

State of California

Franchise Tax Board-Legislative Services Bureau
PO Box 1468 MS A350
Sacramento, CA 95812-1468

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

Legislative Change No.	08-8
Bill Number: <u>AB 3078</u>	Author: <u>AR&T Committee</u> Chapter Number: <u>08-305</u>
Laws Affecting Franchise Tax Board:	<u>Sections 18535, 18536, 18662, 18668, 19136, 19311.5, 21004, 21006, and 25106 of the Revenue and Taxation Code</u>
Date Filed with the Secretary of State:	<u>September 25, 2008</u>

SUBJECT: Modify Group Return Provisions/Real Estate Withholding For Certain Non-CA Entities/Other State Tax Credit Claims/TP Advocate Penalty Relief/Increase Threshold For Imposing Estimated Tax Penalty/Eliminate Double Inclusion Of Income

Assembly Bill 3078 (Committee on Revenue and Taxation), as enacted on September 25, 2008, made the following changes to laws impacting the Franchise Tax Board:

Sections 18535 and 18536 of the Revenue and Taxation Code are amended.

This act allows the following to be included in a group nonresident return:

- Entities with less than two electing nonresident individuals, and
- Individuals with more than \$1,000,000 in California taxable income.

Sections 18535 and 18536 of the Revenue and Taxation Code amended by this act were chaptered out by AB 1389 (Stats. 2008, Ch. 751).

Sections 18662 and 18668 of the Revenue and Taxation Code are amended.

This act provides the following changes:

1. Require non-California partnerships to be subject to withholding on California real property sales at a rate of 3 1/3% of sales proceeds or 9.3% of gain.
2. For S corporations, specify that the entity-level and pass-through withholding rates be combined to determine the alternative withholding rate to be applied to the gain on the sale.
3. Require the buyer to withhold on each installment sale payment if the sale is structured as an installment sale.
4. Clarify that withholding amounts can be collected from the withholding agent if the agent fails to withhold or fails to remit the withheld amounts to the FTB, and provide a clear method for assessment and collection of unremitted withholding.

This provision of the act is effective on January 1, 2009, and applies to real property sales that occur on or after that date.

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

Assistant Bureau Director Patrice Gau-Johnson	Date 11/03/08
--	------------------

Section 19136 of the Revenue and Taxation Code is amended.

This act increases the threshold for imposing the estimated tax penalty from \$200 (\$100 if married/RDP filing separate) after subtracting withholding and credits to \$500 (\$250 if married/RDP filing separate).

This provision of the act is effective on January 1, 2009, and specifically operative for taxable years beginning on or after January 1, 2009.

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

Section 19311.5 of the Revenue and Taxation Code is added.

This act revises the statute of limitations period for claiming an other state tax credit to be the *later* of the normal SOL period or one year after the taxpayer pays tax to the other state.

This provision of the act is effective on or after January 1, 2009, and applies to taxes paid to another state on or after that date.

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

Section 21004 of the Revenue and Taxation Code is amended.

This act expands the responsibility of the Advocate to include resolution of taxpayer issues identified by Franchise Tax Board (FTB) employees. In addition, this act authorizes the Advocate to waive (grant relief from) penalties or additions to tax, fees, and interest that are attributable to any of the following:

- Erroneous action or erroneous inaction by the FTB in processing documents filed or payments made by a taxpayer,
- Unreasonable delay caused by the FTB, or
- Erroneous written advice that did not qualify for relief under Chief Counsel authority.

Relief may be granted only in situations where no part of the error is attributable to the taxpayer and relief is not available under any other statute or regulation.

This provision of the act is effective on January 1, 2009, and specifically operative for requests for Advocate consideration that are received by the Advocate on or after January 1, 2009, irrespective of the tax year involved. In addition, this provision of the act, by its own terms, is repealed as of January 1, 2012, and existing law would be restored as of that date, unless a later enacted statute deletes or extends that date.

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

Section 21006 of the Revenue and Taxation Code is amended.

This act requires the Taxpayer Advocate to include in its annual report to the Legislature a summary of the instances where relief was granted, the nature of the error or delay, and the steps taken by the department to remedy systemic issues that required relief.

This provision of the act is effective on January 1, 2009, and operative for taxable years beginning on or after January 1, 2009.

This provision of the act expands the current report from the department to the Legislature.

Section 25106 of the Revenue and Taxation Code is amended.

This act makes the following changes to existing law:

- Conform to the department's practice that if dividends are paid from income earned in years prior to the payor and payee becoming members of a California combined group filing, dividend elimination would be allowed if the earnings and profits are from a return filed on a comparable combined unitary basis in another state that included the payor and payee.
- Conform to the department's practice that dividends paid out of the earnings and profits of a non-taxpayer member of the California combined unitary group to another non-taxpayer member of the group are eliminated from business income.
- Expand the dividend elimination rules to include dividends paid from a member of a combined unitary group to a newly formed member of the combined unitary group if the recipient has been a member of the combined unitary group from its formation to its receipt of the dividends.
- Add anti-abuse provisions relating to newly formed members of a combined unitary group and grant the Franchise Tax Board legislative rulemaking authority.

This provision of the act is effective on January 1, 2009. Certain aspects of this provision are declaratory of existing law. Other aspects of this provision are specifically operative for taxable years beginning on or after January 1, 2008. In addition, this provision adds a no inference clause for prior years with respect to those aspects.

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