

2012

TAX TREATMENT FOR MULTISTATE
BUSINESSES. CLEAN ENERGY AND
ENERGY EFFICIENCY FUNDING.

Follow this and additional works at: http://repository.uchastings.edu/ca_ballot_props

Recommended Citation

TAX TREATMENT FOR MULTISTATE BUSINESSES. CLEAN ENERGY AND ENERGY EFFICIENCY FUNDING. California Proposition 39 (2012).
http://repository.uchastings.edu/ca_ballot_props/1318

This Proposition is brought to you for free and open access by the California Ballot Propositions and Initiatives at UC Hastings Scholarship Repository. It has been accepted for inclusion in Propositions by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.

TAX TREATMENT FOR MULTISTATE BUSINESSES. CLEAN ENERGY AND ENERGY EFFICIENCY FUNDING. INITIATIVE STATUTE.

- Requires multistate businesses to calculate their California income tax liability based on the percentage of their sales in California.
- Repeals existing law giving multistate businesses an option to choose a tax liability formula that provides favorable tax treatment for businesses with property and payroll outside California.
- Dedicates \$550 million annually for five years from anticipated increase in revenue for the purpose of funding projects that create energy efficiency and clean energy jobs in California.

Summary of Legislative Analyst’s Estimate of Net State and Local Government Fiscal Impact:

- Approximately \$1 billion in additional annual state revenues—growing over time—from eliminating the ability of multistate businesses to choose how their California taxable income is determined. This would result in some multistate businesses paying more state taxes.
- Of the revenue raised by this measure over the next five years, about half would be dedicated to energy efficiency and alternative energy projects.
- Of the remaining revenues, a significant portion likely would be spent on public schools and community colleges.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

State Corporate Income Taxes. The amount of money a business owes the state in corporate income taxes each year is based on the business’ taxable income. For a business that operates both in California and in other states or countries (a multistate business), the state taxes only the part of its income that was associated with California. While only a small portion of corporations are multistate in nature, multistate corporations pay the vast majority of the state’s corporate income taxes. This tax is the state’s third largest General Fund revenue source, raising \$9.6 billion in 2010–11.

Multistate Businesses Choose How Their Taxable Income Is Determined. Currently, state law allows most multistate businesses to pick one of two methods to determine the amount of their income associated with California and taxable by the state:

- ***“Three-Factor Method” of Determining Taxable Income.*** One method uses the location of the company’s sales, property, and employees. When using this method, the more sales, property, or employees the multistate business has in California, the more of the business’ income is subject to state tax.

- **“Single Sales Factor Method” of Determining Taxable Income.** The other method uses only the location of the company’s sales. When using this method, the more sales the multistate business has in California, the more of the business’ income is taxed. (For example, if one-fourth of a company’s product was sold in California and the remainder in other states, one-fourth of the company’s total profits would be subject to California taxation.)

Multistate businesses generally are allowed to choose the method that is most advantageous to them for tax purposes.

Energy Efficiency Programs. There are currently numerous state programs established to reduce energy consumption. These efforts are intended to reduce the need to build new energy infrastructure (such as power plants and transmission lines) and help meet environmental quality standards. For example, the California Public Utilities Commission (CPUC) oversees various types of energy efficiency upgrade and appliance rebate programs that are funded by monies collected from utility ratepayers. In addition, the California Energy Commission (CEC) develops building and appliance standards that are intended to reduce energy consumption in the state.

School Funding Formula. Proposition 98, passed by voters in 1988 and modified in 1990, requires a minimum level of state and local funding each year for public schools and community colleges (hereafter referred to as schools). This funding level is commonly

known as the Proposition 98 minimum guarantee. Though the Legislature can suspend the guarantee and fund at a lower level, it typically decides to provide funding equal to or greater than the guarantee. The Proposition 98 guarantee can grow with increases in state General Fund revenues (including those collected from state corporate income taxes). Accordingly, a measure—such as this one—that results in higher revenues also can result in a higher school funding guarantee. Proposition 98 expenditures are the largest category of spending in the state’s budget—totaling roughly 40 percent of state General Fund expenditures.

PROPOSAL

Eliminates Ability of Multistate Businesses to Choose How Taxable Income Is Determined.

Under this measure, starting in 2013, multistate businesses would no longer be allowed to choose the method for determining their state taxable income that is most advantageous for them. Instead, most multistate businesses would have to determine their California taxable income using the single sales factor method. Businesses that operate only in California would be unaffected by this measure.

This measure also includes rules regarding how all multistate businesses calculate the portion of some sales that are allocated to California for state tax purposes. These include a set of specific rules for certain large cable companies.

