General Explanation of California Legislation Affecting Franchise Tax Board Enacted in 2008

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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 2008 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 2008 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.

Tax Preparer Requirements

(Stats. 2008, ch. 33)[1]

Existing Federal/State Law

Existing federal law imposes no certification requirements for tax preparers relating to ethics, professional conduct, or education. Only Certified Public Accountants (CPAs), Enrolled Agents (EAs), or attorneys can represent taxpayers before the IRS in all matters, including audits, collections, and appeals.

The Tax Preparers Act, enacted in California in 1996, regulates a tax preparer's professional conduct, ethics, and bonding requirements. A tax preparer is defined as "a person who, for a fee, assists with or prepares tax returns for another person, who assumes final responsibility for completed work on a return on which preliminary work has been done by another person, or who holds himself or herself out as offering those services." All tax preparers must register with the California Tax Education Council (CTEC), unless otherwise exempt.

The following tax preparers are exempt from registering with CTEC:

- An individual with a current valid license issued by the California Board of Accountancy (CPAs)
- An individual who is an active member of the State Bar of California (attorney)
- An individual who is enrolled to practice before the Internal Revenue Service (EAs)
- Employees of the individuals listed above
- Certain employees of a trust company or financial institution

The three primary requirements to complete registration with CTEC include all the following:

- Receive at least 60 hours of tax preparer education from a CTEC-approved provider,
- Maintain a $5,000 Tax Preparer Bond issued by a surety company admitted to do business in California, and
- Complete annually, not less than 20 hours of continuing education from a CTEC approved provider.

Existing state law authorizes the Franchise Tax Board to assess a penalty of up to $5,000 on tax preparers that are required to register with CTEC and have failed to do so.

Reasons for Change

This act is to ensure proper and accurate preparation of tax returns by tax preparers and their employees.

Explanation of Provision

This act requires income tax returns prepared by an employee of an exempt tax preparer to be signed by either of the following:

- An exempt tax preparer (CPA, Attorney, or EA), or
- A tax preparer that is registered with the CTEC.

This requirement would not apply to an employee that is exempt under existing law, is registered with CTEC, or is an employee of a trust company or financial institution with respect to returns prepared within the scope of their employment. This act adds entering data into a computer as part of tax preparation.
This act extends the repeal date of the chapter regulating income and franchise tax return preparers from January 1, 2009, to January 1, 2012.

[1] SB 797 (Ridley-Thomas) - Senate passed bill on April 23, 2008, with a 33 Aye/6 Noe vote. Assembly passed bill with amendments on May 29, 2008, with a 76 Aye/0 Noe vote. Senate concurred with Assembly amendments on June 9, 2008, with a 35 Aye/1 Noe vote. Bill enrolled and to the Governor on June 11, 2008. Governor signed and bill was chaptered on June 23, 2008.

Effective Date

This act became effective and operative upon enactment of June 23, 2008.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 797 6-23-2008 Ch Text	SB 797 Leg Chng 8-1	---
SB 797 6-10-2008 Enr Text	---	---
SB 797 4-24-2008 Amd Text	SB 797 4-24-2008 Amd	SB 797 Sen Flr 3d Unf Bus 4-24-2008 Amd SB 797 Sen Flr 3d Unf Bus 4-24-2008 Amd SB 797 Sen Flr 3d 4-24-2008 Amd SB 797 Asm Approps 4-24-2008 Amd SB 797 Asm Bus & Prof 4-24-08 Amd
SB 797 9-7-2007 Amd Text	SB 797 9-7-2007 Amd	SB 797 Sen Flr 3d 9-7-2007 Amd
SB 797 2-23-2007 Intro Text		SB 797 Sen 3d Flr 2-23-2007 Intro SB 797 Asm Approps 2-23-2007 Intro SB 797 Asm Bus & Prof 2-23-2007 Intro SB 797 Sen Flr 3d 2-23-2007 Intro SB 797 Sen Approps 2-23-2007 Intro SB 797 Sen Bus & Prof & Eco Dev 2-23-2007 Intro

California Public Records Act/State Agencies May Not Allow Another Party to Control the Disclosure of Information Subject to Disclosure

(Stats. 2008, ch. 62)[2]

Existing Federal/State Law

Under existing federal law, the United States (U.S.) Freedom of Information Act[3] (FOIA) ensures public access to U.S. government records. FOIA carries a presumption of disclosure; the burden is on the government to substantiate why information may not be released. Upon written request, federal agencies are required to disclose the requested records, unless they can be lawfully withheld from disclosure under one of the specific exemptions in the FOIA. Federal agencies are given 20 days to determine whether the agency is able to comply with the information request and notify the requestor of their determination.

Under existing state law, the Public Records Act[4] (PRA) is designed to give the public access to information in the possession of public agencies. The state agency bears the burden of justifying nondisclosure of requested information. The agency must justify the withholding of any record by demonstrating that the record is exempt or that the public interest in confidentiality outweighs the public interest in disclosure. The state agency is given ten days to determine whether the department possesses records responsive to the request that may be disclosed and to notify the requestor with the estimated date and time when the records will be made available.

Reasons for Change

This act is to ensure that public records remain accessible to the public.

Explanation of Provision

This act provides, as declaratory of existing law, that a state agency may not allow another party to control the disclosure of information otherwise subject to the PRA. This act further provides that any contract entered into by a state or local agency, including the University of California, which requires a private entity to review, audit, or report on any aspect of that agency, is a public document to the extent it is otherwise subject to disclosure under the PRA.

Effective Date

This act became effective and operative on January 1, 2009.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 1696 7-3-2008 Ch Text	SB 1696 Leg Chng 8-2	---
SB 1696 6-24-2008 Enr Text	SB 1696 Final	---
SB 1696 4-1-2008 Amd Text	SB 1696 4-1-2008 Amd	SB 1696 Sen Flr 3d 4-1-2008 Amd SB 1696 Asm Gov Org 4-1-2008 Amd SB 1696 Sen Flr 3d 4-1-2008 Amd
SB 1696 2-22-2008 Intro Text	SB 1696 2-22-2008 Intro	SB 1696 Sen Jud 2-22-2008 Intro

[2] SB 1696 (Yee) – Senate passed bill on April 14, 2008, with a 33 Aye/1 Noe vote. Assembly passed bill on June 23, 2008, with a 77 Aye/ 0 Noe vote. Senate sent bill to enrollment on June 23, (corrected 25) 2008. Bill enrolled and to Governor on June 26, 2008. Governor signed and bill chaptered on July 3, 2008.

[3] Freedom of Information Act

[4] Public Records Act

California Firefighters’ Memorial Fund and California Peace Officer Memorial Foundation Fund/Extend Repeal Date to January 1, 2016

(Stats. 2008, ch. 160)[5]

Program Background

The California Firefighters’ Memorial Fund first appeared on the 1993 personal income tax (PIT) return. This fund would be required to meet the minimum contribution amount beginning at $250,000 only if its repeal date is deleted. This fund has received the following total annual contributions:

2003	2004	2005	2006	2007
$206,112	$223,988	$187,132	$202,927	$213,236

The California Peace Officer Memorial Foundation Fund first appeared on the 1999 PIT return. This fund would be required to meet the minimum contribution amount beginning at $250,000 only if its repeal date is deleted. This fund has received the following total annual contributions:

2003	2004	2005	2006	2007
$179,444	$181,288	$183,269	$180,395	$166,602

Existing State Law

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the return.

With the following exceptions, VCFs remain on the PIT 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 meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

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

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify, in writing, affected VCFs of the minimum contribution amount required to remain on the PIT return for the following calendar year.

[5] AB 1812 (Arambula) - Assembly passed bill on May 28, 2008, with a 78 Aye/ 0 Noe vote. Senate passed bill on July 2, 2008, with a 38 Aye/ 0 Noe vote. Bill enrolled and to Governor on July 8, 2007. Governor signed and bill enacted on July 21, 2008.

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 1 of that calendar year.

General voluntary contribution provisions specify the following for all VCFs:

- Any contribution amounts designated prior to a fund's repeal must continue to be transferred and disbursed to that voluntary contribution fund.
- If the designee is unspecified, the contribution amount is transferred to the General Fund after reimbursing costs incurred by the FTB.
- If an individual designates contributions to more than one fund and the actual amount available is less than the total amount contributed, the contribution would be allocated on a pro rata basis to the designated funds.

The general provisions also provide a formal queuing process for adding new contingent[6] voluntary contribution funds to the tax return. Upon enactment, new contingent funds are added to the tax return when an existing fund is removed or when FTB determines space exists on the income tax return.

Reasons for Change

This act continues to provide an additional source of funding of local programs for the California Firefighter's Memorial Fund and the California Peace Officer Memorial Foundation Fund.

Explanation of Provision

This act extends the repeal date for the California Firefighters' Memorial Fund and the California Peace Officer Memorial Foundation Fund from January 1, 2011, to January 1, 2016. Thus, these funds will last appear on the 2015 PIT income tax return filed in 2016, unless a later enacted statute extends that date or the funds fail to meet their individual minimum contribution amounts.

Effective Date

This act became effective January 1, 2009, and operative on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 1812 Chap 7-21-08 Text	AB 1812 Leg Chng 8-03	---
AB 1812 Enrolled 7-07-08 Text	---	---
AB 1812 5-23-08 Amd Text	AB 1812 5-23-08 Amd	AB 1812 Sen Flr 3d 5-23-08 Amd AB 1812 SRT 5-23-08 Amd AB 1812 Asm Flr 3d 5-23-08 Amd
AB 1812 4-02-08 Amd Text	AB 1812 4-02-08 Amd	AB 1812 Asm Approp 4-02-08 Amd AB 1812 Asm Gov Org 4-02-08 Amd
AB 1812 1-16-08 Intro Text	AB 1812 1-16-08 Intro	AB 1812 ART 1-16-08 Intro

[6] A contingent voluntary contribution designation is a voluntary contribution fund that includes language that the fund may not be added to the personal income tax return until another voluntary contribution fund is removed.

Code Maintenance

(Stats. 2008, ch. 179)[7]

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 Federal/State 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" act is the vehicle for implementing these wholesale corrections. For inclusion into the act, 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 a bill prior to enactment.

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
SB 1498 Chaptered Text	---	---
SB 1498 Enrolled Text	---	---
SB 1498 6-09-08 Amd Text	SB 1498 6-09-08 Amd	SB 1498 Sen Flr Amd 6-09-08 SB 1498 Asm Jud 6-09-08 Amd
SB 1498 2-21-08 Intro Text	SB 1498 2-21-08 Intro	SB 1498 Sen Flr 3d 2-21-08 Intro SB 1498 Sen Jud 2-21-08 Intro

[7] SB 1498 (Senate Judiciary Committee) -Senate passed bill on April 1, 2008, with a 37 Aye/0 Noe vote. Assembly passed bill June 23, 2008, with amendments with 78 Aye/0 Noe vote. Senate concurred with Assembly amendments July 2, 2008, with a 40 Aye/0 Noe vote. Bill enrolled and to Governor on July 10, 2008. Governor signed and bill enacted on July 22, 2008.

Emergency Food for Families Fund/Extend Repeal Date to January 1, 2014

(Stats. 2008, ch. 203)[8]

Program Background

The Emergency Food for Families Fund (the Fund) first appeared on the 1998 personal income tax (PIT) return as the Emergency Food Assistance Program Fund. The minimum contribution amount for calendar year 1999 was $250,000. The minimum contribution amount is adjusted for each subsequent calendar year based on the California Consumer Price Index (CCPI). The Fund has received the following total annual contributions:

2003	2004	2005	2006	2007
$395,003	$383,603	$399,876	$390,586	$392,424

Donations to the Fund exceeded the $324,291 minimum contribution amount necessary to remain on the 2008 return.

Existing Federal/State Law

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the return.

With the following exceptions, VCFs remain on the PIT 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 meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

The annual inflation adjustment is based on the percentage change in the CCPI. The Franchise Tax Board (FTB) is required to make the following two determinations for each VCF by September 1 of each calendar year:

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify certain specified funds in writing of the minimum contribution amount required for the next 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 1 of that calendar year.

[8] SB 1101 (Cedillo) – Senate passed bill on May 8, 2008, with 30 Aye/3 Noe vote. Assembly passed bill on July 14, 2008, with 73 Aye/1 Noe vote. Senate sent bill to enrollment on July 14, 2008. Enrolled and to the Governor on July 16, 2008. Governor signed and bill enacted on July 25, 2008.

Reasons for Change

This act continues to provide an additional source of funding for direct services provided by the Emergency Food Assistance Program.

Explanation of Provision

This act extends the operation of the fund from January 1, 2009, to January 1, 2014. Thus, this fund would last appear on the 2013 PIT income tax return filed in 2014, unless a later enacted statute extends that date or the fund fails to meet the minimum contribution amount.

Effective Date

This act became effective January 1, 2009, and operative on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 1101 Chaptered Text	SB 1101 Leg Chng 8-04	---
SB 1101 Enrolled	---	---
SB 1101 4-15-08 Amd Text	SB 1101 4-15-08 Amd	SB 1101 Asm 3d 4-15-08 Amd SB 1101 Asm Approp 4-15-08 Amd SB 1101 ART 4-15-08 Amd SB 1101 Sen Flr 3d 4-15-08 Amd SB 1101 Sen Approp 4-15-08 Amd
SB 1101 2-15-08 Amd Text	SB 1101 2-15-08 Amd	SB 1101 SRT 2-15-08 Amd
SB 1101 1-15-08 Intro Text	---	

Direct Deposit Refund Errors

(Stats. 2008, ch. 234)[9]

Program Background

Franchise Tax Board (FTB) processes approximately four million Direct Deposit Refund (DDR) requests each year, with roughly 60,000 DDRs rejections due to incorrect routing or account numbers. FTB reissues a rejected DDR to the taxpayer in the form of a paper refund warrant by US Mail. Annually, FTB receives approximately 450 requests to research missing DDRs. These missing deposits generally are found in the taxpayer's bank account; however, some DDRs are found erroneously deposited in the account of a third party. This type of errant deposit is called a misdirected DDR.

In some cases, FTB can request a financial institution either to return the DDR to FTB or to move it to the correct taxpayer's account, resolving the issue. FTB is unable to resolve approximately 20 cases of misdirected DDRs each year. Less than $50,000 is involved on an annual basis. The dollar amount will grow each year with greater public use of DDRs.

Federal and state laws allow the government to recover an erroneous refund. An erroneous refund is due to an error made by the government, such as a refund made in the wrong amount or to the wrong person. A misdirected DDR is not an erroneous refund because the taxing agency has followed the taxpayer's instructions.

Current subpoena powers are ineffective because service on an account holder is required before a financial institution can provide account information to FTB. Since the department only has account and routing information, with no statutory authority to obtain the identity of the third-party account holder from a financial institution, it cannot serve the account holder.

Existing Federal/State Law

Existing federal law allows a taxpayer to designate one or more accounts at a financial institution for direct deposit of their federal tax refund. However, the Internal Revenue Service (IRS) assumes no responsibility if the taxpayer or their tax preparer puts an incorrect account or routing number on a return.

The federal Electronic Funds Transfer Act does not require financial institutions to match taxpayer names with the names on an account designated for direct deposit. Financial institutions are required to resolve problems related to electronic funds transfer (EFT) errors in instances where the error is attributable to the financial institution or a failure within the Fedwire® Services system. Federal law specifies what constitutes an error. A misdirected DDR does not qualify as an EFT error. With limited exceptions, federal financial privacy laws prohibit a financial institution from divulging the personal information of account holders without a civil or criminal subpoena or a court order.

Existing state law allows a taxpayer to designate one or more accounts at a financial institution for direct deposit of their state tax refund. FTB can recover an erroneous refund if FTB issues a notice and demand for repayment of the erroneous refund within two years from when the refund is made or during the period within which FTB may mail a notice of proposed deficiency assessment, whichever period expires later. FTB may recover any erroneous refund, including accrued interest, in an action brought in a court of competent jurisdiction in the County of Sacramento.

[9] AB 2249 (Niello) – Assembly passed bill on May 8, 2008, with a 75 Aye/0 Noe vote. Senate passed bill July 14, 2008, with amendments with 38 Aye/0 Noe vote. Assembly concurred with Senate amendments on July 15, 2008, with a 76 Aye/0 Noe vote. Bill to enrollment on July 15, 2008. Bill enrolled and to Governor on July 22, 2008. Governor signed bill August 1 and bill enacted on August 4, 2008.

Except under specified conditions, the California Right to Financial Privacy Act (CRPA) prohibits an officer, employee, or agent of a state agency or department from requesting or receiving from a financial institution the financial information of a customer. CRPA generally requires that a consumer notice be sent to the account holder prior to the delivery of an administrative subpoena before the financial institution can release account information, including the name of the account holder.

One express exception to CRPA requires a financial institution to provide specified public retirement systems with the names and addresses of accounts of a customer who received direct deposit transfers from the retirement system after the date of his or her death.

A taxpayer may seek to recover a misdirected deposit through civil litigation in a small claim or superior court. Once the taxpayer receives a judgment, the taxpayer can execute the judgment through warrants, as provided in the California Code of Civil Procedure.

Reasons for Change

This act assures that taxpayers receive their refunds and to maintain taxpayer confidence in electronic direct deposit, which is the fastest and most economical method for the state to issue tax refund.

Explanation of Provision

This act defines a misdirected refund to mean a direct deposit refund that was deposited in the account of a person other than the taxpayer entitled to the refund. A misdirected refund is not a refund caused by FTB error, which is an erroneous refund.

This act requires a financial institution to provide contact information of any co-owner, cosigner, or any other person who had access to funds in an account following the date of the direct deposit upon FTB's written certification that all of the following have occurred:

- A taxpayer filed a tax return authorizing direct deposit refund with an incorrect financial institution account or routing number resulting in all or a portion of the refund not being received, directly or indirectly, by the taxpayer due the refund;
- The direct deposit refund was not returned to FTB, and
- The refund was deposited directly on a specified date into the account of an accountholder of the financial institution who was not entitled to receive the refund.

This act authorizes a credit for the misdirected refund to the taxpayer once the taxpayer, upon written request by the board, provides FTB with one or more of the following affidavits:

- The taxpayer notified the financial institution that the taxpayer, tax preparer, or electronic return originator entered an incorrect financial institution account or routing number and the state issued refund was directly deposited into an account not owned, directly or indirectly, by the taxpayer entitled to the refund.
- Neither the taxpayer nor the taxpayer's representative has custody or control, directly or indirectly, over the account at the financial institution that received the direct deposit refund.
- Neither the taxpayer nor the taxpayer's representative has received reimbursement of the refund money from any source.

This act authorizes FTB to mail a notice and demand for repayment to the recipient of a misdirected refund. Effective on the date the notice and demand for repayment is mailed to the recipient; the taxpayer's account would be credited for the amount of the misdirected refund.

This act provides that if the account is closed, the financial institution is to provide the name and address of the person who closed the account.

Once identifying information is obtained from the financial institution, this act applies existing erroneous refund remedies to a misdirected refund. In order for the erroneous refund remedies to apply, the following must occur:

- A taxpayer filed a tax return that designated one or more direct deposit refunds
- The taxpayer, tax preparer or electronic return originator entered an incorrect financial institution account or routing number that resulted in all or a portion of the refund not being received, directly or indirectly, by the taxpayer due the refund.
- The taxpayer did not receive the refund.
- The recipient of the misdirected refund was not entitled to the refund.

The act contains intent language that the remedies provided in the act to recover a misdirected refund may only occur after all other avenues to recover the misdirected refund have been exhausted. This act applies to misdirected refunds deposited on or after January 1, 2009.

At the request of the author, this act inserts changes to the California Right to Financial Privacy Act enacted by the Legislature in 2005, but that were subsequently chaptered out in 2006. These changes do not impact FTB and are not discussed in this analysis.

Effective Date

This act became effective January 1, 2009, and is specifically operative for misdirected refunds deposited on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 2249 Chaptered Text	AB 2249 Leg Chng 8-05	---
AB 2249 Enrolled Text	---	---
AB 2249 5-28-2008 Amd Text	AB 2249 5-28-08 Amd	AB 2249 Asm Flr 3d 5-28-2008 Amd AB 2249 Sen Flr 3d 5-28-08 Amd AB 2249 SRT 5-28-08 Amd AB 2249 Sen Bnk & Fin 5-28-2008 Amd
AB 2249 2-20-2008 Intro Text	AB 2249 2-20-2008 Intro	AB 2249 Asm Approp 2-20-08 Intro AB 2249 ART 2-20-2008 Intro AB 2249 Asm Bnk & Fin 2-20-08 Intro

FOR INFORMATION ONLY

2006 Related Legislation	
Bill Text Link	**Committee/Floor Analysis**
AB 618 Chaptered Text	---
AB 618 Enrolled Text	---
AB 618 8-07-2006 Amd Text	AB 618 Asm Flr Concur 8-07-2006 Amd AB 618 Sen Flr 3d 8-07-2006 Amd
AB 618 6-20-2006 Amd Text	AB 618 Sen Flr 3d 6-20-2006 Amd AB 618 Sen Pub Sfty 6-20-2006 Amd
AB 618 6-05-2006 Amd Text	AB 618 Sen Bnk & Fin 6-05-2006 Amd
AB 618 1-04-2006 Amd Text	AB 618 Asm Flr 3d 1-04-2006 Amd AB 618 Asm Pub Sfty 1-04-2006 Amd
AB 618 2-17-2005 Intro Text	AB 618 Asm Pub Sfty 2-17-2005 Intro AB 618 Asm Pub Sfty 2-17-2005 Intro
2005 Related Legislation	
Bill Text Link	**Committee/Floor Analysis**
SB 1018 Chaptered Text	---
SB 1018 Enrolled Text	---
SB 1018 7-13-2005 Amd Text	SB 1018 Sen Flr Unfin Bus 7-13-2005 Amd SB 1018 Sen Flr Unfin Bus 7-13-2005 Amd SB 1018 Sen Flr Unfin Bus 7-13-2005 Amd SB 1018 Sen Flr 3d 7-13-2005 Amd
SB 1018 7-11-2005 Amd Text	SB 1018 Asm Flr 3d 7-11-2005 Amd
SB 1018 5-10-2005 Amd Text	SB 1018 Asm Jud 5-10-2005 Amd APTBA SB 1018 Asm Aging & Long Term Care 5-10-2005 Amd SB 1018 Asm Jud 5-10-2005 Amd SB 1018 Sen Flr 3d 5-10-2005 Amd
SB 1018 2-22-2005 Intro Text	SB 1018 Sen Jud 2-22-2005 Intro SB 1018 Sen Pub Sfty 2-22-2005 Intro

State Agencies Provide Information to PERS Administration Board Regarding Employees Who Are Not Members of PERS

(Stats. 2008, ch. 261)[10]

Existing State Law

With specified exceptions, a person who enters into employment with the State becomes a member of the California Public Employee Retirement System (CalPERS). In addition to other classifications, part-time, seasonal, or temporary employees are ineligible for automatic membership in CalPERS unless certain requirements are met. Those requirements include, but are not limited to the following:

- The individual is already a member.
- The individual position requires regular, part time service for one year or longer with an equivalent of at least an average of 20 hours a week.

CalPERS determines that employment is on a seasonal, limited-term, on-call, emergency, substitute, or other irregular basis that is compensated and meets one of several specified conditions.

Other exceptions to automatic CalPERS membership include, but are not limited to, inmates, independent contractors, student assistants employed in state colleges, employees whose wages are paid through federal funds, and members of a teachers retirement system.

The Franchise Tax Board (FTB) provides a monthly report that includes a retirement code indicator on every employee to the State Controller's Office (SCO). The SCO provides required retirement membership data to PERS.

