California
Franchise
Tax
Board

SUMMARY OF FEDERAL INCOME TAX CHANGES --- 2007

Laws Affected:

Personal Income Tax Laws
Corporation Tax Laws
Administration of Franchise and Income Tax Laws

SUMMARY OF

FEDERAL INCOME TAX

CHANGES

2007

Prepared by the Staff of the

FRANCHISE TAX BOARD (FTB)

State of California

This report is submitted in fulfillment of the requirement in Revenue and Taxation Code section 19522.

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EXECUTIVE SUMMARY
FEDERAL INCOME TAX CHANGES - 2007

Prepared by the Staff of the
FRANCHISE TAX BOARD
State of California

During 2007, the Internal Revenue Code or its application by California was changed by:

PUBLIC LAW	TITLE
110-28	Small Business and Work Opportunity Tax Act (SBWOTA) of 2007 (May 25, 2007)
110-140	The Energy Independence and Security Act (EISA) of 2007 (December 19, 2007)
110-141	The Virginia Tech Victims and Family Assistance Act (December 19, 2007)
110-142	The Mortgage Forgiveness Debt Relief Act (MFDRA) of 2007 (December 20, 2007)
110-166	The Tax Increase Prevention Act (TIPRA) of 2007 (December 26, 2007)
110-172	The Tax Technical Corrections Act (TTCA) of2007 (December 29, 2007)
110-42, 110-52, 110-89, 110-92	2007 Miscellaneous Federal Acts Impacting the Internal Revenue Code (IRC) and Not Requiring a California Response.

This report explains the new federal laws along with the effective dates, the corresponding California law, if any, including an explanation of any changes made in response to the new federal law, and the impact on California revenue were California to conform to the federal changes. This report also contains citations to the section numbers of the federal Public Law (PL), the Internal Revenue Code (IRC), and the California Revenue and Taxation Code (R&TC) impacted by the federal changes.

Following is a list of California tax provisions that expire in 2007. See Exhibit B for a complete listing of expiring provisions in California law.

California Sunset	California Section	Federal Section	Federal Sunset	Description and Comments
01/31/07[1]	17053.46 23646	N/A	N/A	Credit: Hiring in the Local Agency Military Base Recovery Area
01/31/07[1]	17268 24356.8	N/A	N/A	Deduction: Expensing Business Property in Local Agency Military Base Recovery Areas
01/31/07[1]	17276.5 24416.2	N/A	N/A	Deduction: Net Operating Losses in the Local Agency Military Base Recovery Areas (LAMBRA)
12/31/07	17052.10 23610	N/A	N/A	Credit: Rice Straw
12/31/07	18716	N/A	N/A	Voluntary Contribution: State Children's Trust Fund
12/31/07	18744	N/A	N/A	Voluntary Contribution: Fish & Game Preservation Fund
12/31/07	18796	N/A	N/A	Voluntary Contribution: California Breast Cancer Research Fund

[1] The LAMBRA provisions expire eight years after one of two events occur. The expiration date listed for LAMBRAs is the earliest date the tax preferences or incentives can expire.

This report contains the following exhibits:

Exhibit A 2007 Miscellaneous Federal Acts Impacting the IRC Not Requiring a California Response. This exhibit contains a short explanation of the federal change where that change is either not administered by the FTB or not applicable to California.

Exhibit B Complete listing of expiring provisions in California law.

Exhibit C Revenue tables.

Exhibit D Glossary of abbreviations used in this report.

In addition, a topical index is provided at the end of the report.

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SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SBWOTA) (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

PART 1 – SMALL BUSINESS TAX RELIEF PROVISIONS
SUBPART A. – GENERAL PROVISIONS

Section	Section Title
8211	Extension and Modification of Work Opportunity Tax Credit

Background

The work opportunity tax credit (WOTC) is available on an elective basis for employers hiring individuals from one or more of nine targeted groups. The amount of the credit available to an employer is determined by the amount of qualified wages paid by the employer. Generally, qualified wages consist of wages attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual begins work for the employer (two years in the case of an individual in the long-term family assistance recipient category).

Targeted groups eligible for the credit

Generally, an employer is eligible for the credit only for qualified wages paid to members of a targeted group.

(1) Families receiving Temporary Assistance for Needy Families Program (TANF)

An eligible recipient is an individual certified by a designated local employment agency (e.g., a State employment agency) as being a member of a family eligible to receive benefits under the TANF for a period of at least nine months part of which is during the 18-month period ending on the hiring date. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for the TANF.

(2) Qualified veteran

A qualified veteran is a veteran who is certified by the designated local agency as a member of a family certified as receiving assistance under a food stamp program under the Food Stamp Act of 1977 for a period of at least three months part of which is during the 12-month period ending on the hiring date. For these purposes, members of a family are defined to include only those individuals taken into account for purposes of determining eligibility for a food stamp program under the Food Stamp Act of 1977.

For these purposes, a veteran is an individual who has served on active duty (other than for training) in the Armed Forces for more than 180 days or who has been discharged or released from active duty in the Armed Forces for a service-connected disability.

However, any individual who has served for a period of more than 90 days during which the individual was on active duty (other than for training) is not a qualified veteran if any of this active duty occurred during the 60-day period ending on the date the individual was hired by the employer. This latter rule is intended to prevent employers who hire current members of the armed services (or those departed from service within the last 60 days) from receiving the credit.

(3) Qualified ex-felon

A qualified ex-felon is an individual certified as: (1) having been convicted of a felony under any state or federal law, and (2) having a hiring date within one year of release from prison or date of conviction.

(4) High-risk youth

A high-risk youth is an individual certified as being at least age 18 but not yet age 25 on the hiring date and as having a principal place of abode within an empowerment zone, enterprise community, or renewal community (as defined under Subchapter U of Subtitle A, Chapter 1 of the IRC. Qualified wages do not include wages paid or incurred for services performed after the individual moves outside an empowerment zone, enterprise community, or renewal community.

(5) Vocational rehabilitation referral

A vocational rehabilitation referral is an individual who is certified by a designated local agency as an individual who has a physical or mental disability that constitutes a substantial handicap to employment and who has been referred to the employer while receiving, or after completing: (a) vocational rehabilitation services under an individualized, written plan for employment under a State plan approved under the Rehabilitation Act of 1973; or (b) under a rehabilitation plan for veterans carried out under Chapter 31 of Title 38, U.S. Code. Certification will be provided by the designated local employment agency upon assurances from the vocational rehabilitation agency that the employee has met the above conditions.

(6) Qualified summer youth employee

A qualified summer youth employee is an individual: (1) who performs services during any 90-day period between May 1 and September 15, (2) who is certified by the designated local agency as being 16 or 17 years of age on the hiring date, (3) who has not been an employee of that employer before, and (4) who is certified by the designated local agency as having a principal place of abode within an empowerment zone, enterprise community, or renewal community (as defined under Subchapter U of Subtitle A, Chapter 1 of the IRC).

As with high-risk youths, no credit is available on wages paid or incurred for service performed after the qualified summer youth moves outside of an empowerment zone, enterprise community, or renewal community.

If, after the end of the 90-day period, the employer continues to employ a youth who was certified during the 90-day period as a member of another targeted group, the limit on qualified first year wages will take into account wages paid to the youth while a qualified summer youth employee.

(7) Qualified food stamp recipient

A qualified food stamp recipient is an individual aged 18 but not yet 40 certified by a designated local employment agency as being a member of a family receiving assistance under a food stamp program under the Food Stamp Act of 1977 for a period of at least six months ending on the hiring date. In the case of families that cease to be eligible for food stamps under section 6(o) of the Food Stamp Act of 1977, the six-month requirement is replaced with a requirement that the family has been receiving food stamps for at least three of the five months ending on the date of hire. For these purposes, members of the family are defined to include only those individuals taken into account for purposes of determining eligibility for a food stamp program under the Food Stamp Act of 1977.

(8) Qualified SSI recipient

A qualified Supplemental Security Income (SSI) recipient is an individual designated by a local agency as receiving SSI benefits under Title XVI of the Social Security Act for any month ending within the 60-day period ending on the hiring date.

(9) Long-term family assistance recipients

A qualified long-term family assistance recipient is an individual certified by a designated local agency as being: (1) a member of a family that has received family assistance for at least 18 consecutive months ending on the hiring date; (2) a member of a family that has received such family assistance for a total of at least 18 months (whether or not consecutive) after August 5, 1997, (the date of enactment of the welfare-to-work tax credit)[1] if the individual is hired within two years after the date that the 18-month total is reached; or (3) a member of a family who is no longer eligible for family assistance because of either federal or state time limits, if the individual is hired within two years after the federal or state time limits made the family ineligible for family assistance.

Qualified wages

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer's deduction for wages is reduced by the amount of the credit.

For purposes of the credit, generally, wages are defined by reference to the Federal Unemployment Tax Act (FUTA) definition of wages contained in IRC section 3306(b) (without regard to the dollar limitation therein contained). Special rules apply in the case of certain agricultural labor and certain railroad labor.

1 The welfare-to-work tax credit was consolidated into the work opportunity tax credit in the Tax Relief and Health Care Act of 2006 for qualified individuals who begin to work for an employer after December 31, 2006.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Calculation of the credit

The credit available to an employer for qualified wages paid to members of all targeted groups except for long-term family assistance recipients equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Generally, qualified first-year wages are qualified wages (not in excess of $6,000) attributable to service rendered by a member of a targeted group during the one-year period beginning with the day the individual began work.

In the case of long-term family assistance recipients, the credit equals 40% (25% for employment of 400 hours or less) of $10,000 for qualified first-year wages and 50% of the first $10,000 of qualified second-year wages. Generally, qualified second-year wages are qualified wages (not in excess of $10,000) attributable to service rendered by a member of the long-term family assistance category during the one-year period beginning on the day after the one-year period beginning with the day the individual began work for the employer. Therefore, the maximum credit per employee is $9,000 (40% of the first $10,000 of qualified first-year wages plus 50% of the first $10,000 of qualified second-year wages).

Certification rules

An individual is not treated as a member of a targeted group unless: (1) on or before the day on which an individual begins work for an employer, the employer has received a certification from a designated local agency that such individual is a member of a targeted group; or (2) on or before the day an individual is offered employment with the employer, a prescreening notice is completed by the employer with respect to such individual, and not later than the 28th day after the individual begins work for the employer, the employer submits such notice, signed by the employer and the individual under penalties of perjury, to the designated local agency as part of a written request for certification. For these purposes, a pre-screening notice is a document (in such form as the Secretary may prescribe), which contains information provided by the individual on the basis of which the employer believes that the individual is a member of a targeted group.

Minimum employment period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

Other rules

The WOTC is not allowed for wages paid to a relative or dependent of the taxpayer. No credit is allowed for wages paid to an individual who is a more than 50 percent owner of the entity. Similarly, wages paid to replacement workers during a strike or lock out are not eligible for the WOTC.

Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the WOTC. The WOTC generally is not allowed for wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

Expiration

The WOTC is not available for individuals who begin work for an employer after December 31, 2007.

New Federal Law (IRC section 51)

Extension

The SBWOTA extends the WOTC for 44 months (for qualified individuals who begin work for an employer after December 31, 2007, and before September 1, 2011).

Qualified veterans targeted group

Under the Act, the provision expands the qualified veterans' targeted group to include an individual who is certified as entitled to compensation for a service-connected disability and: (1) having a hiring date which is not more than one year after having been discharged or released from active duty in the Armed Forces of the United States, or (2) having been unemployed for six months or more (whether or not consecutive) during the one-year period ending on the date of hiring. Being entitled to compensation for a service-connected disability is defined with reference to section 101 of Title 38, U.S.C., which means having a disability rating of ten percent or higher for service connected injuries.

Qualified first-year wages

The Act expands the definition of qualified first-year wages from $6,000 to $12,000 in the case of individuals who qualify under either of the new expansions of the qualified veteran group, above. The expanded definition of qualified first-year wages does not apply to the veterans qualified with reference to a food stamp program, as defined under present law.

High-risk youth targeted group

The Act expands the definition of high-risk youths to include otherwise qualifying individuals age 18 but not yet age 40 on the hiring date. Also, the provision expands the definition of eligible individuals under this category to include otherwise qualifying individuals from rural renewal counties. For these purposes, a rural renewal county is a county outside a metropolitan statistical area (as defined the Office of Management and Budget), which had a net population loss during the five-year periods 1990-1994 and 1995-1999. Finally, the provision changes the name of the category to the "designated community residents" targeted group.

Vocational rehabilitation referral targeted group

The Act expands the definition of vocational rehabilitation referral to include any individual who is certified by a designated local agency as an individual who has a physical or mental disability that constitutes a substantial handicap to employment and who has been referred to the employer while receiving, or after completing, an individual work plan developed and implemented by an employment network pursuant to subsection (g) of section 1148 of the Social Security Act.

Certification

Under present law, designated local employment agencies may enter into information sharing agreements to facilitate certification for purposes of WOTC eligibility. Such agreements are subject to confidentiality requirements. The Congress expects that the Department of Defense, the Department of Veterans Affairs, and the Social Security Administration will work with the designated local agencies to facilitate certification of the expansions of the qualified veteran category and the SSI recipient category. Finally, the Congress expects that the Internal Revenue Service (IRS) will develop procedures to allow (in addition to original documents) paper versions of electronically completed pre-screening notices and photographic copies of hand signed original pre-screening notices for purposes of the credit. This allowance of pre-screening notices, which are not original documents, should be allowed only to the extent it does not foster incorrect or fraudulent filings.

Effective Date

The provisions are effective for individuals who begin work for an employer after the date of enactment.

California Law

California has no comparable credit.

Impact on California Revenue

Not applicable.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8212	Extension and Increase of Expensing for Small Business

Background

Under current law, in lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or "expense") such costs under IRC section 179. Present law provides that the maximum amount a taxpayer may expense, for taxable years beginning in 2003 through 2009, is $100,000 of the cost of qualifying property placed in service for the taxable year.[2] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2010 is treated as qualifying property. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. The $100,000 and $400,000 amounts are indexed for inflation for taxable years beginning after 2003 and before 2010. For taxable years beginning in 2007, the inflation-adjusted amounts are $112,000 and $450,000, respectively.[3]

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under IRC section 38 is allowed with respect to any amount for which a deduction is allowed under IRC section 179. An expensing election is made under rules prescribed by the Secretary.[4]

For taxable years beginning in 2010 and thereafter (or before 2003), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $25,000 and $200,000 amounts are not indexed.

In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off the- shelf computer software). An expensing election may be revoked only with consent of the Commissioner.

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2 Additional IRC section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (IRC section 1397A), a renewal community (IRC section 1400J), or the Gulf Opportunity Zone (IRC section 1400N(e)).

3 Rev. Proc. 2006-53, sec. 2.19, 2006-48 I.R.B. 996 (Nov. 27, 2006).

4 IRC section 179(c)(1). Under Treas. Reg. sec. 1.179-5, applicable to property placed in service in taxable years beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke an election under IRC section 179 without the consent of the Commissioner on an amended Federal tax return for that taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. T.D. 9209, July 12, 2005.

New Federal Law (IRC section 179)

The Act increases the $100,000 and $400,000 amounts to $125,000 and $500,000, respectively, for taxable years beginning in 2007 through 2010. These amounts are indexed for inflation in taxable years beginning after 2007 and before 2011.

In addition, the provision extends for one year the increased amount that a taxpayer may deduct and the other IRC section 179 rules applicable in taxable years beginning before 2010. Thus, under the provision, these rules continue in effect for taxable years beginning after 2009 and before 2011.

Effective Date

The provision is effective for taxable years beginning after December 31, 2006.

California Law (R&TC sections 17205 and 24356)

California specifically does not allow amounts in excess of $25,000 to be expensed; the placed in service limitation for California purposes remains at $200,000; and the California amounts are not indexed.

Impact on California Revenue

Not applicable.

Section	Section Title
8213	Determination of Credit for Certain Taxes Paid With Respect to Employee Cash Tips

Background

The federal minimum wage under the Fair Labor Standards Act (the “FLSA”) is $5.15 per hour. In the case of tipped employees, the FLSA provides that the minimum wage may be reduced to $2.13 per hour (that is, the employer is only required to pay cash equal to $2.13 per hour) if the combination of tips and cash income equals the federal minimum wage.

Prior to the SBWOTA, employee tip income is treated as employer-provided wages for purposes of the Federal Insurance Contributions Act (“FICA”). Employees are required to report the amount of tips received.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

A business tax credit is provided equal to an employer's FICA taxes paid on tips in excess of those treated as wages for purposes of meeting the minimum wage requirements of the FLSA. The credit applies only with respect to FICA taxes paid on tips received from customers in connection with the providing, delivering, or serving of food or beverages for consumption if the tipping of employees delivering or serving food or beverages by customers is customary. The credit is available whether or not the employee reports the tips on which the employer FICA taxes were paid. No deduction is allowed for any amount taken into account in determining the tip credit. A taxpayer may elect not to have the credit apply for a taxable year.

The tentative minimum tax (TMT) is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount. A taxpayer is subject to the alternative minimum tax to the extent the TMT exceeds the regular tax. Thus, business tax credits generally cannot offset the alternative minimum tax liability.

<u>New Federal Law (IRC section 45B)</u>

The Act treats the TMT as being zero for purposes of determining the tax liability limitation with respect to the WOTC and the credit for taxes paid with respect to employee cash tips.

Thus, the WOTC and the credit for taxes paid with respect to cash tips may offset the alternative minimum tax liability.

<u>Effective Date</u>

The provision applies to credits determined in taxable years beginning after December 31, 2006.

<u>California Law</u>

California has no comparable credit.

<u>Impact on California Revenue</u>

Not applicable.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8214	Waiver of Individual and Corporate Alternative Minimum Tax Limits on Work Opportunity Credit and Credit for Taxes Paid With Respect to Employee Cash Tips

Background

Under present law, business tax credits generally may not exceed the excess of the taxpayer's income tax liability over the TMT (or, if greater, 25 percent of the regular tax liability in excess of $25,000). Credits in excess of the limitation may be carried back one year and carried over for up to 20 years.

The TMT is an amount equal to specified rates of tax imposed on the excess of the alternative minimum taxable income over an exemption amount. The taxpayer is subject to the alternative minimum tax to the extent the TMT exceeds the regular tax. Thus, business tax credits generally cannot offset the alternative minimum tax liability.

New Federal Law (IRC section 38)

The SBWOTA provision treats the TMT tax as being zero for purposes of determining the tax liability limitation with respect to the WOTC and the credit for taxes paid with respect to employee cash tips.

Thus, the WOTC and the credit for taxes paid with respect to cash tips may offset the alternative minimum tax liability.

Effective Date

The provision applies to credits determined in taxable years beginning after December 31, 2006.

California Law

California has no credits comparable to the federal WOTC and the credit for taxes paid with respect to cash tips.

Impact on California Revenue

Not applicable.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8215	Family Business Tax Simplification

Background

Under present law, a partnership is defined to include a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation or venture is carried on, and which is not a trust or estate or a corporation (IRC section 7701(a)(2)). A partnership is treated as a pass-through entity, and income earned by the partnership, whether distributed or not, is taxed to the partners. The income of a partnership and its partners is determined under subchapter K of the IRC. An election not to be subject to the rules of subchapter K is provided for certain partnerships that meet specified criteria (e.g., the partnership is for investment purposes only, is for the joint production, extraction or use of property but not for selling services or property produced or extracted, or is used by securities dealers for short periods to underwrite, sell or distribute securities). Otherwise, the rules of subchapter K apply to a venture that is treated as a partnership for federal tax purposes.

In the case of an individual with self-employment income, the income subject to self employment tax is the net earnings from self-employment (IRC section 1402(a)). Net earnings from self-employment is the gross income derived by an individual from any trade or business carried on by the individual, less the deductions attributable to the trade or business that are allowed under the self-employment tax rules. If the individual is a partner in a partnership, the net earnings from self-employment generally include his or her distributive share (whether or not distributed) of income or loss from any trade or business carried on by the partnership.

Classification of certain business entity owned solely by spouses.

Revenue Procedure 2002-69 provides an exception to partnership reporting for a business entity in a community property state that is owned solely by a married couple. Under that procedure a married couple may file as either Schedule C business or a partnership.

New Federal Law (IRC section 761)

The SBWOTA provision generally permits a qualified joint venture whose only members are a husband and wife filing a joint return not to be treated as a partnership for federal tax purposes. A qualified joint venture is a joint venture involving the conduct of a trade or business if the following are met: (1) the only members of the joint venture are a husband and wife, (2) both spouses materially participate in the trade or business, and (3) both spouses elect to have the provision apply.

Under the provision, a qualified joint venture conducted by a husband and wife who file a joint return is not treated as a partnership for federal tax purposes. All items of income, gain, loss, deduction and credit are divided between the spouses in accordance with their respective interests in the venture.

Each spouse takes into account his or her respective share of these items as a sole proprietor. Thus, it is anticipated that each spouse would account for his or her respective share on the appropriate form, such as Schedule C. The provision is not intended to change the determination under present law of whether an entity is a partnership for federal tax purposes (without regard to the election provided by the provision).

For purposes of determining net earnings from self-employment, each spouse's share of income or loss from a qualified joint venture is taken into account just as it is for federal income tax purposes under the provision (i.e., in accordance with their respective interests in the venture).

A corresponding change is made to the definition of net earnings from self employment under the Social Security Act. The SBWOTA provision is not intended to prevent allocations or reallocations, to the extent permitted under present law, by courts or by the Social Security Administration of net earnings from self-employment for purposes of determining Social Security benefits of an individual.

Effective Date

The provision is effective for taxable years beginning after December 31, 2006.

California Law (R&TC sections 17851, 17865, and 23038)

California conforms by reference to Subchapter K of the IRC in R&TC section 17851 as of the specified date of January 1, 2005, with specified modifications. In general, the classification of an eligible business entity for California purposes is required to be the same as the eligible business entity's classification under the "check-the-box" regulations for federal purposes. This federal statutory provision that overrides the "check-the-box" regulations was enacted after the specified date of January 1, 2005. However, California, as a community property state, follows Revenue Procedure 2002-69 that allows a married couple owning a business to file as either a Schedule C business or a partnership. Thus, even though California has not conformed to the statutory change, the alternative filing position provided under the procedure means that California has "effectively" conformed to this federal change. Additionally, California specifically does not conform to Part IV of Subchapter K of the IRC (sections 771 through 777, inclusive), relating to special rules for electing large partnerships. Registered domestic partners are required to file California returns using the same rules applicable to married persons under federal law.

California has no tax comparable to Social Security or Medicare tax.

Impact on California Revenue

Any revenue impact would be considered baseline because California has "effectively" conformed to this federal change.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

SUBPART B – GULF OPPORTUNITY ZONE TAX INCENTIVES

Section	Section Title
8221	Extension of Increased Expensing for Qualified Section 179 Gulf Opportunity Zone Property

Background

Present law provides that in lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or "expense") such costs under IRC section 179. The maximum amount a taxpayer may expense, for taxable years beginning in 2003 through 2009, is $100,000 of the cost of qualifying property placed in service for the taxable year.[5] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2010 is treated as qualifying property. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. The $100,000 and $400,000 amounts are indexed for inflation for taxable years beginning after 2003 and before 2010. For taxable years beginning in 2007, the inflation-adjusted amounts are $112,000 and $450,000, respectively.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under IRC section 38 is allowed with respect to any amount for which a deduction is allowed under IRC section 179. An expensing election is made under rules prescribed by the Secretary.[6]

For taxable years beginning in 2010 and thereafter (or before 2003), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000.

The $25,000 and $200,000 amounts are not indexed. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off-the-shelf computer software). An expensing election may be revoked only with consent of the Commissioner.

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5 Additional IRC section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (IRC section 1397A), or a renewal community (IRC section 1400J).

6 IRC section 179(c)(1). Under Treas. Reg. sec. 1.179-5, applicable to property placed in service in taxable years beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke an election under IRC section 179 without the consent of the Commissioner on an amended Federal tax return for that taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. T.D. 9209, July 12, 2005.

