

AMENDED IN ASSEMBLY JULY 18, 2007

AMENDED IN ASSEMBLY JUNE 14, 2007

AMENDED IN ASSEMBLY JUNE 7, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1591

**Introduced by Assembly Member Ma
(Coauthors: Assembly Members De Leon, Garcia, and Mullin)**

February 23, 2007

An act to amend, repeal, and add Section 25128 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1591, as amended, Ma. The Corporation Tax Law: allocation and apportionment.

The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from, or attributable to, sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula, except as otherwise provided.

This bill, for taxable years beginning on or after January 1, 2008 and before January 1, 2022, would allow a taxpayer that is a member of the apportioning trade or business, ~~or a subgroup thereof~~, to elect, by contracting with the Franchise Tax Board, as provided, to apportion its business income to this state by utilizing one of the revised apportionment formulas, as specified.

This bill would take effect immediately as a tax levy.

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

The people of the State of California do enact as follows:

1 SECTION 1. Section 25128 of the Revenue and Taxation Code
2 is amended to read:
3 25128. (a) Notwithstanding Section 38006, all business income
4 shall be apportioned to this state by multiplying the business
5 income by a fraction, the numerator of which is the property factor
6 plus the payroll factor plus twice the sales factor, and the
7 denominator of which is four, except as provided in subdivision
8 (b) or (c).
9 (b) (1) If an apportioning trade or business derives more than
10 50 percent of its “gross business receipts” from conducting one or
11 more qualified business activities, all business income of the
12 apportioning trade or business shall be apportioned to this state by
13 multiplying business income by a fraction, the numerator of which
14 is the property factor plus the payroll factor plus the sales factor,
15 and the denominator of which is three.
16 (2) For purposes of this ~~section~~ *subdivision*, a “qualified business
17 activity” means the following:
18 (A) An agricultural business activity.
19 (B) An extractive business activity.
20 (C) A savings and loan activity.
21 (D) A banking or financial business activity.
22 (c) (1) Notwithstanding any other provision of law, for taxable
23 years beginning on or after January 1, 2008, and before January
24 1, 2022, a taxpayer that is a member of an apportioning trade or
25 business may, on behalf of the apportioning trade or business ~~or~~
26 ~~a subgroup thereof~~, elect, as provided in paragraph (3), to adjust
27 the fraction described in subdivision (a) or (b), as applicable, by
28 utilizing one of the following alternative methods:
29 (A) (i) In calculating its business income apportioned to this
30 state, the apportioning trade or business, ~~or a subgroup thereof~~,
31 may add an additional sales factor to the numerator of the fraction
32 described in subdivision (a) or (b), whichever is applicable, and
33 may increase the denominator of that fraction by one for every
34 two hundred fifty million dollars (\$250,000,000) of qualified

1 expenditures ~~made~~ *incurred by the apportioning trade or business*
2 *during a taxable year beginning on or after January 1, 2008.*

3 ~~(ii) The apportioning trade or business, or a subgroup thereof,~~
4 ~~must submit and certify, with each tax return filed with the~~
5 ~~Franchise Tax Board, a summary of the qualified expenditures.~~

6 *(ii) In any one taxable year, in adjusting the fraction as*
7 *described in clause (i) of this subparagraph, the apportioning*
8 *trade or business may add to the numerator of that fraction not*
9 *more than two additional sales factors as compared to the number*
10 *of sales factors added to the numerator of that fraction by the*
11 *apportioning trade or business in the immediately preceding*
12 *taxable year. Any remaining additional sales factors shall be used*
13 *by the apportioning trade or business in the following taxable year*
14 *in which the apportioning trade or business incurs qualified*
15 *expenditures that will qualify the apportioning trade or business*
16 *for fewer than two additional sales factors, until the additional*
17 *sales factors are fully utilized.*

18 (B) (i) ~~The apportioning trade or business, or a subgroup~~
19 ~~thereof,~~ may adjust the property factor and the payroll factor used
20 in the fraction described in subdivision (a) or (b), whichever is
21 applicable, as follows:

22 ~~(I) (ia) The value of real and tangible personal property in this~~
23 ~~state owned or rented by the taxpayer in a taxable year that is in~~
24 ~~excess of the value of the taxpayer's real and tangible personal~~
25 ~~property owned or rented and used in this state in the base year~~
26 ~~and otherwise includable in the computations of the property factor,~~
27 ~~as defined in Section 25129, shall be excluded from the numerator~~
28 ~~of that property factor until the election is terminated.~~

