



**Proposed Amendments To Part 10.2
Part 12 Revisions
Operative for Taxable Years Beginning on or After January 1, 2012**

SEC. X. Section 18401 of the Revenue and Taxation Code is amended to read:

18401. Each provision of this part shall apply to Part 10 (commencing with Section 17001), ~~and~~ Part 11 (commencing with Section 23001), and Part 12 (commencing with Section 27001), unless otherwise provided.

SEC. X. Section 18402 of the Revenue and Taxation Code is amended to read:

18402. (a) Except where the context otherwise requires, the general provisions and definitions provided in Chapter 1 (commencing with Section 17001) of Part 10, ~~and in~~ Chapter 1 (commencing with Section 23001) of Part 11, and Chapter 1 (commencing with Section 27001) of Part 12 shall apply to this part.

(b) For purposes of this part, "person" includes an individual, fiduciary, partnership, limited liability company, corporation, or organization exempt from taxation under Section 23701.

(c) (1) Whenever provisions of this part are applied in connection with Part 10 (commencing with Section 17001), the terms "taxpayer," "corporation" and "taxable year" have the same meaning as defined in Chapter 1 (commencing with Section 17001) of Part 10.

(2) Whenever provisions of this part are applied in connection with Part 11 (commencing with Section 23001), the terms "taxpayer," "corporation," "income year," and "taxable year" have the same meaning as defined in Article 2 (commencing with Section 23030) of Chapter 1 of Part 11.

(3) Whenever provisions of this part are applied in connection with Part 12 (commencing with Section 27001), the terms "taxpayer," "business entity," and "taxable year" shall have the same meaning as defined in Chapter 1 (commencing with Section 27001) of Part 12.

SEC. X. Section 18403 of the Revenue and Taxation Code is amended to read:

18403. For purposes of this part, any return, declaration, report, statement, or other document required to be made or filed under Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) shall be deemed to have been required to be made or filed under this part.

SEC. X. Section 18405 of the Revenue and Taxation Code is amended to read:

18405. (a) In the case of a new statutory provision in Part 7.5

(commencing with Section 13201), Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or the addition of a new part, the Franchise Tax Board itself is authorized to grant relief as set forth in subdivision (b) from the requirements of the new statutory provision in a manner as provided in subdivision (c).

(b) The relief provided in subdivision (a) may be granted only for the first taxable year for which the new statutory provision is operative and only when substantial unintentional noncompliance with the new provision has occurred by a class of affected taxpayers. The relief is limited to waiving penalties or perfecting elections and may be granted only to taxpayers who timely paid taxes and other required amounts shown on the return consistent with the election and who timely filed their return (with regard to extension).

(c) The relief granted in this section shall, upon the recommendation of the Executive Officer of the Franchise Tax Board, be made by resolution of the Franchise Tax Board that sets forth the conditions, time, and manner as the Franchise Tax Board determines are necessary. The resolution shall be adopted only by an affirmative vote of each of the three members of the Franchise Tax Board.

(d) For purposes of this section:

(1) "New statutory provision" means a complete, newly established tax program, tax credit, exemption, deduction, exclusion, penalty, or reporting or payment requirement and does not mean amendments made to existing tax provisions that make minor modifications or technical changes.

(2) "Perfecting elections" includes correcting omissions or errors only when substantial evidence is present with the filed return that the taxpayer intended to make the election and does not include making an election where one was not previously attempted to be made.

(3) "Substantial unintentional noncompliance," for purposes of Part 11 (commencing with Section 23001), includes any case in which the taxpayer filed a water's-edge contract with a timely filed original return and timely paid all taxes and other required amounts shown on the return consistent with the water's-edge election, but where the taxpayer's election is or might be invalidated by reason of the act or omission of an affiliated corporation that is not the parent or a subsidiary of the taxpayer. In that case, notwithstanding anything to the contrary in this section, relief shall be deemed granted to validate the taxpayer's water's-edge election, conditioned only upon an agreement by the affiliated corporation to either (A) file a water's-edge contract and pay all taxes and other required amounts consistent with that election, or (B) waive any right, with respect to any taxable year for which the corporation did not make a water's-edge election on its own timely filed return, to determine its income derived from or attributable to sources within this state pursuant to that election, whichever measure produces the greater amount of tax.

(e) This section shall apply to any Franchise Tax Board resolution adopted after the effective date of this section with respect to any taxable year that is subject to an open statute of limitations on the date of the resolution.

SEC. X. Section 18407 of the Revenue and Taxation Code is amended to read:

18407. Section 6011 of the Internal Revenue Code, relating to general requirement of return, statement, or list, shall apply, except as otherwise provided.

(a) Section 6011(a) of the Internal Revenue Code, relating to general rule, is modified as follows:

(1) The phrase "any person liable for any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part," shall be substituted for the phrase "when required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title," contained therein.

(2) "Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board" shall be substituted for "Secretary."

(3) To additionally provide that "reportable transaction" includes any transaction of a type that the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or the Franchise Tax Board under this section for California income or franchise tax purposes determines as having a potential for tax avoidance or evasion including deductions, basis, credits, entity classification, dividend elimination, or omission of income, and shall be reported on the return or the statement required to be made.

(4) To additionally provide that "listed transaction" includes any transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under this section for California income or franchise tax purposes, as a tax avoidance transaction including deductions, basis, credits, entity classification, dividend elimination, or omission of income and shall be reported on the return or statement required to be made.

(A) The Franchise Tax Board shall identify and publish "listed transactions" (whether identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board) through the use of Franchise Tax Board Notices or other published positions. In addition, the "listed transactions" identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(B) The Franchise Tax Board shall conduct a public outreach program to make taxpayers aware of the new and increased penalties associated with the use of tax avoidance transactions including deductions, basis, credits, entity classification, dividend elimination, or omission of income.

(5) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraph (4).

(b) Section 6011(b) of the Internal Revenue Code, relating to identification of taxpayer, does not apply and, in lieu thereof, Section 18408 shall apply.

(c) Section 6011(c) of the Internal Revenue Code, relating to returns, etc., of DISCs and former DISCs and FSCs and former FSCs, does not apply.

(d) Section 6011(d) of the Internal Revenue Code, relating to authority to require information concerning Section 912 allowances, does not apply.

(e) Section 6011(e) of the Internal Revenue Code, relating to regulations requiring returns on magnetic media, etc., shall take into account Section 18408 and shall also include the modifications made to Section 6011(e) of the Internal Revenue Code by Section 18408.

(f) Section 6011(f)(2) of the Internal Revenue Code, relating to incentives, does not apply.

SEC. X. Section 18407 of the Revenue and Taxation Code is amended to read:

18407. Section 6011 of the Internal Revenue Code, relating to general requirement of return, statement, or list, shall apply, except as otherwise provided.

(a) Section 6011(a) of the Internal Revenue Code, relating to general rule, is modified as follows:

(1) The phrase "any person liable for any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or this part," shall be substituted for the phrase "when required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title," contained therein.

(2) "Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board" shall be substituted for "Secretary."

(3) To additionally provide that "reportable transaction" includes any transaction of a type that the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or the Franchise Tax Board under this section for California income or franchise tax purposes determines as having a potential for tax avoidance or evasion including deductions, basis, credits, entity classification, dividend elimination, or omission of income, and shall be reported on the return or the statement required to be made.

(4) To additionally provide that "listed transaction" includes any transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under this section for California income or franchise tax purposes, as a tax avoidance transaction including deductions, basis, credits, entity classification, dividend elimination, or omission of income and shall be reported on the return or statement required to be made.

(A) The Franchise Tax Board shall identify and publish "listed transactions" (whether identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board) through the use of Franchise Tax Board Notices or other published positions. In addition, the "listed transactions" identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(B) The Franchise Tax Board shall conduct a public outreach program to make taxpayers aware of the new and increased penalties associated with the use of tax avoidance transactions including deductions, basis, credits, entity classification, dividend elimination, or omission of income.

(5) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to paragraph (4).

(b) Section 6011(b) of the Internal Revenue Code, relating to identification of taxpayer, does not apply and, in lieu thereof, Section 18408 shall apply.

(c) Section 6011(c) of the Internal Revenue Code, relating to returns, etc., of DISCs and former DISCs and FSCs and former FSCs, does not apply.

(d) Section 6011(d) of the Internal Revenue Code, relating to authority to require information concerning Section 912 allowances, does not apply.

(e) Section 6011(e) of the Internal Revenue Code, relating to regulations requiring returns on magnetic media, etc., shall take into account Section 18408 and shall also include the modifications made to Section 6011(e) of the Internal Revenue Code by Section 18408.

(f) Section 6011(f)(2) of the Internal Revenue Code, relating to incentives, does not apply.

SEC. X. Section 18413 of the Revenue and Taxation Code is amended to read:

18413. The repeal of any provision in Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) made by the act adding or amending this section shall not affect any act done or any right accruing or accrued, or any suit, appeal, or other proceeding having commenced under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), before that repeal; but all rights and liabilities under that law shall continue, and may be enforced in the same manner, as if that repeal had not been made.

SEC. X. Section 18414 of the Revenue and Taxation Code is amended to read:

18414. Any provision of this part that refers to the application of any portion of this part to a prior period (or which depends upon the application to a prior period of any portion of this part) shall, when appropriate and consistent with the purpose of that provision, be deemed to refer to (or depend upon the application of) the corresponding provision of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) or Part 12 (commencing with Section 27001), as was applicable to the prior period.

SEC. X. Section 18417 of the Revenue and Taxation Code is amended to read:

18417. Provisions in other codes or general law statutes that are related to this part include all of the following:

(a) Chapter 20.6 (commencing with Section 9891) of Division 3 of the Business and Professions Code, relating to tax preparers.

(b) Sections 1502, 2204 to 2206, inclusive, 6210, 6810, 8210, and 8810 of the Corporations Code, relating to the corporation officer statement penalty.

(c) Section 2104 of the Corporations Code, which prevents the application of any provision of this part against any foreign lending institution whose activities in this state are limited to those described in subdivision (d) of Section 191 of the Corporations Code.

(d) Sections 15700 to 15702.1, inclusive, of the Government Code, relating to the Franchise Tax Board.

(e) Part 10 (commencing with Section 17001) of this division, relating to the Personal Income Tax Law.

(f) Part 10.5 (commencing with Section 20501) of this division, relating to the Senior Citizens Property Tax Assistance and Postponement Law.

(g) Part 10.7 (commencing with Section 21001) of this division, relating to the Taxpayers' Bill of Rights.

(h) Part 11 (commencing with Section 23001) of this division,

relating to the Corporation Tax Law.

(i) Part 12 (commencing with Section 27001) of this division, relating to the Business Net Receipts Tax Law.

SEC. X. Article 3.0. Other Matters is added to the Revenue and Taxation Code to read:

Article 3. Other Matters

18421. (a) Notwithstanding any statute, ordinance, regulation, rule or decision to the contrary, no city, county, city and county, governmental subdivision, district, public and quasi-public corporation, municipal corporation, whether incorporated or not or whether chartered or not, shall levy or collect or cause to be levied or collected any tax upon income which is excludable from gross income and exempt from state taxes pursuant to Section 24320.

(b) This section shall not be construed to authorize any such entity to levy a tax on, according to, or measured by, income or profits paid or accrued.

SEC. X. Section 18510 of the Revenue and Taxation Code is amended to read:

18510. (a) (1) The Franchise Tax Board shall revise the returns required to be filed pursuant to this article, Article 2 (commencing with Section 18601), Section 18633, Section 18633.5, ~~and~~ Article 3 (commencing with Section 23771) of Chapter 4 of Part 11, and Article 3 (commencing with Section 27771) of Chapter 4 of Part 12 in a form and manner approved by the State Board of Equalization, to allow a person to report and pay qualified use tax in accordance with the provisions of Section 6452.1.

(2) Within 10 working days of receiving from the Franchise Tax Board the returns described in paragraph (1), the State Board of Equalization shall do either of the following:

(A) Approve the form and manner of the returns and notify the Franchise Tax Board of this approval.

(B) Submit comments to the Franchise Tax Board regarding changes to the returns that shall be incorporated before the State Board of Equalization approves the form and manner of the returns.

(b) Any payments and credits shown on the return, together with any other credits associated with that person's account, of a person that elects to report qualified use tax on an acceptable tax return shall be applied in the following order:

(1) Taxes imposed under Part 10 (commencing with Section 17001), including penalties and interest, if any, imposed under this part.

(2) Qualified use tax as reported on the acceptable tax return, in accordance with Section 6452.1.

(c) The Franchise Tax Board shall transfer the qualified use tax received pursuant to Section 6452.1, and any information the State Board of Equalization deems necessary for its administration of the use tax, to the State Board of Equalization within 60 days from the date the use tax is received or the acceptable tax return is processed, whichever is later.

(d) This section shall be operative for returns filed for taxable years on and after January 1, 2003, and ending on or before December 31, 2009, and as of that date becomes inoperative, unless a later enacted statute extends the operation of this section.

SEC. X. Section 18535 of the Revenue and Taxation Code is amended to read:

18535. (a) In lieu of electing nonresident partners filing a return pursuant to Section 18501, the Franchise Tax Board may, pursuant to requirements and conditions set forth in forms and instructions, provide for the filing of a group return for one or more electing nonresident partners by a partnership doing business in, or deriving income from, sources in California. The tax rate or rates applicable to each electing partner's distributive share shall consist of the highest marginal rate or rates provided by Part 10 (commencing with Section 17001) plus, in the case of any electing nonresident partner included on the group return who would be subject to Section 17043 when filing individually, an additional tax rate of 1 percent. Except as provided in subdivision (b), no deductions shall be allowed except those necessary to determine each partner's distributive share, and no credits shall be allowed except those directly attributable to the partnership. As required by the Franchise Tax Board, the partnership as agent for the electing partners shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners.

(b) Deductions provided by Chapter 5 (commencing with Section 17501) of Part 10, attributable to earned income of a partner derived from a partnership filing a group return on behalf of electing nonresident partners under subdivision (a), shall be allowed if the partner certifies, in the form and manner as the Franchise Tax Board may prescribe, that he or she has no earned income from any other source.

(c) This section shall also be applicable to a nonresident shareholder of a corporation which is treated as an "S" corporation under Article 2.5 (commencing with Section 17100) of Chapter 3 of Part 10~~Chapter 4.5 (commencing with Section 23800) of Part 11~~. In that case, the provisions of subdivisions (a) and (b) are modified to refer to "shareholder or shareholders" in lieu of "partners" and to "S" corporation in lieu of "partnership."

(d) This section shall also be applicable to a nonresident individual with a membership or economic interest in a limited liability company, registered limited liability partnership, or foreign limited liability partnership, which is classified as a partnership for California tax purposes. In that case, the provisions of subdivisions (a) and (b) are modified to refer to "holders of a membership or economic interest" in lieu of "partners" and to "limited liability companies" in lieu of "partnerships," and "partnerships" shall include registered limited liability partnerships and foreign limited liability partnerships.

(e) The Franchise Tax Board may adjust the income of an electing nonresident taxpayer included in a group return filed under this section to properly reflect income under Part 10 (commencing with Section 17001), including Chapter 11 thereof (commencing with Section 17951), and this part (commencing with Section 18401).

SEC. X. Article 2.5. Business Entities is added to the Revenue and Taxation Code to read:

18611. (a) Except as provided in subdivision (b), every taxpayer subject to the tax imposed by Part 12 (commencing with Section 27001) shall, on or before the 15th day of the third month following the close of its taxable year, transmit to the Franchise Tax Board a return in a form prescribed by it, specifying for the taxable year, all the facts as it may by rule, or otherwise,

require in order to carry out that part and this part.

(b) In the case of any taxpayer that has gross receipts (as defined in Sections 27521 and 27522) of less than \$500,000 during the taxable year, including for this purpose any gross receipts that are part of the unitary business of the taxpayer, no return is required to be filed for that taxable year under this Article.

Comment [dkp1]: Will, check with Pat, but the reference should be to Article 3 (commencing with Section 27521) of Part 12

18612. (a) The Franchise Tax Board may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by Part 12 (commencing with Section 27001), in the manner and form as the Franchise Tax Board may determine. No extension or extensions shall aggregate more than seven months from the due date for filing the return.

(b) An extension of time granted pursuant to this section is not an extension of time for payment of tax required to be paid on or before the due date of the return without regard to extension. Underpayment of tax penalties shall be imposed as provided by law without regard to any extension granted under this section.

18613. (a) In cases where receivers, trustees in a case under Title 11 of the United States Code, or assignees are operating the property or business of a business entity those receivers, trustees, or assignees shall make returns for that business entity in the same manner and form as that business entity is required to make a return.

(b) Any tax due on the basis of returns made by receivers, trustees, or assignees shall be collected in the same manner as if collected from the business entity of whose business or property they have custody and control.

SEC. X. Section 18621 of the Revenue and Taxation Code is amended to read:

18621. Except as otherwise provided by the Franchise Tax Board and in Section 18621.5, any return, declaration, statement, or other document required to be made under any provision of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), this part, or any applicable regulation shall contain, or be verified by, a written declaration that it is made under the penalties of perjury. Those returns, and all other returns, declarations, statements, or other documents or copies thereof required, shall be in any form as the Franchise Tax Board may from time to time prescribe, including, but not limited to, on paper, on magnetic media pursuant to Section 19524, or by electronic technology or electronic imaging technology pursuant to Section 18621.5, and shall be filed with the Franchise Tax Board. The Franchise Tax Board shall prepare blank forms for the returns, declarations, statements, or other documents and shall distribute them throughout the state and furnish them upon application. Failure to receive or secure the form does not relieve any taxpayer from making any return, declaration, statement, or other document required.

