

## **Subject: Conformity to Federal Treatment of Investments in Opportunity Zones**

### **Amendment 1**

Section 1. Section 18036 of the Revenue and Taxation Code is amended to read:

18036. (a) In addition to the adjustments to basis provided by Section 1016(a) of the Internal Revenue Code, a proper adjustment shall also be made for amounts allowed as deductions as deferred expenses under subdivision (b) of former Section 17689 or former Section 17689.5 (relating to certain exploration expenditures) and resulting in a reduction of the taxpayer's taxes under this part, but not less than the amounts allowable under those sections for the taxable year and prior years. A proper adjustment shall also be made for amounts deducted under Section 17252.5, 17265, or 17266.

(b) Notwithstanding the provisions of Sections 164(a) and 1016(a) of the Internal Revenue Code, no adjustment to basis shall be made for any of the following:

(1) Abandonment fees paid in respect of property on which the open-space easement is terminated under Section 51061 or 51093 of the Government Code.

(2) Tax recoupment fees paid under Section 51142 of the Government Code.

(3) Sales or use tax which is paid or incurred by the taxpayer in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 17052.13.

(c) The provisions of Section 1016(c) of the Internal Revenue Code, relating to increase in basis of property on which additional estate tax is imposed, shall be applicable.

(d) The amendments made to Section 1016 of the Internal Revenue Code by Section 1913(a) of Public Law 102-486, relating to deduction for clean-fuel vehicles and certain refueling property, shall apply to property placed in service after June 30, 1993, without respect to taxable year.

(e) The amendments made by Section 13823(b) of the Tax Cuts and Jobs Act (Public Law 115-97), to Section 1016(a) of the Internal Revenue Code, relating to adjustments to basis, shall apply, except as otherwise provided.

## Amendment 2

Section 18036.5 of the Revenue and Taxation Code is repealed:

~~18036.5 In addition to the adjustments to basis provided by Section 1016(a) of the Internal Revenue Code, a proper adjustment shall also be made in the case of property the acquisition of which resulted under Section 18038.5 in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in paragraph (4) of subdivision (b) of Section 18038.5.~~

## Amendment 3

Section 18190 of the Revenue and Taxation Code is added to read:

18190. (a) The amendments made by Section 13823(a) of the Tax Cuts and Jobs Act (Public Law 115-97), to add Subchapter Z of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to opportunity zones, shall apply, except as otherwise provided.

(b) (1) "California qualified opportunity zone" is substituted for qualified opportunity zone under Section 1400Z-1 of the Internal Revenue Code, relating to designation.

(2) A California qualified opportunity zone must be located within the State of California.

(c) For purposes of Section 1400Z-2 of the Internal Revenue Code, relating to Special rules for capital gains invested in opportunity zones,

(1) "California qualified opportunity zone business property" is substituted for "qualified opportunity zone business property",

(2) "California qualified opportunity zone business property" is defined as property which is located in a California qualified opportunity zone and meets either of the following conditions:

(A) It is a qualified low-to-moderate-income housing project

(i) A project is a qualified low-to-moderate-income housing project if:

(ii) It meets the definition of "qualified low-income housing project" provided in Section 42(g) of the Internal Revenue Code, relating to qualified low-income housing project, and

(iii) It has an agreement between the taxpayer and the California Tax Credit Allocation Committee, for the taxable year in which the investment in the California qualified opportunity zone is made, that meets the conditions of an extended low-income housing commitment as defined in Section (h)(6)(B) of the Internal Revenue Code, relating to Extended low-income housing commitment.

(B) It is primarily engaged in those lines of business described in Codes, 221111 to 221118, inclusive, or 221122, of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition, only if engaged in making, producing, creating, or converting electric power from sources other than a conventional power source, as defined in Section 2805 of the Public Utilities Code.

(3) "California qualified opportunity fund" is substituted for "qualified opportunity fund" and shall meet both of the following requirements:

(A) At all times during the taxable year, the California qualified opportunity fund holds at least 90 percent of its total assets in California qualified opportunity zone property

(B) At all times during the taxable year, the California qualified opportunity fund holds any remaining assets either in cash, liquid assets, or tangible property located in California.

