AMENDED IN SENATE APRIL 9, 2012

SENATE BILL No. 1505

Introduced by Senator DeSaulnier

February 24, 2012

An act to amend Section 1012.3 of, to add Section 69.8 to, to add Chapter 3 (commencing with Section 90) to Division 1 of, and Chapter 4 (commencing with Section 1850) to Division 8 of, the Military and Veterans Code, and to amend Sections 23101 and 25128 of, to amend and repeal Section 25128.5 of, to amend, repeal, and add Section 25136 of, and to add ~~Section~~ *Sections* 25128.7 *and 25136.1* to, the Revenue and Taxation Code, relating to veterans, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1505, as amended, DeSaulnier. California Keep Our Promises Act: corporation taxes: apportionment: single sales factor: election: four-factor formula.

(1) 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 apportion its income 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 personal property and sales of other than tangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning on or after January 1, 2012, instead require a taxpayer, except as provided, to apportion its income in accordance with a single sales factor, would allow a taxpayer to apportion in accordance with a specified 4-factor formula~~,~~ pursuant to an irrevocable annual election as specified, and would revise the provisions that determine whether sales other than tangible personal property occur in this state*, including specific provisions for cable systems or networks*.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of ~~2/2~~ *2/3* of the membership of each house of the Legislature.

(2) Under existing law, the Department of Veterans Affairs has specified powers and duties relating to veterans and is required to provide the Legislature with an annual budget estimate.

This bill would require the Department of Finance, based on the annual budget estimate provided by the Department of Veterans Affairs and other specified information, to determine the budget for the fiscal year for the Department of Veterans Affairs and direct the Controller to deposit that amount into the Keep Our Promises Fund, a continuously appropriated fund established by this bill. This bill would provide that the funds in the Keep Our Promises Fund would supplant the General Fund revenues appropriated to the Department of Veterans Affairs and would require specified additional allocations by the Department of Veterans Affairs regarding veterans' homes, small business loans for veterans, and the Veterans' Assistance Grant Program, which would be created by this bill.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. This act shall be known and may be cited as the California Keep Our Promises Act.

SEC. 2. Section 69.8 is added to the Military and Veterans Code, to read:

69.8. (a) Notwithstanding Section 10231.5 of the Government Code, on or before January 1, 2014, and each January 1 thereafter, the department shall prepare and submit to the Legislature an annual fiscal report on the department's activities. The report shall include, but not be limited to, the amount of funds allocated and spent by the department by program or administrative function.

(b) The report submitted pursuant to subdivision (a) shall comply with Section 9795 of the Government Code.

SEC. 3. Chapter 3 (commencing with Section 90) is added to Division 1 of the Military and Veterans Code, to read:

Chapter 3. California Keep Our Promises Act

90. The Director of Finance shall, on or before June 15, 2013, and each June 15 thereafter, based on the budget provided pursuant to Section 13320 of the Government Code and any other available information including the allocations required by this chapter, determine the fiscal year budget for the department and direct the Controller to deposit that amount into the Keep Our Promises Fund.

90.5. (a) The Keep Our Promises Fund is hereby established in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys are hereby continuously appropriated, without regard to fiscal year, to the department. Moneys in the fund shall supplant the moneys appropriated to the department in the annual Budget Bill and shall be used for the same purposes.

(b) In addition to any other allocations by the department, the department shall:

(1) In the 2013–14 fiscal year, and each fiscal year thereafter, if needed, allocate ____ dollars ($____) to veterans' homes to achieve full staffing at each veterans' home within the state.

(2) In the 2013–14 fiscal year, and each fiscal year thereafter, if needed, allocate ____ dollars ($____) to complete the construction of the Veterans' Home of California, Redding and the Veterans' Home of California, Fresno.

(3) In the 2013–14 fiscal year, and each fiscal year thereafter, allocate one hundred million dollars ($100,000,000) to the

California Capital Access Fund for the purpose of funding small business loans to veterans.

(4) In the 2013–14 fiscal year, and each fiscal year thereafter, allocate two hundred million dollars ($200,000,000) to the Veterans' Assistance Grant Program (Chapter 4 (commencing with Section 1850) of Division 8).

SEC. 4. Section 1012.3 of the Military and Veterans Code is amended to read:

1012.3. (a) Members of the home shall pay fees and charges as determined by the department, except that the total of the individual member's fees and charges for any fiscal year shall not be greater than as set forth in the following schedule:

(1) ____ percent of the member's annual income for domiciliary care.

(2) ____ percent of the member's annual income for residential care for the elderly or assisted living.

(3) ____ percent of the member's annual income for intermediate care.

(4) ____ percent of the member's annual income for skilled nursing care.

(b) Nonveteran spouses who become members of the home on or after July 1, 2009, shall pay fees and charges based on the level of care, as described in subdivision (a), or an amount equal to the annual amount of federal per diem received for a veteran member in domiciliary care, whichever is greater. If the nonveteran member's income is less than the annual amount of federal per diem for a veteran member in domiciliary care, the nonveteran member shall pay a maximum of ____ percent of his or her annual income.

SEC. 5. Chapter 4 (commencing with Section 1850) is added to Division 8 of the Military and Veterans Code, to read:

Chapter 4. Veterans' Assistance Grant Program

1850. For purposes of this part:

(a) (1) "Qualified entity" means a unit of local government, an organization exempt from federal income taxation as an organization described in Section 501(c)(3), 501(c)(4), or 501(c)(19) of the Internal Revenue Code, or a nonprofit organization authorized to do business in California with experience providing services to veterans. A qualified entity shall have professional liability or malpractice insurance.

