

Assembly Bill No. 80

Passed the Assembly April 26, 2021

Chief Clerk of the Assembly

Passed the Senate April 19, 2021

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2021, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 17131.8 and 24308.6 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 80, Burke. Taxation: Coronavirus Aid, Relief, and Economic Security Act: Federal Consolidated Appropriations Act, 2021.

The Personal Income Tax Law and the Corporation Tax Law, in conformity with federal income tax law, generally define “gross income” as income from whatever source derived, except as specifically excluded, and provide various exclusions from gross income. Existing law, in conformity with the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and its subsequent amendments in the Paycheck Protection Program and Health Care Enhancement Act and the Paycheck Protection Program Flexibility Act of 2020, among other things, excludes any amounts of covered loans forgiven under the CARES Act from gross income for purposes of the Personal Income Tax Law and the Corporation Tax Law. Existing law reduces the amount of any credit or deduction otherwise allowed under the Personal Income Tax and the Corporation Tax Law for any amount paid or incurred by the taxpayer upon which this exclusion is based by the amount of the exclusion allowed. Existing law requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives the tax expenditure will achieve, detailed performance indicators, and data collection requirements.

Existing federal law, the Consolidated Appropriations Act, 2021, prohibits reductions in tax deductions, denials of basis adjustments, and reductions in tax attributes for federal income tax purposes based on the exclusion from gross income provided in the federal CARES Act and its subsequent amendments.

This bill would exclude, for taxable years beginning on or after January 1, 2019, from gross income any advance grant amount, as defined, issued pursuant to specified provisions of the CARES Act or the Consolidated Appropriations Act, 2021, and covered

loan amounts forgiven pursuant to the Consolidated Appropriations Act, 2021.

This bill would adopt, except as provided, the provisions of the Consolidated Appropriations Act, 2021, prohibiting any reduction in tax deductions, denials of basis adjustments, and reductions in tax attributes based on the exclusion from gross income provided for any loan amount forgiven in modified conformity with the federal CARES Act and its subsequent amendments.

This bill would provide findings to comply with the additional information requirement for any bill authorizing a new tax expenditure.

This bill would also make findings and declarations related to a gift of public funds.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 17131.8 of the Revenue and Taxation Code is amended to read:

17131.8. (a) For taxable years beginning on or after January 1, 2019, gross income does not include any covered loan amount forgiven pursuant to Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), pursuant to the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116-139), pursuant to the Paycheck Protection Program Flexibility Act of 2020 (Public Law 116-142), or pursuant to the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(b) For taxable years beginning on or after January 1, 2019, gross income does not include any advance grant amount issued pursuant to Section 1110(e) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), or pursuant to Section 331 of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(c) (1) Notwithstanding Section 17280, for taxable years beginning on or after January 1, 2019, subsection (a) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall apply, except as provided.

(2) Paragraph (1) of subsection (a) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) is modified by substituting the phrase “For purposes of the Internal Revenue Code of 1986” with “For purposes of this part”.

(3) The provisions of paragraph (1) of subsection (a) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260), relating to paragraphs (2) and (3) of subsection (i) of Section 7A of the Small Business Act, shall not apply to an ineligible entity.

(4) Paragraph (2) of subsection (a) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall not apply.

(d) (1) Notwithstanding Section 17280, for taxable years beginning on or after January 1, 2019, subsection (b) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall apply, except as provided.

(2) Subsection (b) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) is modified by substituting the phrase “For purposes of the Internal Revenue Code of 1986, in the case of any taxable year ending after the date of the enactment of this Act” with “For purposes of this part”.

(3) Paragraphs (2) and (3) of subsection (b) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall not apply to an ineligible entity.

(e) (1) Notwithstanding Section 17280, for taxable years beginning on or after January 1, 2019, subsection (a) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall apply, except as provided.

(2) Subsection (a) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) is modified by substituting the phrase “For purposes of the Internal Revenue Code of 1986” with “For purposes of this part”.

(3) Paragraphs (2) and (3) of subsection (a) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall not apply to an ineligible entity.

(f) (1) Notwithstanding Section 17280, for taxable years beginning on or after January 1, 2019, subsection (b) of Section

278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall apply, except as provided.

(2) Subsection (b) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-120) is modified by substituting the phrase “For purposes of the Internal Revenue Code of 1986” with “For purposes of this part”.

(g) For purposes of this section, all of the following definitions shall apply:

(1) “Covered loan” has the same meaning as in Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), or pursuant to the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(2) “Advance grant amount” means an emergency Economic Injury Disaster Loan grant pursuant to Section 1110(e) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), or a targeted Economic Injury Disaster Loan advance pursuant to Section 331 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(3) “Ineligible entity” means a taxpayer that either:

(A) Is a publicly-traded company.

(B) Does not meet the reduction from the gross receipts requirements of Section 636(a)(37)(A)(iv)(bb) of Title 15 of the United States Code, as added by Section 311 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(4) “Publicly-traded company” means a publicly-traded entity as described in Section 342 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

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

(i) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 2019.

