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# Revenue and Taxation

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## Revenue and Taxation

### Revenue and Taxation; bank and corporate taxes—not doing business exemption

Revenue and Taxation Code § 23101.5 (amended, repealed, and new); §§ 18461, 18583, 18586, 18586.3, 18591.1, 18689.5, 25662, 25662.1, 25663, 25674, 25937 (amended and repealed); § 24371 (repealed); §§ 18682.10, 19136.5, 19393 (new); §§ 17008.5, 17020.7, 17020.8, 17020.11, 17020.12, 17020.13, 17021.5, 17034, 17041, 17042, 17054, 17054.7, 17078, 17250, 17274, 17671, 18180, 18622, 19029, 19043, 19057, 19059, 19167, 19254, 19311, 19702, 23002, 23038.5, 23045.6, 23046, 23047, 23049, 23732, 23734, 23735, 24271, 24276, 24307, 24347.5, 24349.1, 24365, 24369, 24372.3, 24379, 24382, 24414, 24422.3, 24427, 24436.5, 24437, 24442.5, 24443, 24449, 24652, 24654, 24661, 24667, 24673.2, 24681, 24682, 24688, 24689, 24692, 24693, 24701, 24708, 24721, 24726, 224905, 24918, 24941, 24950, 24951, 24954, 24966.1, 24966.2, 24981, 24988, 24989 (amended). Unemployment Insurance Code §§ 2629.1, 13017, 13043, 13050 (amended). SB 673 (Russell); 1993 STAT. Ch. 877 (Effective October 6, 1993)<sup>1</sup>

Under existing law, the Franchise Tax Board may make a determination that a corporation<sup>2</sup> is “not doing business” in California to exempt that corporation from the bank and corporation franchise tax.<sup>3</sup>

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1. See 1993 Cal. Legis. Serv. ch. 877, sec. 102, at 3858 (stating that SB 673, providing for a tax levy, will go into effect immediately, with some exceptions).

2. See CAL. REV. & TAX. CODE § 23038 (West 1992) (defining corporation).

3. *Id.* § 23101.5(a) (amended by Chapter 877); see *id.* §§ 23001-26491 (West 1992 & Supp. 1993) (setting forth the provision for the Bank and Corporate Tax and providing for the imposition of tax on corporations by the Franchise Tax Board when the corporations “do business” in California); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 26, at 3 (June 7, 1993) (declaring that, since 1977, only 29 applications for the “doing business” exemption have been received, and only 8 of those have been granted); see also I.R.C. §§ 381-384 (1988) (setting forth the doing business standard that can be applied by the states); CAL. REV. & TAX. CODE § 23101 (West 1992) (defining “doing business” as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit). See generally CAL. CODE REG. tit. 18, § 23101 (1990) (listing activities which would qualify a domestic corporation as doing business in California); Appeal of Aqua Aerobic Sys., Inc., 36 State Bd. of Equalization 1 (81A-790, Nov. 6, 1985) (holding that a foreign corporation performing warranty repairs and inspecting equipment after installation constitutes doing business in California); Appeal of Putnam Fund Distrib., Inc., 23 State Bd. of Equalization 201 (Dec. 6, 1977) (holding that a foreign corporation is doing business if it has representatives, in California encouraging investment from prospective investors); Appeal of Barton Indus., Inc., 18 State Bd. of Equalization 292 (July 31, 1972) (holding that a foreign corporation keeping books, soliciting customers, and holding board of directors

Under existing law, a corporation qualifies as not doing business in California when it engages in limited activities as specified.<sup>4</sup>

Chapter 877 expands existing law by qualifying a corporation when it: (1) Engages in the purchase of personal property<sup>5</sup> or services for its own use or use by its affiliates outside the state; (2) has less than 200 employees within the state whose duties are either limited to solicitation,<sup>6</sup> negotiation, liaison, monitoring, auditing, and inspecting the property or services acquired, or providing technical advice; and (3) uses the personal property or services for the construction or modification of a physical plant or facility located outside the state.<sup>7</sup>

Chapter 877 additionally provides that if a corporation, applying for or relying on this determination, is engaged in a unitary business,<sup>8</sup> the 100 or 200 employee limitation applies to the aggregation of all corporations within the unitary group.<sup>9</sup> Chapter 877 also provides that the Board's determination is valid for a period of five years, so long as the

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meetings in California constitutes doing business in California); Appeal of Tip Top Delights, Inc., 17 State Bd. of Equalization 307 (Dec. 7, 1970) (holding that a foreign corporation is subject to the franchise tax by merely qualifying to do business in California).

