



**General Explanation of  
California Legislation Affecting  
Franchise Tax Board  
Enacted in 2007**

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February 19, 2009



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## INTRODUCTION

This document, prepared by the Technical Resources Bureau staff of the Legal Division of the California Franchise Tax Board, provides an explanation of state legislation enacted in 2007 that affects the Franchise Tax Board. The explanation follows the chronological order of the legislation as signed into law.

For each act, the document includes a description of present law, an explanation of the provision, and the effective and operative dates of the provision. Present law describes the law in effect immediately prior to enactment. It does not reflect the changes to the law made by the provision or subsequent to the enactment of the provision. For some provisions the reasons for change are also included and, where legislative history or legislative findings exist, that history or findings is reflected in this portion of the explanation.

The first footnote in each part sets forth the legislative history of each of the acts of the 2007 legislative year discussed in this explanation. In addition, links are provided to California Legislative Counsel's website to the various versions of the act (original bill and subsequent amendments) and to any official legislative analyses, as well as to any Franchise Tax Board analyses of the act.

Please note that this document is not an official publication of the Legislature, but is instead merely a compilation of the various Franchise Tax Board and official legislative analyses of the enacted legislation affecting the Franchise Tax Board. As such, it should only be viewed as a research tool useful in ascertaining the history of a particular act.

# **California Fallen Firefighters Assistance Tax Clarification Act of 2006** **(Stats. 2007, ch. 1)<sup>1</sup>**

## ***Background***

On October 26, 2006, a fire in Esperanza, California, claimed the lives of five U.S. Forest Service firefighters. The fire destroyed 34 homes and caused nearly \$10 million in damage. After the deaths, 5,000 people contributed approximately \$1.3 million to assist the fallen firefighters' families. The Internal Revenue Service (IRS) allows charitable organizations to disburse contributed money to named recipients for documented needs (i.e., rent or mortgage payment, etc.). The United Way determined that any disbursement of contributions over approximately \$500,000 would exceed any documented need, thus violating federal tax laws and risking the United Way's tax-exempt status. In December 2006, Congress passed legislation authored by Congressional members Mary Bono, Jerry Lewis, and Ken Calvert and Senators Dianne Feinstein and Barbara Boxer, providing a one-time only exemption. Congress passed similar legislation after the September 11, 2001 terrorist attacks.

## ***Existing Federal Tax Law***

In uncodified law, the Fallen Firefighters Assistance Tax Clarification Act of 2006 (PL 109-445, December 21, 2006) treats payments made to a family member before June 1, 2007, by a charitable organization on behalf of any firefighter who died in the October 2006 Esperanza fire in southern California, as related to such foundation's exempt function, and thus tax exempt, if such payments are made in good faith using a reasonable and objective formula that is consistently applied. This provision allows tax-exempt organizations to disburse funds to these families without loss of tax-exempt status.

## ***Reasons for Change***

The stated finding of public purpose and retroactive application of this act were to allow a one-time tax exemption for charitable organizations, i.e., the United Way and the Wildland Firefighter Foundation, to disburse funds to the families of the five firefighters killed in the 2006 Esperanza fire without risking loss of the organization's tax-exempt status.<sup>2</sup>

## ***Explanation of Provision***

Modeled after federal law, this act enacted uncodified law that allows specified payments made by tax-exempt organizations, as defined in Internal Revenue Code (IRC) section 509(a)(1) or (2), to family members of any firefighter who died as a result of the October 2006 Esperanza fire to be treated as payments made in furtherance of the charitable purpose of that organization to prevent the loss of that organization's tax-exempt status under California law.

## ***Effective Date***

As a tax levy, this act became effective immediately upon enactment on February 7, 2007. Section 2(b) of the Act expressly provided that the act's provisions are operative for payments made on or after October 26, 2006, and before June 1, 2007, by charitable organizations to family members of a firefighter killed in the Esperanza fire.

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<sup>1</sup> SB 41 (Battin) - Senate passed bill on January 8, 2007, with a 36 Aye/0 Noe vote. Assembly passed bill with author's amendments February 1, 2007, with a 74 Aye/0 Noe vote. Senate concurred with Assembly amendments and sent bill to enrollment on February 5, 2007, with a 39 Aye/0 Noe vote. Enrolled and to the Governor on February 6, 2007. Governor signed and bill chaptered on February 7, 2007.

<sup>2</sup> Section 3 of SB 41, Stats. 2007, ch. 1.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">SB 41 Chaptered 2-07-07 Text</a>	<a href="#">SB 41 Legislative Chg</a>	---
<a href="#">SB 41 Enrolled 2-06-07 Text</a>	---	---
<a href="#">SB 41 Amd 1-29-07 Text</a>	<a href="#">SB 41 Amd 1-29-07</a>	<a href="#">SB 41 Sen UnFB Amd 1-29-07</a> <a href="#">SB 41 ART Amd 1-29-07</a>
<a href="#">SB 41 Intro 12-21-06 Text</a>	<a href="#">SB 41 Intro 12-21-06</a>	<a href="#">SB 41 Sen Flr Intro 12-21-06</a>

**Public Meetings/Authorizes Special Meetings to Appoint an Interim Executive  
Officer of a State Body  
(Stats. 2007, ch. 92)<sup>3</sup>**

***Existing State Law***

Under the Bagley-Keene Open Meeting Act, Article 9 (commencing with Section 11120) of Chapter 1, Part 1, Division 3 of Title 1 of the Government Code (GC), existing state law requires that all meetings of a state body be open and public and all persons be permitted to attend any meeting of a state body, with specified exceptions for authorized closed sessions. A closed session meeting is authorized for several purposes, including employment evaluations, appointments, or dismissals, as well as pending litigation.

To conduct a meeting, state bodies are required to provide a 10-day notice to interested parties and the general public, including the date, time, and items to be considered. In instances where compliance with the 10-day notice would impose a substantial hardship on the state body or when immediate action is required to protect the public interest, state bodies are authorized to hold special meetings without the 10-day notice. At the commencement of the special meeting, the body is required to make a finding that the 10-day notice requirement would impose a substantial hardship on the body or that immediate action is required to protect the public interest and must provide a factual basis for the finding. The finding must be adopted by a two-thirds vote and must contain facts that support it. If none of these requirements is followed, then the body cannot convene the special meeting and the meeting must be adjourned. When considering the following purposes, the calling of a special meeting is warranted:

- Pending litigation
- Proposed legislation
- Issuance of a legal opinion
- Disciplinary action involving a state officer or employee
- Purchase, sale, exchange, or lease of real property
- License examinations and applications
- Action on a loan or grant provided pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code
- Response to a confidential final draft audit report

***Reasons for Change***

This act stems from the unexpected death in 2006 of the executive officer of the Tahoe Conservancy (Conservancy). The Conservancy was bound by the 10-day rule because death of the executive officer is not a listed purpose, and thus the Conservancy could not expeditiously appoint an interim executive officer.

***Explanation of Provision***

This act amended Section 11125.5 of the GC to authorize a state body to call a special meeting to appoint an interim executive director of the state body upon the death, incapacity, or vacancy in the office of the executive officer.

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<sup>3</sup> SB 519 (Senate Committee on Government Organization) - Senate passed bill on May 14, 2007, with a 39 Aye/0 Noe vote. Assembly passed bill with author's amendments July 9, 2007, with a 76 Aye/0 Noe vote and Senate sent bill to enrollment. Enrolled on July 12, 2007. Governor signed and bill was chaptered on July 20, 2007.

**Effective Date**

This act became effective January 1, 2008, and operative on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">SB 519 Chaptered 7-20-07 Text</a>	<a href="#">SB 519 Legislative Chg</a>	---
<a href="#">SB 519 Enrolled 7-12-07 Text</a>	---	---
<a href="#">SB 519 Introduced 2-22-07 Text</a>	<a href="#">SB 519 Intro 2-22-07</a>	<a href="#">SB 519 Asm Gov Org</a> <a href="#">SB 519 Sen Gov Org</a>

**Notice to FTB of the Administration of a Decedent's Estate Required by Estate Representative**  
**(Stats. 2007, ch. 105)<sup>4</sup>**

***Background***

Franchise Tax Board's (FTB) method of collecting a decedent's unpaid tax liability depends on how the assets of the decedent are disbursed. Generally, three methods are available to conclude a decedent's affairs. Depending on the size of the estate and actions taken prior to the taxpayer's death, assets are transferred (1) by a court probate estate proceeding, (2) using a trust established prior to the taxpayer's death, or (3) informally by family members.

FTB's Decedent Unit receives a Notice of Administration of a Decedent's Estate (notice) in two ways:

- The representative provides actual notice to FTB as required for reasonably ascertainable creditors of an estate, or
- FTB's Decedent Unit independently identifies an open probate by searching probate case files in the superior courts of all 58 California counties.

FTB initiates a search for a probate estate when FTB's Decedent Unit determines that a taxpayer with an income tax liability is deceased. FTB sends a Request for Probate Information (FTB Form 4777) to the superior court in any of the 58 counties to locate probate information. The superior court probate clerk must then search the court's records for probate information and return the form indicating whether a probate estate was established in that county. If probate information is located, FTB files a Creditor's Claim in the proceeding.

The Decedent Unit estimates that of the 50,000 estates probated each year, approximately 65% are fully compliant with their tax obligations or have no obligations to resolve. The Decedent Unit estimates that of the remaining 35% of cases probated annually, 25% of those estates, or 4,375 cases, provide notice to FTB or are independently located by FTB staff. Finally, the approximately 13,125 cases, or 75% of the remaining probate case universe, remain unidentified by FTB staff.

During the last five years, FTB has pursued approximately 94 transferee assessment cases where the estate failed to satisfy the decedent's unpaid state tax liability. These cases had an estimated value of \$1.8 million. The transferee assessment process is a manual collection procedure that is costly, time consuming, and often not pursued for cost benefit reasons. In addition, these cases surprise beneficiaries and require the beneficiaries to pay amounts to the state that they believed were their unencumbered inheritance. In many cases, the beneficiaries have already committed the assets. FTB discharges approximately 165 probate-related transferee assessment cases each year with an estimated value of \$2.0 million for cost benefit reasons that could be resolved through FTB's receipt of timely notice and the opportunity to file timely probate claims.

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<sup>4</sup> AB 361 (Ma) – Assembly passed bill on May 21, 2007, with a 76 Aye/0 Noe vote. Senate passed bill with amendments on July 16, 2007, with a 36 Aye/0 Noe vote. Assembly concurred with Senate amendments and sent bill to enrollment on July 20, 2007, with a 76 Aye/0 Noe vote. Bill enrolled on July 24, 2007. Governor signed and bill chaptered on July 27, 2007.

### ***Existing State Law***

The administration of a decedent's estate is exclusively a matter of state law. The Internal Revenue Service (IRS) is treated as a creditor of an estate when an estate has a federal tax debt.

Probate proceedings are administered in the county where the decedent resided or owned real property. The personal representative of a decedent's estate is required to make a reasonably diligent effort to identify creditors of the decedent and is required to provide any reasonably ascertainable creditor with a notice. The notice is to be provided within four months after the date the representative receives letters of administration or within 30 days from when the representative first has knowledge of the creditor. Additionally, under certain circumstances, the representative is required to provide specific notice to the Director of Health Services and the Director of the California Victims Compensation and Government Claims Board.

Creditors of a decedent, including a state agency, are required to file a claim in the estate proceedings within specific timeframes to obtain payment of a debt. All claims filed in an estate must be resolved prior to closing the administration of the estate.

After a return is filed reporting both income earned by the decedent and income earned by the estate, a representative may request a prompt audit of that return by FTB. If FTB proposes to adjust the amount of tax reported, FTB must issue a notice proposing to assess the additional tax or commence a proceeding in court without assessment for the collection of tax within 18 months from the date the representative requested the audit. FTB is barred from making a claim in a probate proceeding after the 18-month period expires.

A claim by a public entity is not barred unless notice has been provided to that entity. Where written notice is not provided, the claim is enforceable by an action against the beneficiaries of the estate for the unpaid claim. If property is distributed before expiration of the time allowed a public entity to file a claim, the public entity has a claim against the beneficiaries of the estate that received the property. The state's recourse when estate assets have been distributed before a claim is filed is to pursue a transferee assessment against the beneficiaries that received the estate assets.

### ***Reasons for Change***

The act allows FTB to codify a process that would assure that an estate representative discovers and resolves a decedent's income tax obligation, thus helping to close the tax gap.

### ***Explanation of Provision***

This FTB-sponsored act requires that the personal representative of an estate notify FTB of the probate proceedings within 90 days of when letters are first issued for the estate. The bill also requires estates for which no petition for final distribution has been filed by January 1, 2008, to provide FTB with notice within 90 days of that date.

According to the author, an estate representative often does not know a decedent's financial affairs and, as a result, is unable to resolve tax obligations. This act codifies a process that assures that an estate representative discovers and resolves a decedent's income tax obligation, thus helping to close the tax gap.

Currently, if it is known that a claim is likely, a personal representative of an estate being probated is required to notify the directors of Health Services and the California Victim Compensation and Government Claims Board of the decedent's death within 90 days of when letters for probate administration are first issued. The directors then have four months after receiving notice to make their claims or pursue collection of outstanding fines. This act expands that notice requirement to FTB, but does not limit the time period by which the department has to make a claim against the estate.

***Effective Date***

This act became effective January 1, 2008, and operative for estates formally opened on or after July 1, 2008.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">AB 361 Chaptered 7-20-07 Text</a>	<a href="#">AB 361 Legislative Chg</a>	---
<a href="#">AB 361 Enrolled 7-10-07 Text</a>	---	---
<a href="#">AB 361 Amd 6-25-07 Text</a>	<a href="#">AB 361 Amd 6-25-07</a>	<a href="#">AB 361 Asm Conc Amd 6-25-07</a>
<a href="#">AB 361 Amd 6-04-07 Text</a>	<a href="#">AB 361 Amd 6-04-07</a>	<a href="#">AB 361 Sen Jud Amd 6-04-07</a>
<a href="#">AB 361 Amd 3-22-07 Text</a>	<a href="#">AB 361 Amd 3-22-07</a>	<a href="#">AB 361 Asm Jud Amd 3-22-07</a>
<a href="#">AB 361 Intro 2-14-07 Text</a>	<a href="#">AB 361 Intro 2-14-07</a>	---

**Code Maintenance**  
**(Stats. 2007, ch. 130)**<sup>5</sup>

This act made numerous technical, nonsubstantive changes as a matter of code maintenance to California law, including the Revenue and Taxation Code. These changes included punctuation, grammar, and reference corrections.

***Existing Law***

Unaffected.

***Reasons for Change***

Each year, California's Legislative Counsel identifies grammatical and other errors of a technical nature that have been inadvertently enacted into statutory law. The annual "Maintenance of the Codes" bill is the vehicle for implementing these wholesale corrections. For inclusion into the bill, the change must be technical only and may not affect or enact substantive law. Any proposed change identified as having a substantive change is excised from the bill prior to enactment.

***Effective Date***

This act became effective January 1, 2008, and operative on or after that date.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">AB 299 Chap 7-27-07 Text</a>	---	---
<a href="#">AB 299 Enrolled 7-23-07 Text</a>	---	---
<a href="#">AB 299 Amd 6-11-2007 Text</a>	---	<a href="#">AB 299 Asm Concur 7-20-07</a> <a href="#">AB 299 Sen Jud Amd 6-11-07</a>
<a href="#">AB 299 Intro 2-9-07 Text</a>	<a href="#">AB 299 Intro 2-9-07</a>	<a href="#">AB 299 Asm Jud Intro 2-09-07</a>

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<sup>5</sup> AB 299 (Tran) - Assembly passed bill on April 12, 2007, with 74 Aye/ 0 Noe vote. Senate passed bill with amendments on July 9, 2007, with 40 Aye/ 0 Noe vote. Assembly concurred with Senate amendments and sent bill to enrollment on July 20, 2007, with 78 Aye/0 Noe vote. Enrolled and to the Governor on July 25, 2007. Governor signed and bill enacted on July 27, 2007.

**Court Ordered Debt Collection Program/Reduce Minimum Unpaid Debt Amounts  
for Referral to \$100/FTB Member of Task Force to Evaluate Criminal & Traffic-  
Related Court Ordered Debts  
(Stats. 2007, ch. 132)<sup>6</sup>**

***Background***

Franchise Tax Board (FTB) currently collects debts referred from courts of 43 counties and maintains an inventory of approximately 1.1 million cases. In August 2004, legislation was enacted (SB 246, Stats. 2004, ch. 380) making FTB's Court Ordered Debt program permanent and requiring FTB to expand participation to all 58 counties and superior courts. To meet this requirement, FTB initiated the Court Ordered Debt Expansion (CODE) project to develop and implement a scalable collection and billing system that includes web based electronic payment capability to provide debtors basic access to their account information and provide online payment options (i.e., payment by credit/debit card, requests for installment agreements). CODE project is in development, and the department expects it to be functional by August 2009. CODE is expected to administer an inventory of approximately 8 million cases from potentially 190 different courts.

***Existing State Law***

Under current state law, any fines, fees, penalties, forfeitures, restitution orders, or fines, or any other amounts imposed by a superior or municipal court in California that are delinquent for 90 days or more can be referred to FTB for collection. The delinquent amount must be at least \$250 and includes debts imposed for criminal offenses, including violations of the Vehicle Code, but excluding parking, registration, or offenses by bicyclists or pedestrians.

After issuing a preliminary notice to the debtor, FTB is authorized to collect the debts referred by the courts in the same manner as authorized for collection of a delinquent personal income tax liability. FTB's costs attributable to this collection program are reimbursed through the amount FTB collects for the program, not to exceed 15%. In general, the county or state fund originally owed the debt receives the net collections after reduction by the amount of FTB's departmental costs.

***Reasons for Change***

The purpose of this act is to improve the overall process related to the imposition and collection of court ordered fines, fees, and penalties, and increase the revenue derived from these sources.