29 ~~(ib) For purposes of this section, if real and tangible personal~~
30 ~~property acquired or rented by a taxpayer in this state in a taxable~~
31 ~~year is disposed of by the taxpayer in the following taxable year~~
32 ~~and that disposition occurs within one year or less of the date the~~
33 ~~property was first placed in service, then the value of that property~~
34 ~~shall be included in the numerator of the taxpayer's property factor~~
35 ~~for that period. If the return for such period has already been filed,~~
36 ~~an amended return is required to be filed.~~

37 ~~(II) (ia) The amount of compensation paid in this state by the~~
38 ~~taxpayer, in a taxable year that is in excess of the amount of total~~
39 ~~compensation paid in this state in the base year and otherwise~~
40 ~~includable in the computations of the payroll factor, as defined in~~

1 Section 25132, shall be excluded from the numerator of that payroll
 2 factor.
 3 (ib) For purposes of this section, “compensation in the base
 4 year” does not include extraordinary events such as deferred
 5 compensation payouts or stock option exercises.
 6 (ii) The apportioning trade or business, or a subgroup thereof,
 7 must submit and certify, with each tax return filed with the
 8 Franchise Tax Board, a summary of the new investment made in
 9 this state.
 10 (2) For purposes of this subdivision, all of the following apply:
 11 (A) Sales or other transactions among members of an
 12 apportioning trade or business shall not be taken into account for
 13 purposes of determining the amount of qualified expenditures
 14 incurred, or new investments made, by the trade or business, or a
 15 subgroup thereof, in this state.
 16 (B) Amounts paid to acquire stock or other equity interests in
 17 a corporation or other business entity or an asset acquisition of an
 18 entire ongoing business operation are excluded from qualified
 19 expenditures.
 20 (C) A subgroup making an election under paragraph (3) is
 21 prohibited from doing either of the following:
 22 (i) Adding an additional sales factor under subparagraph (A) if
 23 the apportioning trade or business incurs a reduction in the level
 24 of the qualified expenditures compared to the prior year qualified
 25 expenditures certified by the subgroup.
 26 (ii) Modifying its property or payroll factor, or both, under
 27 subparagraph (B), unless the amount of the apportioning trade or
 28 business’ property or payroll, or both, in this state exceeds the
 29 amount of its property or payroll, or both, in this state in the
 30 immediately preceding taxable year.
 31 (D) Only one subgroup of an apportioning trade or business
 32 may make an election allowed by paragraph (1).
 33 (3) (A) On or after January 1, 2007, a taxpayer may elect to
 34 adjust the fraction described in subdivision (a) or (b), whichever
 35 is applicable. The election shall be made by attaching a statement
 36 to the original, timely filed return identifying the apportioning
 37 trade or business, or a subgroup thereof, specifying the method of
 38 adjusting the apportionment factor as described in subdivision (a)
 39 or (b), and designating the member of the apportioning trade or

1 business, or a subgroup thereof, that will be required to submit
2 and certify the information, as required by paragraph (1).

3 (B) The election may be terminated without the consent of the
4 Franchise Tax Board after it has been in effect for at least 84
5 months. The termination shall be made on an original, timely filed
6 return for the first year in which the election is to be terminated.

7 (C) The election may be terminated before the 84-month period
8 described in subparagraph (B) has elapsed either by the taxpayer,
9 with the permission of the Franchise Tax Board, or by the Franchise
10 Tax Board, if the taxpayer fails to submit a certification signed by
11 an officer, as required by paragraph (1).

12 (D) The election shall remain in effect until terminated.

13 (E) This subdivision shall not be construed to terminate the
14 water's-edge election made by a taxpayer pursuant to Section
15 25113, nor shall it be construed to allow any change in, or
16 adjustments to, that election.

17 (F) (i) In the event the termination of the election occurs within
18 the 84-month period, with the permission of the Franchise Tax
19 Board, an apportioning trade or business, or subgroup thereof,
20 shall be prohibited from making an election for the following 84
21 months and any adjustment reported pursuant to paragraph (1)
22 shall remain in effect for the years prior to termination.

23 (ii) In the event the termination of the election occurs after the
24 84-month period, the adjustments reported by the apportioning
25 trade or business, or a subgroup thereof, pursuant to paragraph (1),
26 may be carried over until January 1, 2022. If an apportioning trade
27 or business, or subgroup thereof, terminates an election after 84
28 months, and then makes a new election, the prior adjustments
29 reported pursuant to paragraph (1) remain in effect until January
30 1, 2022.

