1-1-1983

Taxation

University of the Pacific; McGeorge School of Law

Follow this and additional works at: https://scholarlycommons.pacific.edu/mlr

Part of the Legislation Commons

Recommended Citation

University of the Pacific; McGeorge School of Law, Taxation, 14 Pac. L. J. 709 (1983).
Available at: https://scholarlycommons.pacific.edu/mlr/vol14/iss2/30

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.
Taxation

Taxation; joint custody head of household

Revenue and Taxation Code § 17042.5 (new).
AB 2520 (Sher); STATS. 1982, Ch 1537
(Effective September 29, 1982)
Support: State and Consumer Services Agency
Opposition: Department of Finance; Franchise Tax Board

Chapter 1537 was enacted in an apparent response to the recent changes in child custody law reflecting the public policy preference for joint custody arrangements.\(^1\) Chapter 1537 supplements the existing head of household category for personal income tax liability by enacting the additional category of joint custody head of household.\(^2\) The requirements for qualifying as a joint custody head of household are similar to those required under the existing head of household law.\(^3\) Both categories include unmarried individuals\(^4\) and certain qualifying married individuals.\(^5\)

Chapter 1537 allows married taxpayers to file as a joint custody head of household if they file a separate return and their spouse was not a member of their household during the entire taxable year.\(^6\) Under existing law, married taxpayers who meet these requirements are treated as unmarried for head of household purposes if they furnish more than one-half of the cost of maintaining a home that is also the principal place of abode, for more than one-half of the taxable year, of a dependent child for whom that taxpayer was entitled to a dependency credit.\(^7\)

Under existing law, a taxpayer can qualify as a head of household by maintaining, as that taxpayer's home, a household that constitutes the principal place of abode for certain specified individuals for the taxable

---


3. Id.

4. Id. §§17042, 17042.5.

5. Id.

6. Id. §17042.5(a).

7. Compare id. with id. §§17042, 17173(c).
The differences between the requirements for qualifying as a joint custody head of household and those for qualifying as a head of household include (1) a reduction in the length of time that the taxpayer’s home must be the principal place of abode of the qualifying individual, (2) the addition of a requirement that the maintenance of the required abode be under a decree of dissolution or separate maintenance, or under a written agreement between the parents prior to the issuance of a decree, and (3) a narrowing of the categories of individuals who will qualify the taxpayer to include only a “qualifying child”. In addition, both a head of household and a joint custody head of household must furnish over one-half the cost of maintaining the household during the taxable year.

Chapter 1537 provides a new tax bracket for joint custody heads of household that places these taxpayers halfway between the rates paid by a single taxpayer and those paid by a head of household. Similarly, Chapter 1537 provides that the standard deduction, personal exemption credit and renter’s credit will also be computed as an amount halfway between that allowed to a single taxpayer and that allowed to a head of household. Both married and single taxpayers will be treated as though they are single persons for the purpose of determining all other tax credits.

Prior to enactment of Chapter 1537, the only substantial difference between the California and the federal law regarding head of household was that a dependent who qualified as a taxpayer for head of household status on a California return could not also be used to qual-

8. Id. §17042. The specified individuals include (1) an unmarried son, stepson, daughter or stepdaughter of the taxpayer, (2) these same individuals if they are married at the close of the taxpayer's taxable year and the taxpayer is entitled to a personal exemption credit for them for that taxable year, (3) any other person who is a dependent of the taxpayer or (4) the father or mother of the taxpayer even if the home maintained for them is separate from that of the taxpayer if the taxpayer is entitled to a personal exemption credit for them for that taxable year. Id. See id. §17054 (personal exemption credits).

9. Compare id. §17042 (for the taxable year) with id. §17042.5(a)(2) (for no less than 146 days but no more than 219 days of the taxable year).

10. Compare id. §17042 with id. §17042.5(b).

11. Compare id. §17042(a) with id. §17042.5(b). A “qualifying child” is a son, stepson, daughter or stepdaughter of the taxpayer, or a descendant of a son or daughter of the taxpayer. If that son, stepson, daughter, stepdaughter or descendant is married at the close of the taxpayer's taxable year, the person is a “qualifying child” only if the taxpayer is entitled to a personal exemption credit for the taxable year for that person. Id. §§17045(b); 17954 (personal exemption credits).

12. Id. §§17042(b), 17042(a)(3).

13. See id. §17042.5(c).

14. See id. §17042.5(c)(1). The tax is computed by using a rate arrived at by averaging the rate for a head of household with the rate for a single taxpayer. Id. Compare id. §17041(a) with id. §17041(b).

15. See id. §17042.5(c)(2), (3), (4).

16. Id. §17042.5(c)(5).
ify that taxpayer for a personal exemption credit.\textsuperscript{17} Thus, Chapter 1537 creates a significant deviation from the federal head of household rules for personal income taxes.\textsuperscript{18} Under the federal income tax regulations, the taxpayer's home will constitute the principal place of abode of a qualifying individual, including a qualifying child, if that person occupies that home for the taxable year.\textsuperscript{19} An exception is made for temporary absences by reason of a custody agreement if (1) the child is absent for less than six months of the taxable year, (2) it is reasonable to assume that the child will return, and (3) the taxpayer continues to maintain the household in anticipation of that return.\textsuperscript{20} In addition, these federal regulations make it clear that the same person cannot be used to qualify more than one taxpayer as the head of household for the same taxable year.\textsuperscript{21}

In contrast, Chapter 1537 provides the following two additional possibilities: (1) both parents of the qualifying child will qualify as joint custody heads of household and (2) neither parent will qualify.\textsuperscript{22} Therefore both parents may qualify as joint custody heads of household for California income tax purposes, while only that parent whose home was the principal place of abode of the qualifying child for more than six months of the taxable year would receive head of household status for federal income tax purposes.\textsuperscript{23} Alternatively, if neither parent qualifies as a California joint custody head of household, the parent whose custody exceeded the maximum allowable number of days during the taxable year would still qualify as a head of household under federal law.\textsuperscript{24}

\begin{itemize}
\item[18.] \textit{Cal. Rev. & Tax. Code} §17042.5. \textit{Compare id. with 26 U.S.C. §§1(b), 2(b).}
\item[19.] \textit{Treas. Reg.} §17.2-2(c)(1) (1981).
\item[20.] \textit{Id.}
\item[21.] \textit{Id.} §1.2-2(b)(2).
\item[22.] \textit{Id.} §§1.2-2(b)(1), (2), (c)(1) with \textit{Cal. Rev. & Tax. Code} §17042 (if one parent fails to qualify as a joint custody head of household because that parent's home is the principal place of abode of the qualifying child for less than the minimum 146 days or more than the maximum 219 days, the other parent would also fail to qualify for this category by definition).
\item[23.] \textit{Compare Cal. Rev. & Tax. Code} §17042.5 with \textit{Treas. Reg. §§1.2-2(b)(1), (2), (c)(1) (1956).}
\item[24.] \textit{Compare Cal. Rev. & Tax. Code} §17042.5 with \textit{Treas. Reg. §§1.2-2(b)(1), (2), (c)(1) (1956).}
\end{itemize}
Taxation; liability of innocent spouse for unpaid taxes on joint returns

Revenue and Taxation Code §18555 (amended). AB 2326 (Beverly); STATS. 1982, Ch 526 (Effective August 18, 1982) Support: Department of Finance

In enacting Chapter 526, the Legislature expressly found that the prior statutory provisions designed to relieve innocent spouses of liability for income taxes were too limiting and that many deserving spouses were being denied freedom from liability. Existing law provides that whenever a joint tax return is filed, the liability for the tax on the aggregate income is joint and several, unless revised by a court in a proceeding for dissolution of the joint taxpayers' marriage. The order revising a taxpayer's liability may not relieve a spouse of any fully paid liability or any unpaid liability for taxes, interest or penalties that is attributable to gross income earned by, or subject to the management and control of, that spouse.

Chapter 526 extends, to the Franchise Tax Board (hereinafter referred to as FTB), the authority to revise a spouse's liability for taxes, interest and penalties due. Additionally, Chapter 526 requires that spouses requesting this relief establish that they did not know, or have reason to know, of the nonpayment. As in revisions made by the court, an FTB revision may not relieve a spouse of any liability that is

1. CAL. STATS. 1982, c. 526, §1, at —.
4. Id. §17071 (definition of gross income).
5. Id. §18555(b)(1). The unreleivable tax liability of that spouse (taxpayer) is computed as follows:

\[
gross \text{ income earned or managed and controlled by taxpayer} \quad \times \quad \text{total tax, interest and penalties based on joint return}
gross \text{ income per joint return}
\]

6. Id. §18555(c). The relief provision does not apply to any taxable year that has been closed by a statute of limitations, res judicata or otherwise. Id. §18555(c)(5).
7. Id. §18555(c)(2) ("reason to know" means whether a reasonably prudent person would have had reason to know).
8. Id.
fully paid\(^9\) or that is attributable to gross income earned by, or subject to the management and control of, that spouse.\(^{10}\) Furthermore, Chapter 526 states that the determination of the spouse to whom items of gross income are attributable will be made without regard to community property laws.\(^{11}\)

Whenever an innocent spouse requests this relief from the FTB, the other spouse must receive notice of this action at least 30 days before the FTB makes a determination as to revision of the tax liability.\(^{12}\) The FTB determination will be based on the equity of holding the spouse, who is requesting revision, liable for the nonpayment given all of the surrounding facts and circumstances.\(^{13}\) Unless appealed,\(^{14}\) any action taken by the FTB will become final 30 days after the Board has mailed a notification of its decision to both spouses.\(^{15}\)

---

\(^9\) Id. §18555(c)(1)(B).
\(^{10}\) Id. §18555(c)(1)(A). Compare id. §18555(c) with id. §18555(b).
\(^{11}\) Id. §18555(c)(3).
\(^{12}\) Id. §18555(c)(4) (any action will be treated as an action on a protest). See generally id. §18592 (providing taxpayers with the right to request an oral hearing).
\(^{13}\) Id. §18555(c)(4).
\(^{14}\) Id. (one or both spouses may appeal). See generally id. §18593 (requiring the appeal to be in writing).
\(^{15}\) Id. §18555(c)(4).