Reasons for Change

This act assists CalPERS in determining member eligibility sooner and to identify individuals who automatically should become members to reduce the number of arrears calculations

Explanation of Provision

This act requires a state agency to provide CalPERS, upon request, with information relating to employees not enrolled in the system for purposes of assisting CalPERS to carry out the administration of the system. The agency would be required to provide this information in the same manner the agency provides similar information to members of the system. This act requires that any information provided to CalPERS would be treated as confidential by CalPERS and may not be divulged by a CalPERS employee to anyone other than the individual or his or her authorized representative.

Effective Date

This act was effective and operative January 1, 2009.

[10] AB 2202 (Caballero) – Assembly passed bill on May 5, 2008, with a 74 Aye/1 Noe vote. Senate passed bill July 14, 2008, with a 32 Aye/2 Noe vote. Bill enrolled and to Governor on July 22, 2008. Governor signed bill August 4, 2008.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 2202 Chaptered Text	AB 2202 Leg Chng 8-06	---
AB 2202 Enrolled Text	---	---
AB 2202 4-02-08 Amd Text	AB 2202 4-02-08 Amd	AB 2202 Sen Flr 3d 4-02-08 Amd AB 2202 Sen Pub Emp & Ret 4-02-08 Amd AB 2202 Asm Flr 3d 4-02-08 Amd AB 2202 Asm Approp 4-02-08 Amd AB 2202 Asm Pub Emp, Ret, & SS 4-02-08 Amd
AB 2202 3-24-08 Amd Text	AB 2202 3-24-08 Amd	---
AB 2202 2-20-08 Intro Text	AB 2202 2-20-08 Intro	---

Mortgage Forgiveness Debt Relief

(Stats. 2008, ch. 282)[11]

Program Background

Cancellation of Debt

If a taxpayer borrows money from a commercial lender and the lender later cancels ("forgives") the debt, the taxpayer may have to include the cancelled amount as income for tax purposes. When the taxpayer borrowed the money, the loan proceeds were not required to be included in income because the taxpayer had an obligation to repay the lender. When that obligation is subsequently extinguished, in whole or in part, the amount received as loan proceeds (or the amount extinguished, if less than the entire loan) is often reportable as income because there is no longer an obligation to repay the lender. The lender is usually required to report the amount of Cancellation of Debt (COD) to the taxpayer and the Internal Revenue Service on a Form 1099-C, Cancellation of Debt.

Example: A taxpayer borrows $10,000 then defaults on the loan after paying back $2,000. If the lender is unable to collect the remaining debt, the lender may cancel the remaining $8,000 of debt, which may be considered taxable income.

When COD Income is Taxable

While COD income is generally includable as taxable income, there are some exceptions:

- *Bankruptcy*: Debts discharged through bankruptcy are not considered taxable income.
- *Insolvency*: If a taxpayer is insolvent when the debt is cancelled, some or all of the cancelled debt may not be taxable. A taxpayer is insolvent when the taxpayer's total debts are more than the fair market value of the taxpayer's total assets at the time of the discharge.
- *Certain farm debts*.
- *Non-recourse loans*: A non-recourse loan is a loan for which the lender's only remedy in case of default is to repossess the property being financed or used as collateral. That is, the lender cannot pursue the borrower personally in case of default. Forgiveness of a non-recourse loan resulting from a foreclosure does not result in COD income. However, it may result in other tax consequences, as the discharged amount is treated as an amount realized and may result in capital gain.

Note: Section 580b of the California Code of Civil Procedure provides that indebtedness incurred to purchase a home in California is non-recourse debt. Therefore, in general, first mortgages in California are non-recourse debt. If a California homeowner refinances that debt, or takes out a home equity loan, the refinanced indebtedness or the home equity loan is generally recourse debt.

Existing Federal/State Law

Federal Law

Gross income includes income that is realized by a debtor from the discharge of indebtedness, subject to certain exceptions for debtors in Title 11 bankruptcy cases, insolvent debtors, certain student loans, certain farm indebtedness, and certain real property business indebtedness (Internal Revenue Code (IRC) §§ 61(a)(12) and 108). In cases involving discharges of indebtedness that are excluded from gross income under the exceptions to the general rule, taxpayers generally reduce certain tax attributes, including basis in property, by the amount of the discharge of indebtedness.

[11] SB 1055 (Machado) – Senate passed bill on March 24, 2008, with a 34 Aye/0 Noe vote. Assembly passed bill August 13, 2008, with amendments, with a 76 Aye/1 Noe vote. Senate concurred with Assembly amendments on August 19, 2008, with a 39 Aye/0 Noe vote. Bill enrolled and to Governor September 17, 2008. Governor signed and bill enacted September 25, 2009.

The amount of discharge of indebtedness excluded from income by an insolvent debtor not in a Title 11 bankruptcy case cannot exceed the amount by which the debtor is insolvent. In the case of a discharge in bankruptcy or where the debtor is insolvent, any reduction in basis may not exceed the excess of the aggregate bases of properties held by the taxpayer immediately after the discharge over the aggregate of the liabilities immediately after the discharge (IRC §1017).

For all taxpayers, the amount of discharge of indebtedness generally is equal to the difference between the adjusted issue price of the debt being cancelled and the amount used to satisfy the debt. For example, assume a taxpayer who is not in bankruptcy and is solvent owns a principal residence subject to a $200,000 mortgage debt. If the creditor forecloses and the home is sold for $180,000 in satisfaction of the debt, the debtor has $20,000 of income from the discharge of indebtedness.

The Mortgage Forgiveness Debt Relief Act Of 2007 (P.L. 110-142)[12], Enacted December 20, 2007

The Mortgage Forgiveness Debt Relief Act of 2007 (the Act) excludes from gross income any discharge of indebtedness income due to a discharge of indebtedness for a qualified principal residence occurring on or after January 1, 2007, and before January 1, 2010. Qualified principal residence indebtedness means acquisition indebtedness (within the meaning of IRC §163(h)(3)(B)), up to $2,000,000. Acquisition indebtedness for a principal residence generally means indebtedness incurred in the acquisition, construction, or substantial improvement of the principal residence of an individual and secured by the residence. It also includes refinancing of such debt to the extent the amount of the refinancing does not exceed the amount of the indebtedness being refinanced.[13]

If, immediately before the discharge, only a portion of a discharged indebtedness is qualified principal residence indebtedness, the exclusion applies only to so much of the amount discharged as exceeds the portion of the debt that is not qualified principal residence indebtedness. Thus, assume that a principal residence is secured by an indebtedness of $1 million, of which $800,000 is qualified principal residence indebtedness. If the residence is sold for $700,000 and $300,000 debt is discharged, then only $100,000 of the amount discharged may be excluded from gross income under this provision. The remaining $200,000 of discharged debt would be included in the taxpayer's gross income.

The individual's adjusted basis in their principal residence is reduced by the amount excluded from income under the Act. Under the Act, the exclusion does not apply to a taxpayer in a Title 11 case; instead, the present-law exclusion applies. In the case of an insolvent taxpayer not in a Title 11 case, the exclusion under the Act applies unless the taxpayer elects to have the present-law exclusion apply.

State Law

COD Income from the Discharge of Qualified Principal Residence Indebtedness

Currently, California does not conform to the Mortgage Forgiveness Debt Relief Act of 2007.

The California personal income tax return starts with federal adjusted gross income (AGI) and requires adjustments to be made for differences between federal and California law. An adjustment relating to income from the discharge of qualified principal residence indebtedness is required under current law. A taxpayer excluding income from the discharge of qualified principal residence indebtedness on the federal individual income tax return is required to increase AGI on the taxpayer's California personal income tax return by the amount of the federal exclusion.

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[12] The Mortgage Forgiveness Debt Relief Act of 2007 (P.L. 110-142)

[13] The term "principal residence" has the same meaning as the home sale exclusion rules under IRC section 121. Refer to federal Treasury Regulation section 1.121-1 for the facts and circumstances used to determine "principal residence."

Estimated Tax

Individuals are generally required to pay their estimated California income tax in four installments spread over the taxable year. For example, 2007 calendar-year taxpayers were required to pay 25% of their estimated tax by April 15, 2007; the next 25% by June 15, 2007; the next 25% by September 15, 2007, with the final 25% due by January 15, 2008. Any withholding is treated as a payment of estimated tax, and the total withholding for the year is generally considered as having been paid in four equal installments.

Special rules exist for farmers and fishermen and for taxpayers whose income fluctuates significantly from one installment period to the next.

A penalty is imposed for the underpayment of estimated tax. The penalty is generally computed by multiplying three factors: (1) the underpayment; (2) the interest rate;[14] and (3) the number of days each installment is underpaid.

The amount of the underpayment for the taxable year is the difference between the amount of tax shown on the return for the taxable year and the amount of estimated tax paid. Generally, the amount of tax shown on the return for the taxable year is divided by four, which is the amount of estimated tax due in each of the four installments. Thus, the amount of the underpayment for each installment is the estimated tax due for that quarter less the amount actually paid.

Exceptions to the penalty exist and if any are met, the penalty does not apply. Exceptions include the following:

- If tax liability is less than $200;
- If no tax liability exists in prior taxable year; or
- If total withholding plus estimated tax payments total 90% of tax shown on the current year return or 100% of tax shown on the prior year's return.

Reasons for Change

This act provides some financial relief to homeowners who have found themselves the victims of the recent sub-prime mortgage crisis.

Explanation of Provision

This act generally conforms California law to the federal Mortgage Forgiveness Debt Relief Act of 2007, which provides for an exclusion from gross income for qualified debt forgiveness on a principal residence, up to a maximum of $2 million.

In General

This act excludes from gross income a discharge of indebtedness for a taxpayer's qualified principal residence income for up to $250,000 ($125,000 in the case of a married/RDP individual filing a separate return) occurring on or after January 1, 2007, and before January 1, 2009.

Qualified principal residence indebtedness means acquisition indebtedness (within the meaning of IRC §163(h)(3)(B)), up to $800,000[15] ($400,000 in the case of a married/registered domestic partner (RDP) individual filing a separate return).

If, immediately before the discharge, only a portion of a discharged indebtedness is qualified principal residence indebtedness, the exclusion applies only to so much of the amount discharged as exceeds the

[14] California conforms to the federal interest rate provided in IRC §6621.
[15] Under federal law, the maximum amount of qualified principal residence indebtedness is $2 million.

portion of the debt that is not qualified principal residence indebtedness, up to $250,000 ($125,000 in the case of a married/RDP individual filing a separate return).

Penalty and Interest Waiver

This act explicitly provides that no penalties or interest shall be assessed on COD income resulting from the discharge of qualified residence indebtedness during the 2007 taxable year.

Effective Date

As a tax levy, this act became effective upon enactment September 25, 2008, and is specifically operative for discharges of qualified principal residence indebtedness occurring after January 1, 2007, and before January 1, 2009.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 1055 Chaptered Text	SB 1055 Leg Chng 8-07	---
SB 1055 Enrolled Text	---	---
SB 1055 8-11-08 Amd Text	SB 1055 8-11-08 Amd	SB 1055 Sen Approp Unf Bus 8-11-08 Amd SB 1055 Sen Rules Unf Bus 8-11-08 Amd SB 1055 Asm Flr 3d 8-11-08 Amd
SB 1055 8-05-08 Amd Text	SB 1055 8-05-08 Amd SB 1055 8-05-08 Amd	SB 1055 Asm Approp 8-05-08 Amd
SB 1055 4-22-08 Amd Text	SB 1055 4-22-08 Amd	SB 1055 ART 4-22-08 Amd SB 1055 ART Susp Vote Only 4-22-08 Amd
SB 1055 2-25-08 Amd Text	SB 1055 2-25-2008 Amd	SB 1055 2-25-08 Sen Approps Amd
SB 1055 1-07-08 Intro Text	SB 1055 1-07-08 Intro	SB 1055 1-07-08 SRT Intro SB 1055 Sen Flr 3d 1-07-08 Intro

Taxpayer Advocate Penalty Relief/Modify Group Return Provisions/Other State Tax Credit Claims/Real Estate Withholding for Certain Non-CA Entities/Eliminate Double Inclusion of Income/Increase Threshold for Imposing Estimate Tax Penalty

(Stats. 2008, ch. 305)[16]

Reasons for Change

This act does the following:

- Make filing state returns more convenient for nonresidents,
- Ensure that tax is collected on payments to certain nonresident individuals and businesses from the sale of California real property,
- Provide parity in treatment of the Other State Tax Credit (OSTC),
- Give taxpayers monetary relief from certain Franchise Tax Board (FTB) staff errors,
- Reduce the number of estimated tax penalty notices sent by the department for small penalty amounts and save resources for the department, taxpayers, and tax professionals, and
- Provide relief and fair treatment to certain entities that may have the same income taxed twice and to clarify existing law to increase compliance and reduce taxpayer conflicts and misinterpretations.

Explanation of Provisions

MODIFY GROUP RETURN PROVISIONS

Program Background

Electing individuals included in group nonresident returns are taxed at the highest marginal rate (9.3%) without deductions. Individuals with more than $1,000,000 in California taxable income are ineligible to be included in a group nonresident return because their taxable income in excess of $1,000,000 would need to be taxed at the highest marginal rate plus the additional 1% (mental health tax) rate, for a total of 10.3%.

For tax year 2005, the department received approximately 3,300 group nonresident returns on behalf of an estimated 68,000 nonresidents. Group nonresident returns may not be filed electronically. After initial processing, the nonresident returns are sent to the Filing Enforcement Unit where member and income information is manually keyed.

Existing State Law

State law imposes tax on the entire taxable income of residents of California and upon the taxable income of nonresidents derived from sources within California. In California, rather than statutes explicitly establishing rules to source income, a body of case law prescribes source rules and the relevant California statute delegates to FTB the authority to prescribe sourcing rules by regulation.

These regulations provide that income from services is sourced to California to the extent the services are performed in this state. When nonresidents perform services in California and other states, compensation for these services is sourced to California by using various apportionment methods that reasonably reflect the value of the California services compared to the total services performed. These regulations are consistent

[16] AB 3078 (Committee on Revenue and Taxation) – Assembly passed bill on May 27, 2008, with a 74 Aye/0 Noe vote. Senate passed bill August 22, 2008, with amendments with 35 Aye/1 Noe vote. Assembly concurred with Senate amendments August 28, 2008, with a 76 Aye/0 Noe vote. Bill enrolled and to Governor September 18, 2008. Governor signed bill and bill enacted September 25, 2008.

with existing law and federal statutes that limit or preempt California's ability to tax the California source income of nonresidents.

Nonresidents who receive a distributive or pro rata share of income from a pass-through entity (partnerships[17] or S corporations) deriving income from California sources or doing business in California are allowed to elect to have the pass-through entity file a group nonresident return on their behalf.[18] In addition, California allows filing of a group nonresident return for electing nonresident directors of a corporation. Electing nonresident directors would be those individuals that receive California source wages, salaries, fees, or other compensation from that corporation for director services, including attendance at board of directors' meetings that take place in this state.

State law imposes tax on individuals, corporations, and certain business entities, and each is treated as a distinct entity for tax purposes.

All of the following conditions must be met to be eligible for inclusion in a group nonresident return:

- The partner/member/shareholder/director must be an individual. Estates, trusts, partnerships, LLCs, C corporations, S corporations, or other business entities cannot be included in the group nonresident return.
- The individual must be a full-year nonresident of California.
- The individual must have California taxable income of $1,000,000 or less.

Once these requirements are satisfied, the business entity files the group nonresident return and pays the tax on behalf of the electing nonresidents. The return must be for a calendar year and, except for an S corporation shareholder, must include at least two electing nonresidents. An S corporation may file a group nonresident return on behalf of one shareholder. The business entity must use Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, for the group nonresident return. A nonresident individual can be included on more than one group nonresident return.

Nonresidents subject to the mental health tax (taxable income in excess of $1,000,000) are ineligible to be included in a group nonresident return.

Explanation of Provision

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

- Entities with less than two electing nonresident individuals, and
- Individuals with more than $1,000,000 in California taxable income. The highest marginal rate for these individuals would be 10.3%.

Effective Date

This provision became effective January 1, 2009, and specifically operative for taxable years beginning on or after January 1, 2009, for returns filed on or after January 1, 2010.

[17] This includes limited liability companies classified as partnerships, registered limited liability partnerships, and foreign limited liability partnerships.
[18] RTC §18535

CLOSING LOOPHOLES IN REAL ESTATE WITHHOLDING FOR CERTAIN NON-CALIFORNIA TAXPAYERS

Existing State Law

Revenue and Taxation Code (RTC) section 18662 requires withholding at source from payments to nonresident individuals and business entities with no permanent place of business in California.

Real Estate Withholding – Partnerships and S Corporations

Existing law generally requires withholding at source at the rates shown in the following table. Generally, payments of California source income to nonresident individuals and non-California business entities are subject to withholding at source. Sales of California real property by both resident and nonresident individuals and corporations without a permanent place of business following the sale are subject to withholding. Sales of California real property by partnerships, regardless of whether they are California or non-California partnerships, are *not* subject to withholding. Under FTB's general withholding authority, non-California partnerships are subject to 7% withholding on California source payments received; however, for a payment to a non-California partnership from a real estate sale, no withholding is required.

For S corporation sellers of California real property, California taxes the gain from that sale twice. First, the gain is taxed under the corporate franchise tax at the S corporation entity-level rate. Second, the income from the sale that is passed through to the shareholders as their pro-rata share is taxed to the shareholder at the personal income tax rate. However, for S corporations that elect the alternative withholding amount based on gain, the applicable withholding rate is limited to the entity-level tax rate. See Appendix A.

Real Estate Withholding—Installment Sales

For a sale of real property that qualifies as an installment sale under the Internal Revenue Code (IRC), the buyer is allowed to elect to withhold on each of the installment payments over the life of the installment contract, rather than withholding and remitting the entire withholding amount at the time of sale.

Withholding Administration

RTC section 18668 provides additional withholding requirements and administrative procedures, including penalties and interest for failing to withhold or to remit withholding.[19]

Explanation of Provision

This provision does *all* of the following:

- Requires non-California partnerships to be subject to withholding on California real property sales at a rate of 3.33% of sales proceeds or 9.3% of gain.
- Specifies that the entity-level and pass-through withholding rates for S corporations be combined to determine the alternative withholding rate to be applied to the gain on the sale. The withholding rate would equal the sum of the S corporation rate and the maximum individual rate (1.5% + 9.3% = 10.8%).
- Requires the buyer to withhold on each installment sale payment if the sale is structured as an installment sale.
- Clarifies that withholding amounts can be collected from the withholding agent if the agent fails to withhold or fails to remit the withheld amounts to FTB, and provide a clear method for assessment and collection of unremitted withholding.

[19] Because the withholding statutes were modified over a period of decades, sometimes conforming to federal provisions in piecemeal fashion, a few procedural provisions regarding the assessment and collection of amounts required to be withheld are duplicative, internally inconsistent, and contradictory.

Effective/Operative Date of Provision

This provision became effective on January 1, 2009, and would apply to real property sales occurring on or after that date.

PERIOD OF LIMITATIONS FOR OTHER STATE TAX CREDIT (OXTC) CLAIMS FOR CREDIT OR REFUND

Existing Federal/State Law

Federal Law

No comparable federal credit for taxes paid exists at the state level. State income taxes paid by individuals are generally deductible as an itemized deduction. Federal law provides a credit for taxes paid to foreign countries, and the statute of limitations (SOL) for claiming that credit is ten years from the date for filing the return for the year in which the foreign taxes were actually paid or accrued.[20]

State Law

Statute of Limitations

In General – RTC section 19306 states that no credit or refund shall be allowed after four years from the original due date of the return, four years from the date the return was filed (if filed within the extension period), or one year from the date of the overpayment, whichever is later, unless before the expiration of that period a claim for refund is filed by the taxpayer.

Special Statutes - Other provisions of the RTC extend the SOL for filing a claim for refund for specific circumstances, including claims based on federal changes, overpaid partnership items, bad debts or worthless securities, and financially disabled taxpayers.

General Other State Tax Credit Provisions - Subject to certain conditions and limitations:

- A California resident may claim a credit for income taxes paid to another state on income that has a source within the other state and is income that is taxable by California,
- An estate or trust treated as a resident of California and also a resident of another state may claim a credit for income taxes paid to another state on income that is taxable by California,
- A California resident beneficiary of an estate or trust may claim a credit for income taxes paid to another state on income that is taxable by California,
- Partners (including members of a limited liability company classified as a partnership) and S corporation shareholders may claim a credit for their share of income taxes paid by the respective entity to another state on income that is taxable by California,
- Nonresidents may claim the credit for net income taxes paid to another state if the income being taxed by the other state is also taxable by California, and the state of residence does either of the following:

    1. Does not tax the income of California residents that is derived from sources within that state, or
    2. Allows California residents to claim a credit for taxes paid to California on income that is also being taxed by that state.

[20] The federal foreign tax credit rules are found in IRC §§901-908, while the applicable statute of limitations is found in IRC §6511(d)(3).

Period Credit May be Claimed and Other Provisions

- Regulation section 18001-1, subsection (b), provides that the credit may be taken either at the time of filing returns or "subsequently." A taxpayer claiming the credit must provide a receipt showing proof of payment of taxes to the other state. A taxpayer must also provide a certified copy of the other state return or a certified copy of the notice assessing or proposing to assess the additional tax.
- Regulation section 18001-1, subsection (c), generally provides that if the net tax has been paid before a credit is claimed, a taxpayer must file a refund claim within four years from the date the return was filed, four years from the date the return was due (without regard to extensions), or one year from the date of the overpayment, whichever expires later.
- RTC section 18007 provides that if a taxpayer has paid taxes to another state, received a California OSTC based on those taxes, and the other state at any time refunds or credits any of the tax back to the taxpayer, the taxpayer shall immediately report that fact to FTB. RTC section 18008 provides that a tax equal to the credit allowed for the taxes credited or refunded by the other state is due and payable upon notice and demand from FTB.

Explanation of Provision

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

Effective Date

This provision became effective on January 1, 2009, and specifically applies to taxes paid to another state on or after that date.

TAXPAYER ADVOCATE EQUITY RELIEF

Program Background

The following situations have been identified as the specific instances where Franchise Tax Board (FTB) lacks affirmative statutory authority to resolve the consequences of the error. The taxpayer advocate estimates less than ten errors by FTB addressed by this provision are believed to be infrequent—the Advocate estimates less than ten occurrences per year. If a system error were to occur, significant numbers of taxpayers could be affected by the error.

- FTB lacks the ability to waive interest assessed due to a delay in processing. For example: A taxpayer files an amended return reporting additional income and tax, having paid the amount of tax originally reported on the return. The amended return is misplaced within the department and fails to be processed for several years. When the amended return is discovered and processed, it is determined that the taxpayer in fact does owe additional tax.
- FTB issues an invoice to the taxpayer for the unpaid tax and the accrued interest from the original due date of the original return to the date of the billing, including the period during which the amended return was not processed. Because the department lacks authority to waive interest accrued prior to the first billing, the taxpayer is responsible for that interest.
- A taxpayer follows directions provided in FTB forms or publications to prepare his/her return. Upon audit, it is determined that the taxpayer owes additional tax, penalty or addition to tax, and interest despite following the directions provided by FTB. Despite FTB error, the taxpayer is responsible for payment of the penalty or addition to tax and interest.
- System limitations or workload constraints prevent FTB from providing timely billing to a taxpayer, resulting in the accrual of additional interest to the taxpayer. Several years ago, FTB implemented a new accounting system for business entities returns. In the process of transitioning from the old system to the new system, numerous accounts remained on the

old system, with balances due, but no billing issued. Approximately ten months later, those accounts were incorporated into the new system, and bills were issued for balances due that included the accrued interest. The delayed billings prevented taxpayers from resolving their accounts without accruing interest.