Provides Funding for Energy Efficiency and Alternative Energy Projects. This measure establishes a new state fund, the Clean Energy Job Creation Fund, to support projects intended to improve energy efficiency and expand the use of alternative energy. The measure states that the fund could be used to support: (1) energy efficiency retrofits and alternative energy projects in public schools, colleges, universities, and other public facilities; (2) financial and technical assistance for energy retrofits; and (3) job training and workforce development programs related to energy efficiency and alternative energy. The Legislature would determine spending from the fund and be required to use the monies for cost-effective projects run by agencies with expertise in managing energy projects. The measure also (1) specifies that all funded

projects must be coordinated with CEC and CPUC and (2) creates a new nine-member oversight board to annually review and evaluate spending from the fund.

The Clean Energy Job Creation Fund would be supported by some of the new revenue raised by moving to a mandatory single sales factor. Specifically, half of the revenues so raised—up to a maximum of \$550 million—would be transferred annually to the Clean Energy Job Creation Fund. These transfers would occur for only five fiscal years—2013–14 through 2017–18.

FISCAL EFFECTS

Increase in State Revenues. As shown in the top line in Figure 1, this measure would increase state revenues by around \$1 billion annually starting in 2013–14. (There would

Figure 1			
Estimated Effects of Proposition 39 on State Revenues and Spending			
	2012–13	2013–14 Through 2017–18	2018–19 And Beyond
Annual Revenues	\$500 million	\$1 billion, growing over period	Over \$1 billion
Annual Spending			
Amount dedicated to energy projects	None	\$500 million to \$550 million	None
Increase in school funding guarantee	\$200 million to \$500 million	\$200 million to \$500 million, growing over period	\$500 million to over \$1 billion

be a roughly half-year impact in 2012–13.) The increased revenues would come from some multistate businesses paying more taxes. The amounts generated by this measure would tend to grow over time.

Some Revenues Used for Energy Projects. For a five-year period (2013–14 through 2017–18), about half of the additional revenues—\$500 million to \$550 million annually—would be transferred to the Clean Energy Job Creation Fund to support energy efficiency and alternative energy projects.

School Funding Likely to Rise Due to Additional Revenues. Generally, the revenue raised by the measure would be considered in calculating the state’s annual Proposition 98 minimum guarantee. The funds transferred to the Clean Energy Job Creation Fund,

however, would not be used in this calculation. As shown in the bottom part of Figure 1, the higher revenues likely would increase the minimum guarantee by at least \$200 million for the 2012–13 through 2017–18 period. In some years during this period, however, the minimum guarantee could be significantly higher. For 2018–19 and beyond, the guarantee likely would be higher by at least \$500 million. As during the initial period, the guarantee in some years could be significantly higher. The exact portion of the revenue raised that would go to schools in any particular year would depend upon various factors, including the overall growth in state revenues and the size of outstanding school funding obligations.

★ **ARGUMENT IN FAVOR OF PROPOSITION 39** ★

IN 2009, A POLITICAL DEAL CREATED A BILLION DOLLAR TAX LOOPHOLE FOR OUT-OF-STATE CORPORATIONS . . .

At the end of the 2009 budget negotiations in Sacramento, in the middle of the night, legislators and lobbyists for out-of-state corporations made a deal—with no public hearings and no debate. They put a loophole into state law that allows out-of-state corporations to manipulate our tax system every single year, and avoid paying their fair share to California.

The cost of this loophole: \$1 billion per year in lost revenues for California.

YES on 39 ELIMINATES THE OUT-OF-STATE TAX LOOPHOLE

Prop. 39 simply closes this loophole. It ends this manipulation of our tax system—and requires that all corporations doing business in California pay taxes determined by their sales here, no matter where they are based.

Prop. 39 *LEVELS THE PLAYING FIELD*, ensuring that multistate companies play by the same rules as California employers.

YES on 39—ELIMINATING THE LOOPHOLE IS GOOD FOR CALIFORNIA'S JOB MARKET

The current tax loophole lets corporations pay less tax to California if they have FEWER employees here—giving companies a reason to send jobs out of state.

In fact, the state's nonpartisan, independent Legislative Analyst has cited studies showing that the tax policy in Prop. 39 will bring California as many as 40,000 jobs. That's why the independent Legislative Analyst has called for eliminating the present loophole. **YES on 39 BENEFITS CALIFORNIA TAXPAYERS**

Multistate corporations that provide few jobs here are using the loophole to avoid paying their fair share to California, costing the state \$1 billion per year in lost revenues. Prop. 39 will close that loophole and keep these funds in California to provide

vitaly-needed revenues for public services. Because almost half of all new revenue is legally required to go to education, hundreds of millions of dollars per year will be dedicated to schools.

Additionally, Prop. 39 will create savings for taxpayers. 39 will use a portion of the revenues from closing the loophole to fund energy efficiency projects at schools and other public buildings. Using proven energy efficiency measures like improving insulation, replacing leaky windows and roofs and adding small-scale solar panel installations will reduce state energy costs—freeing up dollars for essential services like education, police, and fire.