---

**Taxation; Bankruptcy Tax Act of 1981**

Revenue and Taxation Code §§17142, 18054, 24307, 24918, 25672a (repealed); §§17142, 17145.5, 17368, 17480, 17552.5, 18054, 18698, 24307, 24492, 24519, 24570, 24918, 25959, 25672a (new); §§17325, 17326, 17431, 17432, 17433, 17440, 17461, 17462, 17532, 17854, 18586, 18649, 18650, 18651, 18652, 19058, 19085, 24455, 24521, 24531, 24532, 24540, 24562, 24563, 25403, 25663, 25672, 25672b, 25672c, 25672d, 26076, 26103a (amended).

SB 1039 (Garcia); STATS. 1982, Ch 278

(Effective June 16, 1982)

Support: Department of Finance; Franchise Tax Board

Conforms the state personal income tax law and the bank and corporation tax law to the Federal Bankruptcy Tax Act; repeals laws relating to insolvency reorganizations; enacts new law regarding the tax effects of cancellation of indebtedness, stock redemptions, complete liquidations and other corporation organization and reorganization transactions; updates code terminology to reflect recent changes in federal
In order to modernize bankruptcy law Congress enacted the Federal Bankruptcy Reform Act of 1978, the first thorough bankruptcy reform in 40 years. When this Act became effective on October 1, 1979, the Federal Internal Revenue Code did not contain any tax provisions specifically related to bankruptcy. The tax consequences of reorganizations and other arrangements covered by the act were basically determined by the tax provisions contained within the Bankruptcy Act itself. The Federal Bankruptcy Tax Act of 1980 amended the Internal Revenue Code so that current cases under the bankruptcy code may involve both the amended Internal Revenue Code sections and the tax provision sections of the Federal Bankruptcy Act. Since these federal laws may govern California’s treatment of taxpayers in bankruptcy, Chapter 278 reduces taxpayer errors and confusion by enacting California’s Bankruptcy Tax Act of 1981 to conform state law to these federal laws.

Discharge of Indebtedness

Prior to enactment of Chapter 278, taxpayers were allowed exclusions from gross income for income attributable to debt that was discharged at less than the full value during the income year if the taxpayers filed the requisite consent to have the basis of their property adjusted. Chapter 278 provides that, as a general rule, gross income includes income from discharge of indebtedness.

4. Id. at 101. The Act generally provides for state and local tax treatment of cancellation of indebtedness, net operating loss carryovers and exchange of stock for debt. Id. at 110.
8. See Sheinfeld & Caldwell, supra note 3 at 102.
12. Cal. Stats. 1955, c. 939, §2, at 1672 (enacting Cal. Rev. & Tax Code §17142). The consent was to have the basis of taxpayer’s property adjusted in accordance with the regulations prescribed under prior Section 18054 of the California Revenue and Taxation Code. See id. at 1791.
13. Cal. Rev. & Tax Code §§17142(d)(1) (definition of indebtedness), (e) (unless payment of the debt would have produced a tax deduction).
To the extent a taxpayer is insolvent when indebtedness is discharged, however, Chapter 278 provides that gross income will not include income attributable to that discharge, but certain tax attributes of the taxpayer will be reduced by applying this excluded income to the attributes on a dollar for dollar basis. In the alternative, Chapter 278 allows the insolvent taxpayer to elect to apply any portion of this income exclusion to reduce the basis of the taxpayer’s depreciable property up to the aggregate adjusted basis of that property as of the beginning of the taxable year following the discharge year.

Additionally, to the extent that the taxpayer is not insolvent, Chapter 278 provides that discharged indebtedness will be excluded from gross income if it was “qualified business indebtedness.” Indebtedness will be treated as qualified business indebtedness only if (1) it was incurred or assumed by a corporation, or by an individual in connection with property used in that individual’s trade or business, and (2) the taxpayer elects to have the indebtedness treated as qualified.
business indebtedness. The gross income exclusion based on qualified business indebtedness will be applied to reduce the basis of the taxpayer's depreciable property.

If the basis of the taxpayer's property is to be reduced by the amount of a gross income exclusion based on discharged indebtedness, then the amount of the reduction, and the particular properties' bases to which it will be applied, will be determined by regulations issued by the Franchise Tax Board (hereinafter referred to as the FTB). A basis reduction resulting from an exclusion of income from cancellation of indebtedness will not be treated as a "disposition," and Chapter 278 provides for the effect of these basis reductions upon related code sections.

These exclusion and reduction rules will be applied to partnerships at the partner level. Furthermore, Chapter 278 describes certain transactions involving the acquisition of outstanding debt by a person bearing a certain relationship to the debtor, from a person who is not similarly related to the taxpayer, that will be treated as the acquisition of the debt by the indebted taxpayer for purposes of determining that taxpayer's income from discharge of indebtedness. If the debt arose out of the purchase of property, and the subsequent debt reduction did

---

27. Id. §17142(d)(6).
28. Id. §17142(c)(1). The reduction will be made pursuant to California Revenue and Taxation Code Section 18054. Id. §18054.
29. Id. §17142(b)(2)(B), (5), (c)(1)(A).
30. Id. §18054(b)(1) (but not in excess of the portion of the exclusion that taxpayer chooses to have applied to property basis).
31. Id. §18054(b)(1).
32. Id. §18054(c). This is important because a "disposition" is treated the same way as a sale under the California Revenue and Taxation Code. Id. §18031(a). The corresponding changes were enacted in the Bank and Corporation Tax Law omitting the portion concerned with recapture of excess depreciation as ordinary income and adding the following provision: for purposes of this provision, if (1) a corporation holds stock in another corporation, a subsidiary, and (2) those corporations are members of the same unitary group for tax return purposes for the discharge year, then that stock will be treated as depreciable property to the extent that the subsidiary consents to a corresponding reduction in the basis of its depreciable property. See id. §24918.
33. Id. §18054(d) (explains this section's effect on California Revenue and Taxation Code Sections 18211 through 18218, sections dealing with recapture of excess depreciation as ordinary income upon the sale or disposition of property).
34. Id. §17008 (definition of partnership).
35. Id. (definition of partner).
36. Id. §17142(d)(5).
37. Id. §17142(e)(4). The corresponding rules and regulations will be prescribed by the FTB to say to what extent this attribution will occur and to provide for any adjustments this requires in the treatment of subsequent transactions involving this debt. Id.
not occur in a Title 11 case or when the debtor was insolvent, the reduction will be treated as a purchase price adjustment if the reduction would otherwise have been treated as income of the purchaser. In addition, Chapter 278 establishes various other minor provisions regarding cancellation of indebtedness.

Chapter 278 provides that the earnings and profits of a corporation will not include income from discharged indebtedness to the extent that the resulting exclusion is applied to reduce property basis. Additionally, if any shareholder's corporate interest is terminated in a Title 11 or similar case and there is a deficit in the corporation's earnings and profits, the deficit will be reduced by an amount equal to that shareholder's allocable interest in the paid-in capital that was extinguished.

Under existing law, no gain or loss will be recognized upon a transfer of property to a corporation by one or more persons solely in exchange for that corporation's securities if, immediately after the exchange, those persons are in control of the corporation. Chapter 278, however, declares that securities issued in exchange for indebtedness of the transferee corporation that is not evidenced by a security, or for accrued interest on that indebtedness will not be considered as issued in return for property. Thus, an exchange of securities for debt not evidenced by a security will not be accorded tax-free treatment under the existing provision above. Additionally, if a debtor transfers property in exchange for securities pursuant to a plan while that taxpayer is under the jurisdiction of a court in a Title 11 or similar case, this tax-free exchange provision will not apply to the extent that the

Selected 1982 California Legislation

40. Id. §§17461(d)(1) (defines "a Title 11 or similar case" as (1) a case under Title 11 of the United States Code, to the extent Articles 7 and 8 of the California Revenue and Taxation Code are not in conflict with 11 United States Code Section 346(g)(1)(C), or (2) a receivership, foreclosure or similar proceeding in a federal or state court).