4. CAL. REV. & TAX. CODE § 23101.5 (amended by Chapter 877); *see id.* (providing that the corporation's activities are limited to either or both of the following: (1) The corporation purchases personal property or services solely for its own use or use by its affiliate outside this state, and the corporation has fewer than 100 employees in California and engages only in specific activities; (2) the corporation's employees are in this state solely for educational purposes at a prescribed institution); *id.* § 23101.5(a)(1) (amended by Chapter 877) (limiting the corporation's specific activities to solicitation, negotiation, liaison, monitoring, auditing, and inspecting the property or services acquired, or providing technical advice with respect to its requirement); *id.* § 23101.5(a)(2) (amended by Chapter 877) (requiring that the employees be in this state only for the purpose of attending a public or private school, college, or university).

5. *See id.* § 106 (West 1987) (defining personal property to include all property except real estate).

6. *See Wisconsin Dept. of Rev. v. William Wrigley, Jr., Co.*, 112 S. Ct. 2447, 2455-56 (1992) (holding that the "solicitation of orders" should not be narrowly construed to encompass only a request for purchase, nor should it be construed so broadly as to include all activities that are routinely, or even closely, associated with acts of solicitation performed by salespersons).

7. CAL. REV. & TAX. CODE § 23101.5(a)(1)(B) (amended by Chapter 877); *see id.* § 23101.5(a)(1)(C) (amended by Chapter 877) (providing that Chapter 877 limits the number of employees a corporation, seeking the not doing business exemption, may have to a maximum of 200, with the exception of employees in the state for educational purposes); *see also* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 26, at 3 (June 7, 1993) (fearing the possible loss of sales by California firms due to the state taxing non-California firms for their purchasing activities within the state). *See generally* Charles Oliver, *Investor's Daily*, INVESTOR'S BUS. DAILY, Sept. 17, 1993, at 1 (describing the outward migration of business from California); *id.* (stating that since mid-1990 the state has lost close to 900,000 jobs).

8. *See Joslin Dry Goods Co. v. Dolan*, 615 P.2d 16, 17-18 (Colo. 1980) (providing that the recognized test for determining taxable corporate income for a "unitary business" is whether the operation of a portion of business within the state is dependent upon or contributory to the operation of the business outside the state).

9. CAL. REV. & TAX. CODE § 23101.5(e) (amended by Chapter 877).

qualifications are continuously met by the corporation.<sup>10</sup> Chapter 877 further requires that any taxpayer, who sells property or services to a corporation with more than 100 employees in California and the corporation has been granted “not doing business” status, must file a report to the Franchise Tax Board.<sup>11</sup>

GAR

## Revenue and Taxation; bank and corporate taxes—credit unions

Revenue and Tax Code §§ 23456, 24405 (amended).  
AB 63 (Brulte); 1993 STAT. Ch. 1121  
(Effective October 10, 1993)

Under existing law, state chartered credit unions are subject to the Bank and Corporate Tax Law.<sup>1</sup> Existing law provides credit unions with a deduction<sup>2</sup> on income created from member activity.<sup>3</sup>

Existing law additionally imposes an alternative minimum tax (AMT)<sup>4</sup> on the alternative minimum taxable income (AMTI) of banks and

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10. *Id.* § 23101.5(c)-(d) (amended by Chapter 877); *see id.* (specifying that an annual confirmation of status must be filed with the Franchise Tax Board within two months and fifteen days after the close of the fiscal year and conform to the Board’s requirements).

11. *Id.* § 23101.5(f) (amended by Chapter 877); *see id.* (providing that the taxpayer’s report should include the number of employees the corporation has within the state directly attributable to the construction or modification of a physical plant or facility located outside the state). *See generally* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 673, at 2 (Aug. 27, 1993) (stating that the bill makes numerous technical and clarifying changes to the personal income and corporate tax law).

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1. CAL. REV. & TAX. CODE § 23183 (West 1992); *see id.* §§ 23001-26491 (West 1992 & Supp. 1993) (setting forth the provisions of the Bank and Corporate Tax Law).

2. *See id.* § 24402 (West 1992) (specifying the deductions allowed under franchise alternative minimum, or income tax law).