Existing Federal/State Law

Federal Law

IRS has authority to abate any unpaid portion of tax or any liability related to erroneously assessed tax. IRS also has discretion to abate any interest assessed that is attributable to any unreasonable error or delay by IRS when performing a managerial or ministerial act, but only if no significant aspect of the error or delay can be attributed to the taxpayer involved. The term “managerial act” means an administrative act that occurs during the processing of a taxpayer's case involving the temporary or permanent loss of records or the exercise of judgment or discretion relating to management of personnel. The term “ministerial act” means a procedural or mechanical act that does not involve the exercise of judgment or discretion and that occurs during the processing of a taxpayer’s case after all prerequisites of the act, such as conferences and review by supervisors, have taken place. The error or delay must have occurred before the taxpayer was contacted in writing about the deficiency or payment.

A taxpayer can obtain written advice from IRS on tax issues by providing a written request with accurate information regarding the tax issue. In response to such requests, IRS issues Private Letter Rulings, Technical Advice Memorandums, and other forms of written advice that are taxpayer-specific. If a taxpayer relies on certain forms of written advice obtained from IRS and it is later found that the tax reported on their return is incorrect because IRS advice was incorrect, IRS can abate any portion of any penalty or addition to tax assessed that is attributable to the erroneous written advice furnished to a taxpayer. The taxpayer must have reasonably relied on the advice, and the portion of the penalty or addition to tax must not have resulted from the taxpayer’s failure to provide adequate or accurate information.

Subject to exceptions, IRS is required to suspend interest on any amounts owed if IRS fails to provide a notice to the taxpayer stating the amount owed and the basis of the amount owed within 18 months from when the return was filed, or if later, the date it is due without regard to extension. Beginning with notices issued after November 25, 2007, IRS is required to issue notices stating the amount owed and basis of the amount owed within 36 months from when the return was filed, or if later, the date it is due without regard to extension.

The Treasury Secretary, in consultation with the IRS Oversight Board and the IRS Commissioner, appoints the National Taxpayer Advocate (NTA). The NTA reports directly to the Commissioner. The NTA’s functions are as follows:

- Assist taxpayers in resolving problems with IRS,
- Identify areas where taxpayers have problems dealing with IRS,
- Propose changes to IRS administrative practices to mitigate identified problems, and
- Identify potential legislative changes to mitigate identified problems.

The NTA can issue Taxpayer Assistance Orders (TAOs) if it determines that the taxpayer will suffer a significant hardship because of IRS administration of the tax laws or regulations. A TAO can require IRS to do the following:

- Release levied property of the taxpayer,
- Cease specified action with respect to the taxpayer, and
- Suspend an applicable statute of limitations while the taxpayer’s case is under review by the National Advocate.

Although the NTA can make recommendations to IRS to assist resolving the taxpayer's issue, the NTA is unable to adjust a taxpayer's account.

State Law

Existing law allows FTB staff to abate penalties, fees, additions to tax, or interest in the following narrow circumstances:

- Where interest is attributable to an unreasonable delay by FTB in performing a ministerial or managerial act. Interest abatement is limited to interest that accrues after FTB's first contact with the taxpayer regarding the tax year.
- Where FTB issues an assessment based on an IRS assessment and IRS abates interest due to an IRS delay.
- Where a taxpayer is experiencing an extreme financial hardship caused by a significant disability or catastrophic circumstance, FTB can abate interest.
- Where a taxpayer reasonably relied on the written advice of a legal ruling by the Chief Counsel.
- Where penalties carry reasonable cause exceptions. Reasonable cause means generally that despite ordinary business care and prudence, the action that caused the penalty or addition to tax occurred. Not all penalties carry a reasonable cause exception.
- Where FTB fails to provide a notice to the taxpayer stating the amount owed and the basis of the amount owed within 18 months from when the return was filed, or if later, the date it is due without regard to extension.
- Where the Chief Counsel rescinds the application of tax shelter penalties or fees as authorized.

State law authorizes FTB to reimburse taxpayers for bank charges and fees that result from the issuance of an erroneous levy. Reimbursement includes fees and overdraft charges incurred because of the erroneous levy.

Taxpayers can appeal an action of FTB to the State Board of Equalization (BOE). If a taxpayer loses the appeal at BOE and has paid the tax, the taxpayer can either file a lawsuit for refund of taxes or file a claim with the Victim Compensation and Government Claims Board (VCGCB). Taxpayers can file claims with VCGCB for refund of tax or losses caused by the action or inaction of a state agency. The claimant is required to submit a $25 processing fee with the claim form, and if awarded the claim, the responsible state agency is liable for the claim plus an additional 15% surcharge.

Under state law, the Advocate reports directly to the Executive Officer of FTB and is responsible for coordinating the resolution of taxpayer complaints and problems. The Advocate is empowered to review actions taken on a taxpayer's account and take prompt action including placing a hold on actions where a taxpayer has suffered or will suffer irreparable loss from the board action.

Explanation of Provision

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

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

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

The Chief Counsel of FTB must concur with the decision to grant relief when the total reduction in penalties, fees, additions to tax, or interest exceeds $500. If the total relief granted exceeds $7,500, the Chief Counsel must notify the three-member Franchise Tax Board. The threshold amounts are to be adjusted annually by the percentage change in the California Consumer Price Index. Relief at any level requires a public record to be placed in the office of the Executive Officer of FTB that includes the following information:

- The taxpayer's name,
- The total amount involved,
- The amount payable or refundable due to the error or delay, and
- A summary of why the relief is warranted.

A refund may be paid as a result of the relief granted only if the written claim for refund is received by the Advocate within the applicable statute of limitations. Any decision for relief is not subject to review in any administrative or judicial proceeding and no other entity may participate in the grant or denial of relief.

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

Effective Date

This provision became effective on January 1, 2009, and specifically operative for requests for consideration that are received by the Advocate on or after January 1, 2009, regardless of the tax year involved. The provision would, by its own terms, be repealed as of January 1, 2012, unless a later enacted statute deletes or extends that date.

INCREASE THE PIT ESTIMATED TAX PENALTY THRESHOLD

Program Background

For the 2006 taxable year the, department identified approximately 42,428 returns that had a tax liability ranging from $200 to $1,000 that were assessed the estimated tax penalty. The table below provides a breakdown of the average penalty amount for tax liabilities ranging from $200 to $1,000.

Total Tax Liability Ranges	Total Return Count	Total Estimate Penalty Amount	Average Penalty Amount
$200 - $300	5,160	$ 46,640.07	$ 9.04
$301 - $400	5,629	$ 63,635.79	$11.30
$401 - $500	5,641	$ 71,955.48	$12.76
$501 - $600	5,217	$ 72,289.49	$13.86
$601 - $700	5,170	$ 72,248.74	$13.97
$701 - $800	5,162	$ 82,242.27	$15.93
$801 - $900	5,347	$ 91,447.76	$17.10
$901 - $1000	5,102	$ 91,191.08	$17.87
Totals	**42,428**	**$591,650.68**	**$13.94**

Existing Federal/State Law

Federal Law

Existing federal law requires estimated tax payments if both of the following apply:

- Tax is expected to be at least $1,000 after subtracting withholding and credits.

- Withholding and credits are expected to be less than the smaller of 90% of current year’s tax or 100% (110% for higher income taxpayers[21]) of prior years' tax.

For any PIT underpayment of estimated tax, federal law provides that a penalty equal to the current interest rate[22] will be assessed on the underpaid amount for the period of underpayment. Federal law provides an exception to the penalty if the total tax after applied credits is less than $1,000.

State Law

California law generally conforms to federal law and requires estimated tax payments if both of the following apply:

- Tax is expected to be at least $200 ($100 if married/RDP filing separate) after subtracting withholding and credits.
- Withholding and credits are expected to be less than the smaller of 90% of current years' tax, or 100% (110% for higher income taxpayers) of prior years' tax.

California law also provides an exception to the penalty. If the total tax after application of credits is less than $200 ($100 if married/RDP filing separate) for the preceding or current taxable year, a penalty is not assessed.

Explanation of Provision

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

EFFECTIVE/OPERATIVE DATE OF SOLUTION

This provision became effective on January 1, 2009, and specifically operative for taxable years beginning on or after January 1, 2009.

PROVIDE RULES FOR THE ELIMINATION FROM INCOME OF CERTAIN DIVIDENDS RECEIVED

Program Background

A literal reading of existing law’s dividend elimination statute[23] could be interpreted to mean the payor and/or payee must be California taxpayers before the payee may eliminate dividends received from the payor. The department has determined that the statute is unclear on its face. It has been the department’s practice to allow the dividend elimination provided by the current statute regardless of whether the payor and payee are taxpayer or “non-taxpayer” members of the California combined unitary group return. Taxpayer members of the combined unitary group are those entities that are doing business in California or have qualified to do business in California and therefore are required to file a California tax return. “Non-taxpayer” members of the combined unitary group are members that have their business income included in the calculation of the combined group’s taxable income, but are separately considered by California as doing business solely outside of the state and not subject to California tax.

In addition, department staff views the existing dividend elimination statute as unclear whether earnings and profits, accumulated when the payor and payee were members of a combined group taxable only outside of California, would be used in the calculation of dividend elimination. It has been the department’s practice to allow the dividend elimination provided by the current statute regardless of whether the payor or payee had previously filed California returns, as long as the payor and payee filed as members of a comparable unitary business outside of California when the earnings arose.

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[21] Adjusted gross income for the prior year was more than $150,000 or $75,000 if married filing separate.
[22] The interest rate charged on underpayments of the personal income tax is 8% for the period of 1/01/08 to 6/30/08.
[23] RTC §25106

Existing Federal/State Law

Federal Law

Under existing federal law, a group of affiliated corporations that meet certain ownership requirements may elect to file a single tax return called a consolidated tax return. In general, if a corporation owns at least 80 percent[24] of another corporation or of multiple corporations, those corporations are considered an affiliated group and may file a consolidated tax return.

A 100-percent dividend elimination is allowed to the dividend recipient (payee) if, at the close of the day on which the dividend is received, the payor and payee are members of the same affiliated group[25] and had been affiliated members for each day of the year preceding the date the dividends are paid.[26]

A federal regulation provides relief for dividends paid between a member of an affiliated group and a newly organized holding company of the group. The regulation provides an exception to the general rule for a newly formed corporation that fails the statute's requirement of being a member of the affiliated group for each day of the year preceding the date the dividend was paid.[27]

State Law

Under existing state law, a group of affiliated corporations, determined by a 50 percent rather than the federal 80 percent ownership test, is referred to as a "commonly controlled group." Corporations in a commonly controlled group that meet certain requirements must file on a combined basis if they are part of a unitary business.

In addition, department staff views the current dividend elimination statute as unclear whether earnings and profits, accumulated when the payor and payee were members of a combined group taxable only outside of California, would be used in the calculation of dividend elimination. It has been the department's practice to allow the dividend elimination provided by the current statute regardless of whether the payor and payee filed as members of a comparable unitary business outside of California when the earnings arose.

Explanation of Provision

This provision makes the following changes to existing law:

- Conforms to the department's practice that if dividends are paid from income earned in years prior to the payor and payee becoming members of a California combined group filing, dividend elimination would be allowed if the earnings and profits are from a return filed on a comparable combined unitary basis in another state that included the payor and payee.
- Conforms to the department's practice that dividends paid out of the earnings and profits of a non-taxpayer member of the California combined unitary group to another non-taxpayer member of the group are eliminated from business income.
- Expands the dividend elimination rules to include dividends paid from a member of a combined unitary group to a newly formed member of the combined unitary group if the recipient has been a member of the combined unitary group from its formation to its receipt of the dividends. (See Appendix B below for an example of current law and the proposed law relating to this provision.)
- Adds anti-abuse provisions relating to newly formed members of a combined unitary group.
- Grants FTB legislative rulemaking authority to adopt appropriate regulations relating to the purpose of the section, which is to prevent taxation of dividends received by a member of a unitary group where

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[24] At least 80% of the stock possessing the voting power and at least 80% of the total value of all the classes of stock IRC § 1504(a)(2).
[25] IRC §243(b)(1)(A)
[26] Treas. Reg. §1.243-4(a)(2)(ii)
[27] Treas. Reg. §1.243-4(a)(5)

those dividends were paid from income previously described of the unitary business by another member of the same unitary group.

This provision applies to a member of a unitary combined group whether doing business wholly within California or doing business within and outside of the state.

Effective Date

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

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 3078 Chaptered Text	AB 3078 Leg Chng 8-08	---
AB 3078 Enrolled Text	---	---
AB 3078 8-11-08 Amd Text	AB 3078 8-11-08 Amd	AB 3078 Asm Flr 3d Concurrence 8-11-08 Amd AB 3078 Sen Flr 3d 8-11-08 Amd
AB 3078 8-06-08 Amd Text	AB 3078 8-06-08 Amd	AB 3078 Sen Flr 3d 8-06-08 Amd AB 3078 Sen Flr 3d 8-06-08 Amd
AB 3078 8-04-08 Amd Text	---	---
AB 3078 7-02-08 Amd Text	AB 3078 7-02-08 Amd	---
AB 3078 6-19-08 Amd Text	AB 3078 6-19-08 Amd	AB 3078 SRT 6-19-08 Amd
AB 3078 4-23-08 Amd Text	AB 3078 4-23-08 Amd	AB 3078 Asm Flr 3d 4-23-08 Amd AB 3078 Asm Approp 4-23-08 Amd
AB 3078 3-13-08 Intro Text	AB 3078 3-13-08 Intro	AB 3087 ART 3-13-08 Intro

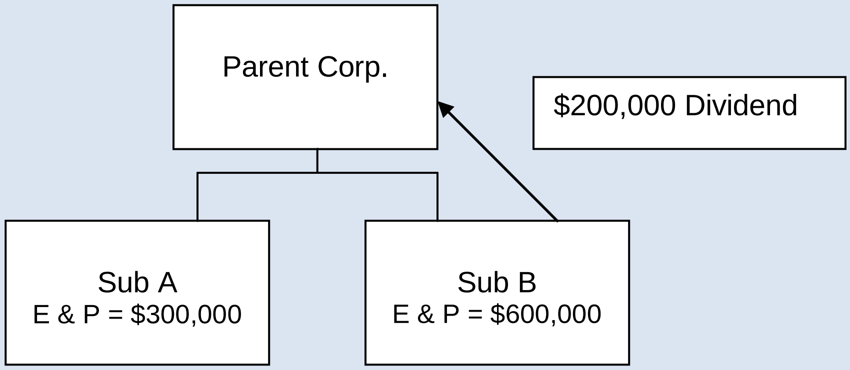
APPENDIX A

Transaction	Resident Individuals Tax rate: 9.3%	Nonresident Individuals Tax rate: 9.3%	Non-CA Partnerships Tax rate depends on partner entity type	Non-CA C Corps Tax rate: 8.84% or 10.84%	Non-CA S Corps	
					Entity-level Tax rate: 1.5% or 3.5%	**Share-holder Tax rate: 9.3% of pro rata share**
Payments of CA source income to nonresidents	Not applicable	7% of income	7% of income and 7% of distribution to partners	7% of income	7% of income	7% of distribution
Sale of CA real property						
➢ *Default withholding based on sale proceeds*	3.33%	3.33%	Not applicable	3.33%	3.33%	
➢ *Taxpayer elects withholding based on gain*	9.3%	9.3%	Not applicable	8.84% or 10.84% for financial corps	1.5% or 3.5% for financial corps	

APPENDIX B

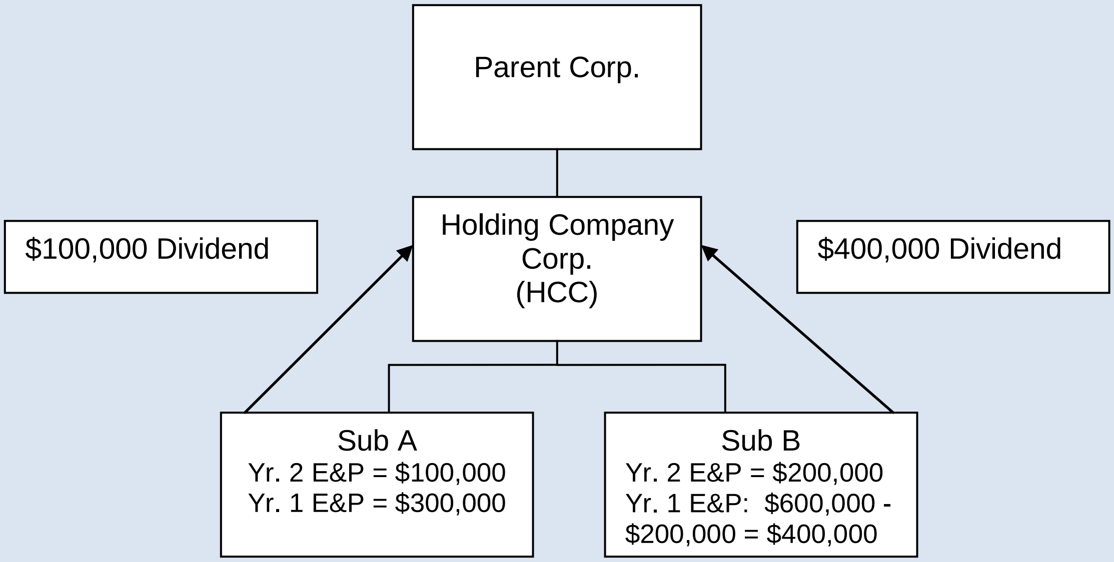
The Year 1 example below illustrates current law and the Year 2 example shows how the unintended inclusion of the same income twice may occur between members of a unitary business when a corporation is newly formed.

Current Law Example: Year 1



In Year 1, Parent Corp. and Subs A and B were members of a combined unitary business. Sub A had current year earnings and profits (E & P) of $300,000 and Sub B had E & P of $600,000. Sub B paid Parent Corp. a dividend equal to $200,000, and Parent Corp. eliminated the $200,000 dividend from taxable income because the dividends were paid out of earnings and profits when Parent Corp. and Sub B were members of a unitary business.

Newly Formed Corporation Example: Year 2



In Year 2, Parent Corp. forms a new subsidiary, HCC. Sub A pays HCC a $100,000 dividend and Sub B pays HCC a $400,000 dividend. The combined business income of Parent Corp, Sub A, and Sub B is included in a California combined unitary business. HCC may eliminate from income the $100,000 dividend received from Sub A because the dividend was paid from earnings and profits (year 2) when HCC and Sub A were members of a combined unitary business. HCC may eliminate from income only $200,000 of the $400,000 dividend received from Sub B because only $200,000 of the dividend was paid from earnings and profits accumulated when HCC and Sub B were members of a combined unitary business (year 2). The other $200,000 of dividend was paid from Sub B's earnings and profits from a year before HCC became a member of the combined unitary business (Year 1).

The Year 2 example illustrates when the inclusion of the same income twice may occur if a dividend is paid to a newly formed corporation in the combined unitary business. The dividends distributed in year 2 from earnings and profits were already included in income for year 1, but would again be included in income in year 2 because the newly formed corporation HCC and Sub B were not members of the unitary business in year 1. If instead HCC was never created and the dividends had been paid directly to Parent Corp., Parent Corp. could have eliminated from income the dividends received from Sub B because Parent Corp. was a member of the unitary business in Year 1.

California Ovarian Cancer Research Fund

(Stats. 2008, ch. 324)[28]

Program Background

Eleven voluntary contribution funds appeared on the 2007 California personal income tax (PIT) return. Total contributions to these funds have varied from approximately $3.4 million for the 1989 taxable year to approximately $4.2 million[29] for the 2006 taxable year.

Existing State Law

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the return.

With the following exceptions, VCFs remain on the PIT 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 meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

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

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify certain specified fund administrators in writing of the minimum contribution amount required for the next 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 with respect to taxable years beginning January 1 of that calendar year.

General voluntary contribution provisions specify the following for all VCFs:

- Any contribution amounts designated prior to a fund’s repeal must continue to be transferred and disbursed to that voluntary contribution fund.
- If a designee is unspecified, the contribution amount is transferred to the General Fund after reimbursing costs incurred by the FTB.
- If an individual designates contributions to more than one fund and the amount designated is more than the amount available, the contributions would be allocated on a pro rata basis to the designated funds.

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[28] AB 1935 (Fuller) – Assembly passed bill on April 21, 2008, with a 75 Aye/1 Noe vote. Senate passed bill July 14, 2008, with amendments with a 32 Aye/3 Noe vote. Assembly concurred with Senate amendments July 15, 2008, with a 77 Aye/0 Noe vote. Bill enrolled and to Governor on September 16, 2008. Governor signed bill and bill enacted on September 26, 2008.

[29] Amount contributed through December 27, 2007.

The general provisions also provide a formal queuing process for adding new contingent[30] voluntary contribution funds to the tax return. Upon enactment, new contingent funds are added to the tax return when an existing fund is removed or when FTB determines space exists on the income tax return.

Reasons for Change

This act provides a mechanism to make charitable contributions that would fund research for the cure, screening, and prevention of ovarian cancer.

Explanation of Provision

This act establishes the California Ovarian Cancer Research Fund (fund) and adds it to the PIT return as a voluntary contribution fund. Taxpayers would be able to designate their own funds, not tax liability, for contribution to the fund on their PIT returns in full dollar amounts of $1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the initial return for the taxable year and, once made, are irrevocable. A charitable contribution would be allowed for a contribution made pursuant to this bill that would be subject to the itemized deduction rules applicable to individuals.

This act specifies that if the taxpayer’s payments and credits reported on the PIT return fail to exceed the tax liability, the designation on the return would be treated as if no designation has been made.

This act requires FTB to revise the tax return to include a designation space for the fund beginning with the first taxable year another voluntary contribution fund is removed. This fund was first placed on the PIT return for the 2008 taxable year.

Beginning with contributions made in 2010, this act would require the fund to meet a minimum contribution amount for each calendar year. The “minimum contribution amount for a calendar year” is defined as $250,000 for contributions made in 2010 or an amount adjusted for inflation for contributions made in subsequent years. This fund would be repealed if contributions fail to meet the minimum contribution amount requirement.

The fund will last appear on the 2012 PIT return filed on or after January 1, 2013, unless a later enacted statute deletes or extends that date or the fund fails to meet the minimum contribution requirement.

This act requires FTB to do the following by September 1 of the second calendar year and by September 1 of each subsequent calendar year that the fund appears on the tax return:

- Determine the minimum contribution amount required to be received during the next calendar year for the fund to remain on the return.
- Notify the University of California in writing of the minimum contribution amount required for the next calendar year.
- Determine if the amount of contributions estimated to be received during the current calendar year will equal or exceed the minimum contribution amount required for that calendar year.

This act requires the State Controller to transfer money designated for this fund by taxpayers from the PIT Fund to the California Ovarian Cancer Research Fund. Upon appropriation by the Legislature, the monies from this fund would be allocated as follows:

1. FTB and the Controller for reimbursement of costs incurred in administering the fund.

[30] A contingent voluntary contribution designation is a voluntary contribution fund that includes language that the fund may not be added to the personal income tax return until another voluntary contribution fund is removed.

2. The University of California for the support of ovarian cancer research, for which up to 5% of the money allocated to it may be used for costs associated with administering the ovarian cancer research program.