41. Id. §§17142(e)(5).

42. Id. §§17142(e)(6)(A)-(E) (rules governing a creditor of a debtor corporation, including a successor corporation, who discharges its debt by distribution of its own stock or stock of a corporation in control of the debtor corporation), (e)(6)(F) (extends the corporate debtor rules to partnerships), (e)(8) (provides that the "stock for debt" exception described in California Revenue and Taxation Code subsections 17142(e)(6)(A) through (E) will not apply to the issuance of nominal or token shares or to certain exchanges involving an individual unsecured creditor), (e)(9) (explains how Chapter 278 affects existing California Revenue and Taxation Code section 17822).

43. Id. §§17368(a).

44. Id. §§17461(d)(1).

45. Id. §§17368(b). A corresponding change was enacted into the Bank and Corporation Tax Law. See id. §§24492.

46. Id. §17007 (definition of person).

47. Id. §17463 (definition of control).

48. Id. §17431(a).

49. Id. §§17431(d), (e). Corresponding changes were made in the Bank and Corporation Tax Law. See CAL. STATS. 1982, c. 278, §32, at — (amending CAL. REV. & TAX. CODE §24521).

50. See CAL. REV. & TAX. CODE §§17431.

51. Id. §§17431(a).
Taxpayer uses the securities received to satisfy outstanding indebtedness.\textsuperscript{52}

All of the changes discussed within this section on discharge of indebtedness will apply to any transaction occurring after December 31, 1981, except for transactions (1) occurring in a proceeding in a bankruptcy case\textsuperscript{53} or a similar proceeding commencing on or before that date or (2) occurring under certain sections of federal law.\textsuperscript{54} Additionally, if an exclusion based on a discharge of indebtedness of an insolvent taxpayer occurs during a bankruptcy case that commenced before January 1, 1982, and the required reduction will be made in tax attributes, the exclusion will only be applied to reduce the basis of the taxpayer's property and the reduction will be limited to the fair market value of that property on the date that the indebtedness was discharged.\textsuperscript{55}

**Corporate Organizations and Reorganizations**

Existing law includes provisions for the taxation of insolvency transactions involving court proceedings.\textsuperscript{56} Chapter 278 terminates the applicability of these “insolvency reorganization” sections of the personal income tax law\textsuperscript{57} by declaring that they will not apply to any proceeding that begins after September 30, 1979.\textsuperscript{58}

Existing law contains six definitions of the term “reorganization” that are applicable to (1) corporate organizations and reorganizations\textsuperscript{59} and (2) the sections of the personal income tax law describing the effect on recipients of corporate distributions and adjustments.\textsuperscript{60} Chapter 278 adds another definition of the term “reorganization” by providing that a reorganization is also a transfer by a corporation of all or part of its assets to another corporation in a Title 11 or similar case,\textsuperscript{61} but only if, in pursuance of the plan, stock or securities of the corporation to which

\textsuperscript{52.} Id. §17431(e).
\textsuperscript{54.} Id. §17431(e).
\textsuperscript{55.} Id. §17431(e).
\textsuperscript{57.} Id. $§17431(e).
\textsuperscript{58.} Id. §17431(e).
\textsuperscript{59.} Id. §17431(e).
\textsuperscript{60.} Id. §17431(e).
\textsuperscript{61.} Id. §17431(e).
the assets are transferred is distributed in a transaction that qualifies\textsuperscript{62} for partial or total tax-free treatment of any resulting gain or loss (hereinafter referred to as “a Type G reorganization”).\textsuperscript{63}

In addition, existing law provides that a transaction that would otherwise qualify under the first of the three listed definitions of reorganization\textsuperscript{64} will not be disqualified because part or all of the assets acquired in the transaction are transferred to a corporation controlled by the corporation acquiring those assets.\textsuperscript{65} Chapter 278 extends this rule to a transaction that would, but for a transfer of the acquired assets to a controlled corporation, qualify as a type G reorganization if (1) the corporation receiving the transferred assets acquires substantially all of the assets of the transferor,\textsuperscript{66} and (2) the stock, securities and other property received by the asset transferor, as well the transferor’s other property, is distributed in pursuance of the plan of reorganization.\textsuperscript{67}

In addition, Chapter 278 provides that a transaction involving an acquisition by one corporation, in exchange for stock of a corporation that controls the acquiring corporation, of substantially all of the properties of a third corporation that is merged into the acquiring corporation in this transaction, will not disqualify a reorganization otherwise qualifying under definition seven if no stock of the acquiring corporation is used in the transaction.\textsuperscript{68}

Furthermore, existing law provides that a transaction that otherwise would have qualified, will not be disqualified because stock of a corporation in control of the merged corporation before the merger (hereinafter referred to as “the controlling corporation”) is used in the transaction, if the following conditions are met: (1) after the transaction, the corporation surviving the merger holds substantially all of its properties and the properties of the merged corporation other than stock of the controlling corporation distributed in the transaction; and (2) in the transaction, former shareholders of the surviving corporation exchanged, for voting stock in the controlling corporation, stock in the surviving corporation that constitutes control of that survivor.\textsuperscript{69} Chap-

\textsuperscript{62} See id. §17461(a) (qualifies under California Revenue and Taxation Code Sections 17432 through 17439 inclusive).

\textsuperscript{63} Id. (the corresponding reorganization in federal law is also denominated as a “type G” reorganization). A corresponding change was made in the Bank and Corporation Tax Law. See CAL. STATS. 1982, c. 278, §36, at — (amending CAL. REV. & TAX. CODE §24562).

\textsuperscript{64} CAL. REV. & TAX. CODE §17461(a)(1)-(3).

\textsuperscript{65} Id. §17461(b)(3).

\textsuperscript{66} Id. §§17461(b)(3), 17432(b)(1)(A).

\textsuperscript{67} Id. §§17461(b)(3), 17432(b)(1)(B). Compare id. §17461(b)(3) with CAL. STATS. 1955, c. 939, §2, at 1714 (enacting CAL. REV. & TAX. CODE §17461).

\textsuperscript{68} CAL. REV. & TAX CODE §17461(b)(4).

\textsuperscript{69} Id. §17461(b)(5).
Chapter 278 states that if a transaction would qualify as a type G reorganization under definition seven, as well as under any other of the six existing definitions or the existing provision for a tax-free transfer to a controlled corporation, the transaction will be treated as qualifying only under the seventh definition for most purposes under the personal income tax law relating to corporate distributions and adjustments.

Existing law provides that if, immediately before a transaction, two or more of the parties to the transaction are found to be "investment companies" under the complex rules provided, then the transaction will not be considered a reorganization with respect to these investment companies and their shareholders unless (1) the company was a regulated investment company, a real estate investment trust, or a corporation that meets certain complicated requirements, or (2) the stock of each investment company is owned substantially by the same persons in the same proportions. Chapter 278 includes a type G reorganization within this rule.

Chapter 278 defines the term "Title 11 or similar case" for purposes of the corporate organizations and reorganizations sections of the California Revenue and Taxation Code as follows: (1) a case under Title 11 of the United States Code, to the extent Articles 7 and 8 of the California Revenue and Taxation Code are not in conflict with Section

\[70. \text{id} \S 17461(d)(4).\]
\[71. \text{id} \S 17461(a)(1)-(6).\]
\[72. \text{See id} \S 17431.\]
\[73. \text{Id} \S 17461(d)(3)(B). \text{The exception involves a situation where the liabilities assumed or acquired exceed the basis of the property surrendered and are taxed as gain from the sale or exchange of an asset. See id} \S 17440(c)(1).\]
\[74. \text{See id} \S 17461(d)(3).\]
\[75. \text{Id} \S 17461(b)(6)(C) \text{(definition of investment company).}\]
\[76. \text{Id} \S 17461(b)(6)(C)-(H).\]
\[77. \text{See id} \S 17461(b)(6)(B).\]
\[78. \text{See id} \S 17461(b)(6).\]
\[79. \text{Compare id} \text{with Cal. Stats. 1979, c. 1168, §38, at 4449. The corresponding change made in the Bank and Corporation Tax Law additionally provides that in the case of a receivership, foreclosure, or similar proceeding before a federal or state agency involving a financial institution to which Section 585 or 593 of the Internal Revenue Code applies, the agency will be treated as a court. See Cal. Stats. 1982, c. 278, §36, at —.}\]
346(g)(1)(C) of Title 11 of the United States Code, or (2) a receivership, foreclosure, or similar proceeding in a federal or state court. Under existing law, the term "a party to a reorganization" includes (1) a corporation resulting from a reorganization and (2) both corporations in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another corporation. Additionally, existing law provides more specific rules applicable to each of the various types of reorganization that can occur. Chapter 278 provides that if a transaction qualifies as a reorganization under the seventh definition, the term "party to a reorganization" will include the corporation in control of the asset-acquiring corporation despite the fact that all or part of the assets acquired in the transaction are subsequently transferred to a controlled corporation.