SEC. X. Section 18622 of the Revenue and Taxation Code is amended to read:

18622. (a) If any item required to be shown on a federal tax return, including any gross income, deduction, penalty, credit, or tax for any year of any taxpayer is changed or corrected by the Commissioner of Internal

Revenue or other officer of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States results in a change in gross income or deductions, or gross receipts or purchases, that taxpayer shall report each change or correction, or the results of the renegotiation, within six months after the date of each final federal determination of the change or correction or renegotiation, or as required by the Franchise Tax Board, and shall concede the accuracy of the determination or state wherein it is erroneous. For any individual subject to tax under Part 10 (commencing with Section 17001), changes or corrections need not be reported unless they increase the amount of tax payable under Part 10 (commencing with Section 17001) for any year.

(b) Any taxpayer filing an amended return with the Commissioner of Internal Revenue shall also file within six months thereafter an amended return with the Franchise Tax Board which shall contain any information as it shall require. For any individual subject to tax under Part 10 (commencing with Section 17001), an amended return need not be filed unless the change therein would increase the amount of tax payable under Part 10 (commencing with Section 17001) for any year.

(c) Notification of a change or correction by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, or renegotiation of a contract or subcontract with the United States that results in a change in any item or the filing of an amended return must be sufficiently detailed to allow computation of the resulting California tax change and shall be reported in the form and manner as prescribed by the Franchise Tax Board.

(d) For purposes of this part, the date of each final federal determination shall be the date on which each adjustment or resolution resulting from an Internal Revenue Service examination is assessed pursuant to Section 6203 of the Internal Revenue Code.

SEC. X. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) ~~(1)~~ Every partnership, on or before the 15th day of the fourth month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the partners.

~~(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17925, on or before the 15th day of the fourth month following the close of its taxable year, shall make a return for that taxable year, containing the information identified in paragraph (1). In the case of a limited partnership not doing business in this state, the Franchise Tax Board shall prescribe the manner and extent to which the information identified in paragraph (1) shall be included with the return required by this paragraph.~~

(b) Each partnership required to file a return under subdivision (a) for any taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for another person at any time during that taxable year a copy of the information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) The provisions of Section 6031(f) of the Internal Revenue Code, relating to electing investment partnerships, shall apply, except as otherwise provided.

SEC. X. Section 18633.5 of the Revenue and Taxation Code is repealed.

~~18633.5. (a) Every limited liability company which is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return on or before the fifteenth day of the fourth month following the close of its taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the limited liability company members. In the case of a limited liability company not doing business in this state, and subject to the tax imposed by subdivision (b) of Section 17941, the Franchise Tax Board shall, for returns required to be filed on or after January 1, 1990, prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.~~

~~(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable year shall, on or before the day on which the return for that taxable year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.~~

~~(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:~~

~~(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable year as the Franchise Tax Board may prescribe by forms and instructions.~~

~~(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).~~

~~(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.~~

~~(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax~~

~~Board, the agreement of each nonresident member to file a return pursuant to Section 19501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails to timely file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041, in the case of members which are individuals, estates, or trusts, and Section 23151, in the case of members that are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period, reduced by the amount of tax previously withheld and paid by the limited liability company pursuant to Section 18662 and the regulations thereunder with respect to each nonresident member. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.~~

~~(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay the tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.~~

~~(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.~~

~~(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (c) shall be filed at either of the following times:~~

~~(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 10.6 (commencing with Section 17941).~~

~~(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf an agreement described in subdivision (c) has not been previously filed.~~

~~(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (c) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.~~

~~(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001).~~

~~(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941~~

~~and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).~~

~~(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (c) by a limited liability company on behalf of a nonresident member for whom an agreement required by subdivision (c) is not attached to the return of the limited liability company.~~

~~(3) The return required under paragraph (1) shall be filed on or before the fifteenth day of the fourth month after the close of the taxable year of the owner subject to tax under Part 10 (commencing with Section 17001) of Division 2 or on or before the fifteenth day of the third month after the close of the taxable year of the owner subject to tax under Chapter 2 (commencing with Section 23101) of Part 11 of Division 2, whichever is applicable.~~

~~(4) For limited liability companies disregarded pursuant to Section 23038, "taxable year of the owner" shall be substituted for "taxable year" in Sections 17941 and 17942.~~

~~(j) The amendments made by the act adding this subdivision apply to taxable years beginning on or after January 1, 2005.~~

SEC. X. Section 18662 of the Revenue and Taxation Code is amended to read:

18662. (a) The Franchise Tax Board may, by regulation, require any person, in whatever capacity acting, including lessees or mortgagors of real or personal property, fiduciaries, employers, and any officer or department of the state, or any political subdivision or agency of the state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state, having the control, receipt, custody, disposal, or payment of items of income specified in subdivision (b), to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due when the items of income are included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(b) The items of income referred to in subdivision (a) are interest, dividends, rents, prizes and winnings, premiums, annuities, emoluments, compensation for services, including bonuses, partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision

(a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person that fails to withhold from any payments any amounts required to be withheld by this section or fails to remit the taxes withheld is liable for the amount specified in Section 18668.

(e) (1) This subdivision applies to any disposition of a California real property interest by:

(A) Any person subject to tax under Part 10 (commencing with Section 17001), other than either of the following:

(i) Except as otherwise provided in this subdivision, a corporation, including an entity classified for tax purposes as a corporation under Part 11 (commencing with Section 23001).

(ii) Except as otherwise provided in this subdivision, a partnership, as determined in accordance with Subchapter K of Chapter 1 of

~~Subtitle A of the Internal Revenue Code, including an entity classified as a partnership for tax purposes under Part 10 (commencing with Section 17001).~~

~~(B) A passthrough entity corporation or partnership, if any income resulting from the disposition of California real property, when distributed, is subject to tax under Part 10 (commencing with Section 17001). For purposes of this subparagraph, passthrough entity means a partnership or an S corporation.~~

~~that corporation or partnership immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation or partnership has no permanent place of business in California if all of the following apply:~~

~~(i) It is not organized and existing under the laws of California.~~

~~(ii) It does not qualify with the office of the Secretary of State to transact business in California.~~

~~(iii) It does not maintain and staff a permanent office in California.~~

(2) (A) Except as provided in subparagraph (B), in the case of any disposition of a California real property interest by a transferor described in paragraph (1), the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to 3 1/3 percent of the sales price of the California real property conveyed.

(B) If the transferor makes an election under this subparagraph, the transferee, including any intermediary or accommodator in a deferred exchange, is required to withhold an amount equal to an amount certified by the transferor in writing under penalty of perjury. The amount certified shall not be less than the gain required to be recognized under Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001) ~~on the disposition of the California real property multiplied by the rate specified in either Section 23151 or Section 23186, as applicable, for transferors that are corporations, or the highest rate specified in Section 17041 for transferors other than corporations.~~ For purposes of applying the previous sentence, the following shall apply:

(i) ~~The highest rate specified in Section 17041 is determined without regard to any other tax rate specified under Part 10 (commencing with Section 17001) irrespective of whether the applicable statute provides that tax shall be treated as if imposed under Section 17041.~~

~~(ii) For corporations that are "S" corporations subject to the modified tax rate specified in Section 23802, the rate shall be the sum of the rate specified in subdivision (b) of Section 23802 and the highest rate specified in Section 17041, as described in clause (i).~~

(C) (i) The written certification required by subparagraph (B) shall be in a form, as prescribed by the Franchise Tax Board. The form shall provide as follows:

"Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose."

(ii) The Franchise Tax Board shall make this form available electronically on its Web site in a format that allows a transferor to complete and print the form. The Franchise Tax Board shall also provide electronic means to enable the transferor to estimate the amount of gain required to be recognized by the transferor in the transaction. Any form or worksheet, electronic or otherwise, developed for this purpose shall provide as follows:

"Title and escrow persons and exchange accommodators are not authorized to provide legal or accounting advice for purposes of determining

withholding amounts. Transferors are strongly encouraged to consult with a competent tax professional for this purpose."

(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:

(A) No transferee is required to withhold any amount under this subdivision unless the sales price of the California real property conveyed exceeds one hundred thousand dollars (\$100,000).

(B) No transferee, other than an intermediary or an accommodator in a deferred exchange, is required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.

(C) (i) No transferee, trustee under a deed of trust, or mortgagee under a mortgage with a power of sale is required to withhold under this subdivision when the transferee has acquired California real property at a sale pursuant to a power of sale under a mortgage or deed of trust or a sale pursuant to a decree of foreclosure or has acquired the property by a deed in lieu of foreclosure.

(ii) No transferee is required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.

(D) No transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying, under penalty of perjury, one of the following:

(i) (I) The California real property being conveyed is the seller's or decedent's principal residence, within the meaning of Section 121 of the Internal Revenue Code.

(II) The last use of the property being conveyed was use by the transferor as the transferor's principal residence within the meaning of Section 121 of the Internal Revenue Code.

(ii) (I) The California real property being conveyed is being exchanged, or will be exchanged, for property of like kind, within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of the gain not required to be recognized for California income or franchise tax purposes under Section 1031 of the Internal Revenue Code.

(II) Subclause (I) may not apply if an exchange does not qualify for nonrecognition treatment for California income or franchise tax purposes under Section 1031 of the Internal Revenue Code, in whole or in part, due to the failure of the transaction to comply with the provisions of Section 1031(a)(3) of the Internal Revenue Code, relating to the requirement that property be identified and that the exchange be completed not more than 180 days after the transfer of the exchanged property.

(III) In any case where clause (ii) applies, the transferee, including for this purpose any intermediary or accommodator in a deferred exchange, is required to notify the Franchise Tax Board in writing within 10 days of the expiration of the statutory periods specified in Section 1031(a)(3) of the Internal Revenue Code and thereafter remit the applicable withholding amounts determined under this subdivision in accordance with paragraph (4).

(iii) The California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and the transferor intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

(iv) The transaction will result in either a net loss or a net gain not required to be recognized for California income or franchise tax purposes.

~~(v) The transferor is a corporation with a permanent place of business in California.~~

(E) (i) In the case of any transaction otherwise subject to this subdivision that qualifies as an "installment sale," within the meaning of Section 453(b) of the Internal Revenue Code, for California income tax purposes, the provisions of this subdivision shall be separately applied to each principal payment to be made under the terms of the installment sale agreement between the parties.

(ii) For purposes of clause (i), subparagraph (A) of paragraph (3) does not apply to each individual payment to be received under the terms of the installment sale agreement.

(4) (A) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and manner and at the time specified by the Franchise Tax Board. Notwithstanding the foregoing, funds withheld on individual transactions by real estate escrow persons may, at the option of the real estate escrow person, be remitted by the 20th day of the month following the close of escrow for the individual transaction, or may be remitted on a monthly basis in combination with other transactions closed during that month.

(B) The transferor shall submit a copy of the written certificate and supporting documentation for the reduced withholding specified in subparagraph (B) of paragraph (2) or subparagraph (D) of paragraph (3), executed by the transferor, to the Franchise Tax Board upon request.

(5) For purposes of this subdivision, "California real property interest" means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(6) For purposes of this subdivision, "real estate escrow person" means any of the following persons involved in the real estate transaction:

(A) The person, including any attorney, escrow company, or title company, responsible for closing the transaction.

(B) If no person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(7) (A) Unless the real estate escrow person provides "assistance," it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, "assistance" includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision or, upon request of the parties, withholding an amount under this subdivision and remitting that amount to the Franchise Tax Board.

(C) For purposes of this paragraph, "assistance" does not include providing the written notification of the withholding requirements of this subdivision.

(D) In a case where the real estate escrow person provides "assistance" in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars (\$45).

(8) For purposes of this subdivision, "sales price" means the sum of all of the following:

(A) The cash paid, or to be paid, but excluding for this purpose any stated or unstated interest or original issue discount, as determined under Sections 1271 through 1275, inclusive, of the Internal Revenue Code.

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(9) The Franchise Tax Board may prescribe, by forms, instructions, published notices, or regulations, any requirements necessary for the efficient administration of this subdivision relating to the treatment of "de minimis" amounts otherwise required under this section.

(f) Withholding is not required under this section with respect to wages, salaries, fees, or other compensation paid by a corporation for services performed in California for that corporation to a nonresident corporate director for director services, including attendance at a board of directors' meeting.

(g) In the case of any payment described in subdivision (f), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

(h) (1) The amendments to this section made by Chapter 488 of the Statutes of 2002 apply to dispositions of California real property interests that occur on or after January 1, 2003.

(2) In the case of any payments received on or after January 1, 2003, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2003, the amendments to this section made by Chapter 488 of the Statutes of 2002 do not apply to those payments.

(i) (1) The amendments made to this section by the act adding this subdivision shall apply to dispositions of California real property interests that occur on or after January 1, 2009.

(2) In the case of any payments received on or after January 1, 2009, pursuant to an installment sale agreement relating to a disposition occurring before January 1, 2009, the amendments made to this section by the act adding this subdivision do not apply to those payments.

SEC. X. Section 18666 of the Revenue and Taxation Code is amended to read:

18666. (a) Section 1446 of the Internal Revenue Code shall apply to the extent that the amounts represent income from California sources, except as otherwise provided.

(b) (1) The rate of tax referred to in Section 1446(b)(2)(A) of the Internal Revenue Code shall be the maximum tax rate specified in Section 17041, rather than the rate specified in Section 1 of the Internal Revenue Code.

(2) ~~The rate of tax referred to in Section 1446(b)(2)(B) of the Internal Revenue Code shall not apply. be the rate specified in Section 23151, 23181, or 23183, as applicable, rather than the rate specified in Section 11 of the Internal Revenue Code.~~

SEC. X. Section 18668 of the Revenue and Taxation Code is amended to read:

18668. (a) Every person required under this article to deduct and withhold any tax is hereby made liable for that tax, to the extent provided by this section. Any amount required to be deducted and paid to the Franchise Tax Board under this article shall be considered the tax of that person. Unless it is shown that the failure is due to reasonable cause, any person who fails to withhold from any payments any amount required to be withheld under this

article or who fails to transmit the withheld amounts to the Franchise Tax Board on or before the due date required by regulations is liable for the amount actually withheld, or the amount of taxes due from the taxpayer to whom the payments are made, whichever is greater, but not in excess of the amount required to be withheld.

(b) If any amount required to be withheld under this article is not paid to the Franchise Tax Board on or before the due date required by regulations, interest shall be assessed at the adjusted annual rate established pursuant to Section 19521, computed from the due date to the date paid.

(c) Whenever any person has withheld any amount pursuant to this article, the amount so withheld shall be held to be a special fund in trust for the State of California.

(d) In lieu of the amount provided for in subdivision (a), unless it is shown that the failure to withhold is due to reasonable cause, whenever any transferee is required to withhold any amount pursuant to subdivision (e) of Section 18662, the transferee is liable for the greater of the following amounts for failure to withhold only after the transferee, as specified, is notified in writing of the requirements under subdivision (e) of Section 18662:

(1) Five hundred dollars (\$500).

(2) Ten percent of the amount required to be withheld under subdivision (e) of Section 18662.

(e) (1) Unless it is shown that the failure to notify is due to reasonable cause, the real estate escrow person is liable for the amount specified in subdivision (d), when written notification of the withholding requirements of subdivision (e) of Section 18662 is not provided to the transferee, other than a transferee that is an intermediary or accommodator in a deferred exchange, and the California real property disposition is subject to withholding under subdivision (e) of Section 18662.

(2) The real estate escrow person shall provide written notification to the transferee (other than a transferee that is an intermediary or accommodator in a deferred exchange) in substantially the same form as follows:

"In accordance with Section 18662 of the Revenue and Taxation Code, a buyer may be required to withhold an amount equal to 3 1/3 percent of the sales price or the amount that is specified in a written certificate executed by the transferor in the case of a disposition of California real property interest by either:

1. A seller who is an individual, trust, or estate or when the disbursement instructions authorize the proceeds to be sent to a financial intermediary of the seller, OR

2. ~~A passthrough entity corporation or partnership, if any income resulting from the disposition of California real property, when distributed, is subject to tax under Part 10 (commencing with Section 17001). For purposes of this subparagraph, passthrough entity means a partnership or an S corporation. corporate or partnership seller that has no permanent place of business in California immediately after the transfer of title to the California real property.~~

The buyer may become subject to penalty for failure to withhold an amount equal to the greater of 10 percent of the amount required to be withheld or five hundred dollars (\$500).

However, notwithstanding any other provision included in the California statutes referenced above, no buyer will be required to withhold any amount or be subject to penalty for failure to withhold if:

1. The sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000), OR

2. The seller executes a written certificate, under the penalty of perjury, certifying that the seller is a corporation or a partnership with a permanent place of business in California, OR

3. The seller, who is an individual, trust, estate, ~~partnership, or passthrough entity corporation or partnership~~, if any income resulting from the disposition of California real property by the passthrough entity, when distributed, is subject to tax under Part 10 (commencing with Section 17001), executes a written certificate, under the penalty of perjury, of any of the following:

A. The California real property being conveyed is the seller's or decedent's principal residence, within the meaning of Section 121 of the Internal Revenue Code.

B. The last use of the property being conveyed was use by the transferor as the transferor's principal residence within the meaning of Section 121 of the Internal Revenue Code.

C. The California real property being conveyed is or will be exchanged for property of like kind, within the meaning of Section 1031 of the Internal Revenue Code, but only to the extent of the amount of gain not required to be recognized for California income tax purposes under Section 1031 of the Internal Revenue Code.

D. The California real property has been compulsorily or involuntarily converted, within the meaning of Section 1033 of the Internal Revenue Code, and that the seller intends to acquire property similar or related in service or use so as to be eligible for nonrecognition of gain for California income tax purposes under Section 1033 of the Internal Revenue Code.

E. The California real property transaction will result in a loss or a net gain not required to be recognized for California income tax purposes.

The seller is subject to penalty for knowingly filing a fraudulent certificate for the purpose of avoiding the withholding requirement."

