,
16 inclusive, Industry Group 5112, NAICS Industry 221119, or NAICS
17 Industry 541711 of the North American Industry Classification
18 System (NAICS) published by the United States Office of
19 Management and Budget (OMB), 2007 edition. In determining
20 whether a trade or business activity qualifies as a new trade or
21 business, the following rules shall apply:

22 (i) In any case where a person purchases or otherwise acquires
23 all or any portion of the assets of an existing trade or business
24 (irrespective of the form of entity) that is doing business in this
25 state (within the meaning of Chapter 2 (commencing with Section
26 23101) of Part 11), the trade or business thereafter conducted by
27 that person (or any related person) shall not be treated as a new
28 business if the aggregate fair market value of the acquired assets
29 (including, real, personal, tangible, and intangible property) used
30 by that person (or any related person) in the conduct of its trade
31 or business exceeds 20 percent of the aggregate fair market value
32 of the total assets of the trade or business being conducted by the
33 person (or any related person). For purposes of this subparagraph
34 only, the following rules shall apply:

35 (I) The determination of the relative fair market values of the
36 acquired assets and the total assets shall be made as of the last
37 day of the month following the quarterly period in which the person
38 (or any related person) first uses any of the acquired trade or
39 business assets in its business activity.

(II) Any acquired assets that constituted property described in Section 1221(a) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(a) of the Internal Revenue Code in the hands of the acquiring person (or related person).

(ii) In any case where a person (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (prior trade or business activity), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different Industry Group (4-digit) of the NAICS published by the United States OMB, 2007 edition, than are any of the person's (or any related person's) current or prior trade or business activities in this state.

(iii) In any case where a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of Chapter 2 (commencing with Section 23101) of Part 11) on or after March 1, 2012, (other than by purchase or other acquisition described in clause (i)), the trade or business activity shall be treated as a new business.

(iv) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the person as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of clause (i).

(v) A qualified person shall not be regarded as a new trade or business when the qualified person has conducted business activities in a new trade or business for 36 months or more.

(B) A trade or business, other than a new trade or business described in subparagraph (A), that is primarily engaged in those lines of business classified in Industry Groups 3111 to 3399, inclusive, Industry Group 5112, NAICS Industry 221119, or NAICS Industry 541711 of the NAICS published by the United States OMB, 2007 edition.

(8) “Qualified person” shall not include a person that is a member of a combined reporting group that is required to apportion its income pursuant to subdivision (b) of Section 25128 as that section read on January 1, 2011. For purposes of this paragraph, a person is a member of a combined reporting group if its tax liability or net income for purposes of Part 11 (commencing with Section 23001) is determined by a combined report pursuant to Section 25101 or 25110, or is an entity included in the combined report. For purposes of the preceding sentence, “member” has the same meaning as that term is defined in paragraph (10) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations as that paragraph read on January 1, 2011, and “combined reporting group” has the same meaning as that term is defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations as that paragraph read on January 1, 2011.

(9) “Refining” means the process of converting a natural resource to an intermediate or finished product.

(10) “Related person” means any person that is related to another person under either Section 267 or 318 of the Internal Revenue Code.

(11) “Research and development” means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(12) “Tangible personal property” includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the qualified person or another person.

(C) Tangible personal property used in pollution control that meets or exceeds standards established by this state or any local or regional governmental agency within this state.

1 (D) Special purpose buildings and foundations used as an
2 integral part of the manufacturing, processing, refining, or
3 fabricating process, or that constitute a research or storage facility
4 used during the manufacturing process. Buildings used solely for
5 warehousing purposes after completion of the manufacturing
6 process are not included.

7 (E) Tangible personal property used in recycling.

8 (13) "Useful life" for tangible personal property that a qualified
9 person treats as having a useful life of one or more years for state
10 income or franchise tax purposes shall be deemed to have a useful
11 life of one or more years for purposes of this section. Useful life
12 for tangible personal property that a qualified person treats as
13 having a useful life of less than one year for state income or
14 franchise tax purposes shall be deemed to have a useful life of less
15 than one year for purposes of this section.

16 (c) An exemption shall not be allowed under this section unless
17 the purchaser furnishes the retailer with an exemption certificate,
18 completed in accordance with any instructions or regulations as
19 the board may prescribe, and the retailer retains the exemption
20 certificate in its records. The exemption certificate shall contain
21 the sales price of the tangible personal property, the sale of, or
22 the storage, use, or other consumption of which is exempt pursuant
23 to subdivision (a) and shall be furnished to the board upon request.

24 (d) Notwithstanding subdivision (a), the exemption established
25 by this section shall not apply with respect to any tax levied by a
26 county, city, city and county, or district pursuant to, or in
27 accordance with, the Bradley-Burns Uniform Local Sales and Use
28 Tax Law (Part 1.5 (commencing with Section 7200)) or the
29 Transactions and Use Tax Law (Part 1.6 (commencing with Section
30 7251)).

31 (e) Notwithstanding subdivision (a), on and after March 1, 2012,
32 for a qualified person described in subparagraph (B) of paragraph
33 (7) of subdivision (b), or for a contractor performing a construction
34 contract as described in subparagraph (D) of paragraph (1) of
35 subdivision (a), the exemption established by this section shall
36 apply only with respect to 20 percent of the tax levied by Sections
37 6051, 6051.3, 6201, and 6201.3.

38 (f) Notwithstanding subdivision (a), the exemption provided by
39 this section shall not apply to any sale or use of tangible personal
40 property which, within one year from the date of purchase, is either

1 removed from California or converted from an exempt use under
2 subdivision (a) to some other use not qualifying for the exemption.