Under existing law, if stocks or securities of a corporation that is a party to a reorganization are exchanged solely for stocks or securities in that corporation, or in another corporation that is also a party to the reorganization, then no gain or loss will be recognized unless (1) any such securities are received and no such securities are surrendered or (2) the principal amount of any such securities received exceeds the principal amount of any such securities surrendered. Existing law also provides that, in situations when excess principal value is received or no stock or securities are surrendered, the exchange will not qualify for tax-free treatment under this provision, but will be taxed under the provisions that deal with exchanges in which "other property" is received. Similarly, Chapter 278 excludes from this tax-free treatment any stocks or securities received that are attributable to interest that accrued during the period in which they were held by the transferor. Unlike the excess value received, however, this portion of the exchange is taxed under the regular income tax provisions.

80. CAL. REV. & TAX. CODE §17461(d)(1).
81. Id. §§17461(a) (seven definitions of reorganization).
82. Id. §17462.
83. Id. (depends on under what definition, among those listed in California Revenue and Taxation Code Section 17461, the stock transactions qualify).
84. Id. §§17461(d)(1).
85. Id. §§17461(b)(3) (controlled by the corporation acquiring the assets). Compare id. §17462(b) with CAL. STATS. 1971, c. 2, §2, at 5156 (amending CAL. REV. & TAX. CODE §17462).
86. CAL. REV. & TAX. CODE §17462 (definition of party to a reorganization).
87. Id. §17432(a)(1).
88. Id. §17432(a)(2).
89. Id. §17438 (definition of other property).
90. Id. §§17432(a)(2),(3).
provisions.92

Existing law provides that if a certain fact pattern regarding a corporate distribution is found to exist, no gain or loss will be recognized by the shareholder or security holder upon receipt of the distributed shares.93 This fact pattern is as follows: (1) the corporation distributes to shareholders, in respect of their shares, or to security holders, in exchange for their securities, solely stock or securities of a corporation that it controlled immediately before the distribution,94 (2) the distribution was not used principally as a device95 to distribute earnings and profits of either the distributing or the controlled corporation, (3) both the distributing corporation and any controlled corporations meet the requirements of being “actively engaged in the conduct of a trade or business,”96 and (4) the distribution includes either all of the stock and securities held by the distributing corporation in the controlled corporation or an amount of stock in the controlled corporation constituting control.97 These existing rules apply regardless of whether the distribution was pro rata with respect to all distributing corporation shareholders, the shareholder surrenders stock in the distributing corporation, or the distribution was part of a plan of reorganization.98 In addition, existing law provides that these nonrecognition rules will not apply if securities of the controlled corporation are received but no securities are surrendered in return, or if the principal amount of the controlled corporation securities received exceeds that of the securities surrendered.99 In either of these situations, the distribution will be taxed under the provisions relating to exchanges that include the receipt of boot.100 Chapter 278 declares that these nonrecognition rules regarding corporate distributions will not apply to the extent that any stock, securities or other property received by the shareholder is attrib-

92. CAL. REV. & TAX. CODE §§17432(a)(2)(B), 17071 (explains gross income). In addition to making the corresponding changes in the Bank and Corporation Tax Law, Chapter 278 updated the terminology in a subsection concerning railroads confirmed under Section 1173 of Title 11 of the United States Code. See CAL. STATS. 1982, c. 278, §33, at — (amending CAL. REV. & TAX. CODE §24531).

93. CAL. REV. & TAX. CODE §17433(a).

94. Id. §17433(a)(1). For this purpose, controlled corporation stock acquired by the distributing corporation within five years of the distribution in question, in an exchange upon which gain or loss was recognized, will be treated as “other property” and not as controlled corporation stock. Id. §17433(c)(2).

95. Id. §17433(a)(2) (describes what will not be treated as this type of “device”).

96. See id. §17434 (describes how to meet these requirements).

97. See id. §17433(a). The fourth factor will only be found present if the FTB is satisfied that retaining the controlled corporation stock was not in pursuance of a plan whose principal purpose was a tax avoidance. Id. §17433(a)(4)(B).

98. Id. §17433(b) (refers to a plan of reorganization within the meaning of California Revenue and Taxation Code Section 17401(a)(4)).

99. See id. §17433.

100. Id. §17433(c), (d).
utable to interest accrued on securities on or after the beginning of the holder's holding period. Furthermore, Chapter 278 provides that this accrued interest will be taxed under the regular gross income provisions of the personal income tax law.

Existing law states that if, in an exchange, a taxpayer's consideration received includes (1) property that would have been permissible under certain tax-free exchange provisions if it were the sole consideration of the exchange and (2) relief of any liability because it is neither assumed by another party to the exchange or the taxpayer's property that is subject to the liability is acquired by that party, the taxpayer may still be eligible for the tax-free treatment afforded by these provisions because the assumption or acquisition will not be treated as boot. Existing law provides an exception to this rule by treating these acquisitions and assumptions as money received in the exchange if they are found to have been (1) made for the purpose of avoiding income tax on the exchange or (2) not made for a bona fide business purpose.

In addition, existing law provides that if a transfer to a controlled corporation is for a bona fide purpose and not in avoidance of tax, and it is an exchange to which the insolvency reorganization provisions do not apply, the excess of the assumption or acquisition of liability over the total adjusted basis of property transferred pursuant to that exchange will be taxed as gain from the sale or exchange of an asset. Chapter 278 provides that this tax treatment will not apply to an excess of liabilities over property basis resulting from an exchange pursuant to a Title 11 reorganization when no former shareholder of the transferor corporation receives any consideration for his or her stock.

All of the "corporate organizations and reorganizations" changes will apply to any Title 11 or similar case commencing after December

---

101. See id. §17433. Corresponding changes were made in the Bank and Corporation Tax Law; Cal. Stats. 1982, c. 278, §34, at — (amending Cal. Rev. & Tax. Code §24532).
105. Id. §17440(b)(1).
106. Id.
107. See id. §17431.
108. Id. §§17481-17484.
111. Id. §17440(a)(2)(C).
31, 1981.112 Those changes relating to the treatment of property attributable to accrued interest will also apply to any exchanges after that date if they do not occur in a Title 11 or similar case commenced on or before that date.113 A debtor may, with the court's approval, elect to substitute September 30, 1979 for December 31, 1981 in this timing provision.114

**Administrative Provisions**

Unless otherwise expressly provided,115 existing law states that if notice of a proposed deficiency assessment is not mailed to a taxpayer within four years after the return is filed, no deficiency can be assessed.116 Chapter 278 adds that, in a case under Title 11 of the United States Code, the running of this period of limitations for mailing notice will be extended for any period during which the Title 11 case prohibits the FTB from mailing that notice, and for 60 days thereafter.117

Under existing law, an appeal of a tax deficiency assessment may not be filed with the FTB after the appointment of a receiver in a receivership proceeding.118 Prior law contained a similar provision to prohibit these appeals after an adjudication of bankruptcy.119 Chapter 278 eliminates this provision.120

Existing law grants the FTB the right to immediately assess any deficiency, plus interest and any additional tax, upon appointment of a receiver for any taxpayer in a receivership proceeding before any court of the United States, any state or territory, or the District of Columbia.122 Chapter 278 adds two more deficiencies for which the FTB can make an immediate assessment if they have not been previously assessed: (1) a deficiency in respect of a tax on the debtor's estate in a

---

112. CAL. STATS. 1982, c. 278, §52, at —.
113. Id.
114. Id. The election (1) is made with respect to the proceeding and will apply to all parties to the proceeding, (2) may be revoked only with FTB consent, and (3) will be made at a time and in a manner prescribed by the FTB. Id. The corresponding changes were made in the Bank and Corporation Tax Law. See CAL. STATS. 1982, c. 278, §43, at — (amending CAL. REV. & TAX. CODE §25672).
115. CAL. REV. & TAX. CODE §18586(a) (except in the case of a fraudulent return).
116. Id.
118. CAL. REV. & TAX. CODE §18651(b).
119. CAL. STATS. 1951, c. 70, §1, at 254 (amending CAL. REV. & TAX. CODE §18651).
120. Compare id. with CAL. REV. & TAX. CODE §18651.
121. Chapter 278 eliminated "the adjudication of bankruptcy" as an alternative basis for immediate assessment of a deficiency. Compare CAL. REV. & TAX. CODE §18649 with CAL. STATS. 1951, c. 70, §1, at 254.
122. CAL. REV. & TAX. CODE §18649.
Title 11 case or (2) a deficiency based on a tax on the debtor if the tax liability has become res judicata pursuant to a determination in a Title 11 case. All of the above changes pertaining to administrative provisions take effect on June 16, 1982, but will not apply to any proceeding under the Federal Bankruptcy Act commenced before October 1, 1979.

Existing law declares that taxpayers who change their annual accounting period will not be able to use the new accounting period as their taxable year unless the change is approved by the FTB. Chapter 278 creates an exception for an estate subject to tax under Title 11 of the United States Code by allowing the estate to change its annual accounting period one time without FTB approval. This change will apply to any bankruptcy case commencing after June 16, 1982.

Existing law states that if the FTB fails to mail a notice of action on any refund claim within six months after the claim is filed, the taxpayer may consider the claim disallowed at any time prior to the mailing of that notice and (1) appeal to the board or (2) bring an action against the FTB on the grounds set forth in the claim to recover part or all of the claimed overpayment. Chapter 278 expressly excepts a Title 11 case from existing law and substitutes a 120-day period for the 6-month period. This substitution is effective as of June 16, 1982.