(4) "California qualified opportunity zone property" is substituted for "qualified opportunity zone property"

(5) "California qualified opportunity zone stock" is substituted for "qualified opportunity zone stock"

(6) "California qualified opportunity zone partnership interest" is substituted for "qualified opportunity zone partnership interest"

(7) "California qualified opportunity zone business" is substituted for "qualified opportunity zone business"

(d)(1) The Franchise Tax Board shall make a California qualified opportunity zone investment allocation to a California qualified opportunity zone fund on a first-come-first-served basis. The maximum amount of allocation that the Franchise Tax Board may allocate to a fund is one hundred million dollars (\$100,000,000).

(2) A California qualified opportunity zone fund may request an allocation amount greater than one hundred million dollars (\$100,000,000) from the Governor's Office of Business and Economic Development.

(A) The Governor's Office of Business and Economic Development shall notify the Franchise Tax Board of any request granted for an allocation over one hundred million dollars (\$100,000,000) and the Franchise Tax Board shall allocate the additional amount to the California qualified opportunity zone fund at the direction of the Governor's Office of Business and Economic Development to the extent that funds are available for allocation.

(B) The date that the Governor's Office of Business and Economic Development notifies the Franchise Tax Board that the request has been granted shall be considered the date the California qualified opportunity zone requested the allocation.

(3)(A) The maximum aggregate amount of California qualified opportunity zone investment that the Franchise Tax Board may allocate is limited to five billion dollars (\$5,000,000,000).

(B) The Franchise Tax Board shall reduce the California qualified opportunity zone investment amount allocated to any California qualified opportunity fund to the total amount of capital raised as reported in the second six month report described in subdivision (f) and shall add the reduction to the available balance to allocate in the taxable year that the reduction occurs.

(e) Notwithstanding Part 11, capital gains invested in California qualified opportunity funds shall retain their character as gains from tangible or intangible property for purposes of this section.

(f)(1) Each California qualified opportunity zone fund that receives an allocation from the Franchise Tax Board under subdivision (d) shall report to the Franchise Tax Board every 6 months information including, but not limited to, the following items:

(A) The total amount of capital raised.

(B) The total amount of capital invested in California qualified opportunity zone business property.

(C) The total amount of capital invested in California qualified opportunity zone stock.

(D) The total amount of capital invested in California qualified opportunity zone partnership interest.

(E) The date the investment or investments are made.

(2) Each California qualified opportunity zone fund that receives an allocation from the Franchise Tax Board under subdivision (d) shall report to the Franchise Tax Board no later than 60 days after the close of their taxable year, in a form and manner specified by the Franchise tax Board. The items included on the report may include, but are not limited to:

(A) The number of low-income housing units created as a result of the investment, if applicable.

(B) The number jobs created as a result of the investment and the average wage paid for those jobs.

(C) The alternative electricity production capacity created as a result of the investment, if applicable.

(3) (A) The Franchise Tax Board shall post on its internet website the total amount of California Qualified Opportunity Zone Investment allocated as of the end of each month.

(B) The Franchise Tax Board shall report to the Legislature, on no less than a yearly basis, in consultation with the Department of Finance, the California Tax Credit Allocation Committee, and the Governor's Office of Business and Economic Development on the effectiveness of the program. The information provided in the report shall include information reported to the Franchise Tax Board by the California Opportunity Zone Funds.

(g)(1) Except as otherwise provided in this section, Section 1400Z-2(b)(2)(B) of the Internal Revenue Code, relating to Determination of basis, shall apply, and the date that the investment is held begins the date that the qualified California opportunity zone fund makes the investment.

(2) A taxpayer with gain excluded under subsection (a)(1)(A) of Section 1400Z-2 of the Internal Revenue Code must include capital gains excluded in prior years on their return in the current taxable year if any of the following applies:

(i) the California qualified opportunity fund is determined to be out of compliance as specified in subdivision (f) or paragraph (3) of subdivision (c).