(3) The real estate escrow person is not liable under this subdivision if the tax due as a result of the disposition of California real property is paid by the original or extended due date of the transferor's return for the taxable year in which the disposition occurred.

(4) The real estate escrow person or transferee is not liable under paragraph (1) or subdivision (d), if the failure to withhold is the result of his or her reliance, based on good faith and on all the information of which he or she has knowledge, upon a written certificate executed by the transferor under penalty of perjury pursuant to subparagraph (D) of paragraph (3) of subdivision (e) of Section 18662.

(5) Any transferor who for the purpose of avoiding the withholding requirements of subdivision (e) of Section 18662 knowingly executes a false certificate pursuant to that section is liable for twice the amount specified in subdivision (d).

(f) The amount of tax required to be deducted, withheld, and remitted under this article shall be assessed, collected, and paid upon notice and demand. Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any amount due under this article.

SEC. X. Section 19001 of the Revenue and Taxation Code is amended to read:

19001. Except as provided by Article 2 (commencing with Section

19021), the tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001) and ~~Part 11~~ Part 12 (commencing with Section 27001 23001) shall be paid at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

SEC. X. Section 19007 of the Revenue and Taxation Code is amended to read:

19007. Payment of the estimated tax, or any installment thereof, shall be considered payment on account of the taxes imposed under Part 10 (commencing with Section 17001), ~~or Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001 23001)~~ for the taxable year.

SEC. X. Section 19009 of the Revenue and Taxation Code is amended to read:

19009. (a) Whenever any person or employer who is required to collect, account for, and pay over any tax--

(1) At the time and in the manner prescribed by law or regulations (A) fails to collect, truthfully account for, or pay over the tax, or (B) fails to make deposits, payments, or returns of the tax, and

(2) Is notified, by notice delivered in hand or by registered mail of the failure, then all the requirements of subdivision (b) shall be complied with. In the case of a corporation, partnership, limited liability company, or trust, notice to an officer, partner, manager, member, or trustee, shall, for purposes of this section, be deemed to be sufficient notice to the corporation, partnership, limited liability company, or trust and to all officers, partners, managers, members, trustees, and employees thereof.

(b) Any person or employer who is required to collect, account for, and pay over any tax imposed by Part 10 (commencing with Section 17001), ~~or Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001)~~, if notice has been delivered to that person or employer in accordance with subdivision (a), shall collect the taxes, which become collectible after delivery of the notice, shall (not later than the end of the second banking day after any amount of the taxes is collected) deposit that amount in a separate account in a bank located within the limits of this state, and shall keep the amount of those taxes in that account until payment over to the Franchise Tax Board. The account shall be designated as a special fund in trust for the Franchise Tax Board, payable to the Franchise Tax Board by that person or employer as trustee.

(c) Whenever the Franchise Tax Board is satisfied, with respect to any notification made under subdivision (a), that all requirements of law and regulations with respect to the taxes, will henceforth be complied with, it may cancel the notification. The cancellation shall take effect at the time as is specified in the notice of the cancellation.

SEC. X. Section 19011.7 of the Revenue and Taxation Code is added to read:

19011.7. (a) All payments required under this part, regardless of the taxable year to which the payments apply, shall be remitted to the Franchise Tax Board by electronic funds transfer pursuant to Division 11 (commencing with Section 11101) of the Commercial Code, once any of the following conditions are met:

(1) With respect to any business entity subject to tax under Part 12 (commencing with Section 27001), any installment payment of

estimated tax made pursuant to Section 19028 or the payment made pursuant to Section 18612 with regard to an extension of time to file exceeds fifty thousand dollars (\$50,000) in any taxable year beginning on or after January 1, 2012, or exceeds twenty thousand dollars (\$20,000) in any taxable year beginning on or after January 1, 2012.

(2) With respect to any business entity subject to tax under Part 12 (commencing with Section 27001), the total tax liability exceeds two hundred thousand dollars (\$200,000) in any taxable year beginning on or after January 1, 2012, or exceeds eighty thousand dollars (\$80,000) in any taxable year beginning on or after January 1, 2012. For purposes of this section, total tax liability shall be the total tax liability as shown on the original return, after any adjustment made pursuant to Section 19051.

(3) A taxpayer submits a request to the Franchise Tax Board and is granted permission to make electronic funds transfers.

(b) A taxpayer required to remit payments to the Franchise Tax Board by electronic funds transfer may elect to discontinue making payments where the threshold requirements set forth in paragraphs (1) and (2) of subdivision (a) were not met for the preceding taxable year. The election shall be made in a form and manner prescribed by the Franchise Tax Board.

(c) Any taxpayer required to remit payment by electronic funds transfer pursuant to this section who makes payment by other means shall pay a penalty of 10 percent of the amount paid, unless it is shown that the failure to make payment as required was for reasonable cause and was not the result of willful neglect.

(d) Any taxpayer required to remit payments by electronic funds transfer pursuant to this section may request a waiver of those requirements from the Franchise Tax Board. The Franchise Tax Board may grant a waiver only if it determines that the particular amounts paid in excess of the threshold amounts established in this section were not representative of the taxpayer's tax liability. If a taxpayer is granted a waiver, subsequent remittances by electronic funds transfer shall be required only on those terms set forth in the waiver.

(e) Electronic funds transfer procedures, in addition to those described in subdivision (f), shall be as prescribed by the Franchise Tax Board. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(f) For purposes of this section:

(1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfer shall be accomplished by an automated clearinghouse debit, automated clearinghouse credit, a Federal Reserve Wire Transfer (Fedwire), or by an international funds transfer.

(2) "Automated clearinghouse" means any federal reserve bank, or an organization established by agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and that authorizes an electronic transfer of funds between those banks or bank accounts.

(3) "Automated clearinghouse debit" means a transaction in which any department of the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the taxpayer's bank

Comment [dkp2]: Why two rules here for a dollar threshold? Existing law started at \$50k a few years back and then was lowered to \$20k – shouldn't this just be modified to \$20k – period? If so, then can also delete the taxable year reference.

Comment [dkp3]: Same as above comment.

account and crediting the state's bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction by the taxpayer shall be paid by the state.

(4) "Automated clearinghouse credit" means an automated clearinghouse transaction in which the taxpayer, through its own bank, originates an entry crediting the state's bank account and debiting its own bank account. Banking costs incurred by the state for the automated clearinghouse credit transaction may be charged to the taxpayer.

(5) "Fedwire" means any transaction originated by the taxpayer and utilizing the national electronic payment system to transfer funds through federal reserve banks, pursuant to which the taxpayer debits its own bank account and credits the state's bank account. Electronic funds transfers may be made by Fedwire only if prior approval is obtained from the Franchise Tax Board and the taxpayer is unable, for reasonable cause, to make payments pursuant to paragraph (3) or (4). Banking costs charged to the taxpayer and to the state may be charged to the taxpayer.

(6) "International funds transfer" means any transaction originated by the taxpayer and utilizing the international electronic payment system to transfer funds, pursuant to which the taxpayer debits its own bank account and credits the state's bank account.

(7) In determining whether a payment or total tax liability exceeds the amounts established in subdivision (a), the income of all taxpayers whose income derived from, or attributable to, sources within this state is required to be determined by a combined report shall be aggregated and the total aggregate amount shall be considered to be the income of a single taxpayer for purposes of determining the payment or total tax liability of a single taxpayer.

SEC. X. Article 2.5. Business Entities is added to Chapter 4 of Part 10.2 of the Revenue and Taxation Code to read:

Article 2.5. Business Entities

19028. (a) For purposes of this article, in the case of a business entity subject to tax under Part 12 (commencing with Section 27001), the term "estimated tax" means the amount which the business entity estimates as the amount of the tax imposed by Part 12 (commencing with Section 27001).

(b) Estimated tax shall be paid in installments as follows:

<u>If the estimated tax of this subdivision are first met--</u>	<u>The following percentages of the requirements shall be paid on the 15th day of the--</u>			
	<u>4th month</u>	<u>6th month</u>	<u>9th month</u>	<u>12th month</u>
<u>Before the 1st day of the 4th month of the taxable year.</u>	<u>25</u>	<u>25</u>	<u>25</u>	<u>25</u>

After the last day of the 3rd month and before the 1st day of

the 6th
month of the
taxable year.

33^{1/3} 33^{1/3} 33^{1/3}

After the
last day of
the 5th
month and
before the
1st day of
the 9th
month of the
taxable year. _ _

50 50

After the
last day of
the 8th
month and
before the
1st day of
the 12th
month of the
taxable year.

100

(d) This section shall apply to installments due for each taxable year
beginning on or after January 1, 2012.

Comment [dkp4]: If the BNRT first starts for taxable years beginning on or after 1/1/12, why do we need this taxable year reference?

19029. If, after paying any installment of estimated tax required
by of Section 19028, the taxpayer makes a new estimate, the
amount of each remaining installment (if any) shall be the amount which would
have been payable if the new estimate had been made when the first estimate
for the taxable year was made, increased or decreased (as the case may be) by
the amount computed by dividing--

(a) The difference between--

(1) The amount of estimated tax required to be paid before the date
on which the new estimate is made, and

(2) The amount of estimated tax which would have been required to
be paid before that date if the new estimate had been made when the first
estimate was made, by

(b) The number of installments remaining to be paid on or after the
date on which the new estimate is made.

19030. The application of this article to taxable years of less
than 12 months shall be in accordance with regulations prescribed by the
Franchise Tax Board.

SEC. X. Section 19041.5 of the Revenue and Taxation Code is amended to read:

19041.5. (a) Notwithstanding any other provision of this part, Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), the provisions of Section 6603 of the Internal Revenue Code, relating to deposits made to suspend the running of interest on potential underpayments, shall apply, except as otherwise provided. A deposit shall not be considered a payment of tax for purposes of filing a claim for refund pursuant to Section 19306, converting an administrative action to an action on a claim pursuant to Section 19335, or

filing an action pursuant to Section 19384, until either of the following occurs:

(1) The taxpayer provides a written statement to the Franchise Tax Board specifying that the deposit shall be a payment of tax for purposes of Section 19306, 19335, or 19384.

(2) The deposit is used to pay a final tax liability.

(b) Section 6603(d) of the Internal Revenue Code is modified to substitute the phrase "notice of proposed deficiency assessment under Article 3 of Chapter 4 of this part" for "30-day letter" in each place that the phrase "30-day letter" appears.

(c) In the case of any amount held by the Franchise Tax Board as a deposit in the nature of a cash bond pursuant to the provisions of this section prior to the amendments made by the act adding this subdivision, the date that the taxpayer identifies that amount as a deposit made pursuant to this section, as amended by the act adding this subdivision, shall be treated as the date that the amount is deposited for purposes of this section, as amended by the act adding this subdivision.

SEC. X. Section 19043 of the Revenue and Taxation Code is amended to read:

19043. (a) For purposes of this part, "deficiency" means the amount by which the tax imposed by Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) exceeds the excess of--

(1) The sum of--

(A) The amount shown as the tax by the taxpayer on an original or amended return, if an original or amended return was filed, plus

(B) The amounts previously assessed (or collected without assessment) as a deficiency, over--

(2) The amount of rebates, as defined in paragraph (2) of subdivision (b), made.

(b) For purposes of this section:

(1) The tax imposed by Part 10 (commencing with Section 17001), and Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001) and the tax shown on an original or amended return shall both be determined without regard to payments on account of estimated tax, and without regard to the credit under Section 19002.

(2) "Rebate" means so much of an abatement, credit, refund, or other repayment, as was made on the ground that the tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) or Part 12 (commencing with Section 27001) was less than the excess of the amount specified in paragraph (1) of subdivision

(a) over the rebates previously made.

SEC. X. Section 19043.5 of the Revenue and Taxation Code is amended to read:

19043.5. (a) (1) If the Franchise Tax Board determines that the amount of a carryover disclosed by the taxpayer on an original or amended return, including an amended return reporting federal adjustments pursuant to Section 18622, is more than the amount of the carryover disclosed by its own examination, it may mail a notice or notices to the taxpayer of the proposed carryover adjustment and the proposed adjusted carryover amount.

(2) For purposes of this section, "carryover" means the amount of

a credit, loss, deduction, or other item that is shown on an original or amended return for carry forward to a subsequent taxable year.

(b) Except as otherwise provided in this section, the provisions of this article applicable to a proposed deficiency assessment shall be applicable to a proposed adjusted carryover amount, including protest and appeal rights as if that proposed adjusted carryover amount were a proposed deficiency assessment.

(c) (1) A proposed adjusted carryover amount shall become a final adjusted carryover amount under this section following a determination of the board regarding that proposed adjusted carryover amount that becomes final pursuant to the provisions of Section 19048.

(2) A final adjusted carryover amount shall be binding and conclusive with respect to the amount of that carryover for purposes of Part 10 (commencing with Section 17001), this part, ~~and~~ Part 11 (commencing with Section 23001), and Part 12 (commencing with Section 27001), except in the following circumstances:

(A) In the event of fraud, malfeasance, or misrepresentation of a material fact.

(B) Subject to any provision of the Revenue and Taxation Code that expressly provides that effect be given to that provision notwithstanding any other law or rule of law.

(C) Subject to any law that is, or becomes, operative with respect to a taxable year affected by the final adjusted carryover amount.

(D) Subject to any final federal adjustment that is made with respect to the taxpayer's federal income tax liability for a taxable year affected by the final adjusted carryover amount.

(E) In an action brought pursuant to provisions of Section 19382.

(d) (1) In any case where there is a final adjusted carryover amount with respect to a carryover, the taxpayer shall report that final adjusted carryover amount on an original or amended return for any subsequent year.

(2) If a taxpayer fails to comply with paragraph (1), then any adjustment required to make the amount of the carryover shown on the return for any year consistent with the final adjusted carryover amount shall be treated as arising out of a mathematical error and assessed and collected under Section 19051.

(e) Except as provided in subdivision (c), this section shall not affect the determination, issuance, assessment, collection, or validity of a deficiency assessment under this part.

SEC. X. Section 19054 of the Revenue and Taxation Code is amended to read:

19054. (a) If on any return or claim for refund of taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) or Part 12 (commencing with 27001), there is an overstatement of the credit for income tax withheld, or of the amount paid as estimated income tax, the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Franchise Tax Board in the same manner as is provided by Section 19051 in the case of a mathematical error appearing on the return.

(b) No unpaid amount of estimated tax under Section 19025 or 19136 shall be assessed.

SEC. X. Section 19057 of the Revenue and Taxation Code is amended to read:

19057. (a) Except in the case of a false or fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year period or the period otherwise provided. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit.

(b) The running of the period of limitations provided in subdivision (a) on mailing a notice of proposed deficiency assessment shall, in a case under Title 11 of the United States Code, be suspended for any period during which the Franchise Tax Board is prohibited by reason of that case from mailing the notice of proposed deficiency assessment and for 60 days thereafter.

(c) Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) for any taxable year would otherwise expire, the Franchise Tax Board receives a written document, other than an amended return or a report required by Section 18622, signed by the taxpayer showing that the taxpayer owes an additional amount of that tax for that taxable year, the period for the assessment of an additional amount in excess of the amount shown on either an original or amended return shall not expire before the day 60 days after the day on which the Franchise Tax Board receives that document.

(d) If a taxpayer determines in good faith that it is an exempt organization and files a return as an exempt organization under Section 23772, and if the taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, that return shall be deemed the return of the organization for the purposes of this section.

SEC. X. Section 19061 of the Revenue and Taxation Code is repealed.

~~19061. In case of a deficiency described in Sections 24945 and 24946, and in Sections 1033(a)(2)(C) and 1033(a)(2)(D) of the Internal Revenue Code, the deficiency may be assessed at any time prior to the expiration of the time therein provided.~~

SEC. X. Section 19063 of the Revenue and Taxation Code is amended to read:

19063. (a) In the case of any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) with respect to any person, the period for assessing a deficiency attributable to any partnership item of a federally registered partnership shall not expire before the later of the following:

(1) The date which is five years after the date on which the partnership return of the federally registered partnership for the partnership taxable year in which the item arose was filed (or later, if the date prescribed for filing the return).

(2) If the name or address of the person does not appear on the partnership return, the date which is one year after the date on which the information is furnished to the Franchise Tax Board in the manner and at the

place as it may prescribe.

(b) For purposes of this section, "partnership item" means both of the following:

(1) Any item required to be taken into account for the partnership taxable year under any provision of subchapter K of Chapter 1 of Title 26 of the Internal Revenue Code to the extent that regulations prescribed by the Franchise Tax Board provide that for purposes of this part that item is more appropriately determined at the partnership level than at the partner level.

(2) Any other item to the extent affected by an item described in paragraph (1).

(c) The extensions referred to in subsection (c)(4) of Section 6501 of the Internal Revenue Code, insofar as they relate to partnership items, may, with respect to any person, be consented to by either of the following:

(1) Except to the extent the Franchise Tax Board is otherwise notified by the partnership, by a general partner of the partnership.

(2) By any person authorized to do so by the partnership in writing.

(d) For purposes of this section, "federally registered partnership" means, with respect to any partnership taxable year, any partnership for which either of the following apply:

(1) Interests have been offered for sale at any time during that taxable year or a prior taxable year in any offering required to be registered with the Securities and Exchange Commission.

(2) At any time during that taxable year or a prior taxable year, was subject to the annual reporting requirements of the Securities and Exchange Commission which relate to the protection of investors in the partnership.

SEC. X. Section 19066 of the Revenue and Taxation Code is amended to read:

19066. (a) For the purposes of Sections 19057, 19058, and 19065, a return of tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), except a return required by Article 5 (commencing with Section 18661) of Chapter 2 (relating to withholding), filed before the last day prescribed by law for filing (determined without regard to any extension of time for filing the return), shall be considered as filed on that day. For purposes of Section 19306, payment of any portion of the tax made before the last day prescribed for the payment of the tax shall be considered made on the last day.

