

State of California

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Legislative Change No.

10-25

Senate Committee on
Budget and Fiscal

Bill Number: SB 858 Author: Review Chapter Number: **10-721**

Laws Affecting Franchise Tax Board: Sections 6452.1, 17276, 17276.05, 17276.9, 17276.10, 17276.20, 17276.21, 17276.22, 18510, 19138, 23101, 24416, 24416.05, 24416.9, 24416.10, 24416.20, 24416.21, 24416.22, and 25136 of the Revenue and Taxation Code

Date Filed with the Secretary of State: October 19, 2010

SUBJECT: Use Tax On Tax Returns/Federal Disaster Loss Net Operating Loss (NOL) Carrybacks Inapplicable/Suspend NOLs 2010 & 2011/Delay NOL Carrybacks/Modify Large Corporate Understatement Penalty(LCUP)/Clarify Bright-line Test/Reinstate Pre-2011 Rules For Assigning Intangibles & Services To Nonelectors Of Single Sales Factor Formula & If Single Sales Factor Provision Is Inoperative

Senate Bill 858 (Senate Committee on Budget and Fiscal Review), as enacted on October 19, 2010, made the following changes to laws impacting the Franchise Tax Board:

Section 6452.1 of the Revenue and Taxation Code is repealed and added.

This act repeals Section 6452.1 and restores these provisions by adding another Section 6452.1 that removes prior law's sunset date and adds a new operative date.

This act is effective immediately upon enactment and specifically operative for purchases of tangible personal property made on or after January 1, 2010, in taxable years beginning on and after January 1, 2010.

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

Section 17276 of the Revenue and Taxation Code is repealed.

This act repeals Section 17276, but restores these provisions in section 17276.20 added by this act.

Assistant Bureau Director

Patrice Gau-Johnson

Date

10/26/10

Section 17276.05 of the Revenue and Taxation Code is added.

This act provides that IRC section 172(b)(1)(J), relating to the special 5-year carryback period for NOLs attributable to "qualified disaster losses," and IRC section 172(j), relating to definitions and rules for the 5-year carryback period, will not apply for California purposes.

This act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

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

Section 17276.9 of the Revenue and Taxation Code is repealed.

This act repeals Section 17276.9, but restores these provisions in Section 17276.21 added by this act.

Section 17276.10 of the Revenue and Taxation Code is repealed.

This act repeals Section 17276.10, but restores these provisions in Section 17276.22 added by this act.

Section 17276.20 of the Revenue and Taxation Code is added.

This act restores the provisions of Section 17276 repealed by this act and delays the operative date and phase-in periods for NOL carrybacks two years.

This act is effective immediately and specifically provides that losses attributable to taxable years beginning on or after January 1, 2013, could begin to be carried back.

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

Section 17276.21 of the Revenue and Taxation Code is added.

This act restores the provisions of Section 17276.9 repealed by this act and suspends NOL deductions two additional years except for a taxpayer with modified adjusted gross income of less than \$300,000.

This act is effective immediately and specifically operative for taxable years beginning on or after January 1, 2010, and before January 1, 2012.

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

Section 17276.22 of the Revenue and Taxation Code is added.

This act restores the provisions of Section 17276.10 repealed by this act and delays the operative date and phase-in periods for NOL carrybacks two years for special NOLs (i.e., economic development area NOLs).

This act is effective immediately and specifically provides that losses attributable to taxable years beginning on or after January 1, 2013, could begin to be carried back.

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

Section 18510 of the Revenue and Taxation Code is repealed and added.

This act repeals Section 18510 and restores these provisions by adding another Section 18510 that removes the prior law's sunset date and adds a new operative date.

This act is effective immediately and specifically operative for returns filed for taxable years beginning on or after January 1, 2010.

Section 19138 of the Revenue and Taxation Code is amended.

This act modifies the LCUP by providing a second condition when the penalty will be imposed and provides that the LCUP applies to an "understatement of tax" only if such understatement exceeds the greater of:

- 1st Condition: \$1 million; or
- 2nd Condition: 20 percent of the tax shown on an original return (or amended return filed on or before the original or extended due date of the original return).

This act is effective immediately and is specifically operative for taxable years beginning on or after January 1, 2010.

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

Section 23101 of the Revenue and Taxation Code is amended.

This act clarifies that a taxpayer will utilize the market rule, Section 25136(b), for determining the bright-line test, relating to sales, for when a taxpayer is doing business in the state.

This act is effective immediately and specifically operative for taxable years beginning on or after January 1, 2011.

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

Section 24416 of the Revenue and Taxation Code is repealed.

This act repeals Section 24416, but restores these provisions in Section 24416.20 added by this act.

Section 24416.05 of the Revenue and Taxation Code is added.

This act provides that IRC section 172(b)(1)(J), relating to the special 5-year carryback period for NOLs attributable to “qualified disaster losses,” and IRC section 172(j), relating to definitions and rules for the 5-year carryback period, will not apply for California purposes.

This act is effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

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

Section 24416.9 of the Revenue and Taxation Code is repealed.

This act repeals Section 24416.9, but restores these provisions in Section 24416.21 added by this act.

Section 24416.10 of the Revenue and Taxation Code is repealed.

This act repeals Section 24416.10, but restores these provisions in Section 24416.22 added by this act.

Section 24416.20 of the Revenue and Taxation Code is added.

This act restores provisions of Section 24416 repealed by this act and delays the operative date and phase-in periods for NOL carrybacks two years.

This act is effective immediately and specifically provides that losses attributable to taxable years beginning on or after January 1, 2013, could begin to be carried back.

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

Section 24416.21 of the Revenue and Taxation Code is added.

This act restores the provisions of Section 24416.9 repealed by this act and suspends NOL deductions two additional years except for a taxpayer with preapportioned income of less than \$300,000.

This act is effective immediately and specifically operative for taxable years beginning on or after January 1, 2010, and before January 1, 2012.

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

Section 24416.22 of the Revenue and Taxation Code is added.

This act restores the provisions of Section 24416.10 repealed by this act and delays the operative date and phase-in periods for NOL carrybacks two years for special NOLs (i.e., economic development area NOLs).

This act is effective immediately and specifically provides that losses attributable to taxable years beginning on or after January 1, 2013, could begin to be carried back.

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

Section 25136 of the Revenue and Taxation Code, as added by Section 14 of Chapter 10 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

Section 25136 of the Revenue and Taxation Code, as amended by Section 13 of Chapter 17 of the 3rd Extraordinary Session of the Statutes of 2009, is amended.

This act makes the following changes:

- Requires an apportioning trade or business that makes an election to utilize the single sales factor apportionment formula to use the post-2010 rules for assigning sales of intangibles and services.
- Requires an apportioning trade or business that has not made an election to utilize the single sales factor apportionment formula to use the pre-2011 rules for assigning sales of intangibles and services.
- If the single sales factor election is inoperative, requires all apportioning trades or businesses to use the pre-2011 rules for assigning sales of intangibles and services.
- Provides that no inference be drawn from the amendments made by this act with respect to the extent to which the rules for the assignment of sales of intangibles and services, before and after the amendments, are intended to properly reflect the market for the activities of the taxpayer giving rise to the business income. Section 25136(a) and (b) are intended to accomplish the goal of proper market reflection in the sales assigned to California.

This act is effective immediately and specifically operative for taxable years beginning on or after January 1, 2011.

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