(ii) the taxpayer sells or exchanges the qualified California qualified opportunity zone property.

(iii) the taxable year includes December 31, 2026.

(3) If the California qualified opportunity fund is determined to be out of compliance as specified in subdivision (f) or paragraph (3) of subdivision (c):

(i) the gain excluded under subsection (a)(1)(A) of Section 1400Z-2 of the Internal Revenue Code, relating to Special rules for capital gains invested in opportunity zones, shall be taxable in the current taxable year and the taxpayer's basis of the investment shall be reduced to zero.

(ii) Section 1400Z-2(b)(2)(B)(ii), (iii), and (iv) and Section 1400Z-2(c) of the Internal Revenue Code, relating to Determination of basis, shall not apply

(h) Notwithstanding Section 19542, the Franchise Tax Board may disclose information reported pursuant to subdivision (f) for the purpose of reporting on the effectiveness of this section.

(i) The Franchise Tax Board may disclose to the California Tax Credit Allocation Committee and the Governor's Office of Business and Economic Development individual income tax return information and other information related to the income tax return in the records of the Franchise Tax Board, through information sharing agreements or data interfaces, for purposes of administering this section.

(j)The Franchise Tax Board may, in consultation with the Governor's Office of Economic Development, adopt regulations that are necessary and appropriate to implement this part.

(k) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to any standard, criterion, procedure, determination, rule, notice, guideline, or any other guidance established or issued by the Franchise Tax Board pursuant to this part.

#### **Amendment 4**

Section 19183.5 of the Revenue and Taxation Code is added to read:

19183.5. (a) In the case of a failure to make a report required under Section 18190 or Section 24996 that contains the information required by those sections on the date prescribed therefore, or for failure to meet the requirements specified in paragraph (3) of subdivision (c) of Section 18190 or 24996, there shall be paid on notice and demand by the Franchise Tax Board and in the same manner as tax, by the California Qualified Opportunity Fund, an amount equal to:

(1) For the first failure, a penalty of one half of a percent (.5%).

(2) For the second failure, a penalty of one percent (1%).

(3) For the third failure, a penalty of one and one half percent (1.5%).

(4) For the fourth failure, a penalty of two percent (2%).

(5) For the fifth failure, a penalty of two and one half percent (2.5%).

(6) After the fifth failure, any subsequent failure shall result in revocation of the qualified California opportunity zone fund allocation.

(b) In the case of a failure to make a return as required under Section 18190 or Section 24996 on or before the due date of the return or the due date as extended by the Franchise Tax Board, a penalty of 10 percent of the tax shall be added to the tax due and the basis of the investment shall be reduced to zero.

## **Amendment 5**

Section 24916 of the Revenue and Taxation Code is amended to read:

24916. Proper adjustment with regard to the property shall in all cases be made as follows:

(a) For expenditures, receipts, losses, or other items properly chargeable to capital account. However, no adjustment shall be made for any of the following:

(1) Sales or use tax paid or incurred in connection with the acquisition of property for which a tax credit is claimed pursuant to Section 23612.2.

(2) Taxes or other carrying charges described in Section 24426, or for expenditures described in Sections 24364 and 24369 for which deductions have been taken in determining net income for the taxable year or any prior taxable year.

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

(1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), to the extent sustained prior to January 1, 1928, and to the extent allowed (but not less than the amount allowable) under this part, except that no deduction shall be made for amounts in excess of the amount which would have been allowable had depreciation not been computed on the basis of January 1, 1928, value and amounts in excess of the adjustments required by Section 113(b)(1)(B) of the Federal Revenue Act of 1938 for depletion prior to January 1, 1932.

(2) In the case of a taxpayer subject to the tax imposed by Chapter 3 (commencing with Section 23501), to the extent sustained prior to January 1, 1937, and for periods thereafter to the extent allowed (but not less than the amount allowable) under the provisions of this part.

(3) If a taxpayer has not claimed an amortization deduction for an emergency facility, the adjustment under paragraph (1) shall be made only to the extent ordinarily provided under Sections 24349 and 24372.