(b) For purposes of this section, if a return required by Article 5 (commencing with Section 18661) of Chapter 2 (relating to withholding) or a return of tax imposed by Section 13020 of the Unemployment Insurance Code (relating to withholding tax on wages), for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, that return shall be considered filed on April 15 of that calendar year.

SEC. X. Section 19066.5 of the Revenue and Taxation Code is amended to read:

19066.5. In the case of any information that is required to be reported to the Franchise Tax Board under Section 19141.2 or 19141.5, the time for assessment of any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part with respect to any event or period to which that information relates shall not expire before the date that is four years after

the date on which the Franchise Tax Board is furnished the information required to be reported under Section 19141.2 or 19141.5, or within the periods provided in Section 19057, 19058, 19059, 19060, 19065, 24945, 24946, Section 1033(a)(2)(C) of the Internal Revenue Code, or Section 1033(a)(2)(D) of the Internal Revenue Code, whichever period expires later.

SEC. X. Section 19071 of the Revenue and Taxation Code is amended to read:

19071. The taxes imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) upon any taxpayer other than a transferee for which any person other than the taxpayer is liable may be assessed against that person in the manner provided for the assessment of deficiencies. The taxes may be assessed at any time within which deficiency assessments may be made against the taxpayer; provided, however, the running of the period of limitations upon the assessment of the liability imposed upon any person other than the taxpayer shall, after the mailing of the notice provided for in Section 19033 to the taxpayer, be suspended for the period during which the taxpayer exercises an administrative remedy as provided in Section 19041, 19045, or 19048.

SEC. X. Section 19101 of the Revenue and Taxation Code is amended to read:

Article 6. Interest

19101. (a) If any amount of tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with 27001), is not paid on or before the last date prescribed for payment, interest on that amount at the adjusted annual rate established under Section 19521 shall be paid for the period from that last date to the date paid.

(b) For purposes of this article, the last date prescribed for payment of the tax shall be determined under Chapter 4 (commencing with Section 19001), with the application of the following rules:

(1) The last date prescribed for payment shall be determined without regard to any extension of time for payment or any installment agreement entered into under Section 19008.

(2) The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy as provided in Article 5 (commencing with Section 19081), prior to the last date otherwise prescribed for that payment.

(3) In all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Franchise Tax Board).

(c) Except as provided in this article:

(1) Interest prescribed under this article on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part (except Article 3 (commencing with Section 19031), relating to deficiency assessments) to any tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) shall be deemed also to refer to interest imposed by this article on that tax.

(2) (A) Interest shall be imposed under subdivision (a) in respect to any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under Section 19131, 19132, or 19164) only if that assessable penalty, additional amount, or addition to the tax is not paid within 15 calendar days from the date of notice and demand therefor, and in that case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(B) Interest shall be imposed under this article with respect to any addition to tax imposed by Section 19131 (relating to failure to file a return on or before the due date), Section 19132 (relating to underpayment of tax), or Section 19164 (relating to imposition of the accuracy-related penalty), for the period that:

(i) Begins on the date on which the return of the tax with respect to which that addition to tax is imposed is required to be filed (including any extensions), and

(ii) Ends on the date of payment of that addition to tax.

(3) If notice and demand is made for payment of any amount and if that amount is paid within 15 calendar days after the date of the notice and demand, interest under this article on the amount so paid shall not be imposed for the period after the date of the notice and demand.

(d) This article shall not apply to any failure to pay estimated tax required by Section 19025 or 19136.

SEC. X. Section 19132 of the Revenue and Taxation Code is amended to read:

19132. (a) (1) Unless it is shown that the failure is due to reasonable cause and not due to willful neglect, a penalty computed in accordance with paragraph (2) is hereby imposed in the case of failure to pay any of the following:

(A) The amount shown as tax on any return on or before the date prescribed for payment of that tax determined with regard to any extension of time for payment.

(B) Any amount in respect of any tax required to be shown on a return which is not so shown including an assessment made pursuant to Section 19051 within 15 days of the date of the notice and demand therefor.

(C) The amount required to be paid by Section 19021, if applicable, that is not paid.

~~(D) The amount required to be paid by Section 17941 or 23091, if applicable, that is not paid.~~

~~(E) The amount required to be paid by Section 17948 or 23097, if applicable, that is not paid.~~

(2) The penalty imposed under paragraph (1) shall consist of both of the following:

(A) Five percent of the total tax unpaid as defined in subdivision (c).

(B) An amount computed at the rate of 0.5 percent per month of the "remaining tax" as defined in subdivision (d) for each additional month or fraction thereof not to exceed 40 months during which the "remaining tax" is greater than zero.

(3) The aggregate amount of penalty imposed by this subdivision shall not exceed 25 percent of the total unpaid tax and shall be due and payable upon notice and demand by the Franchise Tax Board. The tender of a check or money order does not constitute payment of the tax for purposes of this section unless the check or money order is paid on presentment.

(b) The penalty prescribed by subdivision (a) shall not be assessed if, for the same taxable year, the sum of any penalties imposed under Section 19131 relating to failure to file return and Section 19133 relating to failure to file return after demand is equal to or greater than the subdivision (a) penalty. In the event the penalty imposed under subdivision (a) is greater than the sum of any penalties imposed under Sections 19131 and 19133, the penalty imposed under subdivision (a) shall be the amount which exceeds the sum of any penalties imposed under Sections 19131 and 19133.

(c) For purposes of this section, total tax unpaid means the amount of tax shown on the return reduced by both of the following:

(1) The amount of any part of the tax which is paid on or before the date prescribed for payment of the tax.

(2) The amount of any credit against the tax which may be claimed upon the return.

(d) For purposes of this section, "remaining tax" means total tax unpaid reduced by the amount of any payment of the tax.

(e) If the amount required to be shown as a tax on a return is less than the amount shown as tax on that return, subdivisions (a), (c), and (d) shall be applied by substituting that lower amount.

(f) No interest shall accrue on the portion of the penalty prescribed in subparagraph (B) of paragraph (2) of subdivision (a).

(g) The amendments made by the act adding this subdivision are operative for notices issued on or after January 1, 1998.

SEC. X. Section 19135.5 is added to the Revenue and Taxation Code to read:

19135.5. Whenever any foreign limited liability business entity which fails to qualify to do business in this state or whose powers, rights, and privileges have been forfeited, or any domestic limited liability business entity which has been suspended, and which is doing business in this state, within the meaning of Section 27101, fails to make and file a return as required by this part, the Franchise Tax Board shall impose a penalty of two thousand dollars (\$2,000) per taxable year, unless the failure to file is due to reasonable cause and not willful neglect. The penalty shall be in addition to any other penalty which may be due under this part. The penalty shall be imposed if the return is not filed within 60 days after the Franchise Tax Board sends the taxpayer a notice and demand to file the required tax return.

SEC. X. Section 19139 is added to the Revenue and Taxation Code to read:

19139. (a) (1) A taxpayer subject to the tax imposed under Part 12 (commencing with Section 27001) with an understatement of tax in excess of one million dollars (\$1,000,000) for any taxable year shall be subject to the penalty imposed under this section.

(2) For taxpayers included in a combined report under Section 27xxx or authorized to be included in a combined report under Section 27yyy, the threshold amount prescribed in paragraph (1) shall apply to the aggregate amount of tax liability under Part 12 (commencing with Section 27001) for all taxpayers that are required to be or authorized to be included in a combined report.

(b) The penalty under this section shall be an amount equal to 20 percent of any understatement of tax. For purposes of this section, "understatement of tax" means the amount by which the tax imposed by Part 12 (commencing with Section 27001) exceeds the amount of tax shown on an original return or shown on an amended return filed on or before the original or extended due date of the return for the taxable year.

(c) The penalty imposed by this section shall be in addition to any other penalty imposed under Part 12 (commencing with Section 27001) or this part.

(d) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(e) A refund or credit for any amounts paid to satisfy a penalty imposed under this section may be allowed only on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.

(f) (1) No penalty shall be imposed under this section on any understatement to the extent that the understatement is attributable to a change in law that is enacted, promulgated, issued, or becomes final after the earlier of either of the following dates:

(A) The date the taxpayer files the return for the taxable year for which the change is operative.

(B) The extended due date for the return of the taxpayer for the taxable year for which the change is operative.

(2) For purposes of this subdivision, a "change of law" means a statutory change or an interpretation of law or rule of law by regulation, legal ruling of counsel, within the meaning of subdivision (b) of Section 11340.9 of the Government Code, or a published federal or California court decision.

Comment [dkp5]: Need section numbers, check with Pat.

Comment [dkp6]: Same as prior comment.

(3) The Franchise Tax Board shall implement this subdivision in a reasonable manner.

(g) No penalty shall be imposed under this section to the extent that a taxpayer's understatement is attributable to the 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 paragraph (1) of subdivision (a) of Section 21012.

Comment [dkp7]: Not necessary.

SEC. X. Section 19141.5 of the Revenue and Taxation Code is amended to read:

19141.5. (a) (1) Section 6038A of the Internal Revenue Code, relating to information with respect to certain foreign-owned corporations, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038A of the Internal Revenue Code.

(3) Section 11314 of Public Law 101-508, relating to application of amendments made by Section 7403 of the Revenue Reconciliation Act of 1989 to taxable years beginning on or before July 10, 1989, shall apply.

(4) Section 6038A(e) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

(B) Each reference to "summons" shall instead refer to "subpoena duces tecum."

(C) Section 6038A(e)(4)(C) of the Internal Revenue Code shall refer to "superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco," instead of "United States district court for the district in which the person (to whom the summons is issued) resides or is found."

(b) In the case of a corporation, each of the following shall apply:

(1) Section 6038B of the Internal Revenue Code, relating to notice of certain transfers to foreign persons, shall apply, except as otherwise provided.

(2) The information required to be filed with the Franchise Tax Board under this subdivision shall be a copy of the information required to be filed with the Internal Revenue Service.

(3) (A) A penalty shall be imposed under this part for failure to furnish information and that penalty shall be determined in accordance with Section 6038B of the Internal Revenue Code, except as otherwise provided.

(B) Subparagraph (A) shall not apply to any transfer described in Section 6038B(a)(1)(B) of the Internal Revenue Code.

(c) (1) Section 6038C of the Internal Revenue Code, relating to information with respect to foreign corporations engaged in United States business, shall apply.

(2) A penalty shall be imposed under this part for failure to furnish information or maintain records and that penalty shall be determined in accordance with Section 6038C of the Internal Revenue Code.

(3) Section 6038C(d) of the Internal Revenue Code, relating to enforcement of requests for certain records, is modified as follows:

(A) Each reference to Section 7602, 7603, or 7604 of the Internal Revenue Code shall instead refer to Section 19504.

(B) Each reference to "summons" shall instead refer to "subpoena duces tecum."

(d) For purposes of this part, the information required to be filed with the Franchise Tax Board pursuant to this section shall be a copy of the information filed with the Internal Revenue Service.

(e) For purposes of this section, each of the following shall apply:

(1) Section 7701(a)(4) of the Internal Revenue Code, relating to the term "domestic," shall apply.

(2) Section 7701(a)(5) of the Internal Revenue Code, relating to the term "foreign," shall apply.

(3) Section 7701(a)(30) of the Internal Revenue Code, relating to the term "United States person," shall apply. However, the term "United States person" shall not include any ~~business entity corporation~~ that is not subject to the tax imposed under ~~Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), or Chapter 3 (commencing with Section 23501),~~ of Part ~~1211~~ (commencing with Section 27001).

SEC. X. Section 19141.8 is added to the Revenue and Taxation Code to read:

19141.8. (a) Each taxpayer subject to tax under Part 12 (commencing with Section 27001) shall maintain (in the location, in the manner, and to the extent prescribed in regulations promulgated by the Franchise Tax Board) and make available upon request all of the following:

(1) Any records as may be appropriate to determine the correct treatment of the components that are a part of one or more unitary businesses for purposes of determining the net receipts derived from or attributable to this state.

(2) Any records as may be appropriate to determine the correct treatment of amounts that are attributable to the classification of an item as business or nonbusiness income.

(3) Any records as may be appropriate to determine the correct treatment of the apportionment factors.

(4) Documents and information, including any questionnaires completed and submitted to the Internal Revenue Service, that are necessary to audit issues involving.

(b) For purposes of this section:

(1) Information for any year shall be retained for that period of time in which the taxpayers' business net receipts tax liability to this state may be subject to adjustment, including all periods in which additional taxes may be assessed, not to exceed eight years from the due date or extended due date of the return, or during which a protest is pending before the Franchise Tax Board, or an appeal is pending before the State Board of Equalization, or a lawsuit is pending in the courts of this state or the United States with respect to California business net receipts tax.

(2) "Related party" means entities that are related because one owns or controls, directly or indirectly, more than 50 percent of the stock of the other or because more than 50 percent of the voting stock of each is owned or controlled, directly or indirectly, by the same interests.

(3) "Records" includes any books, papers, or other data.

(c) (1) If a taxpayer subject to this section fails to maintain or fails to cause another to maintain records as required by subdivision (a), that taxpayer shall pay a penalty of ten thousand dollars (\$10,000) for each taxable year with respect to which the failure occurs.

(2) If any failure described in paragraph (1) continues for more than 90 days after the day on which the Franchise Tax Board mails notice of

the failure to the taxpayer, that taxpayer shall pay a penalty (in addition to the amount required under paragraph (1)) of ten thousand dollars (\$10,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The additional penalty imposed by this subdivision shall not exceed a maximum of fifty thousand dollars (\$50,000) if the failure to maintain or the failure to cause another to maintain is not willful.

(3) For purposes of this section, the time prescribed by regulations to maintain records (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as not earlier than the last day on which (as shown to the satisfaction of the Franchise Tax Board) reasonable cause existed for failure to maintain the records.

(d) (1) The Franchise Tax Board may apply the rules of paragraph

(2) whether or not the board begins a proceeding to enforce a subpoena, or subpoena duces tecum, if subparagraphs (A), (B), and (C) apply:

(A) For purposes of determining the correct treatment under Part 12 (commencing with Section 27001) of the items described in subdivision (a), the Franchise Tax Board issues a subpoena or subpoena duces tecum to a taxpayer to produce (either directly or as agent for the related party) any records or testimony.

(B) The subpoena or subpoena duces tecum is not quashed in a proceeding begun under paragraph (3) and is not determined to be invalid in a proceeding begun under Section 19504 to enforce the subpoena or subpoena duces tecum.

(C) The taxpayer does not substantially comply in a timely manner with the subpoena or subpoena duces tecum and the Franchise Tax Board has sent by certified or registered mail a notice to that taxpayer that it has not substantially complied.

(D) If the taxpayer fails to maintain or fails to cause another to maintain records as required by subdivision (a), and by reason of that failure, the subpoena, or subpoena duces tecum, is quashed in a proceeding described in subparagraph (B) or the taxpayer is not able to provide the records requested in the subpoena or subpoena duces tecum, the Franchise Tax Board may apply the rules of paragraph (2) to any of the items described in subdivision (a) to which the records relate.

(2) (A) All of the following shall be determined by the Franchise Tax Board in the Franchise Tax Board's sole discretion from the Franchise Tax Board's own knowledge or from information the Franchise Tax Board may obtain through testimony or otherwise:

(i) The components that are a part of one or more unitary businesses for purposes of determining the business net receipts derived from or attributable to this state pursuant to Section ~~XXXXX~~ or ~~YYYYY~~.

(ii) Amounts that are attributable to the classification of an item as business or nonbusiness for purposes of Chapter 3 (commencing with Section 27501) of Part 12.

(iii) The apportionment factors for purposes of Chapter 7 (commencing with Section 28001) of Part 12.

(iv) The correct amount of income under Section 882 of, or Subpart F of Part III of Subchapter N of, or similar provisions of, the Internal Revenue Code.

(B) This paragraph shall apply to determine the correct treatment of the items described in subdivision (a) unless the taxpayer is authorized by its related parties (in the manner and at the time as the Franchise Tax Board shall prescribe) to act as the related parties' limited agent solely for purposes of applying Section 19504 with respect to any request by the Franchise Tax Board to examine records or produce testimony related to any item described in subdivision (a) or with respect to any subpoena or subpoena

Comment [dkp8]: Check with Pat.

duces tecum for the records or testimony. The appearance of persons or the production of records by reason of the taxpayer being an agent shall not subject those persons or records to legal process for any purpose other than determining the correct treatment under Part 12 of the items described in subdivision (a).

(C) Determinations made in the sole discretion of the Franchise Tax Board pursuant to this paragraph may be appealed to the State Board of Equalization, in the manner and at the time prescribed by Section 19045 or 19324, or may be the subject of an action to recover tax, in the manner and at a time prescribed by Section 19382. The review of determinations by the board or the court shall be limited to whether the determinations were arbitrary or capricious, or are not supported by substantial evidence.

(3) (A) Notwithstanding any other law or rule of law, any reporting taxpayer to which the Franchise Tax Board issues a subpoena or subpoena duces tecum referred to in subparagraph (A) of paragraph (1) shall have the right to begin a proceeding to quash the subpoena or subpoena duces tecum not later than the 90th day after the subpoena or subpoena duces tecum was issued. In that proceeding, the Franchise Tax Board may seek to compel compliance with the subpoena or subpoena duces tecum.

(B) Notwithstanding any other law or rule of law, any reporting taxpayer that has been notified by the Franchise Tax Board that it has determined that the taxpayer has not substantially complied with a subpoena or subpoena duces tecum referred to in paragraph (1) shall have the right to begin a proceeding to review the determination not later than the 90th day after the day on which the notice referred to in subparagraph (C) of paragraph (1) was mailed. If the proceeding is not begun on or before the 90th day, the determination by the Franchise Tax Board shall be binding and shall not be reviewed by any court.