SEC. 2. Section 24308.6 of the Revenue and Taxation Code is amended to read:

24308.6. (a) For taxable years beginning on or after January 1, 2019, gross income does not include any covered loan amount

forgiven pursuant to Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), pursuant to the Paycheck Protection Program and Health Care Enhancement Act (Public Law 116-139), pursuant to the Paycheck Protection Program Flexibility Act of 2020 (Public Law 116-142), or pursuant to the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(b) For taxable years beginning on or after January 1, 2019, gross income does not include any advance grant amount issued pursuant to Section 1110(e) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), or pursuant to Section 331 of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(c) (1) Notwithstanding Section 24425, for taxable years beginning on or after January 1, 2019, subsection (a) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall apply, except as provided.

(2) Paragraph (1) of subsection (a) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) is modified by substituting the phrase “For purposes of the Internal Revenue Code of 1986” with “For purposes of this part”.

(3) The provisions of paragraph (1) of subsection (a) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260), relating to paragraphs (2) and (3) of subsection (i) of Section 7A of the Small Business Act, shall not apply to an ineligible entity.

(4) Paragraph (2) of subsection (a) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall not apply.

(d) (1) Notwithstanding Section 24425, for taxable years beginning on or after January 1, 2019, subsection (b) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall apply, except as provided.

(2) Subsection (b) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) is modified by substituting the phrase “For purposes of the Internal Revenue Code of 1986, in the case of any taxable year ending after the date of the enactment of this Act” with “For purposes of this part”.

(3) Paragraphs (2) and (3) of subsection (b) of Section 276 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall not apply to an ineligible entity.

(e) (1) Notwithstanding Section 24425, for taxable years beginning on or after January 1, 2019, subsection (a) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall apply, except as provided.

(2) Subsection (a) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) is modified by substituting the phrase “For purposes of the Internal Revenue Code of 1986” with “For purposes of this part”.

(3) Paragraphs (2) and (3) of subsection (a) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall not apply to an ineligible entity.

(f) (1) Notwithstanding Section 24425, for taxable years beginning on or after January 1, 2019, subsection (b) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260) shall apply, except as provided.

(2) Subsection (b) of Section 278 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-120) is modified by substituting the phrase “For purposes of the Internal Revenue Code of 1986” with “For purposes of this part”.

(g) For purposes of this section, all of the following definitions shall apply:

(1) “Covered loan” has the same meaning as in Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), or pursuant to the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(2) “Advance grant amount” means an emergency Economic Injury Disaster Loan grant pursuant to Section 1110(e) of the Coronavirus Aid, Relief, and Economic Security Act (Public Law 116-136), or a targeted Economic Injury Disaster Loan advance pursuant to Section 331 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(3) “Ineligible entity” means a taxpayer that either:

(A) Is a publicly-traded company.

(B) Does not meet the reduction from the gross receipts requirements of Section 636(a)(37)(A)(iv)(bb) of Title 15 of the United States Code, as added by Section 311 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

(4) “Publicly-traded company” means a publicly-traded entity as described in Section 342 of Division N of the Consolidated Appropriations Act, 2021 (Public Law 116-260).

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

(i) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 2019.

SEC. 3. For the purposes of complying with Section 41 of the Revenue and Taxation Code, with respect to Sections 17131.8 and 24308.6 of the Revenue and Taxation Code as amended by this act (hereafter “the deductions, tax basis, and other attributes”), the Legislature finds and declares all of the following:

(a) The specific goal, purpose, and objective that the deductions, tax basis, and other attributes will achieve is to provide assistance to small businesses operating in the state that have been harmed economically by the COVID-19 pandemic.

(b) Detailed performance indicators for the Legislature to use in determining whether the deductions, tax basis, and other attributes meet the goal, purpose, and objective described in subdivision (a) is the extent to which the businesses that received the Payroll Protection Program (PPP) loans and subsequently used the deductions, tax basis, and other attributes reflect the industries, regions, and businesses by type of ownership that were most substantially harmed by the COVID-19 pandemic, and whether any particular industries, regions, or businesses by type of ownership in the business community were not able to participate in the PPP loans and the deductions, tax basis, and other attributes.

(c) The Legislative Analyst’s Office shall collaborate with the Franchise Tax Board, as well as reviewing other publicly available data, to analyze whether the PPP loans and the tax benefits of the deductions, tax basis, and other attributes were distributed evenly over industries, regions, and businesses by type of ownership harmed by the COVID-19 pandemic and report by January 1, 2024, and in compliance with Section 9795 of the Government Code, to the Legislature.

(d) The data collection requirements for determining whether the deductions, tax basis, and other attributes meet, or fail to meet, the specific goal, purpose, and objective described in subdivision (a) are:

(1) To assist the Legislature in determining whether the deductions, tax basis, and other attributes meet the specific goal, purpose, and objective described in subdivision (a), and in order to carry out its duties pursuant to subdivision (c), the Legislative Analyst's Office may request information from the Franchise Tax Board.

(2) (A) The Franchise Tax Board shall provide any available data requested by the Legislative Analyst's Office pursuant to this subdivision.

(B) The disclosure provisions of this paragraph shall be treated as an exception to Section 19542 under Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

SEC. 4. The Legislature hereby finds and declares that the deductions and other tax benefits authorized by the amendments to Sections 17131.8 and 24308.6 of the Revenue and Taxation Code made by this bill serve the public purpose of securing the financial condition of businesses that were economically harmed by the COVID-19 pandemic and do not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide, as soon as possible, much needed tax relief in conformity with federal tax relief enacted due to the COVID-19 pandemic and to assist California businesses struggling under the economic strain thereof, it is necessary that this act go into immediate effect.

Approved _____, 2021

Governor