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

(d) (1) In the case of corporations subject to the tax imposed by Chapter 2 (commencing with Section 23101), in the case of any bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to Section 24360 with respect thereto.

(2) In the case of taxpayers subject to the tax imposed by Chapter 3 (commencing with Section 23501), in the case of any bond, as defined in Section 24363, the interest on which is wholly exempt from the tax imposed by this part, to the extent of the amortizable bond premium disallowable as a deduction pursuant to subdivision (b) of Section 24360, and in the case of

any other bond, as defined in Section 24363, to the extent of the deductions allowable pursuant to subdivision (a) of Section 24360 (or the amount applied to reduce interest payments under paragraph (2) of subdivision (a) of Section 24363.5) with respect thereto.

(3) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to Section 24273, and to the extent of any deficiency on that loan with respect to which the taxpayer has been relieved from liability.

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

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

(g) For amounts allowed as deductions as deferred expenses under subdivision (a) of Section 24366, relating to research and experimental expenditures, and resulting in a reduction of the corporation's taxes under this part, but not less than the amounts allowable under that section for the taxable year and prior years.

(h) For amounts allowed as deductions under Sections 24356.2, 24356.3, and 24356.4.

(i) (1) To the extent provided in Section 179A(e)(6)(A) of the Internal Revenue Code, relating to basis reduction for clean-fuel vehicles and certain refueling property.

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

(j) The amendments made by Section 13823(b) of the Tax Cuts and Jobs Act (Public Law 115-97), to Section 1016(a) of the Internal Revenue Code, relating to adjustments to basis, shall apply, except as otherwise provided.

(jk) In the case of property the acquisition of which resulted under Section 1044 of the Internal Revenue Code, relating to rollover of publicly traded securities gain into specialized small business investment companies, in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in Section 1044(d) of the Internal Revenue Code, relating to basis adjustments.

## **Amendment 6**

Section 24996 of the Revenue and Taxation Code is added to read:

24996. (a) The amendments made by Section 13823(a) of the Tax Cuts and Jobs Act (Public Law 115-97), to add Subchapter Z of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to opportunity zones, shall apply, except as otherwise provided.

(b) (1) “California qualified opportunity zone” is substituted for qualified opportunity zone under Section 1400Z-1 of the Internal Revenue Code, relating to designation.

(2) A California qualified opportunity zone must be located within the State of California.

(c) For purposes of Section 1400Z-2 of the Internal Revenue Code, relating to Special rules for capital gains invested in opportunity zones,

(1) “California qualified opportunity zone business property” is substituted for “qualified opportunity zone business property”.

(2) “California qualified opportunity zone business property” is defined as property which is located in a California qualified opportunity zone and meets either of the following conditions:

(A) It is a qualified low-to-moderate-income housing project

(i) A project is a qualified low-to-moderate-income housing project if:

(ii) It meets the definition of “qualified low-income housing project” provided in Section 42(g) of the Internal Revenue Code, relating to qualified low-income housing project, and

(iii) It has an agreement between the taxpayer and the California Tax Credit Allocation Committee, for the taxable year in which the investment in the California qualified opportunity zone is made, that meets the conditions of an extended low-income housing commitment as defined in Section (h)(6)(B) of the Internal Revenue Code, relating to Extended low-income housing commitment.

(B) It is primarily engaged in those lines of business described in Codes, 221111 to 221118, inclusive, or 221122, of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2012 edition, only if engaged in making, producing, creating, or converting electric power from sources other than a conventional power source, as defined in Section 2805 of the Public Utilities Code.

(3) “California qualified opportunity fund” is substituted for “qualified opportunity fund” and shall meet both of the following requirements:

(A) At all times during the taxable year, the California qualified opportunity fund holds at least 90 percent of its total assets in California qualified opportunity zone property

(B) At all times during the taxable year, the California qualified opportunity fund holds any remaining assets either in cash, liquid assets, or tangible property located in California.