Effective Date

This act became effective January 1, 2009, and operative on or after that date for taxable years beginning with 2008.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 1935 Chaptered Text	AB 1935 Leg Chng 8-09	---
AB 1935 Enrolled Text	---	---
AB 1935 6-10-08 Amd Text	AB 1935 6-10-08 Amd	AB 1935 Asm Flr Concurrence 6-10-08 Amd AB 1935 Sen Flr 3d 6-10-08 Amd
AB 1935 5-05-08 Amd Text	AB 1935 5-05-08 Amd	---
AB 1935 4-01-08 Amd Text	AB 1935 4-01-08 Amd	AB 1935 SRT 4-01-08 Amd AB 1935 Asm Flr 3d 4-01-08 Amd AB 1935 Asm Approp 4-01-08 Amd
AB 1935 2-12-08 Intro Text	AB 1935 2-12-08 Intro	AB 1935 ART 2-12-08 Intro

Municipal Shelter Spay-Neuter Fund

(Stats. 2008, ch. 328)[31]

Program Background

Eleven voluntary contribution funds appeared on the 2007 California personal income tax (PIT) return. Total contributions to these funds have varied from approximately $3.4 million for the 1989 taxable year to approximately $4.2 million[32] for the 2006 taxable year.

Existing State Law

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the return.

With the following exceptions, VCFs remain on the PIT 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 meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

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

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify certain specified fund administrators in writing of the minimum contribution amount required for the next 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 with respect to taxable years beginning January 1 of that calendar year.

General voluntary contribution provisions specify the following for all VCFs:

- Any contribution amounts designated prior to a fund's repeal must continue to be transferred and disbursed to that voluntary contribution fund.
- If a designee is unspecified, the contribution amount is transferred to the General Fund after reimbursing costs incurred by the FTB.
- If an individual designates contributions to more than one fund and the amount designated is more than the amount available, the contributions would be allocated on a pro rata basis to the designated funds.

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[31] AB 2291 (Mendoza) – Assembly passed bill on May 15, 2008, with a 64 Aye/10 Noe vote. Senate passed bill August 18, 2008, with amendments with a 29 Aye/9 Noe vote. Assembly concurred with Senate amendments on August 19, 2008, with a 65 Aye/9 Noe vote. Bill enrolled and to Governor on September 18, 2008. Governor signed bill and bill enacted on September 26, 2008.

[32] Amount contributed through December 27, 2007.

The general provisions also provide a formal queuing process for adding new contingent[33] voluntary contribution funds to the tax return. Upon enactment, new contingent funds are added to the tax return when an existing fund is removed or when FTB determines space exists on the income tax return.

Reasons for Change

This act provides a mechanism to make charitable contributions that would fund municipal shelter spay or neuter programs.

Explanation of Provision

This act establishes and adds the Municipal Shelter Spay-Neuter Fund (fund) to the PIT return as a voluntary contribution. Taxpayers are able to designate their own funds, not tax liability, for contribution to the fund on their PIT returns in full dollar amounts of $1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the original return for the taxable year and, once made, are irrevocable. A deduction, subject to the itemized deduction rules applicable to individuals, would be allowed for a contribution.

This act defines “municipal shelter” as a city or county animal control agency or shelter and provides rules for awarding grants to municipal shelters. Contributions to the fund, which are allocated to the Department of Food and Agriculture, would be used to provide grants to municipal shelters for low cost or free spay-neuter services.

This act specifies that if the taxpayer’s payments and credits reported on the PIT return fail to exceed the tax liability, the designation on the return would be treated as if no designation has been made.

This act requires FTB to revise the tax return to include a designation space for the fund beginning with the first taxable year another voluntary contribution fund is removed, thus making this fund a contingent voluntary contribution fund.

Beginning with contributions made in 2010, this act requires the fund to meet a minimum contribution amount for each calendar year. The “minimum contribution amount for a calendar year” is defined as $250,000 for contributions made in 2010 or an amount adjusted for inflation for contributions made in subsequent years. The law authorizing designations to this fund would be repealed if contributions fail to meet the minimum contribution amount.

The fund first appeared on the 2008 PIT return and will last appear on the 2012 return filed on or after January 1, 2013, unless a later enacted statute deletes or extends that date or the fund fails to meet the minimum contribution requirement.

This act requires FTB to do the following by September 1 of each subsequent calendar year that the fund appears on the tax return:

- Determine the minimum contribution amount required to be received during the next calendar year for the fund to remain on the return.
- Notify the Department of Food and Agriculture in writing of the minimum contribution amount required for the next calendar year.
- Determine if the amount of contributions estimated to be received during the current calendar year will equal or exceed the minimum contribution amount required for that calendar year.

[33] A contingent voluntary contribution designation is a voluntary contribution fund that includes language that the fund may not be added to the personal income tax return until another voluntary contribution fund is removed.

FTB would be required to notify the State Controller of both the amount of money paid by taxpayers in excess of their tax liability and amount of refund money they have contributed to the Fund.

This act requires the State Controller to transfer money designated for this fund by taxpayers from the Personal Income Tax Fund to the Municipal Shelter Spay-Neuter Fund. Upon appropriation by the Legislature, the monies from this fund would be allocated as follows:

1. FTB and the Controller for reimbursement of costs incurred in administering the fund.
2. The Department of Food and Agriculture for allocation of grants to eligible municipal shelters.

Effective Date

This act became effective January 1, 2009, and operative on or after that date for taxable years beginning with 2008.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 2291 Chaptered Text	AB 2291 Leg Chng 8-10	---
AB 2291 Enrolled Text	---	---
AB 2291 8-13-08 Amd Text	AB 2291 8-13-08 Amd	AB 2291 Asm Concurrence 8-13-08 Amd AB 2291 Sen Flr 3d 8-13-08 Amd
AB 2291 8-04-08 Amd Text	AB 2291 8-04-08 Amd	AB 2291 Sen Flr 3d 8-04-08 Amd AB 2291 Sen Flr 3d 8-04-08 Amd
AB 2291 6-18-08 Amd Text	AB 2291 6-18-08 Amd	AB 2291 SRT 6-18-08 Amd
AB 2291 4-21-08 Amd Text	AB 2291 4-21-08 Amd	AB 2291 Asm Flr 3d 4-21-08 Amd AB 2291 Asm Approp 4-21-08 Amd
AB 2291 4-08-08 Amd Text	AB 2291 4-08-08 Amd	AB 2291 ART 4-08-08 Amd
AB 2291 3-28-08 Amd Text	AB 2291 3-28-08 Amd	---
AB 2291 2-21-08 Intro Text	AB 2291 2-21-08 Intro	---

California Cancer Center Research Fund

(Stats. 2008, ch. 330)[34]

Program Background

Eleven voluntary contribution funds appeared on the 2007 California personal income tax (PIT) return. Total contributions to these funds have varied from approximately $3.4 million for the 1989 taxable year to approximately $4.2 million[35] for the 2006 taxable year.

Existing State Law

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the return.

With the following exceptions, VCFs remain on the PIT 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 meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

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

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify certain specified fund administrators in writing of the minimum contribution amount required for the next 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 with respect to taxable years beginning January 1 of that calendar year.

General voluntary contribution provisions specify the following for all VCFs:

- Any contribution amounts designated prior to a fund's repeal must continue to be transferred and disbursed to that voluntary contribution fund.
- If a designee is unspecified, the contribution amount is transferred to the General Fund after reimbursing costs incurred by the FTB.
- If an individual designates contributions to more than one fund and the amount designated is more than the amount available, the contributions would be allocated on a pro rata basis to the designated funds.

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[34] AB 2518 (Torrico) – Assembly passed bill on April 21, 2008, with a 77 Aye/1 Noe vote. Senate passed bill August 22, 2008, with amendments, with a 32 Aye/3 Noe vote. Assembly concurred with Senate amendments July 15, 2008, with a 77 Aye/0 Noe vote. Bill enrolled and to Governor September 16, 2008. Governor signed bill and bill enacted on September 26, 2008.

[35] Amount contributed through December 27, 2007.

The general provisions also provide a formal queuing process for adding new contingent[36] voluntary contribution funds to the tax return. Upon enactment, new contingent funds are added to the tax return when an existing fund is removed or when FTB determines space exists on the income tax return.

Reasons for Change

This act provides a mechanism to make charitable contributions that would fund research relating to the detection, treatment, and prevention of cancer.

Explanation of Provision

This act establishes and adds the California Cancer Center Research Fund (fund) to the PIT return as a VCF. Taxpayers are able to designate their own funds, not tax liability, for contribution to the fund on their PIT returns in full dollar amounts of $1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the original return for the taxable year and, once made, are irrevocable. A deduction, subject to the itemized deduction rules applicable to individuals, would be allowed for a contribution.

Contributions to the fund, which are allocated to cancer research centers or registries, would be used to conduct research on cancer detection, treatment, and prevention.

This act specifies that if the taxpayer's payments and credits reported on the PIT return fail to exceed the tax liability, the designation on the return would be treated as if no designation has been made.

This act requires FTB to revise the tax return to include a designation space for the fund beginning with the first taxable year another voluntary contribution fund is removed, thus making this fund a contingent voluntary contribution fund.

Beginning with contributions made in 2010, this act requires the fund to meet a minimum contribution amount for each calendar year. The "minimum contribution amount for a calendar year" is defined as $250,000 for contributions made in 2010 or an amount adjusted for inflation for contributions made in subsequent years. The law authorizing designations to this fund would be repealed if contributions fail to meet the minimum contribution amount.

The fund first appeared on the 2008 PIT return and will last appear on the 2012 return filed on or after January 1, 2013, unless a later enacted statute deletes or extends that date or the fund fails to meet the minimum contribution requirement.

This act requires FTB to do the following by September 1 of each subsequent calendar year that the fund appears on the tax return:

- Determine the minimum contribution amount required to be received during the next calendar year for the fund to remain on the return.
- Notify the Regents of the University of California in writing of the minimum contribution amount required for the next calendar year.
- Determine if the amount of contributions estimated to be received during the current calendar year will equal or exceed the minimum contribution amount required for that calendar year.

FTB would be required to notify the State Controller of both the amount of money paid by taxpayers in excess of their tax liability and amount of refund money they have contributed to the fund.

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[36] A contingent voluntary contribution designation is a voluntary contribution fund that includes language that the fund may not be added to the personal income tax return until another voluntary contribution fund is removed.

This act requires the State Controller to transfer money designated for this fund by taxpayers from the Personal Income Tax Fund to the fund. Upon appropriation by the Legislature, the monies from this fund would be allocated as follows:

1. FTB and the Controller for reimbursement of costs incurred in administering the fund.
2. The Regents of the University of California for grants for the purposes of conducting cancer research by expanding education and providing prevention and awareness activities. Administrative costs incurred by the Regents to administer the grants would be reimbursed from the fund.

Effective Date

This act became effective January 1, 2009, and operative on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 2518 Chaptered Text	AB 2518 Leg Chng 8-11	---
AB 2518 Enrolled Text	---	---
AB 2518 8-04-08 Amd Text	AB 2518 8-04-08 Amd	AB 2518 Asm Flr 3d 8-04-08 Amd AB 2518 Sen Flr 3d 8-04-08 Amd AB 2518 Sen Flr 3d 8-04-08 Amd
AB 2518 7-10-08 Amd Text	AB 2518 7-10-08 Amd	AB 2518 Sen Flr 3d 7-10-08 Amd
AB 2518 6-16-08 Amd Text	AB 2518 6-16-08 Amd	---
AB 2518 6-05-08 Amd Text	AB 2518 6-05-08 Amd	AB 2518 SRT 6-05-08 Amd
AB 2518 3-24-08 Amd Text	AB 2518 3-24-08 Amd	AB 2518 Asm Flr 3d 3-24-08 Amd AB 2518 Asm Approp 3-24-08 Amd
AB 2518 2-21-08 Intro Text	AB 2518 2-21-08 Intro	AB 2518 ART 2-21-08 Intro

FTB Disclosure Reciprocal Agreement with Cities/Extend Repeal Date to January 1, 2014 and Allow Requests for any Other Information by Affidavit/City or County Provide Business Tax Program Information to FTB

(Stats. 2008, ch. 345)[37]

Program Background

Franchise Tax Board (FTB) compiles information from many different sources including employers, financial institutions, and federal and state entities for purposes of assuring compliance with the state's income tax laws. When FTB receives information indicating that a tax return should be filed for a taxable year, but has no record of a return, FTB may contact the individual taxpayer to request that the taxpayer file a return or explain why no return is required. When a taxpayer is required to file a return, but fails to do so, FTB is authorized to assess tax based on estimated income from all available sources.

During fiscal years 1993 through 1999, California law required that each city maintaining a computerized record keeping system or that has access to such a system and that assesses a business license tax or fee annually furnish FTB a list of all businesses subject to tax in the preceding year. In 1999, this statute was repealed.

Acknowledging the historical revenue generating performance of city business tax data as a part of its Tax Gap Strategies, FTB requested and received funding to initiate a program to purchase city business tax data for 2005 and 2006 from local government agencies. Fifteen cities contracted with FTB for 2005 data at a cost of $123,100 to provide lists of businesses in their jurisdictions that were assessed a tax or issued a license. Thirty-eight cities provided city business tax data for the 2006 tax year at a cost of $167,000. The department anticipates that approximately $1 million would be derived from this source of data each year.

Existing State Law

Existing state law prohibits the disclosure of any taxpayer returns and return information, except as specifically authorized by statute. Generally, disclosure is authorized to other state tax agencies, federal tax agencies, other state tax agencies, and the Multistate Tax Commission for tax administration purposes only. Tax officials of political subdivisions of the state may obtain tax information only upon affidavit. At the time the tax official requests the tax information, they must provide a copy of the affidavit to the taxpayer whose information is sought, and upon request, make the obtained information available to that person. Unauthorized disclosure of state tax returns and return information is a misdemeanor and improper disclosure of federal tax returns and return information is a felony.

FTB is authorized to provide limited specified tax return information to cities for the administration of local city business license requirements. The information is limited to only those taxpayers within the city jurisdiction and includes the following:

- Taxpayer Name,
- Taxpayer Address,
- Taxpayer Social Security Number or Taxpayer Identification Number, and
- Principal Business Activity Code.

[37] SB 1146 (Cedillo) – Senate passed bill on May 8, 2008, with a 27 Aye/6 Noe vote. Assembly passed bill August 21, 2008, with amendments, with a 47 Aye/31 Noe vote. Senate concurred with Assembly amendments August 30, 2008, with a 26 Aye/12 Noe vote. Bill enrolled and to Governor September 17, 2008. Governor signed bill and bill enacted on September 26, 2008.

Information provided to the cities may be used by city employees only for city business tax purposes. FTB is required to execute an agreement with each participating city that, among other things, provides that the annual cost incurred by FTB to provide the city data is reimbursed by the city to FTB.

Reasons for Change

This act makes permanent the local government sharing provisions and takes advantage of efficiencies in the exchange of data between a city and FTB.

Explanation of Provisions

This act does the following:

- Enacts a requirement for cities that assess a business tax or require a license to furnish specified information on the business or license holder to FTB on an annual basis;
- Allows a city to enter into a reciprocal agreement to exchange city tax data for state income tax data and each entity would absorb its own costs for providing the data in lieu of reimbursement, and
- Provides that annual funding is to be included in amounts appropriated to FTB in the Budget Act to reimburse cities for actual costs, not to exceed $1.00 per usable record, adjusted annually for the implicit price deflator and add a repeal provision in the event a determination by the Commission on State Mandates that the reimbursement does not cover a city’s costs to provide data to FTB.

Enact a requirement for cities that assess a business tax or require a license to furnish specified information on the business or license holder to FTB on an annual basis

This act requires a city that assesses a city business tax or requires a city business license to furnish FTB, as requested by FTB on an annual basis, information collected in the course of administering the tax or license requirements. The information required would be limited to the following:

- Name of the business if a corporation, partnership, or limited liability company, or the owner’s name if a sole proprietorship,
- Business mailing address,
- Federal employer identification number, if applicable, or the business owner’s social security number,
- Standard Industry Classification Code (SIC) or North American Industry Classification Code (commonly referred to as “NAICS”),
- Business start date,
- Business cease date,
- City number, and
- Ownership type.

Information provided to FTB would be required to be on magnetic media, such as tapes or compact discs, through a secure electronic process, or in other machine-readable form, according to standards prescribed in regulations issued by FTB.

The cities that receive a request from FTB would begin providing information as soon as economically feasible, but no later than December 31, 2009. Use of the data would be limited to state tax enforcement or as otherwise authorized by law.

Cities would not be required to provide data to FTB if FTB fails to provide tax information to a city pursuant to a reciprocal agreement with the city for reasons other than a breach of confidentiality of data by the city.

Allow a city to enter into a reciprocal agreement to exchange city tax data for state income tax data and each party would absorb their own costs for providing the data in lieu of reimbursement

This act authorizes a city to enter into a reciprocal agreement with FTB to exchange tax data between the city and FTB. Reciprocal agreement is defined to mean an agreement to exchange information for tax administration purposes between tax officials of a city and FTB. Information provided by FTB to the city would be authorized for use in administration of the city business tax or as otherwise authorized by state or federal law. If a city enters into a reciprocal agreement with FTB, both parties in the agreement would be prohibited from obtaining reimbursement of the costs to provide the data. Each party would bear its own costs.

Provide that annual funding is to be included in amounts appropriated to FTB in the Budget Act to reimburse cities for actual costs, not to exceed $1.00 per usable record, adjusted annually for the implicit price deflator, and add a repeal provision in the event of a determination by the Commission on State Mandates that the reimbursement does not cover a city's costs to provide data to FTB

Reimbursement to cities for costs mandated by this act would be provided in the annual Budget Act beginning in the 2009/10 fiscal year for FTB to reimburse a city for the cost of submitting the information prescribed in this act. The reimbursement rate would be for actual costs incurred, not to exceed $1.00 per usable record submitted to FTB. The reimbursement amount would be adjusted annually in the Budget Act for the implicit price deflator.

If the Commission on State Mandates (Commission) determines that the costs mandated by the requirements of this act exceed the rate provided for reimbursement, the entire act would be repealed within 90 days following the date on which the Commission's determination becomes final. The repeal would be stayed if the Director of Finance files a written Notice of Intent to Appeal with the Commission within 90 days of the Commission's determination that the costs exceed the rate provided for in this act. The Notice of Intent to Appeal would consist of a written notice setting forth the intention of the Director of Finance to seek judicial review of the determination of the Commission. If, pursuant to the appeal, a California court of appellate jurisdiction determines that the costs mandated by the state exceed the amount of reimbursement, the act would be repealed 90 days after that determination is final.

Effective Date

This act became effective January 1, 2009. The provisions relating to city business tax reporting are operative for a city that receives a request for data from FTB that assesses a tax or requires a city business license on or after that date to the extent economically feasible, except that in no event may a city comply any later than December 31, 2009. The provisions related to FTB providing confidential tax data to cities and counties became operative on January 1, 2009.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 1146 Chaptered Text	SB 1146 Leg Chng 8-12	---
SB 1146 Enrolled Text	---	---
SB 1146 8-19-08 Amd Text	SB 1146 8-19-08 Amd	SB 1146 Sen Flr Unfin Bus 8-19-08 Amd SB 1146 Sen Flr 3d 8-19-08 Amd
SB 1146 8-08-08 Amd Text	SB 1146 8-08-08 Amd	SB 1146 Sen Flr 3d 8-08-08 Amd
SB 1146 7-02-08 Amd Text	SB 1146 7-02-08 Amd	SB 1146 Asm Approp 7-02-08 Amd
SB 1146 6-05-08 Amd Text	SB 1146 6-05-08 Amd	SB 1146 ART 6-05-08 Amd
SB 1146 4-29-08 Amd Text	SB 1146 4-29-08 Amd	SB 1146 Sen Flr 3d 4-29-08 Amd SB 1146 Sen Flr 3d 4-29-08 Amd SB 1146 Sen Flr 3d 4-29-08 Amd SB 1146 Sen Flr 3d 4-29-08 Amd
SB 1146 4-03-08 Amd Text	SB 1146 4-03-08 Amd Rev SB 1146 4-03-08 Amd	SB 1146 Sen Approp 4-03-08 Amd SB 1146 SRT 4-03-08 Amd
SB 1146 2-04-08 Intro Text	SB 1146 02-04-08 Intro	---

ALS/Lou Gehrig's Disease Research Fund

(Stats. 2008, ch. 354)[38]

Program Background

Eleven voluntary contribution funds appeared on the 2007 California personal income tax (PIT) return. Total contributions to these funds have varied from approximately $3.4 million for the 1989 taxable year to approximately $4.2 million[39] for the 2006 taxable year.

Existing State Law

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the return.

With the following exceptions, VCFs remain on the PIT 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 meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

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

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify certain specified fund administrators in writing of the minimum contribution amount required for the next 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 with respect to taxable years beginning January 1 of that calendar year.

General voluntary contribution provisions specify the following for all VCFs:

- Any contribution amounts designated prior to a fund's repeal must continue to be transferred and disbursed to that voluntary contribution fund.
- If a designee is unspecified, the contribution amount is transferred to the General Fund after reimbursing costs incurred by the FTB.
- If an individual designates contributions to more than one fund and the amount designated is more than the amount available, the contributions would be allocated on a pro rata basis to the designated funds.

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[38] SB 1502 (Steinberg) – Senate passed bill on May 27, 2008, with a 33 Aye/5 Noe vote. Assembly passed bill August 13, 2008, with amendments on with a 74 Aye/1 Noe vote. Senate concurred with Assembly amendments August 21, 2008 with a 31 Aye/3 Noe vote. Bill enrolled and to Governor September 17, 2008. Governor signed bill and bill enacted on September 26, 2008.

[39] Amount contributed through December 27, 2007.

The general provisions also provide a formal queuing process for adding new contingent[40] voluntary contribution funds to the tax return. Upon enactment, new contingent funds are added to the tax return when an existing fund is removed or when FTB determines space exists on the income tax return.

Reasons for Change

This act provides a mechanism to make charitable contributions that would fund research relating to the cause, cure, and prevention of amyotrophic lateral sclerosis (ALS), also known as Lou Gehrig's disease.

Explanation of Provision

This act establishes the ALS/Lou Gehrig's Disease Research Fund (fund), and adds it to the PIT return as a voluntary contribution fund. Taxpayers would be able to designate their own funds, not tax liability, for contribution to the Fund on their PIT returns in full dollar amounts of $1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the original return for the taxable year and, once made, are irrevocable. A deduction, subject to the itemized deduction rules applicable to individuals, would be allowed for a contribution made pursuant to this act.

This act specifies that if the taxpayer's payments and credits reported on the PIT return fail to exceed the tax liability, the designation on the return would be treated as if no designation has been made.

This act requires FTB, when another voluntary contribution fund is removed from the return, to revise the tax return to include a designation space for the Fund. The act provides language that the Legislature intends the Fund to appear on the personal income tax return as soon as possible.

Beginning with contributions made in the first calendar year the fund appears on the return, this act requires the fund to meet a minimum contribution amount for each calendar year. The "minimum contribution amount for a calendar year" is defined as $250,000 for contributions made in the second calendar year the fund appears on the return or an amount adjusted for inflation for contributions made in subsequent years. The law authorizing designations to this fund would be repealed if contributions made under this bill fail to meet the minimum contribution amount.

This act requires FTB to do the following by September 1 of the second calendar year the fund appears on the return and by September 1 of each subsequent calendar year that the Fund appears on the tax return:

- Determine the minimum contribution amount required to be received during the next calendar year for the fund to remain on the return.
- Notify the State Department of Public Health in writing of the minimum contribution amount required for the next calendar year.
- Determine if the amount of contributions estimated to be received during the current calendar year will equal or exceed the minimum contribution amount required for that calendar year.

Beginning with the third calendar year that the fund appears on the return, FTB would be required to adjust the minimum contribution amount as indexed for inflation by September 1 of each calendar year.

If the fund first appeared on the 2008 PIT return, it would remain on the PIT return until January 1, 2013, in this case the 2012 PIT return, unless a later enacted statute deletes or extends that date, and provided that it meets the annual minimum contribution requirement.