“By increasing energy efficiency, Prop. 39 will reduce air pollution that causes asthma and lung disease. In the process of upgrading school buildings, Prop. 39 will also remove lead, asbestos, mold, and other toxic substances from schools.”—Jane Warner, President, American Lung Association in California

YES on 39—STRICT ACCOUNTABILITY

Prop. 39 contains tough financial accountability provisions—including INDEPENDENT ANNUAL AUDITS, ongoing review and evaluation by a CITIZENS OVERSIGHT BOARD, a COMPLETE ACCOUNTING of all funds and expenditures, and FULL PUBLIC DISCLOSURE.

YES on 39—IT'S COMMON SENSE: CLOSE the OUT-OF-STATE TAX LOOPHOLE. BRING \$1 BILLION per YEAR BACK TO CALIFORNIA.

<http://www.cleanenergyjobsact.com/>

JANE WARNER, President
American Lung Association in California

TOM STEYER, Chairman
Californians for Clean Energy and Jobs

MARY LESLIE, President
Los Angeles Business Council

★ **REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 39** ★

When you read Prop. 39's campaign promises, remember that Tom Steyer—whom CNN called “California's Hedge Fund King”—is bankrolling \$20 million on slick poll-tested buzzwords like “loophole,” and promising “clean jobs.”

California is already losing businesses at a record rate. Ask yourself how raising taxes on companies employing tens of thousands of Californians makes things better?

It won't!

CALIFORNIA IS ALREADY BILLIONS IN DEBT BUT PROP. 39 MAKES THINGS WORSE!

California is the *worst state for business for eight consecutive years*, and has the worst credit rating in America. Millions are unemployed.

Loophole? No. Prop. 39 repeals a tax law that's been in effect for decades generating billions in state revenue. The nonpartisan Legislative Analyst and the Department of Finance agree: **39 IS A \$1 BILLION TAX INCREASE.**

Here's the truth. A \$1 billion tax increase gives California employers another reason not to invest or hire. Fewer jobs mean lower revenue and more cuts to schools and law enforcement.

Is that good for California?

Prop. 39 is ballot box budgeting at its worst. It raids \$2.5 billion from the state budget—money that could go to schools, roads, infrastructure, or public safety.

PROP. 39 ALSO ADDS NEW BUREAUCRACY—MILLIONS IN SALARIES AND PENSIONS FOR POLITICAL CRONIES. No accountability, and no taxpayer protection against corruption.

Higher taxes, fewer jobs, more bureaucracy and waste . . . ZERO accountability and no taxpayer protections against conflicts of interest. That's the story on Prop. 39.

Democrats, Independents, and Republicans agree—vote NO!

MIKE SPENCE, President
California Taxpayer Protection Committee

ROBERT MING, Chairman
Friends for Saving California Jobs

JACK STEWART, President
California Manufacturers & Technology Association

★ **ARGUMENT AGAINST PROPOSITION 39** ★

PROPOSITION 39 IS A MASSIVE \$1 BILLION TAX INCREASE ON CALIFORNIA JOB CREATORS THAT WILL RESULT IN THE LOSS OF THOUSANDS OF MIDDLE CLASS JOBS. California's unemployment rate is already third worst in the country at nearly 11%. Prop. 39 makes our problems worse.

PROPOSITION 39 IS A RECIPE FOR WASTE AND CORRUPTION. It spends up to \$22 million on a new bureaucracy and special interest commission. It gives Sacramento politicians a blank check to spend billions without real accountability or taxpayer protections against conflicts of interest.

Here are the facts: a billionaire who CNN called "California's Hedge Fund King" is bankrolling 39, spending \$20 million to influence your vote and buy the election. His political consultants use terms like "closing a loophole" but don't believe them.

PROP. 39 IS POLITICS AT ITS WORST. CALIFORNIA NEEDS REFORM, NOT MORE TAXES AND WASTEFUL SPENDING. WE MUST VOTE NO.

\$2.5 billion that could go to schools, health and welfare, environmental protection or public safety is instead diverted to a new government commission with fat salaries and little accountability. Our state budget deficit today is nearly \$16 billion and Prop. 39 makes things worse by wasting money on a new unnecessary bureaucracy.

California needs teachers and police officers, not more bureaucrats!

PROPOSITION 39 ATTACKS BUSINESSES THAT PROVIDE MIDDLE CLASS CALIFORNIA JOBS.

Manufacturing jobs that provide for families are vanishing. Almost two million hard-working Californians are struggling to find any kind of work. The \$1 billion Prop. 39 tax increase changes tax laws that have been in effect for more than 40 years and will cost more union and non-union workers their jobs.

