Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Wolk, Hancock, and Leno	Analyst:	Scott McFarlane	Bill Number:	SBX8 32
Related Bills:	AB 1561 (2007/2008) AB 1580 (2008/2009)	Telephone:	845-6075	Introduced Date: Amended Date:	February 5, 2010 February 11, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Conformity Act of 2010

SUMMARY

This bill would change California's specified date of conformity to federal income tax law from January 1, 2005, to January 1, 2009, for taxable years beginning on or after January 1, 2010, and thereby, in general, conform to the numerous changes that were made to federal income tax law during that four-year period. Additionally, this bill would conform to the February 17, 2009, federal legislation providing an exclusion from gross income in any taxable year for energy grants provided in lieu of federal energy credits.

PURPOSE OF THE BILL

The general purpose of conforming to numerous changes in federal law is to simplify both the preparation of California income tax returns and the administration of California income tax laws.

SUMMARY OF AMENDMENTS

As introduced on February 5, 2010, this bill would change California's specified date of conformity to federal income tax law from January 1, 2005, to January 1, 2010. The February 11, 2010, amendments would change California's specified date of conformity to federal income tax law from January 1, 2005, to January 1, 2009.

EFFECTIVE/OPERATIVE DATE

This bill is a tax levy and would be effective immediately; unless otherwise specified, it would apply to taxable years beginning on or after January 1, 2010.

POSITION

Pending.

Board Position:			Department Director	Date
_____ S	_____ NA	_____ NP		
_____ SA	_____ O	_____ NAR	Selvi Stanislaus	03/03/10
_____ N	_____ OUA	___X___ PENDING		

SUMMARY OF REVENUE ESTIMATE

Conformity Provisions	2009-10	2010-11	2011-12	2012-13
Tax Revenue Totals	-$23,400,000	-$20,623,000	-$21,610,000	-$12,460,000
Penalty and Interest Totals	$3,370,000	$13,000,000	$16,300,000	$17,950,000
Totals of Conformity Provisions	**-$20,030,000**	**-$7,623,000**	**-$5,310,000**	**$5,490,000**

SUMMARY OF SUGGESTED AMENDMENTS

Technical amendments are suggested and have been provided to the authors.

ANALYSIS

FEDERAL/STATE LAW

Federal Laws Enacted from January 1, 2005, through January 1, 2009

See Franchise Tax Board's (FTB's) annual reports titled "Summary of Federal Income Tax Changes – 2005," "Summary of Federal Income Tax Changes – 2006," "Summary of Federal Income Tax Changes – 2007," and "Summary of Federal Income Tax Changes – 2008" for a detailed discussion of federal and state laws affected by this bill.

Federal Energy Grants - American Recovery and Reinvestment Act of 2009 (Public Law 111-5, February 17, 2009)

Section	Section Title
1104	Coordination with Renewable Energy Grants

Background

Under Section 1603 of this Act, the Secretary of the Treasury is authorized to provide a grant to each person who places in service during 2009 or 2010 energy property that is either (1) an electricity production facility otherwise eligible for the renewable electricity production credit or (2) qualifying property otherwise eligible for the energy credit. In general, the grant amount is 30 percent of the basis of the property that would (1) be eligible for the energy credit under IRC section 48 or (2) comprise an electricity production (IRC section 45) credit-eligible facility. For qualified microturbine, combined heat and power system, and geothermal heat pump property, the amount is 10 percent of the basis of the property.

Qualifying property must be depreciable or amortizable to be eligible for the grant.

Taxpayers are permitted to claim the credit with respect to otherwise eligible property that is not placed in service in 2009 and 2010 so long as construction begins in either of those years and is completed prior to 2013 (in the case of wind facility property), 2014 (in the case of other renewable power facility property eligible for credit under IRC section 45), or 2017 (in the case of any specified energy property described in IRC section 48).

No grant may be awarded to any federal, state, or local government (or any political subdivision, agency, or instrumentality thereof) or any IRC section 501(c) tax-exempt entity.

No grant may be made unless the application for the grant has been received before October 1, 2011.

New Federal Law (IRC section 48)

This provision provides that the grant provision in Act section 1603 is intended to mimic the operation of the credit under IRC section 48. For example, the amount of the grant is not includable in gross income. However, the basis of the property is reduced by fifty percent of the amount of the grant. In addition, some or all of each grant is subject to recapture if the grant eligible property is disposed of by the grant recipient within five years of being placed in service.

Under the provision, if a grant is paid, no renewable electricity credit or energy credit may be claimed with respect to the grant-eligible property.

Effective Date

The provision is effective on February 17, 2009.

California Law (None)

The exclusion of the grant from federal income and the corresponding 50 percent basis reduction are provided under IRC section 48. California does not conform to IRC section 48; thus, the grant is included in California income and there is no California basis reduction.

Section	Section Title
1603	Grants for Specified Energy Property in Lieu of Tax Credits

Background

Renewable electricity production credit

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the "renewable electricity production credit").[1] Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

[1] IRC section 45. In addition to the renewable electricity production credit, IRC section 45 also provides income tax credits for the production of Indian coal and refined coal at qualified facilities.

Energy credit

An income tax credit is also allowed for certain energy property placed in service. Qualifying property includes certain fuel cell property, solar property, geothermal power production property, small wind energy property, combined heat and power system property, and geothermal heat pump property.[2]

New Federal Law (Act Section 1603 affecting IRC Section 48)

The provision authorizes the Secretary of the Treasury to provide a grant to each person who places in service during 2009 or 2010 energy property that is either (1) an electricity production facility otherwise eligible for the renewable electricity production credit or (2) qualifying property otherwise eligible for the energy credit. In general, the grant amount is 30 percent of the basis of the property that would (1) be eligible for the energy credit under IRC section 48 or (2) comprise an electricity production (IRC section 45) credit-eligible facility. For qualified microturbine, combined heat and power system, and geothermal heat pump property, the amount is 10 percent of the basis of the property.

Qualifying property must be depreciable or amortizable to be eligible for the grant.

The provision also permits taxpayers to claim the credit with respect to otherwise eligible property that is not placed in service in 2009 and 2010 so long as construction begins in either of those years and is completed prior to 2013 (in the case of wind facility property), 2014 (in the case of other renewable power facility property eligible for credit under IRC section 45), or 2017 (in the case of any specified energy property described in IRC section 48).

Nonbusiness property and property that would not otherwise be eligible for credit under IRC section 48 or part of a facility that would be eligible for credit under IRC section 45 is not eligible for a grant under the provision. The grant may be paid to whichever party would have been entitled to a credit under IRC section 48 or IRC section 45, as the case may be.

In addition, no grant may be awarded to any federal, state, or local government (or any political subdivision, agency, or instrumentality thereof) or any IRC section 501(c) tax-exempt entity.

No grant may be made unless the application for the grant has been received before October 1, 2011.

Effective Date

The provision is effective February 17, 2009.

California Law (None)

California has no comparable credit or grant provisions.

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[2] IRC section 48.

