



Section 1. Part 12 is added to Division 2 of the Revenue and Taxation Code to read as follows:

PART 12

BUSINESS NET RECEIPTS TAX LAW

**CHAPTER 1.
GENERAL PROVISIONS AND DEFINITIONS**

Article 1. General Provisions

27001. This part is known and may be cited as the Business Net Receipts Tax Law.

27002. A reference made in this part by number without further identification:

- (a) To a division, is a reference to that division of this code.
- (b) To a part, is a reference to that part in this division.
- (c) To a chapter, is a reference to that chapter in which it is made.
- (d) To an article, is a reference to that article in the chapter in which it is made.

27003. Whenever this part refers to "regulations of the Franchise Tax Board," or makes similar reference, the reference authorizes the Franchise Tax Board to make rules and regulations as to the subject matter concerning which the reference is made.

Article 2. Definitions

27011. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

27012. (a) "Franchise Tax Board" means the Franchise Tax Board described in Part 10 (commencing with Section 15700) of Division 3 of Title 2 of the Government Code.

(b) "Board" means the State Board of Equalization.

27013. "Fiscal year" means an accounting period of twelve months or less ending on the last day of any month other than December.

27014. "Paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which net receipts is computed.

27015. "State" means any state of the United States, the District of

Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

27016. "Counsel for the Franchise Tax Board" means attorney or attorneys appointed or employed by the Franchise Tax Board and acting subject to the approval and under the supervision of the Attorney General.

27017. The term "tax" means the tax imposed under Chapter 2 (commencing with Section 27101).

27018. "Taxpayer" means any person subject to the tax imposed under Chapter 2 (commencing with Section 27101).

27019. (a) For purposes of the tax imposed under Chapter 2 (commencing with Section 27101), "business entity" means any entity engaged in a trade or business, including an incorporated entity, an association, a partnership (including an eligible business entity classified as a partnership for federal income tax purposes), a business trust, and a business owned by an individual and operated as a sole proprietorship.

(b) For purposes of this part, the classification of a business entity as a partnership or an association taxable as a corporation shall be the same as the classification of that entity for federal income tax purposes. If the separate existence of an eligible business entity is disregarded for federal income tax purposes, the separate existence of that business entity will not be disregarded for purposes of this part.

(c) The following entities are not subject to the tax imposed under Chapter 2 (commencing with Section 27101):

- (1) An estate, except to the extent the estate relates to a business owned by an individual and operated as a sole proprietorship.
- (2) A trust, other than a business trust.

27020. "Bank" includes national banking associations, and also includes any "bank" operated by any receiver, liquidator, referee, trustee or other officers or agents appointed by any court, or an assignee for the benefit of creditors.

27021. Receipts derived from or attributable to sources within this State includes receipts from tangible or intangible property located or having a situs in this State and receipts from any activities carried on in this State, regardless of whether carried on in intrastate, interstate or foreign commerce.

27022. For the purposes of the tax imposed under this part, "taxable year" means all of the following:

- (a) The calendar year or the fiscal year for which the tax is payable.
- (b) The calendar year or fiscal year upon the basis of which the net receipts are computed.
- (c) A period of 12 months or less.

27023. (a) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto, as applicable for federal purposes for the applicable taxable year.

27024. If any chapter, article, section, subdivision, clause, sentence or phrase of this part which is reasonably separable from the remaining portions of this part, or the application thereof to any person, taxpayer or circumstance, is for any reason determined unconstitutional, such determination shall not affect the remainder of this part, nor will the application of any such provision to other persons, taxpayers or circumstances be affected thereby.

27025. Unless otherwise specifically provided therein, the provisions of any act:

(a) That affect the imposition or computation of tax, penalties, or the allowance of credits against the tax, shall be applied to taxable years beginning on or after January 1 of the year in which the act takes effect.

(b) That otherwise affect the provisions of this part shall be applied on and after the date the act takes effect.

27026. Provisions in other codes or General Law Statutes that are related to this part include all of the following:

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

(b) Part 10 (commencing with Section 17001), relating to the Personal Income Tax Law.

(c) Part 10.2 (commencing with Section 18401), relating to the Administration of Franchise and Income Taxes.

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

(e) Part 11 (commencing with Section 23001), relating to the Corporation Tax Law.

CHAPTER 2.
THE BUSINESS NET RECEIPTS TAX

Article 1. Definitions and General Provisions

27101. (a) A taxpayer is doing business in this State for a taxable year if any of the following conditions has been satisfied:

(1) The taxpayer is organized or commercially domiciled in this State.

(2) Sales, as defined in subdivision (e) of Section 28120, of the taxpayer in this State exceed the lesser of five hundred thousand dollars (\$500,000) or 25 percent of the taxpayer's total sales.

(A) For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer.

(B) For purposes of this paragraph, sales in this State shall be determined using the rules for assigning sales under Sections 28135 and 28136 and the regulations thereunder, as modified by regulations under Section 28137.

(3) The real property and tangible personal property of the taxpayer in this State exceed the lesser of fifty thousand dollars (\$50,000) or 25 percent of the taxpayer's total real property and tangible personal property. The value of real and tangible personal property and the determination of whether property is in this State shall be determined using the rules contained in Sections 28129 to 28131, inclusive, and the regulations thereunder, as modified by regulation under Section 28137.

(4) The amount paid in this State by the taxpayer for compensation, as defined in subdivision (c) of Section 29120, exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent of the total compensation paid by the taxpayer. Compensation in this State shall be determined using the rules for assigning payroll contained in Section 28133 and the regulations thereunder, as modified by regulations under Section 28137.

(b) (1) The Franchise Tax Board shall annually revise the amounts in paragraphs (2), (3), and (4) of subdivision (b) in accordance with subdivision (h) of Section 17041.

(2) For purposes of the adjustment required by paragraph (1), subdivision (h) of Section 17041 shall be applied by substituting "2012" in lieu of "1988."

(c) The sales, property, and payroll of the taxpayer include the taxpayer's pro rata or distributive share from pass-through entities. For purposes of this subdivision, "pass-through entities" means a partnership or an "S" corporation.

27102. The tax imposed under this chapter shall attach whether a taxpayer has a taxable year of twelve months or less.

27103. A business entity shall not be subject to the taxes imposed by this chapter if the business entity did no business in this State during the taxable year and the taxable year was 15 days or less.

Article 2. Tax on Business Entities Other than Banks and Financial Business Entities.

27151. (a) With the exception of banks and financial business entities, every business entity doing business within the limits of this State and not expressly exempted from taxation by the provisions of the Constitution of this

State or by this part, shall annually pay to the State, for the privilege of exercising its franchises within this State, a tax computed at the rate of XX.X percent of its net receipts for the taxable year.

Article 3. Tax on Financial Institutions.

27161. (a) Except as otherwise provided herein, every financial institution doing business within the limits of this State and not expressly exempted from taxation by the provisions of the Constitution of this State or by this part, shall annually pay to the State, for the privilege of exercising its franchises within this state, a tax computed at the rate of YY.Y percent of its net business receipts for the taxable year.

27162. The tax imposed under this part upon financial institutions is in lieu of all other taxes and licenses, state, county and municipal, upon the said banks and financial business entities except taxes upon their real property, local utility user taxes, sales and use taxes, state energy resources surcharge, state emergency telephone users surcharge, and motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the State upon vehicles, motor vehicles or the operation thereof.

27163. (a) For purposes of this part, a "financial institution" is defined as:

- (1) Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended;
- (2) A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, 12 U.S.C. §§21 et seq.;
- (3) A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(b)(1);
- (4) Any bank or thrift institution incorporated or organized under the laws of any state;
- (5) Any corporation organized under the provisions of 12 U.S.C. §§611 to 631.
- (6) Any agency or branch of a foreign depository as defined in 12 U.S.C. §3101;
- (7) A state credit union the loan assets of which exceed \$50,000,000 as of the first day of its taxable year;
- (8) A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired;
- (9) Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in subsections (1) through (8) above other than an insurance company;
- (10) A corporation or other business entity that derives more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this paragraph, a "finance lease" shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any "direct financing lease" or "leverage lease" that meets the criteria of Financial Accounting Standards Board Statement No. 13, "Accounting for Leases" or any

other lease that is accounted for as a financing by a lessor under generally accepted accounting principles. For this classification to apply, (A) the average of the gross income in the current tax year and immediately preceding two tax years must satisfy the more than fifty percent (50%) requirement; and

(B) gross income from incidental or occasional transactions shall be disregarded

(11) Any other person or business entity, other than an insurance company, which derives more than fifty percent (50%) of its gross income from activities that a person described in subsections (2) through (8) and (10) above is authorized to transact. For the purpose of this subsection, the computation of gross income shall not include income from non-recurring, extraordinary items.

(12) The Franchise Tax Board is authorized to exclude any person from the application of paragraph (11) upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in paragraphs (2) through (8) and (10) above.

Article 3.5. Suspension and Revivor

27191. Except for the purposes of filing an application for exempt status or amending the articles of incorporation or organization as necessary either to perfect that application or to set forth a new name, the powers, rights and privileges of a domestic limited liability taxpayer may be suspended, and the exercise of the powers, rights and privileges of a foreign limited liability taxpayer in this State may be forfeited, if any of the following conditions occur:

(a) If any tax, penalty, or interest, or any portion thereof, that is due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, either at the time the return is required to be filed or on or before the 15th day of the ninth month following the close of the taxable year, is not paid on or before 6 p.m. on the last day of the 12th month after the close of the taxable year.

(b) If any tax, penalty, or interest, or any portion thereof, due and payable under Chapter 4 (commencing with Section 19001) of Part 10.2, or under this part, upon notice and demand from the Franchise Tax Board, is not paid on or before 6 p.m. on the last day of the 11th month following the due date of the tax.

(c) If any liability, or any portion thereof, which is due and payable under Article 7 (commencing with Section 19131) of Chapter 4 of Part 10.2, is not paid on or before 6 p.m. on the last day of the 11th month following the date that the tax liability is due and payable.

27192. Except for the purposes of filing an application for exempt status or amending the articles of incorporation or organization as necessary either to perfect that application or to set forth a new name, the powers, rights, and privileges of a domestic limited liability taxpayer may be suspended, and the exercise of the powers, rights, and privileges of a foreign limited liability taxpayer in this State may be forfeited, if a taxpayer fails to file a tax return required by this part or Part 10.2 (commencing with Section 18401).

27194. Sections 27191, 27192, and 27775 shall apply to a foreign limited liability taxpayer only if the taxpayer is qualified to do business in this State. A taxpayer that is required under Section 2105 of the Corporations Code to qualify to do business shall not be deemed to have qualified to do

business for purposes of this article unless the taxpayer has in fact qualified with the Secretary of State.

27194. (a) Forfeiture or suspension of a limited liability taxpayer's powers, rights, and privileges pursuant to Section 27191, 27192, or 27775 shall occur and become effective only as expressly provided in this section in conjunction with Section 21020, which requires notice prior to the suspension of a taxpayer's corporate powers, rights, and privileges.

(b) The notice requirements of Section 21020 shall also apply to any forfeiture of a taxpayer's corporate powers, rights, and privileges pursuant to Section 27191, 27192, or 27775 and to any voidability pursuant to subdivision (d) of Section 27196.

(c) The Franchise Tax Board shall transmit the names of taxpayers to the Secretary of State as to which the suspension or forfeiture provisions of Section 27191, 27192, or 27775 are or become applicable, and the suspension or forfeiture therein provided for shall thereupon become effective. The certificate of the Secretary of State shall be prima facie evidence of the suspension or forfeiture.

(d) If a taxpayer's powers, rights, and privileges are forfeited or suspended pursuant to Section 27191, 27192, or 27775, without limiting any other consequences of such forfeiture or suspension, the taxpayer shall not be entitled to sell, transfer, or exchange real property in California during the period of forfeiture or suspension.

27195. Notwithstanding the provisions of Section 27191 or 27192, any limited liability entity that transacts business or receives business net receipts within the period of its suspension or forfeiture shall be subject to tax under the provisions of this chapter.

27196. (a) Every contract made in this State by a limited liability taxpayer during the time that the taxpayer's powers, rights, and privileges are suspended or forfeited pursuant to Section 27191, 27192 or 27775 shall, subject to Section 27197, be voidable at the instance of any party to the contract other than the limited liability taxpayer.

(b) If a foreign limited liability taxpayer that neither is qualified to do business nor has a business entity account number from the Franchise Tax Board, fails to file a tax return required under this part, any contract made in this State by that taxpayer during the applicable period specified in subdivision (c) shall, subject to Section 27197, be voidable at the instance of any party to the contract other than the taxpayer.

(c) For purposes of subdivision (b), the applicable period shall be the period beginning on January 1, 2012, or the first day of the taxable year for which the taxpayer has failed to file a return, whichever is later, and ending on the earlier of the date the taxpayer qualified to do business in this State or the date the taxpayer obtained a business entity account number from the Franchise Tax Board.

(d) If a taxpayer fails to file a tax return required under this part, to pay any tax or other amount owing to the Franchise Tax Board under this part or to file any statement or return required under Section 27772 or 27774, within 60 days after the Franchise Tax Board mails a written demand therefor, any contract made in this State by the taxpayer during the period beginning at the end of the 60-day demand period and ending on the date relief is granted under Section 27198.1, or the date the taxpayer qualifies to do business in this State, whichever is earlier, shall be voidable at the instance of any party to the contract other than the taxpayer. This subdivision shall apply only to a taxpayer if the taxpayer has a corporate

account number from the Franchise Tax Board, but has not qualified to do business under Section 2105 of the Corporations Code. In the case of a taxpayer that has not complied with the 60-day demand, the taxpayer's name, Franchise Tax Board corporate account number, date of the demand, date of the first day after the end of the 60-day demand period, and the fact that the taxpayer did not within that period pay the tax or other amount or file the statement or return, as the case may be, shall be a matter of public record.

27197. A party that has the right to declare a contract to be voidable pursuant to Section 27196 may exercise that right only in a lawsuit brought by either party with respect to the contract in a court of competent jurisdiction and the rights of the parties to the contract shall not be affected by Section 27196 except to the extent expressly provided by a final judgment of the court, which judgment shall not be issued unless the taxpayer is allowed a reasonable opportunity to cure the voidability under Section 27198.1. If the court finds that the contract is voidable under Section 27196, the court shall order the contract to be rescinded. However, in no event shall the court order rescission of a taxpayer's contract unless the taxpayer receives full restitution of the benefits provided by the taxpayer under the contract.

27198. Any taxpayer which has suffered the suspension or forfeiture provided for in Section 27191 or 27192 may be relieved therefrom upon making application therefor in writing to the Franchise Tax Board and upon the filing of all tax returns required under this part, and the payment of the tax, additions to tax, penalties, interest, and any other amounts for nonpayment of which the suspension or forfeiture occurred, together with all other taxes, additions to tax, penalties, interest, and any other amounts due under this part, and upon the issuance by the Franchise Tax Board of a certificate of revivor. Application for the certificate on behalf of any taxpayer which has suffered suspension or forfeiture may be made by any stockholder or creditor, by a majority of the surviving trustees or directors thereof, by an officer, or by any other person who has interest in the relief from suspension or forfeiture.

27198.1. (a) A taxpayer may make application to the Franchise Tax Board for relief from the voidability provisions of Section 27196. To be relieved from voidability, the taxpayer shall do all of the following:

- (1) Provide the Franchise Tax Board with an application for relief from contract voidability in a form and manner prescribed by the Franchise Tax Board.
- (2) Include on the application the period for which relief is requested in accordance with subdivision (b).
- (3) File any tax returns required to be filed under this part and Part 10.2 (commencing with Section 18401) with the Franchise Tax Board, including returns for the period for which relief is requested.
- (4) Pay any tax, additions to tax, penalties, interest, and any other amounts owing to the Franchise Tax Board, including any liability attributable to the period for which relief is requested.
- (5) Pay any penalty imposed under subdivision (b) for the period for which relief is requested.
- (6) In the case of a taxpayer that applies for and enters into an approved voluntary disclosure agreement in accordance with Article 8 (commencing with Section 19191) of Chapter 4 of Part 10.2, for purposes of this section, the taxpayer shall be considered to have met the requirements of paragraphs (3), (4), and (5) if the taxpayer fulfills to the satisfaction of

the Franchise Tax Board all the specifications of the voluntary disclosure agreement within the meaning of paragraph (2) of subdivision (d) of Section 19191 and if the Franchise Tax Board has not found that any of the circumstances described in Section 19194 has rendered the voluntary disclosure agreement null and void.

(b) (1) Except as provided in paragraph (2), both of the following shall apply:

(A) The period for which relief is requested shall begin on the date that one of the taxpayer's taxable years begins and ends on the date that relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars (\$100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to the amount of the tax for the period for which relief is requested.

(2) If an application for relief from voidability is filed for a period in which an application for revivor has been filed and the certificate of revivor has been issued, all of the following shall apply:

(A) The period for which relief is requested shall begin on the date the taxpayer's powers, rights, and privileges had been suspended or forfeited and ends on the date relief is granted.

(B) The Franchise Tax Board shall assess a daily penalty equal to one hundred dollars (\$100) for each day of the period for which relief from voidability is granted, but not to exceed a total penalty equal to that amount of the tax that would be imposed under Section 27151 for the period for which relief is requested.

(C) In the case of an exempt organization or trust subject to the tax on unrelated business net receipts under Article 2 (commencing with Section 27731) of Chapter 4 (the tax on unrelated business net receipts), the daily penalty provided in subparagraph (B) shall not exceed a total penalty equal to the amount of tax imposed upon its unrelated business taxable income for the period for which relief is requested.

(3) Any penalty imposed under this subdivision shall, subject to Section 27198.2, be due and payable on demand by the Franchise Tax Board.

(c) (1) Upon satisfaction of the conditions specified in subdivision (a), including through the application of Section 27198.2, the following shall apply:

(A) All contracts entered into during the period for which relief is granted that have not been rescinded by a final court order pursuant to Section 27196 may be enforced in the same manner and to the same extent, with regard to both the parties to the contract and any third parties, as if the contract had never been voidable.

(B) Any sale, transfer, or exchange of real property in California during the period for which relief is granted and which the taxpayer at that time was not entitled to sell, transfer, or exchange by reason of subdivision (d) of Section 27194 and which has not been rescinded by a final court order pursuant to Section 27197, shall be as valid as if the taxpayer had not been subject to subdivision (d) of Section 27194 at the time of the sale, transfer, or exchange.

(2) Upon being granted relief from voidability, the Franchise Tax Board shall certify that relief to the taxpayer in a form and manner as prescribed by the Franchise Tax Board. The certificate shall be issued or mailed to the taxpayer, or as directed by the taxpayer, and shall indicate the period for which relief is granted.

(d) The fact that a certificate of relief from voidability was issued pursuant to this section and the information contained on that certificate shall be subject to public disclosure. The certificate shall be

prima facie evidence of the relief from voidability for contracts entered into during the period of relief stated on the certificate and the certificate may be recorded in the office of the county recorder of any county of this State.