31 (G) (i) If a new affiliate member is formed or acquired by an
32 apportioning trade or business, or a subgroup thereof, or the
33 apportioning trade or business, or a subgroup thereof is acquired,
34 then the election made by the apportioning trade or business, or a
35 subgroup thereof, pursuant to subparagraph (A), shall remain in
36 effect unless the value of the new affiliate members' total business
37 assets exceeds the value of the electing members' total business
38 assets.

1 (ii) ~~If the election is terminated as a result of either a formation~~
2 ~~or an acquisition, as described in clause (i), the provisions of~~
3 ~~subparagraph (F) shall not apply.~~

4 ~~(H) The Franchise Tax Board may prescribe any regulations~~
5 ~~that may be necessary or appropriate to implement the provisions~~
6 ~~of this subdivision.~~

7 (I) (ia) *The value of real and tangible personal property in this*
8 *state owned or rented by a taxpayer member of the apportioning*
9 *trade or business, in a taxable year, that is in excess of the value*
10 *of the taxpayer member's real and tangible personal property*
11 *owned or rented and used in this state in the base year and*
12 *otherwise includable in the computations of the numerator of the*
13 *property factor, as defined in Section 25129, shall be excluded*
14 *from the numerator of that taxpayer member's property factor.*

15 (ib) *Any real or tangible property acquired from other members*
16 *of the taxpayer member's apportioning trade or business shall be*
17 *included in the numerator of the property factor, regardless of*
18 *whether or not, as the result of this inclusion, the value of real and*
19 *tangible personal property in this state owned or rented by a*
20 *taxpayer member would exceed the base year value.*

21 (ic) *If real and tangible personal property is acquired or rented*
22 *in this state by a taxpayer member of the apportioning trade or*
23 *business, and is disposed of by the taxpayer member in a following*
24 *taxable year, the value of that property shall be included in the*
25 *numerator of the taxpayer member's property factor for the year*
26 *in which the property was acquired or rented if the disposition*
27 *occurs within one year or less of the date the property was first*
28 *acquired or rented. If the return for that period has already been*
29 *filed, an amended return shall be filed.*

30 (II) (ia) *The amount of compensation paid in this state by*
31 *taxpayer members of the apportioning trade or business, in a*
32 *taxable year, that is in excess of the amount of total compensation*
33 *paid in this state by the taxpayer members in the base year and*
34 *otherwise includable in the computations of the payroll factor*
35 *numerator, as defined in Section 25132, shall be excluded from*
36 *the numerator of that payroll factor.*

37 (ib) *This subparagraph shall not apply until the apportioning*
38 *trade or business invests over fifty million dollars (\$50,000,000)*
39 *in a qualified facility during a taxable year. If, in subsequent*
40 *taxable years, the amount invested in qualified facilities fails to*

1 *exceed the value of qualified facilities in the year the election*
2 *becomes applicable, the apportioning trade or business shall utilize*
3 *the fraction, described in subdivision (a) or (b), whichever is*
4 *applicable, without adjustment.*

5 *(ic) The apportioning trade or business is prohibited from*
6 *modifying its property or payroll factor, or both, under this*
7 *paragraph unless the amount of the apportioning trade or business*
8 *property and payroll in this state exceeds the amount of its property*
9 *and payroll in this state in the immediately preceding taxable year.*

10 *(ii) The adjustment described in this subparagraph may not*
11 *result in the California apportionment percentage of the*
12 *apportioning trade or business that is less than the apportioning*
13 *trade or business' California sales factor percentage.*

14 *(iii) Sales, transfers, or other transactions between members of*
15 *the apportioning trade or business shall not be taken into account*
16 *for purposes of this subparagraph.*

17 *(2) (A) On or after January 1, 2008, an apportioning trade or*
18 *business may elect to adjust the fraction described in subdivision*
19 *(a) or (b), whichever is applicable, in accordance with this*
20 *subdivision. The election shall be made by attaching a statement*
21 *to the original, timely filed return of the apportioning trade or*
22 *business specifying which method of adjusting the apportionment*
23 *factor under this subdivision the apportioning trade or business*
24 *will utilize and designating the member of the apportioning trade*
25 *or business that will be required to submit the aggregate*
26 *information to substantiate the qualifications for the adjustments*
27 *authorized under this subdivision.*

