

AMENDED IN SENATE APRIL 1, 2014

**SENATE BILL**

**No. 1372**

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**Introduced by Senators DeSaulnier and Hancock**

February 21, 2014

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An act to amend Section ~~17151~~ 23151 of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1372, as amended, DeSaulnier. ~~Personal income tax: educational assistance credit.~~ *Corporation taxes: tax rates: publicly held corporations.*

*The Corporation Tax Law imposes taxes according to or measured by net income at a rate of 8.84%, or for financial institutions, at a rate of 10.84%, as specified.*

*This bill would, for taxable years beginning on and after January 1, 2015, revise that rate for taxpayers that are publicly held corporations, as defined, and instead impose an applicable tax rate from 7% to 13%, or for financial institutions, from 9% to 15%, based on the compensation ratio, as defined, of the corporation. This bill would increase the applicable tax rate by 50% for those taxpayers that have a specified decrease in full-time employees employed in the United States as compared to an increase in contracted and foreign full-time employees, as described.*

*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 act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.*

~~The Personal Income Tax Law provides for an exclusion from the gross income of an employee for amounts paid or incurred by an employer for educational assistance to the employee, as specified, up to \$5,250 during a calendar year.~~

~~This bill would make technical, nonsubstantive changes to these provisions.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: no. Fiscal committee: ~~no~~<sup>yes</sup>. State-mandated local program: no.

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

- 1     SECTION 1. Section 23151 of the Revenue and Taxation Code  
2     is amended to read:
- 3     23151. (a) With the exception of banks and financial  
4     corporations, every corporation doing business within the limits  
5     of this state and not expressly exempted from taxation by the  
6     provisions of the Constitution of this state or by this part, shall  
7     annually pay to the state, for the privilege of exercising its  
8     corporate franchises within this state, a tax according to or  
9     measured by its net income, to be computed at the rate of 7.6  
10    percent upon the basis of its net income for the next preceding  
11    income year, or if greater, the minimum tax specified in Section  
12    23153.
- 13    (b) For calendar or fiscal years ending after June 30, 1973, the  
14    rate of tax shall be 9 percent instead of 7.6 percent as provided by  
15    subdivision (a).
- 16    (c) For calendar or fiscal years ending in 1980 to 1986, inclusive,  
17    the rate of tax shall be 9.6 percent.
- 18    (d) For calendar or fiscal years ending in 1987 to 1996,  
19    inclusive, and for any income year beginning before January 1,  
20    1997, the tax rate shall be 9.3 percent.
- 21    (e) For any income year beginning on or after January 1, 1997,  
22    the tax rate shall be 8.84 percent. The change in rate provided in  
23    this subdivision shall be made without proration otherwise required  
24    by Section 24251.
- 25    (f) (1) For the first taxable year beginning on or after January  
26    1, 2000, the tax imposed under this section shall be the sum of  
27    both of the following:
- 28    (A) A tax according to or measured by net income, to be  
29    computed at the rate of 8.84 percent upon the basis of the net

1 income for the next preceding income year, but not less than the  
2 minimum tax specified in Section 23153.

3 (B) A tax according to or measured by net income, to be  
4 computed at the rate of 8.84 percent upon the basis of the net  
5 income for the first taxable year beginning on or after January 1,  
6 2000, but not less than the minimum tax specified in Section 23153.

7 (2) Except as provided in paragraph (1) and subdivision (g), for  
8 taxable years beginning on or after January 1, 2000, the tax  
9 imposed under this section shall be a tax according to or measured  
10 by net income, to be computed at the rate of 8.84 percent upon the  
11 basis of the net income for that taxable year, but not less than the  
12 minimum tax specified in Section 23153.

13 (g) (1) For taxable years beginning on or after January 1, 2015,  
14 the tax imposed under this section upon a publicly held  
15 corporation, as defined in Section 162(m)(2), relating to publicly  
16 held corporation, of the Internal Revenue Code, shall be a tax  
17 according to or measured by net income, to be computed at the  
18 applicable tax rate upon the basis of the net income for that taxable  
19 year, as determined by paragraph (2), but not less than the  
20 minimum tax specified in Section 23153.

21 (2) The applicable tax rate shall be determined as follows:

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23		
24	<i>If the compensation ratio is:</i>	<i>The applicable tax rate is:</i>
25	<i>Over zero but not over 25</i>	<i>7% upon the basis of net income</i>
26	<i>Over 25 but not over 50</i>	<i>7.5% upon the basis of net income</i>
27	<i>Over 50 but not over 100</i>	<i>8% upon the basis of net income</i>
28	<i>Over 100 but not over 150</i>	<i>9% upon the basis of net income</i>
29	<i>Over 150 but not over 200</i>	<i>9.5% upon the basis of net income</i>
30	<i>Over 200 but not over 250</i>	<i>10% upon the basis of net income</i>
31	<i>Over 250 but not over 300</i>	<i>11% upon the basis of net income</i>
32	<i>Over 300 but not over 400</i>	<i>12% upon the basis of net income</i>
33	<i>Over 400</i>	<i>13% upon the basis of net income</i>
34		

35 (3) For purposes of this subdivision:

36 (A) (i) "Compensation," in the case of employees of the  
37 taxpayer other than the chief operating officer or the highest paid  
38 employee, means wages as defined in Section 3121(a) of the  
39 Internal Revenue Code, relating to wages, paid by the taxpayer  
40 during a calendar year to employees of the taxpayer.