PROPOSITION 39 GROWS GOVERNMENT AND BUREAUCRACY. You've heard it before. Sacramento has a

plan to create jobs. We give them money to create a commission of political appointees with an appealing name like Citizens Oversight Board. They get a blank check to spend (or waste) tax dollars.

Under Prop. 39, money is spent to give contracts to so-called "Green Energy" programs. Who is likely to get those contracts? Big campaign contributors, that's who. 39 IS SO POORLY WRITTEN THAT IT DOESN'T EVEN PROHIBIT CONTRACTORS FROM GIVING CAMPAIGN MONEY TO SACRAMENTO POLITICIANS THAT AWARD THE CONTRACTS!

California needs reform, not tax increases that eliminate middle class jobs. Prop. 39 raises taxes by \$1 billion on California job creators to help fund more government bureaucracy and more bloated pensions. It doesn't protect against ongoing state budget deficits, high unemployment and continued economic recession.

Remember, a billionaire with an agenda is bankrolling 39. It's up to voters to protect California taxpayers. By voting NO on Prop. 39, you will stop a job-killing \$1 billion tax increase on California job creators. You will support middle class California jobs that provide for families and sustain our economy. And you'll tell Sacramento politicians no more blank checks for more special interest spending on bloated government and pensions.

SAY NO TO HIGHER TAXES, WASTEFUL SPENDING AND POLITICS AS USUAL. DEMAND GOVERNMENT ACCOUNTABILITY. VOTE NO ON 39.

JACK STEWART, President
California Manufacturers & Technology Association

LEW UHLER, President
National Tax Limitation Committee

PAT FONG KUSHIDA, President
California Asian Pacific Chamber of Commerce

★ **REBUTTAL TO ARGUMENT AGAINST PROPOSITION 39** ★

FACT: YES ON PROP. 39 CLOSES A TAX LOOPHOLE FOR OUT-OF-STATE CORPORATIONS

The opposition argument is shamefully deceptive. Prop. 39 does NOT increase taxes on California families by even a penny. It simply closes a loophole that gives out-of-state corporations an unfair tax break, but costs the rest of us.

That's why out-of-state corporations—including those that dominate the "manufacturing group" that signed the above argument—are leading the deceptive campaign against 39: to keep their loophole.

LEGISLATORS AND LOBBYISTS CREATED THE LOOPHOLE IN A BACKROOM DEAL IN 2009

The San Jose Mercury News said that corporate lobbyists "pulled a fast one on California," and that "it was the kind of shenanigan that gives corporations a bad name and makes a mockery of government openness."

Yes on 39 closes the loophole, cleaning up the mess the Legislature created.

FACT: 39 CREATES CALIFORNIA JOBS

The opponents' argument about taxing employers is a farce. The loophole benefits corporations that keep jobs out of state.

Proposition 39 will eliminate a barrier to creating jobs in California. Plus, Proposition 39 creates thousands of clean energy jobs.

FACT: REQUIRES STRICT ACCOUNTABILITY

The phony opposition arguments about bureaucracy are nonsense. Prop. 39 creates a Citizens Oversight Board to ensure funds dedicated to job creation and energy efficiency are properly spent, including yearly INDEPENDENT AUDITS. Schools will receive hundreds of millions in dedicated funding from closing the loophole.

YES on 39. CLOSE the LOOPHOLE—KEEP DOLLARS and JOBS IN CALIFORNIA.

ALAN JOSEPH BANKMAN, Professor of Tax Law
Stanford Law School

RUBEN GUERRA, CEO
Latin Business Association

JANE SKEETER
California Small Business Owner

this section is hereby exempted from the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(f) Notwithstanding Section 13340 of the Government Code, the California Education Trust Fund is hereby continuously appropriated, without regard to fiscal year, solely for the funding of the Our Children, Our Future: Local Schools and Early Education Investment and Bond Debt Reduction Act.

(g) The additional tax imposed under this section does not apply to any taxable year beginning on or after January 1, 2025, except as may otherwise be provided in a measure that extends the Our Children, Our Future: Local Schools and Early Education Investment and Bond Debt Reduction Act and is approved by the electorate at a statewide election held on or before the first Tuesday after the first Monday in November of 2024.

SEC. 9. Section 19602 of the Revenue and Taxation Code is amended to read:

19602. Except for amounts collected or accrued under Sections 17935, 17941, 17948, 19532, and 19561, and revenues deposited pursuant to Section 19602.5, and revenues collected pursuant to Section 17041.1, all moneys and remittances received by the Franchise Tax Board as amounts imposed under Part 10 (commencing with Section 17001), and related penalties, additions to tax, and interest imposed under this part, shall be deposited, after clearance of remittances, in the State Treasury and credited to the Personal Income Tax Fund.

SEC. 10. Severability.

