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State of California
Franchise Tax Board

Summary of Federal Income Tax Changes
2011

Laws Affected

Personal Income Tax Laws

Corporation Tax Laws

Administration of Franchise and Income Tax Laws

Summary of Federal Income Tax Changes
2011

Prepared by the Staff of the
Franchise Tax Board
STATE OF CALIFORNIA

Members of the Board:

John Chiang, Chair
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This report is submitted in fulfillment of the requirement in Revenue and Taxation Code section 19522.

Summary of Federal Income Tax Changes – 2011

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EXECUTIVE SUMMARY

Prepared by the Staff of the
Franchise Tax Board (FTB)
State of California

During 2011, the Internal Revenue Code (IRC) or its application by California was changed by:

PUBLIC LAW	TITLE	DATE
112-9	Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011	April 14, 2011
112-56 Title I	Three Percent Withholding Repeal and Job Creation Act	November 21, 2011
112-56 Title II	Vow to Hire Heroes Act of 2011	November 21, 2011
112-56 Title IV	Modification of Calculation of Modified Adjusted Gross Income for Determining Certain Healthcare Program Eligibility	November 21, 2011
112-78	Temporary Payroll Tax Cut Continuation Act of 2011	December 23, 2011
112-5, 112-7, 112-10, 112-16, 112-21, 112-27, 112-30, 112-40, 112-41, Title III of 112-56, 112-74, and 112-81	2011 Miscellaneous Federal Acts Impacting the IRC that do not Require a California Response	Various

This report explains the new federal laws along with the effective dates, the corresponding California law, if any, including an explanation of any changes made in response to the new federal law, and the impact on California revenue were California to conform to the federal changes. This report also contains citations to the section numbers of federal Public Laws, the IRC, and the California Revenue and Taxation Code (R&TC) impacted by the federal changes.

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2011 EXPIRING TAX PROVISIONS

Following is a list of California tax provisions that expire in 2011:

California Sunset ¹	California Section(s)	Federal Section	Federal Sunset	Description
12/31/11	17052.17 & 23617	45F	12/31/12	Credit: Employer Child Care Assistance
12/31/11	17052.18 & 23617.5	N/A	N/A	Credit: Employer Dependent Care Plan
12/31/11 ²	17059.1	N/A	N/A	Credit: First Time Homebuyer and New Home

This report contains the following exhibits:

- Exhibit A** 2011 Miscellaneous Federal Acts Impacting the IRC Not Requiring a California Response - Short explanations of federal law changes that are either not administered by the FTB or are not applicable to California.
- Exhibit B** Expiring Tax Provisions - A complete listing of expiring provisions in California tax law.
- Exhibit C** Revenue Tables - The impact on California revenue were California to conform to applicable federal changes.

¹ In general, this is the last taxable year to which the provision applies. Fiscal years beginning within this taxable year are, in general, also covered by the provision. In some cases, the repeal date of the section is listed or the expiration applies to transactions occurring after this date.

² Each credit had a \$100 million cap—the Legislature allocated \$100 million to the First-Time Homebuyer Credit and \$100 million to the New Home Credit. The First-Time Homebuyer Credit expired when its cap was reached in August, 2010. The \$100 million of New Home Credit was not fully allocated, but the credit has expired because it was limited to buyers who: (1) closed escrow on or before July 31, 2011, and (2) sent applications within 14 days after escrow closed. As a result, the FTB stopped accepting New Home Credit applications as of midnight August 14, 2011.

**COMPREHENSIVE 1099 TAXPAYER PROTECTION AND REPAYMENT OF EXCHANGE SUBSIDY
OVERPAYMENTS ACT OF 2011**

Public Law 112-9, April 14, 2011

<u>Section</u>	<u>Section Title</u>
2	Repeal of Expansion of Information Reporting Requirements to Payments Made to Corporations and to Payments for Property and Other Gross Proceeds

Introduction

The federal expansion of information reporting requirements to payments made to corporations and to payments for property and other gross proceeds was repealed before it went into effect.

Background

A variety of information reporting requirements apply under present law.³ The primary provision governing information reporting by payors requires an information return by every person engaged in a trade or business who makes payments to any one payee aggregating \$600 or more in any taxable year in the course of that payor's trade or business.⁴ Reportable payments include compensation for both goods and services, and may include gross proceeds. Certain enumerated types of payments that are subject to other specific reporting requirements are carved out of reporting under this general rule by regulation.⁵ Another carve out excepts payments to corporations from reporting requirements.⁶

For payments made after December 31, 2011, the class of payments subject to reporting was expanded in two ways.⁷ First, the regulatory carve out of payments to corporations was expressly overridden by the addition of IRC section 6041(i). Second, information reporting requirements were expanded to include gross proceeds paid in consideration for any type of property.

³ IRC sections 6031 through 6060.

⁴ IRC section 6041(a). Information returns are generally submitted electronically on federal Forms 1096 and federal Forms 1099, although certain payments to beneficiaries or employees may require use of federal Forms W-3 and W-2, respectively. Treas. Reg. section 1.6041-1(a)(2).

⁵ IRC section 6041(a) requires reporting of payments "other than payments to which IRC section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a), or 6050N(a) applies and other than payments with respect to which a statement is required under authority of IRC section 6042(a), 6044(a)(2), or 6045[.]" The payments thus excepted include most interest, royalties, and dividends.

⁶ Treas. Reg. section 1.6041-3(p).

⁷ Section 9006 of the Patient Protection and Affordable Care Act, Public Law 111-148 (March 23, 2010).

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The payor is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.⁸ The regulations generally except from reporting payments to exempt organizations, governmental entities, international organizations, or retirement plans.

Additionally, the requirement that businesses report certain payments is generally not applicable to payments by persons engaged in a passive investment activity. However, beginning in 2011, recipients of rental income from real estate generally are subject to the same information reporting requirements as taxpayers engaged in a trade or business.⁹ In particular, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically federal Form 1099-MISC) to the IRS and to the service provider. Exceptions to this reporting requirement are made for: (1) individuals who rent their principal residence on a temporary basis, including members of the military or employees of the intelligence community (as defined in IRC section 121(d)(9)), (2) individuals who receive only minimal amounts of rental income, as determined by the Secretary in accordance with regulations, and (3) individuals for whom the requirements would cause hardship, as determined by the Secretary in accordance with regulations.¹⁰

Detailed rules are provided for the reporting of various types of investment income, including interest, dividends, and gross proceeds from brokered transactions (such as a sale of stock).¹¹ In general, the requirement to file federal Form 1099 applies with respect to amounts paid to U.S. persons and is linked to the backup withholding rules of IRC section 3406. Thus, a payor of interest, dividends or gross proceeds generally must request that a U.S. payee (other than certain exempt recipients) furnish a federal Form W-9 providing that person's name and taxpayer identification number.¹² That information is then used to complete the federal Form 1099.

⁸ IRC section 6041(d). Specifically, the recipient of the payment is required to provide a federal Form W-9 to the payor, which enables the payee to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor. If a federal Form W-9 is not provided, the payor is required to "backup withhold" tax at a rate of 28 percent of the gross amount of the payment unless the payee has otherwise established that the income is exempt from backup withholding. The backup withholding tax may be credited by the payee against regular income tax liability, i.e., it is effectively an advance payment of tax, similar to the withholding of tax from wages.

⁹ IRC section 6041(h); Small Business Jobs Act of 2010, Public Law 111-240, section 2101 (Sept. 27, 2010).

¹⁰ Treasury has not promulgated regulations defining these "minimal amounts of rental income" or "hardship" cases.

¹¹ IRC sections 6042 (dividends), 6045 (broker reporting), and 6049 (interest), as well as the Treasury regulations thereunder.

¹² See Treas. Reg. section 31.3406(h)-3.

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Failure to comply with the information reporting requirements results in penalties, which may include a penalty for failure to file the information return,¹³ and a penalty for failure to furnish payee statements¹⁴ or failure to comply with other various reporting requirements.¹⁵

New Federal Law (IRC section 6041)

Under the provision, the changes to IRC section 6041 enacted under section 9006 of the Patient Protection and Affordable Care Act that provide rules for payments to corporations, provide additional regulatory authority and impose a reporting requirement with respect to gross proceeds from property, are repealed in their entirety.

Effective Date

This provision is effective for payments made after December 31, 2011.

California Law (R&TC section 18631)

The FTB may request a copy of any information return that is added, on or after January 1, 2009, to Part III of Subchapter A of Chapter 61 of the IRC as a newly-required information return required to be filed with the Secretary of the Treasury; thus, prior to its repeal, the FTB would have been able to request a copy of any federal information return that would have been required under this expanded reporting requirement.

Impact on California Revenue

Baseline—based on a proration of the federal estimate developed by the Joint Committee on Taxation, baseline revenue losses are estimated to be \$11 million in 2011-12, \$44 million in 2012-13, and \$60 million in 2013-14.

¹³ IRC section 6721. The penalty for failure to file an information return generally is \$100 for each return for which such failure occurs. The total penalty imposed on a person for all failures during a calendar year cannot exceed \$1,500,000. Additionally, special rules apply to reduce the per-failure and maximum penalties where the failure is corrected within a specified period.

¹⁴ IRC section 6722. The penalty for failure to provide a correct payee statement is \$100,000 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed \$1,500,000. Special rules apply that increase the per-statement and total penalties where there is intentional disregard of the requirement to furnish a payee statement.

¹⁵ IRC section 6723. The penalty for failure to timely comply with a specified information reporting requirement is \$50 per failure, not to exceed \$100,000 for a calendar year.

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<u>Section</u>	<u>Section Title</u>
3	Repeal of Expansion of Information Reporting Requirements for Rental Property Expense Payments

Introduction

The federal expansion of information reporting requirements to rental property expense payments was repealed before it went into effect.

Background

A variety of information reporting requirements apply under present law.¹⁶ The primary provision governing information reporting by payors requires an information return by every person engaged in a trade or business who makes payments to any one payee aggregating \$600 or more in any taxable year in the course of that payor's trade or business.¹⁷ Reportable payments include compensation for both goods and services, and may include gross proceeds. Certain enumerated types of payments that are subject to other specific reporting requirements are carved out of reporting under this general rule by regulation.¹⁸ Another carve out excepts payments to corporations from reporting requirements.¹⁹

For payments made after December 31, 2011, the class of payments subject to reporting was expanded in two ways.²⁰ First, the regulatory carve out of payments to corporations was expressly overridden by the addition of IRC section 6041(i). Second, information reporting requirements were expanded to include gross proceeds paid in consideration for any type of property. The payor is required to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor.²¹ The regulations generally

¹⁶ IRC sections 6031 through 6060.

¹⁷ IRC section 6041(a). Information returns are generally submitted electronically on federal Forms 1096 and federal Forms 1099, although certain payments to beneficiaries or employees may require use of federal Forms W-3 and W-2, respectively. Treas. Reg. section 1.6041-1(a)(2).