This act, sponsored by the Judicial Council of California, codified recommendations that were made by the Collaborative Court-County Working Group on Enhanced Collection Status. This act made minor changes to existing programs and established a new task force to review and recommend changes that will improve the assessment and enforcement of criminal and traffic court-related fines and penalties. This task force on criminal and traffic court fines and penalties will make recommendations for simplifying California's criminal and traffic fine and penalty assessment, collection, and distribution system, and address issues such as priority of payments, cost recovery practices, and the expansion of comprehensive collection programs. The author explained that the criminal fine structure has become so complicated with the

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<sup>6</sup> AB 367 (DeLeon) - Assembly passed bill on May 21, 2007, with a 76 Aye/0 Noe vote. Senate passed bill July 16, 2007, with amendments on with 36 Aye/0 Noe vote. Assembly passed bill with Senate amendments and sent bill to enrollment on July 24, 2007. Enrolled and to the Governor on July 24, 2007. Governor signed and bill enacted on July 27, 2007.

various add-ons, surcharges, and penalty assessments that an offense with a \$100 base fine can result in an actual fine of nearly \$400. According to supporters, the American Federation of State, County, and Municipal Employees, "[t]his legislation would make various adjustments to current trial court policy that would result in more effective and efficient revenue generation."

### ***Explanation of Provision***

This act made the following substantive changes to the existing CODE project:

- Reduced the minimum amount of court ordered debts referred for collection to FTB from \$250 to \$100,
- Added public defender fees to the county collection programs for court ordered debts,
- Eliminated a county level working group that had been convened to examine collection issues, and
- Authorized the referral of debts based on violations for parking and registration and offenses by pedestrians and bicyclists.

This act required establishing a task force to evaluate criminal court ordered debts imposed against adult and juvenile offenders. The task force membership will include a representative appointed by FTB, and will do the following:

- Identify all criminal and traffic related court ordered fees, fines, forfeitures, penalties, and assessments imposed under law.
- Identify the distribution of revenue derived from those debts.
- Consult with state and local entities that could be affected by a simplification and consolidation of criminal court ordered debts.
- Evaluate and make recommendations to the Judicial Council for consolidating and simplifying the imposition of criminal court ordered debts and the distribution of the revenue derived from those debts with the goal of improving the process for those entities that benefit from the revenues but with no intention to redistribute the funds that will have a detrimental affect on those entities.
- Evaluate and make recommendations to the Judicial Council on or before December 31, 2009, regarding the priority in which court ordered debts should be satisfied and the use of a comprehensive collection program including cost recovery practices.

### ***Effective Date***

This act became effective January 1, 2008, and operative as of that date.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">AB 367 Chap 7-28-07 Text</a>	<a href="#">AB 367 Legislative Chng</a>	---
<a href="#">AB 367 Enrolled 7-24-07 Text</a>	---	---
<a href="#">AB 367 Amd 6-28-07 Text</a>	<a href="#">AB 367 Amd 6-28-07</a>	<a href="#">AB 367 Asm Concur Amd 6-28-07</a> <a href="#">AB 367 Sen Flr Amd 6-28-07</a>
<a href="#">AB 367 Amd 6-25-07 Text</a>	<a href="#">AB 367 Amd 6-25-07</a>	---
<a href="#">AB 367 Amd 5-15-07 Text</a>	<a href="#">AB 367 Amd 5-15-07</a>	<a href="#">AB 367 Sen Jud Amd 5-15-07</a>
<a href="#">AB 367 Amd 4-17-07 Text</a>	<a href="#">AB 367 Amd 4-17-07</a>	<a href="#">AB 367 Asm Jud Amd 4-17-07</a>
<a href="#">AB 367 Amd 3-22-07 Text</a>	<a href="#">AB 367 Amd 3-22-07</a>	---
<a href="#">AB 367 Intro 2-14-07 Text</a>	<a href="#">AB 367 Intro 2-14-07</a>	---

Additional links of interest:

<http://www.courtinfo.ca.gov/jc/documents/reports/0804item5.pdf>

[http://sccounty01.co.santa-](http://sccounty01.co.santa-cruz.ca.us/BDS/GovStream/BDSvData/non_legacy/agendas/2006/20060613/PDF/015.pdf)

[cruz.ca.us/BDS/GovStream/BDSvData/non\\_legacy/agendas/2006/20060613/PDF/015.pdf](http://sccounty01.co.santa-cruz.ca.us/BDS/GovStream/BDSvData/non_legacy/agendas/2006/20060613/PDF/015.pdf)

[Enhanced Collections: Home](#)

**Disallowance of Deduction if Failure to Report Payments for Personal Services/Technical Clean-Up**  
**(Stats. 2007, ch. 156)<sup>7</sup>**

***Background***

California law generally follows federal law by requiring businesses to file information returns reporting payments made by or to other persons (Forms W-2 and 1099). This information is matched against income tax returns and generally used for purposes of identifying taxpayers that have underreported or failed to report corresponding amounts received as income and to verify certain deductions.

The provision disallowing a deduction if the taxpayer failed to file information returns was enacted as part of the original California tax amnesty legislation in 1984 and was amended several years later to make the provision discretionary rather than mandatory in its application. AB 2892 (Assembly Committee on Revenue & Taxation, Stats. 2000, ch. 863) added, amended, renumbered, and repealed various sections of the Revenue and Taxation Code (RTC) to conform more closely to the language and structure of the Internal Revenue Code (IRC).

***Existing State Law***

Existing state law provides that Franchise Tax Board (FTB) may disallow a deduction for payments made to an individual or entity as remuneration for personal services if those payments are not reported on Forms W-2 (Wage and Tax Statement) or 1099 (payment reporting) as required and as further described under Background. In addition, current state law imposes a penalty if any person or entity fails to report amounts paid as remuneration for personal services.

***Reasons for Change***

This FTB-sponsored act deleted obsolete cross-references to clarify that deductions may be disallowed for payments for personal services if the paying taxpayer fails to report the payments as required by law, and that penalties might be imposed for such failure to report. This act removed ambiguity regarding the authority of FTB to disallow deductions for unreported payments made for personal services, thereby potentially eliminating disputes between taxpayers and the department.

***Explanation of Provision***

This act amended RTC sections 17299.8, 19175, and 24447 to refer to current RTC section 18631 instead of repealed RTC sections 18637 and 18638.

***Effective Date***

This act became effective January 1, 2008, and operative for taxable years beginning on or after that date.

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<sup>7</sup> SB 1044 (SRT) - Senate passed bill on May 7, 2007, with a 38 Aye/0 Noe vote. Assembly passed bill on July 12, 2007, with an 80 Aye/0 Noe vote. Enrolled and to the Governor on July 16, 2007. Governor signed and bill chaptered on July 27, 2007.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">SB 1044 Chap 7-27-07 Text</a>	<a href="#">SB 1044 Legislative Chg</a>	---
<a href="#">SB 1044 Enrolled 7-13-07 Text</a>	---	---
<a href="#">SB 1044 Intro 3-14-07 Text</a>	<a href="#">SB 1044 Intro 3-14-07</a>	<a href="#">SB 1044 ART Intro 3-14-07</a> <a href="#">SB 1044 SRT Intro 3-14-07</a>

## Teacher Retention Tax Credit Repeal (Stats. 2007, ch. 180)<sup>8</sup>

### *Existing Federal and State Law*

Existing federal and state laws provide various tax credits designed to provide tax relief for taxpayers that incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they might not otherwise undertake.

Current state law allows a tax credit for credentialed teachers that is the lesser of 50% of the amount of tax imposed on a teacher's salary or the amount based upon the years of service as a credentialed teacher, as follows:

- At least 4, but less than 6, years: \$250
- At least 6, but less than 11, years: \$500
- At least 11, but less than 20, years: \$1,000
- 20 or more years: \$1,500

The Teacher Retention Tax Credit was enacted in 2000 and first operative for the 2000 taxable year. It was subsequently suspended for the 2002, 2004, 2005, and 2006 taxable years

### *Reasons for Change*

According to committee staff<sup>9</sup>, repealing this credit will provide a general fund savings. The last year the Teacher Retention Tax Credit was allowed in 2003, the credit usage totaled approximately \$155 million. The number of credentialed teachers has increased approximately 2.5% annually. For example, applying this annual growth to the 2003 credit usage would result in a credit usage of approximately \$170 million for the 2007 taxable year.

### *Explanation of Provision*

This act repealed the Teacher Retention Tax Credit for taxable years beginning on or after January 1, 2007.

### *Effective Date*

As an urgency statute, this act became effective upon enactment on August 24, 2007, and operative for taxable years beginning on or after January 1, 2007.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">SB 87 Chap 8-24-07 Text</a>	<a href="#">SB 87 Legislative Chg</a>	---
<a href="#">SB 87 8-22-07 Enrolled Text</a>	---	---
<a href="#">SB 87 7-19-07 Amd Text</a>	<a href="#">SB 87 Amd 7-19-07</a>	<a href="#">SB 87 Sen UnFB Amd 7-19-07</a>
<a href="#">SB 87 7-16-07 Amd Text</a>	---	---
<a href="#">SB 87 Intro 1-17-07 Text</a>	---	<a href="#">SB 87 Sen UnFB Intro 1-17-07</a>

<sup>8</sup> SB 87 (Committee on Budget & Fiscal Review) Senate passed bill on April 19, 2007, with a 30Aye/6 Noe vote. Assembly passed bill on with 64 Aye/21 Noe vote. Senate passed bill with Assembly amendments on August 21, 2007. Enrolled, approved by the Governor, and chaptered on August 24, 2007.

<sup>9</sup> [SB 87 Sen UnFB Amd July 19, 2007](#), page 3, under Fiscal Effects

**Court Records/Abstracts of Judgments or Decrees and Filings Contain only Last Four Digits of Social Security Number**  
**(Stats. 2007, ch. 189)<sup>10</sup>**

***Existing State Law***

Under existing state law, when an abstract of judgment or decree requiring payment of money is certified by the clerk of the court, certain information is required to be shown in the abstract, including the following:

- Title of court where judgment or decree is entered,
- Date of entry of judgment,
- Name and last known address of judgment debtor,
- Name and address of judgment creditor,
- The amount of the judgment, and
- Social security number and driver's license number of debtor, if known.

***Reasons for Change***

According to the author's office, the purpose of this act is to prevent identity theft.

***Explanation of Provision***

This act removed the requirement that an abstract of judgment contain the debtor's full social security number (SSN) and replaced it with the requirement that only the last four digits of that debtor's SSN be shown. This requirement to show only the last four digits of the SSN would be applicable to other related court documents, such as Amendments to an Abstract of Judgment.

***Effective Date***

This act became effective on January 1, 2008, and operative for abstracts filed on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">SB 644 Chap 8-31-07 Text</a>	<a href="#">SB 644 Legislative Chg</a>	---
<a href="#">SB 644 Enrolled Text</a>	---	---
<a href="#">SB 644 Amd 3-29-07 Text</a>	<a href="#">SB 644 Amd 3-29-07</a>	<a href="#">SB 644 Sen 3d Amd 3-29-07</a> <a href="#">SB 644 Asm Jud Amd 3-29-07</a>
<a href="#">SB 644 Intro 2-22-07 Text</a>	---	<a href="#">SB 644 Sen Jud Intro 2-22-07</a>

<sup>10</sup> SB 644 (Ackerman) – Senate passed bill on May 24, 2007, with a 36 Aye/0 Noe vote. Assembly passed bill on August 21, 2007, with a 76 Aye/0 Noe vote. The bill was enrolled on August 24, and chaptered on August 31, 2007.

**Disaster Loss Deduction and Excess Loss Carryover for the October 2006,  
Riverside County Wildfires  
(Stats. 2007, ch. 222)<sup>11</sup>**

***Program Background***

On October 26, 2006, the Riverside County wildfires were declared by Governor Schwarzenegger to be a disaster; President Bush did not declare these fires to be a federal disaster.

***Existing Federal and State Law***

Under federal and state law, a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area declared to be a disaster by the President of the United States.

An individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, may deduct such losses to the extent that each loss exceeds \$100 and aggregate net losses for the taxable year exceed 10% of adjusted gross income. Additionally, a taxpayer can elect to file an amended return to deduct a casualty loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to casualty losses occurring in a Presidentially-declared disaster area.

Under federal and state law, a net operating loss (NOL) is created when business deductions exceed gross income. Thus, as a general rule, an individual taxpayer cannot have an NOL unless the return contains business deductions. A significant exception exists for casualty losses. Any deductible personal casualty loss is treated as a business deduction for the purpose of calculating an NOL.

Under federal law, an NOL may be carried back up to two years to generate a refund. Any remaining NOL may be carried forward for up to 20 years to reduce future income tax liabilities. If a taxpayer elects to deduct a disaster loss in the preceding year and that deduction creates an NOL for that preceding year, the taxpayer can carry back that disaster loss to the two years preceding the year in which the taxpayer deducted the loss. An election to deduct a disaster loss in the preceding year could potentially provide refunds for three taxable years.

Under current state law, no carryback is allowed and the carry forward period for NOLs is limited to 10 years.

State tax law identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100% of the excess disaster loss may be carried over for up to five taxable years, and if any excess loss remains after the five-year period, the remaining excess loss may be carried over for up to 10 additional years. In addition, for disasters that were the subject of a Governor's proclamation but not the subject of a Presidential disaster declaration, enactment of state law identifying a specific event as a disaster for state tax law purposes authorizes the taxpayer to elect to deduct the disaster loss on the return for

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<sup>11</sup>SB 38 (Battin) – Senate Floor passed the bill on June 6, 2007, with a vote of Ayes: 40, Noes: 0; Assembly Floor passed the bill on August 30, 2007, with a vote of Ayes: 78, Noes: 0; Concurrence on September 5, 2007, with a vote of Ayes: 38, Noes: 0. This bill was enrolled on September 11, 2007, and enacted September 21, 2007.

the prior taxable year. Disaster losses subject to the special treatment under state law may not be taken into account in computing an NOL for state tax purposes.

### ***Reasons for Change***

According to the author's staff, the purpose of the act is to provide immediate tax relief to individuals and businesses affected by the Riverside County wildfires.

### ***Explanation of Provision***

This act added wildfires that occurred in Riverside County in October 2006 to the current list of specified disasters under the Personal Income Tax and Corporation Tax Laws.

This act allows special disaster treatment of losses sustained as a result of those wildfires. Specifically, since the President has not proclaimed a disaster for any of these fires, this act allows a taxpayer to elect to claim the loss either in the year the loss occurred or in the year preceding the loss. If a taxpayer elects to take the loss in the preceding year, this act allows the taxpayer to file an amended return immediately for the prior year. This act also allows special disaster loss carryover treatment. A taxpayer may elect to claim the loss either in the year the loss occurred or in the year preceding the loss. If a taxpayer elects to take the loss in the preceding year, this act allows the taxpayer to file an amended return immediately for the prior year.

This act also contained triple jointing language<sup>12</sup> that incorporated provisions from SB 114 (Florez) and AB 62 (Nava) that allows taxpayers affected by the freeze of 2007, and those affected by the fires that occurred in Ventura County in 2006 and El Dorado County, Santa Barbara and Ventura Counties in 2007, disaster loss treatment for their losses.

### ***Effective Date***

As an urgency measure, this act was effective and operative immediately upon enactment on September 21, 2007.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">SB 38 Chap 9-21-07 Text</a>	<a href="#">SB 38 Legislative Chg</a>	---
<a href="#">SB 38 Enrolled Text</a>	---	---
<a href="#">SB 38 Amd 8-27-07 Text</a>	<a href="#">SB 38 Amd 8-27-07 &amp; 8-20-07</a>	<a href="#">SB 38 Sen UnFB 8-27-07</a>
<a href="#">SB 38 Amd 8-20-07 Text</a>	---	<a href="#">SB 38 Asm App 8-20-07</a>
<a href="#">SB 38 Amd 7-12-07 Text</a>	<a href="#">SB 38 Amd 7-12-07</a>	---
<a href="#">SB 38 Intro 12-11-06 Text</a>	<a href="#">SB 38 Intro 12-11-06</a>	<a href="#">SB 38 SRT Intro 12-11-06</a> <a href="#">SB 38 ART Intro 12-11-06</a>

<sup>12</sup> When the provisions of one or more chaptered bills amend the same code section, the language of both bills may be amended to provide for "double jointing." "Double jointing" adds provisions to all the affected bills that would make effective all of the changes in a section of a code or general law proposed by that bill and one or more other bills, if each bill is chaptered. Absent "double jointing" language, the code section as amended by the bill with the higher chapter number takes effect and "chapters out" the code section as amended by the bill with the lower chapter number.

[http://www.senate.ca.gov/ftp/SEN/COMMITTEE/STANDING/LOC\\_GOV/\\_home/DOUBLEJOINING.HTM](http://www.senate.ca.gov/ftp/SEN/COMMITTEE/STANDING/LOC_GOV/_home/DOUBLEJOINING.HTM),  
<http://www.assembly.ca.gov/clerk/BILLSLEGISLATURE/glossary.asp?valid=1&target=1>

**Disaster Loss Deduction and Excess Loss Carryover for Specified Counties for  
the Freezing Conditions That Occurred in January 2007**  
**(Stats. 2007, ch. 223)<sup>13</sup>**

***Program Background***

On February 15, 2007, Governor Schwarzenegger proclaimed 18 counties to be in a state of emergency due to the freeze of January 2007. The 18 counties designated in the proclamation include El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, and Yuba.

On March 13, 2007, President George W. Bush declared 12 counties in California as a federal disaster as a result of the January 2007 freeze<sup>14</sup>, 11 of which were also declared by the Governor. The 12 counties designated as federal disaster areas include Fresno, Imperial, Kern, Los Angeles, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Tulare, and Ventura Counties. Los Angeles County was excluded from the Governor's proclamation. The President's declaration excludes El Dorado, Kings, Madera, Santa Clara, Stanislaus, and Yuba Counties. As a result, these six counties would need state legislation to be enacted to deduct the disaster loss on the prior year's return and receive disaster loss treatment.