3 (g) If a purchaser certifies in writing to the seller that the
4 tangible personal property purchased without payment of the tax
5 will be used in a manner entitling the seller to regard the gross
6 receipts from the sale as exempt from the sales tax pursuant to this
7 section, and within one year from the date of purchase, the
8 purchaser (1) removes that tangible personal property outside
9 California, (2) converts that tangible personal property for use in
10 a manner not qualifying for the exemption, or (3) uses that tangible
11 personal property in a manner not qualifying for the exemption,
12 the purchaser shall be liable for payment of sales tax, with
13 applicable interest, as if the purchaser were a retailer making a
14 retail sale of the tangible personal property at the time the tangible
15 personal property is so removed, converted, or used, and the sales
16 price of the tangible personal property to the purchaser shall be
17 deemed the gross receipts from that retail sale.

18 (h) The exemption established by this section shall apply to a
19 lease of tangible personal property classified as a “continuing
20 sale” or “continuing purchase” in accordance with Section 6006.1
21 or 6010.1, and to the rentals payable pursuant to such a lease,
22 provided the lessee is a qualified person and the tangible personal
23 property is used in an activity described in subdivision (a).

24 (i) At the time necessary information technologies and electronic
25 data warehousing capabilities of the board are sufficiently
26 established, the board shall determine an efficient means by which
27 qualified persons may electronically apply for, and receive, an
28 exemption certificate that contains information that would assist
29 them in complying with this part with respect to the exemption
30 established by this section.

31 (j) Notwithstanding subdivision (e), beginning on July 1, 2015,
32 the percentage of the tax rate specified in subdivision (e) shall be
33 adjusted, as follows:

34 (1) The following reports shall be made to the Director of
35 Finance pursuant to a time schedule prescribed by the director:

36 (A) The Franchise Tax Board shall report the estimated increase
37 or decrease in revenues for the 2012-13 fiscal year as the result
38 of the amendment, addition, or repeal of Sections 17062, 17073.5,
39 17137, 23101, 23151, 23153, 25128, 25128.5, 25128.7, 25136,
40 and 25136.1 by the act adding this section.

(B) The State Board of Equalization shall report the estimated annualized decrease in revenues for the 2012-13 fiscal year, by the act adding this section.

(2) The Director of Finance shall, on or before January 1, 2015, based on the estimates provided pursuant to paragraph (1) and any other available information, adjust the percentage of the tax rate specified in subdivision (e) in such a manner so that the act adding this section and all provisions described in subparagraph (A) of paragraph (1) do not result in a net gain or loss in state tax revenues for the 2015–16 fiscal year.

(3) The provisions of this subdivision are severable. If any provision of this subdivision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

1 (ii) For any taxable year beginning on or after January 1, 1996,
2 and before January 1, 2009, 7 percent.

3 (iii) For taxable years beginning on and after January 1, 2009,
4 and before January 1, 2011, 7.25 percent.

5 (iv) For any taxable year beginning on or after January 1, 2011,
6 7 percent.

7 (B) In the case of a nonresident or part-year resident, the
8 tentative minimum tax shall be computed by multiplying the
9 alternative minimum taxable income of the nonresident or part-year
10 resident, as defined in subparagraph (C), by a rate (expressed as
11 a percentage) equal to the tax computed under subdivision (b) on
12 the alternative minimum taxable income of the nonresident or
13 part-year resident as if the nonresident or part-year resident were
14 a resident of this state for the taxable year and as if the nonresident
15 or part-year resident were a resident of this state for all prior taxable
16 years for any carryover items, deferred income, suspended losses,
17 or suspended deductions, divided by the amount of that income.

18 (C) For purposes of this section, the term “alternative minimum
19 taxable income of a nonresident or part-year resident” includes
20 each of the following:

21 (i) For any period during which the taxpayer was a resident of
22 this state (as defined by Section 17014), all items of alternative
23 minimum taxable income (as modified for purposes of this chapter),
24 regardless of source.

25 (ii) For any period during which the taxpayer was not a resident
26 of this state, alternative minimum taxable income (as modified for
27 purposes of this chapter) which were derived from sources within
28 this state, determined in accordance with Article 9 of Chapter 3
29 (commencing with Section 17301) and Chapter 11 (commencing
30 with Section 17951).

31 (iii) For purposes of computing “alternative minimum taxable
32 income of a nonresident or part-year resident,” any carryover items,
33 deferred income, suspended losses, or suspended deductions shall
34 only be allowable to the extent that the carryover item, suspended
35 loss, or suspended deduction was derived from sources within this
36 state.

37 (4) The provisions of Section 55(b)(2) of the Internal Revenue
38 Code, relating to alternative minimum taxable income, shall be
39 modified to provide that alternative minimum taxable income shall

1 not include the income, adjustments, and items of tax preference
2 attributable to any trade or business of a qualified taxpayer.

3 (A) For purposes of this paragraph, “qualified taxpayer” means
4 a taxpayer who meets both of the following:

5 (i) Is the owner of, or has an ownership interest in, a trade or
6 business.

7 (ii) Has aggregate gross receipts, less returns and allowances,
8 of less than one million dollars (\$1,000,000) during the taxable
9 year from all trades or businesses of which the taxpayer is the
10 owner or has an ownership interest, in the amount of that taxpayer’s
11 proportionate interest in each trade or business.