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[40] A contingent voluntary contribution designation is a voluntary contribution fund that includes language that the fund may not be added to the personal income tax return until another voluntary contribution fund is removed.

This act requires the State Controller to transfer money designated for the Fund by taxpayers from the PIT Fund to the Lou Gehrig's Disease Research Fund. Upon appropriation by the Legislature, the monies from this fund would be allocated as follow:

1. FTB and the Controller for reimbursement of costs incurred in administering the Fund.
2. The Department of Public Health for allocation to The Amyotrophic Lateral Sclerosis Association, an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, to provide grants to research the prevention, cure, screening, and treatment of ALS, and Department of Public Health for reimbursement of administration costs incurred for administering the grant program.

Effective Date

This act became effective January 1, 2009, and operative on or after that date for taxable years beginning with 2008.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 1502 Chaptered Text	SB 1502 Leg Chng 8-13	---
SB 1502 Enrolled Text	---	---
SB 1502 8-14-08 Amd Text	SB 1502 8-14-08 Amd	SB 1502 Sen Flr Unfin Bus 8-14-08 Amd SB 1502 Sen Flr 3d 8-14-08 Amd SB 1502 Asm Flr 3d 8-14-08 Amd
SB 1502 7-14-08 Amd Text	SB 1502 7-14-08 Amd	SB 1502 Asm Flr 3d 7-14-08 Amd SB 1502 Asm Approp 7-14-08 Amd
SB 1502 7-02-08 Amd Text	SB 1502 7-02-08 Amd	---
SB 1502 5-23-08 Amd Text	SB 1502 5-23-08 Amd	SB 1502 ART 5-23-08 Amd SB 1502 Sen Flr 3d 5-23-08 Amd
SB 1502 4-17-08 Amd Text	SB 1502 4-17-08 Amd	SB 1502 Sen Approp 4-17-08 Amd SB 1502 Sen Approp 4-17-08 Amd
SB 1502 4-03-08 Amd Text	SB 1502 4-03-08 Amd	SB 1502 SRT 4-03-08 Amd
SB 1502 2-21-08 Intro Text	SB 1502 2-21-08 Intro	---

Low-Income Housing Credit/Allocation to Partners According to Partnership Agreement

(Stats. 2008, ch. 382)[41]

Existing Federal/State Law

Existing federal tax law allows a tax low-income housing credit (LIHC) for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit amount varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized. The credit is claimed over ten years. The California Tax Credit Allocation Committee (CTCAC)[42] has the authority to oversee the process and allocate the federal credit.

Existing state tax law generally conforms to federal law with respect to the LIHC, except that the state LIHC is claimed over four taxable years, is limited to projects located in California, and is allocated in amounts equal to the sum of all the following:

- For calendar years ending 2002 and thereafter, $70 million increased by the percentage by which the Consumer Price Index (CPI), for the preceding calendar year, exceeds the CPI for the 2001 calendar year.
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

Existing federal and state income tax law requires a partner's distributive share of income, gain, loss, deduction, or credit to be determined in accordance with the partner's interest in the partnership by taking into account all facts and circumstances if one of the following occurs:

- The partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit, or
- The allocation to a partner under the agreement of income, gain, loss, deduction, or credit does not have substantial economic effect.

Reasons for Change

This act increases the pool of affordable housing investors and the demand for state tax credits.

Explanation of Provision

This act requires a project that receives a preliminary reservation of the LIHC on or after January 1, 2009, and before January 1, 2016, to be allocated to the partners of a partnership owning a low-income housing project, in accordance with a partnership agreement, regardless of how the federal LIHC is allocated to the partners or whether the allocation of the credit under the terms of the agreement has substantial economic effect.[43]

This act requires a deferral of any loss or deduction attributable to the sale, transfer, exchange, abandonment, or any other disposition of a partnership interest where the credit was allocated without substantial economic effect. The loss would be deferred until the first taxable year immediately following the end of the ten-year credit period during which the federal credit is allowed.

[41] SB 585 (Lowenthal) – Senate passed bill on January 30, 2008, with a 25 Aye/13 Noe vote. Assembly passed bill August 14, 2008, with amendments, with a 78 Aye/0 Noe vote. Senate concurred with Assembly amendments August 21, 2008, with a 37 Aye/1 Noe vote. Bill enrolled and to Governor September 17, 2008. Governor signed bill and bill enacted on September 27, 2008.

[42] CTCAC

[43] IRC §704(b) defines partner's distributive share and prohibits allocations that lack substantial economic effect.

The act permits the allocation of credits to a partner without substantial economic effect through taxable years beginning on or before January 1, 2016, at which time the bill's provisions generally become inoperative. However, the limitation on the claiming of abandonment losses continues until the expiration of the ten-year federal credit period for any credit allocated under this bill's provisions without regard to substantial economic effect.

This act contained double-jointing language that incorporated provisions from SB 1247 that would consolidate the Farmworker Housing Credit (FWHC) into the state LIHC. The double-jointing language allows an FWHC that does not have a corresponding federal LIHC to be allocated to partners lacking substantial economic effect, thereby creating abandonment losses without a ten-year “waiting period.”

Effective Date

This act is specifically operative for projects that receive a preliminary reservation of the state LIHC on or after January 1, 2009, and before January 1, 2016.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 585 Chaptered Text	SB 585 Legis Chng 8-14	---
SB 585 Enrolled Text	---	---
SB 585 8-08-08 Amd Text	SB 585 8-08-08 Amd	SB 585 Sen Flr Unfin Bus 8-08-08 Amd SB 585 SRT SR 29.10 8-08-08 Amd SB 585 Sen Flr 3d 8-08-08 Amd SB 585 Asm Flr 3d 8-08-08 Amd
SB 585 7-14-08 Amd Text	SB 585 7-14-08 Amd	SB 585 Asm Approps 7-14-08 Amd
SB 585 5-27-08 Amd Text	SB 585 5-27-08 Amd	SB 585 ART 5-27-08 Amd SB 585 Asm Housing & Comm Dev 5-27-08 Amd
SB 585 5-01-08 Amd Text	SB 585 5-01-08 Amd	---
SB 585 1-07-08 Amd Text	---	SB 585 Sen Flr 3d 1-07-08 Amd SB 585 Sen Flr 3d 1-07-08 Amd SB 585 Sen Trans & Housing 1-07-08 Amd
SB 585 2-22-07 Intro Text	---	---

Disaster Loss Deduction/Excess Loss Carryover/2007 Calendar Year/July 2007 Specified County Wildfires/October 2007 Riverside County Damaging Winds/May and June 2008 Specified County Wildfires/July 2008 Santa Barbara County Wildfires/Inyo County Rainstorms
(Stats. 2008, ch. 386)[44]

Program Background

Governor Arnold Schwarzenegger proclaimed on September 15 and October 21, 2007, a state of emergency declaring the wildfires that occurred in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties to be a state disaster. On October 23, 2007, President George W. Bush proclaimed the same counties to be a federal disaster.

On November 2, 2007, Governor Arnold Schwarzenegger proclaimed the wind damage that occurred in Riverside County in October 2007, to be a state disaster. President George W. Bush did not declare the Riverside County wind damage a federal disaster.

In May, June, July, and August 2008, Governor Arnold Schwarzenegger proclaimed a state of emergency, declaring wildfires that occurred in Butte, Humboldt, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Barbara, Santa Clara, Santa Cruz, Shasta, and Trinity Counties to be a state disaster. On June 28 and July 4, 2008, President George W. Bush declared these same counties, except for Humboldt County, to be in a federal emergency.

Governor Arnold Schwarzenegger proclaimed on July 15, 2007, a state of emergency declaring the July 2007, wildfire known as the “Inyo Complex Fire” and July 2008, rainstorms that occurred in Inyo County to be a state disaster. President George W. Bush did not declare the July 2007, Inyo County wildfire and July 2008, severe rainstorms a federal emergency.

Existing Federal/State Law

Federal/State Law

Under federal and state tax law, a business can deduct losses sustained during the taxable year.

Generally, federal and state laws allow an individual taxpayer with a non-business casualty/disaster loss that is not reimbursed, by insurance or otherwise, to deduct such losses to the extent that each loss exceeds $100 and aggregate net losses for the taxable year exceed 10 percent of adjusted gross income (AGI). 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. This election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal disaster tax law treatment. The election is not available for a Governor-only declared disaster until enabling state legislation has been enacted.

The federal National Disaster Relief Act of 2008[45] changed some of the tax rules pertaining to losses resulting from federally declared disasters for losses attributable to federally declared disasters declared in taxable years beginning January 1, 2008, and before January 1, 2010.

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[44] SB 1064 (Hollingsworth) – Senate passed bill on April 1, 2008, with a 36 Aye/0 Noe vote. Assembly passed bill August 20, 2008, with amendments, with a 79 Aye/0 Noe vote. Senate concurred with Assembly amendments August 29, 2008, with a 40 Aye/0 Noe vote. Bill enrolled and to Governor September 23, 2008. Governor signed bill and bill enacted on September 27, 2008.

[45] http://www.irs.gov/irs/article/0,,id=203056,00.html

- Allows all taxpayers, not just those who itemize, to claim the net disaster loss deduction regardless of the taxpayer's AGI.
- Removes the 10 percent of AGI limitation for net disaster losses.
- Provides a 5-year net operating loss (NOL) carryback for qualified disaster losses.
- Changes the amount by which all individual taxpayers must reduce their personal casualty or theft losses for each casualty event from $100 to $500. This applies to deductions claimed in 2009. The reduction amount returns to $100 for taxable years beginning December 31, 2009.

The special rules in effect in 2008 and 2009 for losses of personal use property attributable to federally declared disasters will not apply to losses occurring in 2010 and later years. Instead, these losses will be subject to the 10%-of-AGI limit and will be deductible only if deductions are itemized. These losses will continue to be subject to the $100-per-loss limit.

Under federal and state tax law, a disaster loss occurs when property is destroyed as a result of a fire, storm, flood, or other natural event in an area proclaimed to be a disaster by the President of the United States or, for state law purposes, by the Governor.

Under federal and state tax law, the taxpayer may elect to claim a disaster loss either in the year the loss occurs or in the year preceding the loss. This election allows the taxpayer to file an amended return immediately for the prior year. The deadline to elect and file an amended return based on federal tax law is before the due date of the return for the taxable year in which the disaster occurred. Existing state tax law extends the due date for making the election to six months after the due date of the original return. For state tax law purposes, this election may be made for any Presidentially-declared disaster prior to passage of any state legislation allowing special carryover treatment because California conforms to federal disaster tax law treatment. The election is not available for a Governor only declared disaster until enabling state legislation has been enacted.

State tax law identifies specific events as disasters that are then allowed special carry forward treatment for state tax purposes. That special treatment allows 100% of the excess disaster loss to be carried forward for up to fifteen taxable years. For individual losses, the same carry forward rules apply only if the total losses exceed ten percent of the individual's federal AGI.

Reasons for Change

This act provides immediate tax relief to individuals and businesses affected by the wildfires and damaging winds.

Explanation of Provision

This act added the wildfires that occurred in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties during calendar year 2007: damage that occurred in the Riverside County during October 2007, as a result of strong winds; and the wildfires that occurred in May, June, and July 2008, in Butte, Kern, Humboldt, Mariposa, Mendocino, Monterey, Plumas, Santa Barbara, Santa Clara, Santa Cruz, Shasta, and Trinity Counties to the current list of specified disasters under the personal income tax (PIT) Law and the corporation tax law (CTL). In addition, this act added the July 2007, Inyo wildfire and July 2008, rainstorms that occurred in Inyo County to the list of specified disasters.

As a Presidentially-declared disaster, this act allowed special carry forward treatment for up to 15 taxable years for losses sustained as a result of the wildfires that occurred in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Santa Barbara, and Ventura Counties during calendar year 2007. In addition, the wildfires that occurred in May, June, and July 2008, in Butte, Kern, Mariposa, Mendocino, Monterey, Plumas, Santa Barbara, Santa Clara, Santa Cruz, Shasta, and Trinity Counties were Presidentially-declared disasters.

The same carry forward rule applies to individual nonbusiness losses if the total losses for the year exceed 10% of the individual's federal AGI.

As a Governor-proclaimed disaster, this act allowed a taxpayer to elect to file an amended return for the prior taxable year and allow special carry forward treatment for up to 15 taxable years for losses sustained as a result of the October 2007, Riverside County damaging winds; May 2008, Humboldt County wildfires; July 2007, Inyo County wildfire; and July 2008, Inyo County rainstorms. The same carry forward rule applies to individual nonbusiness losses if the total losses for the year exceed 10% of the individual's federal AGI.

Effective Date

This act became effective and operative on September 27, 2008.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 1064 Chaptered Text	SB 1064 Legis Chng 8-15	---
SB 1064 Enrolled Text	---	---
SB 1064 8-14-08 Amd Text	SB 1064 8-14-08 Amd	SB 1064 Sen Flr Unfin Bus 8-14-08 Amd SB 1064 Asm Flr 3d 8-14-08 Amd
SB 1064 8-08-08 Amd Text	---	SB 1064 Asm Flr 3d 8-08-08 Amd
SB 1064 7-14-08 Amd Text	SB 1064 7-14-08 Amd	SB 1064 Asm Approp 7-14-08 Amd
SB 1064 7-01-08 Amd Text	SB 1064 7-10-08 Amd	---
SB 1064 5-22-08 Amd Text	SB 1064 5-22-08 Amd	SB 1064 ART 5-22-08 Amd SB 1064 Asm Loc Govt 5-22-08 Amd
SB 1064 3-10-08 Amd Text	SB 1064 3-10-08 Amd	SB 1064 Sen Flr 3d 3-10-08 Amd SB 1064 Sen Flr 3d 3-10-08 Amd
SB 1064 2-25-08 Amd Text	SB 1064 2-25-08 Amd	SB 1064 Sen Flr 3d 2-25-08 Amd SB 1064 Sen Approp 2-25-08 Amd
SB 1064 1-08-08 Intro Text	SB 1064 1-08-08 Intro	SB 1064 SRT 1-08-08 Intro

Low-Income Housing Credit/Includes Qualified Farmworker Housing Credit/Repeal Farmworker Housing Assistance Program and Specified Credits
(Stats. 2008, ch. 521)[46]

Existing Federal/State Law

Existing federal law allows a tax credit for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit amount varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized. The credit is claimed over ten years. The California Tax Credit Allocation Committee[47] (CTCAC) has the authority to allocate the federal Low Income Housing Credit (LIHC).

Existing state law generally conforms to federal law with respect to the LIHC, except that the state low-income housing tax credit LIHC is claimed over four taxable years, is limited to projects located in California, and is allocated in amounts equal to the sum of all the following:

- For taxable years ending 2002 and thereafter, $70 million increased by the percentage of the Consumer Price Index, for the preceding calendar year,
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

Existing state tax law allows a farmworker housing credit. The credit amount may be up to 50% of the qualified amount of costs paid or incurred for construction or rehabilitation of qualified farmworker housing in California. The housing must satisfy the requirements of the Farmworker Housing Assistance Program for the costs to be eligible for the credit. CTCAC is authorized to issue this credit.

Existing state tax law allows a separate credit to commercial lenders equal to 50% of the foregone interest income on loans used to finance eligible expenditures for rehabilitating or constructing qualified farmworker housing. A taxpayer claiming the farmworker housing credit or the credit for foregone interest is required to do the following: (1) obtain certification of the credit allocated from the CTCAC, (2) retain a copy of the certification, and (3) provide the certification to the Franchise Tax Board (FTB) upon request.

The aggregate amount of credits granted for both personal income and corporate taxpayers for building or rehabilitating farmworker housing and for banks and financial corporations for foregone interest on farmworker housing loans may not exceed $500,000 for any calendar year. This $500,000 limitation may be increased by an amount equal to any unallocated credits from preceding calendar years.

Reasons for Change

This act streamlines the process of allocating the Farmworker Housing Credit (FWHC) while increasing the pool of affordable housing investors and the demand for state credits by consolidating the farmworker housing tax credit into the state low-income housing tax credit.

Explanation of Provision

This act does the following:

- Repeals the farmworker housing assistance program from the Health and Safety Code.

[46] SB 1247 (Lowenthal) – Senate passed bill on May 8, 2008, with a 32 Aye/1 Noe vote. Assembly passed bill August 12, 2008, with amendments , with a 78 Aye/0 Noe vote. Senate concurred with Assembly amendments August 19, 2008, with a 38 Aye/1 Noe vote. Bill enrolled and to Governor September 17, 2008. Governor signed bill and bill enacted on September 28, 2008.
[47] CTCAC

- Adds new language to the Health and Safety Code requiring the FWHC to be allocated in the same manner as the state low-income housing tax credit.
- Specifies that the $500,000 annual cap plus any unallocated credit under prior law is for farmworker housing exclusively;
- Provides that if a disaster occurs, nonfarmworker households can temporarily occupy vacant farmworker units.
- Specifies that farmworker housing credits that are unallocated or returned could be added to the annual credit allocation cap until exhausted.
- Allows FWHCs to be awarded independently of federal LIHCs.

Additionally, this act provided the following definitions:

- "Household" means an immediate family member who resides, or who has made an application to reside together, as defined in the California Code of Regulations,[48] as a single family at a migrant center.
- "Agricultural worker" or "farmworker" has the same meaning as described in the Labor Code,[49] which means one engaged in agriculture. "Agriculture" is defined by the Labor Code,[50] as farming in all its branches.
- "Farmworker housing" means housing for agricultural workers that are available to, and occupied by, only farmworkers and their households. The Committee may permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence. However, the emergency shelter shall only be permitted if there are no pending qualified farmworker household applications for residency.

While this act repeals the California FWHC, it adds additional credit amounts to the California LIHC that could be allocated to farmworker housing.

This act contained double-jointing language that incorporated provisions from SB 585 (Lowenthal) specifying how the LIHC may be allocated to partners and when losses of partners are recognized upon disposition. Also, this act clarifies that the deferral of abandonment losses do not apply to state low-income housing tax credits set aside for FWHCs unless the FWHC receives a preliminary reservation of federal low-income housing tax credits.

Effective Date

This act became effective and operative for taxable years beginning on or after January 1, 2009.

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[48] Cal. Code Regs., tit, 25, §7602.
[49] Labor Code §1140.4 .
[50] Labor Code §1140.4.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 1247 Chaptered Text	SB 1247 Legis Chng 8-16	---
SB 1247 Enrolled Text	---	---
SB 1247 8-07-08 Amd Text	SB 1247 8-07-08 Amd	SB 1247 Sen Flr 3d Unfin Bus 8-08-08 Amd SB 1247 Asm Flr 8-07-08 Amd
SB 1247 7-14-08 Amd Text	SB 1247 7-14-08 Amd	SB 1247 Asm Flr 7-14-08 Amd SB 1247 Asm Approp 7-14-08 Amd
SB 1247 4-22-08 Amd Text	SB 1247 4-22-08 Amd	SB 1247 ART 4-22-08 Amd SB 1247 Asm Housing & Com Dev 4-22-08 Amd SB 1247 Sen Flr 3d 4-22-08 Amd
SB 1247 4-15-08 Amd Text	---	SB 1247 Sen Approp 4-15-08 Amd
SB 1247 3-27-08 Amd Text	SB 1247 3-27-08 Amd	SB 1247 ART 3-27-08 Amd
SB 1247 2-15-08 Intro Text	SB 1247 2-15-08 Intro	SB 1247 Sen Trans & Housing 2-15-08 Intro

California Military Relief Fund/Contributions Used to Provide Financial Aid Grants to Reserve Members of the U.S. Armed Forces and California National Guard/Extend Repeal Date to January 1, 2015

(Stats. 2008, Ch. 645)[51]

Program Background

The California Military Family Relief Fund first appeared on the 2004 taxable year personal income tax (PIT) return. The minimum contribution amount for calendar year 2006 was $250,000. The minimum contribution amount is adjusted for each subsequent calendar year based on the California Consumer Price Index (CCPI).

The Fund has received the following total annual contributions:

2005	2006[52]	2007	2008
$282,106	$243,977	$260,878	$306,750

It was estimated that this fund met the minimum contribution amount of $283,628, thus will remain on the 2009 individual tax return.

Existing State Law

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the return.

With the following exceptions, VCFs remain on the PIT 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 meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

The annual inflation adjustment is based on the percentage change in the CCPI. The Franchise Tax Board (FTB) is required to make the following two determinations for each VCF by September 1 of each calendar year:

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify sponsors of certain specified funds in writing of the minimum contribution amount required for the next calendar year.

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[51] AB 3016 (Cook) – Assembly passed bill on May 15, 2008, with a 75 Aye/0 Noe vote. Senate passed bill on August 18, 2008, with amendments, with a 39 Aye/0 Noe vote. Assembly concurred with Senate amendments on August 19, 2008, with a 78 Aye/0 Noe vote. Bill enrolled and to Governor on September 18, 2008. Governor signed bill and bill enacted on September 30, 2008.

[52] While actual contributions totaled less than $250,000, the fund remained on the return because on September 1st FTB estimated that the fund would meet the minimum contribution amount.

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 1 of that calendar year.

Reasons for Change

This act continues to provide a mechanism to make charitable contributions to the California Military Family Relief Fund and to expand the use of financial aid grants to include all reserve members of the Armed Forces who have been called to active duty.

Explanation of Provision

This act extends the repeal date for the California Military Family Relief Fund from January 1, 2010, to January 1, 2015. Assuming the amount of contributions remain at or above the minimum contribution amount, this fund would last appear on the personal income tax return for the 2014 taxable year.

This act expands the recipient of financial aid grants from members of the California National Guard[53] to all reserve members of the Armed Forces of the United States who are California residents. Requirements would be established to mandate how money contributed to the Fund would be distributed between the California National Guard and all reserve members of the Armed Forces of the United States.

This act provides additional qualifications and requirements to be met in order to receive a financial aid grant from the fund.

Effective Date

This act became effective and operative January 1, 2009.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 3016 Chaptered Text	AB 3016 Leg Chng 8-17	---
AB 3016 Enrolled Text	---	---
AB 3016 8-05-08 Amd Text	AB 3016 8-05-08 Amd	AB 3016 Asm Concurrence 8-05-08 Amd AB 3016 Sen Flr 3d 8-05-08 Amd
AB 3016 4-23-08 Amd Text	AB 3016 4-23-08 Amd	AB 3016 Sen Vet Aff 4-23-08 Amd AB 3016 SRT 4-23-08 Amd AB 3016 Asm Flr 3d 4-23-08 Amd AB 3016 Asm Approp 4-23-08 Amd
AB 3016 4-08-08 Amd Text	AB 3016 4-08-08 Amd	AB 3016 ART 4-08-08 Amd
AB 3016 2-22-08 Intro Text	AB 3016 2-22-08 Intro	---

[53] California National Guard

Charitable Contributions/Sellers Claiming Contributions over $5,000 Shall Substantiate Value of Conservation Lands Acquired Using State Funds by Attaching Copy of Appraisal to Return

(Stats. 2008, ch. 711)[54]

Existing Federal/State Law

Existing federal/state laws allow a charitable deduction both for personal income taxpayers and for corporate taxpayers for a qualified conservation contribution. A deduction for such a contribution is subject to certain limitations depending on the type of taxpayer, the nature of the property contributed, and the type of donee organizations.

Existing federal/state laws generally apply the rule that the deduction for gifts of property other than money is based on the fair market value (FMV) of the property at the time of contribution. More specifically, FMV is the starting point from which the deductible amount is determined after application of the various limitations.

Existing federal law contains reporting and substantiation requirements for the allowance of the deductions for noncash charitable contributions. For certain charitable contributions by individuals, corporations, partnerships or S corporations, federal law requires certain substantiation requirements for deductions that exceed, in the aggregate, $5,000. The donor must obtain a "qualified appraisal" and attach an appraisal summary to the federal return on which the deduction is first claimed.