27198.2. Notwithstanding Sections 27198 and 27198.5 that require a taxpayer to pay any liability to the Franchise Tax Board as a condition to revivor or relief from voidability, the Franchise Tax Board shall issue a certificate of revivor under Section 27198, or of relief from voidability under Section 27198.5, if the taxpayer provides the Franchise Tax Board with an assumption of liability, or a bond, deposit, or other security for taxpayer's liability, that is acceptable to the Franchise Tax Board. The Franchise Tax Board shall notify the person filing the application for revivor or relief from voidability of the amount of the bond, deposit, or other security, or of the terms of an assumption of liability, that must be furnished as a condition of the revivor or the relief from voidability. Obtaining revivor or voidability relief by securing the debt pursuant to this section shall not constitute an admission of liability by the taxpayer, nor relieve the taxpayer or any individual or corporation from liability for any taxes, additions to tax, penalties, or interest imposed by this part. A taxpayer that provides an assumption of liability or a bond, deposit, or other security to obtain revivor or relief from voidability may, notwithstanding Section 27198 or 27198.5, file any returns required under those sections within a reasonable time after relief is granted by the Franchise Tax Board.

27198.5. (a) For the purposes of this article, "limited liability taxpayer" means any business entity which is organized under the laws of a state, the United States, or a foreign country where, pursuant to those laws, one or more owners of the business entity are not liable for the obligations of the business entity.

27198a. Before the certificate of revivor is issued by the Franchise Tax Board, it shall obtain from the Secretary of State an endorsement upon the application of the fact that the name of the taxpayer that is an incorporated entity then meets the requirements of subdivision (b) of Section 201 of the Corporations Code in the case of a domestic incorporated taxpayer or of subdivision (b) of Section 2106 of the Corporations Code in the case of a foreign incorporated taxpayer that has qualified to do business. The reference to amendment of the articles of incorporation to set forth a new name contained in Sections 27191, 27192, and 27775 includes in the case of a foreign taxpayer the filing of an amended statement and designation to set forth its new name or to set forth an assumed name under subdivision (b) of Section 2106 of the Corporations Code. Upon the issuance of the certificate by the Franchise Tax Board the incorporated taxpayer therein named shall become reinstated but the reinstatement shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture, except that contracts which were voidable pursuant to Section 27196, but which have not been rescinded pursuant to Section 27197, may have that voidability cured in accordance with Section 27198.1. The certificate of revivor shall be prima facie evidence of the reinstatement and the certificate may be recorded in the office of the county recorder of any county of this State.

27198b. Notwithstanding Section 27198, the Franchise Tax Board may revive a limited liability taxpayer to good standing without full payment of the taxes, penalties, and interest due if it determines that the revivor will

improve the prospects for collection of the full amount due. This revivor may be limited as to time or may limit the functions the revived limited liability taxpayer can perform, or both. The powers, rights, and privileges may again be suspended or forfeited if the Franchise Tax Board determines that the prospects for collection of the full amount due have not been improved by the revivor of the limited liability taxpayer.

27198c. (a) Upon issuance of the certificate of revivor, the Franchise Tax Board shall transmit to the Secretary of State the revived taxpayer's name and its registration number.

(b) The taxpayer's name and number, the fact that the taxpayer's powers, rights, and privileges have been revived and the effective date of the revivor shall be a matter of public record.

(c) If the Franchise Tax Board determines that a suspension or forfeiture was in error by the Franchise Tax Board, the Franchise Tax Board shall, in connection with the revivor, indicate that the taxpayer is "restored." The status of the restored taxpayer shall be retroactive to the date of suspension or forfeiture as if there had been no suspension or forfeiture.

(d) If the Franchise Tax Board determines that the mailing of the 60-day demand notice referred to in subdivision (d) of Section 27196 was in error or that the Franchise Tax Board's original determination as to compliance with the 60-day demand notice was in error, the Franchise Tax Board's revised conclusions also shall be part of the public record referred to in that subdivision.

27198d. A certificate of suspension or forfeiture from the Franchise Tax Board setting forth that the suspended or forfeited taxpayer has been notified of its liability for tax or requirement to file a return under this part and that the tax has not been paid or the return has not been filed, shall constitute prima facie evidence of the facts.

27198e. (a) The Franchise Tax Board may provide letters of good standing, verifying a corporation's status for doing business in California, at a charge reflecting the reasonable costs to the department of responding to these requests.

(b) Fees received under this section shall be handled in accordance with Section 19604.

CHAPTER 3

Computation of Net Receipts

Article 1. General

27501. For purposes of the tax imposed under Section 27151, "net receipts" means business net receipts apportioned to this State and nonbusiness net receipts allocated to this State.

Article 2. Net Receipts

27511. "Business net receipts" means business gross receipts less business purchases from other businesses.

27512. "Nonbusiness net receipts" means nonbusiness gross receipts less nonbusiness purchases from other businesses, and includes all net receipts other than business net receipts.

Article 3. Receipts

27521. "Business gross receipts" means gross receipts that satisfy either of the following:

(a) Gross receipts arising from transactions and activity in the regular course of the taxpayer's trade or business.

(b) Gross receipts from the sale or exchange of tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

27522. "Nonbusiness gross receipts" means gross receipts other than business gross receipts.

27523. (a)(1) "Gross receipts" means gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale, rental, licensing, or exchange of property, or from the performance of services.

(2) For financial institutions subject to tax under Article 3 (commencing with Section 27161) of Chapter 2, gross receipts includes interest received.

(b) Notwithstanding subdivision (a), "gross receipts" does not include, among other items, the following:

(1) Interest, dividends, principal, and any amount realized from loans, bonds, mutual funds, certificates of deposit, repurchase agreements, derivative financial instruments (including but not limited to futures contracts, forward contracts, and options), or any other financial instruments, whether the financial instruments are traded in connection with a treasury function, a hedging function, or any other purpose.

(2) Proceeds from the issuance of the taxpayer's own stock or from the sale of treasury stock.

(3) Proceeds that constitute contributions to capital to the business entity.

(4) Proceeds from selling a division, subsidiary, or interest in another business, except to the extent of the gain realized on the sale of that interest.

(5) Damages and other amounts received as the result of litigation (unless the recipient is a law firm).

- (6) Property acquired by an agent on behalf of another.
- (7) Tax refunds.
- (8) Pension reversions.
- (9) Income from discharge of indebtedness, except as otherwise provided.
- (10) Price of commodities or other goods that are traded for similar commodities or other goods, whether such trading is done for hedging or other purposes.
- (11) Proceeds from selling accounts receivables.
- (12) Proceeds from selling land, except to the extent of the gain realized on the sale of that land.
- (13) Proceeds from intercompany transactions that are eliminated under regulations to be issued by the Franchise Tax Board.
- (14) Receipts allocated or apportioned to a business entity in its capacity as a member of, or holder of, an economic interest in a passthrough entity if those receipts are directly or indirectly attributable to receipts that are subject to the tax imposed under this part. For purposes of this paragraph, passthrough entity means a partnership or an S corporation.

27524. The following amounts, as calculated under the rules set forth below, are specifically included as items of gross receipts within the meaning of subdivision (a) of Section 27523:

- (a) The provisions of Section 72(u) of the Internal Revenue Code, relating to the treatment of annuity contracts not held by natural persons, shall be applicable.
- (b) Amounts received other than amounts paid by reason of the death of the insured under life insurance, endowment or annuity contracts, either during the term or at maturity or upon surrender of the contract, equal to the total amount of premiums paid thereon. In the case of a transfer for a valuable consideration by assignment or otherwise, of a life insurance, endowment or annuity contract or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be excluded from gross income under Section 24305 or this section. The preceding sentence shall not apply in the case of such a transfer if such contract or interest therein has a basis for determining gain or loss in the hands of a transferee determined in whole or in part by reference to such basis of such contract or interest therein in the hands of the transferor or to a corporation in which the insured is a shareholder or officer.
- (c)(1) Except as provided in paragraph (2), amounts received under life insurance policies and contracts paid by reason of the death of the insured but if such amounts are held by the insurer under an agreement to pay interest thereon, the interest payments shall be included in gross income.
- (2) Proceeds of flexible premium contracts payable by reason of death shall be excluded from gross income only in accordance with the provisions of Section 101(f) of the Internal Revenue Code.
- (d)(1) Section 108 of the Internal Revenue Code, relating to income from discharge of indebtedness, shall apply, except as otherwise provided.
- (2) Section 108(b)(2)(B) of the Internal Revenue Code, relating to general business credit, is modified by substituting "this part" in lieu of "Section 38 (relating to general business credit)."
- (3) Section 108(b)(2)(G) of the Internal Revenue Code, relating to foreign tax credit carryovers, shall not apply.
- (4) Section 108(b)(3)(B) of the Internal Revenue Code, relating to credit carryover reduction, is modified by substituting "11.1 cents" in lieu of "33 1/3 cents" in each place in which it appears. In the case where more

than one credit is allowable under this part, the credits shall be reduced on a pro rata basis.

(5) Section 108(g)(3)(B) of the Internal Revenue Code, relating to adjusted tax attributes, is modified by substituting "\$9" in lieu of "\$3."

(e)(1) Section 110 of the Internal Revenue Code, relating to qualified lessee construction allowances for short-term leases, shall apply, except as otherwise provided.

(2) Section 110(b) of the Internal Revenue Code is modified by substituting the phrase "(including for purposes of paragraph (2) of subdivision (e) of former Section 24349)" for the phrase "(including for purposes of Section 168(i)(8)(B))."

(3) Section 110(c)(2) of the Internal Revenue Code is modified by substituting the phrase "(as determined under the rules of paragraph (3) of subdivision (e) of former Section 24349)" for the phrase "(as determined under the rules of Section 168(i)(3))."

(f)(1) Section 111 of the Internal Revenue Code, relating to recovery of tax benefit items, shall apply, except as otherwise provided.

(2) Sections 111(b) and 111(c) of the Internal Revenue Code, relating to credits and treatment of credit carryovers, shall be applicable with respect to credits allowable under this part.

Article 4. Purchases

27531. (a) "Business purchases from other businesses" means purchases from other businesses that satisfy either of the following:

(1) Arising from transactions and activity in the regular course of the taxpayer's trade or business.

(2) Purchases or acquisitions of tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b)(1) "Purchases from other businesses" means purchases from other entities that are utilized in the production of the gross receipts subject to the tax imposed by this part, and includes purchases from entities not subject to the tax imposed by this part, including non-profit entities, insurance companies and governmental entities, and specifically means all of the following:

(A) Inventory acquired during the taxable year, including freight, shipping, delivery, or engineering charges included in the original contract price for that inventory.

(B) Assets, including the costs of fabrication and installation, acquired during the taxable year of a type that are, or under the Internal Revenue Code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes.

(C) To the extent not included in inventory or depreciable property, materials and supplies, including repair parts and fuel.

(D) Payments for the rental or leasing of property.

(E) Payments for health insurance and payroll taxes.

(F) For a staffing company, compensation of personnel supplied to customers of staffing companies.

(G) As used in this paragraph:

(i) "Compensation" means that term as defined under Section 28120, plus all payroll tax and worker's compensation costs directly related thereto.

(ii) "Staffing company" means a taxpayer whose business activities are included in industry group 736 under the Standard Industrial Classification Code, as compiled by the United States Department of Labor.

(2) For purposes of this subdivision, "inventory" means all of the following:

(A) The stock of goods held for resale in the regular course of trade of a retail or wholesale business, including electricity or natural gas purchased for resale.

(B) Finished goods, goods in process, and raw materials of a manufacturing business purchased from another person.

(C) For a person that is a securities trader, broker, or dealer or a person included in the unitary business group of that securities trader, broker, or dealer that buys and sells for its own account, contracts that are subject to the Commodity Exchange Act, 7 USC 1 to 27f, the cost of securities as defined under Section 475(c)(2) of the Internal Revenue Code, and for a securities trader the cost of commodities as defined under Section 475(e)(2) of the Internal Revenue Code, and for a broker or dealer the cost of commodities as defined under Section 475(e)(2)(b), (c), and (d) of the Internal Revenue Code, excluding interest expense other than interest expense related to repurchase agreements. As used in this subparagraph:

(i) "Broker" means that term as defined under Section 78c(a)(4) of the Securities Exchange Act of 1934, 15 USC 78c.

(ii) "Dealer" means that term as defined under Section 78c(a)(5) of the Securities Exchange Act of 1934, 15 USC 78c.

(iii) "Securities trader" means a person that engages in the trade or business of purchasing and selling investments and trading assets.

(3) For financial institutions subject to tax under Article 3 (commencing with Section 27161) of Chapter 2, purchases includes interest paid.

27532. There shall be allowed as a deduction for a taxable year an amount equal to the net excess purchase carryover to that taxable year. For purposes of this section, the term "net excess purchase" means the excess of the purchases allowed to reduce gross receipts under this chapter over the gross receipts for a taxable year. A net excess purchase for any taxable year shall be a net excess purchase carryover to each of the five taxable years following the taxable year of excess purchases. The Franchise Tax Board shall issue regulations to implement this section, which shall be comparable to the provisions of Section 172 of the Internal Revenue Code and the applicable regulations.

27533. The following amounts, as calculated under the rules set forth below, are specifically excluded as business purchases from other businesses within the meaning of subdivision (a) of Section 27531:

(a)(1) Amounts paid by a taxpayer with respect to acquisition from a club which restricts membership or the use of its services or facilities on the basis of ancestry or any characteristic listed or defined in Section 11135 of the Government Code.

(2) A club described in paragraph (1) of subdivision (a) holding an alcoholic beverage license pursuant to Division 9 (commencing with Section 23000) of the Business and Professions Code, except a club holding an alcoholic beverage license pursuant to Section 23425 thereof, shall provide on each receipt furnished to a taxpayer a printed statement as follows:

"The expenditures covered by this receipt are nondeductible for state income tax purposes or net receipts tax purposes."

(3) For purposes of this subdivision:

(A) "Amounts paid" means those amounts otherwise treated as purchases under this article, and includes, but is not limited to, club membership dues and assessments, food and beverage expenses, expenses for services furnished by the club, and reimbursements or salary adjustments to officers or employees for any of the preceding expenses.

(B) "Club" means a club as defined in Division 9 (commencing with Section 23000) of the Business and Professions Code, except a club as defined in Section 23425 thereof.

(b) The amount of any bad debt deduction under the Internal Revenue Code for the taxable year that is in excess of the amount of any debts which become worthless within the taxable year.

(c)(1) Any amounts directly attributable to illegal activities, as defined in Chapters 9, 10 or 10.5 of Title 9 of Part 1 of the Penal Code of California.

(2) For purposes of this subdivision, a prior, final determination by a court of competent jurisdiction of this State in any criminal proceedings or any proceeding in which the state, county, city and county, city or other political subdivision was a party thereto on the merits of the legality of the activities of a taxpayer or predecessor in interest of a taxpayer shall be binding in determining whether this subdivision applies.

(d)(1) Any amounts (including deductions for cost of goods sold) directly attributable to illegal activities as defined in Sections 266h or 266i of, or in Chapter 4 (commencing with Section 211) of Title 8 of, Chapter 7.5 (commencing with Section 311) of Title 9 of, Chapter 8 (commencing with Section 314) of Title 9 of, or Chapter 2 (commencing with Section 459), Chapter 5 (commencing with Section 484), or Chapter 6 (commencing with Section 503) of Title 13 of, Part 1 of the Penal Code, or as defined in Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code.

(2) For purposes of this subdivision, a prior, final determination by a court of competent jurisdiction of this State in any criminal proceedings or any proceeding in which the state, county, city and county, city, or other political subdivision was a party thereto on the merits of the legality of the activities of a taxpayer or predecessor in interest of a taxpayer shall be binding in determining whether this subdivision applies.

(e)(1) Any amounts paid or incurred in the taxable year with respect to substandard housing located in this state, except as provided in paragraph (5).

(2) "Substandard housing" means occupied dwellings from which the taxpayer derives rental income or unoccupied or abandoned dwellings for which both of the following apply:

(A) Either of the following occurs:

(i) For occupied dwellings from which the taxpayer derives rental income, a state or local government regulatory agency has determined that the housing violates state law or local codes dealing with health, safety, or building.

(ii) For dwellings that are unoccupied or abandoned for at least 90 days, a state or local government regulatory agency has cited the housing for conditions that constitute a serious violation of state law or local codes dealing with health, safety, or building, and that constitute a threat to public health and safety.

(B) Either of the following occurs:

(i) After written notice of violation by the regulatory agency, specifying the applicability of this section, the housing has not been repaired or brought to a condition of compliance within six months after the date of the notice or the time prescribed in the notice, whichever period is later.

(ii) Good faith efforts for compliance have not been commenced, as determined by the regulatory agency. "Substandard housing" also means employee housing

that has not, within 30 days of the date of the written notice of violation or the date for compliance prescribed in the written notice of violation, been brought into compliance with the conditions stated in the written notice of violation of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code) issued by the enforcement agency that specifies the application of this section. The regulatory agency may, for good cause shown, extend the compliance date prescribed in a violation notice.

(3)(A) When the period specified in subparagraph (B) of paragraph (2) of this subdivision has expired without compliance, the government regulatory agency shall mail to the taxpayer a notice of noncompliance. The notice of noncompliance shall be in a form and shall include information prescribed by the Franchise Tax Board, shall be mailed by certified mail to the taxpayer at his or her last known address, and shall advise the taxpayer of (i) an intent to notify the Franchise Tax Board of the noncompliance within 10 days unless an appeal is filed, (ii) where an appeal may be filed, and (iii) a general description of the tax consequences of that filing with the Franchise Tax Board. Appeals shall be made to the same body and in the same manner as appeals from other actions of the regulatory agency. If no appeal is made within 10 days or if after disposition of the appeal the regulatory agency is sustained, the regulatory agency shall notify, in writing, the Franchise Tax Board of the noncompliance.

(B) The notice of noncompliance shall contain the legal description or the lot and block numbers of the real property, the assessor's parcel number, and the name of the owner of record as shown on the latest equalized assessment roll. In addition, the regulatory agency shall, at the same time as notification of the notice of noncompliance is sent to the Franchise Tax Board, record a copy of the notice of noncompliance in the office of the recorder for the county in which the substandard housing is located that includes a statement of tax consequences that may be determined by the Franchise Tax Board. However, the failure to record a notice with the county recorder does not relieve the liability of any taxpayer nor does it create any liability on the part of the regulatory agency.

(C) The regulatory agency may charge the taxpayer a fee in an amount not to exceed the regulatory agency's costs incurred in recording any notice of noncompliance or issuing any release of that notice. The notice of compliance shall be recorded and shall serve to expunge the notice of noncompliance. The notice of compliance shall contain the same recording information required for the notice of noncompliance. No deduction by the taxpayer, or any other taxpayer who obtains title to the property subsequent to the recordation of the notice of noncompliance, shall be allowed for the items provided in paragraph (1) of this subdivision from the date of the notice of noncompliance until the date the regulatory agency determines that the substandard housing has been brought to a condition of compliance. The regulatory agency shall mail to the Franchise Tax Board and the taxpayer a notice of compliance, which notice shall be in the form and include the information prescribed by the Franchise Tax Board. In the event the period of noncompliance does not cover an entire taxable year, the deductions shall be denied at the rate of 1/12 for each full month during the period of noncompliance.