12 (B) For purposes of this paragraph, “aggregate gross receipts,
13 less returns and allowances” means the sum of the gross receipts
14 of the trades or businesses that the taxpayer owns and the
15 proportionate interest of the gross receipts of the trades or
16 businesses that the taxpayer owns and of pass-through entities in
17 which the taxpayer holds an interest.

18 (C) For purposes of this paragraph, “gross receipts, less returns
19 and allowances” means the sum of the gross receipts from the
20 production of business income, as defined in subdivision (a) of
21 Section 25120, and the gross receipts from the production of
22 nonbusiness income, as defined in subdivision (d) of Section
23 25120.

24 (D) For purposes of this paragraph, “proportionate interest”
25 means:

26 (i) In the case of a pass-through entity that reports a profit for
27 the taxable year, the taxpayer’s profit interest in the entity at the
28 end of the taxpayer’s taxable year.

29 (ii) In the case of a pass-through entity that reports a loss for
30 the taxable year, the taxpayer’s loss interest in the entity at the end
31 of the taxpayer’s taxable year.

32 (iii) In the case of a pass-through entity that is sold or liquidates
33 during the taxable year, the taxpayer’s capital account interest in
34 the entity at the time of the sale or liquidation.

35 (E) (i) For purposes of this paragraph, “proportionate interest”
36 includes an interest in a pass-through entity.

37 (ii) For purposes of this paragraph, “pass-through entity” means
38 any of the following:

39 (I) A partnership, as defined by Section 17008.

1 (II) An “S” corporation, as provided in Chapter 4.5
2 (commencing with Section 23800) of Part 11.

3 (III) A regulated investment company, as provided in Section
4 24871.

5 (IV) A real estate investment trust, as provided in Section 24872.

6 (V) A real estate mortgage investment conduit, as provided in
7 Section 24874.

8 (5) For taxable years beginning on or after January 1, 1998,
9 Section 55(d)(1) of the Internal Revenue Code, relating to
10 exemption amount for taxpayers other than corporations is
11 modified, for purposes of this part, to provide the following
12 exemption amounts in lieu of those contained therein:

13 (A) Fifty-seven thousand two hundred sixty dollars (\$57,260)
14 in the case of either of the following:

15 (i) A joint return.

16 (ii) A surviving spouse.

17 (B) Forty-two thousand nine hundred forty-five dollars (\$42,945)
18 in the case of an individual who is both of the following:

19 (i) Not a married individual.

20 (ii) Not a surviving spouse.

21 (C) Twenty-eight thousand six hundred thirty dollars (\$28,630)
22 in the case of either of the following:

23 (i) A married individual who files a separate return.

24 (ii) An estate or trust.

25 (6) For taxable years beginning on or after January 1, 1998,
26 Section 55(d)(3) of the Internal Revenue Code, relating to phaseout
27 of exemption amount, is modified, for purposes of this part, to
28 provide the following phaseout of exemption amounts in lieu of
29 those contained therein:

30 (A) Two hundred fourteen thousand seven hundred twenty-five
31 dollars (\$214,725) in the case of a taxpayer described in
32 subparagraph (A) of paragraph (5).

33 (B) One hundred sixty-one thousand forty-four dollars
34 (\$161,044) in the case of a taxpayer described in subparagraph
35 (B) of paragraph (5).

36 (C) One hundred seven thousand three hundred sixty-two dollars
37 (\$107,362) in the case of a taxpayer described in subparagraph
38 (C) of paragraph (5).

39 (7) For each taxable year beginning on or after January 1, 1999,
40 the Franchise Tax Board shall recompute the exemption amounts

prescribed in paragraph (5) and the phaseout of exemption amounts prescribed in paragraph (6). Those computations shall be made as follows:

(A) 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.

(B) The Franchise Tax Board shall do both of the following:

(i) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to subparagraph (A) and dividing the result by 100.

(ii) Multiply the preceding taxable year exemption amounts and the phaseout of exemption amounts by the inflation adjustment factor determined in clause (i) and round off the resulting products to the nearest one dollar (\$1).

(c) (1) (A) Section 56(a)(6) of the Internal Revenue Code as in effect on January 1, 1997, relating to installment sales of certain property, shall not apply to payments received in taxable years beginning on or after January 1, 1997, with respect to dispositions occurring in taxable years beginning after December 31, 1987.

(B) This paragraph shall not apply to taxable years beginning on or after January 1, 1998.

(2) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(3) Section 56(b)(3) of the Internal Revenue Code, relating to treatment of incentive stock options, shall be modified to additionally provide the following:

(A) Section 421 of the Internal Revenue Code shall not apply to the transfer of stock acquired pursuant to the exercise of a California qualified stock option under Section 17502.

(B) Section 422(c)(2) of the Internal Revenue Code shall apply in any case where the disposition and inclusion of a California qualified stock option for purposes of this chapter are within the same taxable year and that section shall not apply in any other case.

(C) The adjusted basis of any stock acquired by the exercise of a California qualified stock option shall be determined on the basis of the treatment prescribed by this paragraph.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) Section 57(a) of the Internal Revenue Code is modified to include as an item of tax preference an amount equal to ~~one-half~~:

(1) *The amount excluded from gross income for the taxable year under Section 17137.*

(2) *One-half of the amount excluded from gross income for the taxable year under Section 18152.5.*

(3) *The amendments to this subdivision by the act adding this paragraph shall apply to taxable years beginning on or after January 1, 2012.*

(f) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

(g) The provisions of Section 56(d)(3), relating to net operating loss attributable to federally declared disasters, shall not apply.