Increase for Gulf Opportunity Zone Property

Under IRC section 1400N(e), the $100,000 maximum amount that a taxpayer may elect to deduct under IRC section 179 is increased by the lesser of $100,000 or the cost of qualified IRC section 179 Gulf Opportunity Zone property for the taxable year. The provision applies with respect to qualified IRC section 179 Gulf Opportunity (GO) Zone property acquired on or after August 28, 2005, and placed in service on or before December 31, 2007. Thus, in addition to the $100,000 maximum cost of any IRC section 179 property (including property that also meets the definition of qualified IRC section 179 GO Zone property) that may be deducted under present law, a taxpayer may elect to deduct a maximum $100,000 additional amount of the taxpayer's cost of qualified IRC section 179 GO Zone property, resulting in a maximum deductible amount of $200,000 of qualified IRC section 179 Gulf Opportunity Zone property. (The $100,000 present-law portion of this amount is indexed for taxable years beginning after 2003 and before 2010, so the total may be higher than $200,000 after taking indexation of this portion into account.) The $100,000 additional amount for the cost of qualified IRC section 179 GO Zone property is not indexed.

There is a special rule for the reduction in the $200,000 maximum deduction for the cost of qualified IRC section 179 GO Zone property. Under this rule, the $200,000 amount is reduced (but not below zero) by the amount by which the cost of qualified IRC section 179 Gulf Opportunity Zone property placed in service during the taxable year exceeds a dollar cap of up to $1 million. (The $400,000 present-law portion of this amount is indexed for taxable years beginning after 2003 and before 2010, so the total may be higher than $1 million after taking indexation of this portion into account.) The dollar cap is computed by increasing the $400,000 present-law amount by the lesser of (1) $600,000, or (2) the cost of qualified IRC section 179 GO Zone property placed in service during the taxable year. The $600,000 amount is not indexed.

Qualified IRC section 179 GO Zone property means IRC section 179 property (as defined in IRC section 179(d)) that also meets the requirements to qualify for GO Zone bonus depreciation. Specifically, for IRC section 179 purposes, qualified GO Zone property is property (1) described in IRC section 168(k)(2)(A)(i), (2) substantially all of the use of which is in the GO Zone and is in the active conduct of a trade or business by the taxpayer in that Zone, (3) the original use of which commences with the taxpayer on or after August 28, 2005, (4) which is acquired by the taxpayer by purchase on or after August 28, 2005, but only if no written binding contract for the acquisition was in effect before August 28, 2005, and (5) which is placed in service by the taxpayer on or before December 31, 2007. Such property does not include alternative depreciation property, tax-exempt bond-financed property, or qualified revitalization buildings.

These rules are coordinated with expensing rules with respect to enterprise zone businesses in empowerment zones and with respect to renewal communities. For purposes of those rules, qualified IRC section 179 GO Zone property is not treated as qualified zone property or qualified renewal property, unless the taxpayer elects not to take such property into account for purposes of the increased IRC section 179 expensing. Thus, a taxpayer acquiring property that could qualifyas either qualified IRC section 179 GO Zone property, or qualified zone property or qualified renewal property, may elect the additional expensing provided either under this provision, or under the empowerment zone or renewal community rules, but not both, with respect to the property.

Recapture rules apply to this property if recapture applies under IRC section 179(d)(10) or if the property ceases to be qualified IRC section 179 GO Zone property.

New Federal Law (IRC section 1400N(e))

The Act extends the increased expensing amount for property substantially all of the use of which is in one or more specified portions of the GO Zone to property placed in service by the taxpayer on or before December 31, 2008. The specified portions of the Go Zone include the Louisiana parishes of Calcasieu, Cameron, Orleans, Plaquemines, St. Bernard, St. Tammany, and Washington and the Mississippi counties of Hancock, Harrison, Jackson, Pearl River, and Stone.[7]

Effective Date

The provision is effective for taxable years beginning after May 25, 2007.

California Law

California does not conform to IRC sections 1400M-1400T, relating to tax benefits for GO Zones.

Impact on California Revenue

Not applicable.

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7 The “specified portions of the Go Zone” as defined by IRC section 1400N(d)(6) are identified by the Secretary in Notice 2007-36, 2007-17 I.R.B 1000.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8222	Extension and Expansion of Low-Income Housing Credit Rules for Buildings in the GO Zones

Background

The low-income housing credit may be claimed over a ten-year period for the cost of building rental housing occupied by tenants having incomes below specified levels. The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building. The credit percentage for newly constructed or substantially rehabilitated housing that is not federally subsidized is adjusted monthly by the Internal Revenue Service so that the 10 annual installments of the credit have a present value of 70% of the total qualified basis. The credit percentage for newly constructed or substantially rehabilitated housing that is federally subsidized and for existing housing that is substantially rehabilitated is calculated to have a present value of 30% of qualified basis. These are referred to as the 70% credit and 30% credit, respectively.

Credit cap

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the state or local housing credit agency. Credit cap is provided to the states annually. For 2006, the amount is $1.90 per resident with a minimum annual cap of $2,180,000 for certain small population states. These amounts are indexed for inflation. These limits do not apply in the case of projects that also receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit. Under the GO Zone Act of 2005, the otherwise applicable housing credit ceiling amount is increased for each of the states within the GO Zone (Alabama, Louisiana, and Mississippi). The additional credit cap for each of the affected states equals $18 times the number of such state's residents within the GO Zone. This increase applies to calendar years 2006, 2007, and 2008. This amount is not adjusted for inflation. For purposes of the additional credit cap amount, the determination of population for any calendar year is made on the basis of the most recent census estimate of the resident population of the state in the GO Zone released by the Bureau of the Census before August 28, 2005. In addition, under the GO Zone Act of 2005, the otherwise applicable housing credit ceiling amount is increased for Florida and Texas by $3,500,000 per state. This increase applies only to calendar year 2006.

Carryover allocation rule

A low-income housing credit is allowable only if the owner of a qualified building receives a housing credit allocation from the state or local housing credit agency. In general, the allocation must be made not later than the close of the calendar year in which the building is placed in service. One exception to this rule is a carryover allocation.

In the case of a carryover allocation, an allocation may be made to a building that has not yet been placed in service, provided that: (1) more than ten percent of the taxpayer's reasonablyexpected basis in the project (as of the close of the second calendar year following the calendar year of the allocation) is incurred as of the later of six months after the allocation is made or the end of the calendar year in which the allocation is made, and (2) the building is placed in service not later than the close of the second calendar year following the calendar year of the allocation.

Enhanced credit

Generally, buildings located in high-cost areas (i.e., qualified census tracts and difficult development areas) are eligible for an enhanced credit. Under the enhanced credit, the 70% and 30% credit is increased to a 91% and 39% credit, respectively.

The mechanism for this increase is an increase from 100 to 130% of the otherwise applicable eligible basis of a new building or the rehabilitation expenditures of an existing building. A further requirement for the enhanced credit is that no area having more than 20% of the population of each metropolitan statistical area or non metropolitan statistical area can be a difficult to develop area and therefore a high cost area eligible for this treatment.

Under the GO Zone Act of 2005, the GO Zone, the Rita GO Zone, and the Wilma GO Zone (the, “Go Zones”) are treated as high-cost areas for purposes of the low income housing credit (LIHC) for property placed in service in calendar years 2006, 2007, and 2008. Therefore, buildings located in the GO Zones are eligible for the enhanced credit. Under the enhanced credit, the 70% and 30% credits are increased to 91% and 39% credits, respectively. The 20% of population restriction is waived for this purpose.

This enhanced credit applies regardless of whether the building receives its credit allocation under the otherwise applicable low-income housing credit cap or the additional credit cap provided under the GO Zone Act of 2005. The provision to treat the GO Zones as a high-cost area is generally effective for calendar years beginning after 2005 and before 2009 and for buildings placed in service during such period in the case of projects that also receive financing with the proceeds of tax-exempt bonds subject to the private activity bond volume limit which are issued after December 31, 2005.

Definition of federally subsidized

In general, any newly constructed or substantially rehabilitated building is treated as federally subsidized for any taxable year if, at any time during such taxable year or prior taxable year, there is or was outstanding any obligation the interest on which is exempt under IRC section 103, or any below market federal loan, the proceeds of which are or were used (directly or indirectly) with respect to such building or the operation thereof. Exceptions are provided from this general rule: (1) if the taxpayer elects to reduce eligible basis; and (2) for certain subsidized construction financing.

For purposes of this rule, a below market federal loan generally is defined as a loan funded, in whole or in part, with federal funds if the interest payable on such loan is less than the applicable federal rate in effect under IRC section 1274(d)(1) (as of the date the loan was made).

A loan is not treated as a below market federal loan for these purposes, if it is below market solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974, as in effect on December 19, 1989, (the date of enactment of the Omnibus Budget Reconciliation Act of 1989).

Rehabilitation expenditures

Rehabilitation expenditures paid or incurred by the taxpayer with respect to any building shall be treated as a separate new building for purposes of the credit. In general, rehabilitation expenditures are amounts chargeable to a capital account and incurred for property (or additions or improvements to property) of a character subject to depreciation in connection with the rehabilitation of a building. Such term does not include the cost of acquiring a building (or interest therein). Other rules, including a minimum expenditure requirement, apply.

New Federal Law (IRC section 1400N(c))

Carryover allocation rule

The Act makes two modifications to the carryover allocation rule for otherwise qualifying buildings located in the GO Zones placed in service before January 1, 2011. First, it repeals the requirement that ten percent of the taxpayer's reasonably expected basis in the project (as of the close of the second calendar year following the calendar year of the allocation) must be incurred as of the later of six months after the allocation is made or the end of the calendar year in which the allocation is made (the “10-percent rule”). Second, it repeals the requirement that such building be placed in service not later than the close of the second calendar year following the calendar year of the allocation (the “second-year placed in service rule”). These changes apply only to allocations made in 2006, 2007, or 2008 whether made out of the regular credit cap or the additional GO Zone credit cap. Therefore, an otherwise qualifying building is treated as a qualifying for the credit regardless of whether the 10-percent rule or the second-year placed-in-service rule are satisfied if such building in one of the GO Zones: (1) receives an allocation in 2006, 2007, or 2008; and (2) is placed in service before January 1, 2011.

Enhanced credit

The Act extends the placed-in-service dates for buildings eligible for the enhanced credit available under the GO Zone Act of 2005 for two additional years (2009 and 2010) for allocations made in 2006, 2007, or 2008. The provision to treat the GO Zones as a high-cost area is generally effective for calendar years beginning after December 31, 2008, and before January 1, 2011, and for buildings placed in service during such period in the case of projects that also receive financing with the proceeds of tax-exempt bonds subject to the private activity bond volume limit which are issued during that period. Therefore, otherwise qualifying buildings located in the GO Zones generally are eligible for the enhanced credit for allocations made in 2006, 2007, or 2008, if placed in service after December 31, 2005, and before January 1, 2011.

Definition of federally subsidized

The Act modifies the definition of below market federal loan for otherwise qualifying buildings located in the GO Zones that are placed in service during the period beginning on January 1, 2006, and ending on December 31, 2010. Under the provision, a loan is not treated as a below market federal loan solely by reason of assistance provided under section 106, 107, or 108 of the Housing and Community Development Act of 1974 by reason of: (1) section 122 of that Act; (2) any provision of the Department of Defense Appropriations Act, 2006 (Public Law No. 109-141); or (3) the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Public Law No. 109-234). Therefore, such assistance will not cause an otherwise qualifying building receiving such assistance to be treated as federally subsidized for purposes of the low-income housing credit.

Rehabilitation expenditures

The Congress expects that the present-law rules treating rehabilitation expenses as a separate new building for purposes of the low-income housing credit will apply in the case of buildings in the GO Zones which have been destroyed and, therefore, must be rehabilitated. For example, if a building receiving the low-income housing credit (with an eligible basis of $100 for credit purposes) was destroyed and the cost of replacing the building is $150, then the Congress expects that present-law rules may allow the expenditures that exceed $100 but do not exceed $150 to be treated as a separate building with separate credit and compliance periods, assuming the rehabilitation expenditure receives a credit allocation and meets the otherwise applicable LIHC requirements.

<u>Effective Date</u>

The provision is effective May 25, 2007.

<u>California Law</u>

California does not conform to IRC sections 1400M-1400T, relating to tax benefits for GO Zones.

<u>Impact on California Revenue</u>

Not applicable.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8223	Special Tax-Exempt Bond Financing Rule for Repairs and Reconstructions of Residences in the GO Zones

Background

Prior to the Act, gross income did not include interest on state or local bonds. State and local bonds are classified generally as either governmental bonds or private activity bonds. Governmental bonds are bonds which are primarily used to finance governmental functions or which are repaid with governmental funds. Private activity bonds are bonds with respect to which the state or local government serves as a conduit providing financing to on governmental persons (e.g., private businesses or individuals). The exclusion from income for state and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes ("qualified private activity bonds"). The definition of a qualified private activity bond includes a qualified mortgage bond.

Qualified mortgage bonds

Qualified mortgage bonds are tax-exempt bonds issued to make mortgage loans to eligible mortgagors for the purchase, improvement, or rehabilitation of owner-occupied residences. The IRC imposes several limitations on qualified mortgage bonds, including income limitations for eligible mortgagors, purchase price limitations on the home financed with bond proceeds, and a "first-time homebuyer" requirement. In addition, bond proceeds generally only can be used for new mortgages, i.e., proceeds cannot be used to acquire or replace existing mortgages. Exceptions to the new mortgage requirement are provided for the replacement of construction period loans, bridge loans, and other similar temporary initial financing. In addition, qualified rehabilitation loans may be used, in part, to replace existing mortgages. A qualified rehabilitation loan means certain loans for the rehabilitation of a building if there is a period of at least 20 years between the date on which the building was first used (the "20-year rule") and the date on which the physical work on such rehabilitation begins and the existing walls and basis requirements are met. The existing walls requirement for a rehabilitated building is met if 50% or more of the existing external walls are retained in place as external walls, 75% or more of the existing external walls are retained in place as internal or external walls, and 75% or more of the existing internal structural framework is retained in place. The basis requirement is met if expenditures for rehabilitation are 25% or more of the mortgagor's adjusted basis in the residence, determined as of the later of the completion of the rehabilitation or the date on which the mortgagor acquires the residence.

Qualified mortgage bonds also may be used to finance qualified home-improvement loans. Qualified home-improvement loans are defined as loans to finance alterations, repairs, and improvements on an existing residence, but only if such alterations, repairs, and improvements substantially protect or improve the basic livability or energy efficiency of the property. Qualified home-improvement loans may not exceed $15,000 and may not be used to refinance existing mortgages.

As with most qualified private activity bonds, issuance of qualified mortgage bonds is subject to annual state volume limitations (the "state volume cap"). For calendar year 2007, the state volume cap, which is indexed for inflation, equals the greater of $85 per resident of the state, or $256.24 million. Exceptions from the state volume cap are provided for bonds issued for certain governmentally owned facilities (airports, ports, high-speed intercity rail, and solid waste disposal) and bonds which are subject to separate local, state, or national volume limits (public/private educational facilities, enterprise zone facility bonds, qualified green building/sustainable design projects, and qualified highway or surface freight transfer facility bonds).

Gulf Opportunity Zone Bonds

The GO Zone Act of 2005 authorizes Alabama, Louisiana, and Mississippi (or any political subdivision of those states) to issue qualified private activity bonds to finance the construction and rehabilitation of residential and nonresidential property located in the GO Zone ("GO Zone Bonds"). GO Zone Bonds are not subject to the state volume cap. Rather, the maximum aggregate amount of GO Zone Bonds that may be issued in any eligible state is limited to $2,500 multiplied by the population of the respective state within the GO Zone. GO Zone Bonds issued to finance residences located in the GO Zone are treated as qualified mortgage bonds if the general requirements for qualified mortgage bonds are met. The IRC also provides special rules for GO Zone Bonds issued to finance residences located in the GO Zone. For example, the first-time homebuyer rule is waived and the income and purchase price rules are relaxed for residences financed in the GO Zone, the Rita GO Zone, or the Wilma GO Zone. In addition, the IRC increases from $15,000 to $150,000 the amount of a qualified home-improvement loan with respect to residences located in the specified disaster areas. GO Zone Bonds must be issued before January 1, 2011.

<u>New Federal Law (IRC section 1400N (a))</u>

Under the Act, a qualified GO Zone repair or reconstruction loan is treated as a qualified rehabilitation loan for purposes of the qualified mortgage bond rules. Thus, such loans financed with the proceeds of qualified mortgage bonds and GO Zone Bonds may be used to acquire or replace existing mortgages, without regard to the existing walls or 20-year rule under present law. The provision defines a qualified GO Zone repair or reconstruction loan as any loan used to repair damage caused by Hurricane Katrina, Hurricane Rita, or Hurricane Wilma to a building located in the GO Zones (or reconstruction of such building in the case of damage constituting destruction) if the expenditures for such repair or reconstruction are 25 percent or more of the mortgagor's adjusted basis in the residence. For purposes of the provision, the mortgagor's adjusted basis is determined as of the later of (1) the completion of the repair or reconstruction, or (2) the date on which the mortgagor acquires the residence.

<u>Effective Date</u>

The provision applies to owner-financing provided after May 25, 2007, and before January 1, 2011.

California Law

California does not conform to IRC sections 1400M-1400T, relating to tax benefits for GO Zones.

Impact on California Revenue

Not applicable.

Section	Section Title
8224	GAO Study of Practices Employed by State and Local Governments in Allocating and Utilizing Tax Incentives Provided Pursuant to the Gulf Opportunity Zone Act of 2005

Background

Prior to the Act, there was no requirement that the Government Accountability Office ("GAO") study and report on the utilization of tax incentives in the GO Zones.

New Federal Law

This uncodified provision in the SBWOTA requires the GAO to conduct a study of the practices employed by state and local governments, and subdivisions thereof, in allocating and utilizing tax incentives provided pursuant to the GO Act of 2005 (Public Law 109-135) and this Act.

Not more than one year after the date of enactment of this Act, the GAO must submit a report to the House Committee on Ways and Means and the Senate Committee on Finance on the findings of its study and recommendations, if any, relating to such findings. If the GAO report includes findings of significant fraud, waste or abuse, then each of the two committees should hold public hearings to review such findings within 60 days of the submission of the report.

Effective Date

This provision is effective May 25, 2007.

California Law

California has no comparable provision.

Impact on California Revenue

Not applicable.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

SUBPART C – SUBCHAPTER S PROVISIONS

Section	Section Title
8231	Capital Gain of S Corporation Not Treated as Passive Investment Income

Background

An S corporation is subject to corporate-level tax, at the highest corporate tax rate, on its excess net passive income if the corporation has: (1) accumulated earnings and profits at the close of the taxable year; and (2) gross receipts more than 25% of which are passive investment income.

Excess net passive income is the net passive income for a taxable year multiplied by a fraction, the numerator of which is the amount of passive investment income in excess of 25% of gross receipts and the denominator of which is the passive investment income for the year. Net passive income is defined as passive investment income reduced by the allowable deductions that are directly connected with the production of that income. Passive investment income generally means gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities (to the extent of gains). Passive investment income generally does not include interest on accounts receivable, gross receipts that are derived directly from the active and regular conduct of a lending or finance business, gross receipts from certain liquidations, gain or loss from any IRC section 1256 contract (or related property) of an options or commodities dealer, or certain interest and dividend income of banks and depository institution of holding companies.

In addition, an S corporation election is terminated whenever the S corporation has accumulated earnings and profits at the close of each of three consecutive taxable years and has gross receipts for each of those years more than 25% of which are passive investment income.

New Federal Law (IRC section 1362(d)(3))

The Act eliminates gains from sales or exchanges of stock or securities as an item of passive investment income.

Effective Date

The provision applies to taxable years beginning after May 25, 2007.

California Law (R&TC sections 17087.5 and 23800-23808)

California conforms by reference to Subchapter S of the IRC in R&TC section 23800 as of the “specified date” of January 1, 2005, including IRC section 1362(d)(3)(A), relating to termination, and IRC section 1362(d)(3)(B) and (C), relating to the definition of “gross receipts” and “passive investment income.” However, R&TC section 23801(a) specifically provides that a federal “S corporation” is an “S corporation” under California law. This particular federal change is applicable for California purposes because it is a qualification issue since the impact of eliminating gains from sales or exchanges of stock or securities as an item of passive investment income will reduce the number of terminations of “S corporation” status under federal law. Those corporations will remain federal “S corporations” and therefore remain “S corporations” under California law.

Additionally, California imposes a tax on passive investment income determined in accordance with federal law, with modifications. California law in R&TC section 23811(a) specifically provides that the California tax on passive investment income may not be imposed on an “S corporation” that has no excess net passive income for federal income tax purposes. Therefore, this particular federal change is applicable for California purposes.

Impact on California Revenue

California has pre-conformed to this federal change. Based on the federal estimate, the baseline impact for California is estimated at an annual loss of less than $1 million.

Section	Section Title
8232	Treatment of Bank Director Shares

Background

An S corporation may have no more than 100 shareholders and may have only one outstanding class of stock.

An S corporation has one class of stock if all outstanding shares of stock confer identical rights to distribution and liquidation proceeds. Differences in voting rights are disregarded.

National banking law requires that a director of a national bank own stock in the bank and that a bank have at least five directors. A number of states have similar requirements for state-chartered banks. In some cases, a bank director enters into an agreement under which the bank (or a holding company) will reacquire the stock upon the director’s ceasing to hold the office of director at the price paid by the director for the stock.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

New Federal Law (IRC sections 1361 and 1368)

Under the Act, restricted bank director stock is not taken into account as outstanding stock in applying the provisions of subchapter S. Thus, the stock is not treated as a second class of stock; a director is not treated as a shareholder of the S corporation by reason of the stock; the stock is disregarded in allocating items of income, loss, etc. among the shareholders; and the stock is not treated as outstanding for purposes of determining whether an S corporation holds 100% of the stock of a qualified subchapter S subsidiary.

Restricted bank director stock is stock in a bank (as defined in IRC section 581) or a depository institution holding company (within the meaning of section 3(w)(1) of the Federal Deposit Insurance Act), if the stock is required to be held by an individual under applicable federal or state law in order to permit the individual to serve as a director of the bank or holding company and which is subject to an agreement with the bank or holding company (or corporation in control of the bank or company) pursuant to which the holder is required to sell the stock back upon ceasing to be a director at the same price the individual acquired the stock. A distribution (other than a payment in exchange for the stock) with respect to the restricted stock is includible in the gross income of the director and is deductible by the S corporation for the taxable year that includes the last day of the director's taxable year in which the distribution is included in income.

Effective Date

The provision applies to taxable years beginning after December 31, 2006. The provision also provides that restricted bank director stock is not treated as a second class of stock for taxable years beginning after December 31, 1996.

California Law (R&TC sections 17087.5 and 23800-23808)

California conforms by reference to Subchapter S of the IRC in R&TC section 23800 as of the "specified date" of January 1, 2005, with modifications. However, R&TC section 23801(a) specifically provides that a federal "S corporation" is an "S corporation" under California law. Because the impact of restricted bank director stock not being taken into account as outstanding stock in applying the provisions of subchapter S is a qualification issue, this particular federal change is applicable for California purposes.

Impact on California Revenue

California has pre-conformed to this federal change. Based on the federal estimate, the baseline loss for California would be negligible.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8233	Special Rule for Bank Required to Change from Reserve Method of Accounting on Becoming S Corporation

Background

A financial institution which uses the reserve method of accounting for bad debts may not elect to be an S corporation. If a financial institution changes from the reserve method of accounting, there is taken into account for the taxable year of the change adjustments to taxable income necessary to prevent amounts from being duplicated or omitted by reason of the change.

Positive adjustments (i.e., additions to taxable income) are generally spread over four taxable years beginning in the year of change. Negative adjustments (i.e., reductions to taxable income) are generally taken into account entirely in the year of change.