3. *Id.* § 24405 (amended by Chapter 1121); *see* Woodland Product Credit Ass’n. v. Franchise Tax Board, 225 Cal. App. 2d 293, 298, 37 Cal. Rptr. 231, 234 (1964) (holding that business cooperatives are allowed special deductions of income arising out of business activities with members or related activities); Appeal of Unity Credit Union, 22 State Bd. of Equalization 1 (Jan. 6, 1977) (stating that California Revenue and Taxation Code § 24405 is applicable to credit union deductions); *see also* ASSEMBLY REVENUE AND TAXATION COMMITTEE, COMMITTEE ANALYSIS OF AB 63, at 2 (June 20, 1993) (stating that membership activity includes membership entrance fees and all monies held in the credit union’s regular reserve account).

4. *See* CAL. REV. & TAX. CODE § 23455(b) (West 1993) (defining alternative minimum tax as per Internal Revenue Code § 55(b)(2)); I.R.C. § 55(b)(2) (Supp. 1993) (defining alternative minimum tax).

corporations.<sup>5</sup> Prior law required that the credit unions make certain adjustments to net income for AMT purposes.<sup>6</sup> Chapter 1121 allows credit unions to deduct member income from the AMTI for AMT purposes, thereby exempting from the AMT credit unions' member-related income.<sup>7</sup>

GAR

## Revenue and Taxation; filing and payment extensions

Revenue and Taxation Code § 6459 (amended).  
AB 101 (Klehs); 1993 STAT. Ch. 324

Under existing law, the State Board of Equalization (Board) may extend the period for which any return or tax is due under the Sales and Use Tax Law,<sup>1</sup> for a length of time not exceeding one month.<sup>2</sup> Chapter 324 gives the Board the ability to grant an extension in excess of that period if the state budget has not been adopted by July 1 and the person requesting the extension is a creditor of the state, who has not yet been

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5. CAL. REV. & TAX. CODE § 23400 (West 1992); *see id.* (imposing an alternative minimum tax as under Internal Revenue Code § 55(a)-(b)); I.R.C. § 55(a)-(b) (Supp. 1993) (imposing an alternative minimum tax); *see also* CAL. REV. & TAX. CODE § 23456 (amended Chapter 1121) (providing modifications to Internal Revenue Code § 56 in regard to computing alternative minimum taxable income); I.R.C. § 55(b)(2) (Supp. 1993) (defining AMTI as the taxable income of the taxpayer for the taxable year); *id.* § 56 (Supp. 1993) (providing the method to compute alternative minimum taxable income).

6. 1992 Cal. Legis. Serv. ch. 698, sec. 18, at 2680 (amending California Revenue and Taxation Code § 23456(d)(2)); *see* F.T.B. Notice 92-7, 410:RDB:CN-92-445 (Sept. 25, 1992) (providing the methodology for the application of alternative minimum tax to credit unions).

7. CAL. REV. & TAX. CODE § 23456(d)(2) (amended by Chapter 1121); *cf.* I.R.C. § 501 (West Supp. 1993) (exempting federally chartered credit unions from taxation).

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1. *See* CAL. REV. & TAX. CODE §§ 6001-7176 (West 1987 & Supp. 1993) (comprising the "Sales and Use Tax Law").

2. *Id.* § 6459(a) (amended by Chapter 324); *cf.* ALA. CODE § 40-23-7 (1993) (setting forth the provisions for receiving an extension of time for making a return of sales and use taxes); CONN. GEN. STAT. ANN. § 12-414(6) (West Supp. 1993) (empowering the commissioner with the ability to extend the time one is allowed for returning or paying any amount of the sales or use tax, provided good cause for the extension exists); IDAHO CODE § 63-3623(j) (1989) (allowing a one month extension for the return or payment of sales or use tax); KAN. STAT. ANN. §§ 79-3706(a), 79-3707 (1989) (providing that the director may grant an extension for the return or payment of sales and use tax, not to exceed 60 days, pending proper necessity). *See generally* 3 PHILIP M. PLANT & J. TERRY EAGER, CALIFORNIA TAXATION §68.62[4] (2d ed. 1993) (describing the procedure required in filing for such an extension in California).

paid by the state due to the legislature's delay in adopting a budget.<sup>3</sup> Chapter 324 also provides that, upon the adoption of the budget, the extension is to expire no later than the last day of the month of adoption or one month from when the payment is due, whichever comes later.<sup>4</sup>