(D) If the property is owned by more than one owner or the recorded title is in the name of a fictitious owner, the notice requirements provided in subdivision (b) and this subdivision shall be satisfied for each owner if the notices are mailed to one owner or to the fictitious name owner at the address appearing on the latest available property tax bill. However, notices made pursuant to this subdivision shall not relieve the regulatory agency from furnishing taxpayer identification information required to implement his

section to the Franchise Tax Board.

(4) For the purposes of this section, a notice of noncompliance shall not be mailed by the regulatory agency to the Franchise Tax Board if any of the following occur:

(A) The housing was rendered substandard solely by reason of earthquake, flood or other natural disaster except where the condition remains for more than three years after the disaster.

(B) The owner of the substandard housing has secured financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as substandard, and has commenced repairs or other work necessary to bring the housing into compliance.

(C) The owner of substandard housing that is not within the meaning of housing accommodation, as defined in subdivision (d) of Section 35805 of the Health and Safety Code, has done both of the following:

(i) Attempted to secure financing to bring the housing into compliance with those laws or codes that have been violated, causing the housing to be classified as substandard.

(ii) Been denied that financing solely because the housing is located in a neighborhood or geographical area in which financial institutions do not provide financing for rehabilitation of any of that type of housing.

(5) The provisions of this section do not apply to deductions from gross receipts derived from property rendered substandard solely by reason of a change in applicable state or local housing standards unless those violations cause substantial danger to the occupants of the property, as determined by the regulatory agency which has served notice of violation pursuant to paragraph (2) of this subdivision.

(6) The owner of substandard housing found to be in noncompliance shall, upon total or partial divestiture of interest in the property, immediately notify the regulatory agency of the name and address of the person or persons to whom the property has been sold or otherwise transferred and the date of the sale or transference.

(7) By July 1 of each year, the regulatory agency shall report to the appropriate legislative body of its jurisdiction all of the following information, for the preceding calendar year, regarding its activities to secure code enforcement, which shall be public information:

(A) The number of written notices of violation issued for substandard housing under paragraph (2) of this subdivision.

(B) The number of violations complied with within the period prescribed in paragraph (2) of this subdivision.

(C) The number of notices of noncompliance issued pursuant to paragraph (3) of this subdivision.

(D) The number of appeals from those notices pursuant to paragraph (3) of this subdivision.

(E) The number of successful appeals by owners.

(F) The number of notices of noncompliance mailed to the Franchise Tax Board pursuant to paragraph (3) of this subdivision.

(G) The number of cases in which a notice of noncompliance was not sent pursuant to the provisions of paragraph (4) of this subdivision.

(H) The number of extensions for compliance granted pursuant to paragraph (2) of this subdivision and the mean average length of the extensions.

(I) The mean average length of time from the issuance of a notice of violation to the mailing of a notice of noncompliance to the Franchise Tax Board where the notice is actually sent to the Franchise Tax Board.

(J) The number of cases where compliance is achieved after a notice of noncompliance has been mailed to the Franchise Tax Board.

(K) The number of instances of disallowance of tax deductions by the Franchise Tax Board resulting from referrals made by the regulatory agency.

This information may be filed in a supplemental report in succeeding years as it becomes available.

(8) The provisions of this section relating to substandard housing consisting of abandoned or unoccupied dwellings do not apply to any lender engaging in a "federally related transaction," as defined in Section 11302 of the Business and Professions Code, who acquires title through judicial or nonjudicial foreclosure, or accepts a deed in lieu of foreclosure. The exception provided in this subdivision covers only substandard housing consisting of abandoned or unoccupied dwellings involved in the federally related transaction.

Article 5. Treatment of Preenactment Credits, Excess Capital Losses, and Net Operating Losses

27541. (a) Notwithstanding any provision to the contrary in Part 11 (commencing with Section 23001), for taxable years beginning on or after January 1, 2012, the amount of any remaining net operating loss, excess capital loss, or credit carryforward calculated under Part 11 (commencing with Section 23001) shall be allowed to be taken against net receipts in the case of net operating loss and excess capital loss carryovers or against the tax liability in the case of credit carryovers under the net business receipts tax under Part 12 (commencing with Section 27001), subject to the annual limitation specified in paragraph (3) of subdivision (b).

(b) For purposes of this section, the following rules shall apply:

(1) The amount of any net operating loss, excess capital loss, or credit carryover remaining on the first day of the first taxable year beginning on or after January 1, 2012, shall, regardless of the number of years remaining in the carryover period under Part 11 (commencing with Section 23001), be allowed to be carried forward under this part for a period of up to 20 years, until exhausted.

(2) The limitation in paragraph (3) upon the amount of any net operating loss, excess capital loss, or credit carryover that may be used in any taxable year under this part shall be computed after first applying against the net business receipts tax liability any credits allowed under Sections 27XXX [R&D] and 27YYY [phase-out rate credit], including any carryovers of those credits allowed under this part.

(3) The annual limitation under this section shall be computed as follows:

(A) For net operating loss carryovers, no more than five (5) percent of the net business receipts under Part 12 (commencing with Section 27001) before the application of any net operating loss carryovers.

(B) For excess capital losses, no more than five (5) percent of the net business receipts under Part 12 (commencing with Section 27001) before the application of any excess capital losses.

(C) For credit carryovers, no more than five (5) percent of the net business receipts tax liability under Part 12 (commencing with Section 27001) after the application of any credits under this part and before the application of any credit carryovers.

(D) The annual limitation under this paragraph shall not exceed five (5) percent of the aggregate of the amounts specified in subparagraphs (A), (B), and (C).

(c) The Franchise Tax Board may prescribe by forms and instructions any rules necessary to implement this section.

Article 6. Assignment of Credits

27542. (a) Notwithstanding any other law to the contrary, for each taxable year beginning on or after January 1, 2012, any credit allowed to a taxpayer

under Chapter 3.5 of Part 11 (commencing with Section 23604) that is an "eligible credit" (within the meaning of paragraph (2) of subdivision (b)) may be assigned by that taxpayer to any "eligible assignee" (within the meaning of paragraph (3) of subdivision (b)).

(2) Except as specifically provided in this section, following an assignment of any eligible credit under this section, the eligible assignee shall be treated as if it originally earned the assigned credit.

(b) For purposes of this section, the following definitions shall apply:

(1) "Affiliated corporation" means a corporation that is a member of a commonly controlled group as defined in Section 25105.

(2) "Eligible credit" shall mean:

(A) Any credit earned by the taxpayer in a taxable year beginning before January 1, 2012

that is eligible to be carried forward to the taxpayer's first taxable year beginning on or after January 1, 2012, under the provisions of Part 11 (commencing with Section 23001), or

(B) Any credit earned under Section 27811 in any taxable year beginning on or after January 1, 2012.

(3) "Eligible assignee" shall mean any affiliated corporation that is properly treated as a member of the same combined reporting group pursuant to Section 28101 or 28110 as the taxpayer assigning the eligible credit as of:

(A) In the case of credits earned in taxable years beginning before January 1, 2012:

(i) December 31, 2011, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(B) In the case of credits earned in taxable years beginning on or after January 1, 2012.

(i) The last day of the first taxable year in which the credit was allowed to the taxpayer, and

(ii) The last day of the taxable year of the assigning taxpayer in which the eligible credit is assigned.

(c) (1) The election to assign any credit under subdivision (a) shall be irrevocable once made, and shall be made by the taxpayer allowed that credit on its original return for the taxable year in which the assignment is made.

(2) The taxpayer assigning any credit under this section shall reduce the amount of its unused credit by the face amount of any credit assigned under this section, and the amount of the assigned credit shall not be available for application against the assigning taxpayer's "business net receipts tax" in any taxable year, nor shall it thereafter be included in the amount of any credit carryover of the assigning taxpayer.

(3) The eligible assignee of any credit under this section may apply all or any portion of the assigned credits against the "business net receipts tax" (as defined in Section 27036) of the eligible assignee for the taxable year in which the assignment occurs, or any subsequent taxable year, subject to any carryover period limitations that apply to the assigned credit and the rules of Section 27541 limiting the amount of carryover credits which may be applied in any taxable year

(4) In no case may the eligible assignee sell, otherwise transfer,

or thereafter assign the assigned credit to any other taxpayer.

(d) (1) No consideration shall be required to be paid by the eligible assignee to the assigning taxpayer for assignment of any credit under this section.

(2) In the event that any consideration is paid by the eligible assignee to the assigning taxpayer for the transfer of an eligible credit under this section, then:

(A) Any amounts paid to the eligible assignee under this part with respect to the assignment shall not be treated as a purchase, and

(B) Any amounts received by the assigning taxpayer shall not be treated as a gross receipt under this part.

(e) (1) The Franchise Tax Board shall specify the form and manner in which the election required under this section shall be made, as well as any necessary information that shall be required to be provided by the taxpayer assigning the credit to the eligible assignee.

(2) Any taxpayer who assigns any credit under this section shall report any information, in the form and manner specified by the Franchise Tax Board, necessary to substantiate any credit assigned under this section and verify the assignment and subsequent application of any assigned credit.

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

(4) The Franchise Tax Board may issue any regulations necessary to implement the purposes of this section, including any regulations necessary to specify the treatment of any assignment that does not comply with the requirements of this section (including, for example, where the taxpayer and eligible assignee are not properly treated as members of the same combined reporting group on any of the dates specified in paragraph (3) of subdivision (b)).

(f) (1) The taxpayer and the eligible assignee shall be jointly and severally liable for any tax, addition to tax, or penalty that results from the disallowance, in whole or in part, of any eligible credit assigned under this section.

(2) Nothing in this section shall limit the authority of the Franchise Tax Board to audit either the assigning taxpayer or the eligible assignee with respect to any eligible credit assigned under this section.

CHAPTER 4.
EXEMPT BUSINESS ENTITIES

Article 1. Exemptions From This Part

27701. Organizations which are organized and operated for nonprofit purposes within the provisions of a specific section of this article are exempt from taxes imposed under this part, except as provided in this article or in Article 2 (commencing with Section 27731) of this chapter, if:

- (a) An application for exemption is submitted in the form prescribed by the Franchise Tax Board; and
- (b) A filing fee of twenty-five dollars (\$25) is paid with each application for exemption filed with the Franchise Tax Board; and
- (c) The Franchise Tax Board issues a determination exempting the organization from tax.

This section shall not prevent a determination from having retroactive effect and does not prevent the issuance of a determination with respect to a domestic organization which was in existence prior to January 1, 1970, and exempt under prior law without the submission of a formal application or payment of a filing fee. For the purpose of this section, the term "domestic" means created or organized under the laws of this State. The Franchise Tax Board may issue rulings and regulations as are necessary and reasonable to carry out the provisions of this article.

27701a. Labor, agricultural, or horticultural organizations other than cooperative organizations described in Section 27904 or 27905 (unless the cooperative organization is determined by the Internal Revenue Service to be an organization described in Section 501(c)(5) of the Internal Revenue Code, as amended). For purposes of this section, the term "agricultural" includes the art or science of cultivating land, harvesting crops or aquatic resources, or raising livestock.

27701b. A fraternal order described in Section 501(c)(8) of the Internal Revenue Code.

27701c. A cemetery company described in Section 501(c)(13) of the Internal Revenue Code.

27701d. (a) A corporation, community chest or trust, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involved the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, (except as otherwise provided in Section 27704.5), and which does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. An organization is not organized exclusively for exempt purposes listed above unless its assets are irrevocably dedicated to one or more purposes listed in this section. Dedication of assets requires that in the event of dissolution

of an organization or the impossibility of performing the specific organizational purposes the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section or Section 501(c)(3) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board; that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. The irrevocable dedication requirement shall not be a sole basis for revocation of an exempt determination made by the Franchise Tax Board prior to the effective date of this amendment.

(b) (1) In the case of a qualified amateur sports organization--

(A) The requirement of subdivision (a) that no part of its activities involves the provision of athletic facilities or equipment shall not apply.

(B) That organization shall not fail to meet the requirements of subdivision (a) merely because its membership is local or regional in nature.

(2) For purposes of this subdivision, "qualified amateur sports organization" means any organization organized and operated exclusively to foster national or international amateur sports competition if that organization is also organized and operated primarily to conduct national or international competition in sports or to support and develop amateur athletes

for national or international competition in sports.

(c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section 27701, an organization organized and operated for nonprofit purposes in accordance with this section shall be exempt from taxes imposed by this part, except as provided in this article or in Article 2 (commencing with Section 27731), upon its submission to the Franchise Tax Board of a copy of the notification issued by the Internal Revenue Service approving the organization's tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. The effective date of an organization's tax-exempt status for state income tax purposes pursuant to this subdivision shall be no later than the effective date of the organization's tax-exempt status, under Section 501(c)(3) of the Internal Revenue Code, for federal income tax purposes.

(2) If, for federal income tax purposes, an organization's tax-exempt status under Section 501(c)(3) of the Internal Revenue Code is suspended or revoked, the organization shall notify the Franchise Tax Board of the suspension or revocation, in the form and manner prescribed by the Franchise Tax Board. Upon notification, the board shall suspend or revoke, whichever is applicable, for state income tax purposes, an organization's tax-exempt status granted pursuant to paragraph (1) of this subdivision.

(3) This subdivision shall not be construed to prevent the Franchise Tax Board from revoking the exemption of an organization that is not organized or operated in accordance with this chapter or Section 501(c)(3) of the Internal Revenue Code.

(d) The Franchise Tax Board may prescribe rules and regulations to implement this section.

27701e. A business league, chamber of commerce, real estate board, or a board of trade described in Section 501(c)(6) of the Internal Revenue Code, except that the phrase "or professional football leagues (whether or not administering a pension fund for football players)" shall not apply.

27701f. (a) A civic league, social welfare organization, or local organization of employees described in Section 501(c)(4) of the Internal Revenue Code, except as otherwise provided.

(b) An organization is not organized exclusively for exempt purposes under Section 501(c)(4) of the Internal Revenue Code unless its assets are irrevocably dedicated to one or more purposes listed in Section 501(c)(4) of the Internal Revenue Code.

27701g. A social organization described in Section 501(c)(7) of the Internal Revenue Code.

27701h. (a) A corporation described in Section 501(c)(2) of the Internal Revenue Code, relating to certain title-holding companies.

(b) For purposes of applying Section 501(c)(2) of the Internal Revenue Code under this section, the term "corporation" includes a limited liability company that is classified as a partnership.

27701i. A voluntary employees' beneficiary association described in Section 501(c)(9) of the Internal Revenue Code.

27701j. A teacher's retirement fund association described in Section 501(c)(11) of the Internal Revenue Code.

27701k. Religious or apostolic corporations, if such corporations have a common treasury or community treasury even if such corporations engaged in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the net income of the corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

27701l. (a) A domestic fraternal society described in Section

501(c)(10) of the Internal Revenue Code, except as otherwise provided.

(b) For purposes of this section, the term "domestic" means created or organized in the United States or under the law of the United States or of any state or territory therein.

27701n. (a) A supplemental unemployment compensation trust described in Section 501(c)(17) of the Internal Revenue Code, except as otherwise provided.

(b) The following references in Section 501(c)(17)(E) of the Internal Revenue Code shall be modified as follows:

(1) The phrase "under Section 27701" shall be substituted for the phrase "under subsection (a)."

(2) The phrase "Section 27701i" shall be substituted for the phrase "paragraph (9) of this subsection."

27701p. A trust or plan which meets the requirements of Public Law 87-792, 76 U.S. Stats. 809, approved October 10, 1962 (the Self-Employed Individuals Tax Retirement Bill of 1962), but only if such trust or plan is not exempt from taxation under Section 17631.

27701r. (a) A political organization. However, a political organization shall be subject to tax under this part with respect to its "political organization net receipts" and such net receipts shall be subject to tax as provided by Chapter 2 (commencing with Section 27101).

(b) For purposes of this section, the political organization net receipts of any organization for any taxable year is an amount equal to the excess over one hundred dollars (\$100) (if any) of--

(1) The gross receipts for the taxable year (excluding any exempt function receipts), over

(2) The deductions allowed by this part which are directly connected with the production of the gross receipts (excluding exempt function receipts).

(c) For purposes of this section, the term "exempt function net receipts " means any amount received as--

(1) A contribution of money or other property,

(2) Membership dues, a membership fee or assessment from a member of the political organization, or

(3) Proceeds from a political fundraising or entertainment event, or proceeds from the sale of political campaign materials, which are not received in the ordinary course of any trade or business, to the extent such amount is segregated for use only for the exempt function of the political organization.

(d) For purposes of this part, if any political organization--

(1) Contributes any amount to or for the use of any political organization which is treated as exempt from tax under subdivision (a) of this section,

(2) Contributes any amount to or for the use of any organization described in paragraph (1) or (2) of Section 509(a) of the Internal Revenue Code, which is exempt from tax under Section 27701, or

(3) Deposits any amount in the General Fund or the Treasury of the United States or in the General Fund of any state or local government, such amount shall be treated as an amount not diverted for the personal use of the candidate or any other person. No deduction shall be allowed under this part for the contribution or deposit of any amount described in the preceding sentence.

(e) For purposes of this section--

(1) The term "political organization" means a party, committee, association, fund (including the trust of an individual candidate), or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function.

(2) The term "exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed. The term includes the making of expenditures relating to an office described in the preceding sentence which, if incurred by the individual, would be allowable as a deduction under Section 162(a) of the Internal Revenue Code.

(3) The term "contributions" has the meaning given to such term by Section 271(b)(2) of the Internal Revenue Code.

(4) The term "expenditures" has the meaning given to such term by Section 271(b)(3) of the Internal Revenue Code.

(f) For purposes of paragraph (1) of subdivision (e), a separate segregated fund (within the meaning of Section 610 of Title 18 of the United States Code or of any similar state statute, or within the meaning of any state statute which permits the segregation of dues money for exempt functions, within the meaning of paragraph (2) of subdivision (e)) which is maintained by an organization described in Sections 27701a through 27701p or Section 27701s which is exempt from tax under Section 27701 shall be treated

as a separate organization.

(g) (1) For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of paragraph (3)) for nomination or election to, any federal, state, or local elective public office for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

(2) In the case of any fund described in paragraph (1), the exempt function shall be only the preparation and circulation of the newsletter.

(3) For purposes of paragraph (1), "candidate" means with respect to any federal, state, or local elective public office, an individual who does both of the following:

(A) Publicly announces that he or she is a candidate for nomination or election to that office.

(B) Meets the qualifications prescribed by law to hold that office.

(h) The requirements set forth in subdivisions (a), (b) and (c) of Section 27701 shall not apply to a political organization or newsletter fund described in this section.

(i) The requirements set forth in Section 27772 or Section 27774 shall not apply to a political organization or newsletter fund. Further, the requirements set forth in Sections 18505, 18506, and 18601 shall not apply to a political organization or newsletter fund described in this section, except that if it has political organization net receipts for any taxable year, the political organization shall be required to file income tax returns or statements as determined by the Franchise Tax Board under Chapter 2 (commencing with Section 27101).

27701s. (a) An employee-funded pension trust described in Section 501(c)(18) of the Internal Revenue Code, except as otherwise provided.