***Existing Federal and State Law***

Under federal and state law, a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area declared to be a disaster by the President of the United States.

An individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, may deduct such losses to the extent that each loss exceeds \$100 and aggregate net losses for the taxable year exceed 10% of adjusted gross income. Additionally, a taxpayer can elect to file an amended return to deduct a casualty loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to casualty losses occurring in a Presidentially-declared disaster area.

Under federal and state law, a net operating loss (NOL) is created when business deductions exceed gross income. Thus, as a general rule, an individual taxpayer cannot have an NOL unless the return contains business deductions. A significant exception exists for casualty losses. Any deductible personal casualty loss is treated as a business deduction for the purpose of calculating an NOL.

Under federal law, an NOL may be carried back up to two years to generate a refund. Any remaining NOL may be carried forward for up to 20 years to reduce future income tax liabilities. If a taxpayer elects to deduct a disaster loss in the preceding year and that deduction creates an

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<sup>13</sup> SB 114 (Florez) - Senate Floor passed the bill on March 28, 2007, with a vote of Ayes: 36, Noes: 0; Assembly Floor passed the bill on September 5, 2007, with a vote of Ayes: 78, Noes: 0; Concurrence on September 7, 2007, with a vote of Ayes: 39, Noes: 0. This bill was enrolled on September 12, 2007, and enacted September 21, 2007.

<sup>14</sup> <http://www.fema.gov/news/dfrn.fema?id=7628>, <http://www.fema.gov/news/dfrn.fema?id=7766>

NOL for that preceding year, the taxpayer can carry back that disaster loss to the two years preceding the year in which the taxpayer deducted the loss. An election to deduct a disaster loss in the preceding year could potentially provide refunds for three taxable years.

Under current state law, no carryback is allowed and the carry forward period for NOLs is limited to 10 years.

State tax law identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100% of the excess disaster loss may be carried over for up to five taxable years, and if any excess loss remains after the five-year period, the remaining excess loss may be carried over for up to 10 additional years. In addition, for disasters that were the subject of a Governor’s proclamation but not the subject of a Presidential disaster declaration, enactment of state law identifying a specific event as a disaster for state tax law purposes authorizes the taxpayer to elect to deduct the disaster loss on the return for the prior taxable year. Disaster losses subject to the special treatment under state law may not be taken into account in computing an NOL for state tax purposes.

***Reasons for Change***

According to the author’s office, the purpose of the act is to provide immediate tax relief to individuals and businesses affected by the freezing conditions of January 11, 2007.

***Explanation of Provision***

This act added the freezing conditions that occurred in California commencing January 11, 2007, to the current list of specified disasters under the Personal Income Tax Law and the Corporation Tax Law. The counties included in the bill’s provision are El Dorado, Fresno, Imperial, Kern, Kings, Madera, Merced, Monterey, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Santa Clara, Stanislaus, Tulare, Ventura, and Yuba Counties. Specifically, this act allows a taxpayer to elect to claim the loss either in the year the loss occurred or in the year preceding the loss. If a taxpayer elects to take the loss in the preceding year, this act allows the taxpayer to file an amended return immediately for the prior year.

This act contained triple jointing language that incorporates provisions from SB 38 (Battin) and AB 62 (Nava) that allows taxpayers affected by the fires that occurred in Riverside and Ventura Counties in 2006 and El Dorado, Santa Barbara, and Ventura Counties in 2007, disaster loss treatment for their losses.

***Effective Date***

As an urgency measure, this act became effective and operative immediately upon enactment on September 7, 2007.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">SB 114 Chap 9-07-07 Text</a>	<a href="#">SB 114 Legislative Chg</a>	---
<a href="#">SB 114 Enrolled Text</a>	---	---
<a href="#">SB 114 Amd 8-31-07 Text</a>	<a href="#">SB 114 Amd 8-31-07</a>	<a href="#">SB 114 Sen UnFB Amd 8-31-07</a> <a href="#">SB 114 Sen 3d Amd 8-31-07</a>
<a href="#">SB 114 Amd 7-03-07 Text</a>	<a href="#">SB 114 Amd 7-03-07</a>	<a href="#">SB 114 Asm App Amd 7-03-07</a>
<a href="#">SB 114 Amd 3-07-07 Text</a>	<a href="#">SB 114 Amd 3-07-07</a>	<a href="#">SB 114 ART Amd 3-07-07</a>
<a href="#">SB 114 Amd 2-20-07 Text</a>	<a href="#">SB 114 Amd 2-20-07</a>	<a href="#">SB 114 SRT Amd 2-20-07</a>
<a href="#">SB 114 Intro 1-22-07 Text</a>	<a href="#">SB 114 Intro 1-22-07</a>	---

## **Disaster Loss Deduction and Excess Loss Carryover for 2006 Ventura County Wildfires and 2007 El Dorado, Santa Barbara, and Ventura County Wildfires (Stats. 2007, ch. 224)<sup>15</sup>**

### ***Program Background***

Governor Schwarzenegger proclaimed a state of emergency for the Ventura County wildfire on September 24, 2006, the El Dorado County wildfire on July 25, 2007, and the Ventura/Santa Barbara Counties wildfires on August 3 and August 19, 2007.

The President did not declare a disaster for any of the wildfires discussed above. However, federal fire management assistance was provided through the President's Disaster Relief Fund and made available by FEMA to assist in fighting the fire.

### ***Existing Federal and State Law***

Under federal and state law, a casualty loss is defined as the damage, destruction, or loss of property resulting from an identifiable event that is sudden, unexpected, or unusual. A disaster loss occurs when business or personal property is completely or partially destroyed as a result of a fire, storm, flood, or other natural event in an area declared to be a disaster by the President of the United States.

An individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, may deduct such losses to the extent that each loss exceeds \$100 and aggregate net losses for the taxable year exceed 10% of adjusted gross income. Additionally, a taxpayer can elect to file an amended return to deduct a casualty loss in the taxable year prior to the loss year to receive a refund more quickly. However, this election only applies to casualty losses occurring in a Presidentially-declared disaster area.

Under federal and state law, a net operating loss (NOL) is created when business deductions exceed gross income. Thus, as a general rule, an individual taxpayer cannot have an NOL unless the return contains business deductions. A significant exception exists for casualty losses. Any deductible personal casualty loss is treated as a business deduction for the purpose of calculating an NOL.

Under federal law, an NOL may be carried back up to two years to generate a refund. Any remaining NOL may be carried forward for up to 20 years to reduce future income tax liabilities. If a taxpayer elects to deduct a disaster loss in the preceding year and that deduction creates an NOL for that preceding year, the taxpayer can carry back that disaster loss to the two years preceding the year in which the taxpayer deducted the loss. An election to deduct a disaster loss in the preceding year could potentially provide refunds for three taxable years.

Under current state law, no carryback is allowed and the carry forward period for NOLs is limited to 10 years.

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<sup>15</sup> AB 62 (Nava) - Assembly passed bill on May 3, 2007, with a 40 Aye/0 Noe vote. Senate passed bill with amendments on September 5, 2007, with a 38 Aye/0 Noe vote. Assembly concurred with Senate amendments and sent bill to enrollment on September 6, 2007, with a 78 Aye/0 Noe vote. Bill enrolled on September 14, 2007. Governor signed and bill chaptered on September 21, 2007.

State tax law identifies specific events as disasters and excess disaster losses are allowed special carry forward treatment. That is, 100% of the excess disaster loss may be carried over for up to five taxable years, and if any excess loss remains after the five-year period, the remaining excess loss may be carried over for up to 10 additional years. In addition, for disasters that were the subject of a Governor's proclamation but not the subject of a Presidential disaster declaration, enactment of state law identifying a specific event as a disaster for state tax law purposes authorizes the taxpayer to elect to deduct the disaster loss on the return for the prior taxable year. Disaster losses subject to the special treatment under state law may not be taken into account in computing an NOL for state tax purposes.

### **Reasons for Change**

According to the author's staff, this provides immediate tax relief to individuals and businesses affected by the wildfires.

### ***Explanation of Provision***

This act added the wildfires that occurred in Ventura County in 2006 and in El Dorado, Santa Barbara, and Ventura Counties during 2007 to the current list of specified disasters under the Personal Income Tax Law and the Corporation Tax Law.

This act allowed special disaster treatment of losses sustained as a result of those wildfires. Specifically, because the President did not proclaim a disaster for any of these fires, this act allows a taxpayer to elect to claim the loss either in the year the loss occurred or in the year preceding the loss. If a taxpayer elects to take the loss in the preceding year, this act allows the taxpayer to file an amended return immediately for the prior year.

This act contained triple-jointing language that incorporated provisions from SB 38 (Battin) and SB 114 (Florez) to which AB 62 prevailed. Those acts allow taxpayers affected by the fires that occurred in Riverside County in 2006 or by the freeze of 2007 disaster loss treatment for their losses.

### ***Effective Date***

As an urgency measure, this act became effective and operative immediately upon enactment on September 21, 2007.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">AB 62 Chap 9-21-07 Text</a>	<a href="#">AB 62 Legislative Chg</a>	---
<a href="#">AB 62 Enrolled Text</a>	---	---
<a href="#">AB 62 Amd 8-27-07 Text</a>	<a href="#">AB 62 Amd 8-27-07</a>	<a href="#">AB 62 Asm Concur Amd 8-27-07</a> <a href="#">AB 62 Sen 3d 8-27-07</a> <a href="#">AB 62 Sen App Amd 8-27-07</a>
<a href="#">AB 62 Amd 7-20-07 Text</a>	<a href="#">AB 62 Amd 7-20-07</a>	<a href="#">AB 62 Sen App Amd 7-20-07</a>
<a href="#">AB 62 Amd 7-03-07 Text</a>	<a href="#">AB 62 Amd 7-03-07</a>	<a href="#">AB 62 SRT Amd 7-03-07</a>
<a href="#">AB 62 Amd 6-12-07 Text</a>	<a href="#">AB 62 Amd 6-12-07</a>	---
<a href="#">AB 62 Amd 5-15-07 Text</a>	<a href="#">AB 62 Amd 5-15-07</a>	---
<a href="#">AB 62 Amd 4-09-07 Text</a>	<a href="#">AB 62 Amd 4-09-07</a>	<a href="#">AB 62 Asm 3d 4-09-07</a>
<a href="#">AB 62 Amd 2-22-07 Text</a>	<a href="#">AB 62 Amd 2-22-07</a>	<a href="#">AB 62 ART Amd 2-22-07</a>
<a href="#">AB 62 Intro 12-04-06 Text</a>	<a href="#">AB 62 Intro 12-04-06</a>	---

**Property Tax Exemption/Fruit and Nut Bearing Trees/January 2007 Freeze**  
**(Stats. 2007, ch. 225)<sup>16</sup>**

***Existing State Law***

Existing state law exempts from property taxation fruit and nut trees until four years after the season in which planted in orchard form and exempts grapevines until three years after the season in which planted in vineyard form.

For purposes of this property tax exemption, any fruit-or nut-bearing tree or any grapevine severely damaged during the exemption period by the December 1990 or December 1998 freeze, so as to require pruning to the trunk or bud union to establish a new shoot as a replacement for the damaged tree or grapevine, shall be considered a new planting in orchard or vineyard form.

***Reasons for Change***

The intent of this act is to extend an existing property tax exemption for certain newly-planted fruit and nut bearing trees to existing trees that were damaged during the January 2007 freeze.

**Explanation of Provision**

This act added fruit and nut trees that were severely damaged by the freeze of January 2007 to the current property tax exemptions allowed for trees subject to other specified freezes.

***Effective Date***

As a tax levy, this act became effective immediately upon enactment on September 21, 2007, and operative for taxable years beginning on and after January 1, 2007.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">AB 297 Chap 12-21-07 Text</a>	<a href="#">AB 297 Legislative Chg</a>	---
<a href="#">AB 297 Enrolled Text</a>	---	---
<a href="#">AB 297 Intro 2-09-07 Text</a>	<a href="#">AB 297 Intro 2-09-07</a>	<a href="#">AB 297 Sen 3d Intro 2-09-07</a> <a href="#">AB 297 SRT Intro 2-09-07</a> <a href="#">AB 297 ART Intro 2-09-07</a>

<sup>16</sup> AB 297 (Maze - Assembly passed bill on April 26, 2007, with a 74 Aye/0 Noe vote. Senate passed bill with amendments on August 30, 2007, with a 39 Aye/0 Noe vote. Bill enrolled on September 6, 2007. Governor signed and bill chaptered on September 21, 2007.

**Exempt Organizations/Exempt from State Taxes upon Submission of Notification  
Issued by IRS Approving Tax Exempt Status  
(Stats. 2007, ch. 238)<sup>17</sup>**

***Program Background***

The department receives approximately 7,000 requests for tax-exempt status determinations annually. Of these requests, 10% are rejected either for failing to include all required documentation or for failing to meet the requirements for exemption.

***Existing Federal Law***

Under the Internal Revenue Code (IRC), certain entities, often referred to as tax-exempt organizations, are exempt from federal income tax. A tax-exempt organization can be a trust, unincorporated association, or nonprofit corporation.

The terms “nonprofit” and “tax-exempt” have different meanings. Nonprofit status is a matter of state law, which governs the organization and creation of the entity. All tax-exempt organizations are nonprofit, but not all nonprofits are tax-exempt.

IRC 501(c)(3) organizations make up the largest category of tax-exempt entities. They are organized and operated for one or more of the following purposes:

- Charitable
- Educational
- Religious
- Scientific
- Literary
- Testing for public safety
- Fostering national or international amateur sports competition
- Preventing cruelty to children or animals

To qualify for exempt status with the Internal Revenue Service (IRS), an IRC 501(c)(3) organization must be organized under state law as a corporation, community chest, fund, or foundation. Churches, conventions, or associations of churches, and any organization (other than a private foundation) normally having annual gross receipts of less than \$5,000 annually, are exempt automatically if they meet the requirements of IRC section 501(c)(3). Organizations that are not automatically exempt under federal law must apply for tax-exempt status for federal purposes by submitting an application to the IRS with accompanying statements showing that all of the following are true:

The organization is organized exclusively for, and will be operated exclusively for, one or more of the purposes (e.g., charitable, religious) specified above.

No part of the organization’s net earnings will inure to the benefit of private shareholders or individuals.

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<sup>17</sup> AB 897 (Houston) – Assembly passed bill on May 17, 2007, with a 73 Aye/0 Noe vote. Senate passed bill with amendments on August 30, 2007 with a 39 Aye, 0 Noe vote and Assembly concurred on September 4, 2007 with a 77 Aye/0 Noe vote. Enrolled September 5, 2007, and Governor signed and bill chaptered on September 26, 2007.

The organization will not, as a substantial part of its activities, attempt to influence legislation (unless it elects to come under the provisions allowing certain lobbying expenditures) or participate to any extent in a political campaign for or against any candidate for public office.

The IRS requires all applications for tax-exempt status to be accompanied by a copy of the organization's Articles of Incorporation or other document creating the organization. The Articles of Incorporation must limit the organization's purposes to one or more of the exempt purposes listed in IRC section 501(c)(3) and declare the assets of an organization permanently dedicated to an exempt purpose. The IRS also requires that copies of financial statements be submitted with the application.

Federal law requires the payment of a user fee when making a request for determination of exempt status. For organizations with annual gross receipts in excess of \$10,000 over 4 years, the fee is \$750; for those with annual gross receipts of less than \$10,000, the fee is \$300. A ruling or determination letter will be issued to the organization if its application and supporting documents establish that it meets the particular requirements of the IRC section under which it is claiming exemption.

### ***Existing State Law***

Although most California laws dealing with tax exemption are patterned after the IRC, there are subtle differences between state and federal tax law, and state tax law requires an organization obtain state tax exemption using a separate process from obtaining their federal exemption. In order to obtain state exemption from tax, an organization must: (1) submit a completed exemption application form to the Franchise Tax Board (FTB), (2) pay a filing fee of \$25, and (3) receive a letter issued by FTB indicating the organization is exempt from franchise and income tax. The exemption application is required to include the Articles of Incorporation, the by-laws of the organization, and financial statements showing assets, liabilities, receipts, and disbursements.

To be exempt from taxation for state franchise and income tax purposes, the organization must be organized and operated for one or more of the exempt purposes listed in the California Corporation Tax Law (CTL). The exempt purposes for California exemption are the same as those listed in the federal law section of this analysis, except that churches and small charities are not automatically exempt under state law; they must apply for state tax exemption.

### ***Reasons for Change***

The purpose of this act is to remove the duplicative qualification process for obtaining California tax-exempt status by allowing certain entities that are tax-exempt under federal law to be tax-exempt for state purposes automatically upon submission of a copy of their federal determination letter.

### ***Explanation of Provision***

This act allows IRC 501(c)(3) organizations that are granted tax-exempt status under federal law to submit a copy of the IRS tax-exempt determination letter to FTB to establish their state income tax exemption. As a result, IRC 501(c)(3) organizations are not required to file a separate exemption application with FTB or submit a \$25 filing fee. Instead, the organization may receive state tax exemption automatically by submitting a copy of the IRS tax-exempt determination letter.

These organizations will receive a letter issued by FTB acknowledging receipt of a copy of the organization's federal tax-exempt determination letter, thereby making that organization exempt from state tax. Those organizations that are not issued a federal determination letter would still file a separate application for California income tax exemption.

This act specifies that FTB will not be prevented from revoking tax-exempt status if the entity fails to meet certain California provisions governing exempt organizations.

This act requires the taxpayer to inform FTB of an IRS tax-exemption suspension or revocation and, upon receipt of the IRS notice of suspension or revocation, allows FTB to suspend or revoke the organization's state tax-exempt status.