1 (ii) “Compensation,” in the case of the chief operating officer  
2 and the highest paid employee of the taxpayer, means total  
3 compensation as reported in the Summary Compensation Table  
4 reported to the Securities and Exchange Commission pursuant to  
5 Item 402 of Regulation S-K of the Securities and Exchange  
6 Commission.

7 (B) (i) “Compensation ratio” for a taxable year means a ratio  
8 where the numerator is the amount equal to the greater of the  
9 compensation of the chief operating officer or the highest paid  
10 employee of the taxpayer for the calendar year preceding the  
11 beginning of the taxable year and the denominator is the amount  
12 equal to the median compensation of all employees employed by  
13 the taxpayer in the United States for the calendar year preceding  
14 the beginning of the taxable year.

15 (ii) For taxpayers that are required to be included in a combined  
16 report under Section 25101 or authorized to be included in a  
17 combined report under Section 25101.15, the calculation of the  
18 ratio in clause (i) shall be made by treating all taxpayers that are  
19 required to be or authorized to be included in a combined report  
20 as a single taxpayer.

21 (4) A taxpayer subject to this subdivision shall furnish a detailed  
22 compensation report to the Franchise Tax Board with its timely  
23 filed original return.

24 (5) (A) If the total number of full-time employees, determined  
25 on an annual full-time equivalent basis, employed by the taxpayer  
26 in the United States for a taxable year is reduced by more than 10  
27 percent, as compared to the total number of full-time employees,  
28 determined on an annual full-time equivalent basis, employed by  
29 the taxpayer in the United States for the preceding taxable year  
30 and the total number of contracted employees or foreign full-time  
31 employees, determined on an annual full-time equivalent basis, of  
32 the taxpayer for that taxable year has increased, as compared with  
33 the total number of contracted employees or foreign full-time  
34 employees, determined on an annual full-time equivalent basis, of  
35 the taxpayer for the preceding taxable year, then the applicable  
36 tax rate determined under paragraph (2) shall be increased by 50  
37 percent. For taxpayers who first commence doing business in this  
38 state during the taxable year, the number of full-time employees,  
39 contracted employees, and foreign full-time employees for the  
40 immediately preceding prior taxable year shall be zero.

1 (B) For purposes of this paragraph:

2 (i) “Annual full-time equivalent” means either of the following:

3 (I) In the case of a full-time employee paid hourly qualified  
4 wages, “annual full-time equivalent” means the total number of  
5 hours worked for the qualified taxpayer by the employee, not to  
6 exceed 2,000 hours per employee, divided by 2,000.

7 (II) In the case of a salaried full-time employee, “annual  
8 full-time equivalent” means the total number of weeks worked for  
9 the qualified taxpayer by the employee divided by 52.

10 (ii) “Contracted full-time employee” means an individual  
11 engaged by the taxpayer to provide a specific set of services  
12 established pursuant to the terms and conditions of a written  
13 employment contract that delineates the length of employment, the  
14 salary and bonuses (if any) to be paid, and the benefits that accrue  
15 to that individual.

16 (iii) “Foreign full-time employee” means a full-time employee  
17 of the taxpayer that is employed at a location other than the United  
18 States.

19 (iv) “Full-time employee” means an employee of the taxpayer  
20 that satisfies either of the following requirements:

21 (I) Is paid compensation by the taxpayer for services of not less  
22 than an average of 35 hours per week.

23 (II) Is a salaried employee of the taxpayer and is paid  
24 compensation during the taxable year for full-time employment,  
25 within the meaning of Section 515 of the Labor Code.

26 (6) The Franchise Tax Board may prescribe rules, guidelines,  
27 or procedures necessary or appropriate to carry out the purposes  
28 of this subdivision, including any guidelines regarding the  
29 determination of wages, average compensation, and compensation  
30 ratio. Chapter 3.5 (commencing with Section 11340) of Part 1 of  
31 Division 3 of Title 2 of the Government Code shall not apply to  
32 any rule, guideline, or procedure prescribed by the Franchise Tax  
33 Board pursuant to this subdivision.

34 SEC. 2. This act provides for a tax levy within the meaning of  
35 Article IV of the Constitution and shall go into immediate effect.