(b) The last sentence in Section 501(c)(18) of the Internal Revenue Code, relating to excess contributions under Section 4979 of the Internal Revenue Code, shall not apply.

27701t. (a) A homeowners' association organized and operated to provide for the acquisition, construction, management, maintenance, and care of residential association property if all of the following apply:

(1) Sixty percent or more of the gross income of the organization for the taxable year consists solely of amounts received as membership dues, fees, and assessments from either of the following:

(A) Tenant-stockholders or owners of residential units, residences, or lots.

(B) Owners of time-share rights to use, or time-share ownership interests in, association property in the case of a time-share association.

(2) Ninety percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a time-share association, for activities provided to or on behalf of members of the association.

(3) No part of the net earnings inures (other than by providing management, maintenance, and care of association property or by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual.

(4) Amounts received as membership dues, fees, and assessments not expended for association purposes during the taxable year are transferred to and held in trust to provide for the management, maintenance, and care of association property and common areas.

(b) The term "association property" means:

- (1) Property held by the organization.
- (2) Property held in common by the members of the organization.
- (3) Property within the organization privately held by the members of the organization.

In the case of a time-share association, "association property" includes property in which the time-share association, or members of the association, have rights arising out of recorded easements, covenants, or other recorded instruments to use property related to the time-share project.

(c) A homeowners' association shall be subject to tax under this part with respect to its "homeowners' association net receipts," and those net receipts shall be subject to tax as provided by Chapter 2 (commencing with Section 27101).

(1) For purposes of this section, the term "homeowners' association net receipts" of any organization for any taxable year means an amount equal to the excess over one hundred dollars (\$100) (if any) of--

(A) The gross receipts for the taxable year (excluding any exempt function receipts), over

(B) The deductions allowed by this part which are directly connected with the production of the gross receipts (excluding exempt function receipts).

(2) For purposes of this section, the term "exempt function gross receipts" means any amount received as membership fees, dues, and assessments from tenant-shareholders or owners of residential units, residences, or lots, or owners of time-share rights to use, or time-share ownership interests in, association property in the case of a time-share association.

(d) The term "homeowners' association" includes a condominium management association, a residential real estate management association, a time-share association, and a cooperative housing corporation.

(e) "Cooperative housing corporation" includes, but is not limited to, a limited-equity housing cooperative, as defined in Section 33007.5 of the Health and Safety Code, organized either as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, or a nonprofit mutual benefit corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code.

(f) The term "time-share association" means any organization (other than a condominium management association) organized and operated to provide for the acquisition, construction, management, maintenance, and care of association property if any member thereof holds a time-share right to use, or a time-share ownership interest in, real property constituting association property.

27701u. An organization is operated exclusively for exempt purposes listed in Section 27701f and its net earnings are devoted exclusively

to charitable purposes if that organization is a nonprofit public benefit corporation organized under Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and if the specific and primary purpose for which the corporation is formed is to render financial assistance to government by financing, refinancing, acquiring, constructing, improving, leasing, selling, or otherwise conveying property of any kind to government. This financing ability shall be limited to the issuance of certificates of participation, or similar security arrangements.

For purposes of this section, "government" means the State of California, a city, city and county, county, school district, board of education, public corporation, hospital district, and any other special

district. An organization is not organized exclusively for the exempt purposes referred to in the first paragraph unless its assets are irrevocably dedicated to one or more purposes listed in Section 27701f.

Dedication of assets requires that in the event of dissolution of an organization or the impossibility of performing the specific organizational purposes, including default of lease payments, the assets would continue to be devoted to exempt purposes. Assets shall be deemed irrevocably dedicated to exempt purposes if the articles of organization provide that upon dissolution the assets will be distributed to an organization which is exempt under this section, Section 27701d, or Section 27701f, or under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code or to the federal government, or to a state or local government for public purposes; or by a provision in the articles of organization, satisfactory to the Franchise Tax Board, that the property will be distributed in trust for exempt purposes; or by establishing that the assets are irrevocably dedicated to exempt purposes by operation of law. Any organization that has had its exemption revoked by the Franchise Tax Board for failure to comply with Section 27701f may request a further review of its status under this section.

27701v. (a) An organization of owners of manufactured homes or mobilehomes, who are tenants in a mobilehome park, formed for the purpose of purchasing the mobilehome park to convert it to condominium, stock cooperative, or other resident ownership interests.

(b) An organization shall not fail to meet the requirements of subdivision (a) merely because it manages, maintains, or cares for the mobilehome park it has purchased.

27701w. A veteran's organization, as defined by Section 501(c)(19) of the Internal Revenue Code.

27701x. (a) A corporation or trust described in Section 501(c)(25) of the Internal Revenue Code, relating to certain title-holding companies.

(b) For purposes of applying Section 501(c)(25) of the Internal Revenue Code under this section, the term "corporation" includes a limited liability company that is classified as a partnership.

27701y. A credit union as defined in Section 14002 of the Financial Code. In addition, those credit unions are exempt from all other taxes and licenses, state, county, and municipal, imposed upon those credit unions, except taxes upon their real property, local utility user taxes, sales and use taxes, state energy resources surcharges, state emergency telephone users surcharges, unrelated business net receipts taxes pursuant to Section 27731, motor vehicle and other vehicle registration license fees, and any other tax or license fee imposed by the state upon vehicles, motor vehicles, or the operation thereof.

27701z. An organization established pursuant to Section 5005.1 of the Corporations Code by three or more corporations as an arrangement for the pooling of self-insured claims or losses of those corporations.

27702. Section 502 of the Internal Revenue Code, relating to feeder organizations, shall apply, except as otherwise provided.

(a) Exemption shall not be allowed to any organization on the basis that all of its profits are payable to another organization exempt from taxation under either Section 501 of the Internal Revenue Code or this

article, if that business activity is being conducted by a separate organization.

(b) The reference to Section 501 of the Internal Revenue Code, relating to exemption, shall be modified to refer to Section 27701.

(c) The reference to Sections 512 and 512(b)(3) of the Internal Revenue Code, relating to the exclusion of the deriving of rents from the definition of "trade or business," shall be modified to refer to Section 27732.

27703. (a) No exemption shall be allowed under this article to any charitable corporation as defined in Sections 12582.1 and 12583 of the Government Code for any year or years for which it fails to file with the Attorney General, on or before the due date, any registration or periodic report required by Article 7 (commencing with Section 12580) of Chapter 6, Part 2, Division 3, Title 2, of the Government Code.

(b) The exemption shall be disallowed under this section only after the Attorney General has notified the Franchise Tax Board in writing that a charitable corporation subject to the provisions of subdivision (a) has failed

to file any such registration or periodic report on or before the due date thereof.

(c) If an exemption is disallowed under this section, such exemption may be reinstated when the registration or periodic reports are filed.

(d) The Franchise Tax Board may make any regulations which it deems necessary to effectuate the purposes of this section.

27703.5. Section 501(p) of the Internal Revenue Code, relating to suspension of tax-exempt status of terrorist organizations, shall apply, except as otherwise provided:

(a) References to Section 501(a) of the Internal Revenue Code shall be modified to refer to Section 27701.

(b) Section 501(p)(4) of the Internal Revenue Code is modified by substituting the phrase "under Part 10 (commencing with Section 17001) and this part" for the phrase "under any provision of this title, including Sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), and 2522" contained therein.

(c) This section shall apply only during the period described in Section 501(p)(3) of the Internal Revenue Code that the federal tax exemption of the organization described in Section 501(p)(2) of the Internal Revenue Code is suspended for federal income tax purposes under Section 501(p)(1) of the Internal Revenue Code.

(d) Section 501(p)(5) of the Internal Revenue Code shall not apply and in lieu thereof, notwithstanding any other provision of law, no organization or other person may challenge a suspension under this section, a designation or identification described in Section 501(p)(2) of the Internal Revenue Code, the period of suspension described in Section 501(p)(3) of the Internal Revenue Code, or a denial of a deduction under Section 501(p)(4) of the Internal Revenue Code as modified in subdivision (b) in any administrative

or judicial proceeding relating to the California tax liability of the organization or other person.

(e) (1) Credit or refund (with interest) with respect to an overpayment shall be made if all of the following apply with respect to that overpayment:

(A) The tax exemption of any organization described in Section 501(p)(2) of the Internal Revenue Code is suspended under this section.

(B) Each designation and identification described in Section 501(p)(2) of the Internal Revenue Code which has been made with respect to that organization is determined to be erroneous under Section 501(p)(6) of the Internal Revenue Code for federal income tax purposes.

(C) The erroneous designations and identifications result in an overpayment of income tax for any taxable year by that organization.

(2) If the credit or refund of any overpayment of tax described in subparagraph (C) of paragraph (1) is prevented at any time by the operation of any law or rule of law (including res judicata), the credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the one-year period beginning on the date of the last determination described in subparagraph (B) of paragraph (1).

27704. Section 501(e) of the Internal Revenue Code, relating to cooperative hospital service organizations, shall apply, except as otherwise provided.

(a) References to Section 501(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 27701d.

(b) References to Section 501(a) of the Internal Revenue Code, relating to exemptions, shall be modified to refer to Section 27701.

(c) The services which may be provided under Section 501(e)(1) of the Internal Revenue Code shall include laundry services.

(d) Section 501(e)(1)(B)(iii) of the Internal Revenue Code is modified by substituting the phrase "owned and operated by the United States, the State, or a county or political subdivision thereof, or an agency or instrumentality of any of the foregoing" for the phrase "owned and operated by the United States, a State, the District of Columbia, or a possession of the United States, or a political subdivision or an agency or instrumentality of any of the foregoing."

(e) References to Section 170(b)(1)(A)(iii) of the Internal Revenue Code, relating to the deductibility of contributions to hospitals, shall be modified to refer to subdivision (e) of Section 27736.

27704.3. Section 501(o) of the Internal Revenue Code, relating to treatment of hospitals participating in provider-sponsored organizations, shall apply, except that the reference to Section 501(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 27701d.

27704.4. Section 501(k) of the Internal Revenue Code, relating to the treatment of certain organizations providing care of children, shall apply, except as otherwise provided.

(a) The reference to Section 501(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 27701d.

(b) The reference to Section 2522(a)(2) of the Internal Revenue Code, relating to the computation of taxable gifts or Internal Revenue Code Section 2055, relating to transfers for public, charitable, and religious uses, shall not apply.

27704.5. Section 501(h) of the Internal Revenue Code, relating to expenditures by public charities engaged in activities to influence legislation, shall apply, except as otherwise provided.

(a) The reference to Section 501(a) of the Internal Revenue Code, relating to exemption from taxation, shall be modified to refer to Section

27701.

(b) The reference to Section 501(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 27701d.

27704.6. Section 504 of the Internal Revenue Code, relating to status after organization ceases to qualify for exemption under Section 501(c)(3) because of substantial lobbying or because of political activities, shall apply, except as otherwise provided.

(a) The reference to Section 501(a) of the Internal Revenue Code, relating to exemption from taxation, shall be modified to refer to Section 27701.

(b) The reference to Section 501a(c)(3) of the Internal Revenue Code, relating to charitable organizations, shall be modified to refer to Section 27701d.

(c) The reference to Section 501(c)(4) of the Internal Revenue Code, relating to civic leagues, social welfare organizations, and local associations of employees, shall be modified to refer to Section 27701f.

27705. (a) (1) An organization described in Section 27701i (voluntary employee's beneficiary associations) or 27701q (qualified group legal service plans) which is part of a plan of an employer shall not be exempt from tax under Section 27701, unless that plan meets the requirements of Section 505(b) of the Internal Revenue Code.

(2) Paragraph (1) shall not apply to any organization described in Section 505(a)(2) of the Internal Revenue Code.

(b) A copy of any notice filed with the Secretary of the Treasury, pursuant to Section 505(c) of the Internal Revenue Code, relating to application for tax-exempt status, shall be filed at the same time and in the same manner with the Franchise Tax Board.

27706. Any exemption from the net receipts tax under Chapter 2 (commencing with Section 27101) granted by any California statute on or after January 1, 1985, for an organization which is an instrumentality of this state, shall be provided for in this part of the code.

27707. (a) Except as provided in subdivision (b), the status of any organization as a private foundation shall be terminated only if--

(1) Such organization notifies the Franchise Tax Board (at such time and in such manner as the Franchise Tax Board may by regulations prescribe) of its intent to accomplish such termination, or

(2) Such organization has been terminated by the Attorney General of this state or by action taken pursuant to Section 507 of the Internal Revenue Code.

(b) (1) The status as a private foundation of any organization shall be terminated if--

(A) Such organization distributes all of its net assets to one or more organizations described below (other than clauses (vii), (viii), (ix) or (x)) each of which has been in existence and so described for a continuous period of at least 60 calendar months immediately preceding such distribution and exempt from tax under Section 27701d of the Revenue and Taxation Code or Section 501(c)(3) of the Internal Revenue Code during the last 60 months, or--

(i) A church or a convention or association of churches,

(ii) An educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are

regularly carried on,

(iii) An organization the principal purpose or functions of which are the providing of medical or hospital care or medical education or medical research, if the organization is a hospital, or if the organization is a medical research organization directly engaged in the continuous active conduct of medical research in conjunction with a hospital, and during the calendar year in which the contribution is made such organization is committed to spend such contributions for such research before January 1 of the fifth calendar year which begins after the date such contribution is made.

(iv) An organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 2770ld) from the United States or any state or political subdivision thereof or from direct or indirect contributions from the general public, and which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a college or university which is an organization referred to in clause (ii) of this subparagraph and which is an agency or instrumentality of a state or political subdivision thereof, or which is owned or operated by a state or political subdivision thereof or by an agency or instrumentality of one or more states or political subdivisions, (v) A governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code,

(vi) An organization referred to in Section 170(c)(2) of the Internal Revenue Code which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 2770ld) from a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code or from direct or indirect contributions from the general public,

(vii) A private operating foundation (as defined in Section 4942(j)(3) of the Internal Revenue Code),

(viii) Any other private foundation (as defined in Section 509(a) of the Internal Revenue Code) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in Section 4942(g) of the Internal Revenue Code, as amended by P.L. 94-455, without regard to paragraph (3) thereof), which are treated, after the application of Section 4942(g)(3) of the Internal Revenue Code as distributions out of corpus (in accordance with Section 4942(h) of the Internal Revenue Code) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer maintains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions,

(ix) A private foundation all of the contributions to which are pooled in a common fund and which would be described in paragraph (3) of Section 509(a) of the Internal Revenue Code but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of Section 509(a) of the Internal Revenue Code, of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund shall apply only if all the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to

any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus, and

(x) An organization described in paragraph (2) or (3) of Section 509(a) of the Internal Revenue Code.

(B) Such organization meets the requirements of Section 507(b)(1)(B) or paragraph (1), (2), or (3) of Section 509(a) of the Internal Revenue Code, whichever applies, and furnishes copies of its federal notice of termination of its private foundation status to the Franchise Tax Board.

(2) For purposes of this part, in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee foundation shall not be treated as a newly created organization.

27708. (a) For the purposes of this part, unless otherwise indicated in context, the term "an organization exempt from tax" shall mean an organization which has satisfied the provisions of Section 27701.

(b) Except as provided in subdivision (c), any organization (including an organization in existence on December 31, 1970) which is described in Section 27701d and which does not notify the Franchise Tax Board at such time and such manner as the Franchise Tax Board may prescribe, that it is not a private foundation shall be presumed to be a private foundation. The time prescribed for giving notice under this subdivision shall not expire before the 90th day after the day on which the regulations first prescribed under this subdivision become final.

(c) Subdivision (b) shall not apply to--

(1) Churches, their integrated auxiliaries, and conventions or associations of churches, or

(2) Any organization which is not a private foundation (as defined in Section 27709).

(3) The Franchise Tax Board may by regulations exempt (to the extent and subject to such conditions as may be prescribed in such regulations) from the provisions of subdivision (b)--

(A) Educational organizations which normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where their educational activities are regularly carried on; and

(B) Any other class of organizations with respect to which the Franchise Tax Board determines that full compliance with the provisions of subdivision (b) is not necessary to the efficient administration of the provisions of this title relating to private foundations.

(d) (1) A private foundation shall not be exempt from taxation under Section 27701d unless its governing instrument includes provisions the effects of which are--

(A) To require its income for each taxable year to be distributed at such time and in such manner as not to subject the foundation to tax under Section 4942 of the Internal Revenue Code, as amended by P.L. 94-455, and

(B) To prohibit the foundation from engaging in any act of self-dealing (as defined in Section 4941 of the Internal Revenue Code) from retaining any excess business holdings (as defined in Section 4943 of the Internal Revenue Code), from making any investments in such manner as to subject the foundation to tax under Section 4944 of the Internal Revenue Code.

(2) In the case of any organization organized before January 1, 1970, paragraph (1) shall not apply--

(A) To any taxable year beginning before January 1, 1972,
(B) To any period after December 31, 1971, during the pendency of any judicial proceeding begun before January 1, 1972, by the private foundation which is necessary to reform, or to excuse such foundation from compliance with, its governing instrument or any other instrument in order to meet the requirements of paragraph (1), and
(C) To any period after the termination of any judicial proceeding described in subparagraph (B) during which its governing instrument or any other instrument does not permit it to meet the requirements of paragraph (1).

(3) This subdivision shall not apply to require the inclusion in governing instruments of any provisions inconsistent with this subdivision.

(e) Notwithstanding any of the requirements of this section, if they are determined to be met under federal law they are also met for state purposes.

27709. (a) For the purposes of this part the term "private foundation" means a domestic or foreign organization defined in the Internal Revenue Code as a private foundation.

(b) For the purposes of this part, if an organization is a private foundation (within the meaning of subdivision (a)) on December 31, 1970, or becomes a private foundation on any subsequent date, such organization shall be treated as a private foundation for all periods after December 31, 1970, or

after such subsequent date, unless its status as such is terminated.

(c) For purposes of this part, an organization the status of which as a private foundation is terminated shall be treated as an organization created on the day after the date of such termination, except in the case of a transfer of assets of any private foundation to another private foundation pursuant to any liquidation, merger, redemption, recapitalization, or other adjustment, organization, or reorganization, the transferee shall not be treated as a newly created organization.

(d) For purposes of this part, the term "support" includes (but is not limited to)--

- (1) Gifts, grants, contributions, or membership fees,
- (2) Gross receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business (within the meaning of Section 27734),
- (3) Net receipts from unrelated business activities, whether or not such activities are carried on regularly as a trade or business,
- (4) Gross investment receipts (as defined in subdivision (e)),
- (5) Tax revenues levied for the benefit of an organization and either paid to or expended on behalf of such organization, and
- (6) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code to an organization without charge. Such term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset, or the value of exemption from any federal, state, or local tax or any similar benefit.

(e) For purposes of this section, the term "gross investment receipts" means the gross amount of interest, dividends, rents, and royalties, but not including any such receipts to the extent included in computing the tax imposed by Section 27731.

27710. Any organization exempted from taxes imposed under this part pursuant to the provisions of this article shall not be disqualified for

such exemption on the basis that it conducts bingo games pursuant to Section 326.5 of the Penal Code, provided that the proceeds from those games are used exclusively for charitable purposes.