In the case of a financial institution that changes from the reserve method and elects to be an S corporation for the year of change, the adjustments are both included in the income of the shareholders and are taken into account in computing the tax on built-in gain under IRC section 1374.

If the change in accounting method is made for the last taxable year prior to becoming an S corporation, any adjustments for that year are taken into account in computing the corporation's taxable income, but not taken into account by the shareholders.

New Federal Law (IRC section 1361)

The Act allows a bank which changes from the reserve method of accounting for bad debts for its first taxable year for which it is an S corporation to elect to take into account all adjustments under IRC section 481 by reason of the change in the last taxable year it was a C corporation.

Effective Date

The provision applies to taxable years beginning after December 31, 2006.

California Law (R&TC sections 17087.5, 17551, 23800-23808, and 24721)

California conforms by reference to Subchapter S of the Internal Revenue Code in R&TC section 23800 as of the “specified date” of January 1, 2005, including IRC section 1361(b)(2)(A), relating to ineligible corporation defined, and IRC section 481, relating to adjustments required by changes in method of accounting. Because this federal change was made after the “specified date” of January 1, 2005, and is not a “qualification issue,” California is not conformed.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Impact on California Revenue

Estimated Revenue Impact of SBWOTA of 2007 Effective TYBA 12/31/07 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
$1,000,000	- $1,000,000	-$2,000,000

The revenue estimate is based on federal projections with modifications.

Section	Section Title
8234	Treatment of the Sale of Interest in a Qualified Subchapter S Subsidiary

An S corporation that owns all the stock of a corporation may elect to treat the subsidiary corporation as a qualified subchapter S subsidiary (QSub). A QSub is disregarded as a separate entity for federal tax purposes, and its items of income, deduction, loss, and credit are treated as items of the S corporation.

If the subsidiary corporation ceases to be a QSub (e.g., fails to meet the wholly-owned requirement) the subsidiary is treated as a new corporation acquiring all its assets (and assuming all of its liabilities) immediately before such cessation from the parent S corporation in exchange for its stock. Under Treasury regulations, the tax treatment of the termination of the QSub election is determined under general principals of tax law, including the step transaction doctrine. The regulations set forth an example in which an S corporation sells 21% of the stock of a QSub to an unrelated party. In the example, the deemed transfer of all the assets to the QSub is treated as a taxable sale because the S corporation was not in control of the QSub immediately after the transfer by reason of the sale, and thus the transfer did not qualify for non-recognition treatment under IRC section 351.

New Federal Law (IRC section 1361(b))

The SBWOTA provides that where the sale of stock of a QSub results in the termination of the QSub election, the sale is treated as a sale of an undivided interest in the assets of the QSub (based on the percentage of the stock sold) followed by a deemed transfer to the QSub in a transaction to which IRC section 351 applies.

Thus, in the above example, the S corporation will be treated as selling a 21% interest in all the assets of the QSub to the unrelated party, followed by a transfer of all the assets to a new corporation in a transaction to which IRC section 351 applies. Thus, the S corporation will recognize 21% of the gain or loss in the assets of the QSub.

The provision is not intended to change the present-law treatment of the disposition of stock of a QSub by an S corporation in connection with an otherwise non-taxable transaction. For example, the transfer of stock of a QSub by an S corporation pro rata to its shareholders can qualify as a distribution to which IRC sections 368(a)(1)(D) and 355 apply if the transaction otherwise satisfies the requirements of those sections.

Effective Date

The provision applies to taxable years beginning after December 31, 2006.

California Law (R&TC sections 17087.5 and 23800-23808)

California conforms by reference to Subchapter S of the IRC in R&TC section 23800 as of the "specified date" of January 1, 2005, including IRC section 1361(b)(3), relating to treatment of certain wholly-owned subsidiaries, with modifications. Because this federal change was made after the "specified date" of January 1, 2005, and is not a "qualification issue," California is not conformed.

Impact on California Revenue

Estimated Revenue Impact of SBWOTA of 2007 Effective TYBA 12/31/07 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- < $150,000	- < $150,000	- < $150,000

The revenue estimate is based on federal projections with modifications.

Section	Section Title
8235	Elimination of All Earnings and Profits Attributable to Pre-1983 Years for Certain Corporations

Background

The Small Business Jobs Protection Act of 1996 provided that if a corporation was an S corporation for its first taxable year beginning after December 31, 1996, the accumulated earnings and profits of the corporation as of the beginning of that year were reduced by the accumulated earnings and profits (if any) accumulated in a taxable year beginning before January 1, 1983, for which the corporation was an electing small business corporation under Subchapter S.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

New Federal Law

The Act provides in the case of any corporation, which was not an S corporation for its first taxable year beginning after December 31, 1996, the accumulated earnings and profits of the corporation as of the beginning of the first taxable year beginning after the date of the enactment of this provision is reduced by the accumulated earnings and profits (if any) accumulated in a taxable year beginning before January 1, 1983, for which the corporation was an electing small business corporation under Subchapter S.

Effective Date

The provision applies to taxable years beginning after the date of enactment (May 25, 2007).

California Law

California first conformed to Subchapter S of the IRC in R&TC section 23800 starting in 1987. Therefore, this federal provision does not apply to California.

Impact on California Revenue

Not applicable.

Section	Section Title
8236	Deductibility of Interest Expense on Indebtedness Incurred by an Electing Small Business Trust to Acquire S Corporation Stock

Background

Under IRC section 641, an electing small business trust (ESBT) is subject to a tax at the highest individual income tax rate (currently 35%) on the portion of the trust that consists of stock in one or more S corporations (S portion). The income from the S portion of an ESBT is not included in the beneficiaries' income.

The only items of income, loss, or deduction taken into account in computing the taxable income of the S portion of an ESBT are: (1) the items of income, loss or deduction allocated to it as an S corporation shareholder under the rules of Subchapter S, (2) gain or loss from the sale of the S corporation stock, and (3) to the extent provided in regulations, any state or local income taxes and administrative expenses of the ESBT properly allocable to the S corporation stock.

Under Treasury regulations, interest paid by an ESBT to purchase stock in an S corporation is allocated to the S portion of the ESBT but is not a deductible administrative expense for purposes determining the taxable income of the S portion. In determining the tax liability with regard to the remaining portion of the trust, the items taken into account by the subchapter S portion of the trust are disregarded.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

New Federal Law (IRC section 641)

The Act provides that a deduction for interest paid or accrued on indebtedness to acquire stock in an S corporation may be taken into account in computing the taxable income of the S portion of an ESBT.

Effective Date

The provision is effective for taxable years beginning after December 31, 2006.

California Law (R&TC sections 17731 and 17731.5)

California conforms by reference to Subchapter J of the IRC (IRC sections 641-692) in R&TC section 17731 as of the “specified date” of January 1, 2005, with modifications to the tax rate and the personal exemption in R&TC section 17731.5. Because this federal change was made after the “specified date” of January 1, 2005, and is not a “qualification issue,” California is not conformed.

Impact on California Revenue

Estimated Revenue Impact of SBWOTA of 2007 Effective TYBA 12/31/07 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- <$150,000	- <$150,000	- <$150,000

The revenue estimate is based on federal projections with modifications.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

PART 2 – REVENUE PROVISIONS

Section	Section Title
8241	Increase in Age Children Whose Unearned Income is Taxed as if Parent's Income

Background

The Tax Increase Prevention and Reconciliation Act (TIPRA) (Public Law 109-222) was enacted on May 17, 2006. Section 510 of TIPRA increased the age of minor children whose unearned income is taxed as if it were the parent's income from a child under 14 years of age to under 18 years of age for 2006 and later taxable years.

Special rules (generally referred to as the "kiddie tax") apply to the net unearned income of certain children. Generally, the kiddie tax applies to a child if: (1) the child has not reached the age of 18 by the close of the taxable year and either of the child's parents is alive at such time; (2) the child's unearned income exceeds $1,700 (for 2007); and (3) the child does not file a joint return. The kiddie tax applies regardless of whether the child may be claimed as a dependent by either or both parents.

Under these rules, the net unearned income of a child (for 2007, generally unearned income over $1,700) is taxed at the parents' tax rates if the parents' tax rates are higher than the tax rates of the child.[8] The remainder of a child's taxable income (i.e., earned income, plus unearned income up to $1,700 (for 2007), less the child's standard deduction) is taxed at the child's rates, regardless of whether the kiddie tax applies to the child. For these purposes, unearned income is income other than wages, salaries, professional fees, other amounts received as compensation for personal services actually rendered, and distributions from qualified disability trusts. In general, a child is eligible to use the preferential tax rates for qualified dividends and capital gains.

The kiddie tax is calculated by computing the "allocable parental tax." This involves adding the net unearned income of the child to the parent's income and then applying the parent's tax rate. A child's "net unearned income" is the child's unearned income less the sum of: (1) the minimum standard deduction allowed to dependents ($850 for 2007), and (2) the greater of (a) such minimum standard deduction amount or (b) the amount of allowable itemized deductions that are directly connected with the production of the unearned income. A child's net unearned income cannot exceed the child's taxable income.

The allocable parental tax equals the hypothetical increase in tax to the parent that results from adding the child's net unearned income to the parent's taxable income.

8 Special rules apply for determining which parent's rates apply where a joint return is not filed.

If the child has net capital gains or qualified dividends, these items are allocated to the parent's hypothetical taxable income according to the ratio of net unearned income to the child's total unearned income. If a parent has more than one child subject to the kiddie tax, the net unearned income of all children is combined, and a single kiddie tax is calculated. Each child is then allocated a proportionate share of the hypothetical increase, based upon the child's net unearned income relative to the aggregate net unearned income of all of the parent's children subject to the tax.

Generally, a child must file a separate return to report his or her income. In such case, items on the parents' return are not affected by the child's income, and the total tax due from the child is the greater of:

1. The sum of (a) the tax payable by the child on the child's earned income and unearned income up to $1,700 (for 2007), plus (b) the allocable parental tax on the child's unearned income, or

2. The tax on the child's income without regard to the kiddie tax provisions.

Under certain circumstances, a parent may elect to report a child's unearned income on the parent's return.

<u>New Federal Law (IRC section 1(g))</u>

The Act expands the kiddie tax to apply to children who are 18 years old or who are full-time students over age 18 but under age 24. The expanded provision applies only to children whose earned income does not exceed one-half of the amount of their support.

<u>Effective Date</u>

The provision is effective for taxable years beginning after May 25, 2007 (i.e., starting with the 2008 taxable year for most individuals).

<u>California Law (R&TC sections 17041(g))</u>

California conforms to IRC section 1(g), relating to the kiddie tax, as of the "specified date" of January 1, 2005, before the date of the TIPRA change. Until state legislation is enacted to conform to the federal changes, the age to which the California kiddie tax provisions apply remains at under 14 years of age.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Impact on California Revenue

Estimated Revenue Impact of SBWOTA of 2007 Effective Tax Year Beginning On or After (TYBOA) 1/1/08 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
$4,500,000	$4,500,000	$4,500,000

According to federal estimates, conforming to the expanded Kiddie Tax on children ages 18 to under 24 would result in state revenue gains of approximately $4.5 million beginning with the 2008-09 fiscal year. An additional $1.5 million per year is considered a baseline gain.

Section	Section Title
8242	Suspension of Certain Penalties and Interest

Background

In general, interest and penalties accrue during periods for which taxes were unpaid without regard to whether the taxpayer was aware that there was tax due. IRC section 6404 suspends the accrual of certain penalties and interest starting 18 months after the filing of the tax return if the IRS has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for the liability within the specified period. If the return is filed before the due date, for this purpose it is considered to have been filed on the due date. Interest and penalties resume 21 days after the IRS sends the required notice to the taxpayer. The provision is applied separately with respect to each item or adjustment. The provision does not apply where a taxpayer has self-assessed the tax. The suspension applies only to taxpayers who are individuals and who file a timely tax return. In addition, the provision does not apply to the failure-to-pay penalty, in the case of fraud, or with respect to criminal penalties. Generally, the provision also does not apply to interest accruing with respect to underpayments resulting from listed transactions or undisclosed reportable transactions.

New Federal Law (IRC section 6404(g))

The Act extends the period before which accrual of interest and certain penalties are suspended. Under the provision, the accrual of certain penalties and interest is suspended starting 36 months after the filing of the tax return if the IRS has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for the liability.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Effective Date

The provision is effective for IRS notices issued after the date that is six months after May 25, 2007.

California Law (R&TC section 19116)

California is not conformed by reference to IRC section 6404, relating to interest suspension, but instead has stand-alone provisions in R&TC section 19116 that parallel the federal language.
R&TC section 19116 suspends the accrual of certain penalties and interest starting 18 months after the filing of the tax return if the FTB has not sent the taxpayer a notice specifically stating the taxpayer's liability and the basis for that liability within the specified period. If the return is filed before the due date, for this purpose it is considered to have been filed on the due date. Interest and penalties resume 15 days after the FTB sends the required notice to the taxpayer. In 2005, California conformed its stand alone provision to the American Jobs Creation Act (AJCA) section 903 amendments to IRC section 6404(g) to make inapplicable the suspension of interest provisions in the case of gross misstatements, reportable transactions, and listed transactions. However, California has not conformed its stand-alone law to the changes made by section 303 of the GO Zone Act of 2005, including restarting the "interest suspension period" upon the filing of an amended return.

Impact on California Revenue

Estimated Revenue Impact of SBWOTA of 2007 Effective for Notices Issued on TYBOA after 1/1/09 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- 0 -	$7,000,000	$7,000,000

Based on internal audit program reports, around $10 million in statutory interest is earned on income tax revenue assessments each year. To the extent any future assessments are qualified for the prolonged interest suspension period; an estimated $7 million of additional statutory interest would result annually. This analysis assumes a normal two-year audit cycle and an average audit timeframe of more than 12 months.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8243	Modification of Collection Due Process Procedures for Employment Tax Liabilities

Background

Levy is the IRS's administrative authority to seize a taxpayer's property to pay the taxpayer's tax liability. The IRS is entitled to seize a taxpayer's property by levy if a federal tax lien has attached to such property. A federal tax lien arises automatically when: (1) a tax assessment has been made, (2) the taxpayer has been given notice of the assessment stating the amount and demanding payment, and (3) the taxpayer has failed to pay the amount assessed within ten days after the notice and demand.

In general, the IRS is required to notify taxpayers that they have a right to a fair and impartial collection due process ("CDP") hearing before levy may be made on any property or right to property. Similar rules apply with respect to notices of tax liens, although the right to a hearing arises only on the filing of a notice. The CDP hearing is held by an impartial officer from the IRS Office of Appeals, who is required to issue a determination with respect to the issues raised by the taxpayer at the hearing. The taxpayer is entitled to appeal that determination to a court. Under present law, taxpayers are not entitled to a pre-levy CDP hearing if a levy is issued to collect a federal tax liability from a state tax refund or if collection of the federal tax is in jeopardy. However, levies related to state tax refunds or jeopardy determinations are subject to post-levy review through the CDP hearing process.

Employment taxes generally consist of the taxes under the Federal Insurance Contributions Act ("FICA"), the tax under the Federal Unemployment Tax Act, and the requirement that employers withhold income taxes from wages paid to employees ("income tax withholding"). Income tax withholding rates vary depending on the amount of wages paid, the length of the payroll period, and the number of withholding allowances claimed by the employee.

New Federal Law (IRC section 6330)

Under the SBWOTA, a levy issued to collect federal employment taxes is excepted from the pre-levy CDP hearing requirement if the taxpayer subject to the levy requested a CDP hearing with respect to unpaid employment taxes arising in the two-year period before the beginning of the taxable period with respect to which the employment tax levy is served. However, the taxpayer is provided an opportunity for a hearing within a reasonable period of time after the levy. As the IRC provides for state tax refunds or jeopardy determinations, collection by levy of employment tax liabilities is permitted to continue during the CDP proceedings.

Effective Date

The provision is effective for levies issued on or after the date that is 120 days after May 25, 2007.

California Law

The Employment Development Department (EDD), rather than the FTB, administers employment taxes. Defer to EDD.

Impact on California Revenue

Defer to EDD.

Section	Section Title
8244	Permanent Extension of IRS User Fees

Background

The IRS generally charges a fee for requests for a letter ruling, determination letter, opinion letter, or other similar ruling or determination. These user fees are authorized by statute (IRC section 7528) through September 30, 2014.

New Federal Law (IRC section 7528)

The provision permanently extends the statutory authorization for IRS user fees.

Effective Date

The provision is effective for requests made after the date of enactment (May 25, 2007).

California Law

California does not conform to IRC section 7528, relating to IRS user fees.

Impact on California Revenue

Not applicable.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8245	Increase in Penalty for Bad Checks and Money Orders

Background

IRC section 6657 imposes a penalty on a person who tenders a bad check or money orders. The penalty is two percent of the amount of the bad check or money order. For checks or money orders that are less than $750, the minimum penalty is $15 (or, if less, the amount of the check or money order).

New Federal Law (IRC section 6657)

The SBWOTA increases the minimum penalty to $25 (or, if less, the amount of the check or money order), applicable to checks or money orders that are less than $1,250.

Effective Date

The provision is effective with respect to checks or money orders received after the date of enactment (May 25, 2007).

California Law (R&TC section 19134)

California conforms by reference to IRC section 6657 as of the “specified date” of January 1, 2005, in R&TC section 19134, with a modification providing that the penalty also applies to payments made by credit card remittance or electronic funds transfer.

Impact on California Revenue

Estimated Revenue Impact of SBWOTA of 2007 Effective for Dishonored Payments Received After 6/30/08 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
<$500,000	<$500,000	<$500,000

A $10 increase in the minimum penalty imposed for dishonored payments made in amounts up to $1,250 would likely result in a minor revenue gain of under $500,000 per year. This analysis assumes less than 1 in every 200 payments received each year would be subject to the increased penalty.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007
(SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8246	Understatement of Taxpayer Liability by Tax Return Preparers

Background

An income tax return preparer is defined as any person who prepares for compensation, or who employs other people to prepare for compensation, all or a substantial portion of an income tax return or claim for refund. Under present law, the definition of an income tax return preparer does not include a person preparing non-income tax returns, such as estate and gift, excise, or employment tax returns.

An income tax return preparer who prepares a return with respect to which there is an understatement of tax that is due to an undisclosed position for which there was not a realistic possibility of being sustained on its merits, or a frivolous position, is liable for a first-tier penalty of $250, provided the preparer knew or reasonably should have known of the position. For purposes of the penalty, an understatement is generally defined as any understatement with respect to any tax imposed by subtitle A (i.e., income taxes).
An income tax return preparer who prepares a return and engages in specified willful or reckless conduct with respect to preparing an income tax return is liable for a second-tier penalty of $1,000.

New Federal Law (IRC sections 6694 and 7701)

The Act broadens the scope of the present-law tax return preparer penalties to include preparers of estate and gift tax, employment tax, and excise tax returns, and returns of exempt organizations.

The provision also alters the standards of conduct that must be met to avoid imposition of the penalties for preparing a return with respect to which there is an understatement of tax. The provision replaces the realistic possibility standard for undisclosed positions with a requirement that there be a reasonable belief that the tax treatment of the position was more likely than not the proper treatment. The provision replaces the not-frivolous standard accompanied by disclosure with the requirement that there be a reasonable basis for the tax treatment of the position accompanied by disclosure. The provision also increases the first-tier penalty from $250 to the greater of $1,000 or 50% of the income derived (or to be derived) by the tax return preparer from the preparation of a return or claim with respect to which the penalty is imposed. The provision increases the second-tier penalty from $1,000 to the greater of $5,000 or 50% of the income derived (or to be derived) by the tax return preparer.

Effective Date

The provision is effective for tax returns prepared after May 25, 2007.

California Law (R&TC section 19166)

California conforms by reference to IRC section 6694, relating to understatement of taxpayer's liability by tax preparer, as of the "specified date" of January 1, 2005, with substantial modifications.

California modifies the federal standards of conduct that must be met to avoid imposition of the penalties for preparing a return with respect to which there is an understatement of tax as follows:

- R&TC section 19166(b)(2) replaces the "realistic possibility standard" for undisclosed positions with a requirement that there be a "reasonable belief that the tax treatment in that position was more likely than not the proper treatment."
- R&TC section 19166(b)(3) replaces the "not-frivolous standard" accompanied by disclosure with the requirement that there be a "reasonable basis for the tax treatment of the position" accompanied by disclosure.

Additionally, California modifies the federal first-tier and second-tier penalty amounts as follows:

- R&TC section 19166(b)(1) also increases the first-tier penalty for unrealistic positions from $250 to $1,000 for certain reportable transactions, any listed transaction, or a gross misstatement.
- R&TC section 19166(c) increases the second-tier penalty for willful or reckless conduct from $1,000 to $5,000.

Impact on California Revenue

Estimated Revenue Impact of SBWOTA of 2007 Effective for Returns Prepared After 6/30/08 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2009-10
- 0 -	$750,000	$750,000

California law currently authorizes a $1,000 first-tier penalty and a $5,000 second-tier penalty for certain reportable transactions and for gross misstatements. There is no conformity revenue impact for these cases. For all other cases, the penalty for understatement of tax liability by a return preparer is currently $250 per return filed. Conforming would yield an incremental revenue gain of $750 per penalty charged in such cases. Based on recent audit efforts, around 1,000 of such penalties are imposed each year. The conformity revenue impact is therefore $750,000 annually.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007
(SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Section	Section Title
8247	Penalty for Filing Erroneous Refund Claims

Background

IRC section 6662 imposes accuracy-related penalties on a taxpayer in cases involving a substantial valuation misstatement or gross valuation misstatement relating to an underpayment of income tax. The penalty is 20 percent of the underpayment of tax resulting from a substantial valuation misstatement and rises to 40 percent for a gross valuation misstatement. Under present law, no penalty is imposed with respect to any portion of the understatement attributable to any item if: (1) the treatment of the item on the return is or was supported by substantial authority, or (2) facts relevant to the tax treatment of the item were adequately disclosed on the return or on a statement attached to the return and there is a reasonable basis for the tax treatment. Special rules apply to tax shelters.

New Federal Law (IRC section 6676)

The SBWOTA imposes a new penalty on any taxpayer filing an erroneous claim for refund or credit.

The penalty is equal to 20% of the disallowed portion of the claim for refund or credit for which there is no reasonable basis for the claimed tax treatment. The penalty does not apply to any portion of the disallowed portion of the claim for refund or credit relating to the earned income credit or any portion of the disallowed portion of the claim for refund or credit that is subject to accuracy-related or fraud penalties.

Effective Date

The provision is effective for claims for refund or credit filed after May 25, 2007.

California Law (R&TC section 19164)

California conforms by reference to IRC section 6662, relating to imposition of accuracy-related penalty on underpayments, in R&TC section 19164, as of the “specified date” of January 1, 2005, with modifications. California has not conformed to new IRC section 6676, relating to erroneous claim for refund or credit, which was enacted in the SBWOTA.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

Impact on California Revenue

Estimated Revenue Impact of SBWOTA of 2007 Effective for Returns Prepared After 1/1/09 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- 0 -	<$150,000	<$150,000

The estimated revenue impact should California conform to the 20% penalty on erroneous claims would likely not exceed $150,000 annually beginning no earlier than fiscal year 2009-10. The timing of such impact is based on the assumption that minimum length of time to resolve a case involving a potentially erroneous claim is at least six months.

Section	Section Title
8248	Time for Payment of Corporate Estimated Taxes

Background

The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) section 401 provided that in the case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2012 (for fiscal and calendar year taxpayers, respectively) are increased to 106.25% of the payment otherwise due and the next required payment is reduced accordingly.

New Federal Law

This uncodified provision in the SBWOTA increases the corporate estimated tax payments due in July, August, and September, 2012, from 106.25 percent to 114.25 percent of the payment otherwise due. As under present law, the next payment is reduced accordingly.