(C) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco, shall have jurisdiction to hear any proceeding brought under subparagraphs (A) and (B). Any order or other determination in the proceeding shall be treated as a final order that may be appealed.

(D) If any taxpayer takes any action as provided in subparagraphs (A) and (B), the running of any period of limitations under Sections 19057 to 19064, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that taxpayer shall be suspended for the period during which the proceedings, and appeals therein, are pending. In no event shall any period expire before the 90th day after the day on which there is a final determination in the proceeding.

SEC. X. Section 19142 of the Revenue and Taxation Code is amended to read:

19142. (a) Except as provided in Sections 19147 and 19148 and subdivision (b), in the case of any underpayment of tax imposed under Part 11 (commencing with Section 23001) or Part 12 (commencing with Section 27001), there shall be added to the tax for the taxable year an amount determined at the rate established under Section 19521 on the amount of the underpayment for the period of the underpayment.

(b) (1) No addition to tax shall be imposed under this section to the extent that the underpayment was created or increased by any provision of law that is chaptered during and operative for the taxable year of the underpayment.

(2) Notwithstanding Section 18415, this subdivision applies to penalties imposed on and after January 1, 2005.

SEC. X. Section 19144 of the Revenue and Taxation Code is amended to read:

19144. For the purposes of Section 19142 the amount of the underpayment shall be the excess of--

(a) ~~(1) The amount of the installment which would be required to be paid if the estimated tax were equal to the applicable percentage of the tax shown on the return for the taxable year, or (2) in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11 an amount equal to the applicable percentage of the lesser of the tax computed at the rate provided by Section 19024 (but otherwise on the basis of the facts shown on the return and the law applicable to the taxable year), or the tax shown on the return for the taxable year as prescribed by Section 19021, or (3) if no return was filed, the applicable percentage of the tax for that year, over~~

(b) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) For purposes of this section, the "applicable percentage" shall be ~~as follows:~~

~~(1) For taxable years beginning before January 1, 1998, 95 percent.~~

~~(2) For taxable years beginning on or after January 1, 1998, 100 percent.~~

SEC. X. Section 19145 of the Revenue and Taxation Code is amended to read:

19145. For purposes of Section 19142, the period of the underpayment shall run from the date the installment was required to be made to whichever of the following dates is the earlier:

(a) The 15th day of the third month following the close of the taxable year, ~~except in the case of an organization described in Section 23731 subject to the tax imposed under Section 23731, in which case "fifth" shall be substituted for "third."~~

(b) With respect to any portion of the underpayment, the date on which that portion is paid. For purposes of this subdivision, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent the payment exceeds the amount of the installment determined under subdivision (a) of Section 19144 for the installment date.

SEC. X. Section 19147 of the Revenue and Taxation Code is amended to read:

19147. (a) Notwithstanding Sections 19142 to 19145, inclusive, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax paid on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before that date if the estimated tax were whichever of the following is the lesser:

(1) (A) The tax shown on the return of the taxpayer for the preceding taxable year if a return showing a liability for tax was filed by the taxpayer for the preceding year and that preceding year was a year of 12 months. ~~The tax shown on the return, in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11, means the amount of tax shown on the return for the taxable year as prescribed in Section 19021.~~

(B) In the case of a large corporation, subparagraph (A) shall not apply, except as provided in clauses (i) and (ii).

(i) Subparagraph (A) shall apply for purposes of determining the amount of the first required installment for any taxable year.

(ii) Any reduction in the first required installment by reason of clause (i) shall be recaptured by increasing the amount of the next required installment by the amount of that reduction.

(2) (A) An amount equal to the applicable percentage specified in Section 19144 of the tax for the taxable year computed by placing on an annualized basis the business net receipts taxable income:

(i) For the first three months of the taxable year, in the case of the installment required to be paid in the fourth month.

(ii) For the first three months of the taxable year, in the case of the installment required to be paid in the sixth month.

(iii) For the first six months of the taxable year, in the case of the installment required to be paid in the ninth month.

(iv) For the first nine months of the taxable year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) (i) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (i) of subparagraph (A) shall be applied by substituting "two months" for "three months."

(II) Clause (ii) of subparagraph (A) shall be applied by substituting "four months" for "three months."

(III) Clause (iii) of subparagraph (A) shall be applied by substituting "seven months" for "six months."

(IV) Clause (iv) of subparagraph (A) shall be applied by substituting "ten months" for "nine months."

(ii) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (ii) of subparagraph (A) shall be applied by substituting "five months" for "three months."

(II) Clause (iii) of subparagraph (A) shall be applied by substituting "eight months" for "six months."

(III) Clause (iv) of subparagraph (A) shall be applied by substituting "eleven months" for "nine months."

(iii) An election under clause (i) or (ii) shall apply to the taxable year for which the election is made and shall be effective only if the election is made on or before the date required for the payment of the first required installment for that taxable year.

(iv) This subparagraph shall apply to taxable years beginning on or after January 1, 1997.

(C) For purposes of this paragraph, the taxable income shall be placed on an annualized basis in the following manner:

(i) Multiply by 12 the taxable income referred to in subparagraph (A).

(ii) Divide the resulting amount by the number of months in the taxable year referred to in subparagraph (A). "Business Net Receipts Taxable income" as used in this paragraph means "business net receipts income" subject to tax under Part 12 (commencing with Section 27001) ~~includable in the measure of tax or "alternative minimum taxable income" (as defined by Section 23455).~~

(D) In the case of any corporation which is subject to the tax imposed under Section 23731, any reference to taxable income shall be treated as including a reference to unrelated business taxable income and, except in the case of an election under subparagraph (B), each of the following shall apply:

(i) Clause (i) of subparagraph (A) shall be applied by substituting

"two months" for "three months."

(ii) Clause (ii) of subparagraph (A) shall be applied by substituting "four months" for "three months."

(iii) Clause (iii) of subparagraph (A) shall be applied by substituting "seven months" for "six months."

(iv) Clause (iv) of subparagraph (A) shall be applied by substituting "ten months" for "nine months."

(3) The applicable percentage specified in Section 19144 or more of the tax for the taxable year was paid by withholding of tax pursuant to Section 18662.

(4) The applicable percentage specified in Section 19144 or more of the ~~business net receipts net income~~ for the taxable year consists of items from which an amount was withheld pursuant to Section 18662, the amount of the first installment under Section 19025 equals at least the minimum franchise tax specified in Section

23153, and the amount of any installment under Section 19025 includes an amount equal to the applicable tax under Section 23800.5.

(b) (1) For purposes of this section, "large corporation" means any corporation if that corporation (or any predecessor corporation) had taxable income (computed without regard to net operating loss deductions) of one million dollars (\$1,000,000) or more for any taxable year during the testing period.

(2) For purposes of this subdivision, "testing period" means the three taxable years immediately preceding the taxable year involved.

(c) (1) Any dividend received from a closely held real estate investment trust by any person that owns (after application of Sections 856(d)(5) and 856(l)(3)(B) of the Internal Revenue Code) 10 percent or more (by vote or value) of the stock or beneficial interests in the trust shall be taken into account in computing annualized income installments under paragraph (2) of subdivision (a) in a manner similar to the manner under which partnership income inclusions are taken into account.

(2) For purposes of paragraph (1), the term "closely held real estate investment trust" means a real estate investment trust with respect to which five or fewer persons own (after application of Sections 856(d)(5) and 856(l)(3)(B) of the Internal Revenue Code) 50 percent or more (by vote or value) of the stock or beneficial interests in the trust.

~~(3) The amendments made to this section by the act adding this subdivision shall apply to estimated tax payments due on or after January 1, 2001.~~

SEC. X. Section 19149 of the Revenue and Taxation Code is repealed.

~~19149. (a) Notwithstanding any other provision of Sections 19142 to 19151, inclusive, if the amount of estimated tax due and payable under Section 19025 is only the minimum franchise tax imposed by Section 23153 and, if applicable, the tax of a wholly owned subsidiary under Section 23800.5, then the addition to the tax with respect to any underpayment of any installment imposed by Section 19142 shall be calculated only on the basis of the amount of the minimum franchise tax and the amount of the tax of each wholly owned subsidiary.~~

~~(b) This section shall not apply to a large corporation as defined in subdivision (b) of Section 19147.~~

SEC. X. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) (A) An accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662 of the Internal Revenue Code, relating to imposition of accuracy-related penalty on underpayments, except as otherwise provided.

(B) (i) Except for understatements relating to reportable transactions to which Section 19164.5 applies, in the case of any proposed deficiency assessment issued after the last date of the amnesty period specified in Chapter 9.1 (commencing with Section 19730) for any taxable year beginning prior to January 1, 2003, the penalty specified in Section 6662(a) of the Internal Revenue Code shall be computed by substituting "40 percent" for "20 percent."

(ii) Clause (i) shall not apply to any taxable year of a taxpayer beginning prior to January 1, 2003, if, as of the start date of the amnesty program period specified in Section 19731, the taxpayer is then under audit by the Franchise Tax Board, or the taxpayer has filed a protest under Section 19041, or the taxpayer has filed an appeal under Section 19045, or the taxpayer is engaged in settlement negotiations under Section 19442, or the taxpayer has a pending judicial proceeding in any court of this state or in any federal court relating to the tax liability of the taxpayer for that taxable year.

(2) With respect to corporations, this subdivision shall apply to all of the following:

(A) All taxable years beginning on or after January 1, 1990, and before January 1, 2012.

(B) Any other taxable year for which an assessment is made after July 16, 1991.

(C) For purposes of this section, references in Section 6662(e) of the Internal Revenue Code and the regulations thereunder, relating to treatment of an affiliated group that files a consolidated federal return, are modified to apply to those entities required to be included in a combined report under Section 25101 or 25110. For these purposes, entities included in a combined report pursuant to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be considered only to the extent required to be included in the combined report.

(3) With respect to business entities subject to tax under Part 12 (commencing with Section 27001), this subdivision shall apply to taxable years beginning on or after January 1, 2012.

~~(3) (4) Section 6662(d)(1)(B) of the Internal Revenue Code is modified to provide that in the case of a taxpayer subject to tax under Part 12 (commencing with Section 27001) a corporation, other than an "S" corporation, there is a substantial understatement of tax for any taxable year if the amount of the understatement for the taxable year exceeds the lesser of:~~

~~(A) Ten percent of the tax required to be shown on the return for the taxable year (or, if greater, two thousand five hundred dollars (\$2,500)).~~

~~(B) Five million dollars (\$5,000,000).~~

(4) Section 6662(d)(2)(A) of the Internal Revenue Code is modified to additionally provide that the excess determined under Section 6662(d)(2)(A) of the Internal Revenue Code shall be determined without regard to items to which Section 19164.5 applies and without regard to items with respect to which a penalty is imposed by Section 19774.

(b) For purposes of Section 6662(d) of the Internal Revenue Code, Section 6664 of the Internal Revenue Code, Section 6694(a)(1) of the Internal Revenue Code, and this part, the Franchise Tax Board may prescribe a list of positions for which the Franchise Tax Board believes there is not substantial authority or there is no reasonable belief that the tax treatment is more likely than not the proper tax treatment. That list (and any revisions thereof) shall be published through the use of Franchise Tax Board Notices or

other published positions. In addition, the "listed transactions" identified and published pursuant to the preceding sentence shall be published on the Web site of the Franchise Tax Board.

(c) A fraud penalty shall be imposed under this part and shall be determined in accordance with Section 6663 of the Internal Revenue Code, relating to imposition of fraud penalty, except as otherwise provided.

(d) Section 6664 of the Internal Revenue Code, relating to definitions and special rules, shall apply, except as otherwise provided.

SEC. X. Section 19164.1 of the Revenue and Taxation Code is repealed.

~~19164.1. (a) Any understatement determined pursuant to subdivision (a) of Section 19164 (relating to the accuracy-related penalty) may not include amounts that are attributable to the credit allowed under Section 17052.2 (relating to the teacher retention tax credit).~~

~~(b) This section applies only to tax credits claimed under Section 17052.2 for taxable years beginning on or after January 1, 2000, and before January 1, 2001.~~

SEC. X. Section 19164.5 of the Revenue and Taxation Code is amended to read:

19164.5. (a) A reportable transaction accuracy-related penalty shall be imposed under this part and shall be determined in accordance with Section 6662A of the Internal Revenue Code, relating to the imposition of an accuracy-related penalty on understatements with respect to reportable transactions, except as otherwise provided.

(b) (1) The reportable transaction understatement, as determined under Section 6662A(b) of the Internal Revenue Code, is modified to not include amounts to which the penalty of Section 19774 is imposed.

(2) Section 6662A(b)(1)(A)(ii) of the Internal Revenue Code is modified to substitute the phrase "Sections 17041, 23151, 23181, or 23501" for "section 1 (section 11 in the case of a taxpayer which is a corporation)."

(3) Section 6662A(b)(1)(B) of the Internal Revenue Code is modified to substitute the phrase "Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) or Part 12 (commencing with Section 27001)" for "subtitle A."

(4) Section 6662A(b)(2)(B) of the Internal Revenue Code is modified to substitute the phrase "income or business net receipts ~~franchise~~ tax" for "Federal income tax."

(5) Section 6662A(e)(1) of the Internal Revenue Code is modified to additionally provide that the amount of the understatement is increased by noneconomic transaction understatements, as defined in Section 19774.

(c) Section 6662A(e)(2) of the Internal Revenue Code is modified to additionally provide that Section 6662A of the Internal Revenue Code does not apply to amounts to which a penalty is imposed under Section 19774.

(d) The provisions of subdivision (f) of Section 19772, relating to the rescission of the penalty by the Chief Counsel, shall apply to any penalty imposed by this section.

SEC. X. Section 19169 of the Revenue and Taxation Code is amended to read:

19169. (a) In addition to the criminal penalty provided by Section 19712, any tax preparer who endorses or otherwise negotiates (directly or through an agent) any warrant made in respect of the taxes imposed by Part 10

(commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) which is issued to a taxpayer (other than the tax preparer) shall pay a penalty of two hundred fifty dollars (\$250) with respect to each warrant. The preceding sentence shall not apply with respect to the deposit by a bank (as defined by Section 581 of the Internal Revenue Code) of the full amount of the warrant in the taxpayer's account in that bank for the benefit of the taxpayer.

(b) For purposes of subdivision (a), "tax preparer" means any person who prepares for compensation, or who employs one or more persons to prepare for compensation, any return of tax imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) or any claim for refund of tax imposed by Part 10 or Part 11 or Part 12. For purposes of the preceding sentence, the preparation of a substantial portion of a return or claim for refund shall be treated as if it were the preparation of that return or claim for refund.

A person shall not be a "tax preparer" merely because the person does any of the following:

- (1) Furnishes typing, reproducing, or other mechanical assistance.
- (2) Prepares a return or claim for refund of the employer (or of an officer or employee of the employer) by whom that person is regularly and continuously employed.
- (3) Prepares as a fiduciary a return or claim for refund for any person.

(c) This section shall not apply where the tax preparer has advanced the taxpayer an amount of money equal to or greater than the amount of the taxpayer's refund.

SEC. X. Section 19173 of the Revenue and Taxation Code is amended to read:

19173. (a) A penalty shall be imposed under this part for failure to maintain lists of advisees with respect to reportable transactions and shall be determined in accordance with Section 6708 of the Internal Revenue Code, except as otherwise provided.

(b) If a material advisor fails to meet the requirements of subdivision (d) of Section 18648 with respect to a listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code, an additional penalty shall be imposed equal to the greater of:

- (1) One hundred thousand dollars (\$100,000).
- (2) Fifty percent of the gross income that the material advisor derived from that activity.

(c) A penalty imposed under this section does not apply if it is shown that the additional information required under paragraph (1) of subdivision (d) of Section 18648 was not identified in a Franchise Tax Board notice issued prior to the date the transaction or shelter was entered into.

(d) The penalty imposed by subdivision (a) shall be assessed against the person required to maintain or provide a list under Section 18648. The penalty may be assessed at any time during the period ending eight years after the failure has occurred.

(e) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section with respect to a list required to be maintained or provided under Section 18648, if all of the following apply:

- (A) The violation is with respect to a reportable transaction,

other than a listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code.

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(g) The penalty imposed by this section is in addition to any penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or this part.

SEC. X. Section 19179 of the Revenue and Taxation Code is amended to read:

19179. A penalty shall be imposed for filing a frivolous return and shall be determined in accordance with Section 6702 of the Internal Revenue Code, except as otherwise provided.

(a) Section 6702 of the Internal Revenue Code shall be applied to returns required to be filed under this part.

(b) For taxpayers that have a reportable transaction, as defined in Section 6707A(c)(1) of the Internal Revenue Code with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, any listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code, Section 6702(a) of the Internal Revenue Code is modified as follows:

(1) By substituting "\$5,000" instead of "\$500."

(2) By substituting the term "person" instead of the term "individual" in each place that it appears.

(3) By substituting "tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or this part"

instead of the phrase "tax imposed by subtitle A" contained therein.

(4) By substituting the phrase "is based on" instead of the phrase "is due to" contained therein.

(5) By substituting the phrase "frivolous or is based on a position that the Franchise Tax Board has identified as frivolous under subdivision (c) of Section 19179" instead of the term "frivolous" contained therein.

(6) By substituting the phrase "reflects a desire to delay or

impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or this part as determined by the Franchise Tax Board" instead of the phrase "a desire (which appears on the purported return) to delay or impede the administration of Federal income tax laws" contained therein.

(c) (1) The Franchise Tax Board shall prescribe (and periodically revise) a list of positions which the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board has identified as being frivolous for purposes of this section.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or prescribed by the Franchise Tax Board pursuant to paragraph (1).

(d) (1) Except as provided in paragraph (3), any person who submits a specified frivolous submission shall pay a penalty of five thousand dollars (\$5,000).