27711. Section 529 of the Internal Revenue Code, relating to qualified state tuition programs, shall apply, except as otherwise provided.

(a) Section 529(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "under Part 10 (commencing with Section 17001) and this part" in lieu of the phrase "under this subtitle."

(2) By substituting "Article 2 (commencing with Section 27731)" in lieu of "section 511."

(b) A copy of the report required to be filed with the Secretary of the Treasury under Section 529(d) of the Internal Revenue Code shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in that section.

27711.5. The Golden State Scholarshare Trust, established pursuant to Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code, is an instrumentality of this state and the receipts of the Scholarshare trust shall be exempt from taxes imposed under this part. The Scholarshare trust is established and shall be maintained as a qualified state tuition program as defined in Section 529 of the Internal Revenue Code.

27712. Section 530 of the Internal Revenue Code, relating to Coverdell education savings accounts, shall apply, except as otherwise provided.

(a) Section 530(a) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "under Part 10 (commencing with Section 17001) and this part" in lieu of the phrase "under this subtitle."

(2) By substituting "Article 2 (commencing with Section 27731)" in lieu of "section 511."

(b) Section 530(d) of the Internal Revenue Code is modified as follows:

(1) By substituting the phrase "under Part 10 (commencing with Section 17001) in the manner as provided in Section 72(b) of the Internal Revenue Code, as modified by Part 10" in lieu of the phrase "in the manner as provided in Section 72(b)" in Section 530(d)(1) of the Internal Revenue Code.

(2) (A) By substituting the phrase "tax imposed by Part 10 (commencing with Section 17001)" in lieu of the phrase "tax imposed by this chapter" in Section 530(d)(4)(A) of the Internal Revenue Code.

(B) By substituting the phrase "increased by 2 1/2 percent" in lieu of the phrase "increased by 10 percent" in Section 530(d)(4)(A) of the Internal Revenue Code.

(C) By substituting the phrase "shall be included in the contributor's gross income under Part 10 (commencing with Section 17001) or this part" in lieu of the phrase "shall be included in gross income" in Section 530(d)(4)(C) of the Internal Revenue Code.

(c) For purposes of Part 10 (commencing with Section 17001) and this part, in the case of a custodial account treated as a trust by reason of Section 530(g) of the Internal Revenue Code, the custodian of that account shall be treated as the trustee thereof.

(d) A copy of the report, which is required to be filed with the Secretary of the Treasury under Section 530(h) of the Internal Revenue Code, shall be filed with the Franchise Tax Board at the same time and in the same

manner as specified in that section.

Article 2. Taxation of Unrelated Business Net Receipts of Certain Article 1 Organizations

27731. Every organization or trust exempt under this chapter, except as provided in this article, is subject to the tax imposed upon its unrelated business net receipts, as defined in Section 27732, as follows:

- (a) Business entities, including business trusts, are subject to the tax imposed under Section 27101.
- (b) Trusts, other than business trusts, are subject to the tax imposed by subdivision (e) of Section 17041.

27732. Section 512 of the Internal Revenue Code, relating to unrelated business taxable income, shall apply, except as otherwise provided.

(a) (1) Section 512(a)(1) of the Internal Revenue Code shall be modified as follows:

- (A) By substituting "gross business receipts", as defined in this part, for "gross income" each place it appears.
- (B) By substituting "deductions allowed by this part" for deductions allowed by this chapter".

(2) Section 512(a)(2) of the Internal Revenue Code, relating to special rules for foreign organizations, shall not be applicable.

(b) Section 512(a)(3) of the Internal Revenue Code, relating to special rules applicable to certain organizations, shall be modified as follows:

(1) The reference to Section 501(c)(7) of the Internal Revenue Code, relating to clubs organized for pleasure, recreation, and other non-profitable purposes, shall be modified to refer to Section 27701g.

(2) The reference to Section 501(c)(9) of the Internal Revenue Code, relating to voluntary employees' beneficiary associations, shall be modified to refer to Section 27701i.

(3) The reference to Section 501(c)(17) of the Internal Revenue Code, relating to trusts providing for payment of supplemental unemployment compensation benefits, shall be modified to refer to Section 27701n.

(4) The reference to Section 501(c)(20) of the Internal Revenue Code, relating to qualified group legal services plans, shall be modified to refer to Section 27701q.

(c) Section 512(d) of the Internal Revenue Code, relating to treatment of dues of agricultural or horticultural organizations, shall be modified by substituting "Section 27701a" in lieu of "Section 501(c)(5)" of the Internal Revenue Code.

27734. (a) Section 513 of the Internal Revenue Code, relating to unrelated trade or business, shall apply, except as otherwise provided.

(b) Section 513(g) of the Internal Revenue Code, relating to certain pole rentals, shall not apply.

27735. (a) Section 514 of the Internal Revenue Code, relating to unrelated debt-financed income, shall apply, except as otherwise provided.

(b)

An interest in a participation agreement, as defined in subdivision (i) of Section 69980 of the Education Code, shall not be treated as debt.

27736. Sections 27736.1 to 27736.4, inclusive, shall apply to any organization described in Section 27701d or Section 27701n except--

- (a) A religious organization (other than a trust);
- (b) An educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on;
- (c) An organization which normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under Section 27701d) from the United States or any state or political subdivision thereof or from direct or indirect contributions from the general public;
- (d) An organization which is operated, supervised, controlled, or principally supported by a religious organization (other than a trust) which is itself not subject to the provisions of this article; and
- (e) An organization the principal purposes or functions of which are the providing of medical or hospital care or medical education or medical research.

27736.1. (a) For the purposes of this article, the term "prohibited transaction" means any transaction in which an organization subject to this article--

- (1) Lends any part of its income or corpus, without the receipt of adequate security and a reasonable rate of interest, to;
- (2) Pays any compensation, in excess of a reasonable allowance for salaries or other compensation for personal services actually rendered, to;
- (3) Makes any part of its services available on a preferential basis to;
- (4) Makes any substantial purchase of securities or any other property, for more than adequate consideration in money or money's worth, from;
- (5) Sells any substantial part of its securities or other property, for less than an adequate consideration in money or money's worth, to; or
- (6) Engages in any other transaction that results in a substantial diversion of its income or corpus to; the creator of the organization (if a trust); a person who has made a substantial contribution to the organization; a member of the family (as defined in Section 267(c)(4) of the Internal Revenue Code) of an individual who is the creator of that trust or who has made a substantial contribution to that organization; or a corporation controlled by that creator or person through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation.

(b) For purposes of subdivision (a), a bond, debenture, note, or certificate or other evidence of indebtedness (hereinafter in this section referred to as "obligation") acquired by a trust described in Section 27701n shall not be treated as a loan made without the receipt of adequate security if--

- (1) The obligation is acquired--
 - (A) On the market, either (i) at the price of the obligation prevailing on a national securities exchange that is registered with the Securities and Exchange Commission, or (ii) if the obligation is not traded on a national securities exchange, at a price not less favorable to the trust than the offering price for the obligation as established by current bid and asked prices quoted by persons independent of the issuer;

(B) From an underwriter, at a price (i) not in excess of the public offering price for the obligation as set forth in a prospectus or offering circular filed with the Securities and Exchange Commission, and (ii) at which a substantial portion of the same issue is acquired by persons independent of the issuer; or

(C) Directly from the issuer, at a price not less favorable to the trust than the price paid currently for a substantial portion of the same issue by persons independent of the issuer;

(2) Immediately following acquisition of that obligation--

(A) Not more than 25 percent of the aggregate amount of obligations issued in that issue and outstanding at the time of acquisition is held by the trust, and

(B) At least 50 percent of the aggregate amount referred to in subparagraph (A) is held by persons independent of the issuer; and

(3) Immediately following acquisition of the obligation, not more than 25 percent of the assets of the trust is invested in obligations of persons described in subdivision (a).

(4) In the application of paragraph (1) of subdivision (a), if a trust described in Section 27701n forming part of a supplemental unemployment compensation benefit plan lends any money to another trust described in Section 27701n forming part of the same plan, that loan shall not be treated as an indebtedness of the borrowing trust, except to the extent that the loaning trust--

(A) Incurs any indebtedness in order to make that loan,

(B) Incurred indebtedness before the making of that loan which would not have been incurred but for the making of that loan, or

(C) Incurred indebtedness after the making of that loan which would not have been incurred but for the making of that loan and that was reasonably foreseeable at the time of making that loan.

(c) Subdivision (a) shall not apply to a loan made by a trust described in Section 27701n to the employer (or to a renewal of that loan or, if the loan is repayable upon demand, to a continuation of that loan) if the loan bears a reasonable rate of interest, and if (in the case of a making or renewal)--

(1) The employer is prohibited (at the time of that making or renewal) by any law of the United States or regulation thereunder from directly or indirectly pledging, as security for the loan, a particular class or classes of his or her assets the value of which (at that time) represents more than one-half of the value of all his or her assets;

(2) The making or renewal, as the case may be, is approved in writing as an investment that is consistent with the exempt purposes of the trust by a trustee who is independent of the employer, and no other independent trustee had previously refused to give that written approval; and

(3) Immediately following the making or renewal, as the case may be, the aggregate amount loaned by the trust to the employer, without the receipt of adequate security, does not exceed 25 percent of the value of all the assets of the trust.

(4) For purposes of paragraph (2) the term "trustee" means, with respect to any trust for which there is more than one trustee who is independent of the employer, a majority of those independent trustees. For purposes of paragraph (3), the determination as to whether any amount loaned by the trust to the employer is loaned without the receipt of adequate security shall be made without regard to subdivision (b).

27736.2. An organization described in Section 27701d which is

subject to the provisions of this article, except those specified in Section 27736, shall not be exempt from taxation under Article 1 of this chapter if it

has engaged in a prohibited transaction after January 1, 1951; and an organization described in Section 27701n which is subject to the provisions of this article shall not be exempt from taxation under Article 1 of this chapter if it has engaged in a prohibited transaction after December 31, 1960.

27736.3. An organization described in Section 27701n or Section 27701d, except as specified in Section 27736, shall be denied exemption under Section 27736.2 only for taxable years subsequent to the taxable years during which it is notified by the Franchise Tax Board that it has engaged in a prohibited transaction, unless such organization entered into such prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purposes, and such transaction involved a substantial part of the corpus or income of such organization.

27736.4. Any organization denied exemption under Section 27701d or Section 27701n by reason of the provisions of Section 27736.2 with respect to any taxable year following the taxable year in which notice of denial of exemption was received, may, under regulations prescribed by the Franchise Tax Board, file claim for exemption, and if the Franchise Tax Board pursuant to such regulations, is satisfied that such organizations will not knowingly again engage in a prohibited transaction, such organization shall be exempt with respect to taxable years subsequent to the year in which such claim is filed.

27737. In the case of any organization described in Section 27701d to which this article is applicable, exemption under Article 1 (commencing with Section 27701) shall be denied for the taxable year if the amounts accumulated out of income during the taxable year or any prior taxable year and not actually paid out by the end of the taxable year--

(a) Are unreasonable in amount or duration in order to carry out the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under Section 27701d; or

(b) Are used to a substantial degree for purposes or functions other than those constituting the basis for such organization's exemption under Section 27701d, or

(c) Are invested in such a manner as to jeopardize the carrying out of the charitable, educational, or other purpose or function constituting the basis for such organization's exemption under Section 27701d.

27740. Section 4911 of the Internal Revenue Code, relating to tax on excess expenditures to influence legislation, shall apply, except as otherwise provided.

(a) Section 4911(a)(1) of the Internal Revenue Code shall not apply.

(b) Section 4911(f)(4)(A) of the Internal Revenue Code shall include efforts to influence legislation with respect to acts, bills, resolutions, or similar items by the State Legislature.

27741. Notwithstanding any other provision in this part, in the case of a church exempt from taxes imposed under this part pursuant to Article 1 (commencing with Section 27701) of Chapter 4, any rental income received, directly or indirectly, from another church exempt from taxes imposed under this part pursuant to Article 1 (commencing with Section 27701)

of Chapter 4 for rental of exempt function church property is exempt from any tax imposed by this part.

Article 3. Returns of Exempt Organizations

27771. (a) Except as provided in subdivision (b), every organization, otherwise exempt under Article 1 (commencing with Section 27701), but having receipts of the character described in Article 2 (commencing with Section 27731), shall file a return, verified by an executive officer under penalty of perjury in the form prescribed by the Franchise Tax Board, on or before the 15th day of the fifth month following the close of the taxable year, reporting its net receipts from those activities and shall pay a tax as required by Section 27731 on its unrelated business net receipts as defined in Section 27732.

(b) An education IRA described in Section 27712 shall file a return described in subdivision (a) on or before the 15th day of the fourth month following the close of the taxable year.

27772. (a) For the purposes of this part--

(1) Except as provided in paragraph (2), every organization exempt from taxation under Section 27701 and every trust treated as a private foundation because of Section 4947(a)(1) of the Internal Revenue Code shall file an annual return, stating specifically the items of gross receipts and purchases, and any other information for the purpose of carrying out the laws under this part as the Franchise Tax Board may by rules or regulations prescribe, and shall keep any records, render under oath any statements, make any other returns, and comply with any rules and regulations as the Franchise Tax Board may from time to time prescribe. The return shall be filed on or before the 15th day of the fifth full calendar month following the close of the taxable year.

(2) Exceptions from filing--

(A) Mandatory exceptions--Paragraph (1) does not apply to--

(i) Churches, their integrated auxiliaries, and conventions or association of churches,

(ii) Any organization (other than a private foundation as defined in Section 27709), the gross receipts of which in each taxable year are normally not more than five hundred thousand dollars (\$500,000), or

(iii) The exclusively religious activities of any religious order.

(B) Discretionary exceptions--The Franchise Tax Board may permit the filing of a simplified return for organizations based on either gross receipts or total assets or both gross receipts and total assets, or may permit the filing of an information statement (without fee), or may permit the filing of a group return for incorporated or unincorporated branches of a state or national organization where it determines that an information return is not necessary to the efficient administration of this part.

(3) An organization that is required to file an annual information return shall pay a filing fee of ten dollars (\$10) on or before the due date for filing the annual information return (determined with regard to any extension of time for filing the return) required by this section. In case of failure to pay the fee on or before the due date, unless it is shown that the failure is due to reasonable cause, the filing fee shall be twenty-five dollars (\$25). All collection remedies provided in Article 5 (commencing with Section 18661) of Chapter 2 of Part 10.2 are applicable to collection of the filing fee. However, the filing fee does not apply to the organization described in paragraph (4).

(4) Paragraph (3) does not apply to: (A) a religious organization exempt under Section 27701d; (B) an educational organization exempt under

Section 2770ld, if that organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; (C) a charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under Section 2770ld, if that organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported by contributions of the general public; (D) an organization exempt under Section 2770ld, if that organization is operated, supervised, or controlled by or in connection with a religious organization described in subparagraph (A).

(b) Every organization described in Section 2770ld that is subject to the requirements of subdivision (a) is required to furnish annually information, at the time and in the manner as the Franchise Tax Board may by rules or regulations prescribe, setting forth all of the following:

(1) Its gross income for the year.

(2) Its expenses attributable to gross income and incurred within the year.

(3) Its disbursements within the year for the purposes for which it is exempt.

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of that year.

(5) The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors.

(6) The names and addresses of its foundation manager (within the meaning of Section 4946 of the Internal Revenue Code) and highly compensated employees.

(7) The compensation and other payments made during the year to each individual described in paragraph (6).

(8) In the case of an organization with respect to which an election under Section 27704.5 is effective for the taxable year, the following amounts for that organization for that taxable year:

(A) The lobbying expenditures (as defined in Section 4911(c)(1) of the Internal Revenue Code).

(B) The lobbying nontaxable amount (as defined in Section 4911(c)(2) of the Internal Revenue Code).

(C) The grassroots expenditures (as defined in Section 4911(c)(3) of the Internal Revenue Code).

(D) The grassroots nontaxable amount (as defined in Section 4911(c)(4) of the Internal Revenue Code). For purposes of this paragraph, if Section 27740 applies to the organization for the taxable year, the organization shall furnish the amounts with respect to the affiliated group as well as with respect to the organization.

(9) Other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in Sections 27701a to 27701w, inclusive (other than Sections 2770ld, 27701k, and 27701t), as the Franchise Tax Board may require to prevent either of the following:

(A) Diversion of funds from the organization's exempt purpose.

(B) Misallocation of revenue or expense.

(10) Any other relevant information as the Franchise Tax Board may prescribe.

(c) For the purposes of this part--

(1) In the case of a failure to file a return required under this section on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause, there shall be paid (on notice and demand

by the Franchise Tax Board and in the same manner as tax) by the exempt organization or trust failing so to file, five dollars (\$5) for each month or part thereof during which the failure continues, but the total amount imposed hereunder on any organization for failure to file any return may not exceed forty dollars (\$40).

(2) The Franchise Tax Board may make written demand upon a private foundation failing to file under paragraph (1) of this subdivision specifying therein a reasonable future date by which the filing shall be made, and if the filing is not made on or before that date, and unless it is shown that failure so to file is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the person failing so to file, in addition to the penalty prescribed in paragraph (1), a penalty of five dollars (\$5) each month or part thereof after the expiration of the time specified in the written demand during which the failure continues, but the total amount imposed hereunder on all persons for the failure to file shall not exceed twenty-five dollars (\$25). If more than one person is liable under this paragraph for a failure to file, all of those persons shall be jointly and severally liable with respect to the failure. The term "person" as used herein means any officer, director, trustee, employee, member, or other individual who is under a duty to perform the act in respect of which the violation occurs.

27774. (a) Except as provided in subdivision (b), every organization exempt from filing an annual information return by reason of subdivision (a) of Section 27772, may be required to file an annual statement on or before the 15th day of the fifth calendar month following the close of the taxable year setting forth in the manner as may be required by the Franchise Tax Board the following information: the name and address of the organization, its major activities, its sources of gross receipts, and the section of the Internal Revenue Code under which it is exempt. Organizations other than those described in clause (i) and (iii) of subparagraph (A) of paragraph (2) of subdivision (a) of Section 23772 may also be required by the Franchise Tax Board to furnish information with respect to their gross receipts and their assets.

(b) Every religious organization exempt from filing an annual information return by reason of subdivision (a) of Section 27772, which because of sincerely held religious convictions refuses to file an annual statement as prescribed in subdivision (a), may submit in lieu thereof a notarized statement on its organizational letterhead containing the following information: the name and address of the organization, its major activities, its sources of gross receipts, and the section of the Internal Revenue Code under which it is exempt. That information shall be for the sole purpose of verifying the absence of unrelated business net receipts of the organization. The statement shall be submitted on or before the 15th day of the fifth calendar month following the close of the taxable year.

27775. Except for purposes of amending the articles of incorporation or organization to set forth a new name, under regulations prescribed by the Franchise Tax Board, the powers, rights and privileges of an exempt domestic limited liability business entity may be suspended and the exercise of the powers, rights and privileges of a foreign exempt limited liability entity in this state may be forfeited if the organization fails to file the annual return or statement required under Section 27772 or 27774, or pay any amount due under Section 27703 or 27772 on or before the last day of the 12th month following the close of the taxable year.