The provisions of this act are meant to be severable. If any of the provisions of this measure or the applicability of any provision of this measure to any person or circumstances shall be found to be unconstitutional or otherwise invalid, that finding shall not affect the remaining provisions of the act or the application of this measure to other persons or circumstances.

SEC. 11. Conflicting Initiatives.

(a) In the event that this measure and another measure or measures amending the California personal income tax rate for any taxpayer or group of taxpayers, or amending the rate of tax imposed on retailers for the privilege of selling tangible personal property at retail, or amending the rate of excise tax imposed on the storage, use or other consumption in this state of tangible personal property purchased from any retailer for storage, use or other consumption in this state, shall appear on the same statewide election ballot, the rate-amending provisions of the other measure or measures and all provisions of that measure that are funded by its rate-amending provisions, shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than any such other measure, the rate-amending provisions of the other measure, and all provisions of that measure that are funded by its rate-amending provisions, shall be null and void, and the provisions of this measure shall prevail instead.

(b) Conflicts between other provisions not subject to subdivision (a) shall be resolved pursuant to subdivision (b) of Section 10 of Article II of the California Constitution.

SEC. 12. Amendments.

This act may not be amended except by majority vote of the people in a statewide general election.

SEC. 13. Effective Dates and Expiration.

(a) This measure shall be effective the day after its enactment. Operative dates for the various provisions of this measure shall be those set forth in the act.

(b) The tax imposed by subdivisions (a) and (b) of Section 17041.1 of the Revenue and Taxation Code added pursuant to this act shall cease to be operative and shall expire on December 31, 2024, unless the voters, by majority vote, approve the extension of the act at a statewide election held on or before the first Tuesday after the first Monday in November, 2024.

PROPOSITION 39

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Public Resources Code and the Revenue and Taxation Code; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

THE CALIFORNIA CLEAN ENERGY JOBS ACT

SECTION 1. The people of the State of California do hereby find and declare all of the following:

(1) California is suffering from a devastating recession that has thrown more than a million Californians out of work.

(2) Current tax law both discourages multistate companies from locating jobs in California, and puts job-creating California companies at a competitive disadvantage.

(3) To address this problem, most other states have changed their laws to tax multistate companies on the percent of sales in that state, a tax approach referred to as the “single sales factor.”

(4) If California were to adopt the single sales factor approach, the independent Legislative Analyst’s Office estimates that state revenues would increase by as much as \$1.1 billion per year and create a net gain of 40,000 California jobs.

(5) In addition, by dedicating a portion of increased revenue to job creation in the energy efficiency and clean energy sectors, California can create tens of thousands of additional jobs right away, reducing unemployment, improving our economy, and saving taxpayers money on energy.

(6) Additional revenue would be available to public schools consistent with current California law.

SEC. 2. Division 16.3 (commencing with Section 26200) is added to the Public Resources Code, to read:

DIVISION 16.3. CLEAN ENERGY JOB CREATION

CHAPTER 1. GENERAL PROVISIONS

26200. This division shall be known and may be cited as the California Clean Energy Jobs Act.

26201. This division has the following objectives:

38

39

(a) Create good-paying energy efficiency and clean energy jobs in California.

(b) Put Californians to work repairing and updating schools and public buildings to improve their energy efficiency and make other clean energy improvements that create jobs and save energy and money.

(c) Promote the creation of new private sector jobs improving the energy efficiency of commercial and residential buildings.

(d) Achieve the maximum amount of job creation and energy benefits with available funds.

(e) Supplement, complement, and leverage existing energy efficiency and clean energy programs to create increased economic and energy benefits for California in coordination with the California Energy Commission and the California Public Utilities Commission.

(f) Provide a full public accounting of all money spent and jobs and benefits achieved so the programs and projects funded pursuant to this division can be reviewed and evaluated.

CHAPTER 2. CLEAN ENERGY JOB CREATION FUND

26205. The Clean Energy Job Creation Fund is hereby created in the State Treasury. Except as provided in Section 26208, the sum of five hundred fifty million dollars (\$550,000,000) shall be transferred from the General Fund to the Job Creation Fund in fiscal years 2013–14, 2014–15, 2015–16, 2016–17, and 2017–18. Moneys in the fund shall be available for appropriation for the purpose of funding projects that create jobs in California improving energy efficiency and expanding clean energy generation, including all of the following:

(a) Schools and public facilities:

(1) Public schools: Energy efficiency retrofits and clean energy installations, along with related improvements and repairs that contribute to reduced operating costs and improved health and safety conditions, on public schools.

(2) Universities and colleges: Energy efficiency retrofits, clean energy installations, and other energy system improvements to reduce costs and achieve energy and environmental benefits.

(3) Other public buildings and facilities: Financial and technical assistance including revolving loan funds, reduced interest loans, or other financial assistance for cost-effective energy efficiency retrofits and clean energy installations on public facilities.

