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September 29, 2010

Overview of  
Proposition 24

L E G I S L A T I V E A N A L Y S T ' S O  
F F I C E

Presented to:

Joint Hearing of Senate and Assembly  
Committees  
On Revenue and Taxation

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September 29, 2010

Overview

- Three provisions of California's laws for taxing businesses changed recently as part of 2008 and 2009 state budget agreements between the Legislature and the Governor. The

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three provisions are those dealing with:

- The use of operating losses.
- The taxation of the income of multistate businesses.
- Tax credit sharing.
- Under current law, all of these recent changes will be in effect by the 2011 tax year.
- Proposition 24 would repeal business tax law changes passed in 2008 and 2009 in the three areas listed above. In general, this would return business taxes to what they were under prior law.

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Changes to the Use of Operating Losses

Prior Law Current Law  
Law if  
Proposition 24  
Passes

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Carrybacks. Business losses cannot  
Carrybacks. Business losses can be used to  
get refunds Same as  
be used to get refunds of taxes of taxes  
paid in the prior two years. prior law.  
previously paid.

Carryforwards. Businesses can  
Carryforwards. Businesses can use losses  
to offset in-Same as  
use losses to offset income in the come in  
the 20 years following the loss. prior  
law.  
ten years following the loss.

- Under federal and state tax laws, in a  
year when a business has  
more deductible expenses than income, the  
business has a net  
operating loss (NOL).

- Under current state law, a business with  
an NOL in one year  
generally can “carry forward” the losses  
to reduce its taxes when  
it makes a profit in the 20 years  
following the loss.

- Under current state law, a business with

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an NOL in one year generally will be able to “carry back” the losses to reduce its taxes for the two previous years, if those years were profitable.

- These mechanisms have been put in place in part to recognize that business income or expenses can vary significantly from year to year.

- Example: a business that had profits and paid taxes in 2009 but has a loss in 2011 may deduct its 2011 NOL against its 2009 taxable income under current law. The business would file an amended tax return for 2009 and receive a tax refund.

- If Proposition 24 passes, carryback and carryforward provisions would return to what they were under prior law.

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## Changes to Taxation of the Income of Multistate Businesses

Prior Law Current Law

Law if

Proposition 24

Passes

A single formula determines the Most multistate businesses will choose every year between Same as

level of a multistate business' two options to determine the level of income that California prior law.

income that California taxes based can tax: (1) the formula under prior law, or (2) a formula

on the business' sales, property, that considers only the business' sales in California relative

and payroll in California. to its national sales.

- Businesses often operate in many states. To determine how much of the income of a multistate business is taxed by the state, California law has used a "three-factor" formula that considers how concentrated a business'

property, payroll, and sales are in California compared to the rest of the nation.

- Starting in 2011 under current law, most multistate businesses will be able to choose each year between two formulas to set the level of income California can tax. A business' two options will be:

- The three-factor formula.

- The new "single sales factor" formula, which is based only on the portion of the business' overall national sales that are in California.

- If Proposition 24 passes, taxation of the income of multistate businesses would continue to be based on the three-factor formula.

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Changes to Rules for Tax Credit Sharing

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Prior Law Current Law

Law if

Proposition 24

Passes

Tax credits given to a business entity can

Tax credits given to a business entity can

be Same as

only reduce that entity's taxes. That

entity used to reduce the taxes of other

entities in the prior law.

cannot share its tax credits with entities

in same group of related businesses.

the same group of businesses.

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Tax credits can reduce a business' taxes.

If a business has

credits which exceed the amount of taxes

it owes in a given year,

it will have unused credits that typically

can be carried forward to

be used in future years.

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Many business organizations consist of a

group of business

entities. This is called a "unitary group"

if it meets certain

conditions, such as operating jointly or

operating under the same management.

- Tax credits are given to individual business entities—not unitary groups.

- A law approved by the Legislature and the Governor in 2008 allows a business with available tax credits to transfer unused tax credits to another business in the same unitary group. Shared credits can be used to reduce taxes in 2010 and later years.

- If Proposition 24 passes, tax credits would not be able to be transferred to other businesses within a unitary group.

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Summary of Proposition 24's Effects

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If Proposition 24 passes, the three business tax provisions discussed in this handout will return to what they were before 2008 and 2009 law changes. As a result:

- A business will be less able to deduct losses in one year against income in other years.
- A multistate business will have its California income determined by a calculation using three factors.
- A business will not be able to share tax credits with related businesses.
- If Proposition 24 does not pass, the three business tax provisions that were recently changed will not be affected.

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Increased State Revenues

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- This proposition would increase state General Fund revenues by increasing the taxes paid by businesses.
  - By 2012-13, state revenues would increase by an estimated \$1.3 billion annually. There would be smaller increases as the provisions of Proposition 24 are phased in during 2010-11 and 2011-12.
  - More than one-half of these estimated increased taxes would be paid by multistate businesses as a result of the elimination of the single sales factor option.
  - Under the formulas of Proposition 98, a significant part of Proposition 24's revenue increases would be allocated to schools and community colleges.
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