¹⁸ IRC section 6041(a) requires reporting of payments "other than payments to which IRC section 6042(a)(1), 6044(a)(1), 6047(c), 6049(a), or 6050N(a) applies and other than payments with respect to which a statement is required under authority of IRC section 6042(a), 6044(a)(2), or 6045[.]" The payments thus excepted include most interest, royalties, and dividends.

¹⁹ Treas. Reg. section 1.6041-3(p).

²⁰ The Patient Protection and Affordable Care Act, Public Law. 111-148, section 9006 (March 23, 2010).

²¹ IRC section 6041(d). Specifically, the recipient of the payment is required to provide a federal Form W-9 to the payor, which enables the payee to provide the recipient of the payment with an annual statement showing the aggregate payments made and contact information for the payor. If a federal Form W-9 is not provided, the payor is required to "backup withhold" tax at a rate of 28 percent of the gross amount of the payment unless the payee has

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except from reporting payments to exempt organizations, governmental entities, international organizations, or retirement plans.

Additionally, the requirement that businesses report certain payments is generally not applicable to payments by persons engaged in a passive investment activity. However, beginning in 2011, recipients of rental income from real estate generally are subject to the same information reporting requirements as taxpayers engaged in a trade or business.²² In particular, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are required to provide an information return (typically federal Form 1099-MISC) to the IRS and to the service provider. Exceptions to this reporting requirement are made for (1) individuals who rent their principal residence on a temporary basis, including members of the military or employees of the intelligence community (as defined in IRC section 121(d)(9)), (2) individuals who receive only minimal amounts of rental income, as determined by the Secretary in accordance with regulations, and (3) individuals for whom the requirements would cause hardship, as determined by the Secretary in accordance with regulations.²³

Detailed rules are provided for the reporting of various types of investment income, including interest, dividends, and gross proceeds from brokered transactions (such as a sale of stock).²⁴ In general, the requirement to file federal Form 1099 applies with respect to amounts paid to U.S. persons and is linked to the backup withholding rules of IRC section 3406. Thus, a payor of interest, dividends or gross proceeds generally must request that a U.S. payee (other than certain exempt recipients) furnish a federal Form W-9 providing that person's name and taxpayer identification number.²⁵ That information is then used to complete the federal Form 1099.

Failure to comply with the information reporting requirements results in penalties, which may include a penalty for failure to file the information return,²⁶ and a penalty for failure to furnish payee statements²⁷ or failure to comply with other various reporting requirements.²⁸

otherwise established that the income is exempt from backup withholding. The backup withholding tax may be credited by the payee against regular income tax liability, i.e., it is effectively an advance payment of tax, similar to the withholding of tax from wages.

²² IRC section 6041(h); the Small Business Jobs Act of 2010, Public Law 111-240, section 2101 (Sept. 27, 2010).

²³ Treasury has not promulgated regulations defining these "minimal amounts of rental income" or "hardship" cases.

²⁴ IRC sections 6042 (dividends), 6045 (broker reporting), and 6049 (interest), as well as the Treasury regulations thereunder.

²⁵ See Treas. Reg. section 31.3406(h)-3.

²⁶ IRC section 6721. The penalty for failure to file an information return generally is \$100 for each return for which such failure occurs. The total penalty imposed on a person for all failures during a calendar year cannot exceed \$1,500,000. Additionally, special rules apply to reduce the per-failure and maximum penalties where the failure is corrected within a specified period.

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New Federal Law (IRC section 6041)

Under the provision, recipients of rental income from real estate who are not otherwise considered to be engaged in a trade or business of renting property are not subject to the same information reporting requirements as taxpayers who are considered to be engaged in a trade or business. As a result, rental income recipients making payments of \$600 or more to a service provider (such as a plumber, painter, or accountant) in the course of earning rental income are not required to provide an information return (typically federal Form 1099-MISC) to the IRS and to the service provider.

Effective Date

The provision is effective for payments made after December 31, 2010.

California Law (R&TC section 18631)

The FTB may request a copy of any information return that is added, on or after January 1, 2009, to Part III of Subchapter A of Chapter 61 of the IRC as a newly-required information return required to be filed with the Secretary of the Treasury; thus, prior to its repeal, the FTB would have been able to request a copy of any federal information return that would have been required under this expanded reporting requirement.

Impact on California Revenue

Baseline—based on a proration of the federal estimate developed by the Joint Committee on Taxation, baseline revenue losses are estimated to be \$5,700,000 for 2011-12, \$6,600,000 for 2012-13, and \$6,800,000 for 2013-14.

²⁷ IRC section 6722. The penalty for failure to provide a correct payee statement is \$100 for each statement with respect to which such failure occurs, with the total penalty for a calendar year not to exceed \$1,500,000. Special rules apply that increase the per-statement and total penalties where there is intentional disregard of the requirement to furnish a payee statement.

²⁸ IRC section 6723. The penalty for failure to timely comply with a specified information reporting requirement is \$50 per failure, not to exceed \$100,000 for a calendar year.

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<u>Section</u>	<u>Section Title</u>
4	Increase in Amount of Overpayment of Health Care Credit Which is Subject to Recapture

Background

Premium Assistance Credit

For taxable years ending after December 31, 2013, IRC section 36B provides a refundable tax credit (the “premium assistance credit”) for eligible individuals and families who purchase health insurance through an exchange.²⁹ The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an exchange.

To become entitled to an advance premium assistance credit under IRC section 36B, an eligible individual enrolls in a plan offered through an exchange and reports his or her income to the exchange.³⁰ Based on the information provided to the exchange, the individual receives an advance premium assistance credit based on income and the Treasury pays the premium assistance credit amount directly to the insurance plan in which the individual is enrolled. The individual then pays to the plan in which he or she is enrolled the dollar difference between the premium assistance credit amount and the total premium charged for the plan.³¹ Individuals who fail to pay all or part of the remaining premium amount are given a mandatory three-month grace period prior to an involuntary termination of their participation in the plan. Eligibility for the advance premium assistance credit is generally based on the individual’s income for the taxable year ending two years prior to the enrollment period.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the federal poverty level (FPL) for the family size involved who do not receive health insurance through an employer or a spouse’s employer.³² Household income is defined as the sum of: (1) the taxpayer’s modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account

²⁹ Individuals enrolled in multistate plans, pursuant to section 1334 of the Patient Protection and Affordable Care Act, Public Law 111-148, are also eligible for the credit.

³⁰ Section 1412 of the Patient Protection and Affordable Care Act, Public Law 111-148, describes the program for advance payment of the premium assistance credit.

³¹ Although the credit is generally payable in advance directly to the insurer, individuals may elect to purchase health insurance out of pocket and then apply to the IRS for the credit at the end of the taxable year. The amount of the reduction in premium as a result of the assistance credit is required to be included with each bill sent to the individual.

³² Individuals who are lawfully present in the United States but are not eligible for Medicaid because of their immigration status are treated as having a household income equal to 100 percent of the FPL (and thus eligible for the premium assistance credit) as long as their household income does not actually exceed 100 percent of the FPL.

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in determining that taxpayer's family size (but only if such individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as adjusted gross income increased by: (1) the amount (if any) normally excluded by IRC section 911 (the exclusion from gross income for citizens or residents living abroad), plus (2) any tax-exempt interest received or accrued during the tax year. To be eligible for the premium assistance credit, taxpayers who are married (within the meaning of IRC section 7703) must file a joint return. Individuals who are listed as dependents on a return are ineligible for the premium assistance credit.

As described in Table 1 below, premium assistance credits are available on a sliding-scale basis for individuals and families with household incomes between 100 and 400 percent of the FPL to help offset the cost of private health insurance premiums. The premium assistance credit amount is determined based on the percentage of income the cost of premiums represents, rising from two percent of income for those at 100 percent of the FPL for the family size involved to 9.5 percent of income for those at 400 percent of the FPL for the family size involved. Beginning in 2014, the percentages of income are indexed to the excess of premium growth over income growth for the preceding calendar year. Beginning in 2018, if the aggregate amount of premium assistance credits and cost-sharing reductions³³ exceeds 0.504 percent of the gross domestic product for that year, the percentage of income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the consumer price index for the preceding calendar year. For purposes of calculating household size, individuals who are in the country illegally are not included.

Premium assistance credits, or any amounts that are attributable to them, cannot be used to pay for abortions for which federal funding is prohibited.

The Low-Income Premium Credit Phase Out

The premium assistance credit increases, on a sliding scale in a linear manner, as shown in the table below.

TABLE 1 – PREMIUM ASSISTANCE CREDIT PHASE-OUT

Household Income (expressed as a percent of the FPL)	Initial Premium (percentage)	Final Premium (percentage)
100% through 133%	2.0	3.0
133% through 150%	3.0	4.0
150% through 200%	4.0	6.3
200% through 250%	6.3	8.05
250% through 300%	8.05	9.5
300% through 400%	9.5	9.5

³³ As described in section 1402 of the Patient Protection and Affordable Care Act, Public Law 111-148.

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The premium assistance credit amount is tied to the cost of the second lowest-cost silver plan (adjusted for age) that: (1) is in the rating area where the individual resides, (2) is offered through an exchange in the area in which the individual resides, and (3) provides self-only coverage in the case of an individual who purchases self-only coverage, or family coverage in the case of any other individual. If the plan in which the individual enrolls offers benefits in addition to essential health benefits,³⁴ even if the state in which the individual resides requires such additional benefits, the portion of the premium that is allocable to those additional benefits is disregarded in determining the premium assistance credit amount.³⁵ Premium assistance credits may be used for any plan purchased through an exchange, including bronze, silver, gold, and platinum level plans and, for those eligible,³⁶ catastrophic plans.

Minimum Essential Coverage and Employer Offer of Health Insurance Coverage

Generally, if an employee is offered minimum essential coverage³⁷ in the group market, including employer-provided health insurance coverage, the individual is ineligible for the premium assistance credit for health insurance purchased through a state exchange.

If an employee is offered unaffordable coverage by his or her employer or the plan's share of provided benefits is less than 60 percent, the employee can be eligible for the premium assistance credit, but only if the employee declines to enroll in the coverage and satisfies the conditions for receiving a tax credit through an exchange. Unaffordable is defined as coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee's household income, based on self-only coverage.³⁸ The percentage of income that is considered unaffordable is indexed in the same manner as the percentage of income is indexed for purposes of determining eligibility for the credit (as discussed above). The Secretary of the Treasury is informed of the name and employer identification number of every employer that has one or more employees receiving a premium assistance credit.

Procedures for Determining Eligibility

For purposes of the premium assistance credit, during the open enrollment period for coverage during the next calendar year, exchange participants must provide information from their tax

³⁴ As defined in section 1302(b) of the Patient Protection and Affordable Care Act, Public Law 111-148.

³⁵ A similar rule applies to additional benefits that are offered in multi-state plans, under section 1334 of the Patient Protection and Affordable Care Act, Public Law 111-148.

³⁶ Those eligible to purchase catastrophic plans either must have not reached the age of 30 before the beginning of the plan year, or have certification of an affordability or hardship exemption from the individual responsibility payment, as described in sections 5000A(e)(1) and 5000A(e)(5) of the Patient Protection and Affordable Care Act, Public Law 111-148, respectively.