(b) Job training and workforce development: Funding to the California Conservation Corps, Certified Community Conservation Corps, YouthBuild, and other existing workforce development programs to train and employ disadvantaged youth, veterans, and others on energy efficiency and clean energy projects.

(c) Public-private partnerships: Assistance to local governments in establishing and implementing Property Assessed Clean Energy (PACE) programs or similar financial and technical assistance for cost-effective retrofits that include repayment requirements. Funding shall be prioritized to maximize job creation, energy savings, and geographical and economic equity. Where feasible, repayment revenues shall be

used to create revolving loan funds or similar ongoing financial assistance programs to continue job creation benefits.

26206. The following criteria apply to all expenditures from the Job Creation Fund:

(a) Project selection and oversight shall be managed by existing state and local government agencies with expertise in managing energy projects and programs.

(b) All projects shall be selected based on in-state job creation and energy benefits for each project type.

(c) All projects shall be cost effective: total benefits shall be greater than project costs over time. Project selection may include consideration of non-energy benefits, such as health and safety, in addition to energy benefits.

(d) All projects shall require contracts that identify the project specifications, costs, and projected energy savings.

(e) All projects shall be subject to audit.

(f) Program overhead costs shall not exceed 4 percent of total funding.

(g) Funds shall be appropriated only to agencies with established expertise in managing energy projects and programs.

(h) All programs shall be coordinated with the California Energy Commission and the California Public Utilities Commission to avoid duplication and maximize leverage of existing energy efficiency and clean energy efforts.

(i) Eligible expenditures include costs associated with technical assistance, and with reducing project costs and delays, such as development and implementation of processes that reduce the costs of design, permitting or financing, or other barriers to project completion and job creation.

26208. If the Department of Finance and the Legislative Analyst jointly determine that the estimated annual increase in revenues as a result of the amendment, addition, or repeal of Sections 25128, 25128.5, 25128.7, and 25136 of the Revenue and Taxation Code is less than one billion one hundred million dollars (\$1,100,000,000), the amount transferred to the Job Creation Fund shall be decreased to an amount equal to one-half of the estimated annual increase in revenues.

CHAPTER 3. ACCOUNTABILITY, INDEPENDENT AUDITS, PUBLIC DISCLOSURE

26210. (a) The Citizens Oversight Board is hereby created.

(b) The board shall be composed of nine members: three members shall be appointed by the Treasurer, three members by the Controller, and three members by the Attorney General. Each appointing office shall appoint one member who meets each of the following criteria:

(1) An engineer, architect, or other professional with knowledge and expertise in building construction or design.

(2) An accountant, economist, or other professional with knowledge and expertise in evaluating financial transactions and program cost-effectiveness.

(3) A technical expert in energy efficiency, clean energy, or energy systems and programs.

(c) The California Public Utilities Commission and the California Energy Commission shall each designate an ex officio member to serve on the board.

(d) The board shall do all of the following:

(1) *Annually review all expenditures from the Job Creation Fund.*

(2) *Commission and review an annual independent audit of the Job Creation Fund and of a selection of projects completed to assess the effectiveness of the expenditures in meeting the objectives of this division.*

(3) *Publish a complete accounting of all expenditures each year, posting the information on a publicly accessible Internet Web site.*

(4) *Submit an evaluation of the program to the Legislature identifying any changes needed to meet the objectives of this division.*

CHAPTER 4. DEFINITIONS

26220. *The following definitions apply to this division:*

(a) *“Clean energy” means a device or technology that meets the definition of “renewable energy” in Section 26003, or that contributes to improved energy management or efficiency.*

(b) *“Board” means the Citizens Oversight Board established in Section 26210.*

(c) *“Job Creation Fund” means the Clean Energy Job Creation Fund established in Section 26205.*

(d) *“Program overhead costs” include staffing for state agency development and management of funding programs pursuant to this division, but excluding technical assistance, evaluation, measurement, and validation, or costs related to increasing project efficiency or performance, and costs related to local implementation.*

SEC. 3. Section 23101 of the Revenue and Taxation Code is amended to read:

23101. (a) *“Doing business” means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.*

(b) *For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following conditions has been satisfied:*

(1) *The taxpayer is organized or commercially domiciled in this state.*

(2) *Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars (\$500,000) or 25 percent of the taxpayer’s total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under ~~Section~~ Sections 25135 and ~~subdivision (b) of Section~~ 25136, and the regulations thereunder, as modified by regulations under Section 25137.*

(3) *The real property and tangible personal property of the taxpayer in this state exceed the lesser of fifty thousand dollars (\$50,000) or 25 percent of the taxpayer’s total real property and tangible personal property. The value of real and tangible personal property and the determination of whether property is in this state shall be determined using the rules contained in Sections 25129 to 25131, inclusive, and the regulations thereunder, as modified by regulation under Section 25137.*

(4) *The amount paid in this state by the taxpayer for compensation, as defined in subdivision (c) of Section 25120,*

exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent of the total compensation paid by the taxpayer. Compensation in this state shall be determined using the rules for assigning payroll contained in Section 25133 and the regulations thereunder, as modified by regulations under Section 25137.