28 *(B) If the apportioning trade or business chooses to elect the*
29 *method in subparagraph (A) of paragraph (1) of this subdivision,*
30 *all changes made to the sales factor in subsequent years will*
31 *remain in effect for all subsequent taxable years.*

32 *(C) If the apportioning trade or business chooses to elect the*
33 *method in subparagraph (B) of paragraph (1) of this subdivision,*
34 *the base line year chosen by the apportioning trade or business*
35 *shall remain the same for all subsequent taxable years.*

36 *(D) The apportioning trade or business may only switch between*
37 *the method described in subparagraph (A) of paragraph (1) and*
38 *the method described in subparagraph (B) of the same paragraph*
39 *after the election has been in place for 84 months, unless*

1 *permission is granted by the Franchise Tax Board prior to the*
2 *expiration of that 84-month period.*

3 *(E) If the termination of the original election occurs, with the*
4 *permission of the Franchise Tax Board, within the 84-month*
5 *period, an apportioning trade or business shall be prohibited from*
6 *making a new election for the following 84 months, but any*
7 *adjustment pursuant to subparagraph (A) of paragraph (1) shall*
8 *remain in effect.*

9 *(F) If a new affiliate member is formed or acquired by an*
10 *apportioning trade or business, or the apportioning trade or*
11 *business is acquired, then the election made by the apportioning*
12 *trade or business, pursuant to this paragraph, shall remain in*
13 *effect unless the value of the new affiliate member's total business*
14 *assets exceeds the value of the electing member's total business*
15 *assets.*

16 *(G) If the election is terminated as a result of either a formation*
17 *or an acquisition, as described in subparagraph (E), a new election*
18 *may be made.*

19 (d) For purposes of this section:

20 (1) "Gross business receipts" means gross receipts described in
21 subdivision (e) of Section 25120 (other than gross receipts from
22 sales or other transactions within an apportioning trade or business
23 between members of a group of corporations whose income and
24 apportionment factors are required to be included in a combined
25 report under Section 25101, limited, if applicable, by Section
26 25110), whether or not the receipts are excluded from the sales
27 factor by operation of Section 25137.

28 (2) "Agricultural business activity" means activities relating to
29 any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
30 plantation, ranch, nursery, or range. "Agricultural business activity"
31 also includes activities relating to cultivating the soil or raising or
32 harvesting any agricultural or horticultural commodity, including,
33 but not limited to, the raising, shearing, feeding, caring for, training,
34 or management of animals on a farm as well as the handling,
35 drying, packing, grading, or storing on a farm any agricultural or
36 horticultural commodity in its unmanufactured state, but only if
37 the owner, tenant, or operator of the farm regularly produces more
38 than one-half of the commodity so treated.

1 (3) “Extractive business activity” means activities relating to
2 the production, refining, or processing of oil, natural gas, or mineral
3 ore.

4 (4) “Savings and loan activity” means any activities performed
5 by savings and loan associations or savings banks which have been
6 chartered by federal or state law.

7 (5) “Banking or financial business activity” means activities
8 attributable to dealings in money or moneyed capital in substantial
9 competition with the business of national banks.

10 (6) “Apportioning trade or business” means a distinct trade or
11 business whose business income is required to be apportioned
12 under Sections 25101 and 25120, limited, if applicable, by Section
13 25110, using the same denominator for each of the applicable
14 payroll, property, and sales factors.

15 (7) “Base year” means ~~the year immediately preceding the year~~
16 ~~of election.~~ *taxable year immediately preceding the first taxable*
17 *year for which an election made pursuant to paragraph (2) of*
18 *subdivision (c) is applicable.*

19 (8) “Value of real and tangible personal property” ~~in this state~~
20 means the value of owned and rented property *in this state* as
21 described in Section 25130.

22 (9) “Amount of compensation” means compensation *in this*
23 *state, as* described in Section 25132.