***Effective Date***

This act became effective January 1, 2008, and operative for requests for California tax-exempt status filed on or after that date. In addition, this act specifies the effective date of an organization's California tax-exempt status to be no later than the effective date of that organization's tax-exempt status under section 501(c)(3) of the IRC.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">AB 897 Chap 9-26-07 Text</a>	<a href="#">AB 897 Legislative Chg</a>	---
<a href="#">AB 897 Enrolled Text</a>	---	---
<a href="#">AB 897 Amd 8-01-07 Text</a>	<a href="#">AB 897 Amd 8-01-07</a>	<a href="#">AB 897 Asm Concur 8-01-07</a> <a href="#">AB 897 Sen 3d 8-01-07</a> <a href="#">AB 897 Sen 3d 8-01-07</a>
<a href="#">AB 897 Amd 07-03-07 Text</a>	<a href="#">AB 897 Amd 7-30-07</a>	<a href="#">AB 897 SRT 7-03-07</a>
<a href="#">AB 897 Amd 5-03-07 Text</a>	<a href="#">AB 897 Amd 5-03-07</a>	<a href="#">AB 897 Asm App 5-03-07</a>
<a href="#">AB 897 Amd 3-29-07 Text</a>	<a href="#">AB 897 Amd 3-29-07</a>	<a href="#">AB 897 ART Amd 3-29-07</a>
<a href="#">AB 897 Intro 7-22-07 Text</a>	---	---

## **State Agencies/Bilingual Services** **(Stats. 2007, ch. 259)<sup>18</sup>**

### ***Program Background***

Currently, Franchise Tax Board (FTB) provides bilingual services in over 37 different languages to the taxpayers of California. Two hundred seventy-nine (279) FTB employees self-identified as being fluent in foreign languages provide these translation services. Fifty-one FTB employees providing bilingual services are certified, primarily in the Spanish language. In instances where a taxpayer contacts the department in a language not provided, the department would contract with outside agencies for language assistance to service the taxpayer. Because of the diverse bilingualism of FTB employees, both certified and uncertified, the department did not have to contract for outside services in 2006. Employees who use bilingual skills in over 10% of their daily work and are certified receive a pay differential for the use of their bilingual skills. Because of the diversity of California taxpayers, not all bilingual employees use their bilingual skills in over 10% of their workday and do not receive a pay differential.

### ***Existing Federal and State Law***

Under federal law, Title VI of the Civil Rights Act of 1964 states that no person shall be excluded from participation in, denied the benefits of, or be subject to discrimination based on race, color, or national origin under any program or activity receiving federal financial assistance. A federal program's failure to assure that people who are not proficient in the English language can effectively participate in and benefit from the federal program or activity may constitute discrimination on the basis of national origin. Based on Executive Order 13166, federal agencies are required to provide services and information to individuals with limited English proficiency in a manner that ensures meaningful access by the applicants or beneficiaries of those federal agency programs or activities.

State law requires state agencies directly involved in the furnishing of information or rendering of services to a substantial number of non-English speaking people to employ qualified bilingual persons in public contact positions. State agencies must provide a sufficient number of qualified bilingual persons to enable the agency to provide the same level of services in the language of the non-English speaking person as provided to the English speaking person. State agencies may furnish non-English written materials or, in the alternative, provide translation services or aids in the local offices to assist their customers in understanding English forms, letters, or notices.

State agencies are required to report to the State Personnel Board (SPB), in every even-numbered year, a status report on the agency's plan for delivering bilingual services, including training, recruitment, and methods used to identify non-English speaking needs of its customers. State agencies that do not furnish information or render services to the public, or consistently receive limited public contact with the non-English speaking public, may obtain an exemption from the reporting requirement.

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<sup>18</sup> AB 67 (Dymally) – Assembly passed bill on May 10, 2007, with a 72 Aye/0 Noe vote. Senate passed bill with amendments on September 4, 2007 with a 37 Aye, 0 Noe vote, and Assembly concurred on September 5, 2007 with a 78 Aye/0 Noe vote. Enrolled September 11, 2007, and Governor signed and bill chaptered on October 5, 2007.

### ***Reasons for Change***

According to the author's office, the purpose of this bill is to make it clear that the responsibility for certifying qualified bilingual persons is delegated to the SPB.

### ***Explanation of Provision***

This act made clarifying amendments to existing requirements for state agencies to provide certified bilingual services to non-English speaking customers that comprise 5% or more of the people served by the state agency who request information or services. This act clarifies that furnishing of information or rendering of services includes, but is not limited to, providing public safety protection or prevention, administering state benefits, implementing public information programs, managing public resources or facilities, holding public hearings, and engaging in any other state program or activity that involves public contact.

This act defines a "qualified bilingual person, interpreter or employee" as someone who is proficient in both the English language and the non-English language to be used, and for state agency purposes, must be one of the following:

- A bilingual person or employee whom the SPB has tested and certified as proficient in the ability to understand and convey in English and in non-English language, commonly used terms and ideas, including terms and ideas regularly used in state government,
- A bilingual employee who was tested and certified by a state agency or other testing authority approved by the SPB as proficient in the ability to understand and convey in English and in non-English language, commonly used terms and ideas, including terms and ideas regularly used in state government, or
- An interpreter who has met the testing or certification standards established by the SPB for outside or contract interpreters as proficient in the ability to communicate commonly used terms and ideas between the English language and non-English language to be used and has knowledge of basic interpreter practices, including but not limited to, confidentiality, neutrality, accuracy, completeness, and transparency.

This act allows state agencies that have fewer than the equivalent of 25 full-time employees in public contact positions to be exempt from the bilingual services reporting requirement.

This act changes the due date of the bilingual survey from March 31 of every even-numbered year to October 1 of every even-numbered year beginning in 2008. Additionally, this act changes the due date for a state agency to develop and submit an implementation plan related to bilingual services from every even-numbered year to every odd-numbered year beginning in 2009.

This act requires state agencies to apply annually for exemption from the bilingual services requirements and would limit the exemption to five consecutive survey periods.

### ***Effective Date***

This act was effective on January 1, 2008, and operative as of that date.

<b><i>Bill Text Link</i></b>	<b><i>FTB Analysis Link</i></b>	<b><i>Committee/Floor Analysis</i></b>
<a href="#"><u>AB 67 Chap 10-05-07 Text</u></a>	<a href="#"><u>AB 67 Legislative Chg</u></a>	---
<a href="#"><u>AB 67 Enrolled Text</u></a>	---	---
<a href="#"><u>AB 67 Amd 6-05-07 Text</u></a>	<a href="#"><u>AB 67 Rev Amd 6-05-07</u></a> <a href="#"><u>AB 67 Amd 6-05-07</u></a>	<a href="#"><u>AB 67 Asm Concur 6-05-07</u></a> <a href="#"><u>AB 67 Sen 3d Amd 6-05-07</u></a> <a href="#"><u>AB 67 Sen Pub EEmnt &amp; Ret Amd 6-05-07</u></a>
<a href="#"><u>AB 67 Amd 4-11-07 Text</u></a>	<a href="#"><u>AB 67 Amd 4-11-07</u></a>	<a href="#"><u>AB 67 Asm App Amd 4-11-07</u></a> <a href="#"><u>AB 67 Asm Pub EEs, Ret &amp; SS Amd 4-11-07</u></a>
<a href="#"><u>AB 67 Intro 12-04-06 Text</u></a>	<a href="#"><u>AB 67 Intro 12-04-06</u></a>	---

## **Recordation of Digital Instruments/County Recorder (Stats. 2007, ch. 277)<sup>19</sup>**

### ***Existing State Law***

Under existing law, when a person fails to pay any liability for taxes at the time the debt becomes due and payable, the unpaid amount becomes a perfected and enforceable state tax lien. A state tax lien attaches to all property and rights to property, including all after-acquired property, belonging to the person, and located in California. Under the concept of “first in time, first in right,” when liens compete for an interest in the same parcel of real property, the lien recorded first in time takes priority over later recorded liens.

The Uniform Federal Lien Registration Act within the Civil Code establishes procedures for the filing of federal tax liens in county recorder offices located in California. Current state law authorizes the transmission, filing, recording, and indexing of notices of state tax liens recorded by electronic or magnetic means using computerized data processing, telecommunications, or other similar information technologies.

FTB is authorized to submit digitized electronic records to a county recorder’s office for filing a Notice of State Tax Lien, Extension of State Tax Lien, or Release of State Tax Lien. Digitized electronic records are defined as a scanned image of an original paper document. Digital electronic records are defined as a record containing information that is created, generated, sent, communicated, received, or stored by electronic means, but not created in original paper form.

A county recorder is authorized to establish an electronic recording delivery system at each county recorder's office for the electronic recording of documents by private entities. Current state law requires the Attorney General's office to oversee and establish regulations to ensure sufficient security exists to prevent fraudulent filing of documents through the electronic process.

### ***Reasons for Change***

According to the author’s staff, the purpose of this act is to affirm the continued use by public agencies of digitized documents.

### ***Explanation of Provision***

This act authorizes the recorder of any county to accept for recording, in lieu of paper, digitized images or digital images or both of a recordable instrument, paper, or notice under the following conditions:

- The image conforms to all other applicable statutes that prescribe the criteria for recordability, and
- The requester and addressee for delivery of the recorded images are the same and can be readily identified as a local or state government entity or an agency, branch, or instrumentality of the federal government.

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<sup>19</sup> AB 1020 (Runner) — Assembly passed bill on May 17, 2007, with a 73 Aye/0 Noe vote. Senate passed bill with amendments on September 4, 2007 with a 39 Aye, 0 Noe vote, and Assembly concurred on September 5, 2007 with a 78 Aye/0 Noe vote. Enrolled September 17, 2007, and Governor signed and bill chaptered on October 5, 2007.

**Effective Date**

This act became effective on January 1, 2008, and operative as of that date.

<b><i>Bill Text Link</i></b>	<b><i>FTB Analysis Link</i></b>	<b><i>Committee/Floor Analysis</i></b>
<a href="#">AB 1020 Chap 10-05-07 Text</a>	<a href="#">AB 1020 Legislative Chg</a>	---
<a href="#">AB 1020 Enrolled Text</a>	---	---
<a href="#">AB 1020 Amd 7-17-07 Text</a>	<a href="#">AB 1020 Amd 7-17-07</a>	<a href="#">AB 1020 Asm Concur 7-17-07</a> <a href="#">AB 1020 Sen 3d Amd 7-17-07</a>
<a href="#">AB 1020 Intro 2-22-07 Text</a>	<a href="#">AB 1020 Intro 2-22-07</a>	<a href="#">AB 1020 SRT Intro 2-22-07</a> <a href="#">AB 1020 Sen Loc Govt Intro 2-22-07</a> <a href="#">AB 1020 Asm App Intro 2-22-07</a> <a href="#">AB 1020 Asm Loc Govt Intro 2-22-07</a> <a href="#">AB 1020 ART Intro 2-22-07</a>

**FTB Postmark Notices of Proposed Deficiency Assessment Mailed to Taxpayers  
on or After January 1, 2008  
(Stats. 2007, ch. 281)<sup>20</sup>**

***Program Background***

The Franchise Tax Board (FTB) utilizes metered mail machines to affix postage on the majority of the mail sent from the department, including notices of proposed assessment (NPAs) and final deficiency notices. The postage affixed by the metered mail machine includes the date stamp. In some instances, a postage stamp may be used, but these notices are sent first class mail in a manner specified by the United States Postal Service (USPS). Generally, the postmark date is the same date shown on the notice. In an instance where there are different dates on the postmark and the notice, the department uses the actual postmark date to determine the date by which the taxpayer must take certain actions.

***Existing Federal and State Law***

Under federal law, the USPS requires that all senders of first class mail affix sufficient postage on each envelope submitted for mailing at a rate determined by the USPS. For senders that utilize metered mail machines, the USPS has established criteria for use of the machine that includes postmarks containing the date of mailing and the proper amount of postage. Generally, mail postmarked with a given date by a metered mail machine must be mailed on that date.

FTB examines selected returns to determine the correct amount of tax. If FTB determines that the amount of tax reported on the return of a taxpayer is less than the tax determined after examination, FTB is required to mail an NPA to the taxpayer. A taxpayer may file a protest of the NPA within 60 days after the NPA was mailed. The NPA is required to identify the last day the taxpayer may file a written protest, although failure to include this date does not invalidate a notice. Unless a protest is filed, the NPA becomes final upon expiration of the 60-day period. Once the NPA is final, FTB is required to send the taxpayer a notice and demand for payment of the assessment. The assessment is due and payable at the expiration of 15 days from the date on the notice and demand.

***Reasons for Change***

According to the author's staff, the purpose of this act is to ensure that a taxpayer does not experience any delays in receiving an NPA that carries consequences if the taxpayer does not take action within a prescribed time.

***Explanation of Provision***

This act requires that NPAs and final deficiency notices mailed by FTB be postmarked for all notices issued on or after January 1, 2008. This act defines "postmark" as a postal marking made on a letter, package, or postcard indicating the date the item is delivered to the USPS.

***Effective Date***

This act became effective on January 1, 2008, and specifically operative for all NPAs and final deficiency notices mailed on or after that date.

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<sup>20</sup> AB 1360 (Anderson) – Assembly passed bill on May 24, 2007, with a 76 Aye/0 Noe vote. Senate passed bill on August 30, 2007 with a 39 Aye, 0 Noe vote. Enrolled September 6, 2007, and Governor signed and bill chaptered on October 5, 2007.

<b><i>Bill Text Link</i></b>	<b><i>FTB Analysis Link</i></b>	<b><i>Committee/Floor Analysis</i></b>
<a href="#"><u>AB 1360 Chap 10-05-07 Text</u></a>	<a href="#"><u>AB 1360 Legislative Chg</u></a>	---
<a href="#"><u>AB 1360 Enrolled Text</u></a>	---	---
<a href="#"><u>AB 1360 Amd 5-21-07 Text</u></a>	<a href="#"><u>AB 1360 Amd 5-21-07</u></a>	<a href="#"><u>AB 1360 Sen 3d 5-21-07</u></a> <a href="#"><u>AB 1360 SRT 5-21-07</u></a>
<a href="#"><u>AB 1360 Amd 4-30-07 Text</u></a>	<a href="#"><u>AB 1360 Amd 4-30-07</u></a>	<a href="#"><u>AB 1360 Asm App 4-30-07</u></a>
<a href="#"><u>AB 1360 Amd 3-29-07 Text</u></a>	<a href="#"><u>AB 1360 Amd 3-29-07</u></a>	<a href="#"><u>AB 1360 ART 3-29-07</u></a>
<a href="#"><u>AB 1360 Intro 2-23-07 Text</u></a>	<a href="#"><u>AB 1360 Intro 2-23-07</u></a>	---

## **Water's Edge Audits (Stats. 2007, ch. 306)<sup>21</sup>**

### ***Existing Federal and State Law***

Under Internal Revenue Code (IRC) section 482, the Internal Revenue Service (IRS) is authorized to allocate income and deductions among two or more entities owned or controlled by the same interests in order to prevent tax evasion or to reflect the true taxable income of any of those entities. This authority assures that taxpayers report and pay the correct amount of tax by preventing improper shifting of income and deductions among related taxpayers.

Under advance pricing agreements (APAs) entered into with the IRS, taxpayers prospectively determine and apply transfer-pricing methodologies to international transactions by related foreign or domestic taxpayers. APAs memorialize the agreement between the taxpayer and IRS of the transfer pricing methods that should be applied before the tax return is filed. Negotiating an APA prior to tax return filing provides certainty and eliminates the need for intrusive and resource intensive transfer pricing audits.

IRC section 482 requires that all transactions between related entities be transacted at arm's-length. "Arm's-length" refers to the uncontrolled price that would be used in the open marketplace had the entities been unrelated. The analysis needed for a transfer pricing examination, more specifically, the process of determining an "arm's-length" price, is extremely time consuming, necessitating not only significant audit hours, but also the skills of economists and industry experts.

California law allows corporations engaged in a unitary business to elect to determine their business income on a "water's-edge" basis. In general, the water's-edge method excludes the income and apportionment factors of foreign corporations from the calculation of business income. The effect of a water's-edge election is that some foreign unitary affiliates are no longer part of the combined reporting group, thus raising the same transfer pricing audit issues that arise under federal law.

Revenue and Taxation Code (RTC) section 25114 requires FTB to examine water's-edge returns for potential noncompliance. If potential noncompliance is found, current law requires FTB to conduct a detailed examination of the issue, regardless of the net revenue benefit to the state, unless the IRS is addressing the issue. These examination requirements have been in place since the water's-edge statutes<sup>22</sup> were originally enacted in 1986.

A significant issue for water's-edge taxpayers is the assignment of income among related taxpayers within and without the water's-edge group; thus, when the water's-edge statutes were enacted, language was included that requires FTB to examine the annual filings for taxpayers making the water's-edge election. FTB evaluates each water's-edge case that it audits for potential noncompliance with this issue—known as transfer pricing—and generally follows the results of federal examinations of this issue.

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<sup>21</sup> SB 788 (Cogdill) - Senate passed bill on May 14, 2007, with a 39 Aye/0 Noe vote. Assembly passed bill with amendments on August 27, 2007 with a 76 Aye, 0 Noe vote, and Senate concurred on August 30, 2007 with a 39 Aye/0 Noe vote. Enrolled September 4, 2007, and Governor signed and bill chaptered on October 5, 2007.

<sup>22</sup> RTC sections 25110 - 25115 were added by SB 85 (Stats. 1986, ch. 660), applicable to taxable years beginning on or after January 1, 1988. The language of section 25114 was originally part of section 25110. SB 85 (Stats. 1988, ch. 989) amended this language out of section 25110 and into section 25114, replacing the original language of section 25114. SB 1229 (Stats. 1999, ch. 987) subsequently amended section 25114.

### **Reasons for Change**

The purpose of this FTB-sponsored act is to allow for more efficient tax administration for both the taxpayers and the department.