Effective Date

The provision is effective May 25, 2007.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (SUBTITLE B OF TITLE VIII OF PL 110-28, MAY 25, 2007)

California Law (R&TC sections 19021-19027 and 19142-19151)

California does not conform to TIPRA section 401. Additionally, California does not conform by reference to IRC section 6655, relating to failure by corporation to pay estimated tax, but instead has stand-alone law in Article 2 of Chapter 4 of the R&TC (R&TC sections 19021-19027), relating to the requirement for corporations to make estimated tax payments, and R&TC sections 19142–19151, relating to the penalty for underpayment of corporate estimated tax.

Impact on California Revenue

Not applicable.

SMALL BUSINESS AND WORK OPPORTUNITY TAX ACT OF 2007 (CHAPTER 6 OF TITLE VI OF PL 110-28, MAY 25, 2007)

Section	Section Title
6611	Revocation of Election Relating to Treatment as Multiemployer Plan

Background

A multiemployer plan means a plan: (1) to which more than one employer is required to contribute; (2) which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer; and (3) which satisfies such other requirements as the Secretary of Labor may prescribe. Present law provides that within one year after the date of enactment of the Multiemployer Pension Plan Amendments Act of 1980, a multiemployer plan could irrevocably elect for the plan not to be treated as a multiemployer plan if certain requirements were satisfied.

Pursuant to the Pension Protection Act (PPA) of 2006, certain multiemployer plans are permitted under the IRC to revoke an existing election not to treat the plan as a multiemployer plan if, for each of the three plan years prior to the date of enactment, the plan would have been a multiemployer plan, but for the election in place. The revocation must be pursuant to procedures prescribed by the Pension Benefit Guaranty Corporation ("PBGC"). In the case of a plan to which more than one employer is required to contribute and which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer (collectively the "criteria"), such plan may, pursuant to procedures prescribed by the PBGC, elect to be a multiemployer plan if: (1) for each of the three plan years prior to the date of enactment, the plan has met the criteria; (2) substantially all of the plan's employer contributions for each of those plan years were made or required to be made by organizations that were tax-exempt; and (3) the plan was established prior to September 2, 1974. Such a revocation election is also available in the case of a plan that was established in Chicago, Illinois, on August 12, 1881, and is sponsored by an organization described in IRC section 501(c)(5). An election made under the provision is effective beginning with the first plan year ending after the date of enactment of the PPA (i.e., August 17, 2006) and is irrevocable.

New Federal Law (IRC section 414(f))

The Act modifies the effective date of the election provided under the IRC. Under the provision, a plan may elect an effective date that is any plan year beginning on or after January 1, 1999, and ending before January 1, 2008. The provision also modifies the time period during which the plan must have satisfied the criteria for the election. Under the provision, the criteria must have been satisfied for each of the three plan years immediately preceding the first plan year for which the election is effective with respect to the plan.

In addition, the provision provides that a plan making the election is treated as maintained pursuant to a collective bargaining agreement if a collective bargaining agreement, expressly or otherwise, provides for or permits employer contributions to the plan by one or more employers that are signatory to such agreement, or participation in the plan by one or more employees of an employer that is signatory to such agreement.

In addition, the provision makes a technical correction to the description of one of the plans that is eligible to make the election. Specifically, the technical correction provides that an election is available in the case of a plan sponsored by an organization, which is described in IRC section 501(c)(5), exempt from tax under IRC section 501(a), and was established in Chicago, Illinois, on August 12, 1881.

Effective Date

The provision takes effect as if included in section 1106 of the PPA of 2006.

California Law (R&TC sections 17501 and 17551)

ERISA Preemption

Federal ERISA provisions apply to pension plans in California. There are no California law provisions because federal law preempts state laws affecting these plans.

IRC Provisions

In general, California conforms by reference to Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 424, inclusive, in R&TC section 17501(a) as of the “specified date” of January 1, 2005. Additionally, California conforms by reference to Subchapter E of Chapter 1 of Subtitle A of the IRC, relating to accounting periods and methods of accounting, consisting of IRC sections 441 through 483, inclusive, in R&TC section 17551(a) as of the “specified date” of January 1, 2005. However, except for increases in the maximum amount of elective deferrals, R&TC sections 17501(b) and 17551(c) specifically provide that federal changes to Part I of Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 420, inclusive, and IRC section 457, relating to deferred compensation plans of state and local governments and tax-exempt organizations, apply without regard to taxable year to the same extent as applicable for federal income tax purposes and thus adopt all changes made to those IRC sections without regard to the “specified date” contained in R&TC section 17024.5. The federal changes to IRC section 414 made by this provision of the SBWOTA are applicable for California purposes without regard to taxable year to the same extent as applicable for federal income tax purposes.

Impact on California Revenue

ERISA changes result in no conformity revenue impact. Any revenue impact would be considered baseline.

Changes to IRC section 414

Any revenue impact is baseline as California is automatically conformed to the SBWOTA changes to IRC section 414.

Section	Section Title
6612 & 6613	Modification of Requirements for Qualified Transfers

Background

A pension plan may provide medical benefits to retired employees through a separate account that is part of such plan ("retiree medical accounts"). Generally, defined benefit plan assets may not revert to an employer prior to termination of the plan and satisfaction of all plan liabilities. However, IRC section 420 of the provides that certain transfers of excess assets of a defined benefit plan to a retiree medical account within the plan may be made in order to fund retiree health benefits. A transfer that qualifies under IRC section 420 does not result in plan disqualification, is not a prohibited transaction, and is not treated as a reversion. No transfer pursuant to IRC section 420 may be made after December 31, 2013.

Prior to the amendment of IRC section 420 by the PPA of 2006, transferred assets (and any income thereon) were required to be used to pay qualified current retiree health liabilities for the taxable year of the transfer. Among the requirements for such a transfer to be qualified is the requirement that the employer generally must maintain retiree health benefits at the same level for the taxable year of the transfer and the following four years (referred to as the minimum cost requirement).

Pursuant to changes made by the PPA of 2006, IRC section 420 currently permits an employer to elect to make a "qualified future transfer" or a "collectively bargained transfer" rather than a "qualified transfer" (which generally is a transfer described in IRC section 420, prior to amendment by the PPA of 2006). A qualified future transfer permits transfers of excess pension assets under a single-employer plan to retiree medical accounts to fund the expected cost of retiree medical benefits for the current and future years. A collectively bargained transfer permits such transfers in the case of benefits provided under a collective bargaining agreement. Transfers must be made for at least a two-year period (referred to as the transfer period). In addition, a qualified future transfer or collectively bargained transfer must meet the requirements applicable to qualified transfers, with certain modifications to the requirements, one of which is the minimum cost requirement.

In the case of a qualified future transfer, the minimum cost requirement is satisfied if, during the transfer period and the four subsequent years, the annual average amount of employer costs is not less than applicable employer cost determined with respect to the transfer. An employer may elect to meet this minimum cost requirement by meeting the requirements as in effect before the amendments made by section 535 of the Tax Relief Extension Act of 1999 for each year during the transfer period and the four subsequent years. In the case of a collectively bargained transfer, the minimum cost requirement is satisfied if each collectively bargained group health plan under which collectively bargained health benefits are provided provides that the collectively bargained employer cost for each taxable year during the collectively bargained cost maintenance period is not less than the amount specified by the collective bargaining agreement. The collectively bargained employer cost is the average cost per covered individual of providing collectively bargained retiree health benefits as determined in accordance with the applicable collective bargaining agreement. Thus, retiree medical benefits must be provided at the level determined under the collective bargaining agreement for the shorter of: (1) the remaining lifetime of each covered retiree (and any covered spouse and dependent), or (2) the period of coverage provided under the collectively bargained health plan for such covered retiree (and any covered spouse and dependent).

New Federal Law (IRC section 420)

In the case of a qualified transfer, the Act permits the transfer to satisfy the minimum cost requirement by satisfying the minimum cost requirement applicable to a collectively bargained transfer. This alternate method of satisfying the minimum cost requirement is only available if the transfer involves a plan maintained by an employer, which in its taxable year ending in 2005, provided health benefits or coverage to retirees and their spouses and the aggregate cost of such benefits or coverage which would have been allowable as a deduction to the employer is at least five percent of the gross receipts of the employer for such taxable year (or is a plan maintained by a successor to such employer). In addition, the provision makes technical corrections to IRC section 420 to correct an internal cross-reference and to reflect the revisions made to the minimum funding requirements applicable to defined benefit plans under the PPA of 2006.

Effective Date

The provision is generally effective for transfers after the date of enactment (May 25, 2007). The technical corrections are effective as if included in the PPA of 2006.

California Law (R&TC sections 17501 and 17551)

In general, California conforms by reference to Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 424, inclusive, in R&TC section 17501(a) as of the “specified date” of January 1, 2005.

Additionally, California conforms by reference to Subchapter E of Chapter 1 of Subtitle A of the IRC, relating to accounting periods and methods of accounting, consisting of IRC sections 441 through 483, inclusive, in R&TC section 17551(a) as of the "specified date" of January 1, 2005. However, except for increases in the maximum amount of elective deferrals, R&TC sections 17501(b) and 17551(c) specifically provide that federal changes to Part I of Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 420, inclusive, and IRC section 457, relating to deferred compensation plans of state and local governments and tax-exempt organizations, apply without regard to taxable year to the same extent as applicable for federal income tax purposes and thus adopt all changes made to those IRC sections without regard to the "specified date" contained in R&TC section 17024.5. The federal changes to IRC section 420 made by this provision of the SBWOTA are applicable for California purposes without regard to taxable year to the same extent as applicable for federal income tax purposes.

Impact on California Revenue

Any revenue impact is baseline as California is automatically conformed to the SBWOTA change to IRC section 420.

Section	Section Title
6614	Extension of Alternative Deficit Reduction Contribution Rules

Background

Single-employer defined benefit pension plans are subject to minimum funding requirements under the IRC.[9] Prior to the enactment of the PPA of 2006, the amount of contributions required for a plan year under the minimum funding rules was generally the amount needed to fund benefits earned during that year plus that year's portion of other liabilities that are amortized over a period of years, such as benefits resulting from a grant of past service credit. Additional contributions were required under the deficit reduction contribution rules in the case of certain under funded plans.

Under the PPA of 2006, these minimum funding rules were replaced by new funding rules. These new rules are generally effective for plan years beginning after December 31, 2007.

9 IRC section 412. Similar rules apply to single-employer defined benefit pension plans under ERISA.

TITLE XV OF THE ENERGY INDEPENDENCE AND SECURITY ACT (EISA) OF 2007 (PL 110-140, DECEMBER 19, 2007)

Prior to the enactment of the PPA of 2006, certain employers (“applicable employers”) were permitted to elect a reduced amount of additional required contribution under the deficit reduction contribution rules (an “alternative deficit reduction contribution”) with respect to certain plans for applicable plan years. For purposes of the election, an applicable plan year was a plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects a reduced contribution. If an employer made such an election, the amount of the additional deficit reduction contribution for an applicable plan year was the greater of: (1) 20% of the amount of the additional contribution that would otherwise be required; or (2) the additional contribution that would be required if the deficit reduction contribution for the plan year were determined as the expected increase in current liability due to benefits accruing during the plan year. An applicable employer included an employer that is a commercial passenger airline.

In the case of an employer which is a commercial passenger airline, the PPA of 2006 extends the alternative deficit reduction contribution rules to plan years beginning before December 28, 2007.

<u>New Federal Law (IRC section 402(i))</u>

The SBWOTA extends the alternative deficit reduction contribution rules under ERISA section 302 and IRC section 412 to plan years beginning before January 1, 2008.

<u>Effective Date</u>

The provision takes effect as if included in section 402 of the PPA of 2006.

<u>California Law (R&TC sections 17501 and 17551)</u>

ERISA Preemption

Federal ERISA provisions apply to pension plans in California. There are no California law provisions because federal law preempts state laws affecting these plans.

IRC Provisions

In general, California conforms by reference to Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 424, inclusive, in R&TC section 17501(a) as of the “specified date” of January 1, 2005. Additionally, California conforms by reference to Subchapter E of Chapter 1 of Subtitle A of the IRC, relating to accounting periods and methods of accounting, consisting of IRC sections 441 through 483, inclusive, in R&TC section 17551(a) as of the “specified date” of January 1, 2005.

However, except for increases in the maximum amount of elective deferrals, R&TC sections 17501(b) and 17551(c) specifically provide that federal changes to Part I of Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 420, inclusive, and IRC section 457, relating to deferred compensation plans of state and local governments and tax-exempt organizations, apply without regard to taxable year to the same extent as applicable for federal income tax purposes and thus adopt all changes made to those IRC sections without regard to the "specified date" contained in R&TC section 17024.5. The federal changes to IRC section 412 made by this provision of the SBWOTA are applicable for California purposes without regard to taxable year to the same extent as applicable for federal income tax purposes.

Impact on California Revenue

ERISA changes result in no conformity revenue impact. Any revenue impact would be considered baseline losses to the extent the additional premiums are deducted from AGI by employers/plan sponsors.

IRC Provisions

Any revenue impact is baseline as California is automatically conformed to the SBWOTA change to IRC section 412.

Section	Section Title
6615	Modification of the Interest Rate for Pension Funding Rules

Background

Single-employer defined benefit pension plans are subject to minimum funding requirements under ERISA and the IRC. The PPA of 2006 provides for new minimum funding rules, which are generally effective for plan years beginning after December 31, 2007.

Under the new minimum funding rules, the minimum required contribution to a single-employer defined benefit pension plan for a plan year generally depends on a comparison of the value of the plan's assets with the plan's funding target and target normal cost. The plan's funding target is the present value of all benefits accrued or earned as of the beginning of the plan year. A plan's target normal cost for a plan year is the present value of benefits expected to accrue or be earned during the plan year. In general, a plan has a funding shortfall if the plan's funding target for the year exceeds the value of the plan's assets (reduced, if applicable, by any prefunding balance and funding standard carryover balance).

If the value of a plan's assets (reduced by any funding standard carryover balance and prefunding balance) is less than the plan's funding target for a plan year, so that the plan has a funding shortfall, the minimum required contribution is generally increased by a shortfall amortization charge.

The shortfall amortization charge for a plan year is the aggregate total of the shortfall amortization installments for the plan year with respect to any shortfall amortization bases for that plan year and the six preceding plan years. A shortfall amortization base is generally required to be established for a plan year if the plan has a funding shortfall for a plan year.

The shortfall amortization base for a plan year is: (1) the plan's funding shortfall, minus (2) the present value, determined using the segment interest rates (discussed below), of the aggregate total of the shortfall amortization installments (and, if applicable, waiver amortization installments) that have been determined for the plan year and any succeeding plan year with respect to any shortfall amortization bases (and waiver amortization bases) for preceding plan years. The shortfall amortization installments with respect to a shortfall amortization base for a plan year are the amounts necessary to amortize the shortfall amortization base in level annual installments over the seven-plan-year period beginning with the plan year. The shortfall amortization installment with respect to a shortfall amortization base for any plan year in the seven-year period is the annual installment determined for that year for that shortfall amortization base. Shortfall amortization installments are determined using the appropriate segment interest rates.

The new minimum funding rules specify the interest rates and other actuarial assumptions that must be used in determining a plan's target normal cost and funding target. Under the rules, present value is determined using three interest rates ("segment" rates), each of which applies to benefit payments expected to be made from the plan during a certain period. The first segment rate applies to benefits reasonably determined to be payable during the five-year period beginning on the first day of the plan year; the second segment rate applies to benefits reasonably determined to be payable during the 15-year period following the initial five-year period; and the third segment rate applies to benefits reasonably determined to be payable the end of the 15-year period. Each segment rate is a single interest rate determined monthly by the Secretary of the Treasury on the basis of a corporate bond yield curve, taking into account only the portion of the yield curve based on corporate bonds maturing during the particular segment rate period. In general, the corporate bond yield curve used for this purpose is to be prescribed on a monthly basis by the Secretary of the Treasury and reflects the average, for the 24-month period ending with the preceding month, of yields on investment grade corporate bonds with varying maturities and that are in the top three quality levels available. A special transition rule applies for plan years beginning in 2008 and 2009 (other than for plans first effective after December 31, 2007).

In addition to the new minimum funding rules described above, section 402(a) of the PPA of 2006 also provided an uncodified provision for special funding rules to apply for certain eligible plans. An eligible plan is a single-employer defined benefit pension plan sponsored by an employer that is a commercial passenger airline or the principal business of which is providing catering services to a commercial passenger airline.

The plan sponsor of an eligible plan may make one of two alternative elections. In the case of a plan that meets certain benefit accrual and benefit increase restrictions, an election allowing a 17-year amortization of the plan's unfunded liability is available. In lieu of this election, a plan sponsor may alternatively elect, for the first taxable year beginning in 2008, to amortize the shortfall amortization base for such taxable year over a period of 10 plan years (rather than 7 plan years) beginning with such plan year. Under this alternative election, the benefit accrual and benefit increase restrictions do not apply. This 10-year amortization election must be made by December 31, 2007.

New Federal Law

The SBWOTA amends the uncodified provision in section 402(a) of the PPA of 2006 to provide that, in the case of a plan sponsor that elects to amortize the shortfall amortization base over a period of 10 plan years, the plan is to use an interest rate of 8.25% for purposes of determining the funding target for each of the 10 plan years during such period (instead of the segment rates calculated on the basis of the corporate bond yield curve).

Effective Date

The provision takes effect as if included in section 402 of the PPA of 2006.

California Law

ERISA Preemption

Federal ERISA provisions apply to pension plans in California. There are no California law provisions because federal law preempts state laws affecting these plans.

Impact on California Revenue

ERISA changes result in no conformity revenue impact. Any revenue impact would be considered baseline losses to the extent the additional premiums are deducted from AGI by employers/plan sponsors.

TITLE XV OF THE ENERGY INDEPENDENCE AND SECURITY ACT (EISA) OF 2007 (PL 110-140, DECEMBER 19, 2007)

Section	Section Title
1501	Extension of Additional 0.20 Percent FUTA Surtax

Background

FUTA imposes a 6.2% gross tax rate on the first $7,000 paid annually by covered employers to each employee. Employers in states with programs approved by the federal government and with no delinquent federal loans may credit 5.4 percentage points against the 6.2% tax rate, making the minimum, net federal unemployment tax rate 0.8%. Since all states have approved programs, 0.8% is the federal tax rate that generally applies.
This federal revenue finances administration of the unemployment system, half of the federal-state extended benefits program, and a federal account for state loans. The states use the revenue turned back to them by the 5.4% credit to finance their regular state programs and half of the federal-state extended benefits program.

In 1976, Congress passed a temporary surtax of 0.2%of taxable wages to be added to the permanent FUTA tax rate. Thus, the current 0.8% FUTA tax rate has two components: a permanent tax rate of 0.6%, and a temporary surtax rate of 0.2%. The temporary surtax subsequently has been extended through 2007.

New Federal Law (IRC section 3301)

The Act extends the temporary surtax rate through December 31, 2008.

Effective Date

The provision is effective for labor performed on or after January 1, 2008.

California Law

The California unemployment tax is administered by the EDD rather than the FTB.

Impact on California Revenue

Defer to EDD.

TITLE XV OF THE ENERGY INDEPENDENCE AND SECURITY ACT (EISA) OF 2007 (PL 110-140, DECEMBER 19, 2007)

Section	Section Title
1502	7-Year Amortization of Geological and Geophysical Expenditures for Certain Major Integrated Oil Companies

Background

Geological and geophysical expenditures (G&G costs) are costs incurred by a taxpayer for the purpose of obtaining and accumulating data that will serve as the basis for the acquisition and retention of mineral properties by taxpayers exploring for minerals. The Energy Tax Incentives Act (ETIA) of 2005 (Public Law 109-58) provided that for G&G costs incurred by independent producers and smaller integrated oil[10] companies in connection with oil and gas exploration in the United States may generally be amortized over two years.
The Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005 (Public Law 109-222) provided that for amounts paid or incurred after May 17, 2006, major integrated oil companies are required to amortize all G&G costs over five years. For purposes of this proposal, a major integrated oil company, with respect to any taxable year, is a producer of crude oil which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year, had gross receipts in excess of one billion dollars for its last taxable year ending during the calendar year 2005, and generally has an ownership interest in a crude oil refiner of 15% or more.

In the case of abandoned property, remaining basis may not be recovered in the year of abandonment of a property as all basis is recovered over the applicable amortization period.

New Federal Law (IRC section 167(h))

The EISA extends from five years to seven years the amortization period for G&G costs for major integrated oil companies.

Effective Date

The provision is effective for amounts paid or incurred after December 19, 2007.

California Law (R&TC sections 17201, 17250, 17250.5, 17681, 24349-24355.4, and 24831)

California conforms by reference to IRC sections 611 – 638, relating to natural resources, as of the “specified date” of January 1, 2005, in the PITL and the CTL, and follows IRS Revenue Rulings 77-188 and 83-105, relating to the treatment of G&G costs and the recovery of the remaining basis in the property in the year of abandonment.

10 Generally, an integrated oil company is a producer of crude oil that engages in the refining or retail sale of petroleum products in excess of certain threshold amounts.

In addition, California conforms by reference to IRC section 167, relating to depreciation, as of the "specified date" of January 1, 2005, under the PITL, with modifications. California does not conform by reference to IRC section 167 in the CTL, but instead has stand-alone language that provides for the depreciation of assets for California corporations. Therefore California has not conformed in the PITL or the CTL to the changes made by section 1329 of the ETIA in 2005, section 503 of TIPRA in 2006, and section 1502 of Title XV of the EISA in 2007, that allow G&G costs incurred in connection with oil and gas exploration in the United States to be amortized over two years (seven years for major integrated oil companies), because under the PITL those changes were made after the "specified date" of January 1, 2005, and under the CTL California has stand-alone language.

Under current California law, as under federal law prior to the enactment of section 1329 of the ETIA, section 503 of TIPRA, and section 1502 of Title XV of the EISA, the key issue with respect to the tax treatment of such expenditures is whether or not they are capital in nature. Capital expenditures are not currently deductible as ordinary and necessary business expenses, but are allocated to the cost of the property. Courts have held that G&G costs are capital, and therefore are allocable to the cost of the property acquired or retained. The costs attributable to such exploration are allocable to the cost of the property acquired or retained. As described further below, IRS administrative rulings in 1977 and 1983 have provided further guidance regarding the definition and proper tax treatment of G&G costs.

Revenue Ruling 77-188

In Revenue Ruling 77-188 (hereinafter referred to as the "1977 ruling"), the IRS provided guidance regarding the proper tax treatment of G&G costs. The ruling describes a typical geological and geophysical exploration program as containing the following elements:

- It is customary in the search for mineral producing properties for a taxpayer to conduct an exploration program in one or more identifiable project areas. Each project area encompasses a territory that the taxpayer determines can be explored advantageously in a single integrated operation. This determination is made after analyzing certain variables such as (1) the size and topography of the project area to be explored, (2) the existing information available with respect to the project area and nearby areas, and (3) the quantity of equipment, the number of personnel, and the amount of money available to conduct a reasonable exploration program over the project area.
- The taxpayer selects a specific project area from which geological and geophysical data are desired and conducts a reconnaissance-type survey utilizing various geological and geophysical exploration techniques. These techniques are designed to yield data that will afford a basis for identifying specific geological features with sufficient mineral potential to merit further exploration.
- Each separable, noncontiguous portion of the original project area in which such a specific geological feature is identified is a separate "area of interest." The original project area is subdivided into as many small projects as there are areas of interest located and identified within the original project area. If the circumstances permit a detailed exploratory survey to be conducted without an initial reconnaissance-type survey, the project area and the area of interest will be coextensive.

- The taxpayer seeks to further define the geological features identified by the prior reconnaissance-type surveys by additional, more detailed, exploratory surveys conducted with respect to each area of interest. For this purpose, the taxpayer engages in more intensive geological and geophysical exploration employing methods that are designed to yield sufficiently accurate sub-surface data to afford a basis for a decision to acquire or retain properties within or adjacent to a particular area of interest or to abandon the entire area of interest as unworthy of development by mine or well.