The Pension Protection Act of 2006[55] (PPA) amended the Internal Revenue Code (IRC) by defining the term "qualified appraisal" as the following:

- An appraisal that is treated as a "qualified appraisal" under regulations or other guidance prescribed by the Secretary, and
- An appraisal conducted by a "qualified appraiser" in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary of the Internal Revenue Service (IRS).

The PPA also amended the IRC to provide that the term "qualified appraiser" is the following:

- An individual who has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,
- An individual who regularly performs appraisals for which the individual receives compensation, and
- An individual who meets requirements as may be prescribed by the Secretary in regulations or other guidance.

The IRC further provides that an individual will not be treated as a "qualified appraiser" unless the individual has satisfied the following:

- The individual demonstrates verifiable education,
- The individual has experience in valuing the type of property subject to the appraisal, and
- The individual has not been prohibited from practicing before the IRS by the Secretary under section 330(c) of Title 31 of the United States Code[56] at any time during the three-year period ending on the date of the appraisal.

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[54] SB 1285 (Corbett) – Senate passed bill on May 27, 2008, with a 28 Aye/12 Noe vote. Assembly passed bill on August 14, 2008, with amendments, with a 51 Aye/24 Noe vote. Senate concurred with Assembly amendments on August 20, 2008, with a 24 Aye/11 Noe vote. Bill enrolled and to Governor on September 17, 2008. Governor signed bill and bill enacted on September 30, 2008.

[55] Pension Protection Act of 2006

[56] 31 U.S.C. 330(c)

Federal law requires that taxpayers substantiate contributions of $250 or more by a contemporaneous written acknowledgement of the contributions by the donee organizations.

California conforms to the federal rules relating to "qualified appraisals" and other documentations for certain contributions as of a specified date of January 1, 2005. California has not conformed to any of the provisions added by the PPA.

Reasons for Change

This act improves the appraisal process used by the public agencies for acquiring conservation lands by establishing appraisal standards and requirements to substantiate the amount of charitable contributions claimed by a seller for conservation land acquired using state funds.

Explanation of Provision

This act requires a seller to attach a copy of an appraisal to the seller's California personal income tax (PIT) return.

This act requires that the appraisal attached to the California PIT return shall be prepared by an appraiser licensed by the Office of Real Estate Appraisers.

This act provides to substantiate the amount of contribution for California income and franchise tax purposes, the appraisal attached to the return shall comply with the applicable requirements of the Revenue and Taxation Code and the IRC.

Effective Date

This act became effective and operative January 1, 2009.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 1285 Chaptered Text	SB 1285 Leg Chng 8-18	---
SB 1285 Enrolled Text	---	---
SB 1285 8-12-08 Amd Text	SB 1285 8-12-08 Amd	SB 1285 Sen Flr Unf Bus 8-12-08 Amd SB 1285 Asm Flr 8-12-08 Amd
SB 1285 8-04-08 Amd Text	SB 1285 8-04-08 Amd	SB 1285 Asm Flr 8-04-08 Amd
SB 1285 4-28-08 Amd Text	SB 1285 4-28-08 Amd	SB 1285 Asm Flr 4-28-08 Amd SB 1285 Asm Approp 4-28-08 Amd SB 1285 Asm Water, Parks & Wildlife 4-28-08 Amd SB 1285 Sen Flr 3d 4-28-08 Amd SB 1285 Sen Approp 4-28-08 Amd
SB 1285 4-01-08 Amd Text	---	SB 1285 Sen Approp 4-01-08 Amd
SB 1285 3-24-08 Amd Text	---	SB 1285 Sen Nat Res & Water 3-24-08 Amd
SB 1285 2-19-08 Intro Text	---	---

Voters Fair Elections Fund

(Stats. 2008, ch. 735)[57]

Program Background

The entities audited by the Franchise Tax Board (FTB) are randomly selected by the Fair Political Practices Commission[58] (FPPC) at public drawings. The audits are conducted pursuant to generally accepted auditing procedures. These audit procedures include interviewing committee staff, preparing bank reconciliation's, evaluating internal controls, and examining documentation of receipts and expenditures, including third party information. At the conclusion of an audit, each entity receives an audit report containing FTB's opinion of its compliance with the Public Records Act[59] (PRA) and a description of any material issues. Examples of material issues are personal use of campaign funds, inadequate disclosure of information regarding contributions and expenditures, missing disclosure reports, and failure to maintain required records.

Eleven voluntary contribution funds (VCF) appeared on the 2007 California personal income tax return. Total contributions to these funds have varied from approximately $3.4 million for the 1989 taxable year to approximately $4.2 million[60] for the 2006 taxable year.

Existing State Law

Under the PRA, existing law limits the amount of campaign contributions that a person or group can make to a candidate for state office. Public officers are prohibited from spending public money to campaign for office. The PRA can be amended by statutes passed with a two-thirds vote in each house of the Legislature, or can be amended if approved by voters in a general election.

FTB's Political Reform Audit Program staff conducts audits of various state and local political entities to determine their compliance with the disclosure and record keeping requirements of the PRA.

Existing state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their personal income tax (PIT) returns to any of the 11 VCFs listed on the return.

With the following exceptions, VCFs remain on the PIT 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 meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

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:

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[57] AB 583 (Hancock) – Assembly passed bill on June 6, 2008, with a 45 Aye/34 Noe vote. Senate passed bill on August 29, 2008, with amendments, with a 21 Aye/18 Noe vote. Assembly concurred with Senate amendments on August 30, 2008, with a 45 Aye/30 Noe vote. Bill enrolled and to Governor on September 18, 2008. Governor signed bill and bill enacted on September 30, 2008.

[58] FPPC

[59] PRA

[60] Amount contributed through December 27, 2007.

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

FTB is also required to notify the sponsors of certain specified funds in writing of the minimum contribution amount required for the next 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 with respect to taxable years beginning on or after January 1 of that calendar year.

General voluntary contribution provisions specify the following for all VCFs:

- Any contribution amounts designated prior to a fund's repeal must continue to be transferred and disbursed to that voluntary contribution fund.
- If the designee is unspecified, the contribution amount is transferred to the General Fund after reimbursing costs incurred by the FTB.
- If an individual designates contributions to more than one fund, and the actual amount available is less than the total amount contributed, the contribution would be allocated on a pro rata basis to the designated funds.

The general provisions also provide a formal queuing process for adding new contingent voluntary contribution funds to the tax return. New contingent funds are defined as funds that include language specifying that the fund may not be added to the return until another fund is removed. Upon enactment, new contingent funds are only added to the tax return when an existing fund is removed or when FTB determines space exists on the income tax return.

Reasons for Change

This act allows taxpayers to contribute money to funds that would be used for public financing of campaigns and to fund the administrative and enforcement costs of the act.

Explanation of Provision

This act repeals a provision of state law that prohibits public officers and candidates from expending public funds for the purpose of seeking public office. This act establishes the California Fair Elections Act of 2008 as a pilot project for a voluntary system of public financing political campaigns for Secretary of State (SOS).

This act provides public financing under specified circumstances to candidates for the office of SOS that, with exceptions for small contributions, promise not to raise funds privately. Candidates who do not want to adhere to these requirements would continue to be subject to existing contribution limits.

This act creates the Fair Elections Fund (FEF) and starting January 1, 2011, after approval by the voters, would transfer an annual amount, subject to a future appropriation by the Legislature, from the General Fund to the FEF. These funds would be used to fund public financing of campaigns and to fund administrative and enforcement costs of the act.

The act establishes requirements for candidates and political parties relating to fund raising and expenditures of funds. Candidates would be required to participate in at least one debate during primary elections.

The requirements governing the funds and campaign financing would be in effect until January 1, 2019, and as of that date would be repealed unless a later enacted statute that is enacted before January 1, 2019, deletes or extends that date.

This act establishes the Voters Fair Elections Fund (fund) as a voluntary contribution fund. Taxpayers would be able to designate their own funds in excess of tax liability, for contribution to the fund on their PIT returns in full dollar amounts of $1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the original return for the taxable year and, once made, are irrevocable. A deduction, subject to the itemized deduction rules applicable to individuals, would be allowed for a contribution made pursuant to this act.

This act specifies that if the taxpayer's payments and credits reported on the PIT return fail to exceed the tax liability, the designation on the return would be treated as if no designation has been made.

This act requires FTB to revise the tax return to include a designation space for the Fund when another voluntary contribution fund is removed from the return. The act requires revisions to the instructions specifying that the contribution may be in the amount of $1 which would be used to provide public funding for the campaigns of qualified candidates for Secretary of State who agree to take no private moneys for their campaigns.

FTB would be required to notify the Controller of both the amount of moneys paid by taxpayers in excess of their tax liability and the amount of refund moneys which taxpayers have designated to be transferred to the fund. The Controller would be required to transfer from the PIT fund to the Voters Fair Election Fund an amount not in excess of the sum of the amounts designated by the individuals for payment into that fund. Upon appropriation by the Legislature, the monies from this fund would be allocated as follows:

- To the FTB and the Controller for reimbursement of costs incurred in administering the fund.
- To the Fair Election Fund established under the Government Code.

Beginning with contributions made in the second calendar year the fund appears on the return, this act would require the fund to meet a minimum contribution amount for each calendar year. The "minimum contribution amount for a calendar year" is defined as $250,000 for the second calendar year after the fund appears on the return or an amount adjusted for inflation for contributions made in subsequent years. The law authorizing designations to this fund would be repealed if contributions made under this act fail to meet the minimum contribution amount.

This act requires FTB to do the following by September 1 of the second calendar year the fund appears on the return and by September 1 of each subsequent calendar year that the fund appears on the tax return:

- Determine the minimum contribution amount required to be received during the next calendar year for the fund to remain on the return.
- Provide written notice to FPPC of the minimum contribution amount required for the next calendar year.
- Determine if the amount of contributions estimated to be received during the current calendar year will equal or exceed the minimum contribution amount required for that calendar year.

Beginning with the third calendar year that the fund appears on the return, FTB would be required to adjust the minimum contribution amount as indexed for inflation by September 1 of each calendar year.

If the fund first appeared on the PIT return for the 2010 taxable year, it would remain on the PIT return until January 1, 2015, in this case the PIT return for the 2014 taxable year, unless a later enacted statute deletes or extends that date, and provided that it meets the annual minimum contribution requirement.

Effective Date

This act was enacted September 30, 2008. Because certain provisions of this act are required to be approved by California voters at the June 8, 2010, statewide primary election, the effective date of this act would be the day after approval by the voters. The provisions of this act relating to the voluntary contribution fund on the tax returns would be operative for tax returns filed on or after January 1, 2011, for the 2010 taxable year.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 583 Chaptered Text	AB 583 Leg Chng 8-19	---
AB 583 Enrolled Text	---	---
AB 583 8-22-08 Amd Text	AB 583 8-22-08 Amd	AB 583 Asm Flr Concur 8-22-08 Amd AB 583 Asm Elec & Redistrict Concurrence 8-22-08 Amd AB 583 Asm Flr Concurrence 8-22-08 Amd AB 583 Sen Flr 3d 8-22-08 Amd
AB 583 8-19-08 Amd Text	AB 583 8-19-08 Amd	AB 583 Sen Flr 3d 8-19-08 Amd AB 583 Sen Flr 3d 8-19-08 Amd AB 583 Sen Flr 3d 8-19-08 Amd
AB 583 8-12-08 Amd Text	AB 583 8-12-08 Amd	AB 583 Sen Flr 3d 8-12-08 Amd AB 583 Sen Flr 3d 8-12-08 Amd AB 583 Sen Flr 3d 8-12-08 Amd
AB 583 8-04-08 Amd Text	AB 583 8-04-08 Amd	AB 583 Sen Approp 8-04-08 Amd AB 583 Sen Approp 8-04-08 Amd
AB 583 6-26-08 Amd Text		---
AB 583 6-11-08 Amd Text		AB 583 Sen Elec, Reapp, & Constit Amds 6-11-08 Amd
AB 583 6-04-07 Amd Text		AB 583 Asm Flr 3d 6-04-07 Amd
AB 583 2-21-07 Intro Text		AB 583 Asm Approp 2-21-07 Amd AB 583 Asm Elec & Redistrict 2-21-07 Amd

Identification Documents/Privacy

(Stats. 2008, ch. 746)[61]

Program Background

The Franchise Tax Board (FTB) currently uses an electronic badge system to secure FTB facilities. Each employee is required to wear a badge that contains an electronic device that identifies and records the location and time each individual in the department enters the facility by placing the badge on a reader. The badges issued by the department to personnel are embedded with a number that when activated access a secure database controlled by security staff that displays the picture identification and name associated with the card number. As such, the badges used by the department are free of personal information.

Existing Federal/State Law

Existing state law allows a state agency to collect personal information on individuals only to the extent it is relevant and necessary to accomplish a purpose of the agency that is authorized by statute or federally mandated. Personal information is to be collected directly from the individual, to the extent possible, and made available to the individual upon request for inspection for accuracy. Existing law provides avenues for taxpayers to correct inaccurate information collected by the state agency.

Existing state law generally prohibits a state agency from disclosing personal information maintained in its records except in accordance with specific exceptions. The exceptions include disclosing the information to the taxpayer, the taxpayer’s authorized representative, other state agencies for the purpose of fulfilling their constitutional duties, investigation purposes, or for purposes of qualifying for state sponsored assistance. The exceptions to disclosing personal information are specific and limited.

Existing federal law contains similar provisions for the protection of an individual’s personal information maintained within a federal agency’s system of records. These provisions identify exceptions that permit disclosure of personal information, as well as procedures to obtain a copy of personal information, address errors, and accounting for disclosures made by the agency.

Reasons for Change

This act protects personal information from identity theft by making it a crime to read or attempt to read personal identification documents using radio frequency identification (RFID) without the owner’s knowledge and consent.

Explanation of Provision

This act makes it a misdemeanor crime to intentionally read or attempt to read a person’s identification documents remotely using RFID without the owner’s knowledge and prior consent. This crime is punishable by imprisonment in a county jail for up to one year, a fine of not more than $1,500, or both.

A person or entity that unintentionally remotely reads a person's identification document using RFID is not subject to this act unless it knows it unintentionally read the document and thereafter intentionally does any of the following:

- Discloses the data to another party whose purpose is to read a person’s identification document or any information derived there from without that person’s knowledge and consent.

[61] SB 31 (Simitian) – Senate passed bill on January 30, 2008, with a 36 Aye/3 Noe vote. Assembly passed bill on August 12, 2008, with amendments on with a 77 Aye/0 Noe vote. Senate concurred with Assembly amendments on August 19, 2008 with a 38 Aye/0 Noe vote. Bill enrolled and to Governor on September 17, 2008. Governor signed bill and bill enacted on September 30, 2008.

- Uses the data for any purpose without the consent of the person to whom the data pertains.
- Stores the data without the consent of the person to whom the data pertains.

This act would not apply to the reading, storage, use, or disclosure to a third party of a person's identification document or information derived from it in the course of an act of good faith security research, experimentation, or scientific inquiry, including but not limited to activities useful in identifying and analyzing security flaws and vulnerabilities.

The act defines RFID to mean the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from a tag through a variety of modulation and encoding schemes to uniquely read the identity of a radio frequency tag or other data stored on it.

This act makes it a crime for any person or entity that knowingly discloses or causes to be disclosed certain operational system keys identified under the Civil Code. This crime is punishable by imprisonment in a county jail for up to one year or a fine of not more than $1,500 or both.

This act exempts certain instances of reading identification documents by RFID for purposes that range from providing medical services to law enforcement efforts. Because FTB does not use RFID in its daily operations, these exemptions are not discussed in this analysis.

Effective Date

This act became effective January 1, 2009, and would apply to violations occurring on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SB 31 Chaptered Text	SB Leg Chng 8-20	---
SB 31 Enrolled Text	---	---
SB 31 8-07-08 Amd Text	SB 31 8-07-08 Amd	SB 31 Sen Flr Unfin Bus 8-07-08 Amd SB 31 Asm Flr 8-07-08 Amd
SB 31 7-03-08 Amd Text	SB 31 7-03-08 Amd	SB 31 Asm Flr 7-03-08 Amd
SB 31 6-17-08 Amd Text	SB 31 6-17-08 Amd	SB 31 Asm Approp 6-17-08 Amd
SB 31 6-05-08 Amd Text	SB 31 6-05-08 Amd	SB 31 Asm Jud 6-05-08 Amd
SB 31 1-07-08 Amd Text	SB 31 1-07-08 Amd	SB 31 Sen Flr 3d 1-07-08 Amd SB 31 Sen Pub Saf 1-07-08 Amd
SB 31 4-17-07 Amd Text	SB 31 4-17-07 Amd	SB 31 Sen Pub Saf 4-17-07 Amd
SB 31 3-20-07 Amd Text	SB 31 3-20-07 Amd	---
SB 31 12-04-06 Intro Text	SB 31 12-04-06 Intro	SB 31 Sen Jud 12-04-06 Amd

Modify Group Return Provisions/Mandatory E-Pay/COD Collection to Include Bail Amounts/DIR Refer CalOSHA Targeted Inspection Debts to FTB for Collection

(Stats. 2008, ch. 751)[62]

Reasons for Change

This act does the following:

- Modifies group return requirements to allow entities to file a return on behalf of certain nonresidents.
- Requires taxpayers that meet certain thresholds to make future payments electronically.
- Adds bail as a type of debt that could be referred by the courts to the Franchise Tax Board (FTB) for collection.
- Authorizes the Department of Industrial Relations (DIR) to refer assessments and penalties under the California Division of Occupational Safety and Health (Cal-OSHA) Targeted Inspection Program to FTB for collection.

Explanation of Provisions

MODIFY GROUP RETURN PROVISIONS

Program Background

Electing individuals included in group nonresident returns are taxed at the highest marginal rate (9.3%) without deductions. Individuals with more than $1,000,000 in California taxable income are ineligible to be included in a group nonresident return because their taxable income in excess of $1,000,000 would need to be taxed at the highest marginal rate plus the additional 1% (mental health tax) rate, for a total of 10.3%.

For tax year 2005, the department received approximately 3,300 group nonresident returns on behalf of an estimated 68,000 nonresidents. Group nonresident returns may not be filed electronically. After initial processing, group nonresident returns are sent to the Filing Enforcement Unit where member and income information is manually keyed.

Existing State Law

State law imposes tax on the entire taxable income of residents of California and upon the taxable income of nonresidents derived from sources within California. In California, rather than statutes explicitly establishing rules to source income, a body of case law prescribes source rules and the relevant California statute delegates to FTB the authority to prescribe sourcing rules by regulation.

These regulations provide that income from services is sourced to California to the extent the services are performed in this state. When nonresidents perform services in California and other states, compensation for these services is sourced to California using various apportionment methods that reasonably reflect the value of the California services compared to the total services performed. These regulations are consistent with existing law and federal statutes that limit or preempt California's ability to tax the California source income of nonresidents.

Nonresidents who receive a distributive or pro rata share of income from a pass-through entity (partnerships[63] or S corporations) deriving income from California sources or doing business in California are allowed to elect

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[62] AB 1389 (Committee on Budget) – Assembly passed bill on January 28, 2008, with a 74 Aye/0 Noe vote. Senate passed bill on September 16, 2008, with amendments, with a 28 Aye/12 Noe vote. Assembly concurred with Senate amendments on September 16, 2008, with a 55 Aye/22 Noe vote. Bill enrolled and to Governor on September 19, 2008. Governor signed bill and bill enacted on September 30, 2008.

[63] This includes limited liability companies classified as partnerships, registered limited liability partnerships, and foreign limited liability partnerships.

to have the pass-through entity file a group nonresident return on their behalf.[64] In addition, California allows filing of a group nonresident return for electing nonresident directors of a corporation. Electing nonresident directors would be those individuals that receive California source wages, salaries, fees, or other compensation from that corporation for director services, including attendance at board of directors' meetings that take place in this state.

State law imposes tax on individuals, corporations, and certain business entities, and each is treated as a distinct entity for tax purposes.

All of the following conditions must be met to be eligible for inclusion in a group nonresident return:

- The partner/member/shareholder/director must be an individual. Estates, trusts, partnerships, Limited Liability Companies (LLCs), C corporations, S corporations, or other business entities cannot be included in the group nonresident return.
- The individual must be a full-year nonresident of California.
- The individual must have California taxable income of $1,000,000 or less.

Once these requirements are satisfied, the business entity files the group nonresident return and pays the tax on behalf of the electing nonresidents. The return must be for a calendar year and, except for an S corporation shareholder, must include at least two electing nonresidents. An S corporation may file a group nonresident return on behalf of one shareholder. The business entity must use Form 540NR, California Nonresident or Part-Year Resident Income Tax Return, for the group nonresident return. A nonresident individual can be included on more than one group nonresident return.

Nonresidents subject to the mental health tax (taxable income in excess of $1,000,000) are ineligible to be included in a group nonresident return.

Explanation of Provision

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

- Entities with less than two electing nonresident individuals, and
- Individuals with more than $1,000,000 in California taxable income. The highest marginal rate for these individuals would be 10.3%.

Effective Date

As an urgency statute, this provision became effective immediately upon enactment on September 30, 2008, and operative as of that date.

<u>MANDATORY E-PAY FOR TAXPAYERS THAT MEET CERTAIN THRESHOLD REQUIREMENTS</u>

Program Background

FTB processed 8.1 million personal income taxpayer (PIT) paper payments in fiscal year (FY) 2006/2007. These large volumes of paper payments require extensive manual processing. Additionally, delays in depositing these payments for several days after receipt during tax return filing season result in significant loss of interest income to the State.

During FY 2006/2007, FTB processed approximately 141,000 paper payments over $20,000 totaling approximately $14.2 billion. FTB received approximately 59,000 payments over $20,000 between April 16 and

[64] RTC §18535

April 27. It took an average of seven days to deposit these payments. The remaining paper payments received in FY 2006/2007 took an average of three days for deposit. The following table highlights this scenario:

Criteria	Number of Days To Make Deposits	Annual Daily Interest Rate[65]	Annual Deposit	Increase in Interest Earned
Estimated Paper Deposits: payments greater than $20,000 received 4/16/07-4/27/07	7	0.0142465753%	$6,770,392,318	$6,751,843
Estimated Paper Deposits: payments greater than $20,000 (remainder of year)	3	0.0142465753%	$7,400,288,004	$3,162,862
TOTAL			$14,170,680,322	$9,914,705

Paper payment processing results in a minimum two-day delay to deposit - one day for the post office and one day to deposit - and it can take up to 16 days to deposit. Currently, 13.6% of PIT payments are remitted electronically, representing 2.4% of all PIT payment dollars. For corporations, the volume of electronic payments is 3.2% of the total payments made, representing approximately 80% of the total payment dollars remitted.

Personal income taxpayers may currently use the following options to pay their taxes:

- Payment by paper check, money order, or cashier's check,
- Payment by credit card, subject to payment of a "convenience fee,"
- Payment through an electronic filing application that debits the taxpayer's bank account for a designated amount at a time determined by the taxpayer, or
- Payment through FTB's Web-pay service that debits a bank account for a designated amount at a time determined by the taxpayer.

Businesses and individuals can pay all their federal taxes using the Electronic Federal Tax Payment System (EFTPS). Individuals may pay their quarterly estimated taxes electronically using EFTPS, and they can make payments weekly, monthly, or quarterly, as well as schedule payments for the entire year in advance. EFTPS is accessible via the Internet or telephone. Businesses can initiate a transaction from their financial institutions that will credit their FTB account through Electronic Funds Transfers (EFT), or can instruct FTB to initiate the transaction to debit their financial institution account for their tax liabilities or estimated payments.