(4) “California qualified opportunity zone property” is substituted for “qualified opportunity zone property”

(5) “California qualified opportunity zone stock” is substituted for “qualified opportunity zone stock”

(6) “California qualified opportunity zone partnership interest” is substituted for “qualified opportunity zone partnership interest”

(7) “California qualified opportunity zone business” is substituted for “qualified opportunity zone business”

(d)(1) The Franchise Tax Board shall make a California qualified opportunity zone investment allocation to a California qualified opportunity zone fund on a first-come-first-served basis. The maximum amount of allocation that the Franchise Tax Board may allocate to a fund is one hundred million dollars (\$100,000,000).



(2) A California qualified opportunity zone fund may request an allocation amount greater than one hundred million dollars (\$100,000,000) from the Governor's Office of Business and Economic Development.

(A) The Governor's Office of Business and Economic Development shall notify the Franchise Tax Board of any request granted for an allocation over one hundred million dollars (\$100,000,000) and the Franchise Tax Board shall allocate the additional amount to the California qualified opportunity zone fund at the direction of the Governor's Office of Business and Economic Development to the extent that funds are available for allocation.

(B) The date that the Governor's Office of Business and Economic Development notifies the Franchise Tax Board that the request has been granted shall be considered the date the California qualified opportunity zone requested the allocation.

(3)(A) The maximum aggregate amount of California qualified opportunity zone investment that the Franchise Tax Board may allocate is limited to five billion dollars (\$5,000,000,000).

(B) The Franchise Tax Board shall reduce the California qualified opportunity zone investment amount allocated to any California qualified opportunity fund to the total amount of capital raised as reported in the second six month report described in subdivision (f) and shall add the reduction to the available balance to allocate in the taxable year that the reduction occurs.

(e) Notwithstanding Part 11, capital gains invested in California qualified opportunity funds shall retain their character as gains from tangible or intangible property for purposes of this section.

(f)(1) Each California qualified opportunity zone fund that receives an allocation from the Franchise Tax Board under subdivision (d) shall report to the Franchise Tax Board every 6 months information including, but not limited to, the following items:

(A) The total amount of capital raised.

(B) The total amount of capital invested in California qualified opportunity zone business property.

(C) The total amount of capital invested in California qualified opportunity zone stock.

(D) The total amount of capital invested in California qualified opportunity zone partnership interest.

(E) The date the investment or investments are made.

(2) Each California qualified opportunity zone fund that receives an allocation from the Franchise Tax Board under subdivision (d) shall report to the Franchise Tax Board no later than 60 days after the close of their taxable year, in a form and manner specified by the Franchise tax Board. The items included on the report may include, but are not limited to:

(A) The number of low-income housing units created as a result of the investment, if applicable.

(B) The number jobs created as a result of the investment and the average wage paid for those jobs.

(C) The alternative electricity production capacity created as a result of the investment, if applicable.

(3) (A) The Franchise Tax Board shall post on its internet website the total amount of California Qualified Opportunity Zone Investment allocated as of the end of each month.

(B) The Franchise Tax Board shall report to the Legislature, on no less than a yearly basis, in consultation with the Department of Finance and the Governor's Office of Business and Economic Development on the effectiveness of the program. The information provided in the report shall include information reported to the Franchise Tax Board by the California Opportunity Zone Funds.

(g)(1) Except as otherwise provided in this section, Section 1400Z-2(b)(2)(B) of the Internal Revenue Code, relating to Determination of basis, shall apply, and the date that the investment is held begins the date that the qualified California opportunity zone fund makes the investment.

(2) A taxpayer with gain excluded under subsection (a)(1)(A) of Section 1400Z-2 of the Internal Revenue Code must include capital gains excluded in prior years on their return in the current taxable year if any of the following applies:

(i) the California qualified opportunity fund is determined to be out of compliance as specified in subdivision (f) or paragraph (3) of subdivision (c).

(ii) the taxpayer sells or exchanges the qualified California qualified opportunity zone property.

(iii) the taxable year includes December 31, 2026.