³⁷ As defined in section 5000A(f) of the Patient Protection and Affordable Care Act, Public Law 111-148.

³⁸ The 9.5 percent amount is indexed for calendar years beginning after 2014.

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return from two years prior. For example, if during the 2013 open enrollment period an individual applies for a premium assistance credit for 2014, the individual must provide his or her tax return from 2012. The IRS is authorized to disclose to the Department of Health and Human Services limited tax-return information to verify a taxpayer's income based on the most recent return information available to establish eligibility for the premium assistance credit. Existing privacy and safeguard requirements apply. Individuals who do not qualify for the premium assistance credit on the basis of their prior year income may apply for the premium assistance credit based on specified changes in circumstances. For individuals and families who did not file a tax return in the prior tax year, the Secretary of Health and Human Services is directed to establish alternative income documentation that may be provided to determine income eligibility for the premium assistance credit.

Reconciliation

If the premium assistance credit received through advance payment exceeds the amount of premium assistance credit to which the taxpayer is entitled for the taxable year, the liability for the excess advance payment must be reflected on the taxpayer's income tax return for the taxable year subject to a limitation on the amount of such liability. For persons with household income below 500 percent of the FPL, the liability for the excess payment for a taxable year is limited to a specific dollar amount (the "applicable dollar amount") as shown in Table 2 below (one-half of the applicable dollar amount shown in Table 2 for unmarried individuals who are not surviving spouses or filing as heads of households).³⁹

TABLE 2 – RECONCILIATION

Household Income (expressed as a percent of the FPL)	Applicable Dollar Amount
Less than 200%	\$600
At least 200% but less than 250%	\$1,000
At least 250% but less than 300%	\$1,500
At least 300% but less than 350%	\$2,000
At least 350% but less than 400%	\$2,500
At least 400% but less than 450%	\$3,000
At least 450% but less than 500%	\$3,500

³⁹ Medicare and Medicaid Extenders Act of 2010, Public Law 111-309, section 208. Prior to the Medicare and Medicaid Extenders Act of 2010, for persons whose household income was below 400 percent of the FPL, the amount of the increase in tax was limited to \$400 (\$250 for unmarried individuals who are not surviving spouses or filing as heads of households).

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If the premium assistance credit for a taxable year received through advance payment is less than the amount of the credit to which the taxpayer is entitled for the year, the shortfall in the credit is also reflected on the taxpayer's tax return for the year.

The eligibility for and amount of the advance premium assistance credit is generally determined in advance of the coverage year, on the basis of household income and family size shown on the taxpayer's return for the taxable year from two years prior, and the monthly premiums for qualified health plans in the individual market in which the taxpayer, spouse and any dependent enroll in an exchange. Any advance premium assistance credit is paid during the year for which coverage is provided by the exchange. In the subsequent year, the amount of advance premium assistance credit is required to be reconciled with the allowable refundable premium assistance credit for the year of coverage. Generally, this reconciliation is to be accomplished on the tax return filed for the year of coverage, based on that year's actual household income, family size, and premiums.

Separately, the provision requires that the exchange, or any person with whom it contracts to administer the insurance program, must report to the Secretary with respect to any taxpayer's participation in the health plan offered by the exchange. The information to be reported is information necessary to determine whether a person has received excess advance payments, identifying information about the taxpayer (such as name, taxpayer identification number, months of coverage) and any other person covered by that policy; the level of coverage purchased by the taxpayer; the total premium charged for the coverage, as well as the aggregate advance payments credited to that taxpayer; and information provided to the exchange for the purpose of establishing eligibility for the program, including changes of circumstances of the taxpayer since first purchasing the coverage. Finally, the party submitting the report must provide a copy to the taxpayer whose information is the subject of the report.

New Federal Law (IRC section 36B)

Under the provision, the applicable dollar amount with respect to any excess advance payment of a taxpayer's allowable premium assistance credit for a taxable year is revised as shown in Table 3 below (one-half of the applicable dollar amount shown in Table 3 for unmarried individuals who are not surviving spouses or filing as heads of households).

TABLE 3 – RECONCILIATION (As Amended by this Provision)

Household Income (expressed as a percent of the FPL)	Applicable Dollar Amount
Less than 200%	\$600
At least 200% but less than 300%	\$1,500
At least 300% but less than 400%	\$2,500

Persons with household incomes of 400 percent of the FPL and above must repay the full amount of the premium assistance credit received through an advance payment.

COMPREHENSIVE 1099 TAXPAYER PROTECTION AND REPAYMENT OF EXCHANGE SUBSIDY
OVERPAYMENTS ACT OF 2011

Public Law 112-9, April 14, 2011

Effective Date

The provision is effective for taxable years ending after December 31, 2013.

California Law (None)

California does not conform to the premium assistance credit, and does not have a comparable tax credit. And, federal tax credits, including refundable credits, are not subject to California income or franchise tax.⁴⁰

Impact on California Revenue

Not applicable.

⁴⁰ See R&TC sections 17024.5(b)(10) and 23051.5(b)(8).

THREE PERCENT WITHHOLDING REPEAL AND JOB CREATION ACT

Public Law 112-56, Title I, November 21, 2011

<u>Section</u>	<u>Section Title</u>
102	Repeal of Imposition of 3 Percent Withholding on Certain Payments Made to Vendors by Government Entities

Introduction

The federal imposition of withholding on certain payments made to vendors by government entities was repealed before it went into effect.

Background

In General

Wages paid to employees, including wages and salaries of employees or elected officials of federal, state, and local government units, are subject to withholding of income tax, which employers are required to collect and remit to the government. Withholding rates vary depending on the amount of wages paid, the length of the payroll period, and the number of withholding allowances claimed by the employee. The withholding amount is allowed as a credit against the individual taxpayer's income tax liability. It may be refunded if it is determined, when a tax return is filed, that the taxpayer's liability is less than the tax withheld, or additional tax may be due if it is determined that the taxpayer's liability is more than the withholding tax.

Certain nonwage payments also may be subject to withholding. Such payments include pensions,⁴¹ gambling proceeds,⁴² Social Security and other specified federal payments,⁴³ unemployment compensation benefits,⁴⁴ and reportable payments such as dividends and interest.⁴⁵

⁴¹ Payors of pensions are required to withhold from payments made to payees, unless the payee elects no withholding. Withholding from periodic payments is at variable rates, parallel to income tax withholding from wages, whereas withholding from non-periodic payments is at a flat 10-percent rate. IRC section 3405(a), (b). Withholding at a rate of 20 percent is required in the case of an eligible rollover distribution that is not directly rolled over. IRC section 3405(c).

⁴² Certain gambling proceeds are subject to withholding obligations which vary depending on the form of wager or game. IRC section 3402(q)(3). Withholding is at a flat rate based on the third lowest rate of tax applicable to single taxpayers. As a general rule, every person making payment of gambling winnings from a wagering transaction subject to withholding must withhold 25 percent of such payment. IRC section 3402(q)(1). If the winnings are payable to a nonresident alien individual or a foreign corporation, the extent to which the payment is subject to withholding is determined under the withholding regime generally applicable to foreigners. IRC section 3402(q)(2).

⁴³ Voluntary withholding applies to specified federal payments which include Social Security payments, certain payments received as a result of destruction or damage to crops, certain amounts received as loans from the Commodity Credit Corporation, and other payments.

⁴⁴ Withholding is at a flat 10-percent rate. IRC section 3402(p)(2).

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Nonbusiness income received by foreign persons from U.S. sources is generally subject to tax on a gross basis at a rate of 30 percent (14 percent for certain items of income), which is collected by withholding at the source of the payment.⁴⁶ The categories of income subject to the 30-percent tax and the categories for which withholding is required are generally coextensive, with the result that determining the withholding tax liability determines the substantive liability.

Nonwage Payments by Governmental Entities

Other than as described above, tax is not currently required to be withheld from payments made by government entities. Effective for payments made after December 31, 2011,⁴⁷ new withholding requirements apply to certain government payments for goods and services. Specifically, government entities must withhold three percent of certain payments to persons providing property or services.⁴⁸ Government entities include the government of the United States, every state, every political subdivision thereof, and every instrumentality of the foregoing (including multistate agencies). The withholding requirement applies regardless of whether the government entity making such payment is the recipient of the property or services. Political subdivisions of states (or any instrumentality thereof) with less than \$100 million of annual expenditures for property or services that would otherwise be subject to withholding under this provision are exempt from the withholding requirement.

Payments subject to three-percent withholding include any payment made in connection with a government voucher or certificate program which functions as a payment for property or services. For example, payments to a commodity producer under a government commodity support program are subject to the withholding requirement.

Withholding is not required with respect to government payments made through a federal, state, or local government public assistance or public welfare program for which eligibility is determined

⁴⁵ A variety of payments (such as interest and dividends) are subject to backup withholding if the payee has not provided a valid taxpayer identification number (TIN). Withholding is at a flat rate based on the fourth lowest rate of tax applicable to single taxpayers. IRC section 3406.

⁴⁶ IRC sections 1441 and 1442.

⁴⁷ IRC section 3402(t), that was added by section 511 of The Tax Increase Prevention and Reconciliation Act of 2005 (Public Law 109-222). As originally enacted, its provisions were to be effective for payments made after December 31, 2010. Section 1511 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5) delayed the effective date until payments made after December 31, 2011. The regulations, as discussed *infra*, deferred the effective date an additional year.

⁴⁸ Amounts withheld from any payment under IRC section 3402(t) are creditable against the income taxes of the payee. Treas. Reg. section 31.3402(t)-6(a). Thus, for calendar year taxpayers, taxes due on March 15 (for corporations) and April 15 (for individuals) will be reduced by amounts withheld under IRC section 3402. For taxpayers making estimated tax payments, tax withheld under IRC section 3402(t) and allowed as a credit may be taken into account in determining estimated tax liability. For calendar year taxpayers, IRC section 3402(t) withholding generally would be treated as a payment of estimated tax for the same calendar year and liability for other payments of estimated tax for that year would be reduced. Treas. Reg. section 31.3402(t)-6(c).

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by a needs or income test. For example, payments under government programs providing food vouchers or medical assistance to low-income individuals are not subject to withholding under the provision. However, payments under government programs to provide health care or other services that are not based on the needs or income of the recipients are subject to withholding, including programs where eligibility is based on the age of the beneficiary.

Withholding is not required with respect to payments of wages or any other payment with respect to which mandatory (e.g., U.S.-source income of foreign taxpayers) or voluntary (e.g., unemployment benefits) withholding applies under present law. In addition, if taxes are actually withheld from payments under the backup withholding rules, the three-percent withholding provision is not applicable.

Three-percent withholding also does not apply to the following: payments of interest; payments for real property; payments to tax-exempt entities or foreign governments; intra-governmental payments; payments made pursuant to a classified or confidential contract (as defined in IRC section 6050M(e)(3)); and payments to government employees that are not otherwise excludable from the new withholding provision with respect to the employees' services as employees.

