

ASSEMBLY BILL

No. 936

Introduced by Assembly Member Villines

February 26, 2009

An act to amend Section 23036 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 936, as introduced, Villines. Income and corporation taxes: definitions.

The Corporation Tax Law, which is administered by the Franchise Tax Board, imposes a tax on corporations doing business in this state. Existing law defines the term "tax" and sets forth the application of various credits to those taxes.

This bill would make technical, nonsubstantive change, to these provisions.

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

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

- 1 SECTION 1. Section 23036 of the Revenue and Taxation Code
2 is amended to read:
3 23036. (a) (1) The term "tax" includes any of the following:
4 (A) The tax imposed under Chapter 2 (commencing with Section
5 23101).
6 (B) The tax imposed under Chapter 3 (commencing with Section
7 23501).

1 (C) The tax on unrelated business taxable income, imposed
2 under Section 23731.

3 (D) The tax on—S “S” corporations imposed under Section
4 23802.

5 (2) The term “tax” does not include any amount imposed under
6 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
7 of subdivision (f) of Section 24667.

8 (b) For purposes of Article 5 (commencing with Section 18661)
9 of Chapter 2, Article 3 (commencing with Section 19031) of
10 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
11 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
12 and for purposes of Sections 18601, 19001, and 19005, the term
13 “tax” also includes all of the following:

14 (1) The tax on limited partnerships, imposed under Section
15 17935, the tax on limited liability companies, imposed under
16 Section 17941, and the tax on registered limited liability
17 partnerships and foreign limited liability partnerships imposed
18 under Section 17948.

19 (2) The alternative minimum tax imposed under Chapter 2.5
20 (commencing with Section 23400).

21 (3) The tax on built-in gains of—S “S” corporations, imposed
22 under Section 23809.

23 (4) The tax on excess passive investment income of—S “S”
24 corporations, imposed under Section 23811.

25 (c) Notwithstanding any other provision of this part, credits are
26 allowed against the “tax” in the following order:

27 (1) Credits that do not contain carryover provisions.

28 (2) Credits that, when the credit exceeds the “tax,” allow the
29 excess to be carried over to offset the “tax” in succeeding taxable
30 years, except for those credits that are allowed to reduce the “tax”
31 below the tentative minimum tax, as defined by Section 23455.
32 The order of credits within this paragraph shall be determined by
33 the Franchise Tax Board.

34 (3) The minimum tax credit allowed by Section 23453.

35 (4) Credits that are allowed to reduce the “tax” below the
36 tentative minimum tax, as defined by Section 23455.

37 (5) Credits for taxes withheld under Section 18662.

38 (d) Notwithstanding any other provision of this part, each of
39 the following applies:

- 1 (1) No credit may reduce the “tax” below the tentative minimum
2 tax (as defined by paragraph (1) of subdivision (a) of Section
3 23455), except the following credits:
- 4 (A) The credit allowed by former Section 23601 (relating to
5 solar energy).
 - 6 (B) The credit allowed by former Section 23601.4 (relating to
7 solar energy).
 - 8 (C) The credit allowed by former Section 23601.5 (relating to
9 solar energy).
 - 10 (D) The credit allowed by Section 23609 (relating to research
11 expenditures).
 - 12 (E) The credit allowed by former Section 23609.5 (relating to
13 clinical testing expenses).
 - 14 (F) The credit allowed by Section 23610.5 (relating to
15 low-income housing).
 - 16 (G) The credit allowed by former Section 23612 (relating to
17 sales and use tax credit).
 - 18 (H) The credit allowed by Section 23612.2 (relating to enterprise
19 zone sales or use tax credit).
 - 20 (I) The credit allowed by former Section 23612.6 (relating to
21 Los Angeles Revitalization Zone sales tax credit).
 - 22 (J) The credit allowed by former Section 23622 (relating to
23 enterprise zone hiring credit).
 - 24 (K) The credit allowed by Section 23622.7 (relating to enterprise
25 zone hiring credit).
 - 26 (L) The credit allowed by former Section 23623 (relating to
27 program area hiring credit).
 - 28 (M) The credit allowed by former Section 23623.5 (relating to
29 Los Angeles Revitalization Zone hiring credit).
 - 30 (N) The credit allowed by former Section 23625 (relating to
31 Los Angeles Revitalization Zone hiring credit).
 - 32 (O) The credit allowed by Section 23633 (relating to targeted
33 tax area sales or use tax credit).
 - 34 (P) The credit allowed by Section 23634 (relating to targeted
35 tax area hiring credit).
 - 36 (Q) The credit allowed by Section 23649 (relating to qualified
37 property).
- 38 (2) No credit against the tax may reduce the minimum franchise
39 tax imposed under Chapter 2 (commencing with Section 23101).