The 1977 ruling provides that if, on the basis of data obtained from the preliminary geological and geophysical exploration operations, only one area of interest is located and identified within the original project area, then the entire expenditure for those exploratory operations is to be allocated to that one area of interest and thus capitalized into the depletable basis of that area of interest.

On the other hand, if two or more areas of interest are located and identified within the original project area, the entire expenditure for the exploratory operations is to be allocated equally among the various areas of interest.

If no areas of interest are located and identified by the taxpayer within the original project area, then the 1977 ruling states that the entire amount of the G&G costs related to the exploration is deductible as a loss under IRC section 165. The loss is claimed in the taxable year in which that particular project area is abandoned as a potential source of mineral production.

A taxpayer may acquire or retain a property within or adjacent to an area of interest, based on data obtained from a detailed survey that does not relate exclusively to any discrete property within a particular area of interest. Generally, under the 1977 ruling, the taxpayer allocates the entire amount of G&G costs to the acquired or retained property as a capital cost under IRC section 263(a). If more than one property is acquired, it is proper to determine the amount of the G&G costs allocable to each such property by allocating the entire amount of the costs among the properties on the basis of comparative acreage.

If, however, no property is acquired or retained within or adjacent to that area of interest, the entire amount of the G&G costs allocable to the area of interest is deductible as a loss under IRC section 165 for the taxable year in which such area of interest is abandoned as a potential source of mineral production.

In 1983, the IRS issued Revenue Ruling 83-105, which elaborates on the positions set forth in the 1977 ruling by setting forth seven factual situations and applying the principles of the 1977 ruling to those situations. In addition, Revenue Ruling 83-105 explains what constitutes "abandonment as a potential source of mineral production."

TITLE XV OF THE ENERGY INDEPENDENCE AND SECURITY ACT (EISA) OF 2007 (PL 110-140, DECEMBER 19, 2007)

Impact on California Revenue

Estimated Revenue Impact of EISA of 2007 Section 1502 7-Year Amortization of Geological and Geophysical Expenditures for Certain Major Integrated Oil Companies Effective for Tax Years Beginning After December 19, 2007 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
$10,000,00	$2,000,000	– $4,000,000

The revenue estimates above are based on federal projections with some modifications. The revenue above includes the 2005 federal rule allowing 2-year amortization of Geological and Geophysical expenditures, the 2006 rule requiring major integrated oil companies to amortize these expenses over 5 years instead of 2 years, and the 2007 rule requiring major integrated oil companies to amortize over 7 years.

THE VIRGINIA TECH VICTIMS AND FAMILY ASSISTANCE ACT (PL 110-141, DECEMBER 19, 2007)

Section	Section Title
1	Exclusion from Income for Payments from the Hokie Spirit Memorial Fund

Background

Following the shooting event at Virginia Polytechnic Institute and State University (Virginia Tech University) on April 16, 2007, a payment program for victims and survivors of the event was established. Under the program, survivors of the murder victims and surviving victims of the event are eligible to receive cash payments from the university. In lieu of receipt of a cash payment, claimants under the program may instead donate their payments to an IRC section 501(c)(3) organization for the purpose of funding scholarships at the university.

Under IRC section 61, gross income includes all income from whatever source derived. The IRC includes a number of exceptions from this rule. These include exceptions for amounts received by gift (IRC section 102), amounts of any damages received on account of personal physical injuries (IRC section 104(a)(2)), and amounts received as qualified disaster relief payments (IRC section 139). There is no specific exclusion from gross income for amounts received pursuant to the Virginia Tech University program described above.

New Federal Law (Uncodified Act section 1 affecting IRC section 61)

The Act, in an uncodified provision, excludes from gross income any amount received from Virginia Tech University out of amounts transferred from the Hokie Spirit Memorial Fund established by the Virginia Tech Foundation, an organization organized and operated as described in IRC section 501(c)(3), if such amount is paid on account of the tragic event on April 16, 2007, at such university.

Effective Date

The provision is effective on December 19, 2007.

California Law (R&TC sections 17071)

California conforms by reference to IRC section 61, relating to gross income defined, as of the "specified date" of January 1, 2005, in R&TC section 17071 in the PITL. Because this federal change was made after the "specified date" of January 1, 2005, California has not conformed to this provision.

THE VIRGINIA TECH VICTIMS AND FAMILY ASSISTANCE ACT (PL 110-141, DECEMBER 19, 2007)

Impact on California Revenue

Estimated Revenue Impact of Exclusion From Income for Certain Payments to Virginia Tech Victims Effective for Tax Years Beginning After December 31, 2007 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- <$150,000	- <$150,000	- <$150,000

The Hokie Memorial Fund was closed on midnight December 31, 2007, having received contributions in excess of $8.5 million. It is anticipated that less than 20% of memorial fund payments will be made to California taxpayers. A revenue loss of less than $150,000 is estimated relative to amounts received from the Hokie Spirit Memorial Fund.

Section	Section Title
2	Modification of Penalty for Failure to File Partnership Returns

Background

A partnership generally is treated as a pass-through entity. Income earned by a partnership, whether distributed or not, is taxed to the partners. Distributions from the partnership generally are tax-free. The items of income, gain, loss, deduction or credit of a partnership generally are taken into account by a partner as allocated under the terms of the partnership agreement. If the agreement does not provide for an allocation, or the agreed allocation does not have substantial economic effect, then the items are to be allocated in accordance with the partners' interests in the partnership. To prevent double taxation of these items, a partner's basis in its interest is increased by its share of partnership income (including tax-exempt income), and is decreased by its share of any losses (including nondeductible losses).

Under present law, a partnership is required to file a tax return for each taxable year. The partnership's tax return is required to include the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual. In addition to applicable criminal penalties, present law imposes a civil penalty for the failure to timely file a partnership return. The penalty is $50 per partner for each month (or fraction of a month) that the failure continues, up to a maximum of five months.

THE VIRGINIA TECH VICTIMS AND FAMILY ASSISTANCE ACT (PL 110-141, DECEMBER 19, 2007)

New Federal Law (Act section 2 affecting IRC section 6698(b)(1))

The Act, in an uncodified provision, increases the present-law failure to file penalty for partnership returns by $1 per month for partnership returns required to be filed for a taxable year beginning in 2008.

Effective Date

The provision is effective for partnership returns required to be filed for a taxable year beginning in 2008.

California Law (R&TC section 19172(b))

California does not conform by reference to IRC section 6698, relating to failure to file partnership returns, but instead has a stand-alone provision in R&TC section 19172 that parallels federal law except that the penalty amount is one-fifth of the federal penalty. That is, the California penalty is $10 per partner (rather than $50 per partner for federal purposes) for each month (or fraction of a month) that the failure continues, up to a maximum of five months.

Impact on California Revenue

Estimated Revenue Impact of Modification to Penalty for Failure to File Partnership Returns Effective for Returns Required to be Filed for Tax Years Beginning in 2008 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- 0 -	- 0 -	- 0 -

California does not conform to the federal penalty for failure to file partnership returns. If earlier filing of California partnership returns results from the increased federal penalty, California penalties would be reduced. However, since the increased penalty is only $1 per partner per month per late filed return, no impact is estimated from this modification.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Section	Section Title
1 - 2	Short Title, Discharge of Indebtedness on Principal Residence Excluded from Gross Income

Background

Gross income includes income that is realized by a debtor from the discharge of indebtedness, subject to certain exceptions for debtors in Title 11 bankruptcy cases, insolvent debtors, certain student loans, certain farm indebtedness, and certain real property business indebtedness (IRC sections 61(a)(12) and 108). In cases involving discharges of indebtedness that are excluded from gross income under the exceptions to the general rule, taxpayers generally reduce certain tax attributes, including basis in property, by the amount of the discharge of indebtedness.

The amount of discharge of indebtedness excluded from income by an insolvent debtor not in a Title 11 bankruptcy case cannot exceed the amount by which the debtor is insolvent. In the case of a discharge in bankruptcy or where the debtor is insolvent, any reduction in basis may not exceed the excess of the aggregate bases of properties held by the taxpayer immediately after the discharge over the aggregate of the liabilities immediately after the discharge (IRC section 1017).

For all taxpayers, the amount of discharge of indebtedness generally is equal to the difference between the adjusted issue price of the debt being cancelled and the amount used to satisfy the debt. These rules generally apply to the exchange of an old obligation for a new obligation, including a modification of indebtedness that is treated as an exchange (a debt-for-debt exchange).

For example, assume a taxpayer who is not in bankruptcy and is not insolvent owns a principal residence subject to a $200,000 mortgage debt. If the creditor forecloses and the home is sold for $180,000 in satisfaction of the debt, the debtor has $20,000 income from the discharge of indebtedness which is includible in gross income. Likewise, if the creditor restructures the loan and reduces the principal amount to $180,000, the debtor has $20,000 includible in gross income.

New Federal Law (IRC section 108)

The MFDRA excludes from the gross income of a taxpayer any discharge of indebtedness income by reason of a discharge (in whole or in part) of qualified principal residence indebtedness occurring on or after January 1, 2007, and before January 1, 2010.

Qualified principal residence indebtedness means acquisition indebtedness (within the meaning of IRC section 163(h)(3)(B), except that the limitation is modified to be $2,000,000 instead of $1,000,000 (or in the case of a married individual filing a separate return, the limitation is modified to be $1,000,000 instead of $500,000)) with respect to the taxpayer's principal residence.

Acquisition indebtedness with respect to a principal residence generally means indebtedness which is incurred in the acquisition, construction, or substantial improvement of the principal residence of the individual and is secured by the residence. It also includes refinancing of such debt to the extent the amount of the refinancing does not exceed the amount of the refinanced indebtedness. For these purposes the term “principal residence” has the same meaning as under IRC section 121.

If, immediately before the discharge, only a portion of a discharged indebtedness is qualified principal residence indebtedness, the exclusion applies only to so much of the amount discharged as exceeds the portion of the debt which is not qualified principal residence indebtedness. Thus, assume that a principal residence is secured by an indebtedness of $1 million, of which $800,000 is qualified principal residence indebtedness. If the residence is sold for $700,000 and $300,000 debt is discharged, then only $100,000 of the amount discharged may be excluded from gross income under this provision.

The basis of the individual’s principal residence is reduced by the amount excluded from income under the proposal.

Under the Act, the exclusion does not apply to a taxpayer in a Title 11 case; instead the present-law exclusion applies. In the case of an insolvent taxpayer not in a Title 11 case, the exclusion under the Act applies unless the taxpayer elects to have the present-law exclusion apply instead.

Under the Act, the exclusion does not apply to the discharge of a loan if the discharge is on account of services performed for the lender or any other factor not directly related to a decline in the value of the residence or to the financial condition of the taxpayer.

Effective Date

The provision is effective December 20, 2007.

California Law (R&TC section 17131)

California conforms by reference to IRC section 108, relating to income from discharge of indebtedness, as of the “specified date” of January 1, 2005, in R&TC section 17131 in the PITL. Because this federal change was made after the “specified date” of January 1, 2005, California has not conformed to this provision.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Impact on California Revenue

Estimated Revenue Impact of Discharge of Indebtedness on Principal Residence Excluded from Gross Income Effective for Taxable Years TYBOA 1/1/2008 Enactment Assumed After 6/30/2008		
2008-09	2009-10	2010-11
- $8,000,000	- $10,000,000	- $2,000,000

Estimates were based on a proration of federal projections developed for the MFDRA. Taxable year estimates are converted to fiscal year estimates in the table above.

Section	Section Title
3	Extension of Treatment of Mortgage Insurance Premiums as Interest

Background

Mortgage insurance, which guarantees loan repayment in case of death or disability of the borrower, is often required by lenders for individuals who do not have sufficient funds for a full down payment on a residence. Premiums paid or accrued for qualified insurance on mortgage loans can be treated as qualified residence interest and deducted from income tax. "Qualified mortgage insurance" is mortgage insurance provided by the Veterans Administration (VA), the Federal Housing Administration (FHA), the Rural Housing Administration (RHA), and private mortgage insurance as defined under Section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. Sec. 4901).

Premiums paid for mortgage insurance were not deductible prior to 2007. A temporary provision was added by the Tax Relief and Health Care Act of 2006 (P.L. 109-432), allowing the deduction for qualified mortgage insurance premiums.

The deduction of qualified mortgage insurance premiums generally applies to amounts paid or accrued only during 2007, with respect to contracts issued during 2007; the provision terminates for premiums paid or accrued after December 31, 2007. This deduction is also subject to a phase-out. For every $ 1,000, or fraction thereof, by which the taxpayer's adjusted gross income exceeds $100,000, the amount of deductible mortgage insurance premiums is reduced (but not below zero) by 10%. In the case of a married taxpayer filing separately, the amounts are lowered to $500 and $50,000. The purpose of this phase-out is to prevent taxpayers with adjusted gross incomes greater than $100,000 ($50,000 for a married taxpayer filing separately) from claiming this tax benefit.

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Prepaid mortgage insurance amounts that are allocable to periods beyond the year in which they are paid are attributed to a capital account and treated as paid in the allocable year (contracts issued by the VA or RHA are excluded from this provision). If the mortgage is paid off before the end of its term, a deduction is not allowed for the unamortized balance of the capital account.

The federal provision does not apply with respect to any mortgage insurance contract issued before January 1, 2007. The provision terminates for any amount paid or accrued after December 31, 2007, or properly allocable to any period after that date.

New Federal Law (IRC section 163(h)(3)(E))

The MFDRA extends the termination date of the deduction for private mortgage insurance to amounts paid or accrued on or before December 31, 2010, but only with respect to contracts entered into after December 31, 2006.

Effective Date

The provision is effective December 20, 2007.

California Law (R&TC section 17201)

California conforms by reference to IRC section 163, relating to interest, as of the "specified date" of January 1, 2005, in R&TC section 17201 in the PITL. Additionally, California did not conform to the temporary provision in federal law that was added by the Tax Relief and Health Care Act of 2006 (P.L. 109-432), allowing the deduction for qualified mortgage insurance premiums. Because both the temporary federal provision and the extension of this deduction to taxable years after 2007 made by the MFDRA were made after the "specified date" of January 1, 2005, California has not conformed to these provisions.

Impact on California Revenue

Estimated Revenue Impact of Treating Mortgage Insurance Premium as Interest Effective for TYBOA 1/1/2008 (Sunset December 31, 2010) Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
-$6,000,000	-$6,000,000	-$4,000,000

Estimates were based on a proration of federal projections developed for the MFDRA of 2007.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Section	Section Title
4	Alternative Tests for Qualifying as Cooperative Housing Corporation

Background

A tenant-stockholder in a cooperative housing corporation is entitled to deduct amounts paid or accrued to the cooperative to the extent those amounts represent the tenant-stockholder's proportionate share of (1) real estate taxes allowable as a deduction to the cooperative which are paid or incurred by the cooperative on the cooperative's land or buildings and (2) interest allowable as a deduction to the cooperative that is paid or incurred by the cooperative on its indebtedness contracted in the acquisition of the cooperative's land or in the acquisition, construction, alteration, rehabilitation, or maintenance of the cooperative's buildings.

Under prior law, a cooperative housing corporation generally is a corporation (1) that has one class of stock, (2) each of the stockholders of which is entitled, solely by reason of ownership of stock in the corporation, to occupy a dwelling owned or leased by the cooperative, (3) no stockholder of which is entitled to receive any distribution not out of earnings and profits of the cooperative, except on complete or partial liquidation of the cooperative, and (4) 80% or more of the gross income of which for the taxable year in which the taxes and interest are paid or accrued is derived from tenant-stockholders.

New Federal Law (IRC section 216)

The MFDRA amends IRC section 216(b)(1) to provide that the fourth requirement (the 80% test) is met if, for the taxable year in which the taxes and interest are paid or accrued, the corporation meets one of three requirements--(1) 80% or more of the corporation's gross income for that taxable year is derived from tenant-stockholders (the present law requirement); (2) at all times during that table year 80% or more of the total square footage of the corporation's property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use; or (3) 90% or more of the expenditures of the corporation paid or incurred during that taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation's property for the benefit of tenant-stockholders.

Effective Date

The provision is effective December 20, 2007.

California Law (R&TC section 17201)

California conforms by reference to IRC section 216, relating to deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder, as of the "specified date" of January 1, 2005, in R&TC section 17201 in the PITL. Because this federal change was made after the "specified date" of January 1, 2005, California has not conformed to this provision.

Impact on California Revenue

Estimated Revenue Impact of Alternative Tests for Qualifying as Cooperative Housing Corporation Effective for TYBOA January 1, 2008 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- <$150,000	- <$150,000	- <$150,000

Estimates were based on a proration of the federal projections developed for the MFDRA of 2007. If California conforms to this provision, the revenue loss would be insignificant, less than $150,000.

Section	Section Title
5	Exclusion from Income for Benefits Provided to Volunteer Firefighters and Emergency Medical Responders

Background

Certain Tax Reductions or Tax Rebates Provided by a State or Local Government

The IRS has provided guidance (*Chief Counsel Adv. 200302045 (*Jan. 10, 2002)) that reductions or rebates of taxes by state or local governments on account of services performed by members of qualified volunteer emergency response organizations are taxable income to the taxpayers receiving these reductions or rebates of taxes.

Deduction for Certain State or Local Taxes

For purposes of determining regular tax liability, an itemized deduction is permitted for certain state and local taxes paid, including individual income taxes, real property taxes, and personal property taxes. The itemized deduction is not permitted for purposes of determining a taxpayer's alternative minimum taxable income (AMTI). For taxable years beginning before January 1, 2008, at the election of the taxpayer, an itemized deduction may be taken for state and local general sales taxes in lieu of the itemized deduction provided under present law for state and local income taxes. The otherwise allowable itemized deduction for these state or local taxes is not reduced by the amount of any reduction or rebate on account of services performed as a member of a qualified volunteer emergency response organization.

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Charitable Deduction for Certain Expenses

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in IRC section 501(c)(3), to a federal, state, or local governmental entity, or to certain other organizations. The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer. Within certain limitations, donors also are entitled to deduct their contributions to IRC section 501(c)(3) organizations for federal estate and gift tax purposes.

<u>New Federal Law (IRC section 139B)</u>

The MFDRA provides an exclusion from gross income to members of qualified volunteer emergency response organizations for: (1) any qualified state or local tax benefit; and (2) any qualified reimbursement payment. A qualified state or local tax benefit is any reduction or rebate of certain taxes provided by state or local governments on account of services performed by individuals as members of a qualified volunteer emergency response organization. These taxes are limited to state or local income taxes, state or local real property taxes, and state or local personal property taxes. A qualified reimbursement payment is a payment provided by a state or political subdivision thereof on account of reimbursement for expenses incurred in connection with the performance of services as a member of a qualified volunteer emergency response organization.

The amount of such qualified reimbursement payments is limited to $30 for each month during which the taxpayer performs such services. A qualified volunteer emergency response organization is any volunteer organization: (1) which is organized and operated to provide firefighting or emergency medical services for persons in the state or its political subdivision; and (2) which is required (by written agreement) by the state or political subdivision to furnish firefighting or emergency medical services in such state or political subdivision.

Denial of Double Benefits

The MFDRA provides that the amount of state or local taxes taken into account in determining the deduction for taxes is reduced by the amount of any qualified state or local tax benefit. Also, the Act provides that expenses paid or incurred by the taxpayer in connection with the performance of services as a member of a qualified volunteer emergency response organization is taken into account for purposes of the charitable deduction only to the extent such expenses exceed the amount of any qualified reimbursement payment excluded from income under the Act.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Effective Date

The provision is effective for taxable years beginning on or after December 31, 2007.

California Law (R&TC section 17131)

California conforms by reference to Part III of Subchapter B of Chapter 1 of Subtitle A of the IRC, relating to items that are specifically excluded from gross income, as of the "specified date" of January 1, 2005, in R&TC section 17131 in the PITL. Because this federal change was made after the "specified date" of January 1, 2005, California has not conformed to this provision.

Impact on California Revenue

Estimated Revenue Impact of Exclusion from Income for Volunteer Firefighters Effective for TYBOA 1/1/2008 (Sunset December 31, 2010) Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
-$4,000,000	-$3,000,000	-$2,000,000

Estimates were based on a proration of federal projections developed for the MFDRA of 2007.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Section	Section Title
6	Clarification of Student Housing Eligible for Low-Income Housing Credit

Background

In General

IRC section 42 allows a low-income housing credit that may be claimed over a 10-year period by owners of certain residential rental property for the cost of rental housing occupied by tenants having incomes below specified levels. The amount of the credit for any taxable year in the credit period is the applicable percentage of the qualified basis of each qualified low-income building. The qualified basis of any qualified low-income building for any taxable year equals the applicable fraction of the eligible basis of the building.

Qualified Low-Income Housing Projects and Qualified Low-Income Buildings

A qualified low-income building is a building subject to a 15-year compliance period and must be part of a qualified low-income housing project.

A qualified low-income housing project is a project that meets the minimum set aside requirement and other requirements with respect to the set aside units at all times that buildings comprising the project are subject to the 15-year compliance period. A qualified low-income housing project includes a qualified low-income building containing residential rental units and also contains other property that is functionally related and subordinate to the function of providing residential rental units. A project may include multiple buildings having similarly constructed housing units, provided: (1) the buildings are located on the same tract of land; (2) are owned by the same person for federal income tax purposes; and (3) are financed pursuant to a common plan of financing.

Residential rental units must be for use by the general public, and all of the units in a project must be used on a nontransient basis. For these purposes, use by the general public, does not include the case were the residential rental units are: (1) provided only for members of a social organization; or (2) are provided by an employer for its employees. Generally, a unit is considered to be used on a nontransient basis if the initial lease term is six months or greater. Additionally, no hospital, nursing home, sanitarium, lifecare facility, dormitory, trailer park or, retirement home providing significant services other than housing may be a qualified low-income project. Factory made housing that is permanently fixed to real property may be a qualified low-income building.

Unlike the requirements for units in projects financed with tax-exempt bonds, certain single room occupancy housing used on a nontransient basis may qualify for the credit, even though such housing may provide eating, cooking, and sanitation facilities on a shared basis. An example of housing that may qualify for the credit is a residential hotel used on a nontransient basis that is available to all members of the public.

New Federal Law (IRC section 42)

The MFDRA amends IRC section 42(i)(3)(D)(ii) to clarify that certain full-time students who are single parents and their children are allowed to live in housing units eligible for the low-income housing tax credit provided that their children are not dependents of another individual (other than a parent of such children).

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Effective Date

The provision applies to housing credit amounts allocated before, on, or after

December 20, 2007, and to certain buildings placed in service before, on, or after December 20, 2007.

California Law (R&TC sections 17057.5 and 17058)

California conforms by reference to IRC section 42, relating to low-income housing credit, as of the “specified date” of January 1, 2005, in R&TC section 17058, with modifications including requiring a 30-year compliance period (versus the 15-year federal compliance period requirement) . Because this federal change was made after the “specified date” of January 1, 2005, California has not conformed to this provision.

Impact on California Revenue

Estimated Revenue Impact of Modified Qualification for LIHC Unit Effective for TYBOA 1/1/2008 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- <$150,000	- <$150,000	- <$150,000

Any revenue loss is estimated to be insignificant because of this modification to the definition of students allowed to occupy low-income housing units for purposes of the units continuing to qualify the project for the LIHC.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Section	Section Title
7	Application of Joint Return for Capital Gains Exclusion to Certain Post-Marriage Sales of Principal Residences by Surviving Spouses

Background

In General

Gross income does not include gain from the sale or exchange of property if, during the five-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more.

Limitation

The amount of gain excluded from gross income with respect to any sale or exchange of a principal residence cannot exceed $250,000.

In the case of a husband and wife who make a joint return for the tax year of the sale or exchange of the property, the $250,000 limitation (described above) that applies to the exclusion of gain from the sale or exchange of a principal residence becomes $500,000 if:

- Either spouse meets the ownership requirements with respect to the property;
- Both spouses meet the use requirements with respect to the property; and
- Neither spouse is ineligible for the benefits of the exclusion with respect to the property because of the one sale every two years rule.