Under final regulations issued by the Secretary of the Treasury, the withholding (and accompanying reporting) requirements apply to payments by government entities to any person providing property or services made after December 31, 2012.⁴⁹ Under these rules, a payment is subject to withholding if it is \$10,000 or more on a payment-by-payment basis. Multiple payments by a government entity generally will not be aggregated in applying this \$10,000 limit.

New Federal Law (IRC section 3402)

Under the provision, IRC section 3402(t), enacted under section 511 of the Tax Increase Prevention and Reconciliation Act of 2005, is repealed.

Effective Date

The provision is effective for payments made after December 31, 2011.

⁴⁹ Treas. Reg. section 31.3402(t)-1(d)(1). The final regulations provide an exception to the IRC section 3402(t) withholding rules for payments made under a written binding contract (as defined) that was in effect on December 31, 2012, and was not materially modified. However, if an existing contract is materially modified (i.e., the contract is changed such that it materially affects either the payment terms of the contract or the services or property to be provided under the contract) after December 31, 2012, payments under the contract become subject to IRC section 3402(t) withholding. Treas. Reg. section 31.3402(t)-1(d)(2).

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California Law (R&TC sections 18551, 18661-18663, and 18667-18668)

California does not conform by reference to IRC section 3402, relating to income tax collected at source, but instead has stand-alone rules relating to withholding.

Wage Withholding

The Employment Development Department (EDD) administers California's wage withholding program. Unless specifically excluded, employers are required to withhold personal income tax from wages paid to employees. Employers are required to make periodic tax deposits of amounts withheld based on their federal deposit schedule, which can range from the next banking day after payment to quarterly, depending on the amount of withholding. When employers fail to withhold or under withhold from wages paid to their employees, they become liable and may be assessed for the amounts that should have been withheld.

Employers are required to file quarterly reports that detail, by employee, the personal income tax withheld and the employee's wages subject to withholding. Employers are also required to file an annual reconciliation statement that is used to reconcile total payroll taxes due to total payroll tax deposits.

Withholding on Certain Payments by Government Entities

Non-wage payments made by the United States Government, the State of California, every political subdivision thereof, and every instrumentality of the foregoing (including multi-state agencies) to persons (whether individuals, corporations, or partnerships) providing property or services are not subject to mandatory withholding.

Independent Contractors

California resident contractors

California does not impose mandatory withholding on payments to resident independent contractors.

California nonresident contractors

The FTB currently administers the withhold-at-source program on payments to nonresidents for services performed by independent contractors, rents, royalties, estate distributions, trust distributions, and partnership distributions and allocations of income. Withholding is generally required on payments to nonresident independent contractors when the payor's total payments for the year exceed \$1,500 or the payor is directed to withhold by the FTB.⁵⁰ Independent contractors include individuals who are not employees and any other type of entity with no

⁵⁰ For non-U.S. partners and limited liability company (LLC) members, there is no minimum threshold before withholding is required.

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permanent place of business in California. Withholding is required regardless of whether the payments to the independent contractor are subject to a federal Form 1099 reporting requirement.

The general withholding rate is seven percent.⁵¹ Reduced rates may be granted to prevent over withholding, and full withholding waivers may be granted.⁵²

Impact on California Revenue

Not applicable.

⁵¹ For non-U.S. partners and LLC members, the withholding rate is the maximum California tax rate applicable to the partner or member.

⁵² Non-U.S. S-corporation shareholders are not eligible for reduced withholding, and withholding may not be waived for non-U.S. partners, LLC members, and S-corporation shareholders.

VOW TO HIRE HEROES ACT OF 2011

Public Law 112-56, Title II, November 21, 2011

<u>Section</u>	<u>Section Title</u>
261	Returning Heroes and Wounded Warriors Work Opportunity Tax Credits

Background

In General

The work opportunity tax credit ("WOTC") is available on an elective basis for employers hiring individuals from one or more of the specified targeted groups. The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer. Generally, qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer (two years in the case of an individual in the long-term family assistance recipient category).

Targeted Groups Eligible for the Credit

Generally, an employer is eligible for the credit only for qualified wages paid to members of one of the following targeted groups:

(1) Families Receiving TANF

An eligible recipient is an individual certified by a designated local employment agency (e.g., a state employment agency) as being a member of a family eligible to receive benefits under the Temporary Assistance for Needy Families (TANF) Program for a period of at least nine months, part of which is during the 18-month period ending on the hiring date. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for the TANF Program.

(2) Qualified Veteran

There are two subcategories of qualified veterans related to eligibility for food stamps and compensation for a service-connected disability.

Food Stamps

A qualified veteran is a veteran who is certified by the designated local agency as a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for a period of at least three months, part of which is during the 12-month period ending on the hiring date. For these purposes, members of a family are defined to include only those individuals taken into account for purposes of determining eligibility for a food stamp program under the Food Stamp Act of 1977.

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Entitled to Compensation for a Service-Connected Disability

A qualified veteran also includes an individual who is certified as entitled to compensation for a service-connected disability and: (1) having a hiring date that is not more than one year after having been discharged or released from active duty in the Armed Forces of the United States, or (2) having been unemployed for six months or more (whether or not consecutive) during the one-year period ending on the date of hiring.

Definitions

For these purposes, being entitled to compensation for a service-connected disability is defined with reference to section 101 of Title 38, U.S. Code, which means having a disability rating of 10 percent or higher for service-connected injuries.

For these purposes, a veteran is an individual who has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability. However, any individual who has served for a period of more than 90 days during which the individual was on active duty (other than for training) is not a qualified veteran if any of this active duty occurred during the 60-day period ending on the date the individual was hired by the employer. This latter rule is intended to prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(3) Qualified Ex-Felon

A qualified ex-felon is an individual certified as: (1) having been convicted of a felony under any state or federal law, and (2) having a hiring date within one year of release from prison or the date of conviction.

(4) Designated Community Residents

A designated community resident is an individual certified as being at least age 18 but not yet age 40 on the hiring date and as having a principal place of abode within an empowerment zone, enterprise community, renewal community, or a rural renewal county. For these purposes, a rural renewal county is a county outside a metropolitan statistical area (as defined by the Office of Management and Budget) that had a net population loss during the five-year periods 1990-1994 and 1995-1999. Qualified wages do not include wages paid or incurred for services performed after the individual moves outside an empowerment zone, enterprise community, renewal community, or a rural renewal community.

(5) Vocational Rehabilitation Referral

A vocational rehabilitation referral is an individual who is certified by a designated local agency as an individual who has a physical or mental disability that constitutes a substantial handicap to

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employment and who has been referred to the employer while receiving, or after completing: (a) vocational rehabilitation services under an individualized, written plan for employment under a state plan approved under the Rehabilitation Act of 1973, (b) a rehabilitation plan for veterans carried out under Chapter 31 of Title 38, U.S. Code, or (c) an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act. Certification will be provided by the designated local employment agency upon assurances from the vocational rehabilitation agency that the employee has met the above conditions.

(6) Qualified Summer Youth Employee

A qualified summer youth employee is an individual who: (1) performs services during any 90-day period between May 1 and September 15, (2) is certified by the designated local agency as being 16 or 17 years of age on the hiring date, (3) has not been an employee of that employer before, and (4) is certified by the designated local agency as having a principal place of abode within an empowerment zone, enterprise community, or a renewal community. As with designated community residents, no credit is available on wages paid or incurred for service performed after the qualified summer youth moves outside of an empowerment zone, enterprise community, or a renewal community. If, after the end of the 90-day period, the employer continues to employ a youth who was certified during the 90-day period as a member of another targeted group, the limit on qualified first-year wages will take into account wages paid to the youth while a qualified summer youth employee.

(7) Qualified Food Stamp Recipient

A qualified food stamp recipient is an individual at least age 18 but not yet age 40 certified by a designated local employment agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for a period of at least six months ending on the hiring date. In the case of families that cease to be eligible for food stamps under section 6(o) of the Food Stamp Act of 1977, the six-month requirement is replaced with a requirement that the family has been receiving food stamps for at least three of the five months ending on the date of hire. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for a food stamp program under the Food Stamp Act of 1977.

(8) Qualified Supplemental Security Income (SSI) Recipient

A qualified SSI recipient is an individual designated by a local agency as receiving SSI benefits under Title XVI of the Social Security Act for any month ending within the 60-day period ending on the hiring date.

(9) Long-Term Family Assistance Recipients

A qualified long-term family assistance recipient is an individual certified by a designated local agency as being: (1) a member of a family that has received family assistance for at least

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18 consecutive months ending on the hiring date, (2) a member of a family that has received such family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997 (the date of enactment of the welfare-to-work tax credit)⁵³ if the individual is hired within two years after the date that the 18-month total is reached, or (3) a member of a family who is no longer eligible for family assistance because of either federal or state time limits, if the individual is hired within two years after the federal or state time limits made the family ineligible for family assistance.

(10) Unemployed Veterans and Disconnected Youth Hired in 2009 and 2010

Unemployed veterans and disconnected youth who began work for the employer in 2009 or 2010 are treated as a targeted category under section 1221(a) of the American Recovery and Reinvestment Act of 2009.⁵⁴

An unemployed veteran is defined as an individual certified by the designated local agency as someone who: (1) has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability, (2) has been discharged or released from active duty in the Armed Forces during the five-year period ending on the hiring date, and (3) has received unemployment compensation under state or federal law for not less than four weeks during the one-year period ending on the hiring date.

A disconnected youth is defined as an individual certified by the designated local agency as someone: (1) at least age 16 but not yet age 25 on the hiring date, (2) not regularly attending any secondary, technical, or post-secondary school during the six-month period preceding the hiring date, (3) not regularly employed during the six-month period preceding the hiring date, and (4) not readily employable by reason of lacking a sufficient number of skills.

Qualified Wages

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer's deduction for wages is reduced by the amount of the credit.

For purposes of the credit, generally, wages are defined by reference to the Federal Unemployment Tax Act definition of wages contained in IRC section 3306(b) (without regard to the dollar limitation therein contained). Special rules apply in the case of certain agricultural labor and certain railroad labor.

⁵³ The welfare-to-work tax credit was consolidated into the work opportunity tax credit in the Tax Relief and Health Care Act of 2006, for qualified individuals who begin to work for an employer after December 31, 2006.

⁵⁴ Public Law 111-5.

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Calculation of the Credit

The credit available to an employer for qualified wages paid to members of all targeted groups except for long-term family assistance recipients equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Generally, qualified first-year wages are qualified wages (not in excess of \$6,000) attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is \$2,400 (40 percent of the first \$6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit is \$1,200 (40 percent of the first \$3,000 of qualified first-year wages). Except for long-term family assistance recipients, no credit is allowed for second-year wages.

In the case of long-term family assistance recipients, the credit equals 40 percent (25 percent for employment of 400 hours or less) of \$10,000 for qualified first-year wages and 50 percent of the first \$10,000 of qualified second-year wages. Generally, qualified second-year wages are qualified wages (not in excess of \$10,000) attributable to service rendered by a member of the long-term family assistance category during the one-year period beginning on the day after the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is \$9,000 (40 percent of the first \$10,000 of qualified first-year wages plus 50 percent of the first \$10,000 of qualified second-year wages).