1 (e) Any credit—~~which~~ *that* is partially or totally denied under
2 subdivision (d) is allowed to be carried over to reduce the “tax”
3 in the following year, and succeeding years if necessary, if the
4 provisions relating to that credit include a provision to allow a
5 carryover of the unused portion of that credit.

6 (f) Unless otherwise provided, any remaining carryover from a
7 credit that has been repealed or made inoperative is allowed to be
8 carried over under the provisions of that section as it read
9 immediately prior to being repealed or becoming inoperative.

10 (g) Unless otherwise provided, if two or more taxpayers share
11 in costs that would be eligible for a tax credit allowed under this
12 part, each taxpayer is eligible to receive the tax credit in proportion
13 to his or her respective share of the costs paid or incurred.

14 (h) Unless otherwise provided, in the case of an—~~S~~ “S”
15 corporation, any credit allowed by this part is computed at the—~~S~~
16 “S” corporation level, and any limitation on the expenses
17 qualifying for the credit or limitation upon the amount of the credit
18 applies to the—~~S~~ “S” corporation and to each shareholder.

19 (i) (1) With respect to any taxpayer that directly or indirectly
20 owns an interest in a business entity that is disregarded for tax
21 purposes pursuant to Section 23038 and any regulations thereunder,
22 the amount of any credit or credit carryforward allowable for any
23 taxable year attributable to the disregarded business entity is limited
24 in accordance with paragraphs (2) and (3).

25 (2) The amount of any credit otherwise allowed under this part,
26 including any credit carryover from prior years, that may be applied
27 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for
28 the taxable year is limited to an amount equal to the excess of the
29 taxpayer’s regular tax (as defined in Section 23455), determined
30 by including income attributable to the disregarded business entity
31 that generated the credit or credit carryover, over the taxpayer’s
32 regular tax (as defined in Section 23455), determined by excluding
33 the income attributable to that disregarded business entity. No
34 credit is allowed if the taxpayer’s regular tax (as defined in Section
35 23455), determined by including the income attributable to the
36 disregarded business entity is less than the taxpayer’s regular tax
37 (as defined in Section 23455), determined by excluding the income
38 attributable to the disregarded business entity.

39 (3) If the amount of a credit allowed pursuant to the section
40 establishing the credit exceeds the amount allowable under this

1 subdivision in any taxable year, the excess amount may be carried
2 over to subsequent taxable years pursuant to subdivisions (d), (e),
3 and (f).

4 (j) (1) Unless otherwise specifically provided, in the case of a
5 taxpayer that is a partner or shareholder of an eligible ~~pass-through~~
6 *passthrough* entity described in paragraph (2), any credit passed
7 through to the taxpayer in the taxpayer's first taxable year
8 beginning on or after the date the credit is no longer operative may
9 be claimed by the taxpayer in that taxable year, notwithstanding
10 the repeal of the statute authorizing the credit prior to the close of
11 that taxable year.

12 (2) For purposes of this subdivision, "~~eligible pass-through~~
13 *passthrough* entity" means any partnership or ~~S~~ "S" corporation
14 that files its return on a fiscal year basis pursuant to Section 18566,
15 and that is entitled to a credit pursuant to this part for the taxable
16 year that begins during the last year a credit is operative.

17 (3) This subdivision applies to credits that become inoperative
18 on or after the operative date of the act adding this subdivision.