### **Explanation of Provision**

This act amends RTC section 25114(a), relating to the examination of water's-edge taxpayers, to eliminate the requirement for FTB to conduct a detailed examination—primarily of transfer pricing issues—when an initial examination reveals potential noncompliance, regardless of the potential net revenue benefit to the state. As a result, FTB could apply discretion for deciding when to conduct detailed examinations of water's-edge taxpayers for noncompliance issues, including transfer pricing, based on an analysis of all factors, including the relative levels of noncompliance and materiality.

### **Effective Date**

This act became effective on January 1, 2008, and specifically applies to examinations commenced on or after that date.

<b><i>Bill Text Link</i></b>	<b><i>FTB Analysis Link</i></b>	<b><i>Committee/Floor Analysis</i></b>
<a href="#">SB 788 Chap 10-05-07 Text</a>	<a href="#">SB 788 Legislative Chg</a>	---
<a href="#">SB 788 Enrolled 9-04-07 Text</a>	---	---
<a href="#">SB 788 Amd 7-09-07 Text</a>	<a href="#">SB 788 Amd 7-09-07</a>	<a href="#">SB 788 Sen Rules Amd 7-09-07</a> <a href="#">SB 788 Sen UnFB Amd 7-09-07</a> <a href="#">SB 788 Asm App Amd 7-09-07</a>
<a href="#">SB 788 Intro 2-23-07 Text</a>	<a href="#">SB 788 Intro 2-23-07</a>	<a href="#">SB 788 ART Intro 2-23-07</a> <a href="#">SB 788 ART Intro 2-23-07</a> <a href="#">SB 788 ART Intro 2-23-07</a> <a href="#">SB 788 Sen 3d Intro 2-23-07</a> <a href="#">SB 788 SRT Intro 2-23-07</a>

## **Confidentiality of Settlement Negotiations** **(Stats. 2007, ch. 309)<sup>23</sup>**

### ***Program Background***

Legislation was adopted in 1992 specifically authorizing the Franchise Tax Board (FTB) to settle administrative civil tax matters in dispute. The program is voluntary. Successful settlement negotiations eliminate the hazards and risks of further litigation, which is a benefit to both the taxpayer and the state. The settlement program has collected in excess of \$8.69 billion dollars since its inception. To ensure the continued success of the program, it is necessary to follow the longstanding public policy in California favoring laws excluding any aspect of settlement negotiations as evidence in subsequent adjudicative proceedings.

### ***Existing Federal and State Law***

Under Rule 408 of the federal Rules of Evidence, an offer of compromise or an attempt to compromise a disputed claim is not admissible to prove liability for or invalidity of the claim or its amount. In addition, federal law prohibits a party in an alternative dispute resolution proceeding from disclosing any dispute resolution communication (5 USC § 574).

Under California Evidence Code section 1152, settlement offers and offers of compromise made by a party in a civil lawsuit are inadmissible in court proceedings to prove such party's liability for loss or damage. Similarly, under Government Code section 11415.60, settlements, settlement offers, and statements made in settlement negotiations between an "agency" and a party are inadmissible in any adjudicative proceeding or civil action to prove liability, except to the extent provided in Evidence Code section 1152. However, appeals heard by the State Board of Equalization are exempt from these provisions of the Administrative Procedure Act.

### ***Reasons for Change***

The purpose of this FTB-sponsored act is to eliminate the concern that statements made during settlement negotiations by either taxpayers or FTB staff may be used by one party against the other in subsequent administrative proceedings, which would make the settlement process less effective.

### ***Explanation of Provision***

This FTB-sponsored act added a specific provision to the RTC prohibiting the admissibility of either any settlement offers or any statements or conduct made in pursuit of settlement as evidence in any subsequent adjudicative proceeding.

### ***Effective Date***

This act became effective January 1, 2008, and by its terms is operative with respect to all settlement negotiations entered into on or after the date of enactment (October 5, 2007), without regard to taxable year.

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<sup>23</sup> SB 1043 (Senate Revenue and Taxation Committee) Senate passed bill on May 14, 2007, with a 39 Aye/0 Noe vote. Assembly passed bill with amendments on August 28, 2007 with a 76 Aye, 0 Noe vote, and Senate concurred on August 30, 2007 with a 39 Aye/0 Noe vote. Enrolled September 4, 2007, and Governor signed and bill chaptered on October 5, 2007.

<b><i>Bill Text Link</i></b>	<b><i>FTB Analysis Link</i></b>	<b><i>Committee/Floor Analysis</i></b>
<a href="#"><u>SB 1043 Chap 10-05-07 Text</u></a>	<a href="#"><u>SB 1043 Legislative Chg</u></a>	---
<a href="#"><u>SB 1043 Enrolled 9-04-07 Text</u></a>	---	---
<a href="#"><u>SB 1043 Amd 6-14-07 Text</u></a>	<a href="#"><u>SB 1043 Amd 6-14-07</u></a>	<a href="#"><u>SB 1043 Sen UnFB Amd 6-14-07</u></a> <a href="#"><u>SB 1043 Sen 3d Amd 6-14-07</u></a> <a href="#"><u>SB 1043 Asm App Amd 6-14-07</u></a> <a href="#"><u>SB 1043 ART Amd 6-14-07</u></a>
<a href="#"><u>SB 1043 Intro 3-14-07 Text</u></a>	<a href="#"><u>SB 1043 Intro 3-14-07</u></a>	<a href="#"><u>SB 1043 Sen 3d Intro 3-14-07</u></a> <a href="#"><u>SB 1043 SRT Intro 3-14-07</u></a>

**Use of Last Known Address for Mailing Notices/Reporting Third Party Checking  
Businesses/Definition of Check Cashier/Change Due Date of Taxpayers' Bill of  
Rights Annual Report to Legislature  
(Stats. 2007, Ch. 341)<sup>24</sup>**

**CHECK CASHER REPORTING REQUIREMENTS NOT APPLICABLE TO INCIDENTAL  
CASHERS**

***Existing Federal and State Law***

Federal law requires financial institutions to report each deposit, withdrawal, exchange of currency, or other payment or transfer that involves a transaction in currency of \$10,000 or more. Financial institutions are also required to file a suspicious activity report if the institution detects or suspects certain activities conducted through the institution involve money laundering, criminal violations, or illegal activities.

Current state law requires any check casher engaged in the business of cashing checks to report specific transactions to the Franchise Tax Board (FTB) in an annual information return. Transactions that are reportable would include one or more transactions for the same person that total more than \$10,000 in a given year. Failure to file the required return could result in fines or imprisonment or both.

***Explanation of Provision***

This act excludes from reportable transactions made by check cashers government, payroll, and one-party checks, as defined.

The act defines the following terms:

- "Government checks" are checks issued by a federal, state, or local government entity.
- "Payroll checks" are checks subject to withholding under the Unemployment Insurance Code and subject to certain fee restrictions under the Civil Code.
- "One-party" checks are checks drawn on the maker's account and presented by the maker.

***Reasons for Change***

According to the Assembly Revenue and Taxation Committee staff, the purpose of this act is to reduce the burden of reporting for check cashers by removing duplicative reporting requirements related to government, payroll, and one-party checks.

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<sup>24</sup> AB 1747 (Assembly Revenue and Taxation Committee) - Assembly passed bill on May 17, 2007, with a 73 Aye/0 Noe vote. Senate passed bill with amendments on August 30, 2007 with a 35 Aye, 0 Noe vote, and Assembly concurred on September 4, 2007 with a 75 Aye/0 Noe vote. Enrolled September 17, 2007, and Governor signed and bill chaptered on October 8, 2007.

### ***Effective Date***

This act became effective January 1, 2008, and is operative for information returns due on or after that date.

## **USE OF LAST KNOWN ADDRESS**

### ***Background***

FTB has generally followed federal law and procedures relating to “last known address” for mailing notices to taxpayers. The department mails notices to the taxpayer’s last known address as shown on the taxpayer’s last filed return, unless the taxpayer provides clear and concise notice of a different address.

Department policy requires staff to exercise reasonable diligence to ascertain and utilize the current address when mailing correspondence and notices to taxpayers. Department policy is similar to the federal regulation requiring use of information from the United States Postal Service’s (USPS) National Change of Address (NCOA) database to update a taxpayer’s address for sending notices to taxpayers.

In addition, the department may receive taxpayer address information from other sources, such as the Employment Development Department, 1099 Information Returns, and interest income statements from financial institutions. If FTB determines that an address provided by such a third party source is the current address over the address in departmental records, the new address will be used. In accordance with this policy, the department’s Integrated Non Compliance system uses the address with the most recent date to send a notice to a taxpayer.

State Board of Equalization decisions on administrative taxpayer appeals from FTB action have generally interpreted the term “last known address” to be the same as the federal “last known address” definition when determining the legal sufficiency of FTB notices.

### ***Existing Federal and State Law***

The fourteenth amendment of the United States Constitution guarantees to individuals specific rights, including the right to due process of law before property can be taken from the individual by the government. The essential elements of due process include reasonable notice.

Under existing federal law, the due process element of reasonable notice is met when the IRS mails a required notice to the taxpayer at the taxpayer’s last known address. Federal regulations require that unless the IRS has been given clear and concise notice of a different address, the address that appears on the taxpayer’s most recently filed federal tax return is the taxpayer’s last known address. The regulation also provides that under certain conditions, updated address information received from the USPS NCOA database will be considered the taxpayer’s last known address, unless the IRS is given clear and concise notification of a different address.

The purpose of the “last known address” rule is to place the responsibility on the taxpayer to notify the taxing agency of any change of address. This rule absolves the taxing agency in instances where the taxing agency does not have the taxpayer’s correct address because of the failure of the taxpayer to notify the agency of a change. The rationale for this rule is that with the transient nature of many taxpayers, the taxing agency does not have sufficient resources to track the movements of several hundred thousand taxpayers each year. When the tax agency

has reason to believe that the address previously provided by the taxpayer is no longer correct, the agency does have a duty to exercise reasonable diligence to ascertain the correct address.

Existing state tax law does not define "last known address," nor does state tax law specify the address to which required notices must be sent to satisfy the reasonable notice element of due process.

### ***Reasons for Change***

The purpose of this act is to create a statutory standard for mailing notices to taxpayers by substantially conforming to federal law.

### ***Explanation of Provision***

This act provides that any notice mailed to a taxpayer is sufficient if it is mailed to the taxpayer's last known address. "Last known address" is defined as the address that appears on the taxpayer's last return filed with FTB, unless the taxpayer has provided FTB clear and concise written or electronic notification of a different address or FTB has an address it has reason to believe is the most current address for the taxpayer.

This act eliminates any uncertainty surrounding the proper address to be used in mailing notices to taxpayers. This act brings California law into conformity with federal law regarding the use and definition of last known address. Substantially conforming to the federal statute provides the benefit of an already established body of case law and provides taxpayers with consistent procedures when dealing with both federal and California income tax agencies.

### ***Effective Date***

This act became effective January 1, 2008, and would be operative for notices issued on and after that date.

## **TAXPAYERS' BILL OF RIGHTS REPORT -- CHANGE DATE DUE TO LEGISLATURE**

### ***Background***

The following were the 2000 to 2006 legislative calendars commencing with the end of the session:

- 2000 - Session ended August 31, last day for Governor to act September 30
- 2001 - Session ended September 14, last day for Governor to act October 14
- 2002 - Session ended August 31, last day for Governor to act September 30
- 2003 - Session ended September 12, last day for Governor to act October 12
- 2004 - Session ended August 31, last day for Governor to act September 30
- 2005 - Session ended September 9, last day for Governor to act October 9
- 2006 - Session ended August 31, last day for Governor to act September 30
- 2007 - Session ended September 14, last day for Governor to act October 14.

### ***Existing State Law***

FTB is required to provide an annual Taxpayers' Bill of Rights Report (TBORR) to the Legislature no later than October 1<sup>st</sup> of each year. The report is required to include information on proposals needing legislative changes resulting from the annual TBOR hearing, as well as other changes in statute or regulations.

The Legislature maintains a legislative calendar governing the introduction and processing of legislative measures during each two-year regular session. The first year of the two-year session allows the Legislature until the second week of September to pass bills, and the second year of the two-year session allows the Legislature until August 31<sup>st</sup> to pass bills. The Governor has 30 days from either of those dates to sign or veto bills passed by the Legislature.

***Explanation of Provision***

This provision would change the due date of the annual TBORR to the Legislature from October 1<sup>st</sup> of each year to December 1<sup>st</sup> of each year. The department needs until December 1<sup>st</sup> to provide a complete and accurate report because the report is currently due before or at the time the Governor has to sign legislation.

***Reasons for Change***

The purpose of this act is to provide FTB with sufficient time to prepare a complete and accurate report. The existing statutory due date of October 1<sup>st</sup> for the annual TBORR provides insufficient time for FTB staff to prepare the report because the statutory due date is either too close or overlaps the period for the Governor to act on legislation.

***Effective Date***

This act became effective January 1, 2008, and is operative for reports issued on and after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">AB 1747 Chap 10-08-07 Text</a>	<a href="#">AB 1747 Legislative Chg</a>	---
<a href="#">AB 1747 Enrolled 9-10-07 Text</a>	---	---
<a href="#">AB 1747 Amd 7-18-07 Text</a>	<a href="#">AB 1747 Rev Amd 7-18-07</a> <a href="#">AB 1747 Amd 7-18-07</a>	<a href="#">AB 1747 Asm Concur Amd 7-18-07</a> <a href="#">AB 1747 Sen 3d Amd 7-18-07</a>
<a href="#">AB 1747 Amd 7-02-07 Text</a>	<a href="#">AB 1747 Amd 7-02-07</a>	<a href="#">AB 1747 Sen Jud Amd 7-02-07</a> <a href="#">AB 1747 SRT Amd 7-02-07</a>
<a href="#">AB 1747 Amd 4-25-07 Text</a>	<a href="#">AB 1747 Amd 4-25-07</a>	<a href="#">AB 1747 Asm App Amd 4-25-07</a>
<a href="#">AB 1747 Intro 3-22-07 Text</a>	<a href="#">AB 1747 Intro 3-22-07</a>	<a href="#">AB 1747 ART Intro 3-22-07</a>

## **Innocent Spouse/No Credit or Refund Shall be Allowed if Election for Relief of Liability** (Stats. 2007, ch. 342)<sup>25</sup>

### **Existing Federal and State Law**

Under federal and state income tax law, spouses who file a joint tax return are individually responsible for the accuracy of the return and for the full tax liability for that tax year. These obligations apply regardless of which spouse earns the income. The concept of obligating each spouse individually for all of the tax liability is called joint and several liability. However, joint and several liability can result in inequitable consequences to one spouse in certain circumstances. Consequently, both the federal government and California enacted “innocent spouse” legislation, which may allow a spouse to be relieved of some or all of the responsibility for a joint tax debt.

The Internal Revenue Restructuring and Reform Act of 1998 (RRA 98) revised the circumstances under which relief is allowed for joint and several liabilities (JSL). RRA 98 allowed an innocent spouse to qualify for relief under one of the following provisions:

- *Understatement/Apportionment* - This provision applies where a joint return has been filed and there is an understatement of tax on the return attributable to an erroneous item. To qualify for relief, the requesting taxpayer must show that the understatement was attributable to the non-requesting spouse, and that at the time the return was signed, he or she did not know and had no reason to know of the understatement of tax. The understatement/apportionment provision is also known as “complete/partial relief.”
- *Separate liability election* - A requesting spouse may elect to be taxed as though he or she filed a married filing separate tax return. An individual is eligible to make this election only if, at the time the election is filed, he or she is no longer married to, or is legally separated from, the spouse with whom the joint return was filed, or has lived apart from the spouse for 12 months prior to requesting relief. At the time the joint return was signed, the requesting spouse must have lacked actual knowledge of the item resulting in the tax deficiency. The separate liability election provision is also known as “separate allocation relief.”
- *Equitable relief* - Relief is available under this provision if the Internal Revenue Service (IRS) determines from a review of all the facts and circumstances that the requesting taxpayer would not qualify for relief under either *understatement/apportionment* or *separate liability election* above, and it would not be equitable to hold the requesting spouse liable for any unpaid tax or any deficiency.

Former federal law generally allowed refunds under the understatement/apportionment subsection for “complete/partial relief,” and under the separate liability election subsection for “separate allocation relief.” In 2000, Congress amended the law to provide, among other things, that refunds for taxes paid under the understatement/apportionment subsection are limited by the claim for refund statute of limitations (3 years from the time the return is filed or 2 years from the time the tax is paid) and that no refunds for taxes paid are allowed under the separate liability election section.

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<sup>25</sup> AB 1748 (Assembly Revenue and Taxation Committee) - Assembly passed bill on May 17, 2007, with a 73 Aye/0 Noe vote. Senate passed bill with amendments on August 30, 2007 with a 39 Aye, 0 Noe vote, and Assembly concurred on September 4, 2007 with a 76 Aye/0 Noe vote. Enrolled September 11, 2007, and Governor signed and bill chaptered on October 8, 2007.

If under all the facts and circumstances it is inequitable to hold a spouse liable for any portion of any unpaid tax or deficiency, IRS may relieve that spouse of liability for that unpaid tax or deficiency and in limited cases may issue a refund. According to the Frequently Asked Questions on the IRS website, the IRS would allow refunds under equitable relief in the following circumstances:

- *Understatements* – Refunds are allowed for installment agreement payments made after the request for relief is filed.
- *Underpayments* – Refunds are allowed for payments made after July 22, 1998 (the effective date of RRA 98), unless the payments were made jointly with the non-requesting spouse, payments were made with the tax return, or payments were made by the non-requesting spouse.

In each case, the requesting spouse must establish that he or she provided the funds used to make the payment for which he or she seeks a refund. In both circumstances, the federal statute of limitations for claiming a refund applies.