In the case of a qualified veteran who is entitled to compensation for a service-connected disability, the credit equals 40 percent of \$12,000 of qualified first-year wages. This expanded definition of qualified first-year wages does not apply to the veterans qualified with reference to a food stamp program, as defined under present law.

Certification Rules

An individual is not treated as a member of a targeted group unless: (1) on or before the day on which an individual begins work for an employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group, or (2) on or before the day an individual is offered employment with the employer, a pre-screening notice is completed by the employer with respect to such individual, and not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for certification. For these purposes, a pre-screening notice is a document (in such form as the Secretary may prescribe) that contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

Minimum Employment Period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

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Other Rules

The WOTC is not allowed for wages paid to a relative or dependent of the taxpayer. No credit is allowed for wages paid to an individual who is a more than fifty-percent owner of the entity. Similarly, wages paid to replacement workers during a strike, or lockout, are not eligible for the WOTC. Wages paid to any employee during any period for which the employer received on-the-job-training program payments with respect to that employee are not eligible for the WOTC. The WOTC generally is not allowed for wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

Expiration

The WOTC is not available for individuals who begin work for an employer after December 31, 2011.

New Federal Law (IRC sections 51, 52, and 3111)

In General

This provision expands the targeted group for qualified veterans and changes the amount of first-year wages that can be claimed for the WOTC, such that for veterans who:

- Are members of a family receiving supplemental nutrition assistance program (SNAP) benefits for at least three months in the year prior to being hired, the maximum wages for the credit are \$6,000;
- Have been unemployed for an aggregate of at least four weeks, but less than six months, in the year prior to being hired, the maximum wages for the credit are \$6,000;
- Are eligible for disability compensation from the VA and within one year of discharge or release from active military duty when hired, the maximum wages for the credit are \$12,000;
- Have been unemployed for an aggregate of at six months or more in the year prior to being hired, the maximum wages for the credit are \$14,000; and,
- Are eligible for disability compensation from the VA and have been unemployed for an aggregate of six months or more in the year prior to being hired, the maximum wages for the credit are \$24,000.

The provision also makes the WOTC refundable for certain non-profit employers. For these non-profit employers, the refundable credit is the lesser of the calculated WOTC for hiring veterans who qualify for the WOTC based on unemployment or the payroll taxes paid by the non-profit. Non-profit employers eligible for the refundable credit are IRC section 501(c) organizations that are tax-exempt under IRC section 501(a).

The provision additionally extends the WOTC for qualified veterans to U.S. possessions with a tax system that mirrors the U.S. tax system, with the Secretary of the Treasury paying to the

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possession the amount lost to the possession in taxes because of the expansion of the WOTC for qualified veterans.

Expiration of the WOTC for Veterans

This provision extends the expiration date of WOTC for veterans to December 31, 2012.

Effective Date

This provision is effective for individuals who began work for an employer after November 21, 2011.

California Law

California does not conform to the WOTC allowed under IRC section 51, but the following California hiring credits⁵⁵ are reduced by the amount of the WOTC: (1) the enterprise zone credit,⁵⁶ (2) the manufacturing enhancement area credit,⁵⁷ and (3) the local agency base recovery area credit.⁵⁸ However, because the reduction to the California hiring credits is the amount of the WOTC allowed under IRC section 51 as of the “specified date” of January 1, 2009, California hiring credits are not reduced by any WOTC credits enacted or extended after the “specified date,” including this provision’s Returning Heroes and Wounded Warriors WOTC.

⁵⁵ California law provides hiring credits for taxpayers conducting business activities within geographically targeted economic development areas (EDAs). EDAs include enterprise zones (EZs), manufacturing enhancement areas (MEAs), targeted tax areas (TTAs), and local agency military base recovery areas (LAMBRAs).

An employer located in an EDA is eligible for a hiring credit equal to a percentage of wages paid to individuals from targeted groups (i.e. qualified employees). To some extent, the definition of qualified employees for the EDA hiring credits is similar to the definition of qualified employees for purposes of the federal work opportunity tax credit.

⁵⁶ R&TC sections 17053.74(b)(4)(A)(iv)(XI) and 23622.7(b)(4)(A)(iv)(XI).

⁵⁷ R&TC sections 17053.47(f) and 23622.8(e).

⁵⁸ R&TC sections 17053.46(g) and 23646(g).

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Impact on California Revenue⁵⁹

Estimated Revenue Impact of Returning Heroes and Wounded Warriors Work Opportunity Tax Credits For Tax Years Beginning On or After January 1, 2012 Enactment Assumed After June 30, 2012		
2011-12	2012-13	2013-14
\$170,000	\$250,000	\$150,000

Estimates are based on a proration of federal estimates prepared by the Joint Committee on Taxation, adjusted to reflect California differences.

⁵⁹ The revenue estimate represents the decrease in California hiring credits that would occur if such credits were required to be reduced by this provision's Returning Heroes and Wounded Warriors WOTC.

**MODIFICATION OF CALCULATION OF MODIFIED ADJUSTED GROSS INCOME FOR DETERMINING
CERTAIN HEALTHCARE PROGRAM ELIGIBILITY**

Public Law 112-56, Title IV, November 21, 2011

<u>Section</u>	<u>Section Title</u>
401	Modification of Calculation of Modified Adjusted Gross Income for Determining Certain Healthcare Program Eligibility

Background

Premium Assistance Credit

For taxable years ending after December 31, 2013, IRC section 36B provides a refundable tax credit (the “premium assistance credit”) for eligible individuals and families who purchase health insurance through an exchange. The premium assistance credit, which is refundable and payable in advance directly to the insurer, subsidizes the purchase of certain health insurance plans through an exchange.

The premium assistance credit is available for individuals (single or joint filers) with household incomes between 100 and 400 percent of the federal poverty level (FPL) for the family size involved who do not receive health insurance through an employer or a spouse’s employer.⁶⁰ Household income is defined as the sum of: (1) the taxpayer’s modified adjusted gross income, plus (2) the aggregate modified adjusted gross incomes of all other individuals taken into account in determining that taxpayer’s family size (but only if such individuals are required to file a tax return for the taxable year). Modified adjusted gross income is defined as adjusted gross income increased by: (1) any amount excluded by IRC section 911 (the exclusion from gross income for citizens or residents living abroad), plus (2) any tax-exempt interest received or accrued during the tax year.⁶¹ To be eligible for the premium assistance credit, taxpayers who are married (within the meaning of IRC section 7703) must file a joint return. Individuals who are listed as dependents on a return are ineligible for the premium assistance credit.

As described in Table 1 below, premium assistance credits are available on a sliding-scale basis for individuals and families with household incomes between 100 and 400 percent of the FPL to help offset the cost of private health insurance premiums. The premium assistance credit amount

⁶⁰ Individuals who are lawfully present in the United States but are not eligible for Medicaid because of their immigration status are treated as having a household income equal to 100 percent of the FPL (and thus eligible for the premium assistance credit) as long as their household income does not actually exceed 100 percent of the FPL.

⁶¹ The definition of modified adjusted gross income used in IRC section 36B is incorporated by reference for purposes of determining eligibility to participate in certain other healthcare-related programs such as reduced cost sharing (section 1402 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148, Medicaid for the nonelderly (section 1902(e) of the Social Security Act (42 U.S.C. 1396a(e)) as modified by section 2002(a) of the PPACA) and the Children’s Health Insurance Program (section 2102(b)(1)(B) of the Social Security Act (42 U.S.C. 1397bb(b)(1)(B)) as modified by section 2101(d) of the PPACA).

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Public Law 112-56, Title IV, November 21, 2011

is determined based on the percentage of income the cost of premiums represents, rising from two percent of income for those at 100 percent of the FPL for the family size involved to 9.5 percent of income for those at 400 percent of the FPL for the family size involved. Beginning in 2014, the percentages of income are indexed to the excess of premium growth over income growth for the preceding calendar year. Beginning in 2018, if the aggregate amount of premium assistance credits and cost-sharing reductions⁶² exceeds 0.504 percent of the gross domestic product for that year, the percentage of income is also adjusted to reflect the excess (if any) of premium growth over the rate of growth in the consumer price index for the preceding calendar year. For purposes of calculating family size, individuals who are in the country illegally are not included.

TABLE 1 – PREMIUM ASSISTANCE CREDIT PHASE-OUT

Household Income (expressed as a percent of the FPL)	Initial Premium (percentage)	Final Premium (percentage)
100% through 133%	2.0	3.0
133% through 150%	3.0	4.0
150% through 200%	4.0	6.3
200% through 250%	6.3	8.05
250% through 300%	8.05	9.5
300% through 400%	9.5	9.5

Minimum Essential Coverage and Employer Offer of Health Insurance Coverage

Generally, if an employee is offered minimum essential coverage⁶³ in the group market, including employer-provided health insurance coverage, the individual is ineligible for the premium assistance credit for health insurance purchased through an exchange. If an employee is offered unaffordable coverage by his or her employer or the plan’s share of total allowed cost of provided benefits is less than 60 percent of such costs, the employee can be eligible for the premium assistance credit, but only if the employee declines to enroll in the coverage and satisfies the conditions for receiving a premium assistance credit through an exchange. Unaffordable coverage is defined as coverage with a premium required to be paid by the employee that is more than 9.5 percent of the employee’s household income, based on self-only coverage.⁶⁴

⁶² As described in section 1402 of the PPACA, Public Law 111-148.

⁶³ As defined in IRC section 5000A(f).

⁶⁴ The 9.5 percent amount is indexed for calendar years beginning after 2014.

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Reconciliation

If the premium assistance credit received through advance payment exceeds the amount of premium assistance credit to which the taxpayer is entitled for the taxable year, the liability for the excess advance payment must be reflected on the taxpayer's income tax return for the taxable year subject to a limitation on the amount of such liability. For persons with household income below 400 percent of FPL, the liability for the excess payment for a taxable year is limited to a specific dollar amount (the "applicable dollar amount") as shown in Table 2 below (one-half of the applicable dollar amount shown in Table 2 for unmarried individuals who are not surviving spouses or filing as heads of households).⁶⁵

TABLE 2 – RECONCILIATION

Household Income (expressed as a percent of the FPL)	Applicable Dollar Amount
Less than 200%	\$600
At least 200% but less than 300%	\$1,500
At least 300% but less than 400%	\$2,500

If the premium assistance credit for a taxable year received through advance payment is less than the amount of the credit to which the taxpayer is entitled for the year, the shortfall in the credit is also reflected on the taxpayer's tax return for the year.

Income Taxation of Social Security Benefits

Social Security Benefits

IRC section 86 provides rules for determining what amount, if any, of a taxpayer's Social Security benefits are includible in gross income. Social Security benefits that are not taxed under IRC section 86 are excluded from gross income. For purposes of IRC section 86, Social Security benefits generally include monthly retirement benefits payable under title II of the Social Security Act and tier 1 Railroad Retirement benefits. If a taxpayer's Social Security benefits or Railroad Retirement benefits are offset by worker's compensation benefits, then the amount of the taxpayer's Social Security benefits is increased by the amount of such offset.