New Federal Law (IRC section 121)

The MFDRA amends IRC section 121(b) to allow a surviving spouse to exclude from gross income up to $500,000 of the gain from the sale or exchange of a principal residence owned jointly with a deceased spouse if the sale or exchange occurs within two years of the death of the spouse and other ownership and use requirements have been met.

Effective Date
This provision is effective for sales or exchanges occurring after December 31, 2007.

California Law (R&TC section 17152)

California conforms by reference to IRC section 121, relating to exclusion of gain from sale of principal residence, as of the "specified date" of January 1, 2005, in R&TC section 17152 in the PITL. Because this federal change was made after the "specified date" of January 1, 2005, California has not conformed to this provision.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Impact on California Revenue

Estimated Revenue Impact of Joint Return Limitation for Surviving Spouse Effective for TYBOA 1/1/2008 Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
- <$500,000	- <$500,000	- <$500,000

Estimates were based on a proration of federal projections developed for the MFDRA of 2007.

Section	Section Title
8	Modification of Penalty for Failure to File Partnership Returns, Limitation on Disclosure

Background

A partnership generally is treated as a pass-through entity. Income earned by a partnership, whether distributed or not, is taxed to the partners. Distributions from the partnership generally are tax-free. The items of income, gain, loss, deduction, or credit of a partnership generally are taken into account by a partner as allocated under the terms of the partnership agreement. If the agreement does not provide for an allocation, or the agreed allocation does not have substantial economic effect, then the items are to be allocated in accordance with the partners' interests in the partnership.

To prevent double taxation of these items, a partner's basis in its interest is increased by its share of partnership income (including tax-exempt income), and is decreased by its share of any losses (including nondeductible losses). Under present law, a partnership is required to file a tax return for each taxable year. The partnership's tax return is required to include the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual. In addition to applicable criminal penalties, present law imposes a civil penalty for the failure to file a partnership return timely. The penalty is $50 per partner for each month (or fraction of a month) that the failure continues, up to a maximum of five months.

A recent report by the Treasury Inspector General for Tax Compliance (TIGTA) indicated that the incidence of late-filed returns, measured as a percentage of total returns filed, is nearly two to four times higher among partnerships and S corporations, respectively, than it is among individual taxpayers. The TIGTA report indicated that the present-law penalty for partnerships fails to address the most egregious late filers.

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New Federal Law (IRC section 6698)

The MFDRA amended: (1) IRC section 6698(a) to provide that the period for calculating the monthly failure to file penalty for partnership returns is extended from five months to 12 months; and (2) amended IRC section 6698(b) to provide that the penalty amount is increased to $85 per partner.

Effective Date

The provision is effective for returns required to be filed after December 20, 2007.

California Law (R&TC sections 19172, 19131, and 19132)

California does not conform to IRC section 6698 by reference, but instead has its own stand-alone rules for the failure-to-file partnership return penalties in R&TC section 19172. The penalty is $10 per partner for each month (or fraction of a month) that the failure continues, up to a maximum of five months.

Additionally, a Limited Liability Company (LLC) that elects to be classified as a partnership is subject to an $800 annual minimum tax, plus an LLC fee based on income. As such, an LLC that elects to be classified as a partnership is subject to: (1) the failure-to-file a partnership return penalty under R&TC section19172; (2) the failure-to-file penalty under R&TC section 19131, which is a penalty of 5 percent of the tax for each month (or fraction thereof) during which the failure continues, up to a maximum of 25 percent of the tax; and (3) the failure-to-pay-tax penalty under R&TC section 19132, which is 5% of the unpaid tax, plus 0.5% of the remaining tax unpaid tax per month, up to a maximum of 25%. (Note the penalties under R&TC sections 19131 and 19132 overlap; that is, the penalty for failure to pay tax under R&TC section 19132 is not assessed to the extent that the penalty for failure to file a return under R&TC section 19131 is assessed for the same taxable year.)

Impact on California Revenue

Estimated Revenue Impact of Increased Penalty for Partnership Returns Effective for Returns Filed After Date of Enactment Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
$2,000,000	$2,000,000	$2,000,000

Estimates were based on a proration of federal projections developed for the MFDRA of 2007. These estimates assume California would modify its penalty such that the California penalty remains 20% of the federal penalty.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Section	Section Title
9	Penalty for Failure to File S Corporation Returns

Background

In general, an S corporation is not subject to corporate-level income tax on its items of income and loss. Instead, an S corporation passes through its items of income and loss to its shareholders. The shareholders take into account separately their shares of these items on their individual income tax returns. Under present law, S corporations are required to file a tax return for each taxable year. The S corporation's tax return is required to include the following: the names and addresses of all persons owning stock in the corporation at any time during the taxable year; the number of shares of stock owned by each shareholder at all times during the taxable year; the amount of money and other property distributed by the corporation during the taxable year to each shareholder and the date of such distribution; each shareholder's pro rata share of each item of the corporation for the taxable year; and such other information as the Secretary of the Treasury may require.

A report by the TIGTA indicated that the incidence of late-filed returns, measured as a percentage of total returns filed, is nearly two to four times higher among partnerships and S corporations, respectively, than it is among individual taxpayers. The TIGTA report attributed the high rate of late-filed S corporation returns to the lack of an effective penalty regime.

New Federal Law (IRC section 6699)

The MFDRA added IRC section 6699 to impose a monthly penalty for any failure to timely file an S corporation return or any failure to provide the information required to be shown on such a return. The penalty is $85 times the number of shareholders in the S corporation during any part of the taxable year for which the return was required, for each month (or a fraction of a month) during which the failure continues, up to a maximum of 12 months.

Effective Date

The provision is effective for returns required to be filed after December 20, 2007.

California Law (R&TC sections 19131 and 19132)

California does not conform to IRC section 6699 by reference, but instead has its own stand-alone rules for the failure to file S corporation return penalty in R&TC 19131. The penalty is 5% of the tax for each month (or fraction thereof) during which the failure continues, up to a maximum of 25% of the tax. Additionally, an S corporation is subject to the failure-to-pay-tax penalty under R&TC section 19132, which is 5% of the unpaid tax, plus 0.5% of the remaining tax unpaid tax per month, up to a maximum of 25%. (Note the penalties under R&TC sections 19131 and 19132 overlap; that is, the penalty for failure to pay tax under R&TC section 19132 is not assessed to the extent that the penalty for failure to file a return under R&TC section 19131 is assessed for the same taxable year.)

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

Impact on California Revenue

Estimated Revenue Impact of New Penalty for Late Filed S Corporation Returns Effective for Returns Filed After Date of Enactment Enactment Assumed After June 30, 2008		
2008-09	2009-10	2010-11
$1,000,000	$1,000,000	$1,000,000

Estimates were based on a proration of federal projections developed for the MFDRA of 2007. These estimates assume California would impose a penalty equal to 20% of the federal penalty.

Section	Section Title
10	Modification of Required Installment of Corporate Estimated Taxes with Respect to Certain Dates

Background

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

The Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005 (PL 109-222) included an uncodified provision that provides that in the case of a corporation with assets of at least $1 billion, the payments due in July, August, and September, 2012, shall be increased to 114.75% of the payment otherwise due and the next required payment shall be reduced accordingly.

New Federal Law (IRC section 6655)

The MFDRA increases the payments due in July, August, and September 2012, from 115.75 percent of the payment otherwise due to 116.75 percent of the payment otherwise due, and the next required payment shall be reduced accordingly.

Effective Date

The provision is effective December 20, 2007.

THE MORTGAGE FORGIVENESS DEBT RELIEF ACT (MFDRA) OF 2007 (PL 110-142, DECEMBER 20, 2007)

California Law (R&TC sections 19142 – 19150, inclusive)

California does not conform to IRC section 6655 by reference, but instead has its own stand-alone rules for estimated tax payments that parallel federal law. In general, corporations are required to make quarterly estimated tax payments of their California tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

Impact on California Revenue

Not applicable.

THE TAX INCREASE PREVENTION ACT (TIPRA) OF 2007 (PL 110-166, DECEMBER 26, 2007)

Section	Section Title
2	Extension of Increased Alternative Minimum Tax (AMT) Exemption Amount

Background

Present law imposes an AMT on individuals. The AMT is the amount by which the TMT exceeds the regular income tax. An individual's tentative minimum tax is the sum of (1) 26% of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28% of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income (AMTI) as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual's taxable income adjusted to take account of specified preferences and adjustments.

The present exemption amount is: (1) $62,550 ($45,000 in taxable years beginning after 2006) in the case of married individuals filing a joint return and surviving spouses; (2) $42,500 ($33,750 in taxable years beginning after 2006) in the case of other unmarried individuals; (3) $31,275 ($22,500 in taxable years beginning after 2006) in the case of married individuals filing separate returns; and (4) $22,500 in the case of an estate or trust. The exemption amount is phased out by an amount equal to 25% of the amount by which the individual's AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of other unmarried individuals, and (3) $75,000 in the case of married individuals filing separate returns or an estate or a trust. These amounts are not indexed for inflation.

New Federal Law (IRC section 55(d)(1))

The Act provides that the individual AMT exemption amount for taxable years beginning in 2007 is $66,250, in the case of married individuals filing a joint return and surviving spouses; (2) $44,350 in the case of other unmarried individuals; and (3) $33,125 in the case of married individuals filing separate returns.

Effective Date

The proposal is effective for taxable years beginning in 2007.

THE TAX INCREASE PREVENTION ACT (TIPRA) OF 2007 (PL 110-166, DECEMBER 26, 2007)

California Law (R&TC sections 17062(b)(6))

California law imposes an AMT. The AMT is the amount by which the tentative minimum tax (TMT) exceeds the regular income tax. An individual's TMT is 7% of the amount that AMTI exceeds the exemption amount. California conforms by reference to IRC sections 55 thru 59, relating to the computation of TMT, as of the "specified date" of January 1, 2005, with significant modifications. For taxable years beginning in 1998 and later, California specifically modifies IRC section 55(d)(1), relating to exemption amount, to provide its own AMT exemption and phaseout amounts that are indexed annually. For the 2007 taxable year the exemption amount and phaseout amounts by filing status are as follows:

	Exemption Amount	Phaseout Amount
Married/RDP filing jointly or qualifying widow(er)	$76,207	$285,776
Single or head of household	$57,156	$214,333
Married/RDP filing separately	$38,102	$142,887

Impact on California Revenue

Not applicable.

Section	Section Title
3	Extension of Alternative Minimum Tax Relief for Nonrefundable Personal Credits

Background

Present law provides for certain nonrefundable personal tax credits (i.e., the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child tax credit, the credit for interest on certain home mortgages, the Helping Outstanding Pupils Educationally (HOPE) Scholarship and Lifetime Learning credits, the credit for savers, the credit for certain nonbusiness energy property, the credit for residential energy efficient property, and the D.C. first-time homebuyer credit).

For taxable years beginning before 2007, the nonrefundable personal credits are allowed to the extent of the full amount of the individual's regular tax and AMT.

For taxable years beginning after 2000, the nonrefundable personal credits (other than the adoption credit, child credit and saver's credit) are allowed only to the extent that the individual's regular income tax liability exceeds the individual's tentative minimum tax, determined without regard to the minimum tax foreign tax credit. The adoption credit, child credit, and saver's credit are allowed to the full extent of the individual's regular tax and AMT.

THE TAX INCREASE PREVENTION ACT (TIPRA) OF 2007 (PL 110-166, DECEMBER 26, 2007)

New Federal Law (IRC section 26)

For taxable years beginning in 2007, TIPRA allows an individual to offset the entire regular tax liability and AMT liability by the nonrefundable personal credits.

Effective Date

The proposal is effective for taxable years beginning in 2007.

California Law (R&TC section 17039)

The PITL provides for certain nonrefundable personal tax credits (i.e., the personal and dependent exemption credit, the qualified joint custody head of household credit, the qualified taxpayer with a dependent parent credit, the senior head of household credit, and the adoption costs credit). Unlike other credits under the PITL, these personal credits are specifically allowed to reduce regular tax below the taxpayer's tentative minimum tax. The California provisions have no sunset date and therefore are permanent.

Impact on California Revenue

Not applicable.

THE TAX TECHNICAL CORRECTIONS ACT (TTCA) OF 2007 (PL 110-172, DECEMBER 29, 2007)

Section	Section Title
1 - 2	Short Title and Amendment related to the Tax Relief and Health Care Act (TRHCA) of 2006

New Federal Law (IRC section 53(e))

Individuals with long-term unused credits under the AMT (TRHCA section 402 of Division A).

Under present law, an individual's minimum tax credit allowable for any taxable year beginning after December 20, 2006, and before January 1, 2013, is not less than the "AMT refundable credit amount." The AMT refundable credit amount is the greater of (1) the lesser of $5,000 or the long-term unused minimum tax credit, or (2) 20% of the long-term unused minimum tax credit. The long-term unused minimum tax credit for any taxable year means the portion of the minimum tax credit attributable to the adjusted net minimum tax for taxable years before the 3rd taxable year immediately preceding the taxable year (assuming the credits are used on a first-in, first-out basis). In the case of an individual whose adjusted gross income for a taxable year exceeds the threshold amount (within the meaning of IRC section 151(d)(3)(C)), the AMT refundable credit amount is reduced by the applicable percentage (within the meaning of IRC section 151(d)(3)(B)). The additional credit allowable by reason of this provision is refundable.

The TTCA amends the definition of the AMT refundable credit amount. The TTCA provides that the AMT refundable credit amount (before any reduction by reason of adjusted gross income) is an amount (not in excess of the long-term unused minimum tax credit) equal to the greater of (1) $5,000, (2) 20% of the long-term unused minimum tax credit, or (3) the AMT refundable credit amount (if any) for the prior taxable year (before any reduction by reason of adjusted gross income).

The provision may be illustrated by the following example: Assume an individual, whose adjusted gross income for all taxable years is less than the threshold amount, has a long term unused minimum tax credit for 2007 of $100,000 and has no other minimum tax credits. The individual's AMT refundable credit amount under present law is $20,000 in 2007, $16,000 in 2008, $10,240 in 2009, $8,192 in 2010, $6,554 in 2011, and $5,243 in 2012. Under the provision, the individual's AMT refundable credit amount is $20,000 for 2007, (as under present law), and in each of the taxable years 2008 thru 2011, the AMT refundable credit amount is also $20,000. The minimum tax credit in 2012 is zero.

Effective Date

The amendment made by this section takes effect as if included in the provision of the TRHCA to which it relates.

THE TAX TECHNICAL CORRECTIONS ACT (TTCA) OF 2007 (PL 110-172, DECEMBER 29, 2007)

California Law (R&TC sections 17062 - 17063, and 23400 - 23459)

California conforms by reference to IRC sections 55 - 59, relating to AMT and IRC section 53, relating to credit for prior year minimum tax liability, as of the “specified date” of January 1, 2005, with modifications. As under federal, law the California AMT is imposed on an individual taxpayer to the extent the taxpayer’s tentative minimum tax liability exceeds his or her regular income tax liability. An individual’s tentative minimum tax is 7% of the amount by which the AMTI exceeds an exemption amount. The individual AMT attributable to deferral adjustments generates a minimum tax credit that is allowable to the extent the regular tax (reduced by certain other credits) exceeds the tentative minimum tax in a future taxable year. Unused minimum tax credits are carried forward indefinitely. Because the TRHCA provision creating the AMT refundable credit in IRC section 53 and this TTCA change were made after the “specified date” of January 1, 2005, California does not automatically conform to these changes.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

Section	Section Title
3	Amendments Related to Title XII of the Pension Protection Act (PPA) of 2006

New Federal Law (IRC section 170(e), 408, 1366, 1367(a), 2055, 2522, 4940, 4962, 4958(c), 6104, 6695A, 6696(d))

a. Tax-free distributions from individual retirement plans for charitable purposes (PPA section 1201).

Under the TTCA, when determining the portion of a distribution that would otherwise be includible in income, the otherwise includible amount is determined as if all amounts were distributed from all of the individual’s IRAs.

California Law (R&TC sections 17024.5, 17501 and 17551)

In general, California conforms by reference to Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 424, inclusive, in R&TC section 17501(a) as of the “specified date” of January 1, 2005. Additionally, California conforms by reference to Subchapter E of Chapter 1 of Subtitle A of the IRC, relating to accounting periods and methods of accounting, consisting of IRC sections 441 through 483, inclusive, in R&TC section 17551(a) as of the “specified date” of January 1, 2005.

However, except for increases in the maximum amount of elective deferrals, R&TC sections 17501(b) and 17551(c) specifically provide that federal changes to Part I of Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 420, inclusive, and IRC section 457, relating to deferred compensation plans of state and local governments and tax-exempt organizations, automatically apply without regard to taxable year to the same extent as applicable for federal income tax purposes and thus adopt all changes made to those IRC sections without regard to the "specified date" contained in R&TC section 17024.5. Thus, the federal changes to IRC section 408 made by this provision of the TTCA automatically apply under California law without regard to taxable year to the same extent as applicable for federal income tax purposes.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

b. Contributions of appreciated property by S corporations (PPA section. 1203).

Under present law (IRC section 1366(d)), the amount of losses and deductions which a shareholder of an S corporation may take into account in any taxable year is limited to the shareholder's adjusted basis in his stock and indebtedness of the corporation. The TTCA provides that this basis limitation does not apply to a contribution of appreciated property to the extent the shareholder's pro rata share of the contribution exceeds the shareholder's pro rata share of the adjusted basis of the property. Thus, the basis limitation of IRC section 1366(d) does not apply to the amount of deductible appreciation in the contributed property. The PPA provision does not apply to contributions made in taxable years beginning after December 31, 2007.

For example, assume that in taxable year 2007, an S corporation with one shareholder makes a charitable contribution of a capital asset held more than one year with an adjusted basis of $200 and a fair market value of $500. Assume the shareholder's adjusted basis of the stock (as determined under IRC section 1366(d)(1)(A)) is $300. For purposes of applying the limitation under IRC section 1366(d) to the contribution, the limitation does not apply to the $300 of appreciation and since the $300 adjusted basis of the stock exceeds the $200 adjusted basis of the contributed property, the limitation does not apply at all to the contribution. Thus, the shareholder is treated as making a $500 charitable contribution. The shareholder reduces the basis of the S corporation stock by $200 to $100 (pursuant to IRC section 1367(a)(2)).

California Law (R&TC sections 17087.5, 23800 and 23802.5)

California conforms by reference to IRC section 1366, relating to determination of shareholder's tax liability, in R&TC sections 17087.5 and 23800 as of the "specified date" of January 1, 2005, with modifications in R&TC section 23802.5. California has not conformed to the changes made by act section 1203 of the PPA.

Thus, the tax technical correction to IRC section 1366 with respect to application limitation on charitable contribution does not automatically apply.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

c. Recapture of tax benefit for charitable contributions of exempt use property not used for an exempt use (PPA section 1215).

The TTCA permits a charitable deduction in the amount of the fair market value (not the donor's basis) for tangible personal property if an officer of the donee organization certifies upon disposition of the donated property that the use of the property was related to the purpose or function constituting the basis of the donee's tax-exempt status. It was not intended that the donee's use, though so related, not also be substantial. The TTCA adds to the certification requirement that the officer certify that use of the property by the donee was substantial.

California Law (R&TC sections 17201, 17275.5, and 24357 – 24357.9)

PPA Act section 1215 amended IRC section 170 relating to recapture of tax benefit for charitable contribution of exempt use property not used for an exempt use. The PITL conforms by reference to IRC section 170, relating to charitable contributions, in R&TC section 17201, as of the “specified date” of January 1, 2005, with modifications in section 17275.5. California has stand alone law in R&TC sections 24357 – 24357.9 providing for charitable contributions for corporations, with two instances where specific rules contained in IRC section 170 are specifically made applicable, as of the “specified date” of January 1, 2005. Under the CTL, R&TC section 24357.1 provides that a taxpayer’s deduction for charitable contributions of inventory generally is limited to the taxpayer’s basis (typically, cost) in the inventory. California has not conformed to the charitable contribution provisions contained in KETRA, TIPRA, or the PPA. Thus, the tax technical correction to IRC section 170 does not automatically apply.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

d. Contributions of fractional interests in tangible personal property (PPA section 1218)

The PPA added an income tax provision providing for treatment of contributions of fractional interests in tangible personal property. A special valuation rule is provided under this rule that creates unintended consequences under the estate and gift tax. The TTCA therefore strikes the special valuation rule for estate and gift tax purposes.

California Law (None)

California does not conform to IRC sections 2055 and 2522, relating to estate and gift tax. Thus, the tax technical corrections to IRC sections 2055 and 2522 are not applicable for California purposes.

Impact on California Revenue

Not applicable.

e. Time for assessment of penalty relating to substantial and gross valuation misstatements attributable to incorrect appraisals (PPA section 1219)

Section 1219 of the PPA added a penalty for substantial and gross valuation misstatements attributable to incorrect appraisals (IRC section 6695A). First, the PPA omitted to apply the penalty with respect to substantial valuation misstatements for estate and gift tax purposes, and the TTCA clarifies that the penalty applies for such purposes. Second, in the cross references for the penalty, the language of IRC section 6696(d)(1), relating to the period for assessment of the penalty, was not properly described. The TTCA adds a cross reference to IRC section 6695A in IRC section 6696(d).

California Law (R&TC section 19168)

PPA Act section 1219 added IRC section 6695A, relating to substantial and gross valuation misstatements attributable to incorrect appraisal, and amended IRC section 6696, relating to rules applicable with respect to IRC sections 6694 and 6695. California does not conform to IRC sections 6695 and 6696, but instead has stand-alone law that parallels IRC sections 6696 in R&TC section 19168 for rules that apply to any penalty imposed under R&TC section 19166 and 19167. Thus, the tax technical corrections to IRC sections 6695 and 6696 are not applicable for California purposes.

Impact on California Revenue

Not applicable.

f. Expansion of the base of tax on private foundation net investment income (PPA section 1221)

The PPA expands the base of the tax on net investment income of private foundations. The TTCA clarifies that capital gains from appreciation are included in this tax base. This clarification conforms the statutory language to the technical explanation.

California Law (None)

The TTCA amends IRC section 4940 relating to excise tax based on investment income with respect to capital gains and losses. California does not impose an excise tax on "private foundations" comparable to the federal excise tax under IRC section 4940, relating to excise tax based on investment income. Thus, the tax technical corrections to IRC section 4940 are not applicable for California purposes.

Impact on California Revenue

Not applicable.

g. Public disclosure of information relating to unrelated business income tax returns (PPA section 1225).

The PPA added a provision requiring that IRC section 501(c)(3) organizations make publicly available their unrelated business income tax returns. However, as drafted, the requirement that, with respect to a Form 990, an organization make publicly available only the last three years of returns (IRC section 6104(d)(2)) does not apply to disclosure of Form 990-T, because Form 990-T is required by IRC section 6011, not by IRC section 6033. The TTCA clarifies that the 3-year limitation on making returns publicly available applies to Form 990-T. The TTCA clarifies that the IRS is required to make Form 990-T publicly available, subject to redaction procedures applicable to Form 990 under IRC section 6104(b).

California Law (R&TC section 19565)

PPA Act section 1225 amended IRC section 6104, relating to public inspection of certain annual returns, reports, and applications for exemption, and notices of status. California does not conform to IRC section 6104 by reference, but instead has stand-alone law in R&TC section 19565 that provides the limited rules for public inspection of the application filed by the organization with respect to which the FTB made its determination that the organization was entitled to exemption under R&TC section 23701. Thus, the tax technical corrections to IRC section 6104 are not applicable for California purposes.

Impact on California Revenue

Not applicable.

h. Donor advised funds (PPA section 1231).

The PPA imposed excise taxes in the event of certain taxable distributions (IRC section 4966) and on the provision of certain prohibited benefits (IRC section 4967), but does not cross refer to these provisions in the IRC section 4962 definition of qualified first tier taxes for purposes of tax abatement (though a cross reference to them is included in IRC section 4963). The TTCA adds a cross reference to them in IRC section 4962 (relating to abatement).