In 1999, California conformed to portions of the RRA 98 by enacting the Taxpayers' Bill of Rights Act of 1999 (TPBOR 99), which revised and expanded innocent spouse relief at the state level. California, however, has not conformed to the subsequent 2000 federal changes to limit refunds under the complete/partial relief election to those claims filed within the statute of limitations or to prohibit refunds under the separate allocation relief election.

Under existing state innocent spouse law, there is no statute of limitations provision for making a claim for refund under the innocent spouse provision of complete/partial relief. California law also has no statute of limitations for a separate allocation relief election.

In addition, existing state law provides two avenues for relief not available under federal law:

- A taxpayer may seek a divorce court order relieving the taxpayer of JSL for income tax reported on a joint return or additional tax resulting from an audit. The order cannot relieve tax on any income that was earned by or derived from assets under the exclusive control and management of the taxpayer seeking relief.
- A taxpayer may seek relief from FTB on any unpaid self-assessed tax liability on a joint return, including penalties and interest. The tax liability must not be attributable to income that was under the exclusive control and management of the requesting taxpayer.

State law requires the taxpayer to demonstrate that he or she neither knew, nor had reason to know, of the nonpayment of tax at the time the return was filed.

### ***Reasons for Change***

According to the author's office, the purpose of this act is to conform California law to federal law to eliminate differences in the application of the innocent spouse relief provisions for certain taxpayers.

### ***Explanation of Provision***

This act amends existing law to more closely conform to federal law by applying the general statute of limitations for claims for refund based on complete/partial relief and by disallowing any

claims for refund based on separate allocation relief. Thus, claims for relief made after the statute of limitations would be disallowed for claims for refunds based on complete/partial relief.

This act also provides FTB the authority to issue guidelines and rules comparable to the IRS rules, but without the necessity of going through the formal rulemaking process under the Administrative Procedures Act.

***Effective Date***

This bill became effective January 1, 2008, and applies to requests for relief filed on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">AB 1748 Chap 10-08-07 Text</a>	<a href="#">AB 1748 Legislative Chg</a>	---
<a href="#">AB 1748 Enrolled 9-07-07 Text</a>	---	---
<a href="#">AB 1748 Amd 8-21-07 Text</a>	<a href="#">AB 1748 Amd 8-21-07</a>	<a href="#">AB 1748 Asm Concur 8-21-07</a> <a href="#">AB 1748 Sen 3d Amd 8-21-07</a> <a href="#">AB 1748 Sen 3d Amd 8-21-07</a> <a href="#">AB 1748 Sen 3d Amd 8-21-07</a>
<a href="#">AB 1748 Amd 7-05-07 Text</a>	<a href="#">AB 1748 Amd 7-05-07</a>	<a href="#">AB 1748 SRT Amd 7-05-07</a>
<a href="#">AB 1748 Amd 5-01-07 Text</a>	<a href="#">AB 1748 Amd 5-01-07</a>	<a href="#">AB 1748 Asm App Amd 5-01-07</a>
<a href="#">AB 1748 Amd 4-25-07 Text</a>	---	---
<a href="#">AB 1748 Intro 3-22-07 Text</a>	---	<a href="#">AB 1748 ART 3-22-07</a>

## **Limited Liability Company (LLC) Fee/Remedy for Final Court Decisions** **(Stats. 2007, ch. 381)<sup>26 27</sup>**

### ***Program Background***

In *Northwest Energetic Services, LLC v. FTB*, Case No. CGC-05-437721<sup>28</sup>, the San Francisco Superior Court held in its Statement of Decision that the limited liability company (LLC) fee could not be applied constitutionally to the Plaintiff because the LLC fee is an unapportioned tax and thus violates the Commerce Clause of the United States Constitution and the Due Process Clauses of the California and United States Constitutions. The Plaintiff is an LLC that registered with the California Secretary of State, and its income was derived solely from sources outside of California. FTB has appealed this decision in the California Court of Appeal.

In *Ventas Finance I, LLC v. FTB*, Case No. CGC-05-440001<sup>29</sup>, the San Francisco Superior Court held in its Statement of Decision that the LLC fee imposed on the Plaintiff is an unapportioned tax that violates the Commerce Clause of the United States Constitution and the Due Process Clauses of the California and United States Constitutions. The Court also held that the statutory language of RTC section 17942 could not be judicially reformed. The Plaintiff is an LLC that registered with the California Secretary of State, and its income was derived from sources within and outside California. FTB has appealed this decision in the California Court of Appeal. The department will continue to enforce current law unless a final appellate decision is rendered to the contrary.

*Bakersfield Mall, LLC v. FTB*, Case No. 462728, is currently before the San Francisco Superior Court. The Plaintiff is an LLC that registered with the California Secretary of State and alleges its income was derived solely within California. The Plaintiff claims that the LLC fee is an unapportioned tax that violates the Commerce Clause of the United States Constitution and the Due Process Clauses and the Equal Protection Clauses of the California and United States Constitutions.

This act prospectively resolves the constitutional issue discussed in the pending litigation for taxable years beginning on or after January 1, 2007.

### ***Existing Federal and State Law***

Federal law lacks provisions that require any LLC to pay an annual tax or fee.

Under existing state law, an LLC not classified as a corporation must pay the \$800 annual LLC tax and the annual LLC fee if it is organized, doing business, or registered in California. The annual LLC fee is based on the LLC's total income from all sources reportable to the state. Total income is defined as gross income from whatever source derived<sup>30</sup> plus the cost of goods sold that are paid or incurred in connection with a trade or business. Existing law lacks a definition

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<sup>26</sup> AB 198 (Assembly Committee on Budget) - Assembly passed bill on May 3, 2007, with a 44 Aye/1 Noe vote. Senate passed bill with amendments on September 11, 2007 with a 23 Aye, 15 Noe vote, and Assembly concurred on September 12, 2007 with a 46 Aye/30 Noe vote. Enrolled September 21, 2007, and Governor signed and bill chaptered on October 10, 2007.

<sup>27</sup> AB 1546 (Calderon) failed passage from Senate Revenue and Taxation Committee. AB 198 is different from AB 1546 by limiting the section of the bill that codifies a recent court decision to apply only to cases pending under the LLC law (Section 17942 of the Revenue and Taxation Code). The remedy, for these LLC cases only, is limited to the amount needed to return the discriminatory or unfairly apportioned tax that is not otherwise relieved under law.

<sup>28</sup> <http://www.ftb.ca.gov/professionals/taxnews/article/llcfee.shtml>  
[www.courtinfo.ca.gov/opinions/archive/A114805.DOC](http://www.courtinfo.ca.gov/opinions/archive/A114805.DOC)

<sup>29</sup> [www.courtinfo.ca.gov/opinions/documents/A116277.DOC](http://www.courtinfo.ca.gov/opinions/documents/A116277.DOC)

<sup>30</sup> RTC Section 24271 and IRC Section 61.

for “from all sources reportable to the state”; however, the department has interpreted this term to mean worldwide total income without apportionment. Total income excludes the flow-through of total income from one LLC to another LLC if that income has already been used to determine the annual LLC fee of an LLC. The following chart is used to determine the amount of the fee:

[---If Total Income From All Sources Reportable To This State Is---]		
Equal To Or Over (\$)	But Not Over (\$)	LLC Fee (\$)
250,000	499,999	900
500,000	999,999	2,500
1,000,000	4,999,999	6,000
5,000,000	And over	11,790

California has adopted the Uniform Division of Income for Tax Purposes Act (UDITPA), with certain modifications, to determine how much of a taxpayer’s net income, which is earned from activities both inside and outside of California, is attributable to California and subject to California franchise or income tax. An apportionment formula is used to determine the amount of “business”<sup>31</sup> income attributable to California. The apportionment formula consists of property, payroll, and sales factors.

The sales factor is determined by dividing total sales in California by total sales worldwide during the taxable year.

The following is a list of the general rules utilized to determine California sales for the sales factor calculation:

- Sales of tangible personal property are assigned to California if the product is delivered or shipped to a purchaser in this state, and the taxpayer (seller) is taxable in this state.
- Sales of tangible personal property are assigned to California if the product is delivered or shipped to a purchaser out of state, and the taxpayer (seller) is not taxable in the state of destination.
- Sales of tangible personal property to the U.S. Government are assigned to California if the goods were shipped from California.
- Sales from the performance of personal services are assigned to California if the services were performed in California. If personal services were performed in more than one state, then the receipts from the services would be assigned to California based on the ratio of time spent performing such services in the state to total time spent in performing such services everywhere.
- Sales from intangibles and all other services are assigned to California if the income producing activity that gave rise to the receipts is performed wholly within California. If the income producing activity is performed within and outside the state, then the sales from intangibles and all other services are assigned to California if the greater cost of performance of the income producing activity is performed in this state.

<sup>31</sup> RTC section 25120(a) defines business income as income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations.

- Sales from the sale, rental, lease, or licensing of real property and the receipts derived from the rental, lease, or licensing of tangible personal property are assigned to California if the property is located in California.

Additional rules for assigning sales to California for sales factor purposes include special rules established in regulations issued under RTC section 25137<sup>32</sup> for cases where the general rules for assigning sales to California would unfairly represent the taxpayer's business activities within the state.

### ***Reasons for Change***

This act removes any uncertainty surrounding undefined terms used in the statute and to make a fair and equitable application of the fee to all LLCs doing business within and outside of the state.

### ***Explanation of Provision***

This act amends existing law to do the following:

- Determine an LLC's fee based on the LLC's total income from all sources derived from or attributable to the state. The level of activity would be determined by applying current law's franchise/income tax sales factor rules to the total income of the LLC (as defined in the bill) in order to calculate the amount of total income from all sources derived from or attributable to the state, but excluding rules that disregard or 'throw out' certain sales.
- Provide that any taxpayers that file claims for refund asserting that the LLC fee is discriminatory or unfairly apportioned in violation of the California Constitution or the laws or Constitution of the United States would have the amount of their claim for refund recalculated in an amount necessary to remedy the discrimination or unfair apportionment required by the prior statute.
- Specify that refunds of fees payable as a result of pending litigation challenging the validity of the LLC fee would be limited to the amount of the LLC fee paid, plus any interest assessed, that exceeds the amount of LLC fee that would have been assessed if the fee had been computed using the rules added by this bill.

### ***Effective Date***

This act became effective immediately upon enactment on October 10, 2007. The new rule for determining total income derived from or attributable to California is specifically operative for taxable years beginning on or after January 1, 2007, and contains a "no inference" clause with respect to taxable years beginning before January 1, 2007. The statutory remedy would specifically apply to refund suits filed before, on, or after October 10, 2007.

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<sup>32</sup> Cal. Code of Regs., tit. 18, § 25137.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">AB 198 Chap 10-10-07 Text</a>	<a href="#">AB 198 Legislative Chg</a>	---
<a href="#">AB 198 Enrolled 9-17-07 Text</a>	---	---
<a href="#">AB 198 Amd 9-11-07 Text</a>	<a href="#">AB 198 Amd 9-11-07</a>	<a href="#">AB 198 Asm Con 9-11-07</a> <a href="#">AB 198 Sen 3d 9-11-07</a>
<a href="#">AB 198 Intro 1-25-07 Text</a>	<a href="#">AB 198 Intro 1-25-07</a>	<a href="#">AB 198 Sen 3d 1-25-07</a> <a href="#">AB 198 Sen 3d 1-25-07</a>

FOR REFERENCE ONLY, below please find information relating to AB 1546 - a 2007 session bill similar to the enacted AB 198 that did not itself get enacted.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">AB 1546 Amd 3-24-08 Text</a>	<a href="#">AB 1546 Amd 3-24-08</a>	<a href="#">AB 1546 SRT Recon 3-24-08</a> <a href="#">AB 1546 SRT 3-24-08</a> <a href="#">AB 1546 Sen Flr 3d 3-24-08</a>
<a href="#">AB 1546 Amd 9-05-07 Text</a>	<a href="#">AB 1546 Amd 9-05-07</a>	<a href="#">AB 1546 Asm Flr 9-05-07</a> <a href="#">AB 1546 Sen Flr 3d 9-05-07</a>
<a href="#">AB 1546 Amd 5-09-07 Text</a>	<a href="#">AB 1546 Amd 5-09-07</a>	<a href="#">AB 1546 Sen App 5-09-07</a> <a href="#">AB 1546 Sen App 5-09-07</a> <a href="#">AB 1546 SRT 5-09-07</a> <a href="#">AB 1546 Asm Flr 3d 5-09-07</a> <a href="#">AB 1546 Asm App 5-09-07</a> <a href="#">AB 1546 ART Vote Only 5-09-07</a> <a href="#">AB 1546 ART 5-09-07</a>
<a href="#">AB 1546 Amd 5-03-07 Text</a>	<a href="#">AB 1546 Amd 5-03-07</a>	---
<a href="#">AB 1546 Intro 2-23-07 Text</a>	<a href="#">AB 1546 Intro 2-23-07</a>	---

## **Aggravated White Collar Crime Enhancement/Fraud or Embezzlement (Stats. 2007, ch. 408)<sup>33</sup>**

### ***Program Background***

FTB refers investigation cases involving tax fraud to the local District Attorney (DA) for prosecution and assists in criminal prosecutions handled by the DAs for medical program fraud, elder abuse, grand theft, embezzlement, and other crimes. The DA often adds tax charges to such cases because evidence supporting the tax crimes is relatively straightforward to establish.

### ***Existing State Law***

California law contains a provision known as “The White-Collar Crime Enhancement” law. In addition to any other sanctions imposed upon conviction, a person who meets specified criteria could be subject to additional terms of imprisonment or fines, or both. To qualify for these enhancement provisions, the following must be in place:

- A person is convicted of two or more related felony acts in a single proceeding,
- The felony acts include elements of fraud or embezzlement,
- The felony acts involve a pattern of related felony conduct as defined, and
- The felony acts involve the taking of \$100,000 or more.

Under California tax law, any person that commits certain fraudulent acts made in connection with the filing of tax returns, or other documents required under the Personal Income Tax Law, can be guilty of a felony and upon conviction subject to a fine of not more than \$50,000 or imprisonment in state prison, or both. Any person that willfully fails to file any return or supply information with intent to evade any tax can, upon conviction, be punished by imprisonment in the county jail not to exceed one year, or in the state prison, or by a fine of not more than \$20,000, or by both the fine and imprisonment. Any person that commits certain fraudulent acts related to obtaining or negotiating a tax refund can, upon conviction, be punished by imprisonment in the county jail not to exceed one year, or in the state prison, or by a fine of not to exceed \$50,000, or both the fine and imprisonment.

### ***Reasons for Change***

A recent court ruling questioned whether a felony for failure to file a tax return met the criteria of a “taking” for purposes of the white-collar crime enhancement statutes. The act clarifies that the application of this statute to felony failure to file tax return cases is appropriate and consistent with the legislative intent of the statute.

### ***Explanation of Provision***

This act clarifies that the white-collar crime enhancement provisions apply to cases where the felony acts result in the loss by another person or entity of more than \$100,000. The act also provides that the changes in the act are intended to be declaratory of existing law.

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<sup>33</sup> AB 1199 (Richardson) - Assembly passed bill on June 4, 2007, with a 77 Aye/0 Noe vote. Senate passed bill with amendments on September 4, 2007 with a 39 Aye, 0 Noe vote, and Assembly concurred on September 7, 2007 with a 77Aye/0 Noe vote. Enrolled September 20, 2007, and Governor signed and bill chaptered on October 10, 2007.

**Effective Date**

This act became effective January 1, 2008, and operative on or after that date. The act includes provisions expressing legislative intent that the amendments are declaratory of existing law.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
<a href="#">AB 1199 Chap 10-10-07 Text</a>	<a href="#">AB 1199 Legislative Chg</a>	---
<a href="#">AB 1199 Enrolled 9-17-07 Text</a>	---	---
<a href="#">AB 1199 Amd 6-19-07 Text</a>	<a href="#">AB 1199 Amd 6-19-07</a>	<a href="#">AB 1199 Asm Concur Amd 6-19-07</a> <a href="#">AB 1199 Sen 3d Amd 6-19-07</a> <a href="#">AB 1199 Sen App Amd 6-19-07</a> <a href="#">AB 1199 Sen App Amd 6-19-07</a> <a href="#">AB 1199 Sen Pub Saf Amd 6-19-07</a>
<a href="#">AB 1199 Amd 4-12-07 Text</a>	<a href="#">AB 1199 Amd 4-12-07</a>	<a href="#">AB 1199 Asm 3d Amd 4-16-07</a> <a href="#">AB 1199 Asm App Amd 4-16-07</a> <a href="#">AB 1199 Asm Pub Saf Amd 4-16-07</a>
<a href="#">AB 1199 Amd 3-28-07 Text</a>	---	---
<a href="#">AB 1199 Intro 2-23-07 Text</a>	---	---

**Registered Domestic Partners (RDP)/Tax Treatment Same as Married Couple  
Except Where Treatment Would Result in Specified Treatment under Federal Law  
(Stats. 2007, ch. 426)<sup>34</sup>**

***Existing Federal and State Law***

Existing federal law treats registered domestic partners (RDPs) as single individuals instead of spouses who are married or members of the same family.

Existing state law requires RDPs to file a personal income tax return jointly or separately by applying the standards applicable to married couples under federal income tax law. RDPs are treated as spouses for state income tax purposes.

S Corporation

An S Corporation is a corporation that makes an election for tax purposes that enables it to enjoy the legal benefits of incorporation but be taxed similar to a pass-through entity, i.e., a partnership. A corporation may elect to be treated as an S Corporation if certain requirements are met. One of those requirements is that the S Corporation's total shareholders must be less than or equal to 100. Spouses and all members of a family are treated as one shareholder.

A corporation may qualify as an S corporation under California law only if it has a valid federal S corporation election in effect. In other words, the federal S corporation requirements must also be met for California purposes. There is no independent California election allowed that would permit a federal S corporation to elect to be taxed as a regular corporation for California purposes. Similarly, current law does not allow a corporation to be an S corporation only for California purposes.