27776. (a) Any organization which has suffered the suspension or forfeiture provided for in Section 27775 may, in accordance with Section 27198a, be relieved therefrom upon the filing of all of the following:

- (1) An application for revivor.
- (2) When required by the Franchise Tax Board, a new application for exemption under Section 27701.
- (3) Any returns, statements, notifications, or amounts due under Sections 27772, 27774, or 27775 which were not previously submitted or paid and which resulted in the suspension or forfeiture.
- (4) An information return or statement and the amounts specified under Section 27772 for each year, or part thereof, during the period of suspension or forfeiture in which the organization conducted any activities or received income, grants, gifts or any other asset.

(b) Any organization exempt from tax under Section 27701 which has suffered the suspension or forfeiture provided for in Section 27191 or 27192 may be required by the Franchise Tax Board to file a new application for exemption in connection with an application for revivor under Section 27198.

27777. The exemption granted to any organization under the provisions of Article 1 (commencing with Section 27701) of this chapter may be revoked by the Franchise Tax Board if the organization fails to--

- (a) File any return required under this chapter or pay any amount due under this part or Part 10.2 (commencing with Section 18401) on or before the last day of the 12th month following the close of the taxable year;
- (b) Comply with Section 19504 (relating to powers of the Franchise Tax Board to examine records and subpoena witnesses); or
- (c) Confine its activities to those permitted by the section under which the exemption was granted.

27778. An organization whose exemption was revoked under Section 27777 may be reestablished as an exempt organization upon:

- (a) The filing or payment of:
 - (1) A new application for exemption and payment of the filing fee required under Section 27701;
 - (2) Any returns, statements, or payment of any amounts due under this part or Part 10.2 (commencing with Section 18401) which were not previously submitted or paid and which resulted in the revocation.
- (b) When revocation occurred under subdivision (c) of Section 27777, satisfactory proof that--
 - (1) The organization has corrected its nonexempt activities; and
 - (2) That it will operate in an exempt manner in the future; and
 - (3) The payment of any tax for periods the organization was not qualified for exemption.

27779. For purposes of this chapter, any reference to the Internal Revenue Code or a provision thereof, means the Internal Revenue or provision thereof, as in effect January 1, 2005.

27780. Any reference to Chapter 4 (commencing with Section 23701) of Part 11 (commencing with Section 23001) or any provision thereof shall also be a reference to this article or a provision of this chapter which is substantially the same as the provision referenced in Chapter 4 (commencing with Section 23701) of Part 11 (commencing with Section 23001).

CHAPTER 5
CREDITS

Article 1. Small Business Credit

27801. (a) For each taxable year beginning on or after January 1, 2012, there shall be allowed as a credit against the tax imposed under Article 2 (commencing with Section 27151) of Chapter 2 the amount determined under paragraph (1) or paragraph (2) subdivision (b).

(b)(1) If net receipts exceed purchases, the credit shall be equal to an amount determined as follows:

(A) Multiply twenty thousand dollars (\$20,000) by a fraction, the numerator of which is net receipts and the denominator of which is gross receipts.

(B) Multiply the amount by which gross receipts exceeds five hundred thousand dollars (\$500,000) by 0.008.

(C) The amount of the credit allowed under this paragraph equals the amount by which the amount determined under subparagraph (A) exceeds the amount determined in subparagraph (B).

(2) If purchases equal or exceed gross receipts, the credit shall be equal to an amount determined as follows:

(A) One (1) less a fraction, the numerator of which is purchases and the denominator of which is gross receipts, carried out to XXX decimal places.

(B) Two hundred and fifty thousand dollars (\$250,000) divided by the number determined under subparagraph (A).

(C) Multiply the amount by which gross receipts exceeds the amount determined in subparagraph (B) by 0.008.

(D) The amount of the credit under this paragraph equals ten thousand dollars (\$10,000), reduced by the amount determined in subparagraph (C).

Article 2. Research and Development Credit

27811. For each taxable year beginning on or after January 1, 2012, there shall be allowed as a credit against the tax imposed under Article 2 (commencing with Section 27151) of Chapter 2 an amount determined in accordance with Section 41 of the Internal Revenue Code, relating to credit for increasing research activities, except as follows:

(a) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "10 percent."

(b) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "16 percent."

(c) (1) With respect to any expense paid or incurred after the operative date of Section 6378, Section 41(b)(1) of the Internal Revenue Code is modified to exclude from the definition of "qualified research expense" any amount paid or incurred for tangible personal property that is eligible for the exemption from sales or use tax provided by Section 6378.

(2) "Qualified research" and "basic research" shall include only research conducted in California.

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that "basic research," for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering

knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

- (1) Basic research conducted outside California.
- (2) Basic research in the social sciences, arts, or humanities.
- (3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.
- (4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).
- (e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in codes 2833 to 2836, inclusive, or any research activities that are described in codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:
 - (A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.
 - (B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a "specialized laboratory cancer center," and has received Clinical Cancer Research Center status from the National Cancer Institute.
- (2) For purposes of this subdivision:
 - (A) "Biopharmaceutical research activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.
 - (B) "Other biotechnology research and development activities" means research and development activities consisting of the application of recombinant DNA technology to produce commercial products, as well as research and development activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.
- (f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.
- (g) The reference to "Section 501(a)" in Section 41(b)(3)(C) of the Internal Revenue Code, relating to contract research expenses, is modified to read "this part or Part 10 (commencing with Section 17001)."
- (h) (1)
 - (A) The reference to "2.65 percent" in Section 41(c)(4)(A)(i) of the Internal Revenue Code is modified to read "one and forty-nine hundredths of one percent."
 - (B) The reference to "3.2 percent" in Section 41(c)(4)(A)(ii) of the Internal Revenue Code is modified to read "one and ninety-eight hundredths of one percent."
 - (C) The reference to "3.75 percent" in Section 41(c)(4)(A)(iii)

of the Internal Revenue Code is modified to read "two and forty-eight hundredths of one percent."

(2) Section 41(c)(4)(B) shall not apply and in lieu thereof an election under Section 41(c)(4)(A) of the Internal Revenue Code may be made. That election shall apply to the taxable year for which made and all succeeding taxable years unless revoked with the consent of the Franchise Tax Board.

(3) Section 41(c)(6) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or any other condition of the sale.

(i) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(j) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (f), except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

(k) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code, as in effect January 1, 2005.

CHAPTER 6.
ACCOUNTING RULES

Article 1. Foreign Governments and International Organizations

27901.(a) Section 892 of the Internal Revenue Code, relating to income of foreign governments and of international organizations, shall apply.

(b) In applying Section 892 of the Internal Revenue Code for purposes of this part, "gross receipts" and "net receipts" shall be substituted for "income" wherever appropriate.

Article 2. Cooperatives

27904. In the case of farmers, fruit growers, or like associations organized and operated in whole or in part on a cooperative or mutual basis, (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, which may include reasonable reserves, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing, or producing, supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses, all net receipts resulting from or arising out of such business activities for or with their members carried on by them or their agents; or when done on a nonprofit basis for or with nonmembers. For the purposes of this section "all net receipts resulting from or arising out of such business activities for or with their members" shall include all amounts, whether or not derived from patronage, allocated to members during the taxable year. Amounts allocated include cash, merchandise, capital stock, revolving fund certificates, certificates of indebtedness, retain certificates, letters of advice, or written instruments which in some other manner disclose to each member the dollar amount allocated to him. Allocations made after the close of the taxable year and on or before the fifteenth day of the ninth month following the close of such year shall be considered as made on the last day of such taxable year to the extent the allocations are attributable to net receipts derived before the close of such year.

27905. (a) In the case of other associations organized and operated in whole or in part on a cooperative or a mutual basis, all net receipts resulting from or arising out of business activities for or with their members carried on by them or their agents, or when done on a nonprofit basis for or with nonmembers, shall be an allowable deduction. However, the deduction allowable under this section shall not apply to those cooperative or mutual associations whose net receipts is principally derived from the sale in the regular course of business of tangible personal property other than water, agricultural products, or food sold at wholesale.

(b) For the purposes of subdivision (a), "food sold at wholesale" means a sale of food to anyone engaged in the business of selling food who holds a seller's permit issued pursuant to Section 6066, and who at the time of purchasing the food either:

(1) Intends to sell it in the regular course of business.

(2) Is unable to ascertain at the time of purchase whether the food will be sold or used for some other purpose.

(c) For the purposes of subdivision (a), a credit union's activities are "for or with" the members of the credit union if the activities involve the

investment of surplus member savings capital in investments permitted for credit unions pursuant to Sections 14406, 14652, 14653, 14653.5, 14654, 14655, and 14656 of the Financial Code. "Surplus member savings capital" means the savings capital of credit union members which is in excess of the amount of savings capital which is loaned to members of the credit union. The term "savings capital" shall have the meaning set forth in subdivision (a) of Section 14400 of the Financial Code.

(d) For purposes of subdivision (a), "net receipts resulting from or arising out of business activities for or with their members" includes, but is not limited to, all net receipts resulting from reciprocal transactions with member credit unions.

27906. In the case of other associations organized and operated as co-operative corporations pursuant to Part 2 (commencing with Section 12200) of Division 3 of Title 1 of the Corporations Code, whose net receipts are principally derived from the sale in the regular course of business of tangible personal property other than water, agricultural products or food sold at wholesale, all patronage refunds paid or accrued to patrons if the patronage refunds are made and allocated as follows:

(a) Made pursuant to a pre-existing obligation which is created by the association's bylaws or other written instrument.

(b) Made from earnings which are attributable to business done by the association with the patrons to whom the patronage refunds are made, and allocated ratably according to patronage.

(c) Allocated, and the patrons to whom the patronage refunds are to be made are notified of the allocation, on or before the due date for the filing of the association's franchise tax return, including any extension of time, pursuant to this part, for the year in which the patronage occurred.

27906.5. (a) In the case of gas producers' cooperative associations organized and operated as cooperative corporations pursuant to Chapter 1 (commencing with Section 3001) of Part 4 of Division 1 of the Public Utilities Code, whose net receipts are principally derived from the sale in the regular course of business of tangible personal property other than water, agricultural products or food sold at wholesale, all patronage refunds paid or accrued to patrons if the patronage refunds are made and allocated as follows:

(1) Made pursuant to a preexisting obligation which is created by the association's bylaws or other written instrument.

(2) Made from earnings which are attributable to business done by the association with the patrons to whom the patronage refunds are made, and allocated ratably according to patronage.

(3) Allocated, and the patrons to whom the patronage refunds are to be made are notified of the allocation, on or before the due date for the filing of the association's franchise tax return, including any extension of time, pursuant to this part, for the year in which the patronage occurred.

(b) Each cooperative corporation shall certify to the Franchise Tax Board its eligibility for the deduction provided by this section. Certification shall be made at the time and in the manner prescribed by the Franchise Tax Board in forms or instructions.

27906.6. For purposes of Sections 27904 to 27906.5, inclusive, net earnings shall not be reduced by amounts paid during the year as dividends on capital stock or other proprietary capital interests of the organization to the extent that the articles of incorporation, bylaws of the organization, or other contract with patrons provide that those dividends are in addition to

amounts otherwise payable to patrons that are derived from business done for or with patrons during the taxable year.

Article 3. Certain Provisions of the Internal Revenue Code

27911. Subchapter C of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to corporate distributions and adjustments, shall apply, except as otherwise provided.

27912. (a) (1) If, in connection with any exchange described in Section 332, 351, 354, 356, or 361 of the Internal Revenue Code, a taxpayer transfers property to an insurer, the insurer shall not, for purposes of determining the extent to which gain shall be recognized on that transfer, be considered to be a corporation for purposes of this part.

(2) Paragraph (1) shall not apply to any of the following types of transactions, unless that transaction has the effect (directly or indirectly) of transferring appreciated property from a taxpayer subject to tax under this part (or a member of the taxpayer's combined reporting group) to an insurer:

(A) An exchange or transfer pursuant to Section 368(a)(2)(D) or Section 368(a)(2)(E) of the Internal Revenue Code.

(B) A transfer of stock in an 80 percent-owned insurer for the purpose of filing a consolidated tax return or for financial or regulatory reporting.

(C) A transfer or exchange of publicly owned stock of the parent corporation.

(3) If a transaction described in paragraph (2) would qualify under that paragraph but for the fact that the transaction has the effect (directly or indirectly) of transferring appreciated property from a taxpayer subject to tax under this part (or a member of the taxpayer's combined reporting group) to an insurer, then, if the property is used in the active trade or business of the insurer, subdivision (b) shall be deemed to apply to that transfer.

(4) For purposes of this subdivision, "appreciated property" means property whose fair market value, as of the date of the transfer subject to this section, exceeds its adjusted basis as of that date.

(b) (1) Except as provided in subdivision (c), or as otherwise provided by regulations prescribed by the Franchise Tax Board, if property subject to paragraph (1) of subdivision (a) or to subdivision (g) is transferred to an insurer for use in the active conduct of a trade or business of the insurer, then any gain otherwise required to be recognized under that subdivision shall be deferred until the date that the property is no longer owned by an insurer in the taxpayer's commonly controlled group (or a member of the taxpayer's combined reporting group), or the property is no longer used in the active conduct of the insurer's trade or business (or the trade or business of another member in the taxpayer's combined reporting group), or the holder of the property is no longer held by an insurer in the commonly controlled group of the transferor (or a member of the taxpayer's combined reporting group).

(2) Any of the events described in paragraph (1) shall be treated as a disposition of the property under this subdivision, irrespective of whether any other provision in this part or in the Internal Revenue Code would otherwise permit nonrecognition treatment of the transaction described in this subdivision.

(3) Notwithstanding paragraph (2) of this subdivision, an insurer that becomes a member of the taxpayer's commonly controlled group or a corporation that becomes a member of the taxpayer's combined reporting group,

as a result of a transaction of which a transfer referred to in this subdivision is a part, shall be treated as a member of the taxpayer's commonly controlled group or a member of the taxpayer's combined reporting group at the time of the transfer for purposes of this subdivision.

(4) For purposes of this subdivision, stock of an insurance subsidiary constitutes property used in the active trade or business of the insurer.

(5) If the deferred gain required to be taken into account under this subdivision is business income (as defined by subdivision (a) of Section 28120), the gain shall be apportioned using the apportionment percentage for the taxable year that the gain is required to be taken into account under this subdivision. Except as provided in regulations under Section 28137, for purposes of the sales factor for that taxable year, the transaction giving rise to that gain shall be treated as a sale occurring in the taxable year the gain is taken into account. The amount of any gain required to be recognized under this subdivision upon any disposition described in this subdivision shall not exceed the lesser of the deferred gain or the gain realized in the transaction in which gain is required to be recognized under this subdivision.

(6) For purposes of computing the amount of gain required to be recognized under this subdivision, appropriate adjustments may be made, pursuant to regulations issued by the Franchise Tax Board, to the basis of stock to reflect the disallowance of any expenses under this part.

(c) The Franchise Tax Board may prescribe regulations providing for an annual reporting requirement in the form of a statement or other form, to be attached to the transferor taxpayer's return, regarding the current ownership of any property for which any gains were previously deferred pursuant to subdivision (b). If the transferor taxpayer fails to provide any information required by the Franchise Tax Board pursuant to the preceding sentence, the Franchise Tax Board may, in lieu of the year described by subdivision (b), require that the transferor taxpayer take those gains into account in the first taxable year in which the current ownership of the property is not reported. The preceding sentence shall not apply so long as the property is still owned by the transferee and the failure to provide the information was due to reasonable cause and not willful neglect. Notwithstanding any other provision of law, if a taxpayer fails to satisfy the reporting requirements of this subdivision, then a notice of proposed deficiency assessment resulting from adjustments attributable to gains previously deferred pursuant to subdivision (b) with respect to which the reporting requirements were not satisfied may be mailed to the taxpayer within four years from the date on which the reporting requirements are satisfied by the taxpayer.

(d) Subdivision (b) shall not apply to any property described by Section 367(a)(3)(B) of the Internal Revenue Code.

(e) Except as provided by regulations prescribed by the Franchise Tax Board, a transfer by a taxpayer of an interest in a partnership to an insurer in a transaction described in subdivision (a) shall be treated as a transfer to that insurer of the taxpayer's pro rata share of the assets of the partnership.

(f) For purposes of this section, any distribution described by Section 355 of the Internal Revenue Code (or so much of Section 356 of the Internal Revenue Code as it relates to Section 355 of the Internal Revenue Code) shall be treated as an exchange under this section, whether or not the distribution is an exchange. This subdivision shall not apply to any distribution in which either of the following applies:

- (1) The distributing corporation is an insurer.
- (2) The distributee is a person other than an insurer.

(g) For purposes of this part, any transfer of property to an insurer as a contribution to capital of that insurer by one or more persons who, immediately after the transfer, own (within the meaning of Section 318 of the Internal Revenue Code) stock possessing at least 80 percent of the total combined voting power of all classes of stock of that insurer that are entitled to vote shall be treated as an exchange of that property for stock of the insurer equal in value to the fair market value of the property transferred.

(h) (1) In the case of any distribution described in Section 355 of the Internal Revenue Code (or so much of Section 356 of the Internal Revenue Code as it relates to Section 355 of the Internal Revenue Code) by a taxpayer to an insurer, to the extent provided in regulations prescribed by the Franchise Tax Board, gain shall be recognized under principles similar to the principles of this section.

(2) In the case of any liquidation to which Section 332 of the Internal Revenue Code applies, except as provided in regulations prescribed by the Franchise Tax Board, both of the following shall apply:

(A) Sections 337(a) and 337(b)(1) of the Internal Revenue Code shall not apply, where the 80 percent distributee is an insurer.

(B) Where the distributor is an insurer, the distributee shall treat the distribution as a distribution from the insurer's earnings and profits, to the extent thereof.

(3) For purposes of the preceding paragraph, the deemed distribution from earnings and profits shall be treated as if actually distributed as a dividend.

(i) For purposes of this section, the following definitions shall apply:

(1) An insurer is any insurer within the meaning of Section 28 of Article XIII of the California Constitution, whether or not the insurer is engaged in business in California.

(2) The phrase "commonly controlled group" shall have the same meaning as that phrase has under Section 28105.

(3) The phrase "combined reporting group" means those corporations whose income is required to be included in the same combined report pursuant to Section 28101 or 28110.

(j) The Franchise Tax Board may prescribe any regulations that may be appropriate to carry out the purpose of this section, which purpose is to prevent the removal of gain inherent in property at the time of a transfer from taxation under this part. Those regulations may provide for appropriate adjustments to the amount of deferred income described in subdivision (b) to avoid the double inclusion of income for situations, including but not limited to, the property transferred to an insurer member of the commonly controlled group is later acquired by a noninsurer member of the taxpayer's combined reporting group.