(2) For purposes of this section, all of the following shall apply:

(A) The phrase "specified frivolous submission" means a specified submission if any portion of that submission meets any of the following conditions:

(i) Is based on a position which the Franchise Tax Board has identified as frivolous under subdivision (c).

(ii) Reflects a desire to delay or impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or this part as determined by the Franchise Tax Board.

(B) The phrase "specified submission" means any of the following:

(i) A protest under Section 19041.

(ii) A request for a hearing under Section 19044.

(iii) An application under any of the following sections:

(I) Section 19008 (relating to agreements for payment of tax liability in installments).

(II) Section 19443 (relating to compromises).

(III) Section 21004 (relating to actions of the Taxpayers' Rights Advocate).

(3) If the Franchise Tax Board provides a person with notice that a submission is a specified frivolous submission and the person withdraws that submission within 30 days after the notice, the penalty imposed under paragraph (1) does not apply with respect to that submission.

(e) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section if both of the following apply:

(A) Imposing the penalty would be against equity and good conscience.

(B) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(f) The penalties imposed by this section shall be in addition to any other penalty provided by law.

SEC. X. Section 19184 of the Revenue and Taxation Code is amended to read:

19184. (a) A penalty of fifty dollars (\$50) shall be imposed for each failure, unless it is shown that the failure is due to reasonable cause, by any person required to file who fails to file a report at the time and in the manner required by any of the following provisions:

(1) Subdivision (c) of Section 17507, relating to individual retirement accounts.

(2) Section 220(h) of the Internal Revenue Code, relating to medical savings accounts for taxable years beginning on or after January 1, 1997.

(3) Subdivision (b) of Section 17140.3 ~~or subdivision (b) of Section 23711 relating to qualified tuition programs.~~

~~(4) Subdivision (e) of Section 23712, relating to Coverdell education savings accounts.~~

(b) (1) Any individual who:

(A) Is required to furnish information under Section 17508 as to the amount designated nondeductible contributions made for any taxable year, and

(B) Overstates the amount of those contributions made for that taxable year, shall pay a penalty of one hundred dollars (\$100) for each overstatement unless it is shown that the overstatement is due to reasonable cause.

(2) Any individual who fails to file a form required to be filed by the Franchise Tax Board under Section 17508 shall pay a penalty of fifty dollars (\$50) for each failure unless it is shown that the failure is due to reasonable cause.

(c) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply in respect of the assessment or collection of any penalty imposed under this section.

SEC. X. Section 19188 is added to the Revenue and Taxation Code to read:

19188. With respect to any penalty or addition to tax that is imposed on a taxpayer subject to tax under Part 12 (commencing with Section 27001) under a provision of this article and that provision refers to the Internal Revenue Code, any reference to income or taxable income in the applicable provision of the Internal Revenue Code shall be interpreted to mean gross receipts or business net receipts, respectively, subject to tax under Part 12 (commencing with Section 27001).

SEC. X. Section 19195 of the Revenue and Taxation Code is amended to read:

19195. (a) Notwithstanding any other provision of law, including Section 6254.21 of the Government Code, the Franchise Tax Board shall make available as a matter of public record each calendar year a list of the 250 largest tax delinquencies in excess of one hundred thousand dollars (\$100,000) under Part 10, ~~and~~ Part 11, and Part 12 of this division, as of December 31 of the preceding year. For purposes of compiling the list, a tax delinquency means the total amount owed by a taxpayer to the State of California for which a notice of state tax lien has been recorded in any county recorder's office in

this state, pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For purposes of the list, a tax delinquency does not include any of the following and may not be included on the list:

(1) A delinquency for which payment arrangements have been agreed to by both the taxpayer and the Franchise Tax Board and the taxpayer is in compliance with the arrangement.

(2) A delinquency for which the taxpayer has filed for bankruptcy protection pursuant to Title 11 of the United States Code.

(3) A delinquency for which the person or persons liable for the tax have contacted the Franchise Tax Board and for which resolution of the tax delinquency has not been rejected by the Franchise Tax Board.

(c) Each annual list shall, with respect to each delinquency, include all the following:

(1) The name of the person or persons liable for payment of the tax and that person's or persons' address.

(2) The amount of tax delinquency as shown on the notice or notices of state tax lien and any applicable interest or penalties, less any amounts paid.

(3) The earliest date that a notice of state tax lien was filed.

(4) The type of tax that is delinquent.

(d) Prior to making a tax delinquency a matter of public record as required by this section, the Franchise Tax Board shall provide a preliminary written notice to the person or persons liable for the tax by certified mail, return receipt requested. If within 30 days after issuance of the notice, the person or persons do not remit the amount due or make arrangements with the Franchise Tax Board for payment of the amount due, the tax delinquency shall be included on the list.

(e) The annual list described in subdivision (a) shall include the following:

(1) The telephone number and address of the Franchise Tax Board office to contact if a person believes placement of his or her name on the list is in error.

(2) The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.

(f) As promptly as feasible, but no later than five business days from the occurrence of any of the following, the Franchise Tax Board shall remove that taxpayer's name from the list of tax delinquencies:

(1) Tax delinquencies for which the person liable for the tax has contacted the Franchise Tax Board and resolution of the delinquency has been arranged.

(2) Tax delinquencies for which the Franchise Tax Board has verified that an active bankruptcy proceeding has been initiated.

(3) Tax delinquencies for which the Franchise Tax Board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount or amounts.

(4) Tax delinquencies that the Franchise Tax Board has determined to be uncollectible.

(g) A person whose delinquency appears on the annual list, and who satisfies that delinquency in whole or in part, may request the Franchise Tax Board to include in its annual list any payments that person made to satisfy the delinquency. Upon receipt of that request, the Franchise Tax Board shall include those payments on the list as promptly as feasible.

SEC. X. Section 19201 of the Revenue and Taxation Code is amended to read:

19201. If any amount due under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or any amount that may be collected by the Franchise Tax Board as though it were a tax, is not paid, the Franchise Tax Board may file in the Office of the County Clerk of Sacramento County, or any other county, a certificate specifying the amount due, the name and last known address of the taxpayer liable for the amount due, and the fact that the Franchise Tax Board has complied with all provisions of the law in the computation and levy of the amount due, and a request that judgment be entered against the taxpayer in the amount set forth in the certificate.

SEC. X. Section 19202 of the Revenue and Taxation Code is amended to read:

19202. The county clerk immediately upon the filing of the certificate shall enter a judgment for the people of the State of California against the taxpayer in the amount set forth in the certificate. The county clerk may file the judgment in a loose-leaf book entitled "Personal Income Tax Judgments," ~~or~~ "Bank and Corporation Tax Judgments," or "Business Net Receipts Tax Judgments," as appropriate.

SEC. X. Section 19221 of the Revenue and Taxation Code is amended to read:

19221. (a) If any taxpayer or person fails to pay any liability imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) at the time that it becomes due and payable, the amount thereof, (including any interest, additional amount, addition to tax, or penalty, together with any costs that may accrue in addition thereto) shall thereupon be a perfected and enforceable state tax lien. This lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are "due and payable" on the following dates:

(1) For amounts of any liability disclosed on a return filed on or before the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board, except that in no case will it be prior to the day after the payment due date;

(2) For amounts of any liability disclosed on a return filed after the date payment is due (with regard to any extension of time to pay), the date the amount is established on the records of the Franchise Tax Board;

(3) For amounts of any liability determined under Section 19081 or 19082 (pertaining to jeopardy assessments), the date the notice of the Franchise Tax Board's finding is mailed or issued;

(4) For all other amounts of liability, the date the assessment is final.

(c) Notwithstanding subdivision (a), during any period that Section 362 of Title 11 of the United States Code applies, any tax lien that would otherwise attach to property by reason of subdivision (a) shall not take effect, unless the tax is a debt of the debtor that will not be discharged in the bankruptcy proceeding and the property or its proceeds are transferred out of the bankruptcy estate to, or otherwise revested in, the debtor.

SEC. X. Section 19222 of the Revenue and Taxation Code is amended to read:

19222. For the purposes of this section, if any certified, treasurer's, or cashier's check (or other guaranteed draft), or any money order received in payment of any liability imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part is not duly paid, the state shall, in addition to its right to exact payment from the party originally indebted therefore, have a perfected and enforceable state tax lien for the amount of that check (or draft) upon all the assets of the financial institution on which drawn or for the amount of that money order upon all the assets of the issuer thereof. The lien referred to in the preceding sentence shall be subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

SEC. X. Section 19254 of the Revenue and Taxation Code is amended to read:

19254. (a) (1) If any person, other than an organization exempt from taxation under Section 23701 or 27701, fails to pay any amount of tax, penalty, addition to tax, interest, or other liability imposed and delinquent under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part, a collection cost recovery fee shall be imposed if the Franchise Tax Board has mailed notice to that person for payment that advises that continued failure to pay the amount due may result in collection action, including the imposition of a collection cost recovery fee. The collection cost recovery fee shall be in the amount of:

(A) In the case of an individual, ~~partnership, limited liability company classified as a partnership for California income tax purposes,~~ or fiduciary, eighty-eight dollars (\$88) or an amount as adjusted under subdivision (b).

(B) In the case of a business entity subject to tax under Part 12 (commencing with Section 27001), ~~other than an individual corporation or limited liability company classified as a corporation for California income tax purposes,~~ one hundred sixty-six dollars (\$166) or an amount as adjusted under subdivision (b).

(2) If any person, other than an organization exempt from taxation under Section 23701 or 27701, fails or refuses to make and file a tax return required by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or this part, within 25 days after formal legal demand to file the tax return is mailed to that person by the Franchise Tax Board, the Franchise Tax Board shall impose a filing enforcement cost recovery fee in the amount of:

(A) In the case of an individual, ~~partnership, limited liability company classified as a partnership for California income tax purposes,~~ or fiduciary, fifty-one dollars (\$51) or an amount as adjusted under subdivision (b).

(B) In the case of a business entity subject to tax under Part 12 (commencing with Section 27001), ~~other than an individual corporation or limited liability company classified as a corporation for California income tax purposes,~~ one hundred nineteen dollars (\$119) or an amount as adjusted under subdivision (b).

(b) For fees imposed under this section during the fiscal year 1993-94 and fiscal years thereafter, the amount of those fees shall be set to reflect actual costs and shall be specified in the annual Budget Act.

(c) Interest shall not accrue with respect to the cost recovery fees provided by this section.

(d) The amounts provided by this section are obligations imposed by this part and may be collected in any manner provided under this part for the collection of a tax.

SEC. X. Section 19255 of the Revenue and Taxation Code is amended to read:

19255. (a) Except as otherwise provided in subdivisions (b) and (e), after 20 years have lapsed from the date the latest tax liability for a taxable year or the date any other liability that is not associated with a taxable year becomes "due and payable" within the meaning of Section 19221, the Franchise Tax Board may not collect that amount and the taxpayer's liability to the state for that liability is abated by reason of lapse of time. Any actions taken by the Franchise Tax Board to collect an uncollectible liability shall be released, withdrawn, or otherwise terminated by the Franchise Tax Board, and no subsequent administrative or civil action shall be taken or brought to collect all or part of that uncollectible amount. Any amounts received in contravention of this section shall be considered an overpayment pursuant to Section 19306 that may be credited and refunded in accordance with Section 19301.

(b) If a timely civil action filed pursuant to Article 2 of Chapter 6 of this part is commenced, or a claim is filed in a probate action, the period for which the liability is collectable shall be extended and shall not expire until that liability, probate claim, or judgment against the taxpayer arising from that liability is satisfied or becomes unenforceable under the laws applicable to the enforcement of civil judgments.

(c) For purposes of this section, both of the following apply:

(1) "Tax liability" means a liability imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part, and includes any additions to tax, interest, penalties, fees and any other amounts relating to the imposed liability.

(2) If more than one liability is "due and payable" for a particular taxable year, with the exception of a liability resulting from a penalty imposed under Section 19777.5, the "due and payable" date that is later in time shall be the date upon which the 20-year limitation of subdivision (a) commences.

(d) This section shall not apply to amounts subject to collection by the Franchise Tax Board pursuant to Article 5, 5.5, or 6 of this chapter, or any other amount that is not a tax imposed under Part 10, ~~or~~ Part 11, or Part 12, but which the Franchise Tax Board is collecting as though it were a final personal income tax delinquency.

(e) (1) The expiration of the period of limitation on collection under this section shall be suspended for the following periods:

(A) The period that the Franchise Tax Board is prohibited from involuntary collection under subparagraph (B) of paragraph (1) of subdivision (b) of Section 19271 relating to collection of child support delinquencies, plus 60 days thereafter.

(B) The period during which the Franchise Tax Board is prohibited by reason of a bankruptcy case from collecting, plus six months thereafter.

(C) The period described under subdivision (d) of Section 19008 relating to installment payment agreements.

(D) The period during which collection is postponed by operation of law under Section 18571, related to postponement by reason of service in a combat zone, or under Section 18572, related to postponement by reason of

presidentially declared disaster or terroristic or military action.

(E) During any other period during which collection of a tax is suspended, postponed, or extended by operation of law.

(2) A suspension of the period of limitation under this subdivision shall apply with respect to both parties of any liability that is joint and several.

(f) This section shall be applied on and after July 1, 2006, to any liability "due and payable" before, on, or after that date.

SEC. X. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior court of the State of California upon a person or any other entity that are due and payable in an amount totaling no less than one hundred dollars (\$100), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board. Unless the victim of the crime notifies the Department of Corrections and Rehabilitation to the contrary, the Department of Corrections and Rehabilitation may refer a restitution order to the Franchise Tax Board, in accordance with subparagraph (B) of paragraph (2), for any person subject to the restitution order who is or has been under the jurisdiction of the Department of Corrections and Rehabilitation.

(2) For purposes of this subdivision:

(A) The amounts referred by the superior court, the county, or state under this section may include an administrative fee and any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated

as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), ~~and~~ Part 11 (commencing with Section 23001), and Part 12 (commencing with Section 27001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001), ~~and~~ Part 11 (commencing with Section 23001), and Part 12 (commencing with Section 27001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

SEC. X. Section 19290 of the Revenue and Taxation Code is amended to read:

19290. (a) The Department of Industrial Relations shall enter into an agreement with the Franchise Tax Board that transfers responsibility from the department to the Franchise Tax Board for the collection of delinquent fees, wages, penalties, and costs, and any interest thereon, effective July 1, 1995. Under the agreement, the Franchise Tax Board shall collect unsatisfied judgments that are issued pursuant to Sections 98.2, 226.5, 1023, 1289, 2681, and 6650 of the Labor Code. The agreement shall also provide for the collection of delinquent debts that result from a final determination by the department after the exhaustion of appeal remedies pursuant to Sections 98.3, 210, 1174.5, 1193.6, 1194, 1194.2, 1197.1, 1197.5, 1771, 1774, 3722, 7314, 7350, 7721, and 7904 of the Labor Code. The agreement shall specify the terms under which fees, wages, penalties, and costs, and any interest thereon, become subject to collection by the Franchise Tax Board. The agreement may also provide for reimbursement to the Franchise Tax Board on the basis of a percentage of the amount of revenue realized as a result of the Franchise Tax Board's services, provided that the amount of any

reimbursement shall not exceed the actual costs of collection, including court costs and reasonable attorney's fees. Wherever possible the collection costs shall be borne by the judgment debtor. Any fee for the recovery of wages shall not be paid by the workers. The department shall adopt rules and regulations to provide for a reasonable fee to cover actual collection costs. The Franchise Tax Board shall be entitled to court costs and reasonable attorney's fees as a judgment creditor under subdivision (i) of Section 98.2 of the Labor Code.

(b) Upon written notice to the obligor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral and any fee imposed to cover collection costs as provided under subdivision (a), shall be treated as final and due and payable to the State of California, and shall be collected from the obligor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in the manner provided for earnings withholding orders for taxes.

(c) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), ~~and~~ Part 11 (commencing with Section 23001), and Part 12 (commencing with Section 27001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the agency referring the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

(d) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) ~~and~~ Part 11 (commencing with Section 23001), and Part 12 (commencing with Section 27001).

(e) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the obligor, and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(f) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). ~~(g) The amendments made by the act adding this subdivision are operative for notices issued on or after January 1, 1998.~~

SEC. X. Section 19301 of the Revenue and Taxation Code is amended to read:

19301. (a) If the Franchise Tax Board or the board, as the case may be, finds that there has been an overpayment of any liability imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with

Section 23001), Part 12 (commencing with Section 27001), or this part by a taxpayer for any year for any reason, the amount of the overpayment may be credited against any amount then due from the taxpayer and the balance shall be refunded to the taxpayer.

(b) In the case of a joint return filed under Section 18521, the amount of the overpayment may be credited against the amount then due from both taxpayers and the balance shall be refunded to both taxpayers in the names under which the return was paid.

(c) In the case of a corporation, the balance shall be refunded to the taxpayer or its successor through reorganization, merger, or consolidation, or to its shareholders upon dissolution.

SEC. X. Section 19313 of the Revenue and Taxation Code is amended to read:

19313. (a) In the case of any tax imposed by Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) with respect to any person, the period for filing a claim for credit or refund of any overpayment attributable to any partnership item of a federally registered partnership shall not expire before the later of the following:

(1) The date which is five years after the date prescribed by law (including extensions thereof) for filing the partnership return for the partnership taxable year in which the item arose.

(2) If an agreement under Section 6501(c)(4) of the Internal Revenue Code of 1954 extending the period for the assessment of any deficiency attributable to the partnership item is made before the date specified in paragraph (1), the date six months after the expiration of the extension.

In any case to which the preceding sentence applies, the amount of the credit or refund may exceed the portion of the tax paid within the period provided in Section 19306 or 19308, whichever is applicable.

(b) For purposes of this subdivision, "partnership item" and "federally registered partnership" have the same meanings as when used in Section 19063.