California Law (None)

The TTCA amended IRC section 4962 by adding a cross reference to Subchapter G relating to donor advised funds. California does not conform to the imposition of excise tax but instead in R&TC section 23732 California imposes a tax on the “unrelated business income” of organizations exempt from tax. Thus, the tax technical corrections to IRC 4962 with respect to excise tax on donor advised funds are not applicable for California purposes.

Impact on California Revenue

Not applicable.

i. Excess benefit transactions involving supporting organizations (PPA section 1242).

New IRC section 4958(c)(3) provides that certain transactions involving supporting organizations are treated as excess benefit transactions for purposes of the intermediate sanctions rules. Under the IRC, certain organizations described in IRC sections 501(c)(4), (5) or (6) are treated as supported organizations, although they are not public charities or safety organizations. The TTCA provides that the excess benefit transaction rules of the PPA generally do not apply to transactions between a supporting organization and its supported organization that is described in IRC section 501(c)(4), (5), or (6).

California Law (None)

The TTCA amended IRC section 4958, relating to excise tax on excess benefit transactions. California does not conform by reference to IRC section 4958, but instead in R&TC section 23732 California imposes a tax on the “unrelated business income” of organizations exempt from tax. Thus, the tax technical corrections to IRC section 4958 are not applicable for California purposes.

Impact on California Revenue

Not applicable.

THE TAX TECHNICAL CORRECTIONS ACT (TTCA) OF 2007 (PL 110-172, DECEMBER 29, 2007)

Section	Section Title
4	Amendments Related to the Tax Increase Prevention and Reconciliation Act (TIPRA) of 2005

New Federal Law (IRC sections 355 and 911)

a. Look-through treatment and regulatory authority (TIPRA section 103(b)).

Under TIPRA, for taxable years beginning after 2005 and before 2009, dividends, interest (including factoring income which is treated as equivalent to interest under IRC section 954(c)(1)(E)), rents, and royalties received by one controlled foreign corporation (CFC) from a related CFC are not treated as foreign personal holding company income to the extent attributable or properly allocable to non-subpart F income of the payor (the "TIPRA look-through rule").

The TTCA clarifies the treatment of deficits in earnings and profits. Under the TTCA, the TIPRA look-through rule does not apply to any interest, rent, or royalty to the extent that such interest, rent, or royalty creates (or increases) a deficit which under IRC section 952(c) may reduce the subpart F income of the payor or another CFC. The TTCA parallels the rule applicable to interest, rents, or royalties that would otherwise qualify for exclusion from foreign personal holding company income under the "same country" exception (IRC section 954(c)(3)(B)). Thus interest, rents, and royalties will be treated as subpart F income, notwithstanding the general TIPRA look-through rule, if the payment creates or increases a deficit of the payor corporation and that deficit is from an activity that could reduce the payor's subpart F income under the accumulated deficit rule (IRC section 952(c)(1)(B)), or could reduce the income of a qualified chain member under the chain deficit rule (IRC 952(c)(1)(C)). For example, under the TTCA, items that do not qualify for the "same country" exception because they meet the terms of IRC section 954(c)(3)(B) will also not qualify under the TIPRA look-through rule.

California Law (R&TC section 25110)

The TTCA amended IRC section 954 by inserting a new subparagraph, relating to exception for foreign personal holding company income. California does not conform to IRC section 954 by reference. Therefore, the tax technical corrections to IRC section 954 are not applicable for California purposes. However, it should be noted that R&TC section 25110, relating to the water's-edge election, specifically provides that the amount of a CFC's income and apportionment factors included in California taxable income when the CFC has federal subpart F income is determined by multiplying these items by the ratio, the numerator of which is the CFC's federal subpart F income for the current year, and the denominator of which is the CFC's current year earnings and profits, as defined by IRC section 964.

Impact on California Revenue

Not applicable.

b. Modification of active business definition under IRC section 355 (TIPRA section 202).

The TTCA revises IRC sections 355(b)(2)(A) and 355(b)(3) to reflect that the provision modifying the active business definition that was enacted by section 202 of the Act was made permanent by section 410 of the Tax Relief and Health Care Act of 2006. Conforming amendments are made as a result of this change.

The TTCA clarifies that if a corporation became a member of a separate affiliated group as a result of one or more transactions in which gain or loss was recognized in whole or in part, any trade or business conducted by such corporation (at the time that such corporation became such a member) is treated for purposes of IRC section 355(b)(2) as acquired in a transaction in which gain or loss was recognized in whole or in part. Accordingly, such an acquisition is subject to the provisions of IRC section 355(b)(2)(C), and may qualify as an expansion of an existing active trade or business conducted by the distributing corporation or the controlled corporation, as the case may be.

The TTCA clarifies that the Treasury Department shall prescribe regulations that provide for the proper application of IRC sections 355(b)(2)(B), (C), and (D) in the case of any corporation that is tested for active business under the separate affiliated group rule, and that modify the application of IRC section 355(a)(3)(B) in the case of such a corporation in a manner consistent with the purposes of the provision.

The TTCA further clarifies that the rule regarding the application of the new rules to determine the continued qualification under IRC section 355 of a distribution that occurred before the effective date of the new rules, shall apply only if such application results in continued qualification and is not intended to require application of the new rules in a manner that would disqualify any distribution that satisfied the active business requirements of IRC section 355 under prior law that was applicable to the distribution.

California Law (R&TC sections17321 and 24551)

California conforms by reference to IRC section 355 as of the “specified date” of January 1, 2005, in R&TC sections 17321 and 24551. California has not conformed to the changes made by TIPRA. Thus, the technical corrections to IRC section 355 do not automatically apply.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

c) Computation of tax for individuals with income excluded under the foreign earned income exclusion (TIPRA section 515).

The TTCA clarifies that in computing the tentative minimum tax on non excluded income, the computation of tax is made before reduction for the AMT foreign tax credit. This conforms the computation of the tentative minimum tax to the computation of the regular tax, so that both computations are made before the application of the foreign tax credit.

The TTCA also corrects an error in present law in the case where a taxpayer has net capital gain in excess of taxable income. Under the TTCA, if a taxpayer's net capital gain (within the meaning of IRC section 1(h)) exceeds taxable income, in computing the tax on the taxable income as increased by the excluded income, the amount of net capital gain which otherwise be taken into account is reduced by the amount of that excess. The excess first reduces the amount of net capital gain without regard to qualified dividend income, and then qualified dividend income. Also, in computing adjusted net capital gain, unrecaptured IRC section 1250 gain, and 28-percent rate gain, the amount of the excess is treated in the same manner as an increase in the long-term capital loss carried to the taxable year.

Similar rules apply in computing the tentative minimum tax where a taxpayer's net capital gain exceeds the taxable excess.

The provision is effective for taxable years beginning after December 31, 2006. The following examples illustrate the provision:

Example 1 - For taxable year 2007, an unmarried individual has $80,000 excluded from gross income under IRC section 911(a), $30,000 gain from the sale of a capital asset held more than one year, and $20,000 deductions. The taxpayer's taxable income is $10,000. Under the TTCA, the regular tax is the excess of (i) the amount of tax computed under IRC section 911(f)(1)(A)(i) on taxable income of $90,000 ($10,000 taxable income plus $80,000 excluded income), over (ii) the amount of tax computed under IRC section 911(f)(1)(A)(ii) on taxable income of $80,000 (excluded income). In applying IRC section 1(h) to determine the tax under IRC section 911(f)(1)(A)(i), the net capital gain and the adjusted net capital gain are each $10,000. The regular tax is $1,500, which is equal to a tax at the rate of 15% on $10,000 of adjusted net capital gain.

Example 2 - For taxable year 2007, an unmarried individual has $90,000 excluded from gross income under IRC section 911(a), $5,000 gain from the sale of a capital asset held more than one year, $25,000 unrecaptured IRC section 1250 gain, and $20,000 deductions. The taxpayer's taxable income is $10,000. Under the TTCA, the regular tax is the excess of (i) the amount of tax computed under IRC section 911(f)(1)(A)(i) on taxable income of $100,000 ($10,000 taxable income plus $90,000 excluded income), over (ii) the amount of tax computed under IRC section 911(f)(1)(A)(ii) on taxable income of $90,000 (excluded income). In applying IRC section 1(h) to determine the tax under IRC section 911(f)(1)(A)(i), the net capital gain is $10,000. $5,000 is unrecaptured IRC section 1250 gain ($25,000 less $20,000) and $5,000 is adjusted net capital gain.

The regular tax is $2,000, which is equal to a tax at the rate of 15 percent on $5,000 of adjusted net capital gain and a tax at the rate of 25% on $5,000 of unrecaptured IRC section 1250 gain.

California Law (None)

TIPRA Act section 515 added a new IRC section 911, relating to citizens or residents of the United State living abroad. California does not conform to IRC section 911, relating to United States citizens living abroad. Thus, the TTCA corrections to IRC section 911 are not applicable to California.

Impact on California Revenue

Not applicable.

Section	Section Title
5	Amendments Related to the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA – LU)

New Federal Law (IRC sections 6426 and 6427)

Timing of claims for excess alternative fuel (not in a mixture) credit and definition of alternative fuel (SAFETEA – LU section 11113).

Present law provides that the alternative fuel (not in a mixture) credit is refundable. IRC section 6427(i)(3) permits claims to be filed on a weekly basis with respect to alcohol, biodiesel, and alternative fuel mixtures if certain requirements are met. This rule, however, does not refer to the alternative fuel credit (for alternative fuel not in a mixture). The TTCA clarifies that the same rules for filing claims with respect to fuel mixtures apply to the alternative fuel credit.

IRC section 6426(d)(2) defines alternative fuel to include "liquid hydrocarbons from biomass" for purposes of the alternative fuel excise tax credit and payment provisions under IRC sections 6426 and 6427. The statute does not define liquid hydrocarbons, which has led to questions as to whether it is permissible for such a fuel to contain other elements, such as oxygen, or whether the fuel must consist exclusively of hydrogen and carbon. It was intended that biomass fuels such as fish oil, which is not exclusively made of hydrogen and carbon, qualify for the credit. The TTCA changes the reference in IRC section 6426 from "liquid hydrocarbons" to "liquid fuel" for purposes of the alternative fuel excise tax credit and payment provisions.

California Law

The TTCA amended the IRC relating to alcohol mixture requirements with respect to excise tax credits and the fuel excise tax. Fuel excise taxes are not administered by the FTB. Defer to the State Board of Equalization (BOE).

Impact on California Revenue

Defer to BOE.

Section	Section Title
6	Amendments Related to the Energy Policy Act (EPA) of 2005

New Federal Law (IRC sections 30C, 41, 45J, 4041, 4042, 4082, and 6430)

a. Credit for production from advanced nuclear power facilities (EPA section 1306).

The TTCA clarifies that the national capacity limitation of 6,000 megawatts represents the total number of megawatts that the Secretary has authority to allocate under IRC section 45J.

California Law (None)

California has no credit comparable to the federal IRC section 45J credit.

Impact on California Revenue

Not Applicable.

b. Clarify limitation on the credit of installing alternative fuel refueling property (EPA section 1342).

The present-law credit for qualified alternative fuel vehicle refueling property for a taxable year is limited to $30,000 per property subject to depreciation, and $1,000 for other property (IRC section 30C(b)). The TTCA clarifies that the $30,000 and $1,000 limitations apply to all alternative fuel vehicle refueling property placed in service by the taxpayer at a location. The TTCA is consistent with similar deduction limitations imposed under IRC section 179A(b)(2)(A) (relating to the deduction for clean-fuel vehicles and certain refueling property). In addition, IRC section 30C(c)(1) provides that qualified alternative fuel vehicle refueling property has the meaning given to the term by IRC section 179A(d). However, IRC section 179A(d) defines a different term. The TTCA modifies the language of IRC section 30C(c)(1) to refer to the correct term.

California Law (None)

California has no credit comparable to the federal IRC section 30C credit.

Impact on California Revenue

Not Applicable.

c. Clarify that research eligible for the energy research credit is qualified research (EPA section 1351).

The energy research credit is available with respect to certain amounts paid or incurred to an energy research consortium. The TTCA clarifies that the credit is available with respect to such amounts paid or incurred to an energy research consortium provided they are used for energy research that is qualified research.

California Law (R&TC sections 17052.12 and 23609)

California conforms by reference to IRC section 41 with modifications, including modifications to the credit percentage amounts. The California credit percentage is 15% (20% federal) for "qualified research" and 24% (20% federal) for "basic research." The federal alternative incremental research expense credit rates of 2.65%, 3.2% and 3.75% are modified for California purposes to be 1.49%, 1.98% and 2.48%, respectively. California has not conformed to the changes to the research credit made by EPA section 1351 and thus, the TTCA clarification is not applicable.

Impact on California Revenue

Not Applicable.

d. Double taxation of rail and inland waterway fuel resulting from the use of dyed fuel on which the Leaking Underground Storage Tank Trust Fund tax has already been imposed; off-highway business use (EPA section 1362).

IRC Section 4081(a)(2)(B) imposes tax at the Leaking Underground Storage Tank Trust Fund financing tax rate of 0.1 cent per gallon on diesel fuel at the time it is removed from a terminal. Section 4082(a) provides that none of the generally applicable exemptions other than the exemption for export apply to this removal even if the fuel is dyed. When dyed fuel is used or sold for use in a diesel powered highway vehicle or train (IRC section 4041), or such fuel is subject to the inland waterway tax (IRC section 4042), the IRC inadvertently imposes the Leaking Underground Storage Tank Trust Fund tax a second time. IRC section 6430 prohibits the refund of taxes imposed at the Leaking Underground Storage Tank Trust Fund financing rate, except in the case of fuel destined for export. The TTCA eliminates the imposition of the 0.1 cent tax a second time if the Leaking Underground Storage Tank Trust Fund financing tax rate previously was imposed under IRC section 4081.

The TTCA permits a refund in the amount of the Leaking Underground Storage Tank Trust Fund financing rate if such tax was imposed a second time under IRC sections 4041 or 4042 from October 1, 2005, through the date of enactment. The TTCA also clarifies that off-highway business use is not exempt from the Leaking Underground Storage Tank Trust Fund financing rate. For administrative reasons associated with collecting the tax, the off-highway business use clarification is effective for fuel sold for use or used after the date of enactment.

California Law

The FTB does not administer the California excise tax on fuel. Defer to the BOE with respect to the Leaking Underground Storage Tank Trust Fund.

Impact on California Revenue

Defer to the BOE.

e. Exemption from the Leaking Underground Storage Tank Trust Fund financing rate for aircraft and vessels engaged in foreign trade (EPA section 1362).

Fuel supplied in the United States for use in aircraft engaged in foreign trade is exempt from U.S. customs duties and internal revenue taxes, so long as, where the aircraft is registered in a foreign state, the state of registry provides substantially reciprocal privileges for U.S.-registered aircraft. However, the EPA imposed, without exemption, the Leaking Underground Storage Tank Trust Fund financing rate on all taxable fuels, except in the case of export. As a result, aviation fuel is no longer exempt from the Leaking Underground Storage Tank Trust Fund financing rate. According to the State Department, almost all of the United States' bilateral air services agreements contain provisions exempting from taxation all fuel supplied in the territory of one party for use in the aircraft of the other party. The United States has interpreted these provisions to prohibit the taxation, in any form, of aviation fuel supplied in the United States to the aircraft of airlines of the foreign countries that are parties to these air services agreements. The TTCA amendment provides that fuel for use in vessels (including civil aircraft) employed in foreign trade or trade between the United States and any of its possessions is exempt from the Leaking Underground Storage Tank Trust Fund financing rate.

California Law

The FTB does not administer the California excise tax on fuel. Defer to the State Board of Equalization (BOE) with respect to the Leaking Underground Storage Tank Trust Fund.

Impact on California Revenue

Defer to the BOE.

THE TAX TECHNICAL CORRECTIONS ACT (TTCA) OF 2007 (PL 110-172, DECEMBER 29, 2007)

Section	Section Title
7	Amendments Related to the American Jobs Creation Act (AJCA) of 2004

New Federal Law (IRC sections 45H, 45c, 45d, 179B, 280C, 470,1016, 1092, 6501)

a. Interaction of rules relating to credit for low sulfur diesel fuel (AJCA section 339).

IRC section 45H allows a credit at the rate of 5 cents per gallon for low sulfur diesel fuel produced at certain small business refineries. The aggregate credit with respect to any refinery is limited to 25% of the costs of the type deductible under IRC section 179B. IRC section 179B allows a deduction for 75% of certain costs paid or incurred with respect to these refineries. The basis of the property is reduced by the amount of any credit determined with respect to any expenditure (IRC section 45H(d)). Further, no deduction is allowed for the expenses otherwise allowable as a deduction in an amount equal to the amount of the credit under IRC section 45H (IRC section 280C(d)). The interaction of these provisions is unclear, and the basis reduction and deduction denial rules may have an unintentionally duplicative effect. Under the TTCA, deductions are denied in an amount equal to the amount of the credit under IRC section 45H, and the provisions of present law reducing basis and denying a deduction are repealed.

California Law (R&TC sections 17053.62, 17201.4, 17255.5, 23662, and 24356.4)

California does not conform by reference to the low sulfur diesel fuel credit under IRC section 45H or the expensing deduction allowed under IRC section 179B. Instead, California has stand-alone law that is similar to the federal credit and expensing deduction in R&TC sections 17053.62, 17255.5, 23662, and 24356.4. Under California law, the increase in the basis of any property that might otherwise be increased by a qualified capital cost expenditure would be reduced by any credit allowed. In addition, any expenses that would otherwise be deducted would be reduced by any credit allowed.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

b. Eliminate the open-loop biomass segregation requirement in IRC section 45(c)(3)(A)(ii) (AJCA section 710).

For purposes of the credit for electricity produced from certain renewable resources, IRC section 45(c)(3)(A)(ii) defines open-loop biomass to include any solid, non-hazardous, cellulosic waste material or any lignin material that is segregated from other waste materials, and that meets other requirements. The AJCA added municipal solid waste to the category of qualified energy resources giving rise to the credit.

Thus, both open-loop biomass and municipal solid waste can be treated as qualified energy resources. The TTCA therefore strikes the requirement that open-loop biomass be segregated from other waste materials in order to be treated as qualified energy resources.

California Law (None)

California has no comparable credit.

Impact on California Revenue

Not applicable.

c. Clarification of proportionate limitation applicable to closed-loop biomass (AJCA section 710).

IRC section 45(d)(2)(B)(ii) provides that when closed-loop biomass is co-fired with other fuels, the credit is limited to the otherwise allowable credit multiplied by the ratio of the thermal content of the closed-loop biomass to the thermal content of all fuel used. This limitation duplicates a similar limitation in IRC section 45(a), which provides that the credit is equal to 1.5 cents multiplied by the kilowatt hours of electricity produced by the taxpayer from qualified energy resources (and meeting other criteria). The present-law IRC section 45(a) rule has the effect of limiting the credit (or duration of the credit) to the appropriate portion of the fuel that constitutes qualified energy resources, in the situations in which qualified energy resources are permitted to be co-fired with each other, or are permitted to be co-fired with other fuels. The TTCA clarifies that the limitation applies only once, not twice, to closed-loop biomass co-fired with other fuels, by striking the duplicate limitation in IRC section 45(d)(2)(B)(ii).

California Law (None)

California has no comparable credit.

Impact on California Revenue

Not applicable.

d. Treatment of partnerships under the limitation on deductions allocable to property used by governments or other tax-exempt entities (AJCA section 848).

IRC section 470 generally applies loss deferral rules in the case of property leased to tax-exempt entities. This rule applies with respect to tax-exempt use property, which for this purpose generally has the meaning given to the term by section 168(h) (with exceptions specified in IRC section 470(c)(2)). The manner of application of IRC section 470 in the case of property owned by a partnership in which a tax-exempt entity is a partner is unclear.

THE TAX TECHNICAL CORRECTIONS ACT (TTCA) OF 2007 (PL 110-172, DECEMBER 29, 2007)

The TTCA provides that tax-exempt use property does not include any property that would be tax-exempt use property solely because of IRC section 168(h)(6). The TTCA refers to IRC section 7701(e) for circumstances in which a partnership is treated as a lease to which IRC section 168(h) applies. Thus, if a partnership is recharacterized as a lease pursuant to IRC section 7701(e), and a provision of IRC section 168(h) (other than IRC section 168(h)(6)) applies to cause the property characterized as leased to be treated as tax-exempt use property, then the loss deferral rules of IRC section 470 apply.

Under IRC section 7701(e)(2), a partnership may be treated as a lease, taking into account all relevant factors, including factors similar to those set forth in IRC section 7701(e)(1) (relating to service contracts treated as leases). In the case of property of a partnership in which a tax-exempt entity is a partner, factors similar to those in IRC section 7701(e)(1) (and in the legislative history of that section) that are relevant in determining whether a partnership is properly treated as a lease of property held by the partnership include (1) a tax-exempt partner maintains physical possession or control or holds the benefits and burdens of ownership with respect to such property, (2) there is insignificant equity investment by any taxable partner, (3) the transfer of such property to the partnership does not result in a change in use of such property, (4) such property is necessary for the provision of government services, (5) a disproportionately large portion of the deductions for depreciation with respect to such property are allocated to one or more taxable partners relative to such partner's risk of loss with respect to such property or to such partner's allocation of other partnership items, and (6) amounts payable on behalf of the tax-exempt partner relating to the property are defeased (annulled or made void)or funded by set-asides or expected set-a-sides. It is intended that Treasury regulations or guidance may provide additional factors that can be taken into account in determining whether a partnership with taxable and tax-exempt partners is an arrangement that resembles a lease of property under which IRC section 470 defers the allowance of losses.

Effective Date

The provision is effective as if included in the provision of the AJCA to which it relates. It is not intended that the provision super cede the rules set forth by the Treasury Department in Notice 2005-29, 2005-13 I.R.B. 796, Notice 2006-2, 2006-2 I.R.B. 1, and Notice 2007-4, 2007-1 I.R.B. 260, with respect to the application of IRC section 470 in the case of partnerships for taxable years of partnerships beginning in 2004, 2005, and 2006. These notices state that the IRS will not apply IRC section 470 to disallow losses associated with property that is treated as tax-exempt use property solely as a result of the application of IRC section 168(h)(6), and that abusive transactions involving partnerships and other pass-through entities remain subject to challenge by the IRS under other provisions of the tax law. Accordingly, for partnership taxable years beginning in 2004, 2005, and 2006, the IRS may apply IRC section 470 to a partnership that would be treated as a lease under IRC section 7701(e)(2).

California Law (R&TC sections 17024.5, 17551, and 24694)

AJCA section 849 amended Subchapter E of Chapter 1 of Subtitle A of the IRC, relating to accounting periods and methods of accounting, by adding new IRC section 470. California is conformed by reference to IRC section 470, relating to limitation on deductions allocable to property used by governments or other tax-exempt entities, as of the "specified date" of January 1, 2005. Thus, the technical corrections do not automatically apply.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

e. Treatment of losses on positions in identified straddles (AJCA section 888).

Under IRC section 1092, the term "straddle" means offsetting positions in actively traded personal property. Generally, a loss on a position in a straddle may be recognized only to the extent the amount of the loss exceeds the unrecognized gain (if any) in offsetting positions in the straddle (IRC section1092(a)(1)(A)). Special rules for identified straddles provide a different treatment of losses and also provide that any position that is not part of an identified straddle is not treated as offsetting with respect to any position that is part of the identified straddle. A taxpayer is permitted to treat a straddle as an identified straddle only if, among other requirements, the straddle is not part of a larger straddle.

Before the enactment of the AJCA, the rules for treating a straddle as an identified straddle required that all the positions of the straddle were acquired on the same day and either that all of the positions were disposed of on the same day in a taxable year or that none of the positions were disposed of as of the close of the taxable year. A loss on a position in an identified straddle was not subject to the loss deferral rule described above but instead was taken into account when all the positions making up the straddle were disposed of.