SEC. 3. Section 17073.5 of the Revenue and Taxation Code is amended to read:

17073.5. (a) A taxpayer may elect to take a standard deduction as follows:

(1) In the case of a taxpayer, other than a head of a household or a surviving spouse (as defined in Section 17046) or a married couple filing a joint return, the standard deduction shall be one thousand eight hundred eighty dollars (\$1,880).

(2) In the case of a head of household or a surviving spouse (as defined in Section 17046) or a married couple filing a joint return, the standard deduction shall be three thousand seven hundred sixty dollars (\$3,760).

(b) The standard deduction provided for in subdivision (a) shall be in lieu of all deductions other than those which are to be subtracted from gross income in computing adjusted gross income under Section 17072.

(c) (1) The provisions of this section shall be applied in lieu of the provisions of Sections 63(c) and 63(f) of the Internal Revenue Code, relating to standard deductions.

(2) Notwithstanding paragraph (1), Section 63(c)(5) of the Internal Revenue Code, relating to limitations on the standard

deduction of certain dependents, and Section 63(c)(6) of the Internal Revenue Code, relating to certain individuals not eligible for the standard deduction, shall apply, except as otherwise provided. For purposes of this paragraph, the amount specified in Section 63(c)(5) of the Internal Revenue Code shall be adjusted for inflation in accordance with the provisions of Section 63(c)(4) of the Internal Revenue Code.

(d) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the standard deduction amounts prescribed in subdivision (a). 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 compute an inflation adjustment factor by adding 100 percent to that portion of the percentage change figure which is furnished pursuant to paragraph (1) and dividing the result by 100.

(3) The Franchise Tax Board shall multiply the standard deduction amounts in the preceding taxable year 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 standard deduction amounts pursuant to this subdivision, the amount provided in paragraph (2) of subdivision (a) shall be twice the amount provided in paragraph (1) of subdivision (a).

(e) *This section shall remain in effect only until January 1, 2012, and as of that date is repealed.*

SEC. 4. Section 17073.5 is added to the Revenue and Taxation Code, to read:

17073.5. (a) For taxable years beginning on or after January 1, 2012, a taxpayer may elect to take a standard deduction as follows:

(1) In the case of a taxpayer, other than a head of a household or a surviving spouse (as defined in Section 17046) or a married couple filing a joint return, the standard deduction shall be one thousand eight hundred eighty dollars (\$1,880).

1 (2) In the case of a head of household or a surviving spouse (as
2 defined in Section 17046) or a married couple filing a joint return,
3 the standard deduction shall be three thousand seven hundred
4 sixty dollars (\$3,760).

5 (b) The standard deduction provided for in subdivision (a) shall
6 be in lieu of all deductions other than those which are to be
7 subtracted from gross income in computing adjusted gross income
8 under Section 17072.

9 (c) (1) The provisions of this section shall be applied in lieu of
10 the provisions of Sections 63(c) and 63(f) of the Internal Revenue
11 Code, relating to standard deductions.

12 (2) Notwithstanding paragraph (1), Section 63(c)(5) of the
13 Internal Revenue Code, relating to limitations on the standard
14 deduction of certain dependents, and Section 63(c)(6) of the Internal
15 Revenue Code, relating to certain individuals not eligible for the
16 standard deduction, shall apply, except as otherwise provided.
17 For purposes of this paragraph, the amount specified in Section
18 63(c)(5) of the Internal Revenue Code shall be adjusted for
19 inflation in accordance with the provisions of Section 63(c)(4) of
20 the Internal Revenue Code.

21 (d) For each taxable year beginning on or after January 1,
22 1988, the Franchise Tax Board shall recompute the standard
23 deduction amounts prescribed in subdivision (a). That computation
24 shall be made as follows:

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

30 (2) The Franchise Tax Board shall compute an inflation
31 adjustment factor by adding 100 percent to that portion of the
32 percentage change figure which is furnished pursuant to paragraph
33 (1) and dividing the result by 100.

34 (3) The Franchise Tax Board shall multiply the standard
35 deduction amounts in the preceding taxable year by the inflation
36 adjustment factor determined in paragraph (2), and round off the
37 resulting products to the nearest one dollar (\$1).

38 (4) In computing the standard deduction amounts pursuant to
39 this subdivision, the amount provided in paragraph (2) of

subdivision (a) shall be twice the amount provided in paragraph (1) of subdivision (a).

(e) For each taxable year beginning on or after January 1, 2012, the standard deduction allowed by this section shall be increased by 27 percent of the amount that would otherwise have been allowed prior to the addition of this section by the act adding this subdivision.

SEC. 5. Section 17137 is added to the Revenue and Taxation Code, to read:

17137. (a) For taxable years beginning on or after January 1, 2012, gross income shall not include an amount equal to 10 percent of the business income of a taxpayer.

(b) For purposes of this section:

(1) "Business income of a taxpayer" means income from a trade or business, whether conducted by the taxpayer or by a passthrough entity in which the taxpayer is a partner or shareholder.

(2) "Passthrough entity" means a partnership or an "S" corporation.

(c) In the case of a passthrough entity, the amount of business income under this section attributable to a partner or shareholder shall be treated as a "separately stated item" within the meaning of Sections 702 and 1366 of the Internal Revenue Code, respectively.

(d) The maximum amount that may be excluded from the gross income of any taxpayer pursuant to this section for any taxable year is five thousand dollars (\$5,000).