Existing law also provides that any person receiving an extension must pay, in addition to the tax, any interest<sup>5</sup> that accrued from the date the tax was originally due until the time of payment.<sup>6</sup> Chapter 324 exempts persons who have been granted an extension, due to the delayed budget, from paying any accruing interest on the portion equivalent to the amount owed to that person by the state.<sup>7</sup>

GAR

### Revenue and Taxation; personal income tax—resident defined

Revenue and Taxation Code § 17014 (amended).  
SB 961 (Morgan); 1993 STAT. Ch. 783  
(Effective October 3, 1993)

Under existing law, the definition of a resident, for the purpose of personal income taxation, includes: (1) Every individual<sup>1</sup> in California, except those in the state for a temporary or transitory purpose; and (2)

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3. CAL. REV. & TAX. CODE § 6459(b) (amended by Chapter 324). *See generally* Ted Appel, *California Regains Spending Authority 64 Days Late*, UPI, Sept. 2, 1992, available in LEXIS, Nexis Library, West File (reporting the end of the historic 64 day budget impasse which halted spending and caused an accumulation of unpaid bills); Ted Appel, *California Legislature Poised on the Brink of a Budget Breakthrough*, UPI, Sept. 1, 1992, available in LEXIS, Nexis Library, West File (discussing the near end of the budget crisis which had forced the State to issue billions of dollars in IOU's for more than two months); Ted Appel, *Assembly Debates Emergency Measures to Pay Vendors*, UPI, Aug. 21, 1992, available in LEXIS, Nexis Library, West File (reporting the efforts of lawmakers, during the state budget stalemate, to enact emergency measures allocating \$1.58 billion for state suppliers who were not paid during July); Virginia Ellis, *State Suppliers Go Unpaid in Budget Crisis*, L.A. TIMES, Aug. 7, 1992, at A1 (discussing how businesses protested the State's issuance of IOU's by withholding the state sales taxes they owed).

4. CAL. REV. & TAX. CODE § 6459(b) (amended by Chapter 324).

5. *See id.* § 6591.5 (West Supp. 1993) (describing the interest payment required).

6. *Id.* § 6459(a) (amended by Chapter 324); *cf.* CONN. GEN. STAT. ANN. § 12-414(6) (West Supp. 1993) (requiring any person receiving an extension to pay interest on the amount due at a rate of one and two-thirds percent per month from the time the tax was originally due); IDAHO CODE § 63-3623(k) (1989) (providing that all extensions granted will be subject to an interest payment from the date the tax was originally due).

7. CAL. REV. & TAX. CODE § 6459(b) (amended by Chapter 324).

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1. *See* CAL. REV. & TAX. CODE § 17005 (West 1983) (defining individual as a natural person).

every individual domiciled in California and who is outside the state for a temporary or transitory purpose.<sup>2</sup>

Chapter 783 provides that any individual domiciled in California, who remains absent from the state under an employment-related contract for an uninterrupted period of at least eighteen consecutive months, is considered to be outside of California for other than temporary or transitory purposes.<sup>3</sup> Chapter 783 disregards any returns to California for a period not exceeding an aggregate of forty-five days during a taxable year.<sup>4</sup> Chapter 783 also includes within this definition any accompanying spouse.<sup>5</sup>

Chapter 783 excludes from this definition any individual whose income from stocks, bonds, notes,<sup>6</sup> or other intangible personal property<sup>7</sup> in the