Under existing law, late payment of the amount shown as tax on any required return will be penalized and similar provisions exist for an underpayment of any required estimated tax. Chapter 278...
ulates an exception\textsuperscript{137} to these penalty provisions for failure\textsuperscript{138} to make
timely payments of tax under certain conditions when a Title 11 case is
pending.\textsuperscript{139} The penalty exceptions, however, will not apply to any
liability arising from a failure to pay or deposit a tax withheld or col-
lected from persons other than the taxpayer.\textsuperscript{140}

Existing law provides that assignees for the benefit of creditors, re-
ceivers, or like fiduciaries must notify the FTB of their qualifications as
required by FTB regulations.\textsuperscript{141} Prior to enactment of Chapter 278,
“every trustee in bankruptcy” had to give this required notice.\textsuperscript{142} Chapter 278 eliminates this terminology and substitutes “any trustee in
a case under Title 11 of the United States Code” on the list of those
required to notify the FTB of their qualifications.\textsuperscript{143} This change takes
effect on June 16, 1982.\textsuperscript{144}

Similarly, Chapter 278 updates the bankruptcy terminology in other
provisions, generally by substitution of the terminology “a case under
Title 11 of the United States Code” for “any proceeding under the
Bankruptcy Act”\textsuperscript{145} or by the elimination of outdated terms.\textsuperscript{146}

\begin{footnotes}
\item[137] Cal. Stats. 1982, c. 278, §52, at — (effective June 16, 1982, but it will not apply to any
proceeding under the Federal Bankruptcy Act at Title 11 United States Code Sections 101 through
151326 inclusive).
\item[138] Cal. Rev. & Tax. Code §§18698(a)(1) (if the tax was incurred by the estate and the
failure to pay was pursuant to a court finding of probable insufficiency of funds to pay estate
administrative expenses), 18698(a)(2) (if the tax was incurred by the debtor before the earlier of
the order for relief or the appointment of a trustee, and petition was filed (1) before the filing date
for the return or (2) on or before the penalty date).
\item[139] Id. §18698(a). The corresponding changes were enacted in the Bank and Corporation
Tax Law. See id. §25959.
\item[140] Cal. Rev. & Tax. Code §18698(b).
\item[141] Id. §18650.
\item[144] Cal. Stats. 1982, c. 278, §52 at —
(required notice by fiduciaries of their qualifications suspends the running of the statutory period
for the FTB’s mailing of deficiency assessments from the date of institution of court proceedings to
a date 30 days after the FTB receives that fiduciary’s notice, up to a 2 year maximum); Cal. Rev.
& Tax. Code §18651 with Cal. Stats. 1961, c. 500, §11, at 1605 (claims for tax deficiencies,
including interest and additions to the tax, may be presented for adjudication to the court before
which the bankruptcy case is pending).
\item[146] Compare Cal. Rev. & Tax. Code §25403 with Cal. Stats. 1955, c. 938, §27, at 1653
(amending Cal. Rev. & Tax. Code §25403) (every return required under the Bank and Corpora-
tion portion of the income tax law must be signed by a principal officer of the taxpayer except that,
in cases involving a taxpayer whose property or business is under the operation of a receiver,
trustee or assignee, that party in control will make and sign the return); Cal. Rev. & Tax. Code
§18652 with Cal. Stats. 1951, c. 70, §1, at 254 (amending Cal. Rev. & Tax. Code §18652) (after
termination of a receivership proceeding taxpayer must, upon notice and demand from the FTB,
pay any unpaid portion of a claim allowed in the proceeding, and it is subject to the delinquent
tax collection provisions for the six years following that date). The corresponding changes were
\end{footnotes}
Miscellaneous

Under existing law, a corporate stock redemption147 is treated as a distribution in part or full payment in exchange for its stock if any of the following situations apply: (1) the redemption is not essentially equivalent to a dividend;148 (2) the distribution is substantially disproportionate149 with respect to the shareholder and immediately after the redemption the shareholder owns 50 percent or less of the total combined voting power of all classes of voting stock; or (3) the redemption redeems all of that corporation’s stock owned by the shareholder.150 Chapter 278 eliminates a previously existing fourth situation involving redemption of certain railroad corporation stock that qualified as a distribution to be treated as a payment in exchange for the redeeming corporation’s stock.151

Existing law provides for tax-free treatment of a corporation’s realized gain from sales and exchanges of “property” made during a one-year period beginning on the date of adoption of a plan to completely liquidate within that one year.152 Existing law states that “property” as used within the meaning of this provision generally does not include stock in trade, inventory, and certain installment obligations.153 Inventories, however, are included as “property” if substantially all of that inventory is sold or exchanged to one person in one transaction.154 Chapter 278 provides that if a corporation completely liquidates pursuant to a plan of complete liquidation adopted in a Title 11 or similar case155 the tax-free treatment afforded by the existing one-year complete liquidation rule will apply to corporate sales and exchanges of “property” within the period beginning on the date of the adoption of the plan and ending on the date of the termination of the case.156

---

147. CAL. REV. & TAX. CODE §17383(b) (explains under what circumstances the acquisition of stock will be treated as a redemption).
148. Id. §17381 (definition of dividend).
149. Id. §17326(b)(3) (definition of substantially disproportionate). See id. §17326(b)(4) (unless the redemption is made pursuant to a planned series of redemptions whose overall effect is not substantially disproportionate with respect to the shareholder).
150. Id. §§17325, 17326.
151. Compare CAL. REV. & TAX. CODE §§17325 and 17326 with CAL. STATS. 1955, c. 939, §2, at 1692 (amending CAL. REV. & TAX. CODE §§17325 and 17326). The eliminated provision concerned redemption of certain railroad corporation stock and the change applies to stock issued after December 31, 1981, other than stock issued pursuant to a plan of reorganization approved on or before that date. Id. CAL. STATS. 1982, c. 278, §52, at —. A corresponding change was made in the Bank and Corporation Tax Law. See id., §29, at — (amending CAL. REV. & TAX. CODE §24455).
152. See CAL. REV. & TAX. CODE §24512.
153. Id. §24513.
154. Id.
155. Id. §17461(d)(1).
156. Id. §24519.

Selected 1982 California Legislation

727
addition, Chapter 278 declares that for these complete one-year liquidations pursuant to a plan under a Title 11 case the term “property” will not include certain items, generally inventory not sold in one bulk sale, acquired on or after the date of adoption of the plan of liquidation.157

Existing law provides that if a stock transfer meets a lengthy list of requirements158 it will not result in income to the transferee or a deduction for the transferor for personal income tax purposes.159 One of these existing requirements is that if an insolvent individual holds a share of stock acquired by exercising a qualified stock option,160 and the share is transferred to a trustee, receiver, or similar fiduciary in any proceeding under the Federal Bankruptcy Act161 or any similar insolvency proceeding, neither that transfer nor any other transfer of that share for the benefit of the insolvent’s creditors in that proceeding will constitute a disposition.162 Since a disposition of the share would prevent the transfer from qualifying for tax-free treatment, this provision preserves the tax-free treatment for insolvency transfers of stock.163

Chapter 278 modernizes this provision by substituting the phrase “Title 11 of the United States Code” for the phrase “the Bankruptcy Act” in the existing law.164 The changes in this provision will take effect on June 16, 1982, but will not apply to any proceeding under the Bankruptcy Act165 commenced before October 1, 1979.166

Existing law provides that gross income does not include income attributable to a recovery of a bad debt,167 prior tax,168 or delinquency amount169 to the extent of any “recovery exclusion.”170 The recovery exclusion is the amount of the deduction or credit allowed on account of the debt, tax, or delinquency amount that did not result in a reduction of the taxpayer’s income tax when that item was originally in-

157. Id.; see id. §§24512, 24513 (will not extend to any after-acquired property except inventory that is sold or exchanged in one transaction and the installment obligations resulting from that bulk sale).
158. Id. §§17532(a), 17533(a), 17534(a).
159. Id. §17531.
160. Id. §17532(b) (definition of qualified stock option).
162. CAL. REV. & TAX. CODE §17532(c)(5).
163. See id. §§18031(a), 17531, 17532.
166. CAL. STATS. 1982, c. 278, §52, at —.
167. CAL. REV. & TAX. CODE §17145(a) (definition of bad debt).
168. Id. §17145(b) (definition of prior tax).
169. Id. §17145(c) (definition of delinquency amount).
170. Id. §§17144, 17145(d) (definition of recovery exclusion).
Chapter 278 changes the effect of a recovery of bad debt, prior tax, or delinquency amount that did not decrease the taxpayer's tax in the original deduction year if it increased a carryover loss from that year and that loss is still unexpired at the time the debt, tax or amount is recovered. This change is accomplished by treating the increase in carryover loss as a reduction in tax so that the item recovered will not be excluded from gross income in the recovery year because it will not be within the definition of a recovery exclusion.