(e) In the case of a husband and wife who file separate returns (including spouses and registered domestic partners), the exclusion under this section may be taken by either or equally divided between them, and the limitation under subdivision (d) shall be an aggregate five thousand dollars \$(5,000) for both returns.

SEC. 6. Section 23101 of the Revenue and Taxation Code is amended to read:

23101. (a) "Doing business" means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(b) For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following conditions has been satisfied:

1 (1) The taxpayer is organized or commercially domiciled in this
2 state.

3 (2) Sales, as defined in subdivision (e) or (f) of Section 25120
4 as applicable for the taxable year, of the taxpayer in this state
5 exceed the lesser of five hundred thousand dollars (\$500,000) or
6 25 percent of the taxpayer's total sales. For purposes of this
7 paragraph, sales of the taxpayer include sales by an agent or
8 independent contractor of the taxpayer. For purposes of this
9 paragraph, sales in this state shall be determined using the rules
10 for assigning sales under ~~Section~~ Sections 25135 and ~~subdivision~~
11 ~~(b) of Section~~ 25136, and the regulations thereunder, as modified
12 by regulations under Section 25137.

13 (3) The real property and tangible personal property of the
14 taxpayer in this state exceed the lesser of fifty thousand dollars
15 (\$50,000) or 25 percent of the taxpayer's total real property and
16 tangible personal property. The value of real and tangible personal
17 property and the determination of whether property is in this state
18 shall be determined using the rules contained in Sections 25129
19 to 25131, inclusive, and the regulations thereunder, as modified
20 by regulation under Section 25137.

21 (4) The amount paid in this state by the taxpayer for
22 compensation, as defined in subdivision (c) of Section 25120,
23 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent
24 of the total compensation paid by the taxpayer. Compensation in
25 this state shall be determined using the rules for assigning payroll
26 contained in Section 25133 and the regulations thereunder, as
27 modified by regulations under Section 25137.

28 (c) (1) The Franchise Tax Board shall annually revise the
29 amounts in paragraphs (2), (3), and (4) of subdivision (b) in
30 accordance with subdivision (h) of Section 17041.

31 (2) For purposes of the adjustment required by paragraph (1),
32 subdivision (h) of Section 17041 shall be applied by substituting
33 "2012" in lieu of "1988."

34 (d) The sales, property, and payroll of the taxpayer include the
35 taxpayer's pro rata or distributive share of pass-through entities.
36 For purposes of this subdivision, "pass-through entities" means a
37 partnership or an "S" corporation.

38 *SEC. 7. Section 23151 of the Revenue and Taxation Code is*
39 *amended to read:*

23151. (a) With the exception of banks and financial corporations, every corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the Constitution of this state or by this part, shall annually pay to the state, for the privilege of exercising its corporate franchises within this state, a tax according to or measured by its net income, to be computed at the rate of 7.6 percent upon the basis of its net income for the next preceding income year, or if greater, the minimum tax specified in Section 23153.

(b) For calendar or fiscal years ending after June 30, 1973, the rate of tax shall be 9 percent instead of 7.6 percent as provided by subdivision (a).

(c) For calendar or fiscal years ending in 1980 to 1986, inclusive, the rate of tax shall be 9.6 percent.

(d) For calendar or fiscal years ending in 1987 to 1996, inclusive, and for any income year beginning before January 1, 1997, the tax rate shall be 9.3 percent.

(e) ~~For~~ *Except as provided in subdivision (g), for any income year beginning on or after January 1, 1997, the tax rate shall be 8.84 percent. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.*

(f) (1) For the first taxable year beginning on or after January 1, 2000, the tax imposed under this section shall be the sum of both of the following:

(A) A tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for the next preceding income year, but not less than the minimum tax specified in Section 23153.

(B) A tax according to or measured by net income, to be computed at the rate of 8.84 percent upon the basis of the net income for the first taxable year beginning on or after January 1, 2000, but not less than the minimum tax specified in Section 23153.

(2) Except as provided in paragraph (1), for taxable years beginning on or after January 1, 2000, the tax imposed under this section shall be a tax according to or measured by net income, to be computed at the rate of 8.84 percent *or, for taxable years beginning on or after January 1, 2012, the rates specified in subdivision (g),* upon the basis of the net income for that taxable year, but not less than the minimum tax specified in Section 23153.

(g) (1) Notwithstanding subdivision (e), for any taxable year beginning on or after January 1, 2012, the rate of tax shall be:

(A) Eight and thirty-four hundredths percent on the amount of net income that is less than or equal to fifty thousand dollars (\$50,000) for the taxable year.

(B) Eight and eighty-four hundredths percent on the amount of net income that is in excess of fifty thousand dollars (\$50,000) for the taxable year.

(2) The change in rate provided in this subdivision shall be made without any proration otherwise required by Section 24251.

(3) This subdivision shall not apply to any taxpayer whose income and apportionment factor data are permitted or required to be included in a combined report under Chapter 17 (commencing with Section 25101).

SEC. 8. Section 23153 of the Revenue and Taxation Code is amended to read:

23153. (a) Every corporation described in subdivision (b) shall be subject to the minimum franchise tax specified in subdivision (d) from the earlier of the date of incorporation, qualification, or commencing to do business within this state, until the effective date of dissolution or withdrawal as provided in Section 23331 or, if later, the date the corporation ceases to do business within the limits of this state.

(b) Unless expressly exempted by this part or the California Constitution, subdivision (a) shall apply to each of the following:

(1) Every corporation that is incorporated under the laws of this state.