2. *Id.* § 17014(a) (amended by Chapter 783). The underlying rationale of California's residency definition is that the state in which a person has the closest connection is the state of that person's residence. *Wittell v. Franchise Tax Bd.*, 231 Cal. App. 2d 278, 285, 41 Cal Rptr. 673, 677 (1965) *cert. denied* (1965); *see* Appeal of Salinger, Pierre E.G. and Nicole, 26 State Bd. of Equalization 329 (June 30, 1980) (stating that the purpose of California's residency definition is to receive support, through taxation, from individuals who receive substantial benefits and the protection from the state's laws and public services); *id.* (stating that residency is determined by a comparative evaluation of contacts within and outside of California); Appeal of Rand, Christopher T. and Hoda A., 21 State Bd. of Equalization 49 (Apr. 5, 1976) (stating that the more complete the severance from California, the more likely that the outcome will be a finding of nonresidency); *see also* Appeal of Dreiling, Charles and Penny, 40 State Bd. of Equalization 10704 (Nov. 29, 1989) (holding that the closest connection test, where the court determines with which state the taxpayer has the most contacts with, generally applies only to taxpayers with an abode in California as well as another state); *cf.* CONN. GEN. STAT. ANN. § 12-701(a)(1) (West Supp. 1993) (defining resident to include an individual who maintains a permanent place of abode and is in the state for an aggregate of 183 days in the taxable year); IND. CODE ANN. § 6-3-1-12 (West 1989) (defining resident to include any individual who maintains a permanent place of residence within the state and spends more than 183 days of the taxable year in the state); MICH. COMP. LAWS ANN. § 206.18(1)(a) (West 1986) (defining resident to include any individual who lives in the state at least 183 days during the tax year); *Maryland Nat'l Bank v. Comptroller of Treas.*, 287 A.2d 291, 293-94 (Md. 1979) (observing that an individual was subject to the state's personal income tax, if he maintained a place of abode within the state, for a period of over six months, regardless of whether he was domiciled in the state or not). *Compare* Appeal of Tuppein, Thomas J., 21 State Bd. of Equalization 124 (May 4, 1976) (stating that certain taxpayers, such as drifters or single merchant seamen, staying infrequently, irregularly, and maintaining insignificant California connections during their absence, are found to be nonresidents for state taxation purposes) *with* Appeal of Schram, Robert R., 35 State Bd. of Equalization 556 (Sept. 10, 1985) (holding that an unmarried merchant seaman who spent little time within California was a resident of California due to his ownership of a mobilehome, auto, and unimproved property in California). *See generally* Appeal of Gabrick, Michael T. and Patrica C., 36 State Bd. of Equalization 171 (Apr. 4, 1986) (providing that taxpayers can be found to be residents of California for taxation purposes even if they are considered to be non-U.S. residents for federal income tax purposes).

3. CAL. REV. & TAX. CODE § 17014(d) (amended by Chapter 783); *see id.* (providing that this provision does not become operative until the taxable year beginning January 1, 1994).

4. *Id.* § 17014(d)(1) (amended by Chapter 783); *see id.* § 17010 (West 1983) (defining taxable year as the calendar year or the fiscal year providing the basis for a computation of an individual's taxable income is computed for the Personal Income Tax Law).

5. *Id.* § 17014(d)(3) (amended by Chapter 783); *see id.* (providing that, except for the requirement of an employment-related contract, the spouse must meet the same qualifications as the employee).

6. *See* CAL. COM. CODE § 3104(e) (West Supp. 1993) (defining note).

state exceeds two hundred thousand dollars (\$200,000) in any taxable year that the employment-related contract is in effect.<sup>8</sup> Chapter 783 further specifies that this provision does not apply to any individual who is absent for the purpose of avoiding the imposed personal income tax.<sup>9</sup>

GAR

## Revenue and Taxation; property tax—taxpayers' rights

Revenue and Taxation Code §§ 169, 531.8, 1605.6, 2191.3, 5900, 5901, 5902, 5903, 5904, 5905, 5906, 5907, 5908, 5909, 5910, 5911 (new); §§ 408, 532.1, 1605.5, 2191.3, 5142 (amended).  
SB 143 (Morgan); 1993 STAT. Ch. 387

Under existing law, the county assessor has no duty to maintain information and records used for the assessment rolls,<sup>1</sup> nor to make such information available to the public, other than information relating to market data.<sup>2</sup> Chapter 387 allows an assessee to inspect or copy all information and records kept by the assessor relating to the appraisal or assessment of, or penalties to, the assessee's property.<sup>3</sup>

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7. See *id.* § 9106 (West 1990) (defining general intangibles for secured transactions); see also *Italiani v. Metro-Goldwyn-Mayer Corp.*, 45 Cal. App. 2d 464, 466, 114 P.2d 370, 372 (1941) (referring to intellectual property as an "intangible incorporeal right" existing separately from the physical medium that embodies it).

8. CAL. REV. & TAX. CODE § 17014(d)(2) (amended by Chapter 783).

9. *Id.* § 17014(d)(4) (amended by Chapter 783).