This provision applies to any transaction that occurs after December 31, 1981 unless the transaction (1) occurs in a proceeding in a bankruptcy case, (2) occurs in a similar judicial proceeding, (3) occurs in a case under the Bankruptcy Act commencing on or before that date, or (4) involves other specified transactions under the federal law.

A debtor has the option, with the court's approval, to elect to substitute September 30, 1979 for December 31, 1981 in the above timing provision.

---

171. Id. §17145(d).
172. Id. §17145.5.
173. Id.
174. See id. §17144.
177. Id. The election (1) is made with respect to the proceeding and will apply to all parties to the proceeding, (2) may be revoked only with FTB consent and (3) will be made at a time and in a manner prescribed by the FTB. Id.

---

Taxation; deficiency assessments, penalties for tax preparers

Government Code §16302.1 (amended); Revenue and Taxation Code §§17208, 18685.08, 19412, 20645.7, 20645.9, 24349, 25662.1 (new); §§18591.1, 18592, 18593, 23186, 25666 (amended); CAL. STATS. 1980, c. 903, §5, at 2434 (amended).

AB2656 (Moore); STATS. 1982, Ch 700

Support: Department of Finance; Franchise Tax Board

Chapter 700 makes various changes in California's taxation laws that clarify the meaning of the term "deficiency" in deficiency assessment protests and allow for the severability of these protests. Chapter 700 also establishes penalties for tax preparers who commit specified of-
fenses and permits certain taxpayers to continue depreciation on solar energy systems after the repeal date.

**Deficiency Assessments and Protests**

Both the Personal Income Tax Law and the Bank and Corporations Tax Law contain procedures for protesting a deficiency assessment. The Personal Income Tax Law defines the term “deficiency” as the difference between the total amount of tax imposed by the Franchise Tax Board and the tax shown on the return plus previously assessed deficiencies less rebates. Chapter 700 supplements this definition by stating that a deficiency includes any credits subject to carryover that have been reduced by action of the Franchise Tax Board. This addition indicates that a taxpayer may protest a deficiency assessment that does not result in any payment being due if the assessment reduces the amount of credits. Chapter 700 then adds the amended definition of “deficiency” to the Bank and Corporations Tax Law.

Additionally, Chapter 700 specifically grants the Franchise Tax Board discretionary power to sever a protest action and adjudicate each matter individually. This procedure allows the Franchise Tax Board to resolve some issues and immediately collect the amount due and can be utilized when the resolution of other issues is dependent on the outcome of cases pending before the courts or the Board of Equalization. Chapter 700 also amends corresponding procedural sections of both the Personal Income Tax Law and the Bank and Corporations Tax Law to bring them into conformity with this change.

---

3. See id. §§18685.08, 19412, 20645.7, 20645.9.
4. See CAL. STATs. 1982, c. 700, §13, at —.
6. Id. §23001 (short title). See generally id. §§23001-26481 (Bank and Corporations Tax Law).
7. Id. §§18590-18596, 25664-25667.
8. Id. §18591.1(a).
9. Compare id. §18591.1 with CAL. STATs. 1971, c. 1, §140, at 5015 (enacting CAL. REV. & TAX. CODE §18591.1).
10. See CAL. REV. & TAX. CODE §§18583 (deficiency notice), 18590 (protest of assessment).
11. Id. §25662.1.
12. Id. §18592, 25666.
13. Telephone interview with Claudia Land, Staff Counsel, Legal Division of the Franchise Tax Board, August 8, 1982 (notes on file at the Pacific Law Journal).
Penalties for Tax Preparers

Chapter 700 establishes civil and criminal penalties for a tax preparer who endorses or otherwise negotiates a warrant that has been issued to a taxpayer pursuant to either the Senior Citizens Property Tax Assistance and Postponement Law or the Personal Income Tax Law. Chapter 700 states that any tax preparer convicted of this offense is guilty of a misdemeanor and may be fined up to $1000, imprisoned up to one year, or both. Furthermore, Chapter 700 requires that an additional fine for the costs of prosecution be levied. Moreover, Chapter 700 imposes a civil penalty of $250 for each warrant that the tax preparer so endorses or negotiates. Neither the criminal nor the civil penalty applies, however, when the tax preparer has advanced money to the taxpayer in an amount at least equal to the refund. In addition, Chapter 700 specifically defines a “tax preparer” as any person who prepares or employs people to prepare, for compensation, either claims for assistance under the Senior Citizens Property Tax Assistance and Postponement Law, or returns or refund claims under the Personal Income Tax Law. Chapter 700 excludes from the designation of “tax preparer” one who furnishes merely clerical assistance or one who prepares a claim for assistance, tax return, or claim for refund in a fiduciary capacity. Additionally, Chapter 700 also excludes one who prepares a return or refund claim for a regular employer from being designated a “tax preparer” in the Personal Income Tax Law.

Depreciation on Solar Energy Systems

Existing law permits either a tax credit or a depreciation allowance for the installation of a solar energy system or allowable conservation measures. Although the tax benefits for solar energy systems are re-

---

16. Id. §§18685.08(a), 19412, 20645.7(a), 20645.9.
17. Id. §§19412, 20645.9.
18. Id.
19. Id. §§18685.08(a), 20645.7(a). See generally 26 U.S.C. §6695(f). Corresponding federal law provides for a civil penalty of $500 for each warrant negotiated. Id.
20. CAL. REV. & TAX. CODE §§18685.08(c), 19412, 20645.7(c), 20645.9.
21. Id. §20645.7(b).
22. Id. §18685.08(b).
23. Id. §§18685.08(b)(1), 20645.7(b)(1).
24. Id. §§18685.08(b)(3), 20645.7(b)(2).
25. Id. §18685.08(b)(2).

Selected 1982 California Legislation 731
pealed on January 1, 1984, existing law allows any unused credit to be taken after this date. Chapter 700 provides that depreciation for solar energy systems, if begun prior to the repeal date, may also be continued until the standard 36 month period is completed.

Conclusion

Chapter 700 allows a taxpayer to protest a deficiency assessment that lowers a credit that is subject to carryover. Furthermore, Chapter 700 expedites the collection of taxes by authorizing the Franchise Tax Board to sever deficiency actions and adjudicate matters separately. In addition, Chapter 700 establishes civil and criminal penalties for a defined tax preparer who endorses or negotiates a warrant issued to a taxpayer. Finally, Chapter 700 permits taxpayers to continue the depreciation on solar energy systems that began prior to the repeal date authorizing the depreciation.

27. CAL. STATS. 1980, c. 903, §5, at 2834.
28. Id.
32. See id. §§18592, 25666.
33. See id. §§18685.08, 19412, 20645.7, 20645.9.
34. See CAL. STATS. 1982, c. 700, §13, at —.

Taxation; wills—marital deductions, charitable remainder trusts, and beneficiaries

Probate Code §1029 (repealed); §§1030, 1031, 1032, 1033, 1034, 1036, 1037, 1038, 1039, 1138.14 (new); §190, (amended).
AB 769 (Naylor); STATS. 1982, Ch 41

Prior to the enactment of Chapter 41, the testator's intent could have been frustrated when federal tax provisions regarding marital deduction gifts, charitable remainder unitrusts, or charitable remainder annuity trusts were not strictly adhered to. Chapter 41 facilitates

2. Id. §664(d)(2) (definition of charitable remainder unitrust).
3. Id. §664(d)(1) (definition of charitable remainder annuity trust).
adherence to federal tax provisions and protects the testator's intent by making it easier to comply with these tax provisions. In addition, Chapter 41 enlarges the list of beneficiaries who may take or disclaim an interest in property.

Marital Deduction Gifts and Charitable Remainder Trusts

Prior to the enactment of Chapter 41, if tax provisions regarding a marital deduction gift, charitable remainder unitrust, or charitable remainder annuity trust were not specifically met, the intent of the testator to create any of these dispositions could be defeated. In the case of marital deductions, even though estate taxes are controlled by federal law, the State Legislature can enact provisions that determine the interest to which the spouse is entitled and make it easier to obtain the marital deduction. Chapter 41 applies to any distribution of a will, unless the terms of the testator's will expressly or by implication make these provisions inapplicable. As a result, the requirements of the Internal Revenue Code for marital deductions and charitable remainder trusts are met.

"Estate" trusts, however, do not gain any benefit from the provisions of chapter 41. An estate trust pays no income to a surviving spouse during that person's lifetime. Instead, the trust ends upon the death of the surviving spouse and becomes part of that person's estate.

Chapter 41 continues to limit the assets that may be given to a surviving spouse in satisfaction of a bequest under a pecuniary formula clause. Unless the will expressly provides otherwise, the surviving spouse must receive assets with a value not less than the amount of cash

---

5. See CAL. PROB. CODE §1032.
6. Id. §190(a) (definition of beneficiary).
7. See id. §190(c), (d).
8. Id. §190(b) (definition of interest).
9. See id. §190.
12. CAL. PROB. CODE §1138.14 ("will" refers to a trust that is subject to this article).
13. Id. §1138.14 ("testator" refers to the trustor).
14. Id. §1031(a) (if distribution is after January 1, 1983 Chapter 41 will apply regardless of whether the testator died before that date). The testator's will may incorporate by reference the terms of these provisions at the time the testator signed the will and unless expressly prohibited, any amendments to these provisions will also be incorporated. Id. §1031(b).
15. See id. §1032.
17. See CAL. PROB. CODE §1032(a).
19. See id.
20. Compare CAL. PROB. CODE §1033(a) with CAL. STATS. 1966, c. 50, §1, at 363 (enacting

Selected 1982 California Legislation 733
that would have satisfied the bequest. Furthermore, the fair market value of the assets chosen for the bequest is determined when distribution is made.