(c) (1) *The Franchise Tax Board shall annually revise the amounts in paragraphs (2), (3), and (4) of subdivision (b) in accordance with subdivision (h) of Section 17041.*

(2) *For purposes of the adjustment required by paragraph (1), subdivision (h) of Section 17041 shall be applied by substituting “2012” in lieu of “1988.”*

(d) *The sales, property, and payroll of the taxpayer include the taxpayer’s pro rata or distributive share of pass-through entities. For purposes of this subdivision, “pass-through entities” means a partnership or an “S” corporation.*

SEC. 4. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) *Notwithstanding Section 38006, for taxable years beginning before January 1, 2013, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).*

(b) *If an apportioning trade or business derives more than 50 percent of its “gross business receipts” from conducting one or more qualified business activities, all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.*

(c) *For purposes of this section, a “qualified business activity” means the following:*

- (1) *An agricultural business activity.*
- (2) *An extractive business activity.*
- (3) *A savings and loan activity.*
- (4) *A banking or financial business activity.*
- (d) *For purposes of this section:*

(1) *“Gross business receipts” means gross receipts described in subdivision (e) or (f) of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and apportionment factors are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110), whether or not the receipts are excluded from the sales factor by operation of Section 25137.*

(2) *“Agricultural business activity” means activities relating to any stock, dairy, poultry, fruit, fur bearing animal, or truck farm, plantation, ranch, nursery, or range. “Agricultural business activity” also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or*

operator of the farm regularly produces more than one-half of the commodity so treated.

(3) “Extractive business activity” means activities relating to the production, refining, or processing of oil, natural gas, or mineral ore.

(4) “Savings and loan activity” means any activities performed by savings and loan associations or savings banks which have been chartered by federal or state law.

(5) “Banking or financial business activity” means activities attributable to dealings in money or moneyed capital in substantial competition with the business of national banks.

(6) “Apportioning trade or business” means a distinct trade or business whose business income is required to be apportioned under Sections 25101 and 25120, limited, if applicable, by Section 25110, using the same denominator for each of the applicable payroll, property, and sales factors.

(7) Paragraph (4) of subdivision (c) shall apply only if the Franchise Tax Board adopts the Proposed Multistate Tax Commission Formula for the Uniform Apportionment of Net Income from Financial Institutions, or its substantial equivalent, and shall become operative upon the same operative date as the adopted formula.

(8) In any case where the income and apportionment factors of two or more savings associations or corporations are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110, both of the following shall apply:

(A) The application of the more than 50 percent test of subdivision (b) shall be made with respect to the “gross business receipts” of the entire apportioning trade or business of the group.

(B) The entire business income of the group shall be apportioned in accordance with either subdivision (a) or (b), or ~~subdivision (b) of Section 25128.5; Section 25128.5 or 25128.7,~~ as applicable.

SEC. 5. Section 25128.5 of the Revenue and Taxation Code is amended to read:

25128.5. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, *and before January 1, 2013*, any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board to apportion its income in accordance with this section, and not in accordance with Section 25128.

(b) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, *and before January 1, 2013*, all business income of an apportioning trade or business making an election described in subdivision (a) shall be apportioned to this state by multiplying the business income by the sales factor.

(c) The Franchise Tax Board is authorized to issue regulations necessary or appropriate regarding the making of an election under this section, including regulations that are consistent with rules prescribed for making an election under Section 25113.

(d) *This section shall not apply to taxable years beginning on*

or after January 1, 2013, and as of December 1, 2013, is repealed.

SEC. 6. Section 25128.7 is added to the Revenue and Taxation Code, to read:

25128.7. *Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2013, all business income of an apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, shall be apportioned to this state by multiplying the business income by the sales factor.*

SEC. 7. Section 25136 of the Revenue and Taxation Code is amended to read:

25136. (a) For taxable years beginning before January 1, 2011, and for taxable years beginning on or after January 1, 2011, *and before January 1, 2013*, for which Section 25128.5 is operative and an election under subdivision (a) of Section 25128.5 has not been made, sales, other than sales of tangible personal property, are in this state if:

(1) The income-producing activity is performed in this state; or

(2) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(3) This subdivision shall apply, and subdivision (b) shall not apply, for any taxable year beginning on or after January 1, 2011, *and before January 1, 2013*, for which Section 25128.5 is not operative for any taxpayer subject to the tax imposed under this part.