24 ~~(10) “Subgroup” means a distinct group of affiliated corporations~~
25 ~~whose total business assets equal or exceed \$one billion dollars~~
26 ~~(\$1,000,000,000).~~

27 ~~(11) (A) “Qualified expenditures” means any of the following~~
28 ~~expenditures that are incurred on or after January 1, 2008:~~

29 ~~(i) Capital expenditures, including maintenance costs, for real~~
30 ~~and tangible personal property located in this state.~~

31 ~~(ii) Expenses incurred to acquire, develop, or license intellectual~~
32 ~~property in this state.~~

33 ~~(iii) Research and development expenses, as defined in Section~~
34 ~~174 of the Internal Revenue Code, incurred in this state.~~

35 ~~(iv) Capitalized rent paid in this state in excess of the prior year.~~

36 ~~(v) The total amount of compensation and benefits paid to~~
37 ~~employees in this state and the payments to independent contractors~~
38 ~~and payroll companies for work performed in this state in excess~~
39 ~~of the amount paid during the prior year.~~

40 ~~(vi) Training costs incurred in this state.~~

1 ~~(vii) Costs incurred in providing a basic level of health care to~~
2 ~~employees in this state, as defined in the Knox-Keene Act, in~~
3 ~~excess of the prior year.~~

4 ~~(viii) Expenditures incurred in connection with funding research~~
5 ~~at a four-year public or private college or university located in~~
6 ~~California.~~

7 *(10) “Qualified facility” means a new facility, acquired or*
8 *constructed in this state, or an existing facility, expanded or*
9 *rehabilitated in this state, provided that the total amount of*
10 *capitalized expenditures, leasehold improvements, tangible*
11 *personal property incurred for the qualified facility, and*
12 *compensation paid to new employees for services performed at*
13 *the qualified facility of the apportioning trade or business for the*
14 *taxable year is at least fifty million dollars (\$50,000,000).*

15 *(11) (A) “Qualified expenditures” means any of the following*
16 *expenditures that are incurred on or after January 1, 2008:*

17 *(i) Capital expenditures for real and tangible personal property*
18 *located in this state.*

19 *(ii) Expenses incurred to acquire, develop, or license intellectual*
20 *property in this state.*

21 *(iii) Research and experimental expenditures, within the*
22 *meaning of Section 174 of the Internal Revenue Code, incurred in*
23 *this state.*

24 *(iv) Capitalized rent paid in this state in excess of the prior year.*

25 *(v) The total amount of compensation and benefits paid to*
26 *employees in this state, as defined in Section 25132 and the*
27 *regulations pursuant thereto, in excess of the amount paid during*
28 *the prior taxable year. “Total amount of compensation and*
29 *benefits” also includes any modifications to the payroll factors*
30 *contained in the regulations promulgated under Section 25137.*

31 *(B) An expense that qualifies as an eligible expenditure under*
32 *two or more categories of qualified expenditures, as listed in*
33 *subparagraph (A), may be taken into account only under one*
34 *category of qualified expenditures for purposes of satisfying the*
35 *two hundred fifty million dollars (\$250,000,000) requirement*
36 *described in subparagraph (A) of paragraph (1) of subdivision (c).*

37 *(C) Sales, transfers, or other transactions between members of*
38 *the apportioning trade or business shall not be taken into account*
39 *for purposes of determining the amount of qualified expenditures*
40 *made in this state.*

1 (12) In any case where the income and apportionment factors
2 of two or more savings associations or corporations are required
3 to be included in a combined report under Section 25101, limited,
4 if applicable, by Section 25110, both of the following shall apply:

5 (A) The application of the more than 50 percent test of
6 subdivision (b) shall be made with respect to the “gross business
7 receipts” of the entire apportioning trade or business of the group.

8 (B) The business income of the apportioning trade or business;
9 ~~or a subgroup thereof,~~ shall be apportioned in accordance with
10 subdivision (a), (b), or (c), as applicable.

11 *(e) For purposes of subparagraphs (A) and (B) of paragraph*
12 *(1) of subdivision (c), qualified expenditures and investment in a*
13 *qualified facility do not include purchased or otherwise acquired*
14 *stock or other equity interest in a corporation or other business*
15 *entity. In addition, in any case where a member purchases or*
16 *otherwise acquires all or any portion of the assets of an existing*
17 *trade or business, irrespective of the form of entity, that is doing*
18 *business in this state, within the meaning of Section 23101, the*
19 *purchased assets shall not be treated as a qualified expenditure*
20 *or new investment for purposes of subparagraph (A) or (B) of*
21 *paragraph (1) of subdivision (c).*

22 ~~(e)~~

23 (f) The provisions of this section are severable. If any provision
24 of this section or its application is held invalid, that invalidity shall
25 not affect other provisions or applications that can be given effect
26 without the invalid provision or application.

27 ~~(f)~~

28 (g) The amendments made to this section by the act adding this
29 subdivision shall apply to taxable years beginning on or after
30 January 1, 2008.