THIS BILL

This bill would change the specified date from January 1, 2005, to January 1, 2009, for taxable years beginning on or after January 1, 2010. Changing the specified date would automatically conform state law to all changes from January 1, 2005, through December 31, 2008, to Internal Revenue Code (IRC) sections that have been previously incorporated by reference. Thus, California law would conform to most of the changes made to the federal income tax law during that four-year period. Additionally, this bill would conform to the February 17, 2009, federal income exclusion of energy grants provided in lieu of federal energy credits.

This bill would also make numerous changes either to specifically not conform to or to modify certain items in the IRC. In addition, technical changes regarding cross references and deletion of unnecessary language that was used to conform to federal law changes subsequent to January 1, 2005, and prior to January 1, 2009, would be made by this bill.

The following tables list:

- The federal Act sections that impact provisions of Personal Income Tax Law (PITL), Administration of Franchise and Income Tax Law (AFITL), and Corporation Tax Law (CTL);
- The beginning page number in the FTB's annual report where that provision is discussed; and
- The change under this bill -- whether SB X8 32 would conform or not conform to that provision. (Note that conformity decisions that require modification are listed in the conform column.)

For certain federal provisions, California law automatically conforms to a federal law change and those provisions are not listed and not discussed in this analysis. Additionally, those federal provisions that are not applicable to PITL, AFITL, and CTL are not listed and not discussed in this analysis.

2005 Conformity Decisions

These tables contain only items for which a conformity decision was necessary.

Table 2 – **Disaster Mitigation Payments Act (PL 109-7)**

		FTB's 2005 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
1	Proper Tax Treatment of Certain Disaster Mitigation Payments	**9**	**X**	

Table 3 – **ETIA of 2005 (PL 109-58)**				
		FTB's 2005 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
1308	Electric Transmission Property Treated As 15-year Property	**38**	**PIT**	**CORP**
1309	Expansion of Amortization For Certain Atmospheric Pollution Control Facilities In Connection With Plants First Placed in Service after 1975	**40**	**X**	
1310	Modification to Special Rules For Nuclear Decommissioning Cost	**41**	**X**	
1323	Temporary Expensing for Equipment Used in Refining Liquids Fuels	**50**		**X**
1324	Pass Through to Owners of Deduction for Capital Costs Incurred By Small Refiner Cooperatives in Complying With EPA Sulfur Regulations	**54**		**X**
1325	Natural Gas Distribution Lines Treated As 15-Year Property	**57**	**PIT**	**CORP**
1326	Natural Gas Gathering Lines Treated As 7-Year Property	**59**	**PIT**	**CORP**
1328	Determination of Small Refiner Exception to Oil Depletion Deduction	**67**		**X**
1329	Amortization of Geological and Geophysical Expenditures	**68**		**X**
1331	Energy Efficient Commercial Buildings Deduction	**71**		**X**
1351	Expansion of Research Credit	**101**		**X**
1363	Modification of Recapture Rules for Amortizable Section 197 Intangibles	**107**	**X**	

Table 5 – **GO Zone Act of 2005 (PL 109-135)**				
		FTB's 2005 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
101-F	Expensing for Certain Demolition and Clean-up Costs	**182**		**X**
101-O	Treatment of Public Utility Disaster Losses	**203**		**X**
303	Modification of Effective Date of Exception from Suspension Rules for Certain Listed and Reportable Transactions	**253**	**X**	
305	Disclosures of Certain Tax Return Information	**256**		**X**
401-423	Tax Technical Provisions	**261**	**X**	

2006 Conformity Decisions

These tables contain only items for which a conformity decision was necessary.

Table 1 – **TIPRA of 2005 (PL 109-222)**				
		FTB's 2006 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
Title II	**OTHER PROVISIONS**			
201	Clarification of Taxation of Certain Settlement Funds	**23**	**X**	
202	Modification of Active Business Definition under Section 355	**25**	**X**	
204	Capital Gains Treatment for Certain Self-Created Musical Works	**31**	**X**	
207	Amortization of Expenses Incurred in Creating or Acquiring Music or Music Copyrights	**38**	**X**	
209	Modification of Treatment of Loans to Qualified Continuing Care Facilities	**43**	**X**	
Title V	**REVENUE OFFSET PROVISIONS**			
501	Application of Earnings Stripping Rules to Partners Which are Corporations	**50**	**X**	
503	5-Year Amortization of Geological and Geophysical Expenditures for Certain Major Integrated Oil Companies	**53**		**X**
507	Section 355 Not to Apply to Distributions Involving Disqualified Investment Companies	**65**	**X**	
510	Increase in Age of Minor Children Whose Unearned Income is Taxed as if Parent's Income	**75**	**X**	

Table 3 – Clarification of Treatment of Self-Employment for Purposes of the Limitation on State Taxation of Retirement Income (PL 109-264)				
		FTB's 2006 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
1	Clarification of Treatment of Self-Employment for Purposes of the Limitation on State Taxation of Retirement Income	**101**	**X**	

Table 4 – **Pension Protection Act of 2006 (PPA) (PL 109-280)**				
		FTB's 2006 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
Title I	**REFORM OF FUNDING FOR SELF-EMPLOYED DEFINED BENEFIT PENSION PLANS**			
112	Minimum Funding Standards; Funding Rules for Single-Employer Defined Benefit Pension Plans	**103**	**X**	
113	Benefit Limitations Under Single-Employer Plans	**125**	**X**	
Title II	**FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS**			
211	Funding Rules for Multiemployer Defined Benefit Plans	**143**	**X**	
212	Additional Funding Rules for Multiemployer Plans in Endangered or Critical Status	**151**	**X**	
221	Sunset of Additional Funding Rules	**177**	**X**	
Title VIII	**PENSION RELATED REVENUE PROVISIONS**			
Subtitle C	**Improvements in Portability, Distributions, and Contribution Rules**			
827	Penalty-Free Withdrawals from Retirement Plans for Individuals Called to Active Duty for at Least 179 Days	**290**	**X**	
828	Waiver of 10% Early Withdrawal Penalty Tax on Certain Distributions of Pension Plans for Public Safety Employees	**293**	**X**	
831	Allowance of Additional IRA Payments in Certain Bankruptcy Cases	**298**	**X**	
833	Inflation Indexing of Gross Income Limitations on Certain Retirement Savings Incentives	**301**	**X**	
Subtitle D	**Health and Medical Benefits**			
844	Treatment of Annuity and Life Insurance Contracts with a Long-Term Care Insurance Feature	**315**		**X**
Subtitle F	**Other Provisions**			
863	Treatment of Death Benefits from Corporate-Owned Life Insurance	**335**	**X**	
866	Exemption of Income from Leveraged Real Estate Held by Church Plans	**345**	**X**	
868	Gratuitous Transfer for Benefits of Employees	**348**	**X**	