(b) For taxable years beginning on or after January 1, 2011, *and before January 1, 2013*:

(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the service in this state.

(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(5) (A) If Section 25128.5 is operative, then this subdivision shall apply in lieu of subdivision (a) for any taxable year for which an election has been made under subdivision (a) of Section 25128.5.

(B) If Section 25128.5 is not operative, then this subdivision shall not apply and subdivision (a) shall apply for any taxpayer subject to the tax imposed under this part.

(C) Notwithstanding subparagraphs (A) or (B), this subdivision shall apply for purposes of paragraph (2) of subdivision (b) of Section 23101.

(c) The Franchise Tax Board may prescribe those regulations as necessary or appropriate to carry out the purposes of subdivision (b).

(d) *This section shall not apply to taxable years beginning on*

or after January 1, 2013, and as of December 1, 2013, is repealed.

SEC. 8. Section 25136 is added to the Revenue and Taxation Code, to read:

25136. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2013, sales, other than sales of tangible personal property, are in this state if:

(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the services in this state.

(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(b) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

SEC. 9. Section 25136.1 is added to the Revenue and Taxation Code, to read:

25136.1. (a) For taxable years beginning on or after January 1, 2013, a qualified taxpayer that apportions its business income under Section 25128.7 shall apply the following provisions:

(1) Notwithstanding Section 25137, qualified sales assigned to this state shall be equal to 50 percent of the amount of qualified sales that would be assigned to this state pursuant to Section 25136 but for the application of this section. The remaining 50 percent shall not be assigned to this state.

(2) All other sales shall be assigned pursuant to Section 25136.

(b) For purposes of this section:

(1) "Qualified taxpayer" means a member, as defined in paragraph (10) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations as in effect on the effective date of the act adding this section, of a combined reporting group that is also a qualified group.

(2) "Qualified group" means a combined reporting group, as defined in paragraph (3) of subdivision (b) of Section 25106.5 of Title 18 of the California Code of Regulations, as in effect on the effective date of the act adding this section, that satisfies the following conditions:

(A) Has satisfied the minimum investment requirement for the taxable year.

(B) For the combined reporting group's taxable year beginning in calendar year 2006, the combined reporting group derived more than 50 percent of its United States network gross business receipts from the operation of one or more cable systems.

(C) For purposes of satisfying the requirements of subparagraph (B), the following rules shall apply:

(i) If a member of the combined reporting group for the taxable year was not a member of the same combined reporting

group for the taxable year beginning in calendar year 2006, the gross business receipts of that nonincluded member shall be included in determining the combined reporting group's gross business receipts for its taxable year beginning in calendar year 2006 as if the nonincluded member were a member of the combined reporting group for the taxable year beginning in calendar year 2006.

(ii) The gross business receipts shall include the gross business receipts of a qualified partnership, but only to the extent of a member's interest in the partnership.

(3) "Cable system" and "network" shall have the same meaning as defined in Section 5830 of the Public Utilities Code, as in effect on the effective date of the act adding this section. "Network services" means video, cable, voice, or data services.

(4) "Gross business receipts" means gross receipts as defined in paragraph (2) of subdivision (f) of Section 25120 (other than gross receipts from sales or other transactions between or among members of a combined reporting group, limited, if applicable, by Section 25110).

(5) "Minimum investment requirement" means qualified expenditures of not less than two hundred fifty million dollars (\$250,000,000) by a combined reporting group during the calendar year that includes the beginning of the taxable year.

(6) "Qualified expenditures" means any combination of expenditures attributable to this state for tangible property, payroll, services, franchise fees, or any intangible property distribution or other rights, paid or incurred by or on behalf of a member of a combined reporting group.

(A) An expenditure for other than tangible property shall be attributable to this state if the member of the combined reporting group received the benefit of the purchase or expenditure in this state.

(B) A purchase of or expenditure for tangible property shall be attributable to this state if the property is placed in service in this state.

(C) Qualified expenditures shall include expenditures by a combined reporting group for property or services purchased, used, or rendered by independent contractors in this state.

(D) Qualified expenditures shall also include expenditures by a qualified partnership, but only to the extent of the member's interest in the partnership.

(7) "Qualified partnership" means a partnership if the partnership's income and apportionment factors are included in the income and apportionment factors of a member of the combined reporting group, but only to the extent of the member's interest in the partnership.

(8) "Qualified sales" means gross business receipts from the provision of any network services, other than gross business receipts from the sale or rental of customer premises equipment. "Qualified sales" shall include qualified sales by a qualified partnership, but only to the extent of a member's interest in the partnership.

(c) The rules in this section with respect to qualified sales by a qualified partnership are intended to be consistent with the rules for partnerships under paragraph (3) of subdivision (f) of Section 25137-1 of Title 18 of the California Code of Regulations.