

AMENDED IN SENATE MAY 15, 2017

AMENDED IN SENATE MAY 3, 2017

SENATE BILL

No. 567

Introduced by Senator Lara

February 17, 2017

An act to amend Sections 17755, 18031, 24343, and 24911 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 567, as amended, Lara. Taxation.

(1) The Personal Income Tax Law does not conform to specified provisions of federal law relating to the taxation of specified trusts. Existing law exempts from tax for the taxable year any charitable remainder annuity trust or charitable remainder unitrust, subject to specified requirements, including that the value of the charitable remainder interest must be at least 10% of the initial fair market value of all of the property placed in trust.

This bill would, for ~~taxable years beginning~~ *charitable remainder annuity trusts formed on or after* January 1, 2018, require that the charitable remainder interest must be at least 40% of the initial fair market value of all of the property placed in trust.

(2) The Personal Income Tax Law and Corporate Tax Law provide, in modified conformity with federal law, that for purposes of calculating the gain or loss upon the disposition of property, generally the basis of property acquired from a decedent is the fair market value at the date of death.

This bill would revise this provision with regard to decedents who died on or after January 1, 2018, to provide that no adjustment shall be

allowed where the person who acquires the property has an adjusted gross income or net income over specified amounts.

(3) The Corporation Tax Law allows various deductions in computing the income that is subject to the taxes imposed by that law. That law, in modified conformity, applies provisions of the Internal Revenue Code relating to business or trade deductions. The Internal Revenue Code provides that a publicly held corporation may not deduct, as a trade or business expense, applicable employee remuneration, as defined, paid to the chief executive officer or other specified employees to the extent that the amount of that compensation exceeds \$1,000,000 in the taxable year. The term “applicable employee remuneration” does not include any compensation payable solely on account of the chief executive officer based on commission or on meeting certain performance goals, thereby allowing a deduction for that compensation even if it exceeds \$1,000,000.

This bill, for taxable years beginning January 1, ~~2017~~, 2018, would eliminate those deductions for compensation payable to the chief executive officer for based on commission or on meeting certain performance goals under the Corporation Tax Law, thereby no longer conforming to federal income tax law.

(4) This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. Section 17755 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 17755. (a) For taxable years beginning on or after January 1,
- 4 2014, Section 664(c)(2) of the Internal Revenue Code, relating to
- 5 excise tax, shall not apply and, in lieu thereof, the unrelated
- 6 business taxable income, as defined in Section 23732, of every
- 7 charitable remainder annuity trust or charitable remainder unitrust
- 8 shall be subject to tax under Section 17651.

1 (b) For ~~taxable years beginning~~ *a charitable remainder annuity*
2 *trust formed* on or after January 1, 2018, Section 664(d)(1)(D) of
3 the Internal Revenue Code is modified by substituting “40 percent”
4 for “10 percent.”

5 SEC. 2. Section 18031 of the Revenue and Taxation Code is
6 amended to read:

7 18031. (a) Subchapter O of Chapter 1 of Subtitle A of the
8 Internal Revenue Code, relating to gain or loss on disposition of
9 property, shall apply, except as otherwise provided.

10 (b) (1) The basis of property in the hands of a person who
11 acquires that property from a decedent or to whom property passed
12 from a decedent, unless such property is sold, exchanged or
13 otherwise disposed of before the decedent’s death by that person,
14 shall be determined under Section 1015 of the Internal Revenue
15 Code, relating to basis of property acquired by gifts and transfers
16 in trust, for those persons described in paragraphs (2) and (3), and
17 Section 1014(a), relating to in general, and Section 1014(f) of the
18 Internal Revenue Code, as added by Section 2004(a) of Public
19 Law 114-41, relating to basis must be consistent with estate tax
20 return, shall not apply to those persons.

21 (2) For individuals with the following adjusted gross income
22 for the taxable year of the decedent’s death:

23 (A) Two million dollars (\$2,000,000) or greater in the case of
24 a joint return or surviving spouse, as defined in Section 17046.

25 (B) One million five hundred thousand dollars (\$1,500,000) or
26 greater in the case of a head of household, as defined in Section
27 17042.

28 (C) One million dollars (\$1,000,000) or greater for all other
29 filers.

30 (3) For persons other than individuals with total income for the
31 taxable year of the decedent’s death of one million dollars—
32 ~~(\$1,000,000)~~ *(\$1,000,000)* or greater.

33 (4) An adjustment shall not be allowed to increase the basis of
34 inherited property to which the rules of this subdivision apply with
35 respect to any federal estate tax paid on the acquisition of such
36 property.

37 (5) This subdivision shall apply to property acquired or inherited
38 from decedents who died on or after January 1, 2018.

39 SEC. 3. Section 24343 of the Revenue and Taxation Code is
40 amended to read:

1 24343. (a) Section 162 of the Internal Revenue Code, relating
2 to trade or business expenses, shall apply, except as otherwise
3 provided.

4 (b) For purposes of applying Section 162 of the Internal Revenue
5 Code, any references to Section 170 of the Internal Revenue Code,
6 relating to charitable, etc, contributions and gifts, shall be modified
7 to refer to Sections 24357 to 24359.1, inclusive, of this part.

8 (c) For taxable years beginning on or after January 1, ~~2017,~~
9 *2018*, Section 162(m)(4)(B) of the Internal Revenue Code, relating
10 to exception for remuneration payable on commission basis, and
11 ~~Section (m)(4)(C)~~ *162(m)(4)(C)* of the Internal Revenue Code,
12 relating to other performance-based compensation, shall not apply.

13 SEC. 4. Section 24911 of the Revenue and Taxation Code is
14 amended to read:

15 24911. (a) The adjusted basis for determining the gain or loss
16 from the sale or other disposition of property, whenever acquired,
17 shall be the basis, determined under Section 24912, or other
18 applicable sections of Chapter 15, relating to gain or loss on
19 disposition of property, and Chapter 8, relating to corporate
20 distributions and adjustments, adjusted as provided in Sections
21 24916 and 24917.

22 (b) If a deduction is allowable under Section 24357, relating to
23 charitable contributions, by reason of a sale, then the adjusted basis
24 for determining the gain from such sale shall be that portion of the
25 adjusted basis which bears the same ratio to the adjusted basis as
26 the amount realized bears to the fair market value of the property.

27 (c) (1) The basis of property in the hands of a person who
28 acquires that property from a decedent or to whom property passed
29 from a decedent, unless such property is sold, exchanged or
30 otherwise disposed of before the decedent's death by that person,
31 shall be determined under Section 1015 of the Internal Revenue
32 Code for persons subject to tax under this part with net income for
33 the taxable year of the decedent's death of one million dollars
34 (\$1,000,000) or greater and Section 1014(a), relating to in general,
35 and Section 1014(f) of the Internal Revenue Code, as added by
36 Section 2004(a) of Public Law 114-41, relating to basis must be
37 consistent with estate tax return, shall not apply to those persons.

38 (2) An adjustment shall not be allowed to increase the basis of
39 inherited property to which the rules of this subdivision apply with

1 respect to any federal estate tax paid on the acquisition of that
2 property.

3 (3) This subdivision shall apply to property acquired or inherited
4 from decedents who died on or after January 1, 2018.

5 SEC. 5. It is the intent of the Legislature to enact legislation
6 for taxable years beginning on or after January 1, 2017, to modify
7 the way payments are taxed to related parties, as defined in Section
8 267, 318, or 707 of the Internal Revenue Code.

9 SEC. 6. This act provides for a tax levy within the meaning of
10 Article IV of the California Constitution and shall go into
11 immediate effect.

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