(3) If the California qualified opportunity fund is determined to be out of compliance as specified in subdivision (f) or paragraph (3) of subdivision (c):

(i) the gain excluded under subsection (a)(1)(A) of Section 1400Z-2 of the Internal Revenue Code, relating to Special rules for capital gains invested in opportunity zones, shall be taxable in the current taxable year and the taxpayer's basis of the investment shall be reduced to zero.

(ii) Section 1400Z-2(b)(2)(B)(ii), (iii), and (iv) and Section 1400Z-2(c) of the Internal Revenue Code, relating to Determination of basis, shall not apply.

(h) Notwithstanding Section 19542, the Franchise Tax Board may disclose information reported pursuant to subdivision (f) for the purpose of reporting on the effectiveness of this section.

(i) The Franchise Tax Board may disclose to the Governor's Office of Business and Economic Development individual income tax return information and other information related to the income tax return in the records of the Franchise Tax Board, through information sharing agreements or data interfaces, for purposes of administering this section.

(j) The Franchise Tax Board may, in consultation with the Governor's Office of Economic Development, adopt regulations that are necessary and appropriate to implement this part.

(k) The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to any standard, criterion, procedure, determination, rule, notice, guideline, or any other guidance established or issued by the Franchise Tax Board pursuant to this part.

## **Amendment 7**

SEC. 2. Section 19717 of the Revenue and Taxation Code is amended to read:

19717. (a) The prevailing party may be awarded a judgment for reasonable litigation costs incurred, in the case of any civil proceeding brought by or against the State of California in a court of record of this state in connection with the determination, collection, or refund of any tax, interest, or penalty under this part.

(b) (1) A judgment for reasonable litigation costs shall not be awarded under subdivision (a) unless the court determines that the prevailing party has exhausted all administrative remedies available to that party under this part, including the filing of an appeal as provided in Section 19324. Any failure to agree to an extension of the time for the assessment of any tax shall not be taken into account for purposes of determining whether the prevailing party meets the requirements of the preceding sentence.

(2) An award under subdivision (a) shall be made only for reasonable litigation costs which are allocable to the State of California and not to any other party to the action or proceeding.

(3) No award for reasonable litigation costs may be made under subdivision (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted that proceeding.

(c) For purposes of this section:

(1) "Reasonable litigation costs" includes any of the following:

(A) Reasonable court costs.

(B) Based upon prevailing market rates for the kind or quality of services furnished, any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of one hundred twenty-five dollars (\$125) per hour unless the court determines that a special factor, such as the limited availability of qualified attorneys for the proceeding, the difficulty of the issues presented in the case, or the local availability of tax expertise justifies a higher rate. In the case of each calendar year beginning with calendar year 2001, the Franchise Tax Board shall recompute the dollar amount referred to in the preceding sentence. That computation shall be made by increasing the amount in this clause by an amount equal to the cost-of-living adjustment determined under subdivision (h) of Section 17041. If any resulting dollar amount is not a multiple of ten dollars (\$10), that dollar amount shall be rounded to the nearest multiple of ten dollars (\$10).

(iv) The court may award reasonable attorney fees under subdivision (a) in excess of the attorney fees paid or incurred if the fees are less than the reasonable attorneys' fees because the attorney is representing the prevailing party for no fee or for a fee which (taking into account all the facts and circumstances) is no more than a nominal fee. This clause shall apply only if the award is paid to the attorney or the attorney's employer.

(2) (A) "Prevailing party" means any party to any proceeding described in subdivision (a) (other than the State of California or any creditor of the taxpayer involved) that meets either of the following criteria:

(i) Has substantially prevailed with respect to the amount in controversy.

(ii) Has substantially prevailed with respect to the most significant issue or set of issues presented.

(B) (i) A party shall not be treated as the prevailing party in a proceeding to which subdivision (a) applies if the State of California establishes that its position in the proceeding was substantially justified.

(ii) For purposes of clause (i), the position of the State of California shall be presumed not to be substantially justified if the Franchise Tax Board did not follow its applicable published guidance in the administrative proceeding. This presumption may be rebutted.