(k) Upon an adequate showing by a taxpayer that a transaction referred to in subdivision (a) or (h) would not violate the purposes of this section to prevent the removal of gain inherent in property at the time of a transfer from taxation under this part, the Franchise Tax Board may grant relief from the application of this section. In an appeal filed with the State Board of Equalization, or an action filed under Section 19382 or 19385, the State Board of Equalization or the court, as the case may be, shall have jurisdiction to grant that relief only upon a specific finding that the transfer did not remove gain inherent in property at the time of transfer from taxation under this part.

(l) This section applies to transactions entered into on or after January 1, June 23, 2004, or transactions entered into after June 23, 2004, pursuant to a binding written contract in existence on June 23, 2004. For purposes of

this subdivision, transactions entered into on or after June 23, 2004, that were given final approval by a regulatory insurance commissioner before June 23, 2004, shall be considered a transaction entered into before June 23, 2004, pursuant to a binding written contract in existence on June 23, 2004.

27913. Section 381(c) of the Internal Revenue Code, relating to items of the distributor or transferor corporation, is modified to provide that, in lieu of paragraph (24), relating to credit under Section 38, and paragraph (25), relating to credit under Section 53, the acquiring corporation shall take into account (to the extent proper to carry out the purposes of Section 381 of the Internal Revenue Code) the items required to be taken into account for purposes of each credit allowable under this part with respect to the distributor or transferor corporation.

27914. Section 383 of the Internal Revenue Code, relating to special limitations on certain excess credits, etc., is modified to apply to credits allowable under Chapter 5 (commencing with Section 27801).

Article 4. Accounting Periods and Methods of Accounting

27921. (a) Receipts shall be computed on the basis of the taxpayer's taxable year.

(b) For purposes of this part, the term "taxable year" means--

(1) The taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) The calendar year, if subsection (g) applies; or

(3) The period for which the return is made, if a return is made for a period of less than 12 months.

(c) For purposes of this part, the term "annual accounting period" means the annual period on the basis of which the taxpayer regularly computes its receipts in keeping its books.

(d) For purposes of this part, the term "calendar year" means a period of 12 months ending on December 31st.

(e) For purposes of this part, the term "fiscal year" means a period of 12 months ending on the last day of any month other than December.

In the case of any taxpayer who has made the election provided by subsection (f), the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) (1) A taxpayer who, in keeping its books, regularly computes its receipts on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always--

(A) On whatever date such same day of the week last occurs in a calendar month, or

(B) On whatever date such same day of the week falls which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute its receipts for purposes of this part on the basis of such annual period.

(2) (A) In any case in which the effective date or the applicability of any provision of this part is expressed in terms of taxable years beginning or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall be treated--

(i) As beginning with the first day of the calendar month beginning nearest to the first day of such taxable year, or

(ii) As ending with the last day of the calendar month ending

nearest to the last day of such taxable year, as the case may be.

(B) In the case of a change from or to a taxable year described in paragraph (1)--

(i) If such change results in a short period (within the meaning of Section 27924) of 359 days or more, or less than seven days, Section 27926 shall not apply;

(ii) If such change results in a short period of less than seven days, such short period shall, for purposes of this part, be added to and deemed a part of the following taxable year; and

(iii) If such change results in a short period to which Section 24634 applies, the income for such short period shall be placed on an annual basis for purposes of such subsection by multiplying such income by 365 and dividing the result by the number of days in a short period, and the tax shall be the same part of the tax computed on the annual basis as the number of days in the short period is of 365 days.

(3) The Franchise Tax Board shall prescribe such regulations as it deems necessary for the application of this subsection.

(g) Except as provided in Section 27924 (relating to returns for periods of less than 12 months), the taxpayer's taxable year shall be the calendar year if--

(1) The taxpayer keeps no books;

(2) The taxpayer does not have an annual accounting period; or

(3) The taxpayer has an annual accounting period, but such period does not qualify as a fiscal year.

27922. The taxable year of a taxpayer may not be different than the taxable year used for purposes of the Internal Revenue Code, unless initiated or approved by the Franchise Tax Board, or otherwise required under Section 27924.

27923. If a taxpayer changes its annual accounting period, the new accounting period shall become the taxpayer's taxable year only if the change is approved by the Franchise Tax Board. For purposes of this part, if a taxpayer to whom subdivision (g) of Section 27921 applies adopts an annual accounting period (as defined in subdivision (c) of Section 27921) other than a calendar year, the taxpayer shall be treated as having changed its annual accounting period.

27924. (a) A return for a period of less than 12 months (referred to in this article as "short period") shall be made under any of the following circumstances:

(1) When the taxpayer, with the approval of the Franchise Tax Board, changes its annual accounting period. In such a case, the return shall be made for the short period beginning on the day after the close of the former taxable year and ending at the close of the day before the day designated as the first day of the new taxable year.

(2) When the taxpayer is in existence during only part of what would otherwise be its taxable year, except if the taxpayer's existence terminates as a result of a reorganization described in Section 368(a)(1)(F) of the Internal Revenue Code.

(3) When the Franchise Tax Board terminates the taxpayer's taxable year under Sections 19081 and 19082 (relating to tax in jeopardy).

(4) When the taxpayer is required to make a federal return for a period of less than 12 months.

(b) This section shall apply whether or not a federal return is required to be filed for a period of less than 12 months.

(c) If a return is required to be filed under this section for a

period of less than 12 months, that period shall be deemed to be a taxable year.

27926. (a) If a separate return is made by a taxpayer under Section 27924 on account of a change in the accounting period, the net receipts computed on the basis of the period for which the separate return is made, referred to in this section as "the short period," shall be placed on an annual basis by multiplying the amount thereof by 12, and dividing by the number of months in the short period. The Franchise Tax Board shall compute the amount of a tax on the receipts placed on such annual basis. The tax due under this section shall be such part of the tax computed on such annual basis as the number of months in the short period is of 12 months.

(b) If a taxpayer subject to the tax imposed by Chapter 2 establishes the amount of its net receipts for the period of 12 months beginning with the first day of the short period, computed as if such 12-month period were a taxable year, under the law applicable to such year, then the tax for the short period shall be reduced to an amount which is such part of the tax computed on the net receipts for such 12-month period as the net receipts computed on the basis of the short period is of the net receipts for the 12-month period. The taxpayer (other than a taxpayer to which the next sentence applies) shall compute the tax and file its return without the application of this section. If the taxpayer has disposed of substantially all its assets prior to the end of such 12-month period, then in lieu of the net receipts for such 12-month period there shall be used for the purposes of this section the net receipts for the 12-month period ending with the last day of the short period. The tax computed under this section shall in no case be less than the tax computed on the net receipts for the short period without placing such receipts on an annual basis. The benefits of this section shall not be allowed unless the taxpayer, at such time as regulations prescribed hereunder require (but not after the time prescribed for the filing of the return for the first taxable year which ends on or after 12 months after the beginning of the short period), makes application therefor in accordance with such regulations. Such application, in case the return was filed without regard to this section, shall be considered a claim for credit or refund with respect to the amount by which the tax is reduced under this section. The Franchise Tax Board shall prescribe such regulations as it may deem necessary for the application of this section.

27927. Section 444 of the Internal Revenue Code, relating to election of taxable year other than required taxable year, shall be applicable, except that Section 444(c)(1), relating to effect of election, shall not apply.

Article 5. Methods of Accounting

27931. (a) Receipts shall be computed under the method of accounting on the basis of which the taxpayer regularly computes its receipts in keeping its books.

(b) If no method of accounting has been regularly used by the taxpayer, or if the method used does not clearly reflect receipts, the computation of receipts shall be made under such method as, in the opinion of the Franchise Tax Board, does clearly reflect receipts.

(c) Subject to subdivisions (a) and (b) and Section 27974, a taxpayer may compute receipts under any of the following methods of accounting--

- (1) The cash receipts and disbursements method;
- (2) An accrual method;

- (3) Any other method permitted by this part; or
- (4) Any combination of the foregoing methods permitted under regulations prescribed by the Franchise Tax Board.
- (d) A taxpayer engaged in more than one trade or business may, in computing receipts, use a different method of accounting for each trade or business.
- (e) Except as otherwise expressly provided in this part, a taxpayer who changes the method of accounting on the basis of which it regularly computes its receipts in keeping its books shall, before computing its receipts under the new method, secure the consent of the Franchise Tax Board.
- (f) If the taxpayer does not file with the Franchise Tax Board a request to change the method of accounting, the absence of the consent of the Franchise Tax Board to a change in the method of accounting shall not be taken into account for either of the following:
 - (1) To prevent the imposition of any penalty, or the addition of any amount to tax, under this part.
 - (2) To diminish the amount of that penalty or addition to tax.

27932. Section 447 of the Internal Revenue Code, relating to method of accounting for corporations engaged in farming, shall apply, except as otherwise provided.

27934. Section 448 of the Internal Revenue Code, relating to limitation on use of cash method of accounting, shall apply, except as otherwise provided.

Article 6. Year of Inclusion

27941. Section 451 of the Internal Revenue Code, relating to the general rule for taxable year of inclusion, shall apply, except as otherwise provided.

27942. Where a business entity subject to the tax imposed by Chapter 2 is engaged in the performance of a contract in this State which will require more than a year to complete, the Franchise Tax Board may require that the gross receipts from the contract be reported on the basis of percentage of completion unless the business entity furnishes bond or other security guaranteeing the payment of a tax measured by the gross receipts received on the completion of the contract even though the business entity is not doing business in this State in the year subsequent to the year of completion.

27943. (a) Section 460 of the Internal Revenue Code, relating to special rules for long-term contracts, shall apply, except as otherwise provided.

(b)(1) Section 804(d) of Public Law 99-514, relating to the effective date of modifications in the method of accounting for long-term contracts, shall apply to taxable years beginning on or after January 1, 1987.

(2) In the case of a contract entered into after February 28, 1986, during a taxable year beginning before January 1, 1987, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for the taxable year in which the contract began.

(c) (1) The amendments to Section 460 of the Internal Revenue Code made by Section 10203 of Public Law 100-203, relating to a reduction in the percentage of items taken into account under the completed contract method,

shall apply to each taxable year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after October 13, 1987, during a taxable year beginning before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each taxable year beginning prior to January 1, 1990.

(d) (1) The amendments to Section 460 of the Internal Revenue Code made by Section 5041 of Public Law 100-647, relating to a reduction in the percentage of items taken into account under the completed contract method, shall apply to each taxable year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after June 20, 1988, during a taxable year beginning before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each taxable year beginning prior to January 1, 1990.

(e) (1) The amendments to Section 460 of the Internal Revenue Code made by Section 7621 of Public Law 101-239, relating to the repeal of the completed contract method of accounting for long-term contracts, shall apply to each taxable year beginning on or after January 1, 1990.

(2) In the case of a contract entered into after July 10, 1989, during a taxable year beginning on or before January 1, 1990, an adjustment to income shall be made upon completion of the contract, if necessary, to correct any underreporting or overreporting of income, for purposes of this part, resulting from differences between state and federal law for each taxable year beginning prior to January 1, 1990.

(f) For purposes of applying paragraphs (2) to (6), inclusive, of Section 460(b) of the Internal Revenue Code, relating to the look-back method, any adjustment to income computed under paragraph (2) of subdivision (b), (c), (d), or (e) shall be deemed to have been reported in the taxable year from which the adjustment arose, rather than the taxable year in which the contract was completed.

27944. Section 461 of the Internal Revenue Code, relating to the general rule for taxable year of deduction of purchases, shall apply, except as otherwise provided.

27945. Section 481 of the Internal Revenue Code, relating to adjustments required by changes in method of accounting, shall apply, except as otherwise provided.

27946. The provisions of Section 482 of the Internal Revenue Code, relating to allocation of income and deductions among taxpayers, shall be applicable, except as provided in Article 2 (commencing with Section 28110) of Chapter 7.

Article 7. Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Trusts

27950. Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, and financial asset securitization investment trusts, shall apply, except as otherwise provided in this part.

27951. (a) Section 852(b)(1) of the Internal Revenue Code, relating to imposition of tax on regulated investment companies, does not

apply.

27952. (a) A real estate investment trust shall be deemed to have satisfied the distribution requirements of Section 857(a)(1) of the Internal Revenue Code for purposes of this part if it satisfies the distribution requirements of Section 857(a)(1) of the Internal Revenue Code for federal purposes.

(b) (1) Section 857(b)(1) of the Internal Revenue Code, relating to imposition of tax on real estate investment trusts, shall not apply.

(2) Every real estate investment trust shall be subject to the taxes imposed under Chapter 2 (commencing with Section 27151).

(d) Section 857(b)(4)(A) of the Internal Revenue Code, relating to the imposition of tax on income from foreclosure property, shall not apply.

(e) Section 857(b)(5) of the Internal Revenue Code, relating to the imposition of tax in case of failure to meet certain requirements, shall not apply.

(f) Section 857(b)(6)(A) of the Internal Revenue Code, relating to the imposition of tax on income from prohibited transactions, shall not apply.

(g) Section 857(b)(7) of the Internal Revenue Code, relating to income from redetermined rents, redetermined deductions, and excess interest, shall not apply. (h)(1) A corporation, trust, or association that is a real estate investment trust for any taxable year for federal purposes under Part II (commencing with Section 856) of Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code (as applicable for federal purposes for the taxable year) shall be a real estate investment trust for purposes of this part for the same taxable year.

(2) A corporation, trust, or association that is not a real estate investment trust for any taxable year for federal purposes under Part II (commencing with Section 856) of Subchapter M of Chapter 1 of Subtitle A of the Internal Revenue Code (as applicable for federal purposes for the taxable year) shall not be a real estate investment trust for purposes of this part for the same taxable year.

(i) (1) An election to be a real estate investment trust for federal purposes under Section 856(c)(1) of the Internal Revenue Code (as applicable for federal purposes for the taxable year) shall be treated, for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, as an election to be a real estate investment trust for state purposes for the same taxable year and a separate election shall not be allowed.

(2) The termination or revocation of an election described in paragraph (1) for federal purposes under Section 856(g) of the Internal Revenue Code (as applicable for federal purposes for the taxable year) shall be treated, for purposes of Part 10 (commencing with Section 17001), Part 10.2 (commencing with Section 18401), and this part, as a termination or revocation, as the case may be, of an election described in paragraph (1) for state purposes and a separate termination or revocation of an election shall not be allowed.

27953. Section 860F(a) of the Internal Revenue Code, relating to the 100 percent tax on prohibited transactions, shall not apply.

27954. (a) Section 860H(b) of the Internal Revenue Code, relating to the taxation of holder of ownership interest, shall be modified as follows:

(1) All activities of a FASIT shall be treated as activities, including for purposes of Section 27101, of the holder of the ownership

interest in the FASIT.

(2) Section 860H(b)(3) of the Internal Revenue Code, shall not apply.

(c) Section 860J(d) of the Internal Revenue Code, relating to affiliated groups, shall not apply.

(d) A reference to the "rate of tax specified in Section 27151" shall be substituted for "highest rate of tax specified in Section 11(b)(1)" of the Internal Revenue Code, contained in Section 860K of the Internal Revenue Code, relating to treatment of transfers of high-yield interests to disqualified holders.

(e) Section 860L(b)(1)(A) of the Internal Revenue Code is modified by substituting the phrase "on or after the startup date" for the phrase "after the startup date."

(f) Section 860L(d)(2) of the Internal Revenue Code is modified by substituting a reference to Section 860I(b)(2) of the Internal Revenue Code in lieu of the reference to Section 860I(c)(2) of the Internal Revenue Code.

(g) Section 860L(e) of the Internal Revenue Code, relating to tax on prohibited transactions, shall not apply.

(h) For purposes of Chapter 4 of Part 10.2 (commencing with Section 19001) the taxes imposed by this section shall be treated as taxes to which the deficiency procedures of that article apply.

Article 8. Gain or Loss on Disposition of Property

27961. (a) The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in Section 27971 for determining gain, and the loss shall be the excess of the adjusted basis provided in that section for determining loss over the amount realized.

(b) The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the amount realized--

(1) There shall not be taken into account any amount received as reimbursement for real property taxes

, and

(2) There shall be taken into account amounts representing real property taxes

(c) In the case of a sale or exchange of property, the extent to which the gain or loss determined under this section shall be recognized for purposes of this part shall be determined under Section 27962.

(d) Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which that payment is received.

(e) (1) In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis

of that interest which is determined pursuant to Sections 27974 and 27975 (to the extent that the adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

(2) For purposes of paragraph (1), the term "term interest in property" means--

(A) A life interest in property,

(B) An interest in property for a term of years, or

(C) An income interest in a trust.

(3) Paragraph (1) shall not apply to a sale or other disposition which is a part of a transaction in which the entire interest in property is transferred to any person or persons.

27962. On the sale or exchange of property, the following rules shall apply:

(a) In the case of the sale or exchange of property acquired prior to January 1, 2012, the entire amount of the gain or loss, determined under Section 27961, shall be recognized and included in gross receipts.

(b) In the case of the sale or exchange of property acquired after December 31, 2011, the entire amount of money or other property received shall be included in gross receipts.

27965. (a) Section 988 of the Internal Revenue Code, relating to treatment of certain foreign currency transactions, shall apply, except as otherwise provided.

(b) Section 988(a)(3) of the Internal Revenue Code, relating to source, shall not apply.

Article 9. Basis for Computation of Gain or Loss

27971. The adjusted basis for determining the gain or loss from the sale or other disposition of property acquired prior to January 1, 2012, shall be the basis (determined under Section 27912) or other applicable sections of Article 8 (relating to gain or loss on disposition of property) and Article 3 (relating to corporate distributions and adjustments), adjusted as provided in Sections 27976 and 27977.

27972. The basis of property shall be the cost of the property, except as otherwise provided in Chapter 8 (commencing with Section 27911), relating to corporate distributions and adjustments, and this chapter. The cost of real property shall not include any amount in respect of real property taxes which are treated as imposed on a taxpayer.

27973. If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

27974. (a) If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in Sections 27976 and 27977) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Franchise Tax Board shall, if possible, obtain such facts from such donor or last preceding owner, or any other person cognizant thereof. If the Franchise Tax Board finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Franchise Tax Board as of the date or approximate date at which, according to the best information that the Franchise Tax Board is able to obtain, such property was acquired by such donor or last preceding owner.

(b) If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss

recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

27975. (a) If--

(1) The property is acquired by gift on or after the date of the enactment of this section, the basis shall be the basis determined under Section 27974, increased (but not above the fair market value of the property at the time of the gift) by the amount of federal gift tax paid with respect to such gift, or

(2) The property was acquired by gift before the date of the enactment of this section and has not been sold, exchanged, or otherwise disposed of before such date, the basis of the property shall be increased on such date by the amount of federal gift tax paid with respect to such gift, but such increase shall not exceed an amount equal to the amount by which the fair market value of the property at the time of the gift exceeded the basis of the property in the hands of the donor at the time of the gift.

(b) For purposes of subsection (a), the amount of federal gift tax paid with respect to any gift is an amount which bears the same ratio to the amount of gift tax paid under Chapter 12 of Subtitle B of the Internal Revenue Code with respect to all gifts made by the donor for the calendar year in which such gift is made as the amount of such gift bears to the taxable gifts (as defined in Section 2503(a) of the Internal Revenue Code but computed without the deduction allowed by Section 2521 of the Internal Revenue Code) made by the donor during such calendar year. For purposes of the preceding sentence, the amount of any gift shall be the amount included with respect to such gift in determining (for the purposes of Section 2503(a) of the Internal Revenue Code) the total amount of gifts made during the calendar year, reduced by the amount of any deduction allowed with respect to such gift under Section 2522 of the Internal Revenue Code (relating to charitable deduction) or under Section 2523 of the Internal Revenue Code (relating to marital deduction).