⁶⁵ IRC section 36B(f)(2)(i), as amended by section 4 of the Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011, Public Law 112-9.

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Portion of Social Security Benefits Includable in Gross Income

The amount of Social Security benefits includable in gross income is determined under a two-tier system. Taxpayers receiving Social Security benefits are not required to include any portion of such benefits in gross income if their provisional income does not exceed a first-tier threshold, which is \$25,000, in the case of unmarried individuals, or \$32,000, in the case of married individuals filing jointly.⁶⁶ For purposes of these computations, a taxpayer's provisional income is defined as adjusted gross income increased by certain amounts, including, generally: (1) tax-exempt interest, (2) excludable interest on educational savings bonds, (3) adoption assistance payments, (4) certain deductible student loan interest, (5) certain excludable foreign-source earned income, (6) certain U.S. possession income, and (7) one-half of the taxpayer's Social Security benefits. A second-tier threshold for provisional income is \$34,000, in the case of unmarried individuals, or \$44,000, in the case of married individuals filing joint returns.⁶⁷ These thresholds are not indexed for inflation.

If the taxpayer's provisional income exceeds the first-tier threshold but does not exceed the second-tier threshold, then the amount required to be included in gross income is the lesser of: (1) 50 percent of the taxpayer's Social Security benefits, or (2) 50 percent of the excess of the taxpayer's provisional income over the first-tier threshold.

If the amount of provisional income exceeds the second-tier threshold, then the amount required to be included in gross income is the lesser of: (1) 85 percent of the taxpayer's Social Security benefits, or (2) the sum of 85 percent of the excess of the taxpayer's provisional income over the second-tier threshold, plus the smaller of (i) the amount of benefits that would have been included in income if the 50-percent inclusion rule (described in the previous paragraph) were applied, or (ii) one-half of the difference between the taxpayer's second-tier threshold and first-tier threshold.⁶⁸ Tables 3 and 4 below summarize the income taxation of Social Security benefits.

⁶⁶ In the case of a married individual who files a separate return, the first-tier threshold is generally zero. However, if the individual lives apart from his or her spouse for the entire year, the first-tier threshold is \$25,000.

⁶⁷ In the case of a married individual who files a separate return, the second-tier threshold is generally zero. However, if the individual lives apart from his or her spouse for the entire year, the second-tier threshold is \$34,000.

⁶⁸ Special rules apply in some cases under present law. In the case of nonresident individuals who are not U.S. citizens, 85 percent of Social Security benefits are includable in gross income and subject to the 30-percent withholding tax (IRC section 871(a)(3)). The taxation of Social Security benefits may also be specified in income tax treaties between the United States and other countries.

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**TABLE 3 – SUMMARY OF THE TAXATION OF SOCIAL SECURITY BENEFITS
FOR UNMARRIED TAXPAYERS**

Provisional Income Level	Amount Included in Gross Income	
\$24,999 and below	0%	
\$25,000 to \$33,999	<i>First-tier inclusion is the lesser of...</i>	
	(1) 50% of Social Security benefit	(2) 50% of provisional income exceeding \$25,000
\$34,000 and above	<i>Second-tier inclusion is the lesser of...</i>	
	(1) 85% of Social Security Benefit	(2) 85% of the amount of provisional income exceeding \$34,000 plus the lesser of...
		(2a) \$4,500

**TABLE 4 – SUMMARY OF THE TAXATION OF SOCIAL SECURITY BENEFITS
FOR MARRIED TAXPAYERS**

Provisional Income Level	Amount Included in Gross Income	
\$31,999 and below	0%	
\$32,000 to \$43,999	<i>First-tier inclusion is the lesser of...</i>	
	(1) 50% of Social Security benefit	(2) 50% of provisional income exceeding \$32,000
\$44,000 and above	<i>Second-tier inclusion is the lesser of...</i>	
	(1) 85% of Social Security Benefit	(2) 85% of the amount of provisional income exceeding \$44,000 plus the lesser of...
		(2a) \$6,000

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CERTAIN HEALTHCARE PROGRAM ELIGIBILITY

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New Federal Law (IRC sections 36B and 6331)

The provision revises the definition of modified adjusted gross income in IRC section 36B to include the amount of the taxpayer's Social Security benefits that are excluded from gross income. Thus, for purposes of the premium assistance credit, modified adjusted gross income is defined as adjusted gross income increased by: (1) any amount excluded by IRC section 911 (the exclusion from gross income for citizens or residents living abroad), (2) any tax-exempt interest received or accrued during the tax year, plus (3) the amount of Social Security benefits of the taxpayer excluded from gross income.

Effective Date

The proposal is effective on November 21, 2011. However, IRC section 36B, which the provision amends, is not effective until taxable years ending after December 31, 2013. Thus, the provision applies for taxable years ending after December 31, 2013.

California Law (None)

California does not conform to the premium assistance credit, and has no comparable credit. And, federal tax credits, including refundable credits, are not subject to California income or franchise tax.⁶⁹

Impact on California Revenue

Not applicable.

⁶⁹ See R&TC sections 17024.5(b)(10) and 23051.5(b)(8).

TEMPORARY PAYROLL TAX CUT CONTINUATION ACT OF 2011

Public Law 112-78, December 23, 2011

<u>Section</u>	<u>Section Title</u>
101	Extension of Payroll Tax Holiday

Background

Federal Insurance Contributions Act (FICA) Tax

The FICA tax applies to employers based on the amount of covered wages paid to an employee during the year.⁷⁰ Generally, covered wages means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash.⁷¹ Certain exceptions from covered wages are also provided. The tax imposed is composed of two parts: (1) the old age, survivors, and disability insurance (OASDI) tax equal to 6.2 percent of covered wages up to the taxable wage base (\$106,800 for 2011 and \$110,100 for 2012); and (2) the Medicare hospital insurance (HI) tax amount equal to 1.45 percent of covered wages.

In addition to the tax on employers, each employee is generally subject to FICA taxes equal to the amount of tax imposed on the employer (the “employee portion”).⁷² The employee portion of FICA taxes generally must be withheld and remitted to the federal government by the employer.

Self-Employment Contributions Act (SECA) Tax

As a parallel to FICA taxes, the SECA tax applies to the self-employment income of self-employed individuals.⁷³ The rate of the OASDI portion of SECA taxes is generally 12.4 percent, which is equal to the combined employee and employer OASDI FICA tax rates, and applies to self-employment income up to the FICA taxable wage base. Similarly, the rate of the HI portion of SECA tax is 2.9 percent, the same as the combined employer and employee HI rates under the FICA tax, and there is no cap on the amount of self-employment income to which the rate applies.⁷⁴

An individual may deduct, in determining net earnings from self-employment under the SECA tax, the amount of the net earnings from self-employment (determined without regard to this deduction) for the taxable year multiplied by one-half of the combined OASDI and HI rates.⁷⁵

⁷⁰ IRC section 3111.

⁷¹ IRC section 3121(a).

⁷² IRC section 3101. For taxable years beginning after 2012, an additional HI tax applies to certain employees.

⁷³ IRC section 1401.

⁷⁴ For taxable years beginning after 2012, an additional HI tax applies to certain self-employed individuals.

⁷⁵ IRC section 1402(a)(12).

TEMPORARY PAYROLL TAX CUT CONTINUATION ACT OF 2011

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Additionally, a deduction, for purposes of computing the income tax of an individual, is allowed for one-half of the amount of the SECA tax imposed on the individual's self-employment income for the taxable year.⁷⁶

Railroad Retirement Tax

Instead of FICA taxes, railroad employers and employees are subject, under the Railroad Retirement Tax Act (RRTA), to taxes equivalent to the OASDI and HI taxes under FICA.⁷⁷ The employee portion of RRTA taxes generally must be withheld and remitted to the federal government by the employer.

Reduced OASDI Rates for 2011

For 2011, the OASDI rate for the employee portion of the FICA tax, and the equivalent employee portion of the RRTA tax, was reduced by two percentage points to 4.2 percent. Similarly, for taxable years beginning in 2011, the OASDI rate for a self-employed individual was reduced by two percentage points to 10.4 percent.

Special rules coordinate the SECA tax rate reduction with a self-employed individual's deduction in determining net earnings from self-employment under the SECA tax and the income tax deduction for one-half of the SECA tax. The rate reduction is not taken into account in determining the SECA tax deduction allowed for determining the amount of the net earnings from self-employment for the taxable year. The income tax deduction allowed for SECA tax for taxable years beginning in 2011 is computed at the rate of 59.6 percent of the OASDI tax paid, plus one-half of the HI tax paid.⁷⁸

The Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974⁷⁹ receive transfers from the General Fund of the United States Treasury equal to any reduction in payroll taxes attributable to the rate reduction for 2011. The amounts are transferred from the General Fund at such times and in such a manner as to replicate to the extent possible the transfers which would have occurred to the Trust Funds or Benefit Account had the provision not been enacted.

⁷⁶ IRC section 164(f).

⁷⁷ IRC sections 3201(a) and 3211(a).

⁷⁸ This percentage replaces the rate of one-half (50 percent) allowed under present law for this portion of the deduction. The new percentage is necessary to allow the self-employed individual to deduct the full amount of the employer portion of SECA taxes. The employer OASDI tax rate remains at 6.2 percent, while the employee portion falls to 4.2 percent. Thus, the employer share of total OASDI taxes is 6.2 divided by 10.4, or 59.6 percent of the OASDI portion of SECA taxes.

⁷⁹ 45 U.S.C. 231n-1(a).

TEMPORARY PAYROLL TAX CUT CONTINUATION ACT OF 2011

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For purposes of applying any provision of federal law other than the provisions of the Internal Revenue Code of 1986, the employee rate of OASDI tax is determined without regard to the reduced rate for 2011.

New Federal Law (IRC sections 164 and 1401)

Under the provision, the reduced employee OASDI tax rate of 4.2 percent under the FICA tax, and the equivalent employee portion of the RRTA tax, is extended to apply to covered wages paid in the first two months of 2012. The provision also provides for a recapture of any benefit a taxpayer may have received from the reduction in the OASDI tax rate, and the equivalent employee portion of the RRTA tax, for remuneration received during the first two months of 2012 in excess of \$18,350.⁸⁰ The recapture is accomplished by a tax equal to two percent of the amount of wages (and railroad compensation) received during the first two months of 2012 that exceed \$18,350. The provision directs the Secretary of the Treasury (or the Secretary's delegate) to prescribe regulations or other guidance that are necessary and appropriate to carry out this provision.

In addition, for taxable years beginning in 2012, the OASDI rate for a self-employed individual is reduced to 10.4 percent, for self-employment income of up to \$18,350 (reduced by wages subject to the lower OASDI rate for 2012). Related rules for 2011 concerning coordination of a self-employed individual's deductions in determining net earnings from self-employment and income tax also apply for 2012, except that the income tax deduction allowed for the OASDI portion of SECA tax paid for taxable years beginning in 2012 is computed at the rate of 59.6 percent⁸¹ of the OASDI tax paid on self-employment income of up to \$18,350. For self-employment income in excess of this amount, the deduction is equal to half of the OASDI portion of the SECA tax paid.