31 (h) *The Franchise Tax Board may prescribe any regulations*
32 *that may be necessary or appropriate to implement the provisions*
33 *of this section.*

34 ~~(g)~~

35 (i) This section shall remain in effect until December 1, 2002
36 2021, and as of that date is repealed. *Any adjustments made*
37 *pursuant to subdivision (c) shall remain in effect for all subsequent*
38 *taxable years.*

39 SEC. 2. Section 25128 is added to the Revenue and Taxation
40 Code, to read:

1 25128. (a) Notwithstanding Section 38006, for taxable years
2 beginning on or after January 1, 2022, all business income shall
3 be apportioned to this state by multiplying the business income
4 by a fraction, the numerator of which is the property factor plus
5 the payroll factor plus twice the sales factor, and the denominator
6 of which is four, except as provided in subdivision (b) or (c).

7 (b) If an apportioning trade or business derives more than 50
8 percent of its “gross business receipts” from conducting one or
9 more qualified business activities, all business income of the
10 apportioning trade or business shall be apportioned to this state by
11 multiplying business income by a fraction, the numerator of which
12 is the property factor plus the payroll factor plus the sales factor,
13 and the denominator of which is three.

14 (c) For purposes of this section, a “qualified business activity”
15 means the following:

- 16 (1) An agricultural business activity.
- 17 (2) An extractive business activity.
- 18 (3) A savings and loan activity.
- 19 (4) A banking or financial business activity.

20 (d) For purposes of this section:

21 (1) “Gross business receipts” means gross receipts described in
22 subdivision (e) of Section 25120 (other than gross receipts from
23 sales or other transactions within an apportioning trade or business
24 between members of a group of corporations whose income and
25 apportionment factors are required to be included in a combined
26 report under Section 25101, limited, if applicable, by Section
27 25110), whether or not the receipts are excluded from the sales
28 factor by operation of Section 25137.

29 (2) “Agricultural business activity” means activities relating to
30 any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
31 plantation, ranch, nursery, or range. “Agricultural business activity”
32 also includes activities relating to cultivating the soil or raising or
33 harvesting any agricultural or horticultural commodity, including,
34 but not limited to, the raising, shearing, feeding, caring for, training,
35 or management of animals on a farm as well as the handling,
36 drying, packing, grading, or storing on a farm any agricultural or
37 horticultural commodity in its unmanufactured state, but only if
38 the owner, tenant, or operator of the farm regularly produces more
39 than one-half of the commodity so treated.

1 (3) “Extractive business activity” means activities relating to
2 the production, refining, or processing of oil, natural gas, or mineral
3 ore.

4 (4) “Savings and loan activity” means any activities performed
5 by savings and loan associations or savings banks which have been
6 chartered by federal or state law.

7 (5) “Banking or financial business activity” means activities
8 attributable to dealings in money or moneyed capital in substantial
9 competition with the business of national banks.

10 (6) “Apportioning trade or business” means a distinct trade or
11 business whose business income is required to be apportioned
12 under Sections 25101 and 25120, limited, if applicable, by Section
13 25110, using the same denominator for each of the applicable
14 payroll, property, and sales factors.

15 (7) Paragraph (4) of subdivision (c) shall apply only if the
16 Franchise Tax Board adopts the Proposed Multistate Tax
17 Commission Formula for the Uniform Apportionment of Net
18 Income from Financial Institutions, or its substantial equivalent,
19 and shall become operative upon the same operative date as the
20 adopted formula.

21 (8) In any case where the income and apportionment factors of
22 two or more savings associations or corporations are required to
23 be included in a combined report under Section 25101, limited, if
24 applicable, by Section 25110, both of the following shall apply:

25 (A) The application of the more than 50 percent test of
26 subdivision (b) shall be made with respect to the “gross business
27 receipts” of the entire apportioning trade or business of the group.

28 (B) The entire business income of the group shall be apportioned
29 in accordance with either subdivision (a) or (b), as applicable.

30 (e) This action shall become operative on or after January 1,
31 2022.

32 SEC. 3. This act provides for a tax levy within the meaning of
33 Article IV of the Constitution and shall go into immediate effect.

34 SEC. 4. It is the intent of the Legislature that Section 1 of this
35 act does not modify the sales factor, as defined in Section 25134
36 of the Revenue and Taxation Code, used in any special
37 apportionment formulas contained in the regulations promulgated

- 1 by the Franchise Tax Board pursuant to Section 25137 of the
- 2 Revenue and Taxation Code.

O