(iii) For purposes of clause (ii), the term "applicable published guidance" means either of the following:

(I) A regulation, legal ruling, notice, information release, or announcement.

(II) Any chief counsel ruling or determination letter issued to the taxpayer.

(iv) For purposes of clause (i), in determining whether the position of the Franchise Tax Board was substantially justified, the court shall take into account whether the Franchise Tax Board has lost in any California Court of Appeal in another district on substantially similar issues, as reflected in a decision certified for publication.

(C) Any determination under this paragraph as to whether a party is a prevailing party shall be made by either of the following:

(i) The court.

(ii) An agreement of the parties.

(3) The term "civil proceeding" includes a civil action.

(d) For purposes of this section, in the case of multiple actions which could have been joined or consolidated, or a case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single proceeding in the same court, the actions or cases shall be treated as one civil proceeding regardless of whether the joinder or consolidation actually occurs, unless the court in which the action is brought determines, in its discretion, that it would be inappropriate to treat the actions or cases as joined or consolidated for purposes of this section.

(e) An order granting or denying an award for reasonable litigation costs under subdivision (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, "position of the State of California" includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the Franchise Tax Board (and all subsequent administrative action or inaction) upon which that proceeding is based.

(g) The amendments made by the act amending this subdivision Chapter 931 of the Statutes of 1999 are effective for costs incurred and services performed more than 180 days after the effective date of the act amending this subdivision.

(h) Notwithstanding any other provision or rule of law to the contrary, the provisions of the Code of Civil Procedure regarding the awarding of litigation costs, including attorney's fees, in civil proceedings shall not apply to any costs, fees, or other expenses in connection with any civil proceeding to which this section applies.

### **Amendment 8**

SEC. 3. Section 1028 of the Code of Civil Procedure is amended to read:

1028. Notwithstanding any other provisions of law, other than section 1028.1, when the State is a party, costs shall be awarded against it on the same basis as against any other party and, when awarded, must be paid out of the appropriation for the support of the agency on whose behalf the State appeared.

### **Amendment 9**

SEC. 4. Section 1028.1 is added to the Code of Civil Procedure, to read:

1028.1. The provisions of this act shall not apply to any costs, fees, and other expenses in connection with any proceeding to which Section 19717 of the Revenue and Taxation Code applies (determined without regard to subdivision (b) of that section). Nothing in the preceding sentence shall prevent the payment of costs, fees, and other expenses awarded pursuant to Section 19717 of the Revenue and Taxation Code out of the appropriation for support of the Franchise Tax Board.

### **Amendment 10**

SEC. 5. (a) The amendments made to Section 19717 of the Revenue and Taxation Code by section 2 of this act, the amendments made to Section 1028 of the Code of Civil Procedure by section 3 of this act, and Section 1028.1 of the Code of Civil Procedure, as added by section 4 of this act, shall be applied to any court proceeding filed on or after the effective date of this act.

(b) It is the intent of the Legislature that no inference be drawn from the amendments made by section 2, section 3, and section 4 of this act for any court proceeding filed before the effective date of this act.

## **Amendment 11**

SEC. 6. (a) Except as set forth in subdivision (b), the amendments in Sections XXXX of the bill adding Revenue and Taxation Code sections XXXXXX are not severable. If any provision of this act or its application is held invalid, that invalidity shall apply to the other provisions or applications of this act.

(b) The provisions of Section 19717 of the Revenue and Taxation Code as amended by Section 2 of this act, Section 1028 of the Code of Civil Procedure as amended by Section 3 of this act, Section 1028.1 of the Code of Civil Procedure as added by Section 4 of this act, and Section 5 of this act are severable from the remainder of this act. If any provision of the remainder of this act is held invalid, that invalidity shall not affect the provisions or applications of Section 19717 of the Revenue and Taxation Code as amended by Section 2 of this act, Section 1028 of the Code of Civil Procedure as amended by Section 3 of this act, Section 1028.1 of the Code of Civil Procedure as added by Section 4, and Section 5 as added by this act that can be given effect without the invalid provision or application.