Existing Federal/State Law

Federal Reserve Banks, and certain financial institutions that are depositories or financial agents of the United States, have authority to accept tax payments for tax imposed under the federal tax laws. Because federal tax payments can be made at most local banks, the need for electronic payment processing is reduced significantly at the federal level.

Taxpayers with aggregate tax payments over $200,000 in a calendar year are required to make tax payments by EFT methods.

Existing state law, for tax years beginning on or after January 1, 1995, requires a corporate taxpayer with a tax liability exceeding $80,000 in a taxable year or with an estimated tax payment in excess of $20,000 to remit its tax payment electronically. If a taxpayer is required to remit payment electronically and remits payment using

[65] Per State Treasurer's Office, Annual Interest rate – 5.2%, daily interest rate annualized - 0.0142465753%.

another method, it is subject to a penalty calculated at 10% of the amount paid, unless the failure was due to reasonable cause. Taxpayers subject to these requirements may request a waiver from FTB under certain circumstances. PIT taxpayers can voluntarily choose to remit funds by EFT.

Explanation of Provision

This provision requires all payments made by an individual on or after January 1, 2009, regardless of the taxable year to which the payments apply, to be electronically remitted to FTB in a form and manner prescribed by the FTB once either of the following conditions is met for taxable years beginning on or after January 1, 2009:

- Any installment payment of estimate tax or extension payment exceeds $20,000.
- The total tax liability, as defined, exceeds $80,000.

For purposes of this provision, the following definitions apply:

- “Total tax liability” is the total tax liability as shown on the original return after any adjustments are made for mathematical errors or erroneously omitted tax.
- “Electronically remit” means to send payment through use of any of the electronic payment applications provided by FTB.

This provision permits a taxpayer that is required to remit electronic payments to elect to discontinue making electronic payments where the threshold requirements are not met in the preceding taxable year. A taxpayer required to remit electronic payments may obtain a waiver of those requirements if FTB determines that the amounts paid in excess of the threshold amounts were not representative of the taxpayer’s tax liability. Once the waiver is received, the requirement to make, or not make, future electronic payments is subject to the terms of the waiver.

A taxpayer that is required to remit electronic payments, but remits payment by other means, can be subject to a penalty of 10% of the amount paid, unless the failure to remit electronically was for reasonable cause and not willful neglect.

This provision specifies that requirements of the Administrative Procedures Act are not applicable to the department's implementation of the provisions of this act.

Effective Date

As an urgency statute, this provision became effective immediately upon enactment on September 30, 2008, and specifically operative for payments, without regard to taxable year, required to be made on or after January 1, 2009.

ADD BAIL AS A CLASS OF DEBTS TO BE REFERRED TO FTB FOR COLLECTION FROM COURTS

Program Background

FTB currently collects restitution orders referred from courts of 43 counties and maintains an inventory of approximately 1.1 million cases. Non-tax debt collection is accomplished primarily through the use of wage garnishments and bank levies. In August 2004, legislation was enacted (SB 246, Stats. 2004, Ch. 380) making FTB’s Court-Ordered Debt (COD) 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. CODE 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

Existing state law allows fees, penalties, forfeitures, restitution orders, fines, or certain amounts imposed by a superior or municipal court or governmental entity in California and delinquent for 90 days or more to be referred by the court or government entity to FTB for collection. To refer restitution orders to FTB, a government entity must meet the following conditions:

- Have authority to collect on behalf of the state or victim.
- Be responsible for distributing the restitution order collection as appropriate.
- Ensure that the referral coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.
- Ensure compliance with the laws relating to reimbursement of the State Restitution Fund.

After issuing a preliminary notice to the debtor, FTB is authorized to collect the referred restitution orders in the same manner as authorized for collection of a delinquent personal income tax liability. The amounts collected are transmitted to and deposited in the Court Collection Account in the General Fund, less an amount equal to FTB's administrative costs attributable to this collection program. FTB is limited to 15% of the amounts collected.[66]

FTB is authorized to use administrative collection tools to collect delinquent tax and non-tax debt liabilities. Collection actions include, but are not limited to, attaching bank accounts and garnishing wages.

Explanation of Provision

This provision authorizes courts to refer bail that is due and payable as a class of debts to be referred to FTB for collection under existing court ordered debt statutes.

Effective Date

As an urgency statute, this provision became effective immediately upon enactment on September 30, 2008, and operative as of that date.

DIR TO REFER CAL-OSHA DEBTS TO FTB FOR COLLECTION

Program Background

FTB currently collects restitution orders referred from courts of 43 counties and maintains an inventory of approximately 1.1 million cases. Non-tax debt collection is accomplished primarily through the use of wage garnishments and bank levies. In August 2004, legislation was enacted (SB 246, Stats. 2004, ch. 380) making FTB's COD program permanent and requiring FTB to expand participation to all 58 counties and superior courts. To meet this requirement, FTB initiated the CODE project to develop and implement a scalable collection and billing system. CODE 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.

[66] RTC §19282

Existing State Law

Existing state law allows fees, penalties, forfeitures, restitution orders, fines, or certain amounts imposed by a superior or municipal court or governmental entity in California and delinquent for 90 days or more to be referred by the court or government entity to FTB for collection. To refer restitution orders to FTB, a government entity must meet the following conditions:

- Have authority to collect on behalf of the state or victim.
- Be responsible for distributing the restitution order collection as appropriate.
- Ensure that the referral coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.
- Ensure compliance with the laws relating to reimbursement of the State Restitution Fund.

After issuing a preliminary notice to the debtor, FTB is authorized to collect the referred restitution orders in the same manner as authorized for collection of a delinquent personal income tax liability. The amounts collected are transmitted to and deposited in the Court Collection Account in the General Fund, less an amount equal to FTB's administrative costs attributable to this collection program. FTB is limited to 15% of the amounts collected.[67]

FTB is authorized to use administrative collection tools to collect delinquent tax and non-tax debt liabilities. Collection actions include, but are not limited to, attaching bank accounts and garnishing wages.

The California Department of Corrections and Rehabilitation (CDCR) has authority to refer restitution orders owed by parolees to FTB for collection because a parolee is still under the jurisdiction of CDCR. When a parolee is discharged from parole, CDCR no longer has authority to collect on behalf of the state or the victim and FTB must return the uncollected portion of the account back to CDCR.

Explanation of Provision

This provision authorizes the Department of Industrial Relations (DIR) to refer assessments and penalties issued under the Cal-OSHA Targeted Inspection activities to FTB for collection. The provisions would deem the assessments and penalties as delinquent debts.

This provision allows existing collection agreements in place between FTB and DIR to be amended or would authorize a new agreement to be entered into by both agencies for the collection of these debts. The Cal-OSHA Targeted Inspection and Consultation Fund would receive payment of those collections.

This provision allows FTB to refer an employer who is disputing the amounts due and payable to DIR for resolution, return the account, or rescind any collection action taken by FTB. FTB would be required to provide DIR with activity reports on a quarterly basis identifying the total amount referred for collection, the amount collected from each employer, and the actual costs of collection incurred by FTB. Upon appropriation by the Legislature, FTB would be reimbursed from the Cal-OSHA Targeted Inspection and Consultation Fund for its actual costs of collection. Interest would not be assessed on any amounts referred to FTB for collection.

Effective Date

As an urgency statute, this provision became effective immediately upon enactment on September 30, 2008, and operative as of that date.

[67] RTC §19282

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 1389 Chaptered Text	AB 1389 Leg Chng 8-21	---
AB 1389 Enrolled Text	---	---
AB 1389 9-15-08 Amd Text	AB 1389 9-15-08 Amd	AB 1389 Sen Flr 3d 9-15-08 Amd
AB 1389 8-21-08 Amd Text	---	---
AB 1389 7-01-08 Amd Text	---	AB 1389 Sen Flr 3d 8-21-08 Amd AB 1389 Sen Approp 7-01-08 Amd AB 1389 Sen Approp 7-01-08 Amd
AB 1389 1-07-08 Amd Text	---	AB 1389 Sen Gov Org 1-07-08 Amd AB 1389 Asm Flr 1-07-08 Amd AB 1389 Asm Approp 1-07-08 Amd AB 1389 Asm Gov Org 1-07-08 Amd
AB 1389 2-23-07 Intro Text	---	---

California Department of Corrections to Contract with FTB for Collection of Restitution Orders Owed by Prisoners

(Stats. 2008, ch. 752)[68]

Program Background

The Franchise Tax Board (FTB) currently collects restitution orders referred from courts of 43 counties and maintains an inventory of approximately 1.1 million cases. Non-tax debt collection is accomplished primarily through the use of wage garnishments and bank levies. In August 2004, legislation was enacted (SB 246, Stats. 2004, ch. 380) making FTB's Court-Ordered Debt (COD) 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. CODE 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 Federal/State Law

Under existing state law, fees, penalties, forfeitures, restitution orders, fines, or certain amounts imposed by a superior or municipal court or governmental entity in California and delinquent for 90 days or more can be referred by the court or government entity to FTB for collection. Restitution orders may be referred by a government entity under the following conditions:

- The government entity has the authority to collect on behalf of the state or victim.
- The government entity is responsible for the distribution of the amounts collected from the restitutions orders.
- The government entity ensures that in making the referral and distribution that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.
- The government entity ensures compliance with the laws relating to reimbursement of the State Restitution Fund.

After issuing a preliminary notice to the debtor, FTB is authorized to collect the referred restitution orders 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. The department has followed legislative intent language under the COD collection program that limits FTB reimbursement to 15% of the amounts collected. In general, the county or state fund originally owed the debt receives the net collection proceeds after reduction by the amount of FTB's departmental collection costs.

Existing state law authorizes FTB to use administrative collection tools to collect delinquent tax and non-tax debt liabilities. Collection actions include, but are not limited to, attaching bank accounts and garnishing wages.

The California Department of Corrections and Rehabilitation (CDCR) has authority to refer restitution orders owed by parolees to FTB for collection because a parolee is still under the jurisdiction of CDCR. When a parolee is discharged from parole, CDCR no longer has authority to collect on behalf of the state or the victim, and FTB must return the uncollected portion of the account to CDCR.

Reasons for Change

This act provides CDCR with the authority to continue collection of restitution orders through FTB against persons who are no longer under CDCR custody.

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[68] AB 2928 (Spitzer) – Assembly passed bill on May 28, 2008, with a 77 Aye/0 Noe vote. Senate passed bill on August 14, 2008, with amendments, with a 39 Aye/0 Noe vote. Assembly concurred with Senate amendments on August 91, 2008 with a 77 Aye/0 Noe vote. Bill enrolled and to Governor on September 18, 2008. Governor signed bill and bill enacted on September 30, 2008.

Explanation of Provision

This act authorizes CDCR to refer restitution orders owed by persons who are or have been under CDCR jurisdiction to FTB for collection. The person to whom restitution is ordered may decline CDCR's assistance to collect the amount. This act provides that in addition to existing amounts authorized to be added to amounts owed, a court, a county, or the state may include an administrative fee in the amounts referred to FTB for collection.

FTB will use existing COD authority to collect the restitution orders in the same manner and using the same tools as used in the collection of tax debts. FTB's costs for collection will be reimbursed from the amounts collected. The balance of the collected amounts will be remitted to CDCR for distribution to the person owed the restitution order.

Effective Date

This act became effective on January 1, 2008, and operative for restitution orders referred to FTB on or after that date.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 2928 Chaptered Text	AB 2928 Leg Chng 8-22	---
AB 2928 Enrolled Text	---	---
AB 2928 8-11-08 Amd Text	AB 2928 8-11-08 Amd	AB 2928 Sen Flr 3d 8-11-08 Amd AB 2928 Sen Flr 3d 8-11-08 Amd
AB 2928 8-04-08 Amd Text	AB 2928 8-04-08 Amd	---
AB 2928 5-23-08 Amd Text	AB 2928 5-23-08 Amd	AB 2928 SRT 5-23-08 Amd AB 2928 Asm Flr 3d 5-23-08 Amd
AB 2928 4-03-08 Amd Text	AB 2928 4-03-08 Amd	AB 2928 Asm Approp 4-03-08 Amd AB 2928 Asm Pub Saf 4-03-08 Amd
AB 2928 3-25-08 Amd Text	---	---
AB 2928 2-22-08 Intro Text	AB 2928 2-22-08 Amd	---

Child Support Collections/Transfer from Franchise Tax Board to Department of Child Support Services

(Stats. 2008, ch. 759)[69]

Program Background

The California Child Support Automated System (CCSAS) Project was initiated to create a single statewide child support system that meets state and federal requirements.

In 1975, amendments to the Social Security Act created Part D of Title IV (IV-D) and established the Office of Child Support Enforcement in the federal government. Additionally, throughout the 1970s and 1980s, there were federal legislative actions to enhance the provisions of Title IV-D. A major legislative initiative was the passage of the Family Support Act of 1988 (FSA 88). FSA 88 emphasized child support as the first line of defense against welfare dependence. It also mandated that each state develop and implement a single statewide automated child support enforcement system by October 1, 1995; this deadline was later extended to October 1, 1997.

In December 1992, the State of California entered into a contract to develop and implement the Statewide Automated Child Support System (SACSS) in 57 California counties (Los Angeles was to remain independent). SACSS was intended to meet the federal mandate to have a California child support system, compliant with FSA 88, operational by October 1, 1995. However, the SACSS system implementation was unsuccessful, leading to a November 1997 agreement to terminate the SACSS contract.

In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996[70] (PRWORA) (Public Law 104-193) amended the Social Security Act to increase federal automation requirements by requiring all states to establish and operate a State Disbursement Unit (SDU) and State Case Registry (SCR) by October 1, 1998. By early 1998, the state, working with the California District Attorneys Association, had developed a plan to create a statewide child support system based on the formation of four to seven consortia. Each consortium would consist of multiple counties operating on one of the existing child support systems, as approved by the state, to meet the FSA 88 requirements. The state would also develop and implement, through a competitive bid process, the SDU and SCR components to meet the PRWORA requirements.

The consortia plan was presented to the Legislature in March 1998, and became the basis for a child support budget bill - Assembly Bill 2779 (Stats. 1998, ch. 329). AB 2779 was passed in August 1998 and required California to implement a consortia-based system that would lead to a federally compliant system by October 2001.

In January 1999, an Implementation Advance Planning Document (IAPD), which identified a four-system consortia approach, was submitted for federal approval by the federal Administration for Children and Families (ACF). In its review, ACF informed the state that the proposed consortia-based alternative system configuration submitted for approval did not meet the criteria required by federal law. Responding to ACF's concerns, Governor Davis, members of the Legislature, and other involved parties reconsidered the mid-1998 decision to proceed with a consortia-based approach.

On September 24, 1999, Governor Davis signed three major child support bills into law (AB 150, Stats 1999, ch. 479; AB 196, Stats. 1999, ch. 478; and SB 542, Stats 1999, ch. 480). These laws restructured California's child support enforcement program and required the state to implement a single statewide automated child support system. The legislation created the new Department of Child Support Services (DCSS) and transferred

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[69] AB 1279 (Committee on Budget) – Assembly passed bill on June 4, 2007, with a 78 Aye/0 Noe vote. Senate passed bill on September 16, 2008, with amendment, with a 33 Aye/6 Noe vote. Assembly concurred with Senate amendments on September 16, 2008, with a 56 Aye/20 Noe vote. Bill enrolled and to Governor on September 19, 2008. Governor signed bill and bill enacted on September 30, 2008.

[70] The Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Child Support Program responsibility from the California Department of Social Services to DCSS. In addition, this legislation transferred responsibility for the statewide automation development project, CCSAS, from California's Health and Human Services Agency Data Center (HHSDC) to the Franchise Tax Board (FTB).

Existing Federal/State Law

Existing federal law requires each state to have a single entity that is responsible for child support enforcement in that state, which is commonly referred to as the Title IV-D agency. Existing state law provides that DCSS is California's Title IV-D agency and each county is required to create a local child support agency to oversee child support enforcement.

Existing state law requires DCSS to delegate the necessary authority to develop and implement CCSAS to FTB.

Reasons for Change

This act, as it impacts FTB, extinguishes the department's responsibility in the development and implementation of the statewide CCSAS and turn over that responsibility to DCSS.

Explanation of Provision

This act transferred FTB's duties and authority for CCSAS to DCSS. DCSS was substituted for FTB in any agreements that FTB entered into to implement CCSAS.

This act authorized DCSS to enter into an interagency agreement with FTB to continue any services necessary to be provided by FTB for ongoing support of CCSAS. The interagency agreement could provide for the transfer of staff from FTB to DCSS upon federal notification that the single statewide CCSAS was implemented in all jurisdictions, or on January 1, 2009, whichever is later. FTB can pursue collection of PIT accounts where the taxpayer also owes child support.

Effective Date

This act became effective and operative on September 30, 2008.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 1279 Chaptered Text	AB 1279 Leg Chng 8-23	---
AB 1279 Enrolled Text	---	---
AB 1279 9-15-08 Amd Text	AB 1279 9-15-08 Amd	AB 1279 Asm Flr Concurrence 9-15-08 Amd AB 1279 Sen Flr 3d 9-15-08 Amd
AB 1279 2-26-08 Amd Text	---	AB 1279 Sen Flr 3d 2-26-08 Amd
AB 1279 9-07-07 Amd Text	---	AB 1279 Sen Flr 3d 9-07-07 Amd
AB 1279 4-16-07 Amd Text	---	AB 1279 Sen Flr 3d 4-16-07 Amd AB 1279 Sen Approp 4-16-07 Amd AB 1279 Sen Approp 4-16-07 Amd AB 1279 Sen Edu 4-16-07 Amd AB 1279 Asm Flr 4-16-07 Amd AB 1279 Asm Approp 4-16-07 Amd AB 1279 Asm Edu 4-16-07 Amd
AB 1279 2-23-07 Intro Text	---	---

Suspend NOLS for 2008 and 2009/Allow 20-year NOL Carryover Starting 2008/Tax Amnesty 2009/Create LLC Estimated Payments/50% Limitation on Utilization of Business Credits/Assignment of CTL Credits Among Unitary Members

(Stats. 2008, ch. 763)[71]

Reasons for Change

This act accelerates receipt of tax revenues by deferring certain currently-allowed deductions and adds new provisions allowing the sharing of tax credits among certain affiliates of a unitary group of taxpayers, extends the NOL carryover period, and enacts a tax amnesty program.[72]

SUSPEND NOLS/EXTEND NOL CARRYOVER PERIOD/ALLOW CARRYBACKS

Existing Federal/State Law

When a taxpayer has an operating loss for the taxable year, the operating loss that may be used in subsequent years is called a net operating loss (NOL). An operating loss occurs when a taxpayer's allowed deductions in connection with conducting a trade or business exceed its gross income for that year. Federal law provides, in general, that an NOL can be carried back 2 years and forward 20 years and deducted. Special rules are provided for the carryback of NOLs relating to issues such as specified liability losses, casualty or theft losses, disaster losses of a small business, and farming losses.

In general, a California taxpayer calculates an NOL in accordance with federal rules. Two important differences are that California 1) does not allow the carryback of NOLs and 2) limits the carryforward period to ten years where federal law allows 20 years. Depending on the type of taxpayer or the amount of a taxpayer's income, the amount of NOL that is eligible to carry forward and the number of years it can be carried forward will vary.

The taxpayer must make an election from the following list as to the type of NOL the taxpayer has incurred.

Existing state law provides the following types of NOLs:

Type of NOL and Description	NOL % Allowed To Carry Over	Carryover Period (Existing state law)
General NOL	100%	10 Years
New Business NOL	100%	10 Years
Eligible Small Business	100%	10 Years
Pierce's Disease	100%	9 Years
Economic Development Areas	100%	15 Years

[71] AB 1452 (Committee on Budget) – Assembly passed bill on June 6, 2008, with a 45 Aye/31 Noe vote. Senate passed bill on September 16, 2008, with amendments, with a 27 Aye/13 Noe vote. Assembly concurred with Senate amendments on September 16, 2008, with a 55 Aye/21 Noe vote. Bill enrolled and to Governor on September 19, 2008. Governor signed bill and bill enacted on September 30, 2008.

[72] SBX1-28 (Committee on Budget & Fiscal Review) subsequently repealed the amnesty program.

Explanation of Provision

This provision applies to both the Personal Income Tax Law (PITL) and the CTL, and would make the following changes:

- Disallow NOL deductions by suspending them for taxable years 2008 and 2009 for a taxpayer with net business income (PITL) or income subject to tax (CTL) of $500,000 or more. However, deductions for NOL carrybacks from taxable years beginning on or after January 1, 2011, would be allowed.
  - For PIT, "net business income" means income from a trade or business, whether conducted by the taxpayer or by a pass-through entity (partnership or S corporation), income from rental activity, and income attributable to a farming business.
- Extend the NOL carryover period by one year for NOLs incurred in taxable year 2008, and two years for NOLs attributable to taxable years beginning before January 1, 2008.
- Allow a 20-year NOL carryover period for NOLs attributable to taxable years beginning on or after January 1, 2008.
- Conform to the federal NOL carryback rules for NOLs attributable to taxable years beginning on or after January 1, 2011, with the following modifications:
  - Allow an NOL to carry back only 2 years. (Federal law has special rules that in some cases, allow an NOL to carry back for a longer period of up to five years).
  - Limit the amount of NOL attributable to taxable year 2011 to 50% of the net operating loss.
  - Limit the amount of NOL attributable to taxable year 2012 to 75% of the net operating loss.
  - Conform to the federal carryback period for a Real Estate Investment Trusts (REITS) and a corporate equity reduction interest loss, which is zero.

Effective/Operative Date

As an urgency statute, this provision became effective immediately upon enactment on September 30, 2008, and specifically operative as follows:

- Suspension of NOLs - operative for taxable years beginning on or after January 1, 2008, and before January 1, 2010.
- Extension of NOL carryover period to 20 years - operative for NOLs attributable to taxable years beginning on or after January 1, 2008.
- Allowance of a NOL carryback - operative for NOLs attributable to taxable years beginning on or after January 1, 2011.

AMNESTY 2009

Existing Federal/State Law

Federal law does not provide a comparable amnesty program.

Under the state PITL or CTL, numerous penalties may be imposed against individuals and corporate taxpayers that fail to report or underreport income. Additionally, certain penalties are imposed against third parties that assist taxpayers in the nonreporting or underreporting of income. Certain fees are imposed against taxpayers that fail to file returns or pay their tax liabilities. Appendix A provides details regarding these fees and penalties. Taxpayers that fail to report or underreport their income may be subject to criminal prosecution and sanctions. Depending upon the gravity of the offense, such taxpayers may be guilty of either a misdemeanor or a felony. Upon conviction, such taxpayers are subject to fines or imprisonment or both, together with costs of investigation and prosecution.

No statute of limitations exists to enforce the filing requirement when a taxpayer fails to file an income tax return. If a taxpayer fails to report or underreport income, FTB has the authority to estimate the net income of that taxpayer from any available information. When the tax liability is determined based on the estimate of net income, FTB may issue a notice of proposed deficiency assessment (NPA) for the additional tax, penalties, and interest.

Explanation of Provision

This provision authorizes FTB to conduct a tax amnesty for taxpayers subject to PITL and CTL providing the opportunity for eligible taxpayers to receive a penalty or fee waiver for unpaid penalty and fee amounts assessed for the 2003 through 2006 taxable years. FTB would accept applications for amnesty starting February 1, 2009, and ending March 27, 2009, with all returns and payments required to be filed and made by June 1, 2009.

The following taxpayers would not be eligible to participate in tax amnesty under this provision:

- Taxpayers who have had criminal complaints filed against them.
- Taxpayers who are under criminal investigation.
- Taxpayers with non-reported or underreported tax liability amounts attributable to a potentially abusive tax avoidance transaction[73], as defined.