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1. See CAL. REV. & TAX. CODE § 109 (West 1987) (defining roll as the entire assessment roll).  
2. *Id.* § 408 (amended by Chapter 387); see *id.* § 408(d) (amended by Chapter 387) (defining market data as any information in the assessor's possession relating to the sale of any property comparable to the property of the assessee); see also *id.* § 408(a) (amended by Chapter 387) (requiring that homeowner's exemption claims be clearly identified on the assessment roll and be open to public inspection to identify the claimants who have been granted the homeowner's exemption); *id.* § 408(b),(c) (amended by Chapter 387) (requiring the assessor's office to disclose or permit access to its record to various state agencies); *id.* § 451 (West 1987) (providing that information requested by the assessor or furnished in a property statement is not open to public inspection); *Chancellor-Western Oil and Dev. Co. v. Cook*, 101 Cal. App. 3d 407, 412, 415, 161 Cal. Rptr. 624, 626, 628 (holding that business information consisting of trade secrets is market data which the assessor must not disclose); cf. CAL. REV. & TAX. CODE § 408.3(a),(b) (West 1987) (requiring that "property characteristics" information, such as square footage, number of rooms, and acreage, must be open to public inspection).

3. CAL. REV. & TAX. CODE § 408(e) (amended by Chapter 387); see *id.* §§ 501-506 (West 1987) (providing penalty assessments).

Existing law provides that the county assessor and taxpayer can extend the period in which an escape assessment<sup>4</sup> may be levied if the agreement is made in writing and before the expiration of that period.<sup>5</sup> Chapter 387 requires the county assessor to notify the affected taxpayer of any escape assessment at least ten days before it is levied.<sup>6</sup> If the notice of the escape assessment was not made ninety days prior to the expiration of the statute of limitations for a refund claim, the statute of limitations will be extended to ninety days from the date the escape assessment was made.<sup>7</sup>

Existing law provides that the County Assessment Appeals Board (Board)<sup>8</sup> must hear and decide cases concerning applications requesting an assessment reduction for property that has either changed ownership<sup>9</sup> or has undergone new construction.<sup>10</sup> Chapter 387 enlarges the scope of cases that a taxpayer can bring before the Board by requiring that the Board hear and decide applications for reduction even when the reduction is only pertaining to a penalty assessment or if all non-penalty issues have already been dismissed.<sup>11</sup> Chapter 387 also requires the County Board of Equalization to notify the applicant of the hearing date at least forty-five days before the hearing is to take place.<sup>12</sup>

Under existing law, the tax collector is authorized to make a tax lien filing with the county reporter pursuant to certain conditions.<sup>13</sup> Chapter 387 requires the county recorder, with regard to delinquent taxes on unsecured property,<sup>14</sup> to send a notice of that filing to the assessee within thirty days.<sup>15</sup>

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4. See *id.* § 531 (West 1987) (defining escape assessments as when a property owner fails to file a property statement and that failure results in either a lower payment or no payment at all); see also 3 PHILLIP M. PLANT & J. TERRY EAGER, CALIFORNIA TAXATION, § 89.141 (2d ed. 1993) (discussing escape assessments). See generally Mike C. Buckley, *The Bauer-Schweitzer: Expanding the Power to Levy Escape Assessments*, 49 L.A. BAR BULLETIN 464, 464-470 (1973) (discussing the expanded power of the state in levying escape assessments on property taxes).

5. CAL. REV. & TAX. CODE § 532.1(a) (amended by Chapter 387).

6. *Id.* § 531.8 (enacted by Chapter 387).

7. *Id.* § 532.1(b) (amended by Chapter 387).

8. See *id.* § 1605.5(a)(2) (amended by Chapter 387) (providing that the board of supervisors, in a county that has established an assessment appeals board, may act as the County Board of Equalization).

9. See *id.* § 60 (West 1987) (defining change in ownership).

10. *Id.* § 1605.5(a)(1) (amended by Chapter 387); see *id.* § 70 (West 1987) (defining new construction).

11. *Id.* § 1605.5(b) (amended by Chapter 387); see *id.* (requiring that the application be timely and filed pursuant to California Revenue and Taxation Code §§ 1603 or 1605); *id.* (providing the penalties be those assessed under California Revenue and Taxation Code §§ 463, 482, or 504).

12. *Id.* § 1605.6 (enacted by Chapter 387).

13. *Id.* § 2191.3(a) (amended by Chapter 387).

14. See *id.* § 134 (West 1987) (defining unsecured property).

15. *Id.* § 2191.3(b) (amended by Chapter 387).

