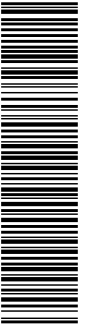


An act to add Section 25128.9 to the Revenue and Taxation Code, relating to taxation.

SECURED
COPY



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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the following:

(a) In 1966, the California Legislature enacted the Uniform Division of Income for Tax Purposes Act under Sections 25120 through 25139, inclusive, of the Revenue and Taxation Code.

(b) That act provides for the allocation and apportionment of income of taxpayer having income from business activities which is taxable both within and without the state.

(c) On April 28, 2006, the Franchise Tax Board issued Franchise Tax Board Legal Ruling 2006-1 (the Legal Ruling), regarding the treatment of apportionment factors attributable to income exempt from income tax under the Corporation Tax Law.

(d) It is the intent of the Legislature that the Legal Ruling shall apply with respect to apportionment factors attributable to the income of taxpayers subject to tax under the Corporation Tax Law.

(e) It is the intent of the Legislature in enacting this act that Section 25128.9 of the Revenue and Taxation Code, as added by this act, does not constitute a change in, but is declaratory of, existing law.

(f) It is the intent of the Legislature that the clarification in Section 25128.9 of the Revenue and Taxation Code apply to any apportionment formula currently and formerly allowed under Article 2 (commencing with Section 25120) of Chapter 17 of Part 11 of Division 2 of the Revenue and Taxation Code.

SEC. 2. Section 25128.9 is added to the Revenue and Taxation Code, to read:

25128.9. (a) (1) A transaction or activity, to the extent that it generates income or loss not included in "net income," as defined in Section 24341, subject to apportionment, shall be excluded from the apportionment formulas under this part, including Sections 25128, 25128.7, and 25141, and former Section 25128.5.

(2) For the purposes of this section, "not included in 'net income,'" means income from transactions and activities that is not included in net income subject to apportionment for any reason, including, but not limited to, exclusion, deduction, exemption, elimination, or nonrecognition.

(b) (1) The Franchise Tax Board may adopt regulations that are necessary or appropriate to carry out the purpose of this section, which is to prevent inclusion within the apportionment formula of transactions and activities that give rise to income that is not subject to apportionment.

(2) The Administrative Procedure Act (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 regulation, standard, criterion, procedure, determination, rule, notice, guideline, or any other guidance established or issued by the Franchise Tax Board pursuant to this section.

(c) This section shall apply to taxable years beginning before, on, or after the effective date of the act adding this section.



LEGISLATIVE COUNSEL'S DIGEST

Bill No.
as introduced, _____.
General Subject: Corporation Tax Law: apportionment factors.

The Corporation Tax Law imposes taxes measured by net income on every corporation doing business within the limits of this state, subject to certain exceptions. In the case of a business with business income derived from or attributable to sources both within and without this state, existing law, the Uniform Division of Income for Tax Purposes Act, apportions the business income between this state and other states and foreign countries by multiplying the business income by the sales factor, except as provided. Existing law provides that certain amounts are not included in income for various reasons, including, but not limited to, exclusion, deduction, exemption, or nonrecognition. Under existing law, the Franchise Tax Board does not include in the apportionment formula amounts that do not give rise to apportionable income.

This bill would exclude from the apportionment formula any amount that does not give rise to apportionable income, consistent with existing law and practice of the Franchise Tax Board, as described above. This bill would make findings and declarations relating to the intent of the Legislature that the provisions of the bill are not a change in, but are declaratory of, existing law. The bill would apply these provisions to taxable years beginning before, on, or after the effective date of this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