SEC. X. Section 19314 of the Revenue and Taxation Code is amended to read:

19314. (a) Notwithstanding any statute of limitations otherwise provided for in this part, any overpayment due a taxpayer for any year, shall be allowed as an offset in computing any deficiency in tax, for the same or any other year, if the overpayment results from any of the following:

(1) A transfer of items of income or deductions or both to or from another year for the same taxpayer.

(2) A transfer of items of income or deductions or both for the same year for a related taxpayer described in Section 19110.

(3) A transfer of items of income, receipt, purchase, or deductions, ~~or both~~, to or from another taxpayer for the same or different years if the items of income, receipt, purchase, or deductions are transferred between affiliated taxpayers whose tax is determined under Chapter 17 (commencing with Section 25101) of Part 11 or Chapter 7 (commencing with Section 28001) of Part 12.

(b) The offset provided under subdivision (a) shall not be allowed after the expiration of seven years from the due date of the return or returns on which the overpayment is determined.

(c) No refund shall be allowed under subdivision (a) unless before the period set forth in Section 19306 a claim therefor is filed by the taxpayer or unless before the expiration of that period the Franchise Tax

Board has allowed a credit or made a refund.

SEC. X. Section 19340 of the Revenue and Taxation Code is amended to read:

19340. Interest shall be allowed and paid on any overpayment in respect of any tax, at the adjusted annual rate established pursuant to Section 19521 as follows:

- (a) In the case of a credit, from the date of the overpayment to the due date of the amount for which the credit is allowed. Any interest allowed on any credit shall first be credited on any amounts due from the taxpayer under Part 10 (commencing with Section 17001), this part, Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).
- (b) In the case of a refund, including a refund in excess of tax liability as prescribed in subdivision (j) of Section 17053.5, from the date of the overpayment to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the Franchise Tax Board.

SEC. X. Section 19365 of the Revenue and Taxation Code is repealed.

- ~~19365. (a) (1) A corporation electing to be treated as an "S corporation" for a taxable year beginning in 2002 under Chapter 4.5 (commencing with Section 23800) of Part 11 may file an application for the transfer of an overpayment with respect to payments of estimated tax for taxable years beginning in 2002 to the personal income tax accounts of its shareholders. An application under this subdivision shall not constitute a claim for credit or refund.~~
- ~~(2) An application under this subdivision shall be verified in the manner prescribed by Section 18621 in the case of the taxpayer, and shall be filed in the manner and form prescribed by the Franchise Tax Board. The application shall set forth all of the following:~~
- ~~(A) The amount the "S corporation" estimates as its tax liability under this part for the taxable year, which shall not be less than the greater of 1 1/2 percent of its net income or the applicable minimum franchise tax.~~
 - ~~(B) The amount and date of the estimated tax paid during the taxable year.~~
 - ~~(C) For each shareholder affected, his or her name, social security account number, address, and percentage of ownership, and any changes in that percentage of ownership for the S corporation's taxable year, the amount of each overpayment to be transferred, and the date the amount was paid.~~
 - ~~(D) Any other information for purposes of carrying out this section as may be required by the Franchise Tax Board.~~
- ~~(b) (1) Within a period of 45 days from the date on which an application for a transfer is filed under subdivision (a), the Franchise Tax Board shall make, to the extent it deems practicable in that period, a limited examination of the application to discover omissions and errors therein, and shall determine the final amount of the transfers upon the basis of the application and the examination, except that the Franchise Tax Board may disallow, without further action, any application which it finds contains material omissions or errors which it deems cannot be corrected within the 45 day period.~~
- ~~(2) The Franchise Tax Board, within the 45 day period referred to in paragraph (1), may credit the amount of the overpayment against any liability on the part of the taxpayer under Part 11 (commencing with Section 23001).~~
- ~~(3) In the event the amount available for transfer is less than~~

~~requested by the taxpayer, the overpayment amount shall be allocated among the shareholders on a pro rata basis based on their percentage of ownership stated on the application.~~

~~(4) For purposes of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), and this part, the transferred amounts shall be treated as if they had been estimated tax payments paid by the respective shareholders on the date originally paid by the corporation.~~

~~(5) No application under subdivision (a) shall be allowed unless the amount to be transferred equals or exceeds five hundred dollars (\$500).~~

~~(6) Each S corporation which files an application for transfer of overpayments under subdivision (a) shall furnish to each person who is a shareholder at any time during the taxable year a statement showing amounts and dates of the overpayments being transferred to that person's personal income tax account.~~

SEC. X. Section 19371 of the Revenue and Taxation Code is amended to read:

19371. (a) At any time within 10 years after the determination of liability for any tax, penalties, and interest, or within the period during which a lien is in force as the result of the recording of an abstract under Section 19203 or of the recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the Franchise Tax Board may bring an action in the courts of this state, of any other state, or of the United States in the name of the people of the State of California to recover the amount of any taxes, penalties, and interest due and unpaid under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) The amendments made by Sections 41 and 108 of Chapter 117 of the Statutes of 1991 shall apply to any of the following:

(1) Taxes assessed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part after July 16, 1991.

(2) Taxes assessed on or before July 16, 1991, under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, if the period specified in subdivision (a), determined without regard to those amendments, has not expired on July 16, 1991.

SEC. X. Section 19373 of the Revenue and Taxation Code is amended to read:

19373. In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

19374. In the action a certificate by the Franchise Tax Board showing the delinquency shall be prima facie evidence of the levy of the tax, penalties and interest of the delinquency, and of the compliance by the Franchise Tax Board and the board with all the provisions of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), and this part in relation to the computation and levy of the tax.

SEC. X. Section 19377 of the Revenue and Taxation Code is amended to read:

19377. (a) The Franchise Tax Board may enter into agreement with one or more persons for the purpose of collecting delinquent accounts with respect to amounts assessed or imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part, provided the agreements do not cause the net displacement of civil service employees. The agreement may provide for the rate and manner of payment for the contracted collection services. However, the consideration payable by the Franchise Tax Board under the agreement shall not be included in the amounts to be collected from the tax debtor by the contractor providing collection services.

(b) For purposes of this section, "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. "Displacement" does not include changes in shifts or days off, nor does it include reassignment to any other position within the same class and general location.

SEC. X. Section 19441 of the Revenue and Taxation Code is amended to read:

19441. (a) The Franchise Tax Board or any person authorized in writing by the Franchise Tax Board is authorized to enter into an agreement in writing with any person (or the person or estate for whom that person acts) in respect of any tax, interest, penalty, or addition to tax levied under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part for any taxable period.

(b) If the agreement is approved by the Franchise Tax Board, itself, within the time as may be stated in the agreement, or later agreed to, the agreement shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon or the agreement modified, by any officer, employee, or agent of the state, and
(2) In any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded.

SEC. X. Section 19443 of the Revenue and Taxation Code is amended to read:

19443. (a) (1) The Executive Officer and Chief Counsel of the Franchise Tax Board, jointly, or their delegates, may compromise any final tax liability in which the reduction of tax is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the Franchise Tax Board, upon recommendation by its executive officer and chief counsel, jointly, may compromise a final tax liability involving a reduction in tax in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of the recommendation shall be deemed approved.

(3) The Franchise Tax Board, itself, may by resolution delegate to the executive officer and the chief counsel, jointly, the authority to compromise a final tax liability in which the reduction of tax is in excess of seven thousand five hundred dollars (\$7,500) but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final tax liability" means

any final tax liability arising under Part 10 (commencing with Section 17001), ~~or Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001)~~, or related interest, additions to tax, penalties, or other amounts assessed under this part.

(c) For an amount to be compromised under this section, the following conditions shall exist:

(1) The taxpayer shall establish that the:

(A) Amount offered in payment is the most that can be expected to be paid or collected from the taxpayer's present assets or income, and

(B) Taxpayer does not have reasonable prospects of acquiring increased income or assets that would enable the taxpayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The Franchise Tax Board shall have determined that acceptance of the compromise is in the best interest of the state.

(d) A determination by the Franchise Tax Board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final tax liability shall not be subject to administrative appeal or judicial review.

(e) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the Franchise Tax Board shall notify the taxpayer in writing.

(f) In the case of a joint and several liability, the acceptance of an offer in compromise from one liable spouse shall not relieve the other spouse from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(g) Whenever a compromise of tax or penalties or total tax and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the Executive Officer of the Franchise Tax Board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the taxpayer.

(2) The amount of unpaid tax, and related penalties, additions to tax, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the taxpayer or the national defense. No list shall be prepared and no releases distributed by the Franchise Tax Board in connection with these statements.

(h) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The Franchise Tax Board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the Franchise Tax Board any property belonging to the estate of any taxpayer or other person liable for the tax.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the taxpayer or other person liable for the tax.

(2) The taxpayer fails to either:

(A) Comply with any of the terms and conditions relative to the offer.

(B) File subsequent required returns and pay subsequent final tax

liabilities within 20 days after the Franchise Tax Board issues notice and demand to the person stating that the continued failure to file or pay the tax may result in rescission of the compromise.

(i) This section shall become operative on the effective date of the act adding this section without regard to the taxable year at issue.

SEC. X. Section 19501 of the Revenue and Taxation Code is amended to read:

19501. The Franchise Tax Board shall administer and enforce Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), and this part. For this purpose, it may divide the state into a reasonable number of districts, in each of which a branch office or offices may be maintained during all or part of the time as may be necessary.

SEC. X. Section 19503 of the Revenue and Taxation Code is amended to read:

19503. (a) The Franchise Tax Board shall prescribe all rules and regulations necessary for the enforcement of Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), and this part and may prescribe the extent to which any ruling (including any judicial decision or any administrative determination other than by regulation) shall be applied without retroactive effect.

(b) (1) Except as otherwise provided in this subdivision, no regulation relating to Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part shall apply to any taxable year ending before the date on which any notice substantially describing the expected contents of any regulation is issued to the public.

(2) Paragraph (1) shall not apply to either of the following:

(A) Regulations issued within 24 months of the date of the enactment of the statutory provision to which the regulation relates.

(B) Regulations issued within 24 months of the date that temporary or final federal regulations with respect to statutory provisions to which California conforms are filed with the Federal Register.

(3) The Franchise Tax Board may provide that any regulation may take effect or apply retroactively to prevent abuse.

(4) The Franchise Tax Board may provide that any regulation may apply retroactively to correct a procedural defect in the issuance of any prior regulation.

(5) The limitation of paragraph (1) shall not apply to any regulation relating to the Franchise Tax Board's policies, practices, or procedures.

(6) The limitation of paragraph (1) may be superseded by a legislative grant of authority to the Franchise Tax Board to prescribe the effective date with respect to any regulation.

(7) The Franchise Tax Board may provide for any taxpayer to elect to apply any regulation before the dates specified in paragraph (1).

(c) The amendments made by the act adding this subdivision are operative with respect to regulations which relate to California statutory provisions enacted on or after January 1, 1998.

SEC. X. Section 19504 of the Revenue and Taxation Code is amended to read:

19504. (a) The Franchise Tax Board, for the purpose of administering its duties under this part, including ascertaining the correctness of any return; making a return where none has been made; determining or collecting the liability of any person in respect of any liability imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part (or the liability at law or in equity of any transferee in respect of that liability); shall have the power to require by demand, that an entity of any kind including, but not limited to, employers, persons, or financial institutions provide information or make available for examination or copying at a specified time and place, or both, any book, papers, or other data which may be relevant to that purpose. Any demand to a financial institution shall comply with the California Right to Financial Privacy Act set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. Information that may be required upon demand includes, but is not limited to, any of the following:

- (1) Addresses and telephone numbers of persons designated by the Franchise Tax Board.
- (2) Information contained on Federal Form W-2 (Wage and Tax Statement), Federal Form W-4 (Employee's Withholding Allowance Certificate), or State Form DE-4 (Employee's Withholding Allowance Certificate).

(b) The Franchise Tax Board may require the attendance of the taxpayer or of any other person having knowledge in the premises and may take testimony and require material proof for its information and administer oaths to carry out this part.

(c) (1) The Franchise Tax Board may issue subpoenas or subpoenas duces tecum, which subpoenas must be signed by any member of the Franchise Tax Board, and may be served on any person for any purpose.

(2) For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777), the subpoena may be signed by any member of the Franchise Tax Board, the Executive Officer of the Franchise Tax Board, or any designee.

(d) Obedience to subpoenas or subpoenas duces tecum issued in accordance with this section may be enforced by application to the superior court as set forth in Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) When examining a return, the Franchise Tax Board shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Franchise Tax Board has a reasonable indication that there is a likelihood of unreported income. This subdivision applies to any examination beginning on or after October 10, 1999.

SEC. X. Section 19504.5 of the Revenue and Taxation Code is amended to read:

19504.5. (a) (1) Except as provided in subdivision (b), no subpoena may be issued under this part and the Franchise Tax Board may not begin any action under Article 2 (commencing with Section 1180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code to enforce any subpoena to produce or analyze any tax-related computer software source code.

(2) Any software and related materials that are provided to the

Franchise Tax Board under this part shall be subject to the safeguards under subdivision (c).

(b) (1) Paragraph (1) of subdivision (a) shall not apply to any portion, item, or component of the tax-related computer software source code if all of the following apply:

(A) The Franchise Tax Board is unable to otherwise reasonably ascertain the correctness of any item on a return from either of the following:

(i) The taxpayer's books, papers, records, or other data.

(ii) The computer software executable code (and any modifications thereof) to which the source code relates and any associated data which, when executed, produces the output to ascertain the correctness of the item.

(B) The Franchise Tax Board identifies with reasonable specificity the portion, item, or component of the source code needed to verify the correctness of the item on the return.

(C) The Franchise Tax Board determines that the need for the portion, item, or component of the source code with respect to the item outweighs the risks of unauthorized disclosure of trade secrets.

(2) Paragraph (1) of subdivision (a) shall not apply to any of the following:

(A) Any inquiry into any offense connected with the administration or enforcement of this part, Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

(B) Any tax-related computer software source code acquired or developed by the taxpayer or related person primarily for internal use by the taxpayer or that person rather than for commercial distribution.

(C) Any communications between the owner of the tax-related computer software source code and the taxpayer or related persons.

(D) Any tax-related computer software source code which is required to be provided or made available pursuant to any other provision of this part, Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

(3) For purposes of paragraph (1), the Franchise Tax Board shall be treated as meeting the requirements of subparagraphs (A) and (B) of that paragraph if all of the following apply:

(A) The Franchise Tax Board determines that it is not feasible to determine the correctness of an item without access to the computer software executable code and associated data described in clause (ii) of subparagraph (A) of paragraph (1).

(B) The Franchise Tax Board makes a formal request to the taxpayer for the code and data and to the owner of the computer software source code for the executable code.

(C) The code and data are not provided within 180 days of that request.

(4) In any proceeding brought under Article 2 (commencing with Section 1180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code to enforce a subpoena issued under the authority of this subdivision, the court shall, at the request of any party, hold a hearing to determine whether the applicable requirements of this section have been met.

(c) (1) In any court proceeding to enforce a subpoena for any portion of software, the court may receive evidence and issue any order necessary to prevent the disclosure of trade secrets or other confidential information with respect to that software, including requiring that any information be placed under seal to be opened only as directed by the court.

(2) Notwithstanding any other provision of this section, and in

addition to any protections ordered pursuant to paragraph (1), in the case of software that comes into the possession or control of the Franchise Tax Board in the course of any examination with respect to any taxpayer, all of the following shall apply:

(A) The software may be used only in connection with the examination of that taxpayer's return, any protest or appeal by the taxpayer, any judicial proceeding and any appeals therefrom, or any inquiry into any offense connected with the administration or enforcement of this part, Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

(B) The Franchise Tax Board shall provide, in advance, to the taxpayer and the owner of the software a written list of the names of all individuals who will analyze or otherwise have access to the software.

(C) (i) The software shall be maintained in a secure area or place, and in the case of computer software source code, shall not be removed from the owner's place of business unless the owner permits, or a court orders, that removal.

(ii) For purposes of clause (i), the owner shall make available any necessary equipment or materials for analysis of computer software source code required to be conducted on the owner's premises.

(D) The software may not be copied except as necessary to perform an analysis, and the Franchise Tax Board shall number all copies made and certify in writing that no other copies have been or will be made.

(E) At the end of the period during which the software may be used under subparagraph (A), both of the following apply:

(i) The software and all copies thereof shall be returned to the person from whom they were obtained and any copies thereof made under subparagraph (D) on the hard drive of a machine or other mass storage device shall be permanently deleted.

(ii) The Franchise Tax Board shall obtain from any person who analyzes or otherwise had access to that software a written certification under penalty of perjury that all copies and related materials have been returned and that no copies were made of them.

(F) The software may not be decompiled or disassembled.

(G) (i) The Franchise Tax Board shall provide to the taxpayer and the owner of any interest in the software, as the case may be, a written agreement, between the Franchise Tax Board and any person who is not an officer or employee of the State of California and who will analyze or otherwise have access to that software, which provides that the person agrees not to do either of the following:

(I) Disclose the software to any person other than persons to whom the information could be disclosed for tax administration purposes under Section 19542.

(II) Participate for two years in the development of software which is intended for a similar purpose as the software examined.

(ii) The owner of any interest in the software shall be considered a party to any agreement described in clause (i).

(H) The software shall be treated as return information for purposes of Section 19542.

(d) For purposes of this section:

(1) "Software" includes computer software source code and computer software executable code.

(2) "Computer software source code" means all of the following:

(A) The code written by a programmer using a programming language which is comprehensible to appropriately trained persons and is not capable of directly being used to give instructions to a computer.

(B) Related programmers' notes, design documents, memoranda, and similar documentation.

(C) Related customer communications.

(3) "Computer software executable code" means both of the following:

(A) Any object code, machine code, or other code readable by a computer when loaded into its memory and used directly by the computer to execute instructions.