Table 4 – **Pension Protection Act of 2006 (PPA) (PL 109-280)**				
		FTB's 2006 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
Title XII	**PROVISIONS RELATING TO EXEMPT ORGANIZATIONS**			
Subtitle B	**Reforming Exempt Organizations**			
Part 1	**General Reforms**			
1211	Reporting on Certain Acquisitions of Interests on Insurance Contracts in Which Certain Exempt Organizations Hold an Interest	**429**	**X**	
1213	Reform of Charitable Contributions of Certain Easements in Registered Historic Districts and Reduced Deduction for Portion of Qualified Conservation Contribution Attributable to Rehabilitation Credit	**437**	**X**	
1214	Charitable Contributions for Taxidermy Property	**443**	**X**	
1215	Recapture of Tax Benefit for Charitable Contributions of Exempt Use Property Not Used for an Exempt Use	**446**	**X**	
1216	Limitation of Deduction for Charitable Contributions of Clothing and Household Items	**451**	**X**	
1217	Modification of Recordkeeping Requirements for Certain Charitable Contributions	**455**	**X**	
1218	Contributions of Fractional Interests in Tangible Personal Property	**457**	**X**	
1219	Provisions Relating to Substantial and Gross Overstatements of Valuations	**460**	**X**	
1220	Additional Standards for Credit Counseling Organizations	**465**	**X**	
1222	Definition of Convention or Association of Churches	**479**	**X**	
1223	Notification Requirement for Entities Not Currently Required to File	**481**	**X**	
Part 2	**Improved Accountability of Donor Advised Funds**			
1231-1235	Excise Taxes Relating to Donor Advised Funds, Excess Benefit Transactions Involving Donor Advised Funds and Sponsoring Organizations, Excess Business Holdings of Donor Advised Funds, Returns of, and Application for Recognition by Sponsoring Organizations	**492**		**X**

Table 4 – **Pension Protection Act of 2006 (PPA) (PL 109-280)**				
		FTB's 2006 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
Part 3	**Improved Accountability of Supporting Organizations**			
1241-1245	Requirements for Supporting Organizations, Excess Benefit Transactions Involving Supporting Organizations, Excess Business Holding of Supporting Organizations, Treatment of Amounts Paid to Supporting Organizations by Private Foundations, and Returns of Supporting Organizations	**510**		**X**

Table 5 – **TRHCA of 2006 (PL 109-432)**				
		FTB's 2006 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
Division A	**Extension and Expansion of Certain Tax Relief Provisions and Other Tax Provisions**			
Title I	**EXTENSION AND MODIFICATION OF CERTAIN PROVISIONS**			
104	Extension and Modification of Research Credit	**538**		**X**
122B	Disclosure of Return Information Regarding Terrorist Activity	**577**		**X**
Title II	**ENERGY TAX PROVISIONS**			
204	Deduction for Energy Efficient Commercial Buildings	**589**		**X**
209	Special Depreciation Allowance for Cellulosic Biomass Ethanol Plant Property	**597**		**X**
402	Credit for Prior Year Minimum Tax Liability Made Refundable After Period of Years	**616**		**X**
404	Partial Expensing for Advance Mine Safety Equipment	**620**		**X**
406	Whistleblower Reforms	**624**		**X**
407	Frivolous Tax Submissions	**626**	**X**	
409	Clarification of Taxation of Certain Settlement Funds Made Permanent – Effective in Taxable	**629**	**X**	

Table 5 – **TRHCA of 2006 (PL 109-432)**				
		FTB's 2006 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
	Year 2011.			
410	Modification of Active Business Definition Under Section 355 Made Permanent – Effective in Taxable Year 2011.	**630**	**X**	
412	Capital Gains Treatment for Certain Self-Created Musical Works Made Permanent	**635**	**X**	
417	Exclusion of Gain from Sale of Principal Residence by Certain Employees of the Intelligence Community	**648**	**X**	
418	Sale of Property by Judicial Officers	**650**	**X**	
424	Modification of Excise Tax on Unrelated Business Taxable Income of Charitable Remainder Trusts	**661**		**X**
425	Loans to Qualified Continuing Care Facilities Made Permanent – Effective in Taxable Year 2011	**662**	**X**	
426	Technical Corrections	**664**	**X**	

2007 Conformity Decisions

These tables contain only items for which a conformity decision was necessary.

Table 1 – **The Small Business Work Opportunity Act (SBWOTA) of 2007 (PL 110-28)**				
		FTB's 2007 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
8215	Family business tax simplification	**17**	**X**	
8233	Recapture of bad debt reserves	**32**	**X**	
8234	Treatment of sale of interest in a qualified subchapter S subsidiary	**33**	**X**	
8236	Permit interest deduction to an electing small business trust to acquire S corporation stock	**35**	**X**	
8241	Increase in age of minor children whose unearned income is taxed as if parents' income	**37**	**X**	
8242	Modify interest suspension under 6404(g) from 18 to 36 months	**39**	**X**	
8245	Increase in penalty for bad checks and money orders	**43**	**X**	
8246	Understatement of taxpayer liability by return preparers	**44**		**X**
8247	Penalty for filing erroneous refund claims	**46**	**X** (with modifications)	

Table 2 - **Title XV of the Energy Independence and Security Act (EISA) of 2007(PL 110-140)**				
		FTB's 2007 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
1502	7-year amortization of geological and geophysical expenditures for major integrated oil companies	**59**		**X**

Table 3 – **The Virginia Tech Victims and Family Assistance Act (PL 110-141)**				
		FTB's 2007 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
1	Exclude from income payments from Hokie Spirit Memorial Fund	**63**	**X**	
2	Modify penalty for failure to file partnership returns	**64**		**X**

Table 4 – **The Mortgage Forgiveness Debt Relief Act (MFDRA) (PL 110-142)**				
		FTB's 2007 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
1 - 2	Exclusion of discharge of principal residence indebtedness	**66**	SB 1055 (2007/2008)	
3	Extension of deduction for private mortgage insurance	**68**		**X**
4	Change in tests to qualify as cooperative housing corporation	**70**	**X**	
5	Exclusion from income for benefits provided to volunteer EMS and firefighters	**71**	**X**	
6	Modify the prohibition against full-time students from qualifying for LIHTC unit	**74**	**X**	
7	Allow surviving spouse to exclude from gross income up to $500,000 of the gain from sale of principal residence if the sale occurs within 2 years of the death of the spouse	**76**	**X**	
8	Increase penalty for failure to file partnership returns	**77**	**X** (20% of federal penalty)	
9	Impose a penalty for failure to file S corporation returns	**79**	**X** (20% of federal penalty)	

Table 6 – **The Tax Technical Corrections Act of 2007 (PL 110-172)**				
		FTB's 2007 Annual Report Page Number	**Decision**	
			Conform	**Not Conform**
	The Tax Technical Corrections Act of 2007 (TTCA)	**85**	**X**	

2008 Conformity Decisions

These tables contain only items for which a conformity decision was necessary.