Rules related to the OASDI rate reduction for 2011 concerning: (1) transfers to the Federal Old-Age and Survivors Trust Fund, the Federal Disability Insurance Trust Fund and the Social Security Equivalent Benefit Account established under the Railroad Retirement Act of 1974, and (2) determining the employee rate of OASDI tax in applying provisions of federal law other than the IRC also apply for 2012.

Effective Date

The provision is effective for remuneration received during the months of January and February in 2012 and for self-employment income for taxable years beginning in 2012.

⁸⁰ \$18,350 is one-sixth of the 2012 taxable wage base of \$110,100.

⁸¹ This percentage used with respect to the first \$18,350 of self-employment income is necessary to continue to allow the self-employed taxpayer to deduct the full amount of the employer portion of SECA taxes. The employer OASDI tax rate remains at 6.2 percent, while the employee portion falls to a 4.2 percent rate for the first \$18,350 of self-employment income. Thus, the employer share of total OASDI taxes is 6.2 divided by 10.4, or 59.6 percent of the OASDI portion of SECA taxes, for the first \$18,350 of self-employment income.

TEMPORARY PAYROLL TAX CUT CONTINUATION ACT OF 2011

Public Law 112-78, December 23, 2011

California Law (R&TC section 17201)

OASDI Tax Cut

The FTB does not administer payroll taxes. Defer to the EDD.

Deductible OASDI Portion of SECA Tax

For purposes of computing the deductible OASDI portion of the SECA tax, the PITL conforms to the deduction allowed under federal law as of the “specified date” of January 1, 2009, with modifications;⁸² thus, California does not conform to this provision’s change to the computation of the SECA income tax deduction (i.e., California does not conform to the change that increases the deductible SECA tax from 50 percent to 59.6 percent of the OASDI tax paid, plus one-half of the HI tax paid). Instead, the California deduction for SECA taxes is 50 percent of the OASDI tax paid plus one-half of the HI tax paid.

Impact on California Revenue

OASDI Tax Cut

Defer to the EDD.

Deductible OASDI Portion of SECA Tax

Estimated Revenue Impact of Extension of Payroll Tax Holiday – Deductible OASDI Portion of SECA Tax For Tax Years Beginning On or After January 1, 2012 Enactment Assumed After June 30, 2012		
2011-12	2012-13	2013-14
\$0	-\$6,300,000	\$0

This estimate is based on a proration of federal estimates and the amount of self-employment tax deducted on California tax returns.

⁸² R&TC section 17201 conforms to IRC section 164, relating to taxes, as of the “specified date” of January 1, 2009, with modifications in R&TC sections 17220 and 17222.

TEMPORARY PAYROLL TAX CUT CONTINUATION ACT OF 2011

Public Law 112-78, December 23, 2011

<u>Section</u>	<u>Section Title</u>
201	Temporary Extension of Unemployment Compensation Provisions

Background

Basic income support for unemployed workers is generally provided through the joint federal-state unemployment compensation, which generally pays up to 26 weeks of unemployment benefits. Unemployment benefits may be extended at the state level by the permanent extended-benefits (EB) program if high unemployment exists within the state. Once regular unemployment benefits are exhausted, the EB program may provide additional weeks of benefits, depending on worker eligibility, state law, and state economic conditions. Under permanent law,⁸³ the EB program is funded 50 percent by the federal government and 50 percent by the states. The American Recovery and Reinvestment Act of 2009⁸⁴ and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010⁸⁵ temporarily provided for 100 percent federal funding of the EB program until January 4, 2012.

In addition, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 allowed states to temporarily use look-back calculations based on three years of unemployment rate data (rather than the a look-back of two years of data) as part of their EB triggers if states would otherwise trigger off or not be on a period of EB benefits. The temporary option to use three-year EB trigger look-back calculations expired the week ending on or before December 31, 2011.

New Federal Law (IRC section 3304)

This provision extends 100 percent federal financing of EB through March 7, 2012, and the option for states to temporarily use look-back calculations based on three years (instead of two) is extended to the week ending on or before February 29, 2012.

Effective Date

This provision takes effect as if included in the enactment of the Tax Relief, Unemployment Reauthorization, and Job Creation Act of 2010.

California Law

The FTB does not administer unemployment compensation provisions. Defer to the EDD.

⁸³ Public Law 91-373.

⁸⁴ Public Law 111-5.

⁸⁵ Public Law 111-312.

TEMPORARY PAYROLL TAX CUT CONTINUATION ACT OF 2011
Public Law 112-78, December 23, 2011

Impact on California Revenue

Defer to the EDD.

EXHIBIT A – 2011 MISCELLANEOUS FEDERAL ACTS IMPACTING THE IRC NOT REQUIRING A CALIFORNIA RESPONSE

1. Public Law 112-5, the Surface Transportation Extension Act of 2011. This Act amends the IRC to extend through FY 2011 authorities for expenditures from the HTF Highway and Mass Transit Accounts, and the Sports Fish Restoration and Boating Trust Fund.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
9503	112-5	401(a)	22
9504	112-5	401(b)	22
9503	112-5	401(c)	22

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2. Public Law 112-7, the Airport and Airway Extension Act of 2011. This Act amends the IRC to extend through May 31, 2011, increased excise taxes on aviation fuels, the excise tax on air transportation of persons and property, and the expenditure authority for the Airport and Airway Trust Fund.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
1	112-7	1	31
4081	112-7	2(a)	31
4261	112-7	2(b)(1)	31
4271	112-7	2(b)(2)	31
4081	112-7	2(c)	31
9502	112-7	3(a), (b)	31
9502	112-7	3(c)	31

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3. Public Law 112-10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011. This Act amends the IRC to eliminate the Patient Protection and Affordable Care Act (Public Law 111-148) requirement that employers provide free (qualified health plan) vouchers to certain employees.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
36B	112-10	1858(b)(1)	168
139D	112-10	1858(b)(2)(A)	168
101	112-10	1858(b)(2)(B)	168
162	112-10	1858(b)(3)	169
4980H	112-10	1858(b)(4)	169
6056	112-10	1858(b)(5)	169
36B	112-10	1858(d)	169

EXHIBIT A – 2011 MISCELLANEOUS FEDERAL ACTS IMPACTING THE IRC NOT REQUIRING A CALIFORNIA RESPONSE

- 4.** Public Law 112-16, the Airport and Airway Extension Act of 2011, Part II. This Act amends the IRC to extend through June 30, 2011, increased excise taxes on aviation fuels, the excise tax on air transportation of persons and property, and the expenditure authority for the Airport and Airway Trust Fund.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
1	112-16	1	218
4081	112-16	2(a)	218
4261	112-16	2(b)(1)	218
4271	112-16	2(b)(2)	218
4081	112-16	2(c)	218
9502	112-16	3(a), (b)	218
9502	112-16	3(c)	218

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- 5.** Public Law 112-21, the Airport and Airway Extension Act of 2011, Part III. This Act amends the IRC to extend through July 22, 2011, increased excise taxes on aviation fuels, the excise tax on air transportation of persons and property, and the expenditure authority for the Airport and Airway Trust Fund.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
1	112-21	1	233
4081	112-21	2(a)	233
4261	112-21	2(b)(1)	233
4271	112-21	2(b)(2)	233
4081	112-21	2(c)	233
9502	112-21	3(a), (b)	233
9502	112-21	3(c)	233

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- 6.** Public Law 112-27, the Airport and Airway Extension Act of 2011, Part IV. This Act amends the IRC to extend through September 16, 2011, increased excise taxes on aviation fuels, the excise tax on air transportation of persons and property, and the expenditure authority for the Airport and Airway Trust Fund.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
1	112-27	1	270
4081	112-27	2(a)	270
4261	112-27	2(b)(1)	270
4271	112-27	2(b)(2)	270
4081	112-27	2(c)	270
9502	112-27	3(a), (b)	270
9502	112-27	3(c)	270

EXHIBIT A – 2011 MISCELLANEOUS FEDERAL ACTS IMPACTING THE IRC NOT REQUIRING A CALIFORNIA RESPONSE

- 7.** Public Law 112-30, the Surface and Air Transportation Programs Extension Act of 2011. This Act amends the IRC to extend through March 31, 2012, authority for expenditures from the HTF Highway and Mass Transit accounts, the Sport Fish Restoration and Boating Trust Fund, and the Leaking Underground Storage Tank Trust Fund.

The Act: (a) extends through March 31, 2012, excise taxes on (1) fuel used by certain buses, (2) certain alcohol fuels, (3) gasoline (other than aviation gasoline) and diesel fuel or kerosene, (4) certain heavy trucks and trailers, and (5) tires; (b) extends through March 31, 2012, the Leaking Underground Storage Tank Trust Fund tax; (c) extends through fiscal year 2012 the excise tax on certain heavy vehicles; (d) extends through March 31, 2012, the exemptions from excise taxes on: (1) certain sales, and (2) motor vehicles used by a state and local government: extends the transfer of certain highway excise taxes to the HTF; and, (e) extends through January 31, 2012, increased excise taxes on aviation fuels, the excise tax on air transportation of persons and property, and the expenditure authority for the Airport and Airway Trust Fund.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
9503	112-30	141(a)	355
9504	112-30	141(b)	355
9508	112-30	141(c)	355
9503	112-30	141(d)	355
4041	112-30	141(a)(1)(A), (B)	355, 356
4081	112-30	141(a)(1)(C)	356
4041	112-30	142(a)(2)(A)	356
4051	112-30	142(a)(2)(B)	356
4071	112-30	142(a)(2)(C)	356
4081	112-30	142(a)(2)(D)	356
4481	112-30	142(b)(1)	356
4482	112-30	142(b)(2)	356
6412	112-30	142(c)	356
4221	112-30	142(d)	356
4483	112-30	142(d)	356
9503	112-30	142(e)(1), (2)(A)	356
1	112-30	201	357
4081	112-30	202(a)	357
4261	112-30	202(b)(1)	357
4271	112-30	202(b)(2)	357
4081	112-30	202(c)	357
9502	112-30	203(a), (b)	357
9502	112-30	203(c)	357

EXHIBIT A – 2011 MISCELLANEOUS FEDERAL ACTS IMPACTING THE IRC NOT REQUIRING A CALIFORNIA RESPONSE

- 8.** Public Law 112-40, Title II, the Trade Adjustment Assistance Extension Act of 2011. This Act amends the IRC to extend from February 13, 2011, through calendar year 2013 the tax credit for the health insurance costs paid by the TAA (as well as the Pension Benefit Guaranty Corporation (PBGC) pension and the Alternate TAA (ATAA) wage subsidy) recipients for coverage under qualified health insurance (including qualifying family members), increases the rate of such credit from 65 percent to 72.5 percent of health insurance costs for that period, and eliminates the 80-percent rate for eligible coverage months beginning before February 13, 2011.