The AJCA changed the rules for identified straddles by providing, among other things, that if there is a loss on a position in an identified straddle, the loss is applied to increase the basis of the offsetting positions in that identified straddle. Under IRC section 1092(a)(2)(A)(ii), the basis of each offsetting position in an identified straddle is increased by an amount that equals the product of the amount of the loss multiplied by the ratio of the amount of unrecognized straddle period gain in that offsetting position to the aggregate amount of unrecognized straddle period gain in all offsetting positions.

The AJCA left unclear the treatment of a loss on a position in an identified straddle in at least two circumstances: first, when there are no offsetting positions in the identified straddle with unrecognized straddle period gain, and, second, when an offsetting position in the identified straddle is or has been a liability to the taxpayer.

The TTCA addresses the treatment of losses in these two circumstances. In general, the provision reaffirms that a loss on a position in an identified straddle is not permitted to be recognized currently and also is not permanently disallowed.

The TTCA provides that if the application of IRC section 1092(a)(2)(A)(ii) does not result in a basis increase in any offsetting position in the identified straddle (because there is no unrecognized straddle period gain in any offsetting position), the basis of each offsetting position in the identified straddle must be increased in a manner that (1) is reasonable, is consistent with the purposes of the identified straddle rules, and is consistently applied by the taxpayer, and (2) allocates to offsetting positions the full amount of the loss (but no more than the full amount of the loss). At the time a taxpayer adopts an allocation method under this rule, the taxpayer is expected to describe that method in its books and records.

Under the TTCA, unless the Secretary of the Treasury provides otherwise, similar rules apply for purposes of the identified straddle rules when there is a loss on a position in an identified straddle and an offsetting position in the identified straddle is or has been a liability or an obligation (including, for instance, a debt obligation issued by the taxpayer, a written option, or a notional principal contract entered into by the taxpayer). Under this rule, if a taxpayer, for example, receives $1 to enter into a five-year short forward contract and the next day $100 of loss is allocated to that position, the resulting basis of the contract is $99.

Under present law, a straddle is treated as an identified straddle only if, among other requirements, it is clearly identified on the taxpayer’s records as an identified straddle before the earlier of (1) the close of the day on which the straddle is acquired, or (2) a time that the Secretary of the Treasury may prescribe by regulations. The TTCA clarifies that for purposes of this identification requirement, a straddle is clearly identified only if the identification includes an identification of the positions in the straddle that are offsetting with respect to other positions in the straddle. Consequently, taxpayers are required to identify not only the positions that make up an identified straddle but also which positions in that identified straddle are offsetting with respect to one another. The offsetting positions identification requirement added by the TTCA is effective for straddles acquired after the date of enactment.

The TTCA provides that regulations or other guidance prescribed by the Secretary for carrying out the purposes of the identified straddle rules may include the rules for the application of IRC section 1092 to a position that is or has been a liability or an obligation. Regulations or other guidance also may include safe harbor basis allocation methods that satisfy the requirements that an allocation other than under IRC section 1092(a)(2)(A)(ii) must be reasonable, consistent with the purposes of the identified straddle rules, and consistently applied by the taxpayer.

THE TAX TECHNICAL CORRECTIONS ACT (TTCA) OF 2007 (PL 110-172, DECEMBER 29, 2007)

Effective Date

1) In General. Except as otherwise provided, the amendments made by the TTCA take effect as if included in the provisions of the AJCA to which they relate.
2) Identification requirement of amendment related to AJCA section 888. The amendment made by subsection (d)(2)(A) of the TTCA applies to straddles acquired after the date of the enactment of this Act.

California Law (R&TC sections 18031 and 24998)

AJCA Act Section 888 amends IRC section 1092 relating to straddles. California is conformed by reference to IRC Sections 1092 in R&TC sections 18031 and 24998 as of the "specified date" of January 1, 2005. Therefore, the technical corrections to IRC section 1092 do not automatically apply.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

Section	Section Title
8	Amendments related to the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001

New Federal Law (IRC sections 402 and 3121)

a. Application of special elective deferral limit to designated Roth contributions (EGTRRA section 617).

IRC section 402(g)(7) provides a special rule allowing certain employees to make additional elective deferrals to a tax-sheltered annuity, subject to (1) an annual limit of $3,000, and (2) a cumulative limit of $15,000 minus the amount of additional elective deferrals made in previous years under the special rule. Present law provides a rule to coordinate the cumulative limit with the ability to make designated Roth contributions, but inadvertently reduces the $15,000 amount by all designated Roth contributions made in previous years. The TTCA clarifies that the $15,000 amount is reduced only by additional designated Roth contributions made under the special rule.

California Law (R&TC sections 17501 and 17551)

In general, California conforms by reference to Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 424, inclusive, in R&TC section 17501(a) as of the "specified date" of January 1, 2005. Additionally, California conforms by reference to Subchapter E of Chapter 1 of Subtitle A of the IRC, relating to accounting periods and methods of accounting, consisting of IRC sections 441 through 483, inclusive, in R&TC section 17551(a) as of the "specified date" of January 1, 2005. However, except for increases in the maximum amount of elective deferrals, R&TC sections 17501(b) and 17551(c) specifically provide that federal changes to Part I of Subchapter D of Chapter 1 of Subtitle A of the IRC, relating to deferred compensation, consisting of IRC sections 401 through 420, inclusive, and IRC section 457, relating to deferred compensation plans of state and local governments and tax-exempt organizations, automatically apply without regard to taxable year to the same extent as applicable for federal income tax purposes and thus adopt all changes made to those IRC sections without regard to the "specified date" contained in R&TC section 17024.5. The technical corrections to IRC section 402 made by this provision therefore automatically apply under California law without regard to taxable year to the same extent as applicable for federal income tax purposes.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

b. Application of FICA taxes to designated Roth contributions (EGTRRA section 617)

Under IRC section 3121(v)(1)(A), elective deferrals are included in wages for purposes of social security and Medicare taxes. The TTCA clarifies that wage treatment applies also to elective deferrals that are designated as Roth contributions.

Effective Date

The amendments made by this section take effect as if included in the provisions of the EGTRRA to which they relate.

California Law (None)

The technical corrections to IRC section 3121 relating to the federal social security and Medicare taxes are not applicable because California does not impose those taxes. Disability and unemployment taxes are administered by the EDD.

Impact on California Revenue

Defer to EDD.

THE TAX TECHNICAL CORRECTIONS ACT (TTCA) OF 2007 (PL 110-172, DECEMBER 29, 2007)

Section	Section Title
9	Amendments related to the Tax Relief Extension Act (TREA) of 1999

New Federal Law (IRC sections 45(e) and 856)

a. Renewable electricity sold to utilities under certain contracts (TREA section 507).

IRC section 45(e)(7) provides that a wind energy facility placed in service by the taxpayer after June 30, 1999, does not qualify for the IRC section 45 production tax credit if the electricity generated at the facility is sold to a utility pursuant to certain pre-1987 contracts. The TTC clarifies that facilities placed in service prior to June 30, 1999, that sell electricity under applicable pre-1987 contracts are not denied the IRC section 45 production tax credit solely by reason of a change in ownership after June 30, 1999.

Effective Date

The amendments made by this section take effect as if included to the provisions of the TREA to which they relate.

California Law (None)

California has no credit comparable to the federal IRC section 45 credit for the production of electricity from qualified facilities sold by the taxpayer to utilities under certain contracts.

Impact on California Revenue

Not applicable.

b. Treatment of income and services provided by taxable REIT subsidiaries (TREA section 542).

The TTCA clarifies that the transient basis language in the definition of a lodging facility applies only in determining whether an establishment other than a hotel or motel qualifies as a lodging facility.

Effective Date

The amendments made by this section take effect as if included to the provisions of the TREA to which they relate.

California Law (R&TC sections 24871 – 24875.5)

California law is conformed to Subchapter M of Chapter 1 of Subtitle A of the IRC, relating to RICs, REITs, Real Estate Mortgage Investment Conduits, and Financial Asset, Secularization Investment Trusts, with modifications in R&TC sections 24871 – 24875.5 as of the "specified date" of January 1, 2005. Thus, the tax technical corrections to IRC section 856 do not automatically apply.

Impact on California Revenue

No impact. No federal revenue impact was estimated for these technicals.

Section	Section Title
10	Amendment related to the Internal Revenue Service Restructuring and Reform Act (IRSRRA) of 1998

New Federal Law (IRC section 6110)

a) Redactions for background documents related to Chief Counsel Advice documents (IRSRRA section 3509).

The IRSRRA established a structured process by which the IRS makes certain work products, designated Chief Counsel advice (CCA), open to public inspection. To afford additional protection for certain governmental interests implicated by CCAs, IRC section 6110(i)(3) governs redactions that may be made to CCAs, including the exemptions or exclusions available under the Freedom of Information Act, 5 U.S.C. § 552(b) and (c) (except that the provision for redaction under a Federal statute excludes Title 26), as well as the exemptions pertaining to taxpayer identity information described in IRC section 6110(c)(1). IRC section 6110(i)(3) does not expressly address redactions to the "background file documents" related to a CCA. The TTCA clarifies that the CCA background file documents are governed by the same redactions as CCAs.

Effective Date

The amendment made by this section takes effect as if included in the provision of the IRSRRA to which it relates.

California Law (None)

California is not conformed by reference to IRC section 6110 and has no equivalent provision. Thus, the technical amendments to IRC section 6110 are not applicable to California.

Impact on California Revenue

Not applicable

Section	Section Title
11	Clerical Corrections

a. Clerical Amendments.

New Federal Law (IRC sections 21, 24, 25C ,26b ,34 ,35 ,38, 45L, 48 ,121 ,125,167, 170, 4942, 2252, 852, 857, 856, 954, 1016, 1260, 1297,1260,1298, 1362,1400O, 4082, 4101, 4965, 5732, 6046, 6103, 7651, 6211, 6230, 6427, 6695A, 6707, 9002, 9004, 9032, 9034, 9006, and 9503)

The TTCA includes a number of clerical and conforming amendments, including amendments correcting typographical errors to the IRC, which are effective upon enactment.

b. Clerical Amendments Related to the Tax Relief and Health Care Act (TRHCA) of 2006.

The TTCA includes a number of clerical amendments to IRC sections 168 and 6724. The amendments made by this subsection take effect as if included in the provision of the TRHCA to which they relate.

c. Clerical Amendments Related to the Gulf Opportunity (GO) Zone Act of 2005.

The TTCA made clerical amendments to IRC section 26. The amendments made by this subsection take effect as if included in the provisions of the GO Zone Act of 2005 to which they relate.

d. Clerical Amendments Related to the Safe, Accountable, Flexible, Efficient Transportaion Equity Act: A Legacy for Users (SAFETEA - LU)

The TTCA made clerical amendments to IRC section 6416. The amendments made by this subsection take effect as if included in the provisions of the SAFETEA – LU to which they relate.

e. Clerical Amendments Related to the Energy Policy Act (EPA) of 2005.

The TTCA includes a number of clerical amendments to IRC sections 41 and 6427. The amendments made by this subsection take effect as if included in the provisions of the EPA to which they relate.

f. Clerical Amendments Related to the American Jobs Creation Act (AJCA) of 2004.

The TTCA includes a number of clerical amendments to IRC sections 904, 1298 and 9502. The amendments made by this subsection take effect as if included in the provisions of the AJCA to which they relate.

g. Clerical Amendments Related to the FSC Repeal and Extraterritorial Income Exclusion Act of 2000.

New Federal Law (IRC sections 54, 56, 245, 275, 291, 441, 884, 901, 904, 906, 936, 951, 952, 954, 956 992, 1248, 1297, 6011, 6072, and 6686).

The TTC includes a number of clerical amendments to the IRC, which are effective upon enactment.

EXHIBIT A – 2007 MISCELLANEOUS FEDERAL ACTS IMPACTING THE INTERNAL REVENUE CODE (IRC) NOT REQUIRING A CALIFORNIA RESPONSE

IRC Code Section	P. L. #	Sec.	118 Stat. Page

1. **Public Law 110-42, Extension of Andean Trade Preference Act,** amended the IRC relating to the time for payment of Corporate Estimated taxes.

6655	110-42	4	236

In an uncodified provision retroactively amended Tax Increase Prevention and Reconciliation Act of 2005 section 401(1)(B) to increase the estimated tax rate. Not applicable to California.

2. **Public Law 110-52, Renewal of Import Restrictions Under Burmese Freedom and Democracy Act of 2003,** amended the IRC relating to the time for payment of Corporate Estimated taxes.

6655	110-52	3	264

In an uncodified provision retroactively amended Tax Increase Prevention and Reconciliation Act of 2005 section 401(1)(B) to increase the estimated tax rate. Not applicable to California.

3. **Public Law 110-89, Temporary Extension of Trade Adjustment Assistance Program,** amended the IRC relating to the time for payment of Corporate Estimated taxes.

6655	110-89	2(a)	982

In an uncodified provision retroactively amended Tax Increase Prevention and Reconciliation Act of 2005 section 401(1)(B) to increase the estimated tax rate. Not applicable to California.

EXHIBIT A – 2007 Miscellaneous Federal Acts Impacting The Internal Revenue Code (IRC) Not Requiring A California Response

IRC Code Section	P. L. #	Sec.	118 Stat. Page

4. **Public Law 110-92,** amended the IRC relating to the Airport and Airway Trust Fund as part of making continuing appropriations for fiscal year 2008 and made uncodified changes relating to imposition of excise and miscellaneous taxes. Excise taxes are not administered by the FTB. Defer to BOE.

4081	110-92	149(a)	996
4261	110-92	149(a)	996
4271	110-92	149(a)	996
9502	110-92	149(b)	996

Airport and Airway Trust Fund and uncodified changes relating to imposition of excise and miscellaneous taxes. Defer to the State Board of Equalization (BOE).

EXHIBIT B – EXPIRING TAX PROVISIONS

California Sunset*	California Section	Federal Section	Federal Sunset	Description and Comments
06/30/08	17053.30 23630	N/A	N/A	Credit: Natural Heritage Preservation
12/31/08	18855	N/A	N/A	Voluntary Contribution: Emergency Food Assistance Program
12/31/08	21028	Title 31	Perm.	Taxpayers' Bill of Rights: Confidentiality/Taxpayer Communication
12/31/08	19551.1	N/A	N/A	Disclosure: Tax Information Furnished to Cities
12/31/08	17053.30 23630	N/A	N/A	Credit: Natural Heritage Contribution
12/31/08	17255.5 24356.4	179B	Perm	Deduction: Expensing of Capital Costs Incurred by Certain Refiners
12/31/09	18766	N/A	N/A	Voluntary Contribution: Alzheimer's Disease & Related Disorders Research Fund
12/31/09	18724	N/A	N/A	Voluntary Contribution: California Fund for Senior Citizens
12/31/09	18705	N/A	N/A	Voluntary Contribution: California Military Relief Fund
12/31/09	18845	N/A	N/A	Voluntary Contributions: California Prostate Cancer Research Fund
12/31/10	18804	N/A	N/A	Voluntary Contribution: California Firefighters' Memorial Fund
12/31/10	18808	N/A	N/A	Voluntary Contribution: California Peace Officer Memorial Fund
12/31/10	18846.3	N/A	N/A	Voluntary Contribution: California Sexual Violence Victim Services Fund
12/31/10	18830	N/A	N/A	Voluntary Contribution: Veterans Quality of Life Fund
12/31/10	18847.3	N/A	N/A	Voluntary Contribution: California Colorectal Cancer Prevention Fund
12/31/17	17053.62 23662	45H	Perm	Credit: Environmental Credit for Production of Ultra Low Sulfur Diesel Fuel

Footnotes

* In general, this is the last taxable year to which the provision applies. Fiscal years beginning within this taxable year are, in general, also covered by the provision. In some cases, the repeal date of the section is listed or the expiration applies to transactions occurring after this date.

EXHIBIT C – REVENUE TABLES

Table 1 – Conformity Revenue Estimates for SBWOTA of 2007 (PL 110-28)				
Assumed Enactment After June 30, 2008				
Act Section	**Provisions**	**2008-09**	**2009-10**	**2010-11**
8211	Extension and modification of the work opportunity tax credit ("WOTC")	N/A	N/A	N/A
8212	Increase and extension of expensing for small business	N/A	N/A	N/A
8213	Determination of credit for certain taxes paid with respect to employee cash tips	N/A	N/A	N/A
8214	Waiver of individual and corporate alternative minimum tax limits on work opportunity credit and credit for taxes paid with respect to employee cash tips	N/A	N/A	N/A
8215	Family business tax simplification	Baseline [‡‡‡]	Baseline [‡‡‡]	Baseline [‡‡‡]
8221	One-year extension to special increase in expensing under section 179 for GO Zone property	N/A	N/A	N/A
8222	Extension and expansion of low-income housing credit rules for buildings in the GO Zones	N/A	N/A	N/A
8223	Special tax-exempt bond financing rule for repairs and reconstructions of residences in the GO Zones	N/A	N/A	N/A
8224	GAO study of certain tax incentives in the GO Zones	N/A	N/A	N/A
8231	Exclude S Corporation capital gains from passive investment income	Baseline [‡‡‡]	Baseline [‡‡‡]	Baseline [‡‡‡]
8232	Treatment of qualifying director shares	Baseline [‡‡‡]	Baseline [‡‡‡]	Baseline [‡‡‡]
8233	Recapture of bad debt reserves	$1,000,000	- $1,000,000	- $2,000,000
8234	Treatment of sale of interest in a qualified subchapter S subsidiary	- <$150,000	- <$150,000	- <$150,000
8235	Elimination of all earnings and profits attributable to pre-1983 years	N/A	N/A	N/A
8236	Permit interest deduction to an electing small business trust to acquire S corporation stock	- <$150,000	- <$150,000	- <$150,000

[‡‡‡] For baseline estimates see individual section write-ups.

EXHIBIT C
REVENUE TABLES

Act Section	Provisions	2008-09	2009-10	2010-11
8241	Increase in age of minor children whose unearned income is taxed as if parents' income	$4,500,000	$4,500,000	$4,500,000
8242	Modify interest suspension under 6404(g) from 18 to 36 months	- 0 -	$7,000,000	$7,000,000
8243	Modification of collection due process procedures for employment tax liabilities	Defer to EDD	Defer to EDD	Defer to EDD
8244	Permanent extension of IRS user fees	N/A	N/A	N/A
8245	Increase in penalty for bad checks and money orders	< $500,000	< $500,000	< $500,000
8246	Understatement of taxpayer liability by return preparers	- 0 -	$750,000	$750,000
8247	Penalty for filing erroneous refund claims	- 0 -	< $150,000	< $150,000
8248	Increase corporate estimated tax payments due July through September for corporations with assets of $1 billion in 2012	N/A	N/A	N/A
6611	Revocation of election relating to treatment as multi-employer plan	Baseline [‡‡‡]	Baseline [‡‡‡]	Baseline [‡‡‡]
6612	Modification of requirements for qualified transfers	Baseline [‡‡‡]	Baseline [‡‡‡]	Baseline [‡‡‡]
6614	Extension of alternative deficit reduction contribution rules	Baseline [‡‡‡]	Baseline [‡‡‡]	Baseline [‡‡‡]
6615	Modification of the interest rate for pension funding rules	Baseline [‡‡‡]	Baseline [‡‡‡]	Baseline [‡‡‡]

Table 2 – Conformity Revenue Estimates for Title XV of the EISA of 2007(PL 110-140)				
Assumed Enactment After June 30, 2008				
Act Section	**Provisions**	**2008-09**	**2009-10**	**2010-11**
1501	Extension of FUTA surtax of 0.2 percent (sunset 12/31/08)	DEFER TO EDD	DEFER TO EDD	DEFER TO EDD
1502	7-year amortization of geological and geophysical expenditures for major integrated oil companies	$10,000,000 [§§§]	$2,000,000 [§§§]	- $4,000,000 [§§§]

§§§ Revenue for the three fiscal years includes TIPRA of 2005 section 503 revenue amounts.

EXHIBIT C
REVENUE TABLES

Table 3 – Conformity Revenue Estimates for Virginia Tech Victims and Family Assistance Act (PL 110-141)

Assumed Enactment After June 30, 2008

Act Section	Provisions	2008-09	2009-10	2010-11
1	Exclude from income payments from Hokie Spirit Memorial Fund	- <$150,000	- <$150,000	- <$150,000
2	Modify penalty for failure to file partnership returns.	- 0 -	- 0 -	- 0 -

Table 4 – Conformity Revenue Estimates for MFDRA OF 2007 (PL 110-142)

Assumed Enactment After June 30, 2008

Act Section	Provisions	2008-09	2009-10	2010-11
1 - 2	Exclusion of discharge of principal residence indebtedness	- $8,000,000	- $10,000,000	- 2,000,000
3	Extension of deduction for private mortgage insurance	- $6,000,000	- $6,000,000	- $4,000,000
4	Change in tests to qualify as cooperative housing corporation	- <$150,000	- <$150,000	- <$150,000
5	Exclusion from income for benefits provided to volunteer EMS and firefighters	- $4,000,000	- $3,000,000	- $2,000,000
6	Modify the prohibition against full-time students from qualifying for LIHTC unit	- <$150,000	- <$150,000	- <$150,000
7	Allow surviving spouse to exclude from gross income up to $500,000 of the gain from sale of principal residence if the sale occurs within 2 years of the death of the spouse	- <$500,000	- <$500,000	- <$500,000
8	Increase penalty for failure to file partnership returns to $85	$2,000,000	$2,000,000	$2,000,000
9	Impose a penalty for failure to file S corporation returns at $85	$1,000,000	$1,000,000	$1,000,000
10	Increasing certain corporate estimated tax payments	N/A	N/A	N/A

Table 5 – Conformity Revenue Estimates for TIPRA of 2007(PL 110-166)

Assumed Enactment After June 30, 2008

Act Section	Provisions	2008-09	2009-10	2010-11
2	Extension of Increased Alternative Minimum Tax Exemption Amount	NA	NA	NA
3	Extension of Alternative Minimum Tax Relief for Nonrefundable Person Credits Deduction.	NA	NA	NA

EXHIBIT D – GLOSSARY OF ABBREVIATIONS

AGI	Adjusted Gross Income
AJCA	American Jobs Creation Act of 2004
AMT	Alternative Minimum Tax
AMTI	Alternative Minimum Taxable Income
BOE	Board of Equalization
CCA	Chief Counsel advice
CDP	Collection Due Process
CFC	Controlled Foreign Corporaton
CTL	Corporation Tax Law
EDD	Employment Development Department
EGTRRA	Economic Growth and Tax Relief Reconciliation Act of 2001
ERISA	Employee Retirement Income Security Act of 1974
ESBT	Electing Small Business Trust
EPA	Environmental Protection Agency
FICA	Federal Insurance Contributions Act
FLSA	Fair Labor Standard Act
FUTA	Federal Unemployment Tax Act
FSC	Foreign Sales Corporation
FTB	Franchise Tax Board
GAO	Government Accountability Office
HOPE	Helping Outstanding Pupils Educationally
IRA	Individual Retirement Account
IRC	Internal Revenue Code
IRS	Internal Revenue Service
IRSRRA	Internal Revenue Service Restructuring and Reform Act
LAMBRA	Local Agency Military Base Recovery Areas
LLC	Limited Liability Company
LIHC	Low Income Housing Credit
MFDRA	Mortgage Forgiveness Debt Relief Act
PBGC	Pension Benefit Guaranty Corporation
PITL	Personal Income Tax Law
QSub	Qualified Subsidiary
REIT	Real Estate Investment Trust
RIC	Regulated Investment Company (Mutual Fund)
R&TC	Revenue and Taxation Code
SAFETEA - LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
SSI	Social Security Income
TANF	Temporary Assistance For Needy Families
TIGTA	Treasury Inspector General for Tax Compliance
TIPRA	Tax Increase Prevention and Reconciliation Act
TRHCA	Tax Relief Health Care Act
TREA	Tax Relief Extension Act
TTCA	Tax Technical Correction Act
TYBOA	Tax Year Beginning On or After
WOTC	Work Opportunity Tax Act

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