

## State of California

Franchise Tax Board-Legislative Services Bureau  
PO Box 1468  
Sacramento, CA 95812-1468

Telephone: (916) 845-4326  
ATSS: 468-4326  
FAX: (916) 845-5472

### Legislative Change No.

**03-22**

Bill Number: SB 1061

Author: Senate Rev & Tax Comm.

Chapter Number: 03-633

Laws Affecting Franchise Tax Board: Sections 2205 and 5008.6 of the Corporations Code; Section 7073.8 of the Government Code; and Sections 17941, 18405.1, 23041, 23701h, 23701x, 25111, 25113, and 25116 of the Revenue and Taxation Code.

Date Filed with the Secretary of the State: September 30, 2003

**SUBJECT:** Water's-Edge Election Procedures/Definition Of "Taxable Year" For Calendar Or Fiscal Years Beginning On Or After January 1, 2000/Exempt Orgs/Applications For Exemption Or Amending Articles Of Incorporation/"Corporation" Includes Limited Liability Companies

**Senate Bill 1061 (Senate Revenue and Taxation Committee), as enacted on September 30, 2003, made the following changes to California law:**

Section 2205 of the Corporations Code is amended.

This act permits a foreign corporation to file an application for tax-exempt status even if it is suspended. It also permits a suspended foreign corporation applying for tax-exempt status to amend its articles of incorporation to perfect its tax-exempt application.

Section 5008.6 of the Corporations Code is amended.

This act permits a suspended domestic corporation applying for tax-exempt status to amend its articles of incorporation to perfect its tax-exempt application.

Section 7073.8 of the Government Code is amended.

This act made a technical change to add "of the Revenue and Taxation Code" after a reference to section 17053.47 of that code.

Section 17941 of the Revenue and Taxation Code is amended.

This act modifies the definition of limited liability companies (LLCs) subject to the tax and fee by removing LLCs that are exempt from taxation from the definition.

Section 18405.1 is added to the Revenue and Taxation Code.

This act provides the Franchise Tax Board with discretionary authority to perfect water's-edge elections that are not valid under current law.

Bureau Director

Jana Howard for Brian Putler

Date

11/3/03

Section 23041 of the Revenue and Taxation Code is amended.

This act explicitly defines "taxable year" as the year for which the franchise tax is payable.

Section 23701h of the Revenue and Taxation Code is amended.

This act exempts from taxation an LLC that is a title-holding corporation under specified Internal Revenue Code (IRC) sections, whether the LLC is classified as an association taxable as corporation, a partnership, or a disregarded entity.

Section 23701x of the Revenue and Taxation Code is amended.

This act exempts from taxation an LLC that is a title-holding corporation under specified IRC sections, whether the LLC is classified as an association taxable as corporation, a partnership, or a disregarded entity.

Section 25111 of the Revenue and Taxation Code is amended.

This act specifies that a water's-edge contract in effect for a taxable year beginning before January 1, 2003, be deemed to be a water's-edge election made pursuant to Section 25113. The commencement date of the water's-edge contract is used for purposes of the deemed water's-edge election, thus the commencement date will not change.

Section 25113 is added to the Revenue and Taxation Code.

This act fundamentally reforms the water's-edge election procedures, replacing the contract with a statutory election. In addition, this act makes the following changes relating to water's-edge elections:

- Codifies the "substantial performance" concept currently in the regulations to prevent taxpayers that inadvertently fail to satisfy a procedural aspect of the election from losing their water's-edge status. This includes inconsistent filings made by water's-edge group members.
- Reforms the acquisition rules so when two or more taxpayers become unitary, the water's-edge status of the larger taxpayer prevails.
- Eliminates the renewal/nonrenewal provisions. Taxpayers are required to maintain their water's-edge election or to remain on the worldwide basis for at least seven years unless the taxpayer requests and receives permission to change from the Franchise Tax Board.

This provision of the act is operative for taxable years beginning on or after January 1, 2003, and before January 1, 2004, at which time Section 25113 as added by SB 640 (Burton, Ch. 657, Stats. 2003) will become operative.

Section 26116 is added to the Revenue and Taxation Code.

This act clarifies that, unless otherwise specifically provided, for purposes of water's-edge elections the term "Internal Revenue Code" means those provisions of Title 26 of the United States Code, as applicable for federal tax purposes for the taxable period, not as conformed to on a specified date.

Except as noted, this act is effective for taxable years beginning on or after January 1, 2003.

This act will not require any reports by the department to the Legislature.