This Act also:

- Amends the IRC, the Employee Retirement Income Security Act of 1974 (ERISA), and the Public Health Service Act (PHSA) to extend through December 31, 2013, the TAA pre-certification period rule disregarding any 63-day lapse in creditable health-care coverage for TAA workers;
- Extends the continued eligibility for the credit for certain qualified TAA-eligible individuals and PBGC pension recipients for Consolidated Omnibus Budget Reconciliation Act (COBRA) premium assistance through December 31, 2013; and,
- Amends the IRC to treat a state law as meeting requirements with respect to the allowance of an additional federal unemployment tax credit to a taxpayer (employer) for its contributions to the state unemployment compensation fund only if the law provides that an employer's unemployment compensation account shall not be relieved of charges relating to a payment from the state unemployment fund if: (1) that payment was made because the employer (or agent) was at fault for failing to respond timely to a state agency request for information regarding an unemployment compensation claim, and (2) the employer or agent has established a pattern of failing to respond timely or adequately to such requests.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
35	112-40	241(a), (b)(1)	418
7527	112-40	241(b)(2)	418
35	112-40	241(b)(3)(A) - (C)	419
35	112-40	241(c)	419
9801	112-40	242(a)(1)	419
9801	112-40	242(b)	419
4980B	112-40	243(a)(3), (4)	420
4980B	112-40	243(b)	420
3303	112-40	252(a)	421
3303	112-40	252(b)	422

EXHIBIT A – 2011 MISCELLANEOUS FEDERAL ACTS IMPACTING THE IRC NOT REQUIRING A CALIFORNIA RESPONSE

- 9.** Public Law 112-41, the United States–Korea Free Trade Agreement Implementation Act. This Act amends the IRC to increase to \$500 the penalty on tax return preparers for failure to be diligent in determining eligibility for the earned income tax credit, and to require the heads of the Federal Bureau of Prisons and state prisons to provide detailed information to the IRS on certain inmates.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
6695	112-41	501(a)	459
6116	112-41	502(a)	460
6117	112-41	502(a)	460
6116	112-41	502(a)	460
6101	112-41	502(b)	460

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- 10.** Public Law 112-56, Title III, Other Provisions Relating to Federal Vendors. This Act amends the IRC to extend the 100 percent continuing levy for delinquent taxes to payments due to a vendor of property (currently, goods or services) sold or leased to the federal government. Additionally, this Act directs the Secretary of the Treasury, in consultation with the Director of the Office of Management and Budget and federal agency heads, to conduct and report on a study on ways to reduce the amount of federal tax owed but not paid by persons submitting bids or proposals for the procurement of property or services by the federal government.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
6331	112-56	301(a)	733
6331	112-56	301(b)	733

EXHIBIT A – 2011 MISCELLANEOUS FEDERAL ACTS IMPACTING THE IRC NOT REQUIRING A CALIFORNIA RESPONSE

11. Public Law 112-74, the Consolidated Appropriations Act, 2012. This Act authorizes the Secretary of Education to modify the terms and conditions of gulf hurricane disaster loans to affected institutions pursuant to section 2601 of Public Law 109-234 on such terms as the Secretary of Education, the Secretary of the Treasury, and the Director of the Office of Management and Budget jointly determine are in the best interests of the United States and the borrowers, and necessary to mitigate the economic effects of the Hurricanes Rita and Katrina.

This Act also provides:

- Indefinite budget authority for the payment of all benefits authorized by IRC section 9501, as well as from the Black Lung Disability Trust Fund (Fund);
- For the repayment of advances and interest payments on advances, as authorized by IRC section 9501(d)(4), from the Fund; and,
- Specified amounts that may be expended from the Fund for fiscal year 2012 for expenses of operation and administration of the Black Lung Benefits Program, as authorized by IRC section 9501(d)(5).

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
7801	112-74	N/A	888
7801	112-74	N/A	889
9501	112-74	N/A	1058

12. Public Law 112-81, the National Defense Authorization Act, 2012. This Act amends section 1603 of the American Recovery and Reinvestment Act of 2009 (ARRA), relating to grants for specified energy property in lieu of tax credits, to eliminate a limitation that applied to certain regulated companies, effective as if enacted in ARRA.

IRC Section	Public Law No.	Act Section No.	125 Stat. Page
48	112-81	1096(a)	1608
48	112-81	1096(b)	1608

EXHIBIT B – EXPIRING TAX PROVISIONS

California Sunset⁸⁶	California Section(s)	Federal Section	Federal Sunset	Description
12/31/11	17052.17 & 23617	45F	12/31/12	Credit: Employer Child Care Assistance
12/31/11	17052.18 & 23617.5	N/A	N/A	Credit: Employer Dependent Care Plan
12/31/11 ⁸⁷	17059.1	N/A	N/A	Credit: First Time Homebuyer and New Home
12/31/12	18791 - 18796	N/A	N/A	Voluntary Contribution: Designations to California Breast Cancer Research Fund
12/31/12	18861 - 18864	N/A	N/A	Voluntary Contribution: California Cancer Research Fund
12/31/13	19551.1	N/A	N/A	City Business Tax/License Information Mandate
12/31/13	17501 - 24601	420	12/31/13	Transfer of Excess Pension Assets to Retiree Health Accounts
12/31/13	18851 - 18855	N/A	N/A	Voluntary Contribution: Emergency Food Assistance Program Fund
12/31/14	18721 - 18724	N/A	N/A	Voluntary Contribution: California Fund for Senior Citizens
12/31/14	18761 - 18766	N/A	N/A	Voluntary Contribution: California Alzheimer's Disease and Related Research Fund
12/31/14	18810 - 18815	N/A	N/A	Voluntary Contribution: California Veterans Home Fund
12/31/14	18856 - 18856.3	N/A	N/A	Voluntary Contribution: California Police Activities League (CALPAL)

⁸⁶ In general, this is the last taxable year to which the provision applies. Fiscal years beginning within this taxable year are, in general, also covered by the provision. In some cases, the repeal date of the section is listed or the expiration applies to transactions occurring after this date.

⁸⁷ Each credit had a \$100 million cap—the Legislature allocated \$100 million to the First-Time Homebuyer Credit and \$100 million to the New Home Credit. The First-Time Homebuyer Credit expired when its cap was reached in August, 2010. The \$100 million of New Home Credit was not fully allocated, but the credit has expired because it was limited to buyers who: (1) closed escrow on or before July 31, 2011, and (2) sent applications within 14 days after escrow closed. As a result, the FTB stopped accepting New Home Credit applications as of midnight August 14, 2011.

EXHIBIT B – EXPIRING TAX PROVISIONS

California Sunset	California Section(s)	Federal Section	Federal Sunset	Description
12/31/14	18887 - 18890	N/A	N/A	Voluntary Contribution: Safely Surrendered Babies Fund
12/31/14	18891 - 18894	N/A	N/A	Voluntary Contribution: Arts Council Fund
06/30/15	17053.85 & 23685	N/A	N/A	Credit: Production of a Motion Picture in California
12/31/15	18754 - 18754.3	N/A	N/A	Voluntary Contribution: California Sea Otter Fund
12/31/15	18755 - 18755.3	N/A	N/A	Voluntary Contribution: Municipal Shelter Spay-Neuter Fund
12/31/15	18801 - 18804	N/A	N/A	Voluntary Contribution: California Firefighter's Memorial Fund
12/31/15	18805 - 18808	N/A	N/A	Voluntary Contribution: California Peace Officer's Memorial Foundation Fund
12/31/15	18809 - 18809.3	N/A	N/A	Voluntary Contribution: Child Victims of Human Trafficking Fund
12/31/15	18881 - 18886	N/A	N/A	Voluntary Contribution: ALS/Lou Gehrig's Disease Research Fund
6/30/16	19558	N/A	N/A	Permit the FTB to Disclose Income Tax Return Information to the Public Employees Retirement System Regarding the Early Retiree Reinsurance Program
12/31/16	17053.57 & 23657	N/A	N/A	Credit: Community Development Financial Institution Deposits
12/31/16	17053.88 & 23688	N/A	N/A	Credit: Donations of Fresh Fruits or Fresh Vegetables to a California Food Bank
12/31/17	17053.62 & 23662	45H	Permanent	Credit: Environmental Credit for Production of Ultra Low Sulfur Diesel Fuel
12/31/17	18416.5	N/A	N/A	Allow Electronic Communication to Taxpayers to Inform of Tax Change
12/31/17	18711 - 18716	N/A	N/A	Voluntary Contribution: State Children's Trust Fund

EXHIBIT B – EXPIRING TAX PROVISIONS

California Sunset	California Section(s)	Federal Section	Federal Sunset	Description
12/31/17	18741 - 18744	N/A	N/A	Voluntary Contribution: Rare and Endangered Species Preservation Program
See footnote. ⁸⁸	17053.80 & 23623	N/A	N/A	Credit: New Jobs
See footnote. ⁸⁹	17131.3 & 24303	48(d)	12/31/16	Grants for Specified Energy Property in Lieu of Tax Credits Excluded from Income

⁸⁸ This credit is repealed on December 1 of the year in which the total amount of the credit allocated reaches \$400 million. As of December 31, 2011, approximately \$76 million of credit had been allocated.

⁸⁹ The eligible property must be placed in service in calendar years 2009, 2010, or 2011, or its construction must begin during that period and must be 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).

EXHIBIT C – REVENUE TABLES

Assumed Enactment after June 30, 2012

Table 1 - Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (Public Law 112-9)				
Act Section	Provision	2011-12	2012-13	2013-14
2	Repeal of Expansion of Information Reporting Requirements to Payments Made to Corporations and to Payments for Property and Other Gross Proceeds	Baseline	Baseline	Baseline
3	Repeal of Expansion of Information Reporting Requirements for Rental Property Expense Payments	Baseline	Baseline	Baseline
4	Increase in Amount of Overpayment of Health Care Credit Which is Subject to Recapture	N/A	N/A	N/A

Table 2 – Three Percent Withholding Repeal and Job Creation Act (Public Law 112-56, Title I)				
Act Section	Provisions	2011-12	2012-13	2013-14
102	Repeal of Imposition of 3 Percent Withholding on Certain Payments Made to Vendors by Government Entities	Baseline	Baseline	Baseline

Table 3 – Vow to Hire Heroes Act of 2011 (Public Law 112-56, Title II)				
Act Section	Provision	2011-12	2012-13	2013-14
261	Returning Heroes and Wounded Warriors Work Opportunity Tax Credits	\$170,000	\$250,000	\$150,000

EXHIBIT C – REVENUE TABLES

Table 4 – Modification of Calculation of Modified Adjusted Gross Income for Determining Certain Healthcare Program Eligibility (Public Law 112-56, Title IV)				
Act Section	Provision	2011-12	2012-13	2013-14
401	Modification of Calculation of Modified Adjusted Gross Income for Determining Certain Healthcare Program Eligibility	N/A	N/A	N/A

Table 5 – Temporary Payroll Tax Cut Continuation Act of 2011 (Public Law 112-78)				
Act Section	Provision	2011-12	2012-13	2013-14
101	Extension of Payroll Tax Holiday	\$0	-\$6,300,000	\$0
201	Temporary Extension of Unemployment Compensation Provisions	Defer to the EDD	Defer to the EDD	Defer to the EDD