36 SECTION 1. ~~Section 17151 of the Revenue and Taxation Code~~  
37 ~~is amended to read:~~

38 ~~17151. (a) Gross income of an employee does not include any~~  
39 ~~amounts, not exceeding an aggregate amount of five thousand two~~  
40 ~~hundred fifty dollars (\$5,250) per calendar year, that is paid or~~

1 incurred by the employer for educational assistance to the employee  
2 pursuant to an educational assistance program.

3 (b) For purposes of this section, the following definitions shall  
4 apply:

5 (1) “Educational assistance” means the payment by an employer  
6 of expenses incurred by, or on behalf of, an employee for the  
7 employee’s education, and includes, but is not limited to, payments  
8 for books, supplies, equipment, tuition, and fees, and similar  
9 payments. “Educational assistance” includes the provision by an  
10 employer of courses of instruction for an employee, including the  
11 provision of books, supplies, and equipment. “Educational  
12 assistance” does not include any payment for, or the provision of,  
13 any of the following:

14 (A) Any tools or supplies that may be retained by the employee  
15 after completion of a course of instruction.

16 (B) Any meals, lodging, or transportation.

17 (C) Any course or education involving sports, games, or hobbies.

18 (D) Any course or education taken at the graduate level of a  
19 kind normally taken by an individual pursuing a program leading  
20 to a law, business, medical, or other advanced academic or  
21 professional degree. This subparagraph applies only to any course  
22 or education taken at the graduate level beginning after June 30,  
23 1996, and before January 1, 2000.

24 (2) “Educational assistance program” means a separate written  
25 plan of an employer for the exclusive benefit of his or her  
26 employees to provide those employees with educational assistance.  
27 The program shall meet the following requirements:

28 (A) The program benefits employees who qualify under a  
29 classification established by the employer and found by the  
30 Franchise Tax Board not to be discriminatory in favor of employees  
31 who are highly compensated employees (within the meaning of  
32 Section 414(q) of the Internal Revenue Code) or their dependents.  
33 For purposes of this subparagraph, there shall be excluded from  
34 consideration employees who are not included in the program and  
35 who are included in a unit of employees covered by an agreement  
36 that the Franchise Tax Board finds to be a collective bargaining  
37 agreement between employee representatives and one or more  
38 employers, if there is evidence that educational assistance benefits  
39 were the subject of good faith bargaining between the employee  
40 representatives and the employer or employers.

1 ~~(B) Not more than 5 percent of the amounts paid or incurred by~~  
2 ~~the employer for educational assistance during the year may be~~  
3 ~~provided for the class of individuals who are owners (or their~~  
4 ~~spouses or dependents), each of whom, on any day of the year,~~  
5 ~~owns more than 5 percent of the capital or profits interest in the~~  
6 ~~employer.~~

7 ~~(C) The program does not provide eligible employees with a~~  
8 ~~choice between educational assistance and other remuneration~~  
9 ~~includable in gross income. For purposes of this section, the~~  
10 ~~business practices of the employer, as well as the written program,~~  
11 ~~shall be taken into account.~~

12 ~~(D) The program need not be funded.~~

13 ~~(E) Reasonable notification of the availability and terms of the~~  
14 ~~program is provided to eligible employees.~~

15 ~~(3) “Employee” includes self-employed individuals within the~~  
16 ~~meaning of Section 401(e)(1) of the Internal Revenue Code.~~

17 ~~(e) For purposes of this section:~~

18 ~~(1) Any individual who owns the entire interest in an~~  
19 ~~unincorporated trade or business shall be treated as his or her own~~  
20 ~~employee.~~

21 ~~(2) A partnership shall be treated as the employer of each partner~~  
22 ~~who is an employee within the meaning of paragraph (3) of~~  
23 ~~subdivision (b).~~

24 ~~(3) (A) An educational assistance program shall not be~~  
25 ~~considered to fail to meet any of the requirements of paragraph~~  
26 ~~(2) of subdivision (b) on the sole basis of either of the following:~~

27 ~~(i) Different utilization rates for the different types of~~  
28 ~~educational assistance made available under the program.~~

29 ~~(ii) Successful completion or attainment of a particular course~~  
30 ~~grade is required for or considered in determining reimbursement~~  
31 ~~under the program.~~

32 ~~(B) This section shall not be construed to affect the deduction~~  
33 ~~or inclusion in income of amounts that are paid or incurred or~~  
34 ~~received as reimbursement for educational expenses under Section~~  
35 ~~117, 162, or 212 of the Internal Revenue Code.~~

36 ~~(d) A deduction or credit shall not be allowed to the employee~~  
37 ~~with respect to any amount that the employee excludes from~~  
38 ~~income pursuant to this section.~~

39 ~~(e) Section 127 of the Internal Revenue Code shall not apply.~~

- 1 (f) ~~This section shall apply with respect to expenses relating to~~
- 2 ~~courses beginning after June 30, 1996.~~

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