In meeting the less than or equal to 100 shareholder S corporation requirement, RDPs will be treated as one shareholder for state purposes versus two shareholders for federal purposes. This could result in a corporation that was not eligible to be an S corporation for federal purposes to be eligible to be an S corporation for California purposes. Similar issues arise in connection with the classification of business entities based on whether the entity is owned by one person or by more than one person.

Federally Qualified Deferred Compensation Plans

Existing federal law allows an employer that participates in a federally qualified deferred compensation plan to deduct contributions paid to the qualified plan on behalf of employees, even though these contributions are not currently taxable to the employees. These provisions are also applicable for California purposes. The federal tax rules parallel provisions of the Employee Retirement Income Security Act (ERISA), which affirmatively preempts state law.

Existing federal law known as the "Defense of Marriage Act" prohibits RDPs from being treated as spouses. Consequently, RDPs are treated as single individuals for federal purposes instead of spouses that are married or members of the same family. However, RDPs are required to be treated as spouses under current state law. An administrator of a federally qualified deferred compensation plan covered by ERISA would be prevented from treating an RDP as a spouse

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<sup>34</sup> SB 105 (Migden) - Senate passed bill on May 21, 2007, with a 37 Aye/2 Noe vote. Assembly passed bill with amendments on September 6, 2007 with a 47 Aye, 31 Noe vote, and Senate concurred on September 10, 2007 with a 35 Aye/4 Noe vote. Enrolled September 14, 2007, and Governor signed and bill chaptered on October 10, 2007.

because ERISA preempts state law. The California Constitution<sup>35</sup> provides that the department has no power to refuse to enforce any California statute that is preempted by federal law unless an appellate court has made a determination that enforcement is prohibited by federal law. If California law required federally qualified plans to treat RDPs as spouses, the plan could not be qualified for federal and state purposes.

### Tax-Favored Accounts

Existing federal law has established several tax-favored special purpose accounts that include Archer Medical Savings Accounts (MSAs), Individual Retirement Accounts (IRAs), and Coverdell education savings accounts (529 accounts). These tax-favored accounts allow taxpayers to get special tax treatment for amounts accumulated to pay for particular expenses. Contributions to some accounts are deductible and tax on income earned on amounts in these accounts may be deferred or avoided. In some cases, eligibility is limited to certain taxpayers and may depend on the circumstances of a spouse or provide special rules for married individuals. In general, current state law conforms to the federal treatment for these tax-favored accounts.

California state law treats RDPs as spouses; however, existing federal law treats RDPs as single taxpayers. An RDP who is an eligible account owner for state tax purposes may not be eligible as an account owner for federal purposes. For example, the transfer of a tax-favored account from one RDP to another RDP incident to dissolution of a domestic partnership would continue to be treated as a tax-favored account under existing state law but would no longer be treated as a tax-favored account under existing federal law, creating a California-only tax favored account.

### Federal AGI

Federal AGI is defined under existing federal law for personal income taxpayers as gross income from all sources not specifically excluded, minus certain "above the line"<sup>36</sup> deductions such as moving expenses, alimony paid, and IRA contributions. Federal adjusted gross income (AGI) is used as a basis for various calculations, including determining the limitation on certain itemized deductions such as medical expenses and miscellaneous itemized deductions. Existing state law requires, for state income tax limitation purposes, taxpayers use their federal AGI. In addition, many California personal income tax returns start calculation with the amount of AGI reported on the federal tax return.

Last year, California law was amended<sup>37</sup> to require RDPs to file their California income tax returns using the same rules applicable to married individuals. Effective January 1, 2007, RDPs are required to file personal income tax returns as either: (1) married filing joint, or (2) married filing separate, using the same rules under federal law applicable to spouses. Because RDPs are not allowed to file a joint federal return, this law also provided a rule for calculating joint federal AGI for limitation purposes. The rule provides that RDPs shall combine the federal AGI amounts from the federal income tax return of each RDP to determine their joint federal AGI for state income tax limitation purposes.

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<sup>35</sup> California Constitution, Article 3, Section 3.5.

<sup>36</sup> Deductible expenses, other than the standard deduction or itemized deductions, which are allowed to be subtracted from gross income to calculate AGI.

<sup>37</sup> SB 1827 (Migden, Stats. 2006, ch. 802).

## Underpayment Penalty

Under existing state and federal laws, taxpayers generally are subject to a penalty for any underpayment of estimated tax. The penalty is an amount equal to the underpayment rate<sup>38</sup> multiplied by the amount of the underpayment. State and federal laws have historically allowed exceptions to the estimated tax underpayment penalty when the underpayment resulted from a specified legislative change.

### ***Reasons for Change***

The author's staff has indicated the purpose of the act is to clarify and resolve issues relating to SB 1827 (Stats. 2006, Ch. 802), which enacted the requirement that RDPs use the same filing status as married persons, to ensure effective implementation of the previously-enacted law.

### ***Explanation of Provision***

This act clarifies that an RDP or former RDP is treated as a spouse or former spouse, respectively, for personal income tax and corporation tax purposes. In addition, this act provides the following technical exceptions to RDPs being treated as spouses for California purposes:

- Where treatment would result in the classification of a business entity for California purposes different than the entity's classification for federal purposes. For example, this exception would avoid an S corporation meeting the 100 shareholder requirement for state purposes and not for federal purposes because there were two RDP shareholders that for federal purposes put the total amount to 101 shareholders, disqualifying the S corporation status under federal law.
- Where treatment would result in the disqualification of a federally qualified deferred compensation plan under the rules established by the IRC.
- Where treatment would result in the creation of a California only tax-favored account that would not be qualified for federal income tax purposes. A "tax favored account" means an individual account, plan, or arrangement that is exempt from tax under federal law and includes an Archer MSA, IRA, qualified tuition program, and a Coverdell education savings account.

This act revises existing law for how RDPs calculate their federal AGI used for state limitation purposes. The revised rule would calculate federal AGI for state limitation purposes as the amount that would have been computed if RDPs were required to (1) file a joint or separate federal tax return, (2) use the same filing status on a federal return that was used on the California tax return, and (3) were treated as spouses or former spouse for federal purposes.

This act prohibits RDPs from being assessed an underpayment of estimated tax penalty for the 2007 taxable year to the extent the underpayment was created by this act and/or the new California tax filing requirement for RDPs (SB 1827).

### ***Effective Date***

As a tax levy, this act became effective on October 10, 2007, and applies to taxable years beginning on or after January 1, 2007.

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<sup>38</sup> The underpayment rate is the federal short-term rate, as determined by the Secretary of the Treasury, plus three hundred (300) basis points.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">SB 105 Chap 10-10-07 Text</a>	<a href="#">SB 105 Legislative Chg</a>	---
<a href="#">SB 105 Enrolled 9-11-07 Text</a>	---	---
<a href="#">SB 105 Amd 8-21-07 Text</a>	<a href="#">SB 105 Amd 8-21-07</a>	<a href="#">SB 105 Sen UnFB Amd 8-21-07</a> <a href="#">SB 105 Sen UnFB Amd 8-21-07</a> <a href="#">SB 105 Sen 3d Amd 8-21-07</a> <a href="#">SB 105 Asm App Amd 8-21-07</a>
<a href="#">SB 105 Amd 6-20-07 Text</a>	<a href="#">SB 105 Amd 6-20-07</a>	<a href="#">SB 105 ART Amd 6-20-07</a>
<a href="#">SB 105 Amd 3-19-07 Text</a>	<a href="#">SB 105 Amd 3-19-07</a>	<a href="#">SB 105 Sen 3d Amd 3-19-07</a> <a href="#">SB 105 Sen 3d Amd 3-19-07</a> <a href="#">SB 105 SRT Amd 3-19-07</a>
<a href="#">SB 105 Intro 1-17-07 Text</a>	<a href="#">SB 105 Intro 1-17-07</a>	---

**California Breast Cancer Research Fund/Extend Repeal Date To January 1, 2013**  
**(Stats. 2007, ch. 486)<sup>39</sup>**

***Program Background***

Since 2000, the California Breast Cancer Research Fund has received the following total annual contributions:

2000	2001	2002	2003	2004	2005	2006
\$508,642	\$623,991	\$736,040	\$646,664	\$697,750	\$636,319	\$578,140

The California Breast Cancer Research Fund has already exceeded the minimum contribution amount necessary to remain on the 2007 return.

***Existing State Law***

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their tax returns to any of the 14 voluntary contribution funds (VCFs) listed on the state personal income tax return (return).

With the following exceptions, VCFs remain on the return until they are either repealed or fail to meet their minimum contribution amount.

Except for the California Seniors Special Fund, which has no sunset date, each VCF has a specific sunset date.

Except for the California Seniors Special Fund, the California Firefighters Memorial Fund, and the California Peace Officer Foundation Memorial Fund, each VCF must generally meet a minimum contribution amount of \$250,000 in the second calendar year after a fund appears on the return.

Except for the California Fund For Senior Citizens, each of the remaining VCF minimum contribution amounts is adjusted annually for inflation.

The annual inflation adjustment is based on the percentage change in the California Consumer Price Index. FTB is required to make the following two determinations for each VCF by September 1 of each calendar year:

- The minimum contribution amount required for the VCF to remain on the return for the following calendar year, and
- Whether estimated contributions to the VCF will be less than the minimum contribution amount for that calendar year.

If FTB estimates that a VCF will fail to meet or exceed the minimum contribution amount for a calendar year, that VCF is repealed effective January 1st of that calendar year.

Reasons for Change

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<sup>39</sup> AB 28 (Huffman) - Assembly passed bill on June 4, 2007, with a 71 Aye/0 Noe vote. Senate passed bill on September 4, 2007 with a 37 Aye, 1 Noe vote. Enrolled September 11, 2007, and Governor signed and bill chaptered on October 11, 2007.

According to the author's office, the purpose of this act is to continue to provide an additional source of funding research for the cause, cure, and prevention of breast cancer.

***Explanation of Provision***

This act extends the operation of the California Breast Cancer Research Fund from January 1, 2008, to January 1, 2013. Thus, this VCF would last appear on the 2012 income tax return filed in 2013, unless it fails to meet the minimum contribution amount prior to that date.

***Effective Date***

This act became effective January 1, 2008, and operative on or after that date.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">AB 28 Chap 10-11-07 Text</a>	<a href="#">AB 28 Legislative Chg</a>	---
<a href="#">AB 28 Enrolled Text</a>	---	---
<a href="#">AB 28 Amd 4-10-07 Text</a>	<a href="#">AB 28 Amd 4-10-07</a>	<a href="#">AB Sen App Amd 4-10-07</a> <a href="#">AB 28 SRT Amd 4-10-07</a> <a href="#">AB 28 SRT Amd 4-10-07</a> <a href="#">AB 28 Asm 3d Amd 4-10-07</a>
<a href="#">AB 28 Intro 12-04-06 Text</a>	<a href="#">AB 28 Intro 12-04-06</a>	<a href="#">AB 28 Asm App Intro 12-04-06</a> <a href="#">AB 28 ART Intro 12-04-06</a>

**Civil Rights Act of 2007/Discrimination/Business Expense  
Deduction/Discriminating Clubs  
(Stats. 2007, ch. 568)<sup>40</sup>**

***Existing Federal and State Laws***

Existing federal and state laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Under federal law, to which California conforms, expenses incurred for meals and entertainment are generally deductible only if it is “directly related to” or “associated with” the active conduct of the taxpayer's trade or business. Such expenses are subject to other restrictions and strict substantiation requirements. “Entertainment” includes any activity generally considered to be entertainment, amusement, or recreation. This includes entertaining guests at nightclubs, theaters, sporting events, and at entertainment facilities such as yachts, country clubs, hunting lodges, etc. However, no deduction is allowed for club dues for membership in any business, pleasure, social, athletic, luncheon, sporting, airline, and hotel clubs.

Existing state law provides that no trade or business expense deduction is allowed for expenditures made at, or payments made to, a club that restricts membership or the use of its services or facilities on the basis of age, sex, race, religion, color, ancestry, or national origin. Under Government Code section 11135, existing state law prohibits discrimination against any person in the state on the basis of race, national origin, ethnic group identification, religion, age, sex, color, or disability with respect to access to benefits to any program or activity administered by the state or funded by the state.

Under the Government Code, current state law prohibits any state funds from being used for membership or for any participation involving a payment or contribution in any organization whose membership practices are discriminatory on the basis of race, creed, color, sex, religion, or national origin. Likewise, state agencies are prohibited from holding any meeting, conference, or other function in any facility that prohibits the admittance of any person on the basis of race, religious creed, color, national origin, ancestry, or sex.

***Reasons For Change***

This act was designed to provide a level of uniformity in various statutes prohibiting discrimination either in providing business services or in operating programs conducted or funded by the state. The Unruh Act prohibits discrimination in business services, while Government Code section 11135 prohibits discrimination in programs conducted with government funds. In addition to these two general provisions, there are a number of statutes prohibiting discrimination in specific business transactions and specific government programs. However, many of these specific laws have not been updated to reflect the state's evolving non-discrimination policies, particularly with regard to protection against discrimination on the basis of disability and sexual orientation. These variances have created deficiencies in protecting Californians and confusion for those charged with implementing and complying with these laws.

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<sup>40</sup> AB 14 (Laird) - Assembly passed the bill on May 21, 2007, with a 46 Aye/29 Noe vote. Senate passed the bill with amendments on September 11, 2007, with a 23 Aye/13 Noe vote. Assembly concurred with Senate amendments and sent the bill to enrollment on September 12, 2007, with a 47 Aye/29 Noe vote. Enrolled and to the Governor on September 26, 2007. Signed by Governor and Chaptered on October 12, 2007.

## ***Explanation of Provision***

### In general

This act is to be known as the Civil Rights Act of 2007. It amends various California codes to redefine the specific characteristics that form the basis for prohibited discrimination. With respect to FTB,<sup>41</sup> this act amends the RTC to redefine the characteristics that form the basis for discrimination that, if such discrimination occurred, would result in disallowance of otherwise deductible business expenses for payments made to certain clubs. Under the provisions of the act, such prohibited discrimination would be on the basis of ancestry and “any characteristic listed or defined in Section 11135 of the Government Code” instead of separately listing “age, sex, race, religion, color, ancestry, or national origin” as contained in Section 11135.

### Disallowance of deduction

This act repeals a redundant statute in the personal income tax law that disallows a deduction for expenditures made at or payments made to a club that restricts membership or the use of its services or facilities on the basis of specified characteristics.

### Miscellaneous

This act modifies the provisions of the Government Code relating to membership in organizations and meeting facilities to reference “any characteristic listed or defined in Section 11135 of the Government Code” instead of separately listing characteristics forming the basis for prohibited discrimination.

## ***Effective Date***

This act became effective on January 1, 2008, and operative for taxable years beginning on or after that date.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">AB 14 Chap 10-12-07 Text</a>	<a href="#">AB 14 Legislative Change</a>	---
<a href="#">AB 14 Enrolled Text</a>	---	---
<a href="#">AB 14 Amd 8-27-07 Text</a>	<a href="#">AB 14 Amd 8-27-07</a>	<a href="#">AB 14 Asm Concur 8-27-07</a>
<a href="#">AB 14 Amd 7-03-07 Text</a>	<a href="#">AB 14 Amd 7-03-07</a>	<a href="#">AB 14 Sen 3d 7-03-07</a> <a href="#">AB 14 Sen 3d 7-03-07</a>
<a href="#">AB 14 Amd 6-14-07 Text</a>	<a href="#">AB 14 Amd 6-14-07</a>	<a href="#">AB 14 Sen Jud 6-14-07</a>
<a href="#">AB 14 Amd 4-12-07 Text</a>	<a href="#">AB 14 Amd 4-12-07</a>	<a href="#">AB 14 Asm 3d 4-12-07</a> <a href="#">AB 14 Asm App 4-12-07</a>
<a href="#">AB 14 Intro 12-04-06 Text</a>	---	<a href="#">AB 14 Asm Jud 12-04-06</a>

<sup>41</sup> Laws affecting FTB are RTC §§ 17269 and 24343.2, and Govt. Code §§ 11015 and 11131.

**Earned Income Tax Credit Information Act/Employers Notify All Employees of the  
Federal Earned Income Credit (EITC)  
(Stats. 2007, ch. 606)<sup>42</sup>**

***Existing Federal and State Law***

Existing federal law allows a refundable income tax credit for low-income working individuals and families, known as the federal earned income credit (EITC). This credit reduces the amount of federal tax owed and can result in a refund if the EITC exceeds the amount of the tax liability.

The amount of the EITC is prorated based on income and begins to phase out at certain income levels. For the 2006 tax year, the adjusted gross income (AGI) must be less than:

- \$36,348 with more than one qualifying child, or \$38,348 for married filing jointly;
- \$32,001 with one qualifying child, or \$34,001 for married filing jointly; or
- \$12,120 without a qualifying child or \$14,120 if married filing jointly.

For tax year 2006, the maximum credit allowed was:

- \$4,536 with two or more qualifying children;
- \$2,747 with one qualifying child;
- \$412 with no qualifying children.

Existing federal law allows an eligible individual to receive advance payment of the EITC by providing their employer with a Form W-5 (Earned Income Credit Advance Payment Certificate). The EITC advance payment allows those taxpayers who expect to qualify for the credit and have at least one qualifying child to receive part of the credit in each paycheck during the year the taxpayer qualifies for the credit. The maximum advance EITC the employer was allowed to provide for taxable year 2006 was \$1,648.

Through its Stakeholder Partnerships, Education, and Communication organization, the IRS currently provides EITC information with utility bills, school report cards, Forms W-2 (Wage and Tax Statement), Forms 1099 (payment reporting for various sources), and company newsletters; through direct mailings by housing authorities and social service agencies; and through advertising, workshops, seminars, and neighborhood outreach.