Eligible taxpayers would be required to file a completed tax amnesty application within the amnesty filing period electing to participate in the tax amnesty and, by June 1, 2009, do all of the following, as applicable:

- File a complete original tax return for any eligible taxable year for which the taxpayer has not filed a return.
- File an amended return for any eligible taxable year where the taxpayer underreported income on the original tax return.
- Pay in full any taxes and interest due for each taxable year for which amnesty is requested or apply for an installment payment agreement.
- Pay in full any tax and interest amounts previously proposed to be assessed.

Taxpayers that are under the jurisdiction of a federal bankruptcy court would be authorized to participate in tax amnesty if they submit an order from a federal bankruptcy court that allows them to participate.

Taxpayers currently in an installment payment agreement would be exempt from the amnesty penalty on those amounts covered by the existing installment payment agreement if they choose not to participate in tax amnesty, but could elect to participate in amnesty to waive any unpaid penalty or fees. If such a taxpayer elected to participate in tax amnesty, the provision exempting them from the amnesty penalty would no longer apply.

Taxpayers that enter into an installment payment agreement under tax amnesty would be given until June 30, 2010, to pay any amount of tax and interest in full. If a taxpayer failed to meet this requirement, the amount of any penalties and fees waived would be restored, unless FTB determined the failure was due to reasonable cause and not willful neglect. The total amount of tax, penalty, fee, and interest would also become immediately due and payable if such a failure to pay in full occurred.

This provision authorizes FTB to prescribe the form of the tax amnesty application. FTB is required to conduct an education and outreach effort to inform as many eligible taxpayers as possible through a streamlined process. This provision authorizes FTB to issue forms, instructions, notices, rules, or guidelines to implement the tax amnesty and would provide an exception to the Administrative Procedures Act for this purpose.

[73] RTC §19742(c) (Link is no longer available.)

This provision authorizes, along with any other applicable penalty, the addition of an amnesty to the tax for amounts in each taxable year for which amnesty could have been requested, but was not. The amnesty penalty would be calculated as follows:

- For amounts that are due and payable on the last day of the tax amnesty period, an amount equal to 50 percent of the accrued interest payable for the period beginning on the last date prescribed by law for the payment of that tax and ending on the last day of the tax amnesty period.
- For amounts that are due and payable after the last day of the tax amnesty period, an amount equal to 50 percent of the interest computed for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency and ending on the last day of the tax amnesty period.

Tax deposits made before the end of the tax amnesty period would reduce the amount on which the amnesty penalty is computed. Any amounts attributable to the following types of assessments would not be subject to the amnesty penalty if, before March 27, 2009, FTB contacted the taxpayer in writing about the assessment and the assessment was not final before March 27, 2009:

- An assessment resulting from an audit.
- An assessment resulting from the failure to file a return or the filing of a false or fraudulent return.

A refund or credit for any amounts paid to satisfy a penalty imposed under this section could be allowed only on grounds that the amount of the penalty was not properly computed. Additionally, no refunds would be allowed on amounts paid pursuant to tax amnesty.

This provision reiterates existing law regarding when amounts are due and payable.

Upon conclusion of the tax amnesty period, this provision authorizes FTB to do the following with respect to the difference between the amount shown on an original income tax return under tax amnesty and the correct amount of tax:

- Propose a deficiency upon any return filed,
- Impose penalties and fees, or
- Initiate criminal action against the taxpayer.

Effective/Operative Date

As an urgency statute, this provision became effective and operative upon enactment on September 30, 2008, with the tax amnesty itself to be specifically conducted during the period beginning on February 1, 2009, and ending March 27, 2009, for taxable years 2003 through 2006.

LLC ESTIMATE PAYMENTS

Existing Federal/State Law

Federal law does not have provisions that require an LLC to pay an annual tax or fee.

Existing state law does not classify an LLC as a corporation and the LLC 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 total income from all sources derived from or attributable to this state.

The LLC fee is due and payable on or before the 15th day of the 4th month following the close of the taxable year (e.g., April 15th for calendar year taxpayers), and is subject to underpayment penalties, late penalties, and interest.

Explanation of Provision

This provision requires an LLC to estimate and pay its LLC fee by the 15th day of the 6th month of the taxable year (e.g. June 15th for calendar year taxpayers).

This provision imposes a 10% penalty when an LLC underpays the estimated fee under certain circumstances. The underpayment penalty would not be imposed when the estimated fee payment for a taxable year is greater than or equal to the LLC's prior year fee liability.

Effective/Operative Date

As part of an urgency statute, this act became effective and operative upon enactment on September 30, 2008. Since the act was enacted before October 15, 2008, LLCs with a taxable year beginning on or after May 1, 2008, are subject to the new requirement.

LIMIT TAX CREDITS/ALLOW CREDITS TO BE ASSIGNED TO OTHER MEMBERS

Existing Federal/State Law

Existing federal/state laws do not permit the assignment of tax credits among taxpayers.

Explanation of Provisions

These provisions specifically apply to both the PIT law and the CTL and make the following changes:

- Limits the amount of allowable "business credits" to an applicable amount (before application of any credits) for taxable years beginning on or after January 1, 2008, and before January 1, 2010.
  - Under PIT, "business credit" includes credits under a specific chapter of the PITL other than credits relating to household and dependent care, adoption costs, renters, personal exemption, joint custody head of household and for care of dependent parent, senior head of household, and excess contributions of unemployment compensation. This provision specifically provides that these excluded credits shall be required to be applied before any business credits.
  - Under PIT, "applicable amount" is equal to 50% of the net tax[74] before the application of any credits.
- Provides that any amount of the credit that may not be allowed due to the 50% limitation shall be a credit carryover under PITL and CTL, and the carryforward period shall be increased by the number of taxable years the credit was not allowed.
- Excludes taxpayers with net "business income" (PITL) and income subject to tax (CTL) of less than $500,000.
  - Under PIT, "business income" means income from a trade or business (including partnerships and S corporations), rental activities, and a farming business.

The provision allowing the assignment of certain credits under the CTL applies to taxpayers under CTL that are members of a combined reporting group:

- Provides that an "eligible credit" may be assigned by a taxpayer to an "eligible assignee."
- "Eligible credit" means any credit earned by a taxpayer in a taxable year beginning on or after July 1, 2008, or any credit earned in any taxable year beginning before July 1, 2008, that is eligible to be carried forward to the taxpayer's first taxable year beginning on or after July 1, 2008.
- Eligible assignee" means any "affiliated corporation" that is properly treated as a member of the same combined reporting group.[75]

[74] Defined in RTC §17039.

- "Affiliated corporation" means a corporation that is a member of a commonly controlled group.[76]

➢ Makes irrevocable the election to assign any credit once made and is required to be made on the taxpayer's original return for the taxable year in which the assignment is made.

➢ Gives FTB authority to issue rules, procedures, guidelines and regulations necessary to implement this provision.

➢ Requires FTB to issue a report on or before June 30, 2013, to the Joint Legislative Budget Committee, the Legislative Analyst, and the relevant policy committees.

Effective/Operative Date

As an urgency statute, this provision became effective immediately upon enactment on September 30, 2008, and would be specifically operative as follows:

➢ 50% limitation on tax credits: operative for taxable years beginning on or after January 1, 2008, and before January 1, 2010.

➢ Assignment of tax credits between unitary members (CTL only): operative for any credit allowed to a taxpayer for taxable years beginning before, on or after July 1, 2008. In addition, an assigned credit may not reduce tax for a taxable year beginning before January 1, 2010.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
AB 1452 Chaptered Text	AB 1452 Leg Chng 8-24	---
AB 1452 Enrolled Text	---	---
AB 1452 9-15-08 Amd Text	AB 1452 9-15-08 Amd	AB 1452 Asm Flr Concurrence 9-15-08 Amd SB 1452 Sen Flr 3d 9-15-08 Amd SB 1452 Sen Flr 3d 9-15-08 Amd
AB 1452 8-29-08 Amd Text	AB 1452 8-29-08 Amd	---
AB 1452 8-27-07 Amd Text	---	---
AB 1452 6-01-07 Amd Text	---	AB 1452 Sen Nat Res & Water 6-01-07 Amd AB 1452 Asm Flr 6-01-07 Amd
AB 1452 2-23-07 Intro Text	---	AB 1452 Asm Approp 2-23-07 Intro AB 1452 Asm Water, Parks & Wildlife 2-23-07 Intro

[75] RTC §§25101 or 25110
[76] RTC §25105

APPENDIX A

Commonly Imposed Penalties

The following are the more commonly imposed penalties under current income tax laws against taxpayers that do not report or underreport their income, or do not pay deficiency assessments:

- Late-Filing Penalty – income tax returns that are filed late are subject to a late-filing penalty that is: (1) a basic penalty of 5% of the unpaid tax per month that the return is late, up to a maximum of 25% of the tax, or (2) a minimum penalty of the lesser of $100 or 100% of the tax liability, if the return is filed 60 days or more late and the basic penalty is less than $100. If the failure to file is due to fraud, the basic penalty is 1% per month, up to a maximum of 75%.

- Underpayment Penalty– income taxes that are not paid by the original due date of the income tax return are subject to a penalty of 5% of the unpaid tax PLUS 1/2 of 1% per month, up to a maximum of 40 months (20%).

- Demand Penalty – income tax returns that are not filed upon notice and demand from the FTB are subject to a penalty of 25% of the amount of the tax required to be shown on the return.

- Frivolous-Return Penalty – income tax returns that are not sufficiently completed to substantially determine the correct self-assessed tax are subject to a penalty of $500.

- Accuracy-Related Penalty – negligence or disregard of rules or regulations, substantially understating income tax, overstating values of items, or overstating pension liabilities are subject to a penalty of 20% of the underpayment amount. If the misstatements are due to fraud, the penalty is 75% of that resulting tax.

- Corporate Penalties Relating to Doing Business- Corporations that are doing business in California while out of compliance with the tax laws are subject to the following penalties that may be significant:
  1. If a corporation's rights, powers, and privileges are suspended or forfeited for failure to file an income or franchise tax return or pay the tax, the corporation's contracts are voidable. To be relieved of voidability, the corporation must be brought to full compliance with the tax laws by filing all past due returns and payment of all past due tax amounts and pay an additional penalty of $100 for each day that voidability relief is being sought (not to exceed the tax amount).
  2. Certain corporations that are doing business in California while their privileges are suspended or forfeited for nonpayment of tax or nonfiling of returns are subject to a $2,000 penalty per tax year.

- Enforcement Fees - Taxpayers that fail to file returns or pay their income or franchise tax liabilities during fiscal year 2007/2008 may be liable for the following fees relating to the enforcement of the income or franchise tax return or liability:
  - $122 for individuals and $305 for corporations that fail to file income or franchise tax returns within 25 days after FTB mails its formal legal demand for the returns.
  - $155 for individuals and $234 for corporations that fail to pay their income or franchise taxes after FTB mails its notice for payment that advises that continued nonpayment may result in collection action.

- Third-Party Penalties -Third parties that assist taxpayers in their failure to comply with the income tax laws may be subject to the following penalties:
  1. Tax preparers who understate a taxpayer's tax liability on any return are subject to a $250 penalty, which increases to $1,000 if the understatement is a result of willful or reckless conduct.
  2. Persons who aid and abet a taxpayer in understating the taxpayer's tax liability are generally subject to a penalty of $1,000 per taxpayer for each year.

Accelerate Estimate Payments/Eliminate Safe Harbor for Certain Taxpayers/Repeal Tax Amnesty/ 20% Corporate Understatement Penalty/Clarify Operative Date for LLC Fee Due Date Change

(Stats. 2008, Ch. 1, First Extra Sess.)[77]

ACCELERATE ESTIMATE PAYMENTS AND REMOVE OPTION FOR CERTAIN TAXPAYERS TO USE PRIOR YEAR'S TAX WHEN CALCULATING REQUIRED ESTIMATE PAYMENT

Effective/Operative Date

This provision became effective on the 91st day after adjournment of the first special session, March 19, 2009, and operative for taxable years beginning on and after January 1, 2009.

Federal/State Law

In general, individual and corporate taxpayers are required to remit four estimated tax payments each equal to 25% of the required annual payment. Current federal and state tax law provides two options in determining the required annual payment for personal income taxes (PIT). The required annual payment for an individual subject to the personal income tax is the lesser of the following:

- Option 1: 90% of the tax shown on the return for the taxable year, or
- Option 2: 100% of the tax shown on the return of the taxpayer for the preceding taxable year.

Option 2 would not apply if the preceding taxable year was not a complete taxable year of 12 months or if the taxpayer failed to file a return for the prior tax year.

Current federal and state tax law increases the required annual payment under option 2 from 100% to 110% of the tax shown on the return if the adjusted gross income (AGI) of the taxpayer for the preceding taxable year exceeds $150,000 ($75,000 in the case of a married individual filing a separate return).

Current federal law generally provides two options in determining the required annual payment for corporate income taxes. The required annual payment for corporations is the lesser of the following:

- Option 1: 100% of the tax shown on the return for the taxable year, or
- Option 2: 100% of the tax shown on the return for the preceding taxable year.

Corporations with taxable income of $1,000,000 or more are required to 100% of the tax for the current year.

In general, current state law requires corporations to remit four estimated tax payments totaling 100% of tax shown on the return for the taxable year. If a corporation's estimated tax does not exceed the minimum franchise tax, the entire amount of the minimum franchise tax is payable as the 1st estimated tax payment. If the amount of estimated tax exceeds the minimum franchise tax after the last day of the 3rd month and before the 1st day of the 6th month of the corporation's taxable year, the amount of the 2nd, 3rd, and 4th estimated tax payments each equal 33 1/3% of the total estimated tax.

[77] SBX1 28 (Committee on Budget and Fiscal Review) – Assembly passed bill on September 19, 2008, with a 43 Aye/30 Noe vote. Senate passed bill on September 19, 2008, with a 22 Aye/14 Noe vote. Bill enrolled and to Governor on September 19, 2008. Governor signed bill and bill enacted on October 1, 2008.

Explanation of Provision

For taxable years beginning on or after January 1, 2009, this provision would revise the required quarterly installments of estimated tax payments for individuals and corporations from four equal payments to the following:

- 1st quarter installment- 30% of estimated tax
- 2nd quarter installment- 30% of estimated tax
- 3rd quarter installment- 20% of estimated tax
- 4th quarter installment- 20% of estimated tax

This provision would require corporate taxpayers who are not required to make an estimate payment installment in the first quarter to make the following installment payments in subsequent quarters:

- 2nd quarter installment- 40% of estimated tax
- 3rd quarter installment- 30% of estimated tax
- 4th quarter installment- 30% of estimated tax.

For taxable years beginning on or after January 1, 2009, this provision would also eliminate the option for taxpayers to make estimate payments equal to 100% of the tax shown on the return of the taxpayer for the prior taxable year if the AGI of taxpayer shown on the return for the current taxable year exceeds $1 million, or $500,000 for taxpayers with a married filing separate filing status.

REMOVE OPTION FOR CERTAIN TAXPAYERS TO USE PRIOR YEAR'S TAX WHEN CALCULATING REQUIRED ESTIMATE PAYMENT

Effective/Operative Date

This provision would be effective on the 91st day after adjournment of the first special session, March 19, 2009, and operative for taxable years beginning on and after January 1, 2009.

Federal/State Law

In general, individual and corporate taxpayers are required to remit four estimated tax payments each equal to 25% of the required annual payment. Current federal and state tax law provides two options in determining the required annual payment for personal income taxes (PIT). The required annual payment for an individual subject to the personal income tax is the lesser of the following:

- Option 1: 90% of the tax shown on the return for the taxable year, or
- Option 2: 100% of the tax shown on the return of the taxpayer for the preceding taxable year

Option 2 would not apply if the preceding taxable year was not a complete taxable year of 12 months or if the taxpayer failed to file a return for the prior tax year.

Current federal and state tax law increases the required annual payment under option 2 from 100% to 110% of the tax shown on the return if the adjusted gross income (AGI) of the taxpayer for the preceding taxable year exceeds $150,000 ($75,000 in the case of a married individual filing a separate return).

Current federal law generally provides two options in determining the required annual payment for corporate income taxes. The required annual payment for corporations is the lesser of the following:

- Option 1: 100% of the tax shown on the return for the taxable year, or

- Option 2: 100% of the tax shown on the return for the preceding taxable year.

Corporations with taxable income of $1,000,000 or more are required to pay 100% of the tax for the current year.

In general, current state law requires corporations to remit four estimated tax payments totaling 100% of tax shown on the return for the taxable year. If a corporation's estimated tax does not exceed the minimum franchise tax, the entire amount of the minimum franchise tax is payable as the 1st estimated tax payment. If the amount of estimated tax exceeds the minimum franchise tax after the last day of the 3rd month and before the 1st day of the 6th month of the corporation's taxable year, the amount of the 2nd, 3rd, and 4th estimated tax payments equal 33 1/3% of the total estimated tax.

Explanation of Provision

For taxable years beginning on or after January 1, 2009, this provision would eliminate the option for individual taxpayers to make estimate payments equal to 100% of the tax shown on the return of the taxpayer for the prior taxable year if the AGI of taxpayer shown on the return for the current taxable year exceeds $1 million, or $500,000 for taxpayers with a married filing separate filing status.

REPEAL TAX AMNESTY

Effective/Operative Date

This provision became effective on the 91st day after adjournment of the first special session. The Assembly and Senate adjourned sine die December 18, 2008, making this provision effective and operative on March 19, 2009.

Explanation of Provision

This provision would repeal the Tax Amnesty and amnesty penalty enacted by AB 1452 of this legislative session for taxable years beginning on or after January 1, 2003, and before January 1, 2007.

CORPORATION TAX PENALTY FOR UNDERSTATEMENTS OF TAX FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2003

EFFECTIVE/OPERATIVE DATE

This provision became effective on the 91st day after adjournment of the first special session, March 19, 2009, and by its own terms operative for taxable years beginning on and after January 1, 2003, for which the statute of limitations on assessment has not expired.

STATE LAW

Underpayment of Tax – RTC 19132

The underpayment penalty is assessed if a corporation fails to pay the amount of the tax due by the original return due date. (Note that the automatic seven-month extension of time to file a return is not an extension of time to pay the tax due).

The underpayment penalty will not be assessed if ALL of the following requirements are met:

- An extension of time to file has been granted.
- At least 90 percent of the tax due is timely paid by the original return due date.

- The remainder of the tax due is paid by the extended due date.

Accuracy-Related Penalty – RTC section 19164

The Accuracy-Related Penalty may be imposed on the portion of any underpayment of tax that should be shown on the return. The penalty is generally equal to 20% of the portion of the underpayment (40% in the case of amnesty-eligible years beginning before January 1, 2003, unless the taxpayer was under audit, in protest, settlement, or appeal, or in judicial proceedings as of February 1, 2005) caused by one or more of the following:

- Negligence or disregard of rules or regulations;
- Substantial understatement of income tax;
- Substantial valuation misstatement;
- Substantial overstatement of pension liabilities; or
- Substantial estate or gift tax valuation understatement.

The statute provides relief provisions or exceptions for each of these situations. FTB will consider the relief provisions for each situation prior to assessing the penalty. A taxpayer may raise three common defenses (relief provisions) to avoid assessment of the penalty. The defenses are:

- **Substantial Authority** - Substantial Authority exists for the tax treatment of an item on the return [Internal Revenue Code (IRC) section 6662(d)(2)(B)];
- **Adequate Disclosure** - Adequate Disclosure of the transaction has been made on the original return [IRC Sec. 6662(d)(2)(B)]; and
- **Reasonable Cause** - The taxpayer, in regards to the underpayment, has showed Reasonable Cause and good faith [IRC Sec. 6664(c)(1)].

Depending on the situation causing the understatement, meeting any one of these three defenses will preclude the assessment of the accuracy-related penalty. In addition, an existing Franchise Tax Board regulation provides that a taxpayer's good faith determination of the components which are a part of one or more unitary businesses and amounts that are attributable to classifying an item as business or non-business income will not be included in computing the amount of any understatement for purposes of the accuracy-related penalty.

THIS PROVISION

This provision would create a new strict liability penalty to be assessed against any corporation that has an understatement of tax in excess of $1 million in any open taxable year beginning on or after January 1, 2003. In the case of taxpayers that are required or authorized to be included in a combined report, the $1 million threshold would apply to the aggregate amount of tax liability for all taxpayers that are required or authorized to be included in the combined report.

The penalty would be calculated at 20% of the understatement of tax. For purposes of this penalty, understatement of tax means the difference between what is shown on the original return (or amended return, if filed on or before the extended due date of the original return) and what is subsequently determined to be the correct amount of tax owed. For any taxable year beginning before January 1, 2008, amounts paid on or before May 31, 2009, and reported on an amended return filed on or before May 31, 2009, are treated as the amount of tax shown on an original return. The bill would allow taxpayers to file an amended return for pre-2008 taxable years by May 31, 2009, to self-assess and pay any additional tax that might be due, thereby increasing the amount of tax treated as paid with the original return for those year(s).

The provision specifies that the penalty is in addition to any other applicable penalty and is a strict liability penalty. A credit or refund for any amounts paid to satisfy the penalty may be allowed only on the grounds that the amount of the penalty was not properly computed by FTB.

The provision would provide for limited relief from this penalty in the following circumstances:

- The understatement of tax is attributable to a change in law, a regulation, a legal ruling of counsel, or a published federal or California court decision that occurs after the earlier of either the date the taxpayer files the return for the taxable year for which the change is operative or the extended due date for the return of the taxpayer for the taxable year for which the change is operative.
- The understatement of tax is attributable to a taxpayer’s reasonable reliance on written advice of the Franchise Tax Board, but only if the written advice was a legal ruling by the Chief Counsel (within the meaning of the Taxpayers' Bill of Rights).

CHANGE THE OPERATIVE DATE FOR THE LLC FEE PAYMENTS TO TAX YEARS BEGINNING ON OR AFTER JANUARY 1, 2009

EFFECTIVE/OPERATIVE DATE

This provision became effective on the 91st day after adjournment of the first special session, March 19, 2009, and by its own terms, is operative for taxable years beginning on or after January 1, 2009.

FEDERAL/STATE LAW

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

Under current 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 total income from all sources derived from or attributable to this state.

The LLC fee is due and payable on or before the 15th day of the 4th month following the close of the taxable year (e.g., April 15th for calendar year taxpayers), and is subject to underpayment penalties, late penalties, and interest.

AB 1452, an urgency measure of this legislative session, included a provision requiring an LLC to pay an estimate of its LLC fee by the 15th day of the 6th month of the taxable year. This provision became effective on September 30, 2009. With an effective date earlier than October 15th, LLCs with taxable years beginning on or after May 1, 2008, are subject to this new requirement for the 2008 taxable year.

THIS PROVISION

This provision clarifies that the operative date requiring an LLC to pay its fee by the 15th day of the 6th month is specifically operative for taxable years beginning on or after January 1, 2009.

CLARIFY BUSINESS TAX CREDIT ASSIGNMENT LANGUAGE IN AB 1452 FOR PURPOSES OF PROPER IMPLEMENTATION OF THAT SECTION.

THIS PROVISION

This provision further clarifies that the language enacted under AB 1452 of this legislative session to specify that any limitations on the allowance of any credit against the "tax" that are applicable to the taxpayer that earns certain business credits are also applicable to the allowance of any credit against the "tax" of any eligible assignee.

Bill Text Link	FTB Analysis Link	Committee/Floor Analysis
SBX1 28 10-1-2008 Ch Text	---	---
SBX1 28 9-19-2008 Enr Text	SBX1 Final	---
SBX1 28 9-19-2008 Intro Text	SBX1 28 9-19-2008 Intro	SBX1 28 Asm Flr 9-19-2008 Intro SB1X 28 Sen 3d 9-19-2008 Intro

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