Under existing law, an action for the refund of taxes cannot be commenced or maintained without first filing a claim for a refund.<sup>16</sup> Chapter 387 allows taxpayers to file a stipulation<sup>17</sup> which would satisfy the requirement of filing and prosecuting an application for reduction.<sup>18</sup>

### PROPERTY TAXPAYERS' BILL OF RIGHTS

Chapter 387 also enacts the Morgan Property Taxpayers' Bill of Rights which governs the assessment, audit, and collection of property taxes in this state.<sup>19</sup> The Bill of Rights creates the Property Taxpayers' Advocate (Advocate), who must create and distribute informational material regarding property tax matters.<sup>20</sup> The Advocate must also resolve Board, assessor, and taxpayer inquiries, as well as taxpayer complaints and problems.<sup>21</sup> Additionally, the Advocate must develop and implement educational and informational programs on property tax assessment matters.<sup>22</sup> Chapter 387 also provides that the county assessors office may respond to a property taxpayer's written request for a written ruling regarding property tax consequences of actual or planned transactions.<sup>23</sup>

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16. *Id.* § 5142(a) (amended by Chapter 387).

17. *See id.* § 5142 (b),(c) (amended by Chapter 387) (providing that the stipulation, made to the County Board of Equalization, state that the issues in dispute do not involve valuation questions).

18. *Id.*

19. *Id.* §§ 5900-5911 (enacted by Chapter 387); *cf. id.* §§ 21001-21022 (West Supp. 1993) (implementing a Taxpayer's Bill of Rights); Omnibus Taxpayer Bill of Rights, Pub. L. 100-647, 102 Stat. 3730 (1988) (codified as amended in scattered sections of the Internal Revenue Code) (setting forth the provisions of the Omnibus Taxpayer's Bill of Rights); F.T.B. Legal Rul. 410:BRL:CL-92-880 (Dec. 28, 1992) (discussing the California Taxpayer's Bill of Rights); *id.* 410:BRL:CN-89-227 (May 10, 1989) (defining and providing F.T.B. application to the enacted Taxpayer's Bill of Rights); *United States v. Raytown Lawnmower Co.*, 763 F. Supp. 411, 414 (W.D. Mo. 1991) (addressing defendant's use of the taxpayer's Bill of Rights). *See generally* Robert W. Gordon, *Corporate Law Practice As A Public Calling*, 49 Md. L. REV. 255, 274 n.113 (1990) (discussing the New York State Bar's opposition to a taxpayer's rights bill); Creighton R. Meland, Jr., *Omnibus Taxpayers' Bill of Rights Act: Taxpayers' Remedy or Political Placebo?*, 86 MICH. L. REV. 1787, 1788-89 (1988) (discussing the validity of taxpayer's bill of rights legislation).

20. CAL. REV. & TAX. CODE § 5904 (enacted by Chapter 387).

21. *Id.*

22. *Id.* § 5905 (enacted by Chapter 387); *see id.* (requiring that the programs be created for the Board of Equalization, the assessor offices, for local boards of equalization, local assessment appeals boards, and taxpayers).

23. *Id.* § 5909(a) (enacted by Chapter 387).

Chapter 387 additionally grants relief from penalties assessed because of the property taxpayer's reliance on the county assessor's written ruling.<sup>24</sup>

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## Revenue and Taxation; sales and use tax—intangible property

Revenue and Taxation Code §§ 6011, 6012 (amended).

AB 103 (Quackenbush); 1993 STAT. Ch. 887

(Effective October 6, 1993)<sup>1</sup>

Existing law imposes a state sales<sup>2</sup> and use<sup>3</sup> tax on the gross receipts<sup>4</sup> or sales price<sup>5</sup> of tangible personal property<sup>6</sup> that is sold, rented, or

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24. *Id.* § 5909(b) (enacted by Chapter 387).

1. *See* 1993 Cal. Legis. Serv. ch. 887, sec. 5, at 3932 (providing that AB 103 becomes operative on the first calendar day of the first calendar quarter commencing more than 90 days after this act goes into effect [April 1, 1994]).

2. *See* CAL. REV. & TAX. CODE § 6003 (West 1987) (defining sales tax as the tax imposed by California Revenue and Taxation Code §§ 6051-6095).

3. *See id.* § 6004 (West 1987) (defining use tax as the tax imposed by CAL. REV. & TAX. CODE §§ 6201-6249).