(2) "Qualified entity" shall not mean an individual, a for-profit entity, a unit of federal or state government, including a state agency, college, or university, an organization that has not fulfilled all legal requirements to operate in the state, or an organization that does not have current operations in the state or a California-based chapter.

(b) "Unit of local government" means a county, municipality, special district, school district, community college district, a local workforce development board, or other legally constituted political subdivision of the state.

(c) "Veterans' assistance program" includes, but is not limited to, a program that provides veterans and their families:

(1) Limited emergency assistance.

(2) Transportation services.

(3) Family or individual counseling for post-traumatic stress disorder and traumatic brain injury.

(4) Employment, training, education, and job placement assistance.

(5) Housing assistance for homeless veterans.

(6) Family and child services.

(7) Legal services, excluding criminal defense.

(8) Development of professional services networks.

1851. (a) The department shall establish a reimbursement grant program and shall award reimbursement grants to qualified entities that implement veterans' assistance programs.

(b) Under the reimbursement grant program, a qualified entity shall finance its operation with its own working capital and may apply for a reimbursement grant for actual cash disbursements, supported by adequate documentation, for a veterans' assistance program.

(c) Reimbursement grants shall not be granted for capital expenditures, including capital purchases or capital leases, subgranting of funds to other organizations or agencies, distribution of cash or a cash equivalent to veterans or their families, acquisition or construction of facilities, educational scholarships, child support payments, contributions to any political party, political association, or the campaign of any candidate for public office, party office, or similar political activity, contributions to support or oppose a candidate or public or party office, contributions to support or oppose a ballot proposition, or costs that are not allowable under federal Office of Management and Budget (OMB) Circular A-87 (Cost Principles for State, Local, and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Non-Profit Organizations).

1852. The reimbursement grant application shall include, but is not limited to:

(a) Information on the number of veterans, dependents, and surviving spouses serviced by the veterans' assistance program.

(b) Unless the qualified entity is a unit of local government, documentation demonstrating the qualified entity's financial stability, as determined by the department.

(c) The reimbursement amount requested for the veterans' assistance program, including documentation substantiating the costs of the program.

1853. (a) The department, or its authorized representative, shall have the right of timely and reasonable access to any books, documents, papers, computer records, or other records of qualified entities that have received a reimbursement grant under this part that are pertinent to the use of the reimbursement grant awarded by the department.

(b) The right of access also includes timely and reasonable access to qualified entity personnel for the purpose of interview and discussion related to the documents described in subdivision (a).

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

(2) Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars ($500,000) or 25 percent of the taxpayer's total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or

independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under Sections 25135 and 25136, and the regulations thereunder, as modified by regulations under Section 25137.

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

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

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

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

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

SEC. 7. Section 25128 of the Revenue and Taxation Code is amended to read:

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

(2) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2012, all business income of an apportioning

trade or business shall be apportioned to this state by multiplying the business income by the sales factor, unless the trade or business meets the criteria of subdivision (b) or makes an election to apportion its income in accordance with Section 25128.7.

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

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

(1) An agricultural business activity.

(2) An extractive business activity.

(3) A savings and loan activity.

(4) A banking or financial business activity.

(d) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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. 9. Section 25128.7 is added to the Revenue and Taxation Code, to read:

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

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

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

SEC. 10. Section 25136 of the Revenue and Taxation Code is amended to read:

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

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

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

(3) This subdivision shall apply, and subdivision (b) shall not apply, for any taxable year beginning on or after January 1, 2011, and before January 1, 2012, for which Section 25128.5 is not operative for any taxpayer subject to the tax imposed under this part.

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

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

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

(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~~ *subparagraph* (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. 11. 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. 12. 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) Notwithstanding Section 25137, qualified sales assigned to this state shall be equal to 50 percent of the amount of qualified sales that would be assigned to this state pursuant to Section 25136 but for the application of this section. The remaining 50 percent shall not be assigned to this state.

(2) All other sales shall be assigned pursuant to Section 25135 or 25136.

(b) For purposes of this section:

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

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

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

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

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

(i) If a member of the combined reporting group for the taxable year was not a member of the same combined reporting group for the taxable year beginning in the 2006 calendar year, the gross business receipts of that nonincluded member shall be included in determining the combined reporting group's gross business receipts for its taxable year beginning in the 2006 calendar year as if the nonincluded member were a member of the combined reporting group for the taxable year beginning in the 2006 calendar year.

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

(3) "Cable system" and "network" shall have the same meaning as defined in Section 5830 of the Public Utilities Code, as in effect on the effective date of the act adding this section. "Network services" means video, cable, voice, or data services.

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

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

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

(A) An expenditure for other than tangible property shall be attributable to this state if the member of the combined reporting

group received the benefit of the purchase or expenditure in this state.

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

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

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

(7) "Qualified partnership" means a partnership if the partnership's income and apportionment factors are included in the income and apportionment factors of a member of the combined reporting group, but only to the extent of the member's interest in the partnership.

(8) "Qualified sales" means gross business receipts from the provision of any network services, other than gross business receipts from the sale or rental of customer premises equipment. "Qualified sales" shall include qualified sales by a qualified partnership, but only to the extent of a member's interest in the partnership.

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

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