AMENDED IN SENATE MAY 23, 2005

AMENDED IN SENATE MARCH 17, 2005

SENATE BILL No. 217

Introduced by Senator Dutton

February 10, 2005

An act to amend Section 17049 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 217, as amended, Dutton. Income taxes: claim of right.

The Personal Income Tax Law, in specified conformity with federal income tax law, provides that if a taxpayer includes an item of income in gross income because it appears that the taxpayer has an unrestricted right to