Table 2 **– Heartland, Habitat, Harvest, and Horticulture Act of 2008 (HHHHA)(PL 110-246)**				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
15302	Two-Year Extension of Special Rule Encouraging Contributions of Capital Gain Real Property For Conservation Purposes	**17**	**X**	
15303	Deduction for Endangered Species Recovery Expenditures	**21**	**X**	
15344	Three-Year Depreciation for Race Horses That are Two Years Old or Younger	**46**	**PIT**	**CORP**
15351	Limitation of Excess Farm Losses of Certain Taxpayers	**52**		**X**
15353	Information Reporting for Commodity Credit Corporation Transactions	**56**	**X**	

Table 3 **– Heroes Earnings Assistance and Relief Tax Act of 2008 (HEARTA)(PL 110-245)**				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
107	Distribution from Retirement Plans to Individuals Called to Active Duty	**75**	**X**	
109	Contributions of Military Death Gratuities to Roth IRAs and Education Savings Accounts	**78**	**X**	
110	Suspension of 5-Year Period during Service with the Peace Corps	**82**	**X**	

Table 3 – **Heroes Earnings Assistance and Relief Tax Act of 2008 (HEARTA)(PL 110-245)**				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
112	State Payments to Service Members Treated as Qualified Military Benefits	**86**	**X**	
113	Permanent Exclusion of Gain from Sale of a Principal Residence by Certain Employees of the Intelligence Community	**87**	**X**	
114	Special Disposition Rules for Unused Benefits in Health Flexible Spending Arrangements of Individuals Called to Active Duty	**89**	**X**	
303	Increase in Minimum Penalty on Failure to File a Return of Tax	**108**	**X**	

Table 4 – **Housing and Economic Recovery Act of 2008 (HERA)(PL 110-289)**				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
3001-3005	Various Housing Tax Incentives Related to the Low-Income Housing Tax Credit	**111**	**X**	
3091	Returns relating to Payments made in Settlement of Payment Card and Third-Party Network Transactions	**182**	**X**	
3092	Gain from Sale of Principal Residence Allocated to Nonqualified Use Not Excluded from Income	**185**	**X**	

Table 5 – **Hubbard Act of 2008 (PL 110-317)**				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
9	Repeal of Dollar Limitation on Contributions to Funeral Trusts	**194**	**X**	

Table 6 – Emergency Economic Stabilization Act of 2008 (EESA)(PL 110-343)				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
EESA Division A, Title III - Tax Provisions				
301	Gain or Loss from Sale or Exchange of Certain Preferred Stock	**195**		**X**
302	Special Rules for Tax Treatment of Executive Compensation of Employers Participating in the Troubled Assets Relief Program	**198**	**X**	
303	Extension of Exclusion of Income from Discharge of Qualified Principal Residence Indebtedness	**208**	**X** (with modifications)	
EESA Division B, Title I, Subtitle B - Carbon Mitigation and Coal Provisions				
116	Certain Income and Gains Relating to Industrial Source Carbon Dioxide Treated as Qualifying Income for Publicly Traded Partnerships	**243**	**X**	
EESA Division B, Title II - Energy Production Incentives				
201	Inclusion of Cellulosic Biofuel in Bonus Depreciation for Biomass Ethanol Plant Property	**245**		**X**
208	Certain Income and Gains Relating to Alcohol Fuels and Mixtures, Biodiesel Fuels and Mixtures, and Alternative Fuels and Mixtures Treated as Qualifying Income for Publicly Traded Partnerships	**266**	**X**	
209	Extension and Modification of Election to Expense Certain Refineries	**268**		**X**
EESA Division B, Title III - Energy Conservation and Efficiency Provisions				
303	Energy Efficient Commercial Buildings Deduction	**281**		**X**
306	Accelerated Recovery Period for Depreciation of Smart Meters and Smart Grid Systems	**289**	**PIT**	**CORP**
308	Special Depreciation Allowance for Certain Reuse and Recycling Property	**293**		**X**

Table 6 – Emergency Economic Stabilization Act of 2008 (EESA)(PL 110-343)				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
EESA Division C, Title II - Extension of Individual Tax Provisions				
204	Additional Standard Deduction for Real Property Taxes for Nonitemizers	**323**		**X**
EESA Division C, Title III - Extension of Business Tax Provisions				
301	Extension and Modification of Research Credit	**335**		**X**
305	Extension of 15-Year Straight-Line Cost Recovery for Qualified Leasehold Improvements and Qualified Restaurant Improvements; 15-Year Straight Line Cost Recovery for Certain Improvements to Retail Space	**350**		**X**
306	Modification of Tax Treatment of Certain Payments to Controlling Exempt Organizations	**354**	**X**	
307	Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property	**356**	**X**	
311	Extension of Election to Expense Advanced Safety Mine Equipment	**363**		**X**
317	Seven-Year Cost Recovery Period for Motorsports Racing Track Facility	**376**		**X**
323	Enhanced Charitable Deductions for Contributions of Food Inventory	**386**		**X**
324	Extension of Enhanced Charitable Deduction for Contributions of Book Inventory	**388**		**X**
EESA Division C, Title IV - Extension of Tax Administration Provisions				
402	Permanent Authority for Disclosure of Information Relating to Terrorists Activities	**392**		**X**
EESA Division C, Title V, Subtitle A - General Provisions				
505	Certain Farming Business Machinery and Equipment Treated as 5-Year Property	**401**		**X**
506	Modification of Penalty on Understatement of Taxpayer's Liability by Tax Return Preparer	**403**	**X** (with modifications)	

Table 6 – Emergency Economic Stabilization Act of 2008 (EESA)(PL 110-343)				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
EESA Division C, Title VII, Subtitle A - Heartland and Hurricane Ike Disaster Relief				
703	Reporting Requirements Relating to Disaster Relief Contributions	**409**	**X**	
EESA Division C, Title VII, Subtitle B - National Disaster Relief				
706	Losses Attributable to Federally Declared Disasters	**411**		**X**
707	Expensing of Qualified Disaster Expenses	**413**		**X**
708	Net Operating Losses Attributable to Federally Declared Disasters	**417**		**X**
710	Special Depreciation Allowance for Qualified Disaster Property	**425**		**X**
711	Increased Expensing for Qualified Disaster Assistance Property	**429**		**X**
EESA Division C, Title VIII - Spending Reductions and Appropriate Revenue Raisers for New Tax Policy Relief				
801	Nonqualified Deferred Compensation from Certain Tax Indifferent Parties	**431**		**X**

Table 6.5 - **Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351, October 7, 2008)**				
			Decision	
Act Section	**Provisions**		**Conform**	**Not Conform**
501	Uniform Definition of a Child	**See Addendum**	**X**	

Table 7 – **Worker, Retiree, and Employer Recovery Act of 2008 (WRERA)(PL 110-458)**				
		FTB's 2008 Annual Report Page Number	**Decision**	
Act Section	**Provisions**		**Conform**	**Not Conform**
124	Treatment of Certain Reimbursements from Governmental Plans for Medical Care	**457**	**X**	
127	Modification of Penalty for Failure to File Partnership Returns	**462**	**X** (20% of the federal penalty)	
128	Modification of Penalty for Failure to File S Corporation Returns	**464**	**X** (20% of the federal penalty)	

2009 Conformity Decision

Table 1 – **American Recovery and Reinvestment Act of 2009 (ARRA)(PL 111-5)**				
			Decision	
Act Section	**Provisions**		**Conform**	**Not Conform**
1104	Coordination with Renewable Energy Grants	**See Explanation on Page 2**	**X**	

TECHNICAL CONSIDERATIONS

Technical amendments are suggested and will be provided to the authors.