(2) Every corporation that is qualified to transact intrastate business in this state pursuant to Chapter 21 (commencing with Section 2100) of Division 1 of Title 1 of the Corporations Code.

(3) Every corporation that is doing business in this state.

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

(2) Nonprofit cooperative associations organized pursuant to Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code that have been issued the certificate of the board of supervisors prepared pursuant to Section 54042 of the Food and Agricultural Code. The association shall be exempt from the minimum franchise tax for five consecutive taxable years,

commencing with the first taxable year for which the certificate is issued pursuant to subdivision (b) of Section 54042 of the Food and Agricultural Code. This paragraph only applies to nonprofit cooperative associations organized on or after January 1, 1994.

(d) (1) Except as provided in paragraph (2), paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of ~~eight hundred dollars (\$800)~~:

(A) *Eight hundred dollars (\$800) for taxable years beginning before January 1, 2012.*

(B) *Seven hundred fifty dollars (\$750) for taxable years beginning on or after January 1, 2012.*

(2) The minimum franchise tax shall be twenty-five dollars (\$25) for each of the following:

(A) A corporation formed under the laws of this state whose principal business when formed was gold mining, which is inactive and has not done business within the limits of the state since 1950.

(B) A corporation formed under the laws of this state whose principal business when formed was quicksilver mining, which is inactive and has not done business within the limits of the state since 1971, or has been inactive for a period of 24 consecutive months or more.

(3) For purposes of paragraph (2), a corporation shall not be considered to have done business if it engages in other than mining.

(e) Notwithstanding subdivision (a), for taxable years beginning on or after January 1, 1999, and before January 1, 2000, every “qualified new corporation” shall pay annually to the state a minimum franchise tax of five hundred dollars (\$500) for the second taxable year. This subdivision shall apply to any corporation that is a qualified new corporation and is incorporated on or after January 1, 1999, and before January 1, 2000.

(1) The determination of the gross receipts of a corporation, for purposes of this subdivision, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the corporation is a member.

(2) “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120,

1 and the gross receipts from the production of nonbusiness income,
2 as defined in subdivision (d) of Section 25120.

3 (3) “Qualified new corporation” means a corporation that is
4 incorporated under the laws of this state or has qualified to transact
5 intrastate business in this state, that begins business operations at
6 or after the time of its incorporation and that reasonably estimates
7 that it will have gross receipts, less returns and allowances,
8 reportable to this state for the taxable year of one million dollars
9 (\$1,000,000) or less. “Qualified new corporation” does not include
10 any corporation that began business operations as a sole
11 proprietorship, a partnership, or any other form of business entity
12 prior to its incorporation. This subdivision shall not apply to any
13 corporation that reorganizes solely for the purpose of reducing its
14 minimum franchise tax.

15 (4) This subdivision shall not apply to limited partnerships, as
16 defined in Section 17935, limited liability companies, as defined
17 in Section 17941, limited liability partnerships, as defined in
18 Section 17948, charitable organizations, as described in Section
19 23703, regulated investment companies, as defined in Section 851
20 of the Internal Revenue Code, real estate investment trusts, as
21 defined in Section 856 of the Internal Revenue Code, real estate
22 mortgage investment conduits, as defined in Section 860D of the
23 Internal Revenue Code, qualified Subchapter S subsidiaries, as
24 defined in Section 1361(b)(3) of the Internal Revenue Code, or to
25 the formation of any subsidiary corporation, to the extent
26 applicable.

27 (5) For any taxable year beginning on or after January 1, 1999,
28 and before January 1, 2000, if a corporation has qualified to pay
29 five hundred dollars (\$500) for the second taxable year under this
30 subdivision, but in its second taxable year, the corporation’s gross
31 receipts, as determined under paragraphs (1) and (2), exceed one
32 million dollars (\$1,000,000), an additional tax in the amount equal
33 to three hundred dollars (\$300) for the second taxable year shall
34 be due and payable by the corporation on the due date of its return,
35 without regard to extension, for that year.

36 (f) (1) Notwithstanding subdivision (a), every corporation that
37 incorporates or qualifies to do business in this state on or after
38 January 1, 2000, shall not be subject to the minimum franchise tax
39 for its first taxable year.

(2) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as defined in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

(g) Notwithstanding subdivision (a), a domestic corporation, as defined in Section 167 of the Corporations Code, that files a certificate of dissolution in the office of the Secretary of State pursuant to subdivision (b) of Section 1905 of the Corporations Code, prior to its amendment by the act amending this subdivision, and that does not thereafter do business shall not be subject to the minimum franchise tax for taxable years beginning on or after the date of that filing.

(h) The minimum franchise tax imposed by paragraph (1) of subdivision (d) shall not be increased by the Legislature by more than 10 percent during any calendar year.

(i) (1) Notwithstanding subdivision (a), a corporation that is a small business solely owned by a deployed member of the United States Armed Forces shall not be subject to the minimum franchise tax for any taxable year the owner is deployed and the corporation operates at a loss or ceases operation.

(2) The Franchise Tax Board may promulgate regulations as necessary or appropriate to carry out the purposes of this subdivision, including a definition for “ceases operation.”

(3) For the purposes of this subdivision, all of the following definitions apply:

(A) “Deployed” means being called to active duty or active service during a period when a Presidential Executive order specifies that the United States is engaged in combat or homeland defense. “Deployed” does not include either of the following:

(i) Temporary duty for the sole purpose of training or processing.

1 (ii) A permanent change of station.

2 (B) “Operates at a loss” means negative net income as defined
3 in Section 24341.