Existing state law does not provide an EITC.

**Reasons for Change**

According to the author's office, the purpose of the act is to ensure that eligible Californians receive their share of the federal money that is available through the EITC program.

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<sup>42</sup> AB 650 (Jones) - Assembly passed bill on June 5, 2007, with a 45 Aye/32 Noe vote. Senate passed bill with amendments on September 7, 2007 with a 24 Aye, 14 Noe vote, and Assembly concurred on September 11, 2007 with a 47Aye/31 Noe vote. Enrolled September 20, 2007, and Governor signed and bill chaptered on October 13, 2007.

### ***Explanation of Provision***

This act requires an employer, as defined, to notify all employees that they may be eligible for the EITC. The employer is required to provide notification by either handing it to the employee or mailing it to their last known address during the period beginning one week before and ending one week after the day the employer provides the annual wage summary (i.e., W-2 or 1099) to the employee.

This act requires that the notice be either of the following:

- Instructions on how to obtain forms from the IRS, including Form W-5 and IRS Notice 797, or
- Any notice created by the employer, if it contains substantially the same language as IRS Notice 797, or the same language as referenced in RTC section 19854(a), as added by this act.

Upon request of the employee, this act requires every employer to process, in accordance with federal law, IRS Form W-5 for advance payments of the EITC.

This act includes a sample notice to be furnished to employees and requires the employer to update the notice annually to include all appropriate updates to the EITC program as determined by the federal government.

This act defines the following terms:

- “Employer” means any California employer that is subject to the Unemployment Insurance Code and is required to provide unemployment insurance to his or her employees under the Unemployment Insurance Code.
- “Employee” means any person who is covered by unemployment insurance by his or her employer.
- “Earned income tax credit,” means the federal earned income tax credit, as defined in IRC section 32.

### ***Effective Date***

This act became effective January 1, 2008, and operative as of that date.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">AB 650 Chap 10-13-07 Text</a>	<a href="#">AB 650 Legislative Chg</a>	---
<a href="#">AB 650 Enrolled Text</a>	---	---
<a href="#">AB 650 Amd 7-03-07 Text</a>	<a href="#">AB 650 Amd 7-03-07</a>	<a href="#">AB 650 Asm Concur 7-03-07</a> <a href="#">AB 650 Sen 3d 7-03-07</a>
<a href="#">AB 650 Amd 6-20-07 Text</a>	<a href="#">AB 650 Amd 6-20-07</a>	<a href="#">AB 650 Asm Labor &amp; Ind Rel Amd 6-20-07</a>
<a href="#">AB 650 Amd 6-01-07 Text</a>	<a href="#">AB 650 Amd 6-01-07</a>	<a href="#">AB 650 Asm 3d Amd 6-01-07</a>
<a href="#">AB 650 Amd 4-30-07 Text</a>	<a href="#">AB 650 Amd 4-30-07</a>	<a href="#">AB 650 Asm App Amd 4-30-07</a>
<a href="#">AB 650 Amd 3-29-07 Text</a>	<a href="#">AB 650 Amd 3-29-07</a>	<a href="#">AB 650 ART Amd 3-29-07</a>
<a href="#">AB 650 Intro 2-21-07 Text</a>	<a href="#">AB 650 Intro 2-21-07</a>	---

**Security of Social Security Numbers/FTB Truncate Social Security Numbers on  
Lien Abstracts and any Other Records Created by the Board that are Disclosable  
Before Disclosing to Public  
(Stats. 2007, ch. 627)<sup>43</sup>**

***Program Background***

The Franchise Tax Board (FTB) collects personal information from various sources, including taxpayers and agencies required to report financial information. This information is used for compliance development, audit, and collection purposes. Federal and state tax laws require that an individual's Social Security Number (SSN) be used as the identifying number for that individual with regard to income taxes.

In every county recorder's office in this state, there are substantial numbers of state tax lien documents that have been recorded in the last 30 years that represent a valid claim against real property held by the individual identified on the lien document. Liens that have been satisfied along with the release document remain in county records and include, among other personal information, a taxpayer's SSN. The lien documents are used to establish rights to property interests and are viewed by title companies and other entities to determine lien priority in comparison to other lien interests or to identify and clear encumbrances on title when property changes hands.

On February 2, 2007, FTB began masking the first five digits of the SSN on lien documents issued by the department. FTB is in compliance with the provisions related to lien documents that were added by this act.

***Existing State Law***

Under existing state law, at the time an unpaid income or franchise tax debt becomes due and payable, the unpaid amount automatically gives rise to a perfected and enforceable state tax lien. A state tax lien attaches to all property and rights to property, including all after-acquired property, belonging to the person located in California. Under the concept of "first in time, first in right," where liens are competing for an interest in the same parcel of real property, the lien recorded first in time takes priority over later recorded liens.

A county recorder is prohibited from altering any document submitted for recording.

Under existing state law, state agencies are prohibited, with exceptions, from the following:

- Publicly posting or displaying an individual's SSN;
- Printing an individual's SSN on any card required to access products or services;
- Requiring an individual to transmit his or her SSN over the Internet unless the connection is secure or the SSN is encrypted;
- Requiring an individual to use his or her SSN to access an Internet website unless a password or unique personal identification number is also required to access the website; and

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<sup>43</sup> AB 1168 (Jones) - Assembly passed bill on June 6, 2007, with a 75 Aye/0 Noe vote. Senate passed bill with amendments on September 10, 2007 with a 33 Aye, 6 Noe vote, and Assembly concurred on September 12, 2007 with a 73 Aye/3 Noe vote. Enrolled September 21, 2007, and Governor signed and bill chaptered on October 13, 2007.

- Printing an individual's SSN on any materials that are mailed to the individual, unless state or federal law requires the SSN to be on the document.

Recorded documents, such as state tax liens, are expressly exempt from current limitations in state law relating to the use of SSNs. Additionally, existing law does not prohibit FTB from using an individual's SSN as an internal identifier, including SSNs on documents mailed to third parties such as garnishments and levies.

The California Public Records Act (PRA) is designed to give the public access to information in possession of public agencies to the extent that information is a public record. Personal information that would identify an individual, such as an SSN, is exempt from disclosure under the PRA.

### ***Reasons for Change***

According to the author, the intent of this act is to remove SSNs from public documents to reduce the incidence of identity theft.

### ***Explanation of Provision***

This act changes the way state, county, and all local levels of government make available to the public documents that may contain an SSN.

On the state level, the act prohibits state agencies from filing or recording documents with a local agency that contain more than the last four digits of an SSN. Unless prohibited by federal law, the act requires FTB to truncate SSNs on any record created by FTB that is disclosable under the PRA and expressly includes lien abstracts. SSNs would be required to be truncated by redacting the first five digits of the SSN so that no more than the last four digits of any SSN are displayed.

This act requires the Secretary of State (SOS) to truncate the SSN on any existing filed document before making it available to the public. This act requires filing offices to create a "public filing" as defined, of any record that contains an SSN and that was filed prior to August 1, 2007. This act requires SOS to provide a financing statement forms that would not have a space for an SSN to be provided. Filing offices are to post notices on their public websites informing filers not to include SSNs on any portion of their filings. The online system in a filing office cannot contain a field requesting an SSN. After August 1, 2007, a filing office must create a public filing of any official filing that contains a non-truncated SSN. An official filing may only be disclosed in response to a subpoena or order of a court of competent jurisdiction.

On the local level, the act provides legislative intent language that local agencies or filing offices should truncate the SSN on any document required to be made available to the public in order to prevent identity theft.

"Official filing" would mean the permanent archival filing of all instruments, papers, and notices as accepted for filing by a filing office. "Public filing" would mean a filing that is an exact copy of an official filing except that any SSN contained in the copied filing is truncated. The public filing would have the same legal force and effect as the official filing. Truncate means to redact at least the first five digits of an SSN. Truncated SSN means an SSN that displays no more than the last four digits of the SSN.

And, on a county level, except for death records, this bill would establish the Social Security Number Truncation Program within the offices of the county recorder of each county. The

program would require the county recorder to create a “public record” version of each “official record” maintained in the county recorder files. A “public record” would be a record that is an exact copy of an official record except that any SSN contained in the copied filing is truncated. An “official record” would be the permanent archival record of all instruments, papers, and notices as accepted for filing by a county recorder.

Recreating the official record in an electronic format and truncating any SSN on the record would accomplish creation of public records. This act requires the county recorder to make only the public record available upon request. The official record would be made available only upon court order or subpoena.

The act provides that, until the public record version of an official record is created (SSNs are truncated), a request for access to an official record would be permitted. For records recorded from January 1, 1980, through December 31, 2008, this act requires the recorder to first truncate records that already exist in an electronic format and then create the electronic version of all other records. Each group of records is to be handled in descending chronological order.

For each official filing recorded on or after January 1, 2009, the recorder is required to create a copy of that filing in an electronic format and truncate any SSN contained in that filing. The recorder will be deemed to be in compliance and have exerted due diligence if an automated program with a high rate of accuracy is used to identify and truncate SSNs in the official filings.

This act specifies that if the county recorder determines that the fee authorized to fund the truncation program is insufficient to meet the cost of creating the public record version of the official documents, then the recorder would only be required to make public record versions of official documents based on the fraction of documents that would be covered by the fees. For instance, if the recorder determines that the fees charged would only cover 25% of the documents on file, the recorder would only be required to convert 25% of the official documents into public record documents.

This act provides that any person may request that a recorder truncate an SSN contained in any filing. The recorder is required to truncate that number within ten business days of receiving the request that includes the exact location of the SSN within a specifically identified filing.

This act authorizes each county recorder, as approved by that county’s board of supervisors, to charge an additional dollar for each page recorded and would limit the use of the funds to implementing the truncation program. This act contains additional provisions specific to the process for the county recorder to be able to assess the additional fees that do not impact FTB and are not discussed in this explanation.

This act requires by January 1, 2009, and annually thereafter, the County Recorders Association to report to the Legislature and the Office of Privacy Protection (OPP) on the progress each county recorder has made in complying with this bill’s provisions. When OPP has determined that all counties have completed the requirements of the program, the report would no longer be required.

This act establishes a task force to review the use of SSNs by post secondary institutions in California. These provisions do not impact FTB and are not discussed in this analysis.

#### ***Effective Date***

This act became effective on January 1, 2008, and operative as of that date.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">AB 1168 Chap 10-13-07 Text</a>	<a href="#">AB 1168 Legislative Chg</a>	---
<a href="#">AB 1168 Enrolled Text</a>	---	---
<a href="#">AB 1168 Amd 9-05-07 Text</a>	<a href="#">AB 1168 Amd 9-05-07</a>	<a href="#">AB 1168 Asm Con Amd 9-05-07</a> <a href="#">AB 1168 Sen 3d Amd 9-05-07</a>
<a href="#">AB 1168 Amd 8-31-07 Text</a>	---	<a href="#">AB 1168 Sen 3d Amd 8-31-07</a>
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**State Children's Trust Fund/ Fish and Game Preservation Fund/Extend Repeal  
Dates to January 1, 2013  
(Stats. 2007, ch. 665)<sup>44</sup>**

***Program Background***

State Children's Trust Fund

Since 2000, the fund has received the following total annual contributions:

2000	2001	2002	2003	2004	2005	2006
\$488,678	\$585,584	\$667,367	\$674,783	\$679,899	\$581,772	\$562,286

The State Children's Trust Fund has already exceeded the minimum contribution amount necessary to remain on the 2007 return.

Fish and Game Preservation Fund

Since 2000, the fund has received the following total annual contributions:

2000	2001	2002	2003	2004	2005	2006
\$569,316	\$627,732	\$704,409	\$673,981	\$643,616	\$624,264	\$555,062

The Fish and Game Preservation Fund has already exceeded the minimum contribution amount necessary to remain on the 2007 return.

***Existing State Law***

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their tax returns to any of the 14 voluntary contribution funds (VCFs) listed on the state personal income tax return (return).

With the following exceptions, VCFs remain on the return until they are either repealed or fail to meet their minimum contribution amount.

- Except for the California Seniors Special Fund, which has no sunset date, each VCF has a specific sunset date.
- Except for the California Seniors Special Fund, the California Firefighters Memorial Fund, and the California Peace Officer Foundation Memorial Fund, each VCF must generally meet a minimum contribution amount of \$250,000 in the second calendar year after a fund appears on the return.
- Except for the California Fund For Senior Citizens, each of the remaining VCF minimum contribution amounts is adjusted annually for inflation.

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<sup>44</sup> SB 898 (Simitian) - Senate passed bill on June 6, 2007, with a 27 Aye/12 Noe vote. Assembly passed bill with amendments on September 11, 2007 with a 60 Aye, 8 Noe vote, and Senate concurred on September 11, 2007 with a 30 Aye/7 Noe vote. Enrolled September 21, 2007, and Governor signed and bill chaptered on October 13, 2007.

The annual inflation adjustment is based on the percentage change in the California Consumer Price Index. FTB is required to make the following two determinations for each VCF by September 1 of each calendar year:

- The minimum contribution amount required for the VCF to remain on the return for the following calendar year, and
- Whether estimated contributions to the VCF will be less than the minimum contribution amount for that calendar year.

If FTB estimates that a VCF will fail to meet or exceed the minimum contribution amount for a calendar year, that VCF is repealed effective January 1st of that calendar year.

### ***Reasons for Change***

According to the author, the purpose of this act is to continue to provide additional sources of funding for: (1) innovative child abuse and neglect prevention and intervention programs, and (2) the support of programs for endangered and rare animals, native plant species, and those species, which may be candidates for determination as endangered or rare.

### ***Explanation of Provision***

This act extends the operation of the State Children’s Trust Fund and the Fish and Game Preservation Fund from January 1, 2008, to January 1, 2013. As a result of this act, unless the State Children’s Trust Fund or the Fish and Game Preservation Fund fails to meet its respective minimum contribution amount, each of these VCFs would last appear on the 2012 income tax return filed in 2013.

### ***Effective Date***

This act became effective January 1, 2008, and operative on or after that date.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
<a href="#">SB 898 Chap 10-13-07 Text</a>	<a href="#">SB 898 Legislative Chg</a>	---
<a href="#">SB 898 Enrolled Text</a>	---	---
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<a href="#">SB 898 Amd 3-26-07 Text</a>	---	<a href="#">SB 898 Sen App Amd 3-26-07</a> <a href="#">SB 898 Sen Env Qual Amd 3-26-07</a>
<a href="#">SB 898 Intro 2-23-07 Text</a>	---	---

**Disclosure of State Income Tax Data to State Controller's Office**  
**(Stats. 2007, ch. 666)<sup>45</sup>**

***Existing Federal and State Law***

Existing federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees, except for authorized purposes. Agencies allowed access to federal return information include certain federal and state agencies, such as the Franchise Tax Board (FTB). A federal return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Service (IRC). Any FTB employee or member responsible for the improper disclosure of federal tax information is subject to criminal prosecution. Improper disclosure of federal tax information is a felony.

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. California law permits FTB to release individual tax return information to specific state agencies. Agencies must have a specific reason for requesting the information, including investigating items of income disclosed on any return or report, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

California law also permits FTB to release confidential tax information pursuant to tax return sharing agreements with the IRS, the Multistate Tax Commission, and the taxing authorities of other states and Mexico. The exchange must relate to the enforcement of tax laws and the information must not be made public.

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any FTB employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor.

***Reasons for Change***

According to the author's staff, the purpose of this act is to improve efficiencies in the state's Unclaimed Property Program.

***Explanation of Provision***

This act authorizes FTB, subject to federal requirements, to annually provide the State Controller's Office (SCO) with specific information from the business entity returns or other business entity records maintained by FTB. The information authorized for disclosure by this act includes the following:

- Taxpayer name,
- Taxpayer identification number,
- Taxpayer address, and
- Taxpayer's principal business activity code.

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<sup>45</sup> SB 920 (Orepeza) – Senate passed the bill on May 21, 2007, with a 25 Aye/14 Noe vote. Assembly passed the bill with amendments on September 4, 2007, with a 47 Aye/30 Noe vote. Senate concurred with amendments and sent the bill to enrollment on September 5, 2007, with a 21 Aye/16 Noe vote. Enrolled and to the Governor on September 11, 2007. Signed by Governor and Chaptered on October 13, 2007.

This act limits the use of the information disclosed under this act to locating owners of unclaimed property in connection with the Unclaimed Property Laws administered by SCO.

***Effective Date***

This act became effective January 1, 2008, and operative on or after that date.

<b>Bill Text Link</b>	<b>FTB Analysis Link</b>	<b>Committee/Floor Analysis</b>
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<a href="#">SB 920 Amd 5-01-07 Text</a>	<a href="#">SB 920 Amd 5-01-07</a>	<a href="#">SB 920 ART Amd 5-01-07</a> <a href="#">SB 920 Sen 3d Amd 5-01-07</a>
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Section 19853	AB 650	<a href="#"><u>59</u></a>
Section 19854	AB 650	<a href="#"><u>59</u></a>
Section 21006	AB 1747	<a href="#"><u>38</u></a>
Section 23001	SB 41	<a href="#"><u>1</u></a>
Section 23701d	AB 897	<a href="#"><u>24</u></a>
Section 24343.2	AB 14	<a href="#"><u>57</u></a>
Section 24347.5	AB 62	<a href="#"><u>20</u></a>
	SB 38	<a href="#"><u>16</u></a>
	SB 114	<a href="#"><u>18</u></a>
Section 24447	SB 1044	<a href="#"><u>12</u></a>

This act allows certain charitable organizations to distribute payments to the family members of firefighters killed in the Esperanza fire without jeopardizing their tax-exempt status by deeming such payments as made in furtherance of the charitable purpose of those charitable organizations. As a tax levy, this act was effective and operative February 7, 2007, for payments distributed by a charitable organization to a family member of a firefighter killed in the Esperanza fire on or after October 26, 2006, and before June 1, 2007.