FISCAL IMPACT

As a result of the modifications to the system, programming, and testing, the costs to the department to implement this bill would be approximately $400,000. If this bill is enacted without appropriation language, the department would be required to redirect resources, which would have an adverse impact on current revenue generating programs and procedures.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, the revenue impact of conformity is shown in the following tables. Items that impact the measure of tax (tax revenue) are summed for each year, as are items that do not impact the measure of tax (penalty and interest revenue). Penalty and interest provisions are identified by an asterisk (*).

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

2005 CONFORMITY REVENUE TABLES

Table 2 **– Conformity Revenue Estimates for Disaster Mitigation Payments Act (PL 109-7)**

Act Section	Provisions	2009-10	2010-11	2011-12	2012-13
1	Proper Tax Treatment of Certain Disaster Mitigation Payments		$0	$0	$0

Table 3 **– Conformity Revenue Estimates for ETIA of 2005 (PL 109-58)**

Act Section	Provisions	2009-10	2010-11	2011-12	2012-13
1308	Electric Transmission Property Treated As 15-year Property		-$100,000	-$200,000	-$300,000
1309	Expansion of Amortization For Certain Atmospheric Pollution Control Facilities In Connection With Plants First Placed in Service after 1975		$0	$0	$0
1310	Modification to Special Rules For Nuclear Decommissioning Cost		-$1,200,000	-$2,500,000	-$2,200,000
1325	Natural Gas Distribution Lines Treated As 15-Year Property		-$500,000	-$600,000	-$900,000
1326	Natural Gas Gathering Lines Treated As 7-Year Property		-$30,000	-$20,000	-$20,000
1363	Modification of Recapture Rules for Amortizable Section 197 Intangibles		$800,000	$600,000	$700,000

Table 5 **– Conformity Revenue Estimates for GO Zone Act of 2005 (PL 109-135)**

Act Section	Provisions	2009-10	2010-11	2011-12	2012-13
303 *	Modification of Effective Date of Exception from Suspension Rules for Certain Listed and Reportable Transactions		$0	$0	$0
401	Tax Technical Provisions		$0	$0	$0

2005 Totals	2009-10	2010-11	2011-12	2012-13
2005 Tax Revenue Totals		-$1,030,000	-$2,720,000	-$2,720,000
2005 Penalty and Interest Totals		$0	$0	$0
2005 Grand Totals		-$1,030,000	-$2,720,000	-$2,720,000

2006 CONFORMITY REVENUE TABLES

Table 1 – **Conformity Revenue Estimates for TIPRA of 2005 (PL 109-222)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
Title II	**Other Provisions**				
201	Clarification of Taxation of Certain Settlement Funds	Included in Act section 409 of TRHCA of 2006			
202	Modification of Active Business Definition under Section 355	Included in Act section 410 of TRHCA of 2006			
204	Capital Gains Treatment for Certain Self-Created Musical Works	Included in Act section 412 of TRHCA of 2006			
207	Amortization of Expenses Incurred in Creating or Acquiring Music or Music Copyrights		$40,000	$20,000	-$20,000
209	Modification of Treatment of Loans to Qualified Continuing Care Facilities	Included in Act section 425 of TRHCA of 2006			
501	Application of Earnings Stripping Rules to Partners Which are Corporations		$0	$0	$0
507	Section 355 Not to Apply to Distributions Involving Disqualified Investment Companies		$700,000	$500,000	$500,000
510	Increase in Age of Minor Children Whose Unearned Income is Taxed as if Parent's Income	Included in Act section 8241 of SBWOTA of 2007			

Table 3 **– Conformity Revenue Estimates for Clarification of Treatment of Self-Employment for Purposes of the Limitation on State Taxation of Retirement Income (PL 109-264)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
1	Clarification of Treatment of Self-Employment for Purposes of the Limitation on State Taxation of Retirement Income		Baseline	Baseline	Baseline

Table 4 – **Conformity Revenue Estimates for the Pension Protection Act of 2006 (PPA)(PL 109-280)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
Title I	**REFORM OF FUNDING FOR SELF-EMPLOYED DEFINED BENEFIT PENSION PLANS**				
112	Minimum Funding Standards; Funding Rules for Single-Employer Defined Benefit Pension Plans		Baseline	Baseline	Baseline

Table 4 – **Conformity Revenue Estimates for the Pension Protection Act of 2006 (PPA)(PL 109-280)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
113	Benefit Limitations Under Single-Employer Plans		Baseline	Baseline	Baseline
Title II	**FUNDING RULES FOR MULTIEMPLOYER DEFINED BENEFIT PENSION PLANS**				
211	Funding Rules for Multiemployer Defined Benefit Plans		Baseline	Baseline	Baseline
212	Additional Funding Rules for Multiemployer Plans in Endangered or Critical Status		Baseline	Baseline	Baseline
221	Sunset of Additional Funding Rules		Baseline	Baseline	Baseline
Title VIII	**PENSION RELATED REVENUE PROVISIONS**				
Subtitle C	**Improvements in Portability, Distributions, and Contribution Rules**				
827	Penalty-Free Withdrawals from Retirement Plans for Individuals Called to Active Duty for at Least 179 Days	Included in Act section 107 of HEARTA of 2008			
828	Waiver of 10% Early Withdrawal Penalty Tax on Certain Distributions of Pension Plans for Public Safety Employees		-$300,000	-$200,000	-$200,000
831	Allowance of Additional IRA Payments in Certain Bankruptcy Cases		-$350,000	-$100,000	-$80,000
833	Inflation Indexing of Gross Income Limitations on Certain Retirement Savings Incentives		-$2,100,000	-$1,600,000	-$1,900,000
Subtitle F	**Other Provisions**				
863	Treatment of Death Benefits from Corporate-Owned Life Insurance		$0	$0	$0
866	Exemption of Income from Leveraged Real Estate Held by Church Plans		-$4,000	-$6,000	-$12,000
868	Gratuitous Transfer for Benefits of Employees		$0	$0	$0
Subtitle A	**Charitable Giving Incentives**				
Title XII	**Provisions Relating to Exempt Organizations**		Baseline	Baseline	Baseline
Subtitle B	**Reforming Exempt Organizations**				
Part 1	**General Reforms**				

Table 4 – **Conformity Revenue Estimates for the Pension Protection Act of 2006 (PPA)(PL 109-280)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
1211	Reporting on Certain Acquisitions of Interests on Insurance Contracts in Which Certain Exempt Organizations Hold an Interest		Baseline	Baseline	Baseline
1213	Reform of Charitable Contributions of Certain Easements in Registered Historic Districts and Reduced Deduction for Portion of Qualified Conservation Contribution Attributable to Rehabilitation Credit		$450,000	$350,000	$350,000
1214	Charitable Contributions for Taxidermy Property		$150,000	$100,000	$100,000
1215	Recapture of Tax Benefit for Charitable Contributions of Exempt Use Property Not Used for an Exempt Use		Baseline	Baseline	Baseline
1216	Limitation of Deduction for Charitable Contributions of Clothing and Household Items		Baseline	Baseline	Baseline
1217	Modification of Recordkeeping Requirements for Certain Charitable Contributions		Baseline	Baseline	Baseline
1218	Contributions of Fractional Interests in Tangible Personal Property		$350,000	$250,000	$250,000
1219 *	Provisions Relating to Substantial and Gross Overstatements of Valuations		$200,000	$100,000	$100,000
1220	Additional Standards for Credit Counseling Organizations		$300,000	$200,000	$200,000
1222	Definition of Convention or Association of Churches		$150,000	$150,000	$150,000
1223	Notification Requirement for Entities Not Currently Required to File		$150,000	$150,000	$150,000