4. *See id.* § 6012(a)-(b) (amended by Chapter 887) (defining gross receipts).

5. *See id.* § 6011(a)-(b) (amended by Chapter 887) (defining sales price).

6. *See id.* § 6016 (West 1987) (defining tangible personal property as personal property which may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses); *Simplicity Pattern Co. v. State Bd. of Equalization*, 27 Cal. 3d 900, 912, 615 P.2d 555, 562, 167 Cal. Rptr. 366, 373 (1980) (holding that completed film negatives and master recordings, though valued in part for their intellectual content, were useful in the manufacturing process, and therefore, were tangible personal property for sales tax purposes); *see also Navistar Int'l Transp. Corp. v. State Bd. of Equalization*, 13 Cal. App. 4th 1459, 1467, 17 Cal. Rptr. 2d 75, 80 (1993) (allowing for the taxation of property as personal tangible property when it is: (1) Not solely the embodiment or expression of an idea; (2) physically useful in the manufacturing process; and (3) not supplied as an incident to providing a service) *petit. for review granted*, 852 P.2d 1145, 20 Cal. Rptr. 163 (1993). *See generally* Melinda Rose Smolin, *Investment Securities: Beyond the Scope of California's Consumers Legal Remedies Act?*, 25 LOY. L.A. L. REV. 127, 134-40 (1991) (discussing tangible personal property).

leased.<sup>7</sup> Existing law also provides certain exceptions to the sales and use tax.<sup>8</sup>

Chapter 887 exempts from the sales and use tax, the amount charged for intangible personal property transferred<sup>9</sup> with tangible personal property in a technology transfer agreement,<sup>10</sup> so long as the agreement separately states a reasonable price for the tangible personal property.<sup>11</sup> Chapter 887 also provides that if the price for the tangible personal property is not separately stated, the retail fair market value shall be established by using the price at which the property, or like tangible personal property, has been previously sold, leased, or offered to a third party.<sup>12</sup>

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7. CAL. REV. & TAX. CODE § 6051 (West Supp. 1992); *see id.* §§ 6011(a),(b), 6012(a),(b) (amended by Chapter 887) (listing transactions included in the sales and use tax); *Simplicity*, 27 Cal. 3d at 906, 615 P.2d at 558, 167 Cal. Rptr. at 369 (stating that, generally, physical objects valued in part for their intellectual content may be taxed as tangible personal property based on their total worth); *Michael Todd Co. v. County of Los Angeles*, 57 Cal. 2d 684, 694, 371 P.2d 340, 345, 21 Cal. Rptr. 604, 609 (1962) (stating that the propriety of including nontaxable intangible values in that valuation of otherwise taxable property is well established); *Navistar*, 13 Cal. App. 4th at 1469-70, 17 Cal. Rptr. 2d at 80 (holding that items valued primarily for their intellectual content may be taxed as tangible property based on their entire worth); *Italiani v. Metro-Goldwyn-Mayer Corp.*, 45 Cal. App. 2d 464, 466, 114 P.2d 370, 372 (1941) (referring to intellectual property as an “intangible incorporeal right” existing separately from the physical medium that embodies it); *cf.* CAL. COM. CODE § 9106 (West 1990) (defining general intangibles for secured transactions); CAL. CODE REGS. tit. 18, § 1501 (1993) (describing service enterprises in relation to non-taxable transactions).

8. CAL. REV. & TAX. CODE §§ 6011(c)(1)-(9), 6012(c)(1)-(9) (amended by Chapter 887).

9. *See id.* § 6010.6(b)(5) (West Supp. 1993) (defining transfer).

10. *See id.* §§ 6011(c)(10)(D), 6012(c)(10)(D) (amended by Chapter 887) (defining a technology transfer agreement as any agreement under which a patent or copyright interest is assigned or licensed to another person); *see also id.* § 19 (West 1987) (defining person).

11. *Id.* §§ 6011(c)(10)(A), 6012(c)(10)(A) (amended by Chapter 887); *see* ASSEMBLY COMMITTEE ON REVENUE AND TAXATION, COMMITTEE ANALYSIS OF AB 103, at 1 (Mar. 15, 1993) (stating that the bill’s purpose was to implement the Board of Equalization’s decision allowing Intel Corporation a tax exemption on their transfer of intangible property).

12. CAL. REV. & TAX. CODE §§ 6011(c)(10)(B), 6012(c)(10)(B) (amended by Chapter 887).