(c) For purposes of subsection (a), where the donor and his spouse elected, under Section 2513 of the Internal Revenue Code to have the gift considered as made one-half by each, the amount of gift tax paid with respect to such gift under Chapter 12 of Subtitle B of the Internal Revenue Code shall be the sum of the amounts of tax paid with respect to each half of such gift (computed in the manner provided in subsection (b)).

(d) For purposes of Section 27977, an increase in basis under subsection (a) shall be treated as an adjustment under Section 27976.

(e) With respect to any property acquired by gift before 1955, references in this section to any provision of this part shall be deemed to refer to the corresponding provision of the Internal Revenue Code or prior revenue laws which was effective for the year in which such gift was made.

27976. In the case of any property acquired prior to January 1, 2012, proper adjustment with regard to the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account.

(b) For exhaustion, wear and tear, obsolescence, amortization, and depletion:

(1) In the case of taxpayers subject to the tax imposed by Chapter 2 (commencing with Section 27101), to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts

in excess of the amount which would have been allowable had depreciation not

been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3 (commencing with Section 27501), to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided.

(c) In the case of stock (to the extent not provided for in the foregoing subdivisions) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation, which was classified as a personal service corporation under the provisions of the Federal Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of Section 218 of the Federal Revenue Act of 1918 or 1921).

(d) (1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 27101), in the case of any bond, to the extent of the deductions allowable with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3 (commencing with Section 27501), in the case of any bond, the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction, and in the case of any other bond, to the extent of the deductions allowable with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as a gross receipt for the year in which received, and to the extent of any deficiency on that loan with respect to which the taxpayer has been relieved from liability.

(e) For amounts allowed as deductions as deferred expenses under Section 616(b) of the Internal Revenue Code, relating to certain expenditures in the development of mines, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the taxable year and prior years.

(f) For amounts allowable as deductions as deferred expenses under Section 617(a) of the Internal Revenue Code, relating to certain exploration expenditures, and resulting in a reduction of the taxpayer's tax, but not less than the amounts allowable under that section for the taxable year and prior years.

(g) For amounts allowed as deductions as deferred expenses, relating to research and experimental expenditures, and resulting in a reduction of the corporation's taxes under this part, but not less than the amounts allowable under that section for the taxable year and prior years.

(h) To the extent provided in Section 179A(e)(6)(A) of the Internal Revenue Code, relating to basis reduction for clean-fuel vehicles and certain refueling property.

(2) This subdivision shall apply to property placed in service after June 30, 1993, without regard to taxable year.

(j) In the case of property the acquisition of which resulted under Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies,

in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in Section 1044(d) of the Internal Revenue Code, relating to basis adjustments.

27976.2. Notwithstanding the provisions of Section 27976, no adjustment shall be made for (a) abandonment fees paid in respect of property on which the open-space easement is terminated under Section 51061 or 51093 of the Government Code or (b) tax recoupment fees paid under Section 51142 of the Government Code.

27977. Whenever it appears that the basis of property in the hands of the corporation is a substituted basis, then the adjustments provided in Section 27976 shall be made after first making in respect of that substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

27978. (a) Section 1017 of the Internal Revenue Code, relating to discharge of indebtedness, shall apply, except as otherwise provided. (b) References to affiliated groups which file a consolidated return under Section 1501 of the Internal Revenue Code shall be treated as meaning members of the same unitary group which file a combined report under Article 1 (commencing with Section 28101) of Chapter 7.

27979. Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under Section 24309 (relating to improvements by lessee on lessor's property). If an amount representing any part of the value of real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1942, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income.

Article 9. Exchanges and Special rules

27981. Part III of Subchapter O of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to common nontaxable exchanges, shall not apply.

27982. If the basis of an asset acquired by a taxpayer before the operative date of this part is relevant for determining the tax imposed under this part, the basis of that asset, as of the last day of the last taxable year of that taxpayer subject to Part 11 (commencing with Section 23001) shall be the basis of that asset, as of the first day of the first taxable year of the taxpayer subject to this part.

27983. Section 1060 of the Internal Revenue Code, relating to special allocation rules for certain asset acquisitions, shall apply, except as otherwise provided.

27988. Subchapter P of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to capital gains and losses, shall apply, except as otherwise provided.

CHAPTER 7.

ALLOCATION OF BUSINESS NET RECEIPTS

Article 1. Basis of Allocation

28101. When the net receipts of a taxpayer subject to the tax imposed under this part is derived from or attributable to sources both within and without this State, the tax shall be measured by the net receipts derived from or attributable to sources within this State in accordance with the provisions of Article 3 (commencing with Section 28120). If the Franchise Tax Board reapportions net receipts upon its examination of any return, it shall, upon the written request of the taxpayer, disclose to it the basis upon which its reapportionment has been made.

28101.15. If the net receipts of two or more taxpayers is derived solely from sources within this State and their business activities are such that if conducted within and without this State a combined report would be required to determine their business net receipts derived from sources within this State, then such taxpayers shall be allowed to determine their business net receipts in accordance with Section 28101.

28102. In the case of two or more persons, as defined in Section 19 of this code, owned or controlled directly or indirectly by the same interests, the Franchise Tax Board may permit or require the filing of a combined report and such other information as it deems necessary and is authorized to impose the tax due under this part as though the combined entire net receipts was that of one person, or to distribute, apportion, or allocate the gross receipts or purchases between or among such persons, if it determines that such consolidation, distribution, apportionment, or allocation is necessary in order to reflect the proper net receipts of any such persons.

28103. In the case of a business entity doing business within the meaning of this part, whether under agreement or otherwise, in such manner as either directly or indirectly to benefit the owners of the business entity, or any of them, or any person or persons, directly or indirectly interested in such business, by rendering services of any nature whatsoever, or acquiring or disposing of its products or the goods or commodities in which it deals, at less than a fair price therefore, the Franchise Tax Board, in order to prevent evasion of taxes or clearly to reflect the net receipts of such corporation, may require a report of such facts as it deems necessary, and may determine the amount which shall be deemed to be the entire net receipts allocable or apportionable to this State of the business of such business entity for the calendar or fiscal year, and compute the tax upon such net receipts. In determining the entire net receipts, the Franchise Tax Board shall have regard to the fair profits which, but for any agreement, arrangement, or understanding, might be or could have been obtained from dealing in such products, goods or commodities.

28104. In the case of a business entity liable to report under this part owning or controlling, either directly or indirectly, another business entity, or other business entities, and in the case of a business entity liable to report under this part and owned or controlled, either directly or indirectly, by another business entity, the Franchise Tax Board may require a consolidated report showing the combined net receipts or such

other facts as it deems necessary. The Franchise Tax Board is authorized and empowered, in such manner as it may determine, to assess the tax against either of the business entities whose net receipts is involved in the report upon the basis of the combined entire net receipts and such other information as it may possess, or it may adjust the tax in such other manner as it shall determine to be equitable if it determines it to be necessary in order to prevent evasion of taxes or to clearly reflect the net receipts earned by said business entity or business entities from business done in this State.

28105. (a) For purposes of this article, other than Section 28102, the net receipts and sales factors of two or more business entities shall be included in a combined report only if the business entity, otherwise meeting the requirements of Section 28101 or 28101.15, are members of a commonly controlled group.

(b) For purposes of this section, the words "common controlled group" shall mean that more than 50 per cent of the voting control of each member of the group is directly or indirectly owned by a common owner or owners, either corporate or non-corporate, whether or not the owner or owners are members of the combined group. A group of corporations under common ownership may be engaged in one or more unitary businesses.

(c) Any business conducted by a partnership shall be treated as the business of the partners, whether the partnership interest is directly held or indirectly held through a series of partnerships, to the extent of the partner's distributive share of the partnership's income, regardless of the magnitude of the partner's ownership interest or its distributive share of partnership income.

(d) A business conducted directly or indirectly by one corporation is unitary with that portion of a business conducted by another, commonly owned corporation through its direct or indirect interest in a partnership if the activities conducted by the former corporation and the partnership are unitary, regardless of the magnitude of the partner's ownership interest or its distributive or any other share of partnership income.

28105.5. The Franchise Tax Board may adopt regulations necessary to ensure that the tax liability or net receipts of any taxpayer whose net receipts derived from or attributable to sources within this state which is required to be determined by a combined report pursuant to Section 28101 or 28110 of this chapter, and of each entity included in the combined report, both during and after the period of inclusion in the combined report is properly reported, determined, computed, assessed, collected, or adjusted.

Article 2. Water's-Edge Combined Reporting

28110. (a) Business entities that comprise a unitary business shall file a combined report on a water's-edge basis.

(b) the term "unitary business" shall mean the activities of a group of 2 or more entities under common control that are sufficiently interdependent, integrated or interrelated through their activities so as to provide mutual benefit and produce a significant sharing or exchange of value among them or a significant flow of value between the separate parts. The term unitary business shall be construed to the broadest extent permitted under the United States Constitution

(c) A taxpayer that is a member of a water's-edge group shall combine the business net receipts of each business entity in the group, so as to allow the offset of the excess business purchases (from other businesses) of one entity against the net business receipts of another entity in the same group.

(d) A taxpayer that is a member of a water's-edge group shall take into account the net receipts and sales factor of the following affiliated entities to the extent provided below:

(1) The entire business net receipts and single sales factor of any of the following:

(A) Domestic international sales corporations, as described in Sections 991 to 994, inclusive, of the Internal Revenue Code and foreign sales corporations as described in Sections 921 to 927, inclusive, of the Internal Revenue Code.

(B) Any corporation or other business entity (other than a bank), regardless of the place where it is incorporated if the average of its property, payroll, and sales factors within the United States is 20 percent or more.

(C) Corporations and other business entities that are incorporated or formed in the United States, excluding corporations making an election pursuant to Sections 931 to 936, inclusive, of the Internal Revenue Code.

(D) Export trade corporations, as described in Sections 970 to 972, inclusive, of the Internal Revenue Code.

(E)(i) Subject to clause (i), any business entity that, for any portion of the taxable year, has business net receipts derived from or attributable to, a tax haven.

(ii) If the application of paragraph (A) results in the inclusion of a business activity in, or business net receipts derived from or attributable to, a tax haven that constitutes either a substantial economic presence or significant economic activity in that jurisdiction, the taxpayer may petition the Franchise Tax Board to treat the activity and business net receipts of that corporation as not having been conducted in, or derived from or attributable to, the tax haven.

(iii) The Franchise Tax Board shall prescribe any regulations that may be necessary or appropriate to carry out the purposes of this subparagraph, including regulations prescribing the extent to which an activity in, or business net receipts derived from or attributable to, a tax haven will be presumed to be either a substantial economic presence or significant economic activity, and the extent to which business net receipts will be presumed to be not derived from or attributable to a tax haven.

(2) With respect to a business entity that is not described in subparagraphs (A), (B), (C), and (D) of paragraph (1):

(A) The business net receipts and single sales factor of such business entity to the extent of its business net receipts derived from or attributable to sources within the United States and its single sales factor assignable to a location within the United States in accordance with paragraph (2) of subdivision (d). The business net receipts of a business entity are derived from or attributable to sources within the United States if the related gross income is derived from or attributable to sources within the United States as determined by federal income tax laws.

(B) any business entity that earns more than 20 percent of its receipts, directly or indirectly, from intangible property or service related activities that are deductible against the business receipts of other members of the combined group, to the extent of those receipts and the apportionment factors related thereto.

(3) For purposes of this section, a "tax haven" means any of the 39 jurisdictions that, as of December of 20XX, were identified as tax havens by the Organization for Economic Cooperation and Development (OECD).

28114. (a) The Franchise Tax Board, for purposes of administering the provisions of this article, may examine all returns filed by taxpayers subject to these provisions.

(b)(1) In the case of any transfer, or license, of intangible property,

within the meaning of Section 936(h)(3)(B) of the Internal Revenue Code, the net receipts with respect to that transfer or license shall be commensurate with the net receipts attributable to the intangible property.

(2) In making distributions, apportionments, and allocations under this section, the Franchise Tax Board shall generally follow the rules, regulations, and procedures of the Internal Revenue Service in making audits under Section 482 of the Internal Revenue Code. Any of these rules, regulations, and procedures adopted by the Franchise Tax Board shall not be subject to review by the Office of Administrative Law.

(3) If the Internal Revenue Service has conducted a detailed audit pursuant to Section 482 of the Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue Code and has made adjustments pursuant to those provisions, it shall be presumed, to the extent that the provisions relate to the determination of the amount of net receipts and amounts in the sales factor required to be taken into account pursuant to Section 28110, that no further adjustments are necessary for this state's purposes. If the Internal Revenue Service has conducted a detailed audit pursuant to Section 482 of the Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue Code and has made or proposed no adjustments to the transactions examined, it shall be presumed, to the extent that the provisions relate to the determination of the amount of net receipts and amounts in the sales factor required to be taken into account pursuant to Section 28110, that no adjustment is necessary for this state's purposes. These presumptions apply to all Internal Revenue Service audit determinations, including determinations made by the Appeals and Competent Authority. These presumptions shall be overcome if the Franchise Tax Board or the taxpayer demonstrates that an adjustment or a failure to make an adjustment was erroneous, if it demonstrates that the results of such an adjustment would produce a minimal tax change for federal purposes because of correlative or offsetting adjustments or for other reasons, or if substantially the same federal tax result was obtained under other sections of the Internal Revenue Code. No inference shall be drawn from an Internal Revenue Service failure to audit international transactions pursuant to Section 482 of the Internal Revenue Code or Subchapter N of Chapter 1 of Subtitle A of the Internal Revenue Code and it shall not be presumed that any of those transactions were correctly reported.

Article 3. ALLOCATION AND APPORTIONMENT OF NET RECEIPTS

28120. As used in Sections 28120 to 28139, inclusive, unless the context otherwise requires:

(a) "Business receipts" means receipts arising from transactions and activity in the regular course of the taxpayer's trade or business and includes receipts from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Nonbusiness receipts" means all receipts other than business receipts.

(e)(1) "Sales" means all gross receipts of the taxpayer not allocated under Sections 25123 to 25127, inclusive.

(2) "Gross receipts" means the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of

services, or the use of property or capital (including rents, royalties, interest, and dividends) in a transaction that produces business income, in which the income, gain, or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold. Gross receipts, even if business income, shall not include the following items:

(A) Repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument.

(B) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

(C) Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock.

(D) Damages and other amounts received as the result of litigation.

(E) Property acquired by an agent on behalf of another.

(F) Tax refunds and other tax benefit recoveries.

(G) Pension reversions.

(H) Contributions to capital (except for sales of securities by securities dealers).

(I) Income from discharge of indebtedness.

(J) Amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code.

(K) Amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer's unitary business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets. For purposes of this subparagraph, "treasury function" means the pooling, management, and investment of intangible assets for the purpose of satisfying the cash flow needs of the taxpayer's trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and business acquisitions, and also includes the use of futures contracts and options contracts to hedge foreign currency fluctuations. A taxpayer principally engaged in the trade or business of purchasing and selling intangible assets of the type typically held in a taxpayer's treasury function, such as a registered broker-dealer, is not performing a treasury function, for purposes of this subparagraph, with respect to income so produced.

(L) Amounts received from hedging transactions involving intangible assets. A "hedging transaction" means a transaction related to the taxpayer's trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer.

(M) Where substantial amounts of gross receipts arise from an occasional sale of a fixed asset or other property held or used in the regular course of the taxpayer's trade or business, such gross receipts shall be excluded from the sales factor. For example, gross receipts from the sale of a factory, patent, or affiliate's stock will be excluded if substantial. For purposes of this subsection, sales of assets to the same purchaser in a single year will be aggregated to determine if the combined gross receipts are substantial.

(i) For purposes of this subparagraph, a sale is substantial if its exclusion results in a five percent or greater decrease in the sales factor denominator of the taxpayer or, if the taxpayer is part of a combined

reporting group, a five percent or greater decrease in the sales factor denominator of the group as a whole.

(ii) For purposes of this subparagraph, a sale is occasional if the transaction is outside of the taxpayer's normal course of business and occurs infrequently.

(3) Exclusion of an item from the definition of "gross receipts" shall not be determinative of its character as business or nonbusiness income.

(f) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

28121. Any taxpayer having receipts from business activity which is taxable both within and without this State shall allocate and apportion its net receipts as provided in this article.

28122. For purposes of allocation and apportionment of net receipts under this article, a taxpayer is taxable in another state if (a) in that state it is subject to a value-added tax, an income tax, a franchise tax measured by income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a value-added tax or to an income tax regardless of whether, in fact, the state does or does not.

28123. Rents and royalties from real or tangible personal property, capital gains, a patent or copyright royalties, to the extent that they constitute nonbusiness receipts, shall be allocated as provided in Sections 28124 through 28127 of this article.

28124. (a) Rents and royalties from real property located in this state are allocable to this state.

(b) Rent and royalties from tangible personal property are allocable to this state:

(1) If and to the extent that the property is utilized in this state, or

(2) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

28125. (a) Gross receipts from sales of real property located in this state are allocable to this state.

(b) Gross receipts from sales of tangible personal property are allocable to this state if:

(1) The property had a situs in this state at the time of the sale, or

(2) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Except in the case of the sale of a partnership interest,

capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

28127. (a) Patent and copyright royalties are allocable to this state:

(1) If and to the extent that the patent or copyright is utilized by the payor in this state, or

(2) If and to the extent that the patent or copyright is utilized by the payor in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

28128. All business receipts shall be apportioned to this State by multiplying the business net receipts by the sales factor.

28129. The property in this State means the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

28130. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

28131. The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year but the Franchise Tax Board may require the averaging of monthly values during the taxable year if reasonably required to reflect properly the average value of the taxpayer's property.

28133. Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state; or

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

28134. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this State during the taxable year, and the denominator of which is the totals sales of the taxpayer everywhere during the taxable year.

28135. Sales of tangible personal property are in this State if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this State regardless of the f.o.b. point or other conditions of the sale.

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this State and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

(c) For purposes of determining whether sales are in this State and included in the numerator of the sales factor, all sales of the combined reporting group properly assigned to this State under this section shall be included in the sales factor numerator for this State regardless of whether the member of the combined reporting group making the sale is subject to the business net receipts tax imposed under Section 27151. All sales not assigned to this State pursuant to subdivision (a) shall not be included in the sales factor numerator for this State if a member of the combined reporting group of the taxpayer is taxable in the state of the purchaser.

(d) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

28136. (a) Sales, other than sales of tangible personal property, are in this State as follows:

(1) Sales from services are in this State to the extent the purchaser of the service received the benefit of the service in this State.

(2) Sales from intangible property are in this State to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(b) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

28137. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's market in this state, the taxpayer may petition for or the Franchise Tax Board may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one or more of the factors;

(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's net receipts.