In an apparent attempt to accommodate wills drafted prior to the Economic Recovery Tax Act of 1981, Chapter 41 also provides that a surviving spouse is entitled to the maximum marital deduction available prior to August 13, 1981, provided the will is dated on or before September 13, 1981. This maximum marital deduction, however, could be subject to certain adjustments, if (1) the provisions of the Internal Revenue Code that were in effect prior to August 13, 1981 dealing with limitations on deductions and adjustments of gifts to spouses applies; (2) the testator's gross estate contains property upon which coordination of an estate tax must be made with generation skipping transfers; and (3) other assets passing to the spouse under or outside of the will qualify for a marital deduction.

Under existing federal law, a survivorship requirement exceeding six months has the effect of destroying a marital deduction. Chapter 41 protects property entitled to a marital deduction by specifying that any survivorship requirement related to a marital deduction that exceeds six months will be construed to only be for a six month period beginning at the testator's death.

In addition, Chapter 41 provides that a fiduciary of a marital deduction gift or a charitable remainder trust lacks the power to take any action harmful to the deduction or the trust. Finally, Chapter 41 applies to any distribution made after its enactment, unless the will provides, expressly or necessarily, that the provisions of Chapter 41 will not apply to any gift, whether outright or in trust.


21. See CAL. PROB. CODE §1033(a).
22. Id.
24. Id. §1030(c) (definition of maximum marital deduction).
25. CAL. PROB. CODE §1034.
28. CAL. PROB. CODE §1034(c).
30. See CAL. PROB. CODE §1036.
31. Id. §1030(f) (a fiduciary includes an executor, administrator, trustee, guardian, conservator, or any other personal representative).
32. See id. §1032(a),(b).
33. See id. §1031(a).
34. See id. §1138.14.
Beneficiaries

Chapter 41 delineates additional beneficiaries entitled to take or disclaim an interest in property. The additional types of beneficiaries include: (1) beneficiaries who take by grant; (2) surviving joint tenants; (3) beneficiaries or payees under various types of contracts or arrangements, plans or programs related to employment, or testamentary or nontestamentary instruments; and (4) those who are beneficiaries by any other method not specifically mentioned in the statute.

Prior to the enactment of Chapter 41, it was possible to take or disclaim these four types of interests, although no specific statutory provision had been made. Chapter 41 now specifically provides that these may be disclaimed.

Conclusion

Chapter 41 makes it easier for a testator to meet the federal provisions regarding a marital deduction or charitable remainder trust and offers some protection to preserve the deduction or trust. Finally, Chapter 41 enlarges the list of beneficiaries that are guaranteed the right to take or disclaim an interest in property.

36. Id. §190(a)(10).
37. Id. §190(a)(11).
38. Id. §190(a)(12).
39. Id. §190(a)(13).
40. Id. §190(a)(14).
41. Id. §190(a)(15).
42. See State Bar of California, 1981 Conference Resolution 6-7g.
43. See generally id.
44. See id. §1032.
45. See generally id.
46. See id. §190.

Taxation: real property—mobilehomes, change in ownership

Government Code §16186.5 (new); Health and Safety Code §18070 (repealed); §18119 (new); §§18115, 33327, 33328, 33328.3 (amended); Probate Code §600 (amended); Revenue and Taxation Code §3445 (repealed); §§68, 172, 172.1, 10760, 10910, 10911, 10912, 10913, 10914, 10915, 10916, 10917, 11597 (new); §§62, 64, 231, 423.7, 483, 672, 758, 830, 864, 1604, 4876.5, 5801, 5812, 5831, 10759.5, 10910,
Chapters 40, 1395 and 1465 make a variety of significant changes in the property tax area. Specifically, these chapters provide certain rights and remedies for mobilehome owners whose mobilehomes are placed on local tax rolls as a result of nonpayment of delinquent vehicle license fees. In addition, Chapter 1465 excludes certain real property transactions from the definition of change in ownership and from reappraisal that would result from a change in ownership. Finally, Chapter 1465 establishes a two year time limitation for the assessment appeals boards to hear petitions appealing the assessed value of real property.

Mobilehomes placed on property tax rolls

Prior to July 1, 1980, owners delinquent in payment of vehicle license fees on mobilehomes were subject only to penalty fees administered by the Department of Motor Vehicles. Existing law provides, however, that after July 1, 1980, mobilehome vehicle license fees that are more than 120 days delinquent will result in the mobilehome being

---

1. See CAL. HEALTH & SAFETY CODE §18119; CAL. REV. & TAX. CODE §§62, 64, 68, 483, 1604, 5801, 10760, 10910, 10911, 10914.
2. CAL. CIV. CODE §798.3 (definition of mobilehome).
4. Id. §10751 (explanation of vehicle license fees). See CAL. HEALTH & SAFETY CODE §18119; CAL. REV. & TAX. CODE §§10910, 10911, 10914.
5. CAL. REV. & TAX. CODE §§60 (definition of change in ownership).
6. See id. §§62, 64, 68.
7. Id. §1620 (definition of county assessment appeals board).
8. See id. §1604(b).
9. See id. §§10769, 10770, 10852.
Taxation

placed on local tax rolls. As a result of a dealer failing to register a mobilehome sale within the required time or the Department of Motor Vehicles using outdated mailing addresses, many mobile homes were placed on local tax rolls for delinquent vehicle license fees through no fault of the mobilehome owner. Prior to the enactment of Chapter 1465, mobilehome owners were notified that they were delinquent in payment of the vehicle license fee by the county tax assessor after the mobilehome was placed on the local tax roll. Chapter 1465 transfers the responsibility of notification of delinquent vehicle license fees from the county assessor to the Department of Housing and Community Development. Under Chapter 1465, notification must be given to the registered mobilehome owner within 60 days from the time the vehicle license fee became delinquent. Chapter 1465 requires the notice to state that the mobilehome will be placed on the local tax rolls after 120 days delinquency and inform the mobilehome owner of the right to petition for reinstatement of the vehicle license fees.

Prior to the enactment of Chapter 40, once the mobilehome was placed on the local tax roll as a result of delinquent license fees no appeals process was available to the mobilehome owner. Consequently, many mobilehome owners living on fixed incomes were subjected to severe financial hardships resulting from the increased taxable value on their mobilehomes. Chapter 40, therefore, provides that an assessee or registered mobilehome owner, whose mobilehome has been placed on the local tax roll, may petition the Department of Housing and Community Development, within a prescribed period, for reinstatement under the vehicle license fee. Under Chapter 40, the petition must be granted if the failure to pay is due to reasonable cause and circumstances beyond the petitioner's control, or if the petitioner can prove that the fee was paid to a licensed dealer or escrow officer, who

Selected 1982 California Legislation

737
was the cause of the delinquency.\textsuperscript{22} In addition, if the mobilehome owner has paid taxes under the local tax roll and is subsequently granted the petition, the taxes paid will be refunded and the owner must then pay the delinquent vehicle license fee to the Department of Housing and Community Development within 60 days from the time the petition was granted.\textsuperscript{23}

Chapter 1395 provides that mobilehome owners whose vehicle license fees became delinquent between July 1, 1980 and March 1, 1982, and who either paid the delinquent fee or paid current property taxes, will not be subject to future penalties or local property taxation if the mobilehome owner files a request for waiver of the delinquency within a specified period.\textsuperscript{24} In addition, Chapter 1395 specifies that for mobilehome owners who are delinquent in their fees between July 1980 and March 1982 and have already been placed on the property tax rolls, payment of the first installment will be deemed full payment of the 1982-1983 property tax liability due in the 1982-1983 fiscal year if the mobilehome owner has filed a request for waiver of the delinquency by April 9, 1983.\textsuperscript{25}

Prior to the enactment of Chapter 1465, the only mechanism for placing a mobilehome on the local tax rolls was by withholding the vehicle license fee for 120 days.\textsuperscript{26} Chapter 1465 now provides that mobilehome owners may request that the mobilehome be placed on the local tax rolls.\textsuperscript{27}