Table 5**– Conformity Revenue Estimates for TRHCA of 2006 (PL 109-432)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
Title IV	**Other Provisions**				
407 *	Frivolous Tax Submissions		$200,000	$100,000	$100,000
409	Clarification of Taxation of Certain Settlement Funds Made Permanent – Effective in Taxable Year 2011[3]		-$200,000	-$200,000	-$300,000

[3] 409 - Includes revenue from Act section 201 of TIPRA of 2005.

Table 5– **Conformity Revenue Estimates for TRHCA of 2006 (PL 109-432)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
410	Modification of Active Business Definition Under Section 355 Made Permanent – Effective in Taxable Year 2011[4]		-$500,000	-$400,000	-$500,000
412	Capital Gains Treatment for Certain Self-Created Musical Works Made Permanent[5]		$0	$0	$0
417	Exclusion of Gain from Sale of Principal Residence by Certain Employees of the Intelligence Community	Included in Act section 113 of HEARTA of 2008			
418	Sale of Property by Judicial Officers		-$20,000	-$10,000	-$10,000
425	Loans to Qualified Continuing Care Facilities Made Permanent – Effective in Taxable Year 2011[6]		-$50,000	-$40,000	-$70,000
426	Technical Corrections		$0	$0	$0

2006 Totals	**2009-10**	**2010-11**	**2011-12**	**2012-13**
2006 Tax Revenue Totals		-$1,234,000	-$836,000	-$1,392,000
2006 Penalty and Interest Totals		$400,000	$200,000	$200,000
2006 Grand Totals		-$834,000	-636,000	-$1,192,000

[4] 410 - Includes revenue from Act section 202 of TIPRA of 2005.
[5] 412 - Includes revenue from Act section 204 of TIPRA of 2005.
[6] 425 - Includes revenue from Act Section 209 of TIPRA of 2005.

2007 CONFORMITY REVENUE TABLES

Table 1 - **Small Business and Work Opportunity Tax Act of 2007 (PL 110-28)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
8215	Family Business Tax Simplification		Baseline	Baseline	Baseline
8233	Recapture of Bad Debt Reserves		-$800,000	-$600,000	-$400,000
8234	Treatment of Sale of Interest in a Qualified Subchapter S Subsidiary		-$100,000	-$80,000	-$90,000
8236	Permit Interest Deduction to an Electing Small Business Trust to Acquire S Corporation Stock		-$200,000	-$150,000	-$150,000
8241	Increase in Age of Minor Children Whose Unearned Income is Taxed as if Parent's Income	$800,000	$15,000,000	$10,000,000	$10,000,000
8242 *	Modify Interest Suspension Under 6404(g) from 18 to 36 months	$1,300,000	$3,200,000	$4,100,000	$4,500,000
8245 *	Increase in Penalty for Bad Checks and Money Orders		$500,000	$500,000	$500,000
8247 *	Penalty for Filing Erroneous Refund Claims	$1,800,000	$6,400,000	$9,700,000	$11,000,000

Table 3 - **Virginia Tech Victims and Family Assistance Act (HR 4118, PL 110-141)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
1	Exclude From Income Payments from Hokie Spirit Memorial Fund		$0	$0	$0

Table 4 - **Mortgage Forgiveness Debt Relief Act of 2007 (HR 3648, PL 110-142)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
4	Change in Tests to Qualify as Cooperative Housing Corporation		-$80,000	-$80,000	-$80,000
5	Exclusion from Income for Benefits Provided to Volunteer EMS and Firefighters	-$200,000	-$3,700,000	-$500,000	$0
6	Modify the Prohibition Against Full-Time Students from Qualifying for LIHTC Unit		-$2,000	-$2,000	-$2,000
7	Allow Surviving Spouse to Exclude from Gross Income up to $500,000 of the Gain from Sale of Principal Residence if the Sale Occurs Within 2 Years of the Death of the Spouse		-$300,000	-$200,000	-$300,000
8 *	Increase Penalty for Failure to File Partnership Returns	Included in Act section 127 of WRERA of 2008			

Table 4 - **Mortgage Forgiveness Debt Relief Act of 2007 (HR 3648, PL 110-142)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
9 *	Impose a Penalty for Failure to File S Corporation Returns	Included in Act section 128 of WRERA of 2008			

Table 6 - **Technical Corrections Act of 2007 (PL 110-172)**	
No Revenue Impact	

2007 Totals	**2009-10**	**2010-11**	**2011-12**	**2012-13**
2007 Tax Revenue Totals	$600,000	$9,818,000	$8,388,000	$8,978,000
2007 Penalty and Interest Totals	$3,100,000	$10,100,000	$14,300,000	$16,000,000
2007 Grand Totals	$3,700,000	$19,918,000	$22,688,000	$24,978,000

2008 CONFORMITY REVENUE TABLES

Table 2 **- Conformity Revenue Estimates for HHHHA of 2008 (Title XV of PL 110-246)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
15302	Two-Year Extension of Special Rule Encouraging Contributions of Capital Gain Real Property For Conservation Purposes		$0	$0	$0
15303	Deduction for Endangered Species Recovery Expenditures		-$700,000	-$600,000	-$700,000
15344	Three-Year Depreciation for Race Horses That are Two Years Old or Younger		-$900,000	-$1,000,000	-$1,000,000
15353	Information Reporting for Commodity Credit Corporation Transactions		$0	$0	$0

Table 3 **- Conformity Revenue Estimates for HEARTA of 2008 (PL 110-245)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
106	Special Period of Limitation When Uniformed Services Retired Pay is Reduced as a Result of Award of Disability Compensation		Baseline	Baseline	Baseline
107	Distribution from Retirement Plans to Individuals Called to Active Duty		-$26,000	-$24,000	-$29,000
109	Contributions of Military Death Gratuities to Roth IRAs and Education Savings Accounts		-$8,000	-$5,000	-$4,000
110	Suspension of 5-Year Period during Service with the Peace Corps		-$5,000	-$3,000	-$3,000
112	State Payments to Service Members Treated as Qualified Military Benefits		$0	$0	$0
113	Permanent Exclusion of Gain from Sale of a Principle Residence by Certain Employees of the Intelligence Community		-$8,000	-$5,000	-$5,000
114	Special Disposition Rules for Unused Benefits in Health Flexible Spending Arrangements of Individuals Called to Active Duty		$0	$0	$0
303*	Increase in Minimum Penalty on Failure to File a Return of Tax	$200,000	$300,000	$300,000	$300,000