(B) Any related user manuals.

(4) "Owner" includes, with respect to any software, the developer of the software.

(5) A person shall be treated as related to another person if the persons are related persons under Section 267 or 707(b) of the Internal Revenue Code.

(6) "Tax-related computer software source code" means the computer source code for any computer software program intended for accounting, tax return preparation or compliance, or tax planning.

(e) This section and Section 19542.3 shall not apply to any software acquired or developed for internal use by the Franchise Tax Board.

(f) This section shall apply to subpoenas issued, and software acquired, after the effective date of the act adding this section. In the case of any software acquired on or before the effective date of the act adding this section, the requirements of paragraph (2) of subdivision (a) shall apply after the 90th day after the effective date of the act adding this section. The preceding sentence shall not apply to the requirement under clause (ii) of subparagraph (G) of paragraph (2) of subdivision (c).

SEC. X. Section 19512 of the Revenue and Taxation Code is amended to read:

19512. Any person acting in a fiduciary capacity shall assume the duties and, upon giving notice to the Franchise Tax Board, shall assume the rights and privileges of the taxpayers in respect of any tax, additions to tax, penalties, and interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part except as otherwise specifically provided, until he or she gives notice that his or her fiduciary has terminated. He or she shall give notice under this section pursuant to rules and regulations prescribed by the Franchise Tax Board.

SEC. X. Section 19521 of the Revenue and Taxation Code is amended to read:

19521. (a) The rate established under this section (referred to in other code sections as "the adjusted annual rate") shall be determined in accordance with Section 6621 of the Internal Revenue Code, except that:

(1) (A) For taxpayers other than corporations, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(B) In the case of any corporation, for purposes of determining interest on overpayments for periods beginning before July 1, 2002, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(C) In the case of any corporation, for purposes of determining interest on overpayments for periods beginning on or after July 1, 2002, the

overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be the lesser of 5 percent or the bond equivalent rate of 13-week United States Treasury bills, determined as follows:

(i) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of January shall be utilized in determining the appropriate rate for the following July 1 to December 31, inclusive. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of 1 percent, that rate shall be increased to the next highest full percent).

(ii) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of July shall be utilized in determining the appropriate rate for the following January 1 to June 30, inclusive. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of 1 percent, that rate shall be increased to the next highest full percent).

(2) The determination specified in Section 6621(b) of the Internal Revenue Code shall be modified to be determined semiannually as follows:

(A) The rate for January shall apply during the following July through December, and

(B) The rate for July shall apply during the following January through June.

(b) (1) For purposes of this part, Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), and any other provision of law referencing this method of computation, in computing the amount of any interest required to be paid by the state or by the taxpayer, or any other amount determined by reference to that amount of interest, that interest and that amount shall be compounded daily.

(2) Paragraph (1) shall not apply for purposes of computing the amount of any addition to tax under Section 19136 or 19142.

(c) Section 6621(c) of the Internal Revenue Code, relating to increase in underpayment rate for large corporate underpayments, is modified as follows:

(1) The applicable date shall be the 30th day after the earlier of either of the following:

(A) The date on which the proposed deficiency assessment is issued.

(B) The date on which the notice and demand is sent.

(2) This subdivision shall apply for purposes of determining interest for periods after December 31, 1991.

(3) Section 6621(c)(2)(B)(iii) of the Internal Revenue Code shall apply for purposes of determining interest for periods after December 31, 1998.

(d) Section 6621(d) of the Internal Revenue Code, relating to the elimination of interest on overlapping periods of tax overpayments and underpayments, shall not apply.

SEC. X. Section 19525 of the Revenue and Taxation Code is amended to read:

19525. The Franchise Tax Board, under regulations prescribed by the Franchise Tax Board, may establish a reward program for information resulting in the identification of underreported or unreported income subject to taxes imposed by Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001). Any reward may not exceed 10 percent of the taxes collected as a result of the information provided. Any person employed by or under contract with any state or federal tax collection agency shall not

be eligible for a reward provided for pursuant to this section.

SEC. X. Section 19533 of the Revenue and Taxation Code is amended to read:

19533. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

- (a) Payment of any delinquencies transferred for collection under Article 5 (commencing with Section 19270) of Chapter 5.
- (b) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part.
- (c) Payment of delinquent wages collected pursuant to the Labor Code.
- (d) Payment of delinquencies collected under Section 10878.
- (e) Payment of any amounts due that are referred for collection under Article 5.5 (commencing with Section 19280) of Chapter 5.
- (f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.
- (g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.
- (h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.
- (i) Payment of delinquencies referred by the Student Aid Commission.
- (j) Notwithstanding the payment priority established by this section, voluntary payments made by a taxpayer designated by the taxpayer as payment for a personal income tax liability, shall not be applied pursuant to this priority, but shall instead be applied solely to the personal income tax liability for which the voluntary payment was made.

SEC. X. Section 19542.1 of the Revenue and Taxation Code is amended to read:

19542.1. (a) Except as otherwise provided by this article, it shall be unlawful for any person described in Section 19542 to willfully inspect any confidential information furnished or secured pursuant to this part, Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001). For purposes of this section, "inspection" means any examination of confidential information. Any willful unauthorized inspection or unwarranted disclosure or use of confidential information by the persons described in Section 19542 is a misdemeanor.

(b) The Franchise Tax Board shall notify a taxpayer of any known incidents of willful unauthorized inspection or unwarranted disclosure or use of his or her confidential tax records, but only if criminal charges have been filed for the willful unauthorized inspection or unwarranted disclosure.

SEC. X. Section 19547 of the Revenue and Taxation Code is amended to read:

19547. In a matter involving tax administration under this part, a return or return information shall be open to inspection by the Attorney General or other legal representatives of the state, if any of the following

apply:

(a) The taxpayer is or may be a party to the proceeding, or the proceeding arose out of, or in connection with, determining the taxpayer's civil or criminal liability, or the collection of the taxpayer's civil liability with respect to any tax imposed under Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

(b) The treatment of an item reflected on the return is or may be related to the resolution of an issue in the proceeding or investigation.

(c) The return or return information relates or may relate to a transactional relationship between a person who is a party to the proceeding and the taxpayer, which affects or may affect, the resolution of an issue in the proceeding or investigation.

In addition, the Attorney General may inspect any report or return required under this part when required in the enforcement of any public or charitable trust or in compelling adherence to any charitable purposes for which any nonprofit corporation is formed.

SEC. X. Section 19549 of the Revenue and Taxation Code is amended to read:

19549. For purposes of this article:

(a) "Return" means any tax or information return, or claim for refund required by, or provided for or permitted under, the provisions of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part which is filed with the Franchise Tax Board by, on behalf of, or with respect to any person, estate, or trust, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.

(b) "Return information" means a taxpayer's identity, the nature, source, or amount of his, her, or its income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Franchise Tax Board with respect to a return or with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of any person under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part for any tax, addition to tax, penalty, interest, fine, forfeiture, or other imposition, or offense.

(c) "Taxpayer return information" means return information as defined in subdivision (b) which is filed with, or furnished to, the Franchise Tax Board by or on behalf of the taxpayer to whom the return information relates.

(d) "Tax administration" means the administration, management, conduct, direction, and supervision of the execution and application of Part 10 (commencing with Section 17001), Part 10.7 (commencing with Section 21001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), and this part.

SEC. X. Section 19563 of the Revenue and Taxation Code is amended to read:

19563. This article does not prohibit the publication of

statistics, so classified as to prevent the identification of particular reports or returns and the items thereof, or the publication of the percentage of dividends paid by any corporation that is deductible by the recipient under Part 11 (commencing with Section 23001) or Part 12 (commencing with Section 27001).

SEC. X. Section 19565 of the Revenue and Taxation Code is amended to read:

19565. (a) If an organization is exempt from taxation under Section 23701 or Section 27701 for any taxable year, the application filed by the organization with respect to which the Franchise Tax Board made its determination that the organization was entitled to exemption under Section 23701 or Section 27701, together with any papers submitted in support of the application, and any letter or other document issued by the Franchise Tax Board, with respect to the application, shall be open to public inspection. Any inspection under this subdivision may be made at the times, and in the manner, as the Franchise Tax Board shall by regulations prescribe. After the application of any organization has been opened to public inspection under this subdivision, the Franchise Tax Board shall, on the request of any person with respect to the organization, furnish a statement indicating the section which it has been determined describes the organization.

(b) Upon request of the organization submitting any supporting papers described in subdivision (a), the Franchise Tax Board shall withhold from public inspection any information contained therein which it determines relates to any trade secret, patent, process, style of work, or apparatus, of the organization, if it determines that public disclosure of the information would adversely affect the organization. The Franchise Tax Board shall withhold from public inspection any information contained in supporting papers described in subdivision (a) the public disclosure of which it determines would adversely affect the national defense.

(c) The Franchise Tax Board may impose a reasonable charge for supplying any information the disclosure of which is permitted under this section.

SEC. X. Section 19566 of the Revenue and Taxation Code is amended to read:

19566. Any information provided to or secured by the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) may be used by Franchise Tax Board for purposes of administering Section 10878 or Article 6 (commencing with Section 19280) of Chapter 5.

SEC. X. Section 19570 of the Revenue and Taxation Code is amended to read:

19570. The provisions of Sections 1798.35, 1798.36, 1798.37, and Article 9 (commencing with Section 1798.45) of Chapter 1 of Title 1.8 of the Civil Code shall not be applied, directly or indirectly, to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, penalty, interest, fine, forfeiture, or other imposition or offense to which the provisions of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part apply.

SEC. X. Section 19591 of the Revenue and Taxation Code is amended to read:

19591. (a) Specialized tax services fees shall be imposed upon the following services provided by the board:

- (1) Installment payment programs.
- (2) Expedited services for:
 - (A) Corporation and business entity revivor requests.
 - (B) Tax clearance certificate requests.
 - (C) Tax-exempt status requests.

(b) (1) For periods on or after the effective date of this section and prior to January 1, 2006, the Franchise Tax Board shall publish by notice a schedule of specialized tax services fees to be imposed, which notice shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The amounts of these fees under this paragraph shall be calculated in the same general manner as required under paragraph (2).

(2) Commencing on January 1, 2006, the amount of the specialized tax services fees shall be established by the board through regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be established in the manner and in the amounts necessary to reimburse the board for the costs of administering the specialized services, including the board's direct and indirect costs for providing specialized tax services.

SEC. X. Section 19604 of the Revenue and Taxation Code is amended to read:

19604. (a)(1) Except for fees received for services under Section 23305e, all moneys and remittances received by the Franchise Tax Board as amounts imposed under Part 11 (commencing with Section 23001), and related penalties, additions to tax, fees, and interest imposed under this part, shall be deposited in a special fund in the State Treasury, to be designated the Corporation Tax Fund. The moneys in the fund shall, upon the order of the Controller, be drawn therefrom for the purpose of making refunds under this part or be transferred into the General Fund. All undelivered refund warrants shall be redeposited into the Corporation Tax Fund upon receipt by the Controller. Fees received for services under Section 23305e shall be treated as reimbursement of the Franchise Tax Board's costs and shall be deposited into the General Fund.

(2) All moneys and remittances received by the Franchise Tax Board as amounts imposed under Part 12 (commencing with Section 27001), and related penalties, additions to tax, fees, and interest imposed under this part, shall be deposited in a special fund in the State Treasury, to be designated the Business Net Receipts Tax Fund. The moneys in the fund shall, upon the order of the Controller, be drawn therefrom for the purpose of making refunds under this part or be transferred into the General Fund. All undelivered refund warrants shall be redeposited into the Business Net Receipts Tax Fund upon receipt by the Controller.

(b) Notwithstanding Section 13340 of the Government Code, all moneys in the Corporation Tax Fund are hereby continuously appropriated, without regard to fiscal year, to the Franchise Tax Board for purposes of making all payments as provided in this section.

SEC. X. Section 19701 of the Revenue and Taxation Code is amended to read:

19701. Any person who does any of the following is liable for a penalty of not more than five thousand dollars (\$5,000):

(a) With or without intent to evade any requirement of Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part or any lawful requirement of the Franchise Tax Board, repeatedly over a period of two years or more, fails to file any return or to supply any information required, or who, with or without that intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, resulting in an estimated delinquent tax liability of at least fifteen thousand dollars (\$15,000).

(b) Aids, abets, advises, encourages, or counsels any person to evade the tax imposed by Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) by not filing any return or supplying any information required under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part, or, by making, rendering, signing, or verifying any false or fraudulent return or statement, or by supplying false or fraudulent information.

(c) Under this part, is required to pay any estimated tax or tax, who willfully fails to pay that estimated tax or tax, at the time or times required by law or regulations.

The penalty shall be recovered in the name of the people in any court of competent jurisdiction. Counsel for the Franchise Tax Board may, upon request of the district attorney or other prosecuting attorney, assist the prosecuting attorney in presenting the law or facts to recover the penalty at the trial of a criminal proceeding for violation of this section.

That person is also guilty of a misdemeanor and shall upon conviction be fined not to exceed five thousand dollars (\$5,000) or be imprisoned not to exceed one year, or both, at the discretion of the court, together with costs of investigation and prosecution. The preceding sentence shall not apply to any person who is mentally incompetent, or suffers from dementia, Alzheimer's disease, or similar condition.

(d) For purposes of subdivision (a), the president of a corporation, or the chief operating officer, is the person presumed to be responsible for filing any return or supplying information required from that corporation.

SEC. X. Section 19702 of the Revenue and Taxation Code is amended to read:

19702. The prosecutor may, with the consent of the Franchise Tax Board, compromise any penalty for which he or she may bring action under this chapter. The penalties provided by this chapter are additional to all other penalties provided in Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part.

SEC. X. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is

made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law, ~~or~~ the Corporation Tax Law, or the Business Net Receipts Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, or compromise under Section 19443, or offer of that compromise, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a corporation, the fifty thousand dollars (\$50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars (\$200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section, "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

(e) The changes made to this section by the act adding this subdivision apply to offers made on or after January 1, 1999.

SEC. X. Section 19706 of the Revenue and Taxation Code is amended to read:

19706. Any person or any officer or employee of any corporation

who, within the time required by or under the provisions of this part, willfully fails to file any return or to supply any information with intent to evade any tax imposed by Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), or who, willfully and with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information, is punishable by imprisonment in the county jail not to exceed one year, or in the state prison, or by fine of not more than twenty thousand dollars (\$20,000), or by both the fine and imprisonment, at the discretion of the court, together with the costs of investigation and prosecution.

SEC. X. Section 19712 of the Revenue and Taxation Code is amended to read:

19712. Any tax preparer, as defined in subdivision (b) of Section 19169, who endorses or otherwise negotiates (directly or through an agent) any warrant made in respect of the taxes imposed by Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001) which is issued to a taxpayer (other than the tax preparer) shall, in addition to other penalties provided by law, be guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned not more than one year, or both, together with the costs of prosecution. This section shall not apply where the tax preparer has advanced the taxpayer an amount of money equal to or greater than the amount of the taxpayer's tax refund.

SEC. X. Section 19772 of the Revenue and Taxation Code is amended to read:

19772. (a) Section 6707A of the Internal Revenue Code, relating to penalty for failure to include reportable transactions information with a return, shall apply, except as otherwise provided.
(b) The penalty amounts in Section 6707A(b) of the Internal Revenue Code shall not apply, and in lieu thereof, the following shall apply:
(1) Except as provided in paragraph (2), the amount of the penalty shall be fifteen thousand dollars (\$15,000).
(2) The amount of the penalty with respect to a listed transaction shall be thirty thousand dollars (\$30,000).
(c) (1) Section 6707A(c)(1) of the Internal Revenue Code is modified to include reportable transactions within the meaning of paragraph (3) of subdivision (a) of Section 18407.
(2) Section 6707A(c)(2) of the Internal Revenue Code is modified to include listed transactions within the meaning of paragraph (4) of subdivision (a) of Section 18407.
(d) The penalty under this section only applies to taxpayers with taxable income greater than two hundred thousand dollars (\$200,000).
(e) Section 6707A(e) of the Internal Revenue Code, relating to a penalty reported to the Securities and Exchange Commission, shall not apply.
(f) Section 6707A(d) of the Internal Revenue Code, relating to the authority to rescind a penalty, shall not apply, and in lieu thereof, the following shall apply:
(1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by this section with respect to any violation if all of the following apply:
(A) The violation is with respect to a reportable transaction other than a listed transaction.

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001), ~~or~~ Part 11 (commencing with Section 23001), or Part 12 (commencing with Section 27001), and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision may not be reviewed in any administrative or judicial proceeding.

(g) Article 3 (commencing with Section 19031) of Chapter 4 (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed under this section.

(h) The penalty imposed by this section is in addition to any penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part.

SEC. X. Section 19777 of the Revenue and Taxation Code is amended to read:

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding a reportable transaction, as defined in Section 6707A(c)(1) of the Internal Revenue Code with respect to which the requirements of Section 6664(d)(2)(A) of the Internal Revenue Code are not met, any listed transaction, as defined in Section 6707A(c)(2) of the Internal Revenue Code, or a gross misstatement within the meaning of Section 6404(g)(2)(D) of the Internal Revenue Code, and has a deficiency, there shall be added to the tax an amount equal to 100 percent of the interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the date the notice of proposed assessment is mailed.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part.

SEC. X. Section 19801 of the Revenue and Taxation Code is amended to read:

19801. In the determination of any issue of law or fact under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), Part 12 (commencing with Section 27001), or this part, neither the Franchise Tax Board nor any officer or agency having any administrative duties under this part nor any court is bound by the determination of any other officer or administrative agency of the state.

SEC. X. The amendments made by this act to Part 10.2 pertaining to Part 12 (commencing with Section 27001) of the Revenue and Taxation Code shall apply to taxable years beginning on or after January 1, 2012.