\textit{Change in Ownership}

Under existing law when there is a change in ownership of real property, the property is subject to reappraisal unless that type of ownership change is exempt.\textsuperscript{28} Chapter 1465 adds several more types of changes in ownership that are exempt from reappraisal.\textsuperscript{29} Under Chapter 1465, the transfer of real property between an original grantor and grantee of the property, for the purpose of correcting or reforming a deed to express the true intentions of the parties, does not constitute a

\begin{footnotesize}
\begin{enumerate}
\item See id. §10914.
\item See id. §10911.
\item Id. §10760(a). The request for waiver must be filed before June 30, 1983. Id.
\item Id. §10760(b). The waiver must be filed no later than April 9, 1983. Id.
\item See id. §§5830; CAL. STATS. 1980, c. 1149, §43, at 3778 (amending CAL. REV. & TAX. CODE §5801).
\item See CAL. REV. & TAX. CODE §§5801(a)(3).
\item See CAL. CONST. art. XIII A, §2. For examples of changes in ownership that are exempt from reappraisal, see CAL. REV. & TAX. CODE §§62 (exclusions from change in ownership), 63 (interspousal transfer), 64 (purchase or transfer of ownership interests in legal entities), 65 (joint tenancy property) (for examples of changes in ownership that are exempt from reappraisal).
\item See CAL. REV. & TAX. CODE §§62(1), (m), 68.
\end{enumerate}
\end{footnotesize}
change in ownership and will not result in a reappraisal of the real property.\textsuperscript{30} In addition, Chapter 1465 provides that any intrafamily transfer, ordered by the court because of the death of the parents,\textsuperscript{31} between a parent and minor\textsuperscript{32} child or between minor siblings, of a dwelling that was and remains the principal place of the minor child’s residence, is not a change in ownership and will not result in the reappraisal of the dwelling.\textsuperscript{33}

Prior to the enactment of Chapter 1465, when real property was acquired as a replacement for property taken by (1) eminent domain proceedings,\textsuperscript{34} (2) a public entity,\textsuperscript{35} or (3) governmental action resulting in a judgment of inverse condemnation,\textsuperscript{36} the newly acquired property was reappraised.\textsuperscript{37} Chapter 1465 now provides that under these circumstances the newly acquired property will not be reappraised.\textsuperscript{38} For the purposes of taxation of the newly acquired property, Chapter 1465 requires that the adjusted base year value\textsuperscript{39} of the newly acquired property be either the lower of the fair market value\textsuperscript{40} of the newly acquired property or the adjusted base year value of the old property.\textsuperscript{41} In determining the base year value of the newly acquired property or that of the old property, Chapter 1465 applies only to property taken, by eminent domain, a public entity or governmental action resulting in a judgment of inverse condemnation, after March 1, 1975,\textsuperscript{42} and affects only reappraisals that occur after June 2, 1982.\textsuperscript{43} In order for a property owner to benefit from the lower adjusted base year value, Chapter 1465 requires that a request for assessment be made to the assessor within a specified time.\textsuperscript{44}

Under existing law, a change in ownership does not occur and the

\begin{footnotes}
\item 30. Id. §62(1).
\item 31. CAL. CIV. CODE §241 (definition of parent). Parents include legal guardians, CAL. REV. & TAX. CODE §62(m).
\item 32. CAL. CIV. CODE §25 (definition of minor).
\item 33. CAL. REV. & TAX. CODE §62(m).
\item 34. CAL. CIV. PROC. CODE §§1230.010-1273.06 (explanation of eminent domain law).
\item 35. Id. §7260(a) (definition of public entity).
\item 36. Id. §905.1 (explanation of inverse condemnation).
\item 37. Compare CAL. REV. & TAX. CODE §68 with id. §§60 and 61.
\item 38. See id. §68.
\item 39. Id. §§50-53. (explanation of base year values).
\item 40. Id. §110 (definition of fair market value).
\item 41. See id. §68.
\item 42. See id.
\item 43. See id.
\item 44. See id. For replacement property acquired between March 1, 1975 and January 1, 1983, a request for assessment must be made on or before January 1, 1987. Id. For replacement property acquired after January 1, 1983, the request for assessment must be made within four years from the date the old property is acquired by eminent domain, purchase, or date the judgment of inverse condemnation becomes final. Id. Chapter 1465 was enacted to implement Proposition 8 changing Section 2 of Article XIII A of the California Constitution. Id.
\end{footnotes}
real property is not subject to reappraisal when the transfer of real property between co-owners, individuals, or legal entities changes the method of holding title but the proportional interest of the co-owners, individuals or legal entities in the transferred real property remain the same. In addition, Chapter 1465 specifies that the transfer of real property during a nontaxable corporate reorganization under California and federal law, when all of the legal entities involved are members of an affiliated group is not a change in ownership and does not result in a reappraisal of the real property. Furthermore, Chapter 1465 specifies that no change in ownership occurs and that “no reappraisal is necessary” when any real property is transferred among members of an affiliated group or is transferred for the purpose of perfecting title to the property.

Existing law provides that no change in ownership occurs and no reappraisal is necessary when the property is transferred to a legal entity resulting in a change in the method of holding title if the proportional interests of the original co-owners remain the same. If, however, the real property transferred is followed by a transfer of more than fifty percent of the total interest in the legal entity by any of the original co-owners, a change in ownership has occurred and existing law requires that the real property be reappraised. Chapter 1465 specifies that a reappraisal of the transferred property must also occur when there is a following transfer of less than fifty percent of the total interest in the legal entity by any of the original co-owners and a person or legal entity gains control or a majority ownership interest in the legal entity. The reappraisal, under Chapter 1465, applies only to

---

45. Id. §104 (definition of real property).
47. CAL. REV. & TAX. CODE §17005 (definition of an individual).
48. Id. §§664(a), 24048 (definition of legal entity).
49. See id. §§662(a)(1), (2), 65, 65.1. See generally CAL. CONST. art. XIII A, §2 (explanation of when property is to be assessed, reassessed and reappraised); 5 B. WITKIN, SUMMARY OF CALIFORNIA LAW, Taxation §95G (8th ed. 1974), (Supp. 1982) (discussion of changes in ownership); 11 PAC. L. REVIEW OF SELECTED 1973 CALIFORNIA LEGISLATION, 625 (1979) (discussion of CAL. REV. & TAX. CODE §§62 and 64).
51. CAL. REV. & TAX. CODE §64(b) (for definition of affiliated group).
52. Id. §§62(a)(2), 64(b).
53. Id. §64(d).
54. Id. §62(b). Compare id. with CAL. STATS. 1981, c. 1141, §2, at — (amending CAL. REV. & TAX. CODE §62(b)). (noting that transferring property for the purpose of perfecting title existed prior to Chapter 1465).
55. Id. §62(a).
56. Id. §64(d).
57. Id. §25105 (definition of change in control).
58. Id. §64(d).
property transferred on or after March 1, 1975.  

Prior to the enactment of Chapter 1465, a portion or all of the real property transferred to the legal entity, prior to the transfer by any of the original co-owners of more than fifty percent of the total interest in the legal entity, could have been reappraised either as a legal entity interest or as a joint tenancy interest. Chapter 1465 now requires that all of the transferred real property is to be reappraised as a legal entity interest.

Existing law provides that an assessees who is assessed a penalty for filing a late change of ownership statement may have the penalty abated if the assessees can prove to the county board of supervisors that the failure to file a timely statement was due to reasonable cause. Under Chapter 1465, existing abatement procedures will not apply in any county where the county board of supervisors has adopted a resolution prohibiting the abatement of penalties imposed for late filing of change in ownership statements. In those counties, however, Chapter 1465 provides that the penalty will be abated if the assessees files the change in ownership statement with the county assessor, rather than with the board of supervisors, no later than 60 days after the date the assessees was notified of the penalty. Chapter 1465 no longer requires assessees in those counties to show that the failure to timely file the statement was due to reasonable cause.

Assessment Appeals

Under existing law, taxpayers who disagree with the assessed value of their property can petition the county assessment appeals board for a reduction of their property assessment. Prior to the enactment of Chapter 1465, however, there was no time limitation on the board to hear the petition. Chapter 1465 now provides that if the county assessment appeals board fails to hear evidence on the application for reduction of assessment within two years of filing, the taxpayer's opin-

59. Id. §64(d).
60. See id. §65; Cal. Stats. 1980, c. 1349, §2, at 4769 (amending Cal. Rev. & Tax. Code §64(d)).
62. See id. §64(d).
63. See id. §483(a).
64. See id. §483(b).
65. See id.
66. See id.
67. See id. §1604(b).
68. Compare id. §1604(b) with 18 Cal. Adm. Code §307 (the only requirement placed on the assessment appeals board is that the clerk mail the notice of hearing 30 days prior to the hearing).
Taxation

...ion of market value will prevail. This provision does not apply to a taxpayer who has failed to provide full and complete information as required by law or to any application that was filed prior to January 1, 1983.

In conclusion, Chapters 40, 1395 and 1465 substantially increase the rights and remedies of mobilehome owners when their mobilehomes are placed on local tax rolls as a result of the nonpayment of delinquent vehicle license fees. Additionally, Chapter 1465 expands the number of types of transfers that are exempted from a change in ownership and resulting reappraisal. Finally, Chapter 1465 establishes a two year time limitation for the assessment appeals boards to hear petitions appealing the assessed value of the property.

---

69. See Cal. Rev. & Tax. Code §1604(c). Chapter 1465 applies only to applications filed after January 1, 1983. Id.

70. Id. §1604(c). The taxpayer is required to furnish (1) a description of the property, (2) the taxpayer's opinion of the property's market value, (3) the market value on which the assessment of the property was based, and (4) the facts relied on to support the taxpayer's claim. See 18 Cal. Adm. Code §305.


73. See id. §1604(b).