Table 4 - **Conformity Revenue Estimates for HERA of 2008 (PL 110-289)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
3001	Temporary Increase in Volume Cap for Low-Income Housing Credits		$0	$0	$0
3002	Determination of Credit Rate		$0	$0	$0
3003	Modification to Definition of Eligible Basis		$0	$0	$0
3004	Other Simplification and Reform of Low-Income Housing Tax Incentives		$0	$0	$0
3005	Treatment of Military Pay		$0	$0	$0
3091	Returns relating to Payments made in Settlement of Payment Card and Third-Party Network Transactions		Baseline	Baseline	Baseline
3092	Gain from Sale of Principal Residence Allocated to Nonqualified Use Not Excluded from Income		$6,400,000	$6,000,000	$6,400,000

Table 5 - **Conformity Revenue Estimates for Hubbard Act of 2008 (PL 110-317)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
9	Repeal of Dollar Limitation on Contributions to Funeral Trusts		$20,000	$15,000	$15,000

Table 6 - **Conformity Revenue Estimates for EESA of 2008 (PL 110-343)**					
Act Section	**Provisions**	**2009-10**	**2010-11**	**2011-12**	**2012-13**
EESA Division A, Title III - Tax Provisions					
302	Special Rules for Tax Treatment of Executive Compensation of Employers Participating in the Troubled Assets Relief Program		Indeterminate	Indeterminate	Indeterminate
303	Extension of Exclusion of Income from Discharge of Qualified Principal Residence Indebtedness		-$15,000,000	-$10,000,000	-$9,000,000
EESA Division B, Title I, Subtitle A - Energy Production Incentives					
116	Certain Income and Gains Relating to Industrial Source Carbon Dioxide Treated as Qualifying Income for Publicly Traded Partnerships		-$100,000	-$120,000	-$150,000

Table 6 - **Conformity Revenue Estimates for EESA of 2008 (PL 110-343)**

Act Section	Provisions	2009-10	2010-11	2011-12	2012-13
EESA Division B, Title II - Energy Production Incentives					
208	Certain Income and Gains Relating to Alcohol Fuels and Mixtures, Biodiesel Fuels and Mixtures, and Alternative Fuels and Mixtures Treated as Qualifying Income for Publicly Traded Partnerships		-$300,000	-$200,000	-$250,000
EESA Division B, Title III - Energy Conservation and Efficiency Provisions					
306	Accelerated Recovery Period for Depreciation of Smart Meters and Smart Grid Systems		-$250,000	-$300,000	-$400,000
EESA Division C, Title III - Extension of Business Tax Provisions					
306	Modification of Tax Treatment of Certain Payments to Controlling Exempt Organizations		$0	$0	$0
307	Basis Adjustment to Stock of S Corporations Making Charitable Contributions of Property		$0	$0	$0
EESA Division C, Title V, Subtitle A – General Provisions					
506*	Modification of Penalty on Understatement of Taxpayer's Liability by Tax Return Preparer		-$100,000	-$200,000	-$200,000
EESA Division C, Title VII, Subtitle A - Heartland and Hurricane Ike Disaster Relief					
703	Reporting Requirements Relating to Disaster Relief Contributions		$0	$0	$0

Table 6.5 - **Fostering Connections to Success and Increasing Adoptions Act of 2008 (PL 110-351, October 7, 2008)**

Act Section	Provisions	2009-10	2010-11	2011-12	2012-13
510	Uniform Definition of a Child		$5,700,000	$2,800,000	$2,800,000

Table 7 **- Conformity Revenue Estimates for WRERA of 2008 (PL 110-458)**

Act Section	Provisions	2009-10	2010-11	2011-12	2012-13
Title I, Subtitle B, Other Provisions					
124	Treatment of Certain Reimbursements from Governmental Plans for Medical Care		$0	$0	$0
127*	Modification of Penalty for Failure to File Partnership Returns	$30,000	$800,000	$500,000	$450,000
128*	Modification of Penalty for Failure to File S Corporation Returns	$40,000	$1,500,000	$1,200,000	$1,200,000

2008 Totals	**2009-10**	**2010-11**	**2011-12**	**2012-13**
2008 Tax Revenue Totals		-$5,177,000	-$3,442,000	-$2,326,000
2008 Penalty and Interest Totals	$270,000	$2,500,000	$1,800,000	$1,750,000
2008 Grand Totals	$270,000	-$2,677,000	-$1,642,000	-$576,000

2009 CONFORMITY REVENUE TABLE

Table 1 – **American Recovery and Reinvestment Act of 2009 (PL 111-5, February 17, 2009)**

Act Section	Provisions	2009-10	2010-11	2011-12	2012-13
1104	Coordination with Renewable Energy Grants	-$24,000,000	-$23,000,000	-$23,000,000	-$15,000,000

GRAND TOTALS

2005, 2006, 2007, 2008, and 2009 Totals	**2009-10**	**2010-11**	**2011-12**	**2012-13**
2005 - 2009 Tax Revenue Totals	-$23,400,000	-$20,623,000	-$21,610,000	-$12,460,000
2005 - 2009 Penalty and Interest Totals	$3,370,000	$13,000,000	$16,300,000	$17,950,000
2005 - 2009 Grand Totals	**-$20,030,000**	**-$7,623,000**	**-$5,310,000**	**$5,490,000**

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ADDENDUM

Fostering Connections to Success and Increasing Adoptions Act of 2008
(PL 110-351, October 7, 2008)

Section	Section Title
501	Uniform Definition of a Child

Background

Uniform definition of qualifying child

In general

Present law provides a uniform definition of qualifying child (the ‘‘uniform definition’’) for purposes of the dependency exemption, the child credit, the earned income credit, the dependent care credit, and head of household filing status. A taxpayer generally may claim an individual who does not meet the uniform definition (with respect to any taxpayer) as a dependent if the dependency requirements are satisfied. The uniform definition generally does not modify other parameters of each tax benefit (e.g., the earned income requirements of the earned income credit) or the rules for determining whether individuals other than children of the taxpayer qualify for each tax benefit.

Under the uniform definition, in general, a child is a qualifying child of a taxpayer if the child satisfies each of three tests: (1) the child has the same principal place of abode as the taxpayer for more than one half the taxable year; (2) the child has a specified relationship to the taxpayer; and (3) the child has not yet attained a specified age. A tie-breaking rule applies if more than one taxpayer claims a child as a qualifying child.

The support and gross income tests for determining whether an individual is a dependent generally do not apply to a child who meets the requirements of the uniform definition.

Residency test

Under the uniform definition’s residency test, a child must have the same principal place of abode as the taxpayer for more than one half of the taxable year. Temporary absences due to special circumstances, including absences due to illness, education, business, vacation, or military service, are not treated as absences.

Relationship test

In order to be a qualifying child, the child must be the taxpayer’s son, daughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, or a descendant of any such individual. For purposes of determining whether an adopted child is treated as a child by blood, an adopted child means an individual who is legally adopted by the taxpayer, or an individual who is lawfully placed with the taxpayer for legal adoption by the taxpayer. A foster child who is placed with the taxpayer by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction is treated as the taxpayer’s child.