4 (C) “Small business” means a corporation with total income
5 from all sources derived from, or attributable, to the state of two
6 hundred fifty thousand dollars (\$250,000) or less.

7 (4) This subdivision shall become inoperative for taxable years
8 beginning on or after January 1, 2018.

9 *SEC. 9. Section 25128 of the Revenue and Taxation Code is*
10 *amended to read:*

11 25128. (a) (1) Notwithstanding Section 38006, *for taxable*
12 *years beginning before January 1, 2012*, all business income shall
13 be apportioned to this state by multiplying the business income
14 by a fraction, the numerator of which is the property factor plus
15 the payroll factor plus twice the sales factor, and the denominator
16 of which is four, except as provided in subdivision (b) or (c).

17 (2) *Notwithstanding Section 38006, for taxable years beginning*
18 *on or after January 1, 2012, all business income of an apportioning*
19 *trade or business described in paragraph (1) shall be apportioned*
20 *to this state by multiplying the business income by the sales factor,*
21 *unless the trade or business meets the criteria of subdivision (b)*
22 *or makes an election to apportion its income in accordance with*
23 *Section 25128.7.*

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

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

33 (1) An agricultural business activity.

34 (2) An extractive business activity.

35 (3) A savings and loan activity.

36 (4) A banking or financial business activity.

37 (d) For purposes of this section:

38 (1) “Gross business receipts” means gross receipts described in
39 subdivision (e) or (f) of Section 25120 (other than gross receipts
40 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:

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

4 (B) The entire business income of the group shall be apportioned
5 in accordance with either subdivision (a) or (b), or ~~subdivision (b)~~
6 ~~of~~ Section 25128.5 or 25128.7, as applicable.

7 *SEC. 10. Section 25128.5 of the Revenue and Taxation Code*
8 *is amended to read:*

9 25128.5. (a) Notwithstanding Section 38006, for taxable years
10 beginning on or after January 1, 2011, *and before January 1, 2012*,
11 any apportioning trade or business, other than an apportioning
12 trade or business described in subdivision (b) of Section 25128,
13 may make an irrevocable annual election on an original timely
14 filed return, in the manner and form prescribed by the Franchise
15 Tax Board to apportion its income in accordance with this section,
16 and not in accordance with Section 25128.

17 (b) Notwithstanding Section 38006, for taxable years beginning
18 on or after January 1, 2011, *and before January 1, 2012*, all
19 business income of an apportioning trade or business making an
20 election described in subdivision (a) shall be apportioned to this
21 state by multiplying the business income by the sales factor.

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

26 (d) *This section shall not apply to taxable years beginning on*
27 *or after January 1, 2012, and as of December 1, 2012, is repealed.*

28 *SEC. 11. Section 25128.7 is added to the Revenue and Taxation*
29 *Code, to read:*

30 25128.7. (a) Notwithstanding Section 38006, for taxable years
31 beginning on or after January 1, 2012, any apportioning trade or
32 business, other than an apportioning trade or business described
33 in subdivision (b) of Section 25128, may make an irrevocable
34 annual election on an original timely filed return, in the manner
35 and form prescribed by the Franchise Tax Board, to apportion its
36 income in accordance with this section, and not in accordance
37 with Section 25128, if the “tax,” as defined in Section 23036 before
38 the application of any credits, using this section to apportion its
39 business income, is not less than the “tax,” as defined in Section
40 23036 before the application of any credits, using paragraph (2)

1 of subdivision (a) of Section 25128 to apportion its business
2 income.

3 (b) Notwithstanding Section 38006, for taxable years beginning
4 on or after January 1, 2012, all business income of an apportioning
5 trade or business making an election under subdivision (a) shall
6 be apportioned to this state by multiplying the business income by
7 a fraction, the numerator of which is the property factor plus the
8 payroll factor plus twice the sales factor, and the denominator of
9 which is four.

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

14 SEC. 12. Section 25136 of the Revenue and Taxation Code is
15 amended to read:

16 25136. (a) For taxable years beginning before January 1, 2011,
17 and for taxable years beginning on or after January 1, 2011, and
18 before January 1, 2012, for which Section 25128.5 is operative
19 and an election under subdivision (a) of Section 25128.5 has not
20 been made, sales, other than sales of tangible personal property,
21 are in this state if:

22 (1) The income-producing activity is performed in this state; or

23 (2) The income-producing activity is performed both in and
24 outside this state and a greater proportion of the income-producing
25 activity is performed in this state than in any other state, based on
26 costs of performance.

27 (3) This subdivision shall apply, and subdivision (b) shall not
28 apply, for any taxable year beginning on or after January 1, 2011,
29 for which Section 25128.5 is not operative for any taxpayer subject
30 to the tax imposed under this part.

31 (b) For taxable years beginning on or after January 1, 2011, and
32 before January 1, 2012:

33 (1) Sales from services are in this state to the extent the
34 purchaser of the service received the benefit of the service in this
35 state.

36 (2) Sales from intangible property are in this state to the extent
37 the property is used in this state. In the case of marketable
38 securities, sales are in this state if the customer is in this state.

39 (3) Sales from the sale, lease, rental, or licensing of real property
40 are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(5) (A) If Section 25128.5 is operative, then this subdivision shall apply in lieu of subdivision (a) for any taxable year for which an election has been made under subdivision (a) of Section 25128.5.

(B) If Section 25128.5 is not operative, then this subdivision shall not apply and subdivision (a) shall apply for any taxpayer subject to the tax imposed under this part.