Age test

The age test varies depending upon the tax benefit involved. In general, a child must be under age 19 (or under age 24 in the case of a full-time student) in order to be a qualifying child. In general, no age limit applies with respect to individuals who are totally and permanently disabled within the meaning of IRC section 22(e)(3) at any time during the calendar year. A child must be under age 13 (if he or she is not disabled) for purposes of the dependent care credit, and under age 17 (whether or not disabled) for purposes of the child credit.

Children who support themselves

A child who provides over one half of his or her own support generally is not considered a qualifying child of another taxpayer. However, a child who provides over one half of his or her own support may constitute a qualifying child of another taxpayer for purposes of the earned income credit.

Tie-breaking rules

If a child would be a qualifying child with respect to more than one individual (e.g., a child lives with his or her mother and grandmother in the same residence) and more than one person claims a benefit with respect to that child, then the following ‘‘tie-breaking’’ rules apply. First, if only one of the individuals claiming the child as a qualifying child is the child’s parent, the child is deemed the qualifying child of the parent. Second, if both parents claim the child and the parents do not file a joint return, then the child is deemed a qualifying child first with respect to the parent with whom the child resides for the longest period of time, and second with respect to the parent with the highest adjusted gross income. Third, if the child’s parents do not claim the child, then the child is deemed a qualifying child with respect to the claimant with the highest adjusted gross income.

Interaction with other rules

Taxpayers generally may claim an individual who does not meet the uniform definition with respect to any taxpayer as a dependent if the dependency requirements (including the gross income and support tests) are satisfied. Thus, for example, a taxpayer may claim a parent as a dependent if the taxpayer provides more than one half of the support of the parent and the parent’s gross income is less than the personal exemption amount. As another example, a grandparent may claim a dependency exemption with respect to a grandson who does not reside with any taxpayer for over one half the year, if the grandparent provides more than one half of the support of the grandson and the grandson’s gross income is less than the personal exemption amount.

Children of divorced or legally separated parents

In the case of divorced or legally separated parents, a custodial parent may release the claim to a dependency exemption and the child credit to a noncustodial parent. While the definition of qualifying child is generally uniform, this custodial waiver rule does not apply with respect to the earned income credit, head of household status, or the dependent care credit.

Other provisions

A taxpayer identification number for a child must be provided on the taxpayer's return. For purposes of the earned income credit, a qualifying child is required to have a social security number that is valid for employment in the United States (that is, the child must be a U.S. citizen, permanent resident, or have a certain type of temporary visa).

Dependency rules

In general

An individual may be claimed as a taxpayer's dependent if such individual is a qualifying child or a qualifying relative of the taxpayer and meets certain other requirements. An individual is a taxpayer's qualifying relative if such individual (1) bears the appropriate relationship to the taxpayer; (2) has a gross income that does not exceed the personal exemption amount; (3) receives one-half of his or her support from the taxpayer; and (4) is not a qualifying child of the taxpayer. Generally, an individual bears the appropriate relationship to the taxpayer if the individual is the taxpayer's lineal descendent or ancestor, brother, sister, aunt, uncle, niece, or nephew. Some relations by marriage also qualify, including stepmothers, stepfathers, stepbrothers, stepsisters, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law, and sisters-in-law. In addition, an individual bears the appropriate relationship if the individual has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.

Dependents of dependents

Generally, if an individual is a dependent of a taxpayer for any taxable year, such individual is treated as having no dependents for such taxable year. Therefore, the individual is ineligible to claim:

1. Head of household filing status;[7]
2. The dependent care credit;[8] or
3. A dependency exemption.[9]

Married dependents

Generally, an individual filing a joint return with such individual's spouse is not treated as the dependent of a taxpayer. Therefore, the taxpayer is ineligible to claim the earned income credit or a dependency exemption with respect to such individual.

[7] IRC section 2.
[8] IRC section 21.
[9] IRC section 151.

Citizenship and residency

Children who are U.S. citizens or nationals living abroad or non-U.S. citizens or nationals living in Canada or Mexico may qualify as dependents. In addition, a legally adopted child who does not satisfy the residency or citizenship requirement may nevertheless qualify as a dependent if (1) the child's principal place of abode is the taxpayer's home and (2) the taxpayer is a citizen or national of the United States.

Earned income credit

The earned income credit is a refundable tax credit available to certain lower-income individuals. Generally, the amount of an individual's allowable earned income credit is dependent on the individual's earned income, adjusted gross income, and the number of qualifying children.

An individual who is a qualifying child of another individual is not eligible to claim the earned income credit. Thus, in certain cases a taxpayer caring for a younger sibling in a home with no parents would be ineligible to claim the earned income credit based solely on the fact that the taxpayer is a qualifying child of the younger sibling if the taxpayer meets the age, relationship, and residency tests.

New Federal Law (IRC section 152)

Limit definition of qualifying child

The provision adds a new requirement to the uniform definition. Specifically, it provides that an individual who otherwise satisfies the uniform definition is not treated as a qualifying child unless he or she is either: (1) younger than the individual claiming him or her as a qualifying child or (2) permanently and totally disabled.

The provision also provides that an individual who is married and files a joint return (unless the return is filed only as a claim for a refund) will not be considered a qualifying child for child-related tax benefits, including the child tax credit.

Restrict qualifying child tax benefits to child's parent

The provision provides that if a parent may claim a particular qualifying child, no other individual may claim that child. There is one exception to this rule: if no parent claims the qualifying child, another individual may claim such child if such other individual (1) is otherwise eligible to claim the child and (2) has a higher adjusted gross income for the taxable year than any parent eligible to claim the child.

The provision further provides that dependent filers are not eligible for child-related tax benefits.

Effective Date

The provision is effective for taxable years beginning after December 31, 2008.

California Law (R&TC sections 17042, 17052.18, 17054, and 17056)

California law follows the federal definition of a qualifying child for purposes of the head-of-household filing status, the dependent care credit, and the dependent exemption credit.

Head of household

California law conforms by reference to the federal definition of head of household as it read on the "specified date" of January 1, 2005. Because the federal change to the definition of a qualifying child was made after the "specified date" of January 1, 2005, California does not conform to this federal change.

Dependent care credit

California allows a refundable dependent care credit computed as a percentage of the allowable federal credit. The percentage varies by adjusted gross income (AGI) as follows:

AGI Amount	Percentage
$40,000 or less	50 percent
$40,001 - $70,000	43 percent
$70,001 - $100,000	34 percent
Over $100,000	0 percent

Because the California credit is based on the allowable amount of the federal credit, California automatically conforms to any federal changes in the definition of a qualifying child for purposes of the dependent care credit.

Dependent exemption credit

The dependent exemption credit conforms to the federal definition of a dependent as of the "specified date" of January 1, 2005. Because the federal definition of a dependent includes a qualifying child, and the federal change to the definition of a qualifying child was made after the "specified date" of January 1, 2005, California does not conform to this federal change.