(C) Notwithstanding subparagraphs (A) or (B), this subdivision shall apply for purposes of paragraph (2) of subdivision (b) of Section 23101.

(c) The Franchise Tax Board may prescribe those regulations as necessary or appropriate to carry out the purposes of subdivision (b).

(d) This section shall not apply to taxable years beginning on or after January 1, 2012, and as of December 1, 2012, is repealed.

SEC. 13. Section 25136 is added to the Revenue and Taxation Code, to read:

25136. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2012, sales, other than sales of tangible personal property, are in this state if:

(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the services in this state.

(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(b) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

SEC. 14. Section 25136.1 is added to the Revenue and Taxation Code, to read:

25136.1. (a) For taxable years beginning on or after January 1, 2012, a qualified taxpayer that apportions its business income under Section 25128 shall apply the following provisions:

1 (1) Notwithstanding Section 25137, qualified sales assigned to
2 this state shall be equal to 50 percent of the amount of qualified
3 sales that would be assigned to this state pursuant to Section 25136
4 but for the application of this section. The remaining 50 percent
5 shall not be assigned to this state.

6 (2) All other sales shall be assigned pursuant to Section 25136.

7 (b) For purposes of this section:

8 (1) “Qualified taxpayer” means a member, as defined in
9 paragraph (10) of subdivision (b) of Section 25106.5 of Title 18
10 of the California Code of Regulations, as in effect on the effective
11 date of the act adding this section, of a combined reporting group
12 that is also a qualified group.

13 (2) “Qualified group” means a combined reporting group, as
14 defined in paragraph (3) of subdivision (b) of Section 25106.5 of
15 Title 18 of the California Code of Regulations, as in effect on the
16 effective date of the act adding this section, that satisfies the
17 following conditions:

18 (A) Has satisfied the minimum investment requirement for the
19 taxable year.

20 (B) For the combined reporting group’s taxable year beginning
21 in calendar year 2006, the combined reporting group derived more
22 than 50 percent of its United States network gross business receipts
23 from the operation of one or more cable systems.

24 (C) For purposes of satisfying the requirements of subparagraph
25 (B), the following rules shall apply:

26 (i) If a member of the combined reporting group for the taxable
27 year was not a member of the same combined reporting group for
28 the taxable year beginning in calendar year 2006, the gross
29 business receipts of that nonincluded member shall be included
30 in determining the combined reporting group’s gross business
31 receipts for its taxable year beginning in calendar year 2006 as
32 if the nonincluded member were a member of the combined
33 reporting group for the taxable year beginning in calendar year
34 2006.

35 (ii) The gross business receipts shall include the gross business
36 receipts of a qualified partnership, but only to the extent of a
37 member’s interest in the partnership.

38 (3) “Cable system” and “network” shall have the same meaning
39 as defined in Section 5830 of the Public Utilities Code, as in effect

1 on the effective date of the act adding this section. “Network
2 services” means video, cable, voice, or data services.

3 (4) “Gross business receipts” means gross receipts as defined
4 in paragraph (2) of subdivision (f) of Section 25120 (other than
5 gross receipts from sales or other transactions between or among
6 members of a combined reporting group, limited, if applicable, by
7 Section 25110).

8 (5) “Minimum investment requirement” means qualified
9 expenditures of not less than two hundred fifty million dollars
10 (\$250,000,000) by a combined reporting group during the calendar
11 year that includes the beginning of the taxable year.

12 (6) “Qualified expenditures” means any combination of
13 expenditures attributable to this state for tangible property, payroll,
14 services, franchise fees, or any intangible property distribution or
15 other rights, paid or incurred by or on behalf of a member of a
16 combined reporting group.

17 (A) An expenditure for other than tangible property shall be
18 attributable to this state if the member of the combined reporting
19 group received the benefit of the purchase or expenditure in this
20 state.

21 (B) A purchase of or expenditure for tangible property shall be
22 attributable to this state if the property is placed in service in this
23 state.

24 (C) Qualified expenditures shall include expenditures by a
25 combined reporting group for property or services purchased,
26 used, or rendered by independent contractors in this state.

27 (D) Qualified expenditures shall also include expenditures by
28 a qualified partnership, but only to the extent of the member’s
29 interest in the partnership.

30 (7) “Qualified partnership” means a partnership if the
31 partnership’s income and apportionment factors are included in
32 the income and apportionment factors of a member of the combined
33 reporting group, but only to the extent of the member’s interest in
34 the partnership.

35 (8) “Qualified sales” means gross business receipts from the
36 provision of any network services, other than gross business
37 receipts from the sale or rental of customer premises equipment.
38 “Qualified sales” shall include qualified sales by a qualified
39 partnership, but only to the extent of a member’s interest in the
40 partnership.

1 (c) *The rules in this section with respect to qualified sales by a*
2 *qualified partnership are intended to be consistent with the rules*
3 *for partnerships under paragraph (3) of subdivision (f) of Section*
4 *25137-1 of Title 18 of the California Code of Regulations.*

5 SEC. 15. *This act addresses the fiscal emergency declared and*
6 *reaffirmed by the Governor by proclamation on January 20, 2011,*
7 *pursuant to subdivision (f) of Section 10 of Article IV of the*
8 *California Constitution.*

9 SEC. 16. *This act provides for a tax levy within the meaning*
10 *of Article IV of the Constitution and shall go into immediate effect.*

11
12
13 **All matter omitted in this version of the bill**
14 **appears in the bill as amended in the**
15 **Assembly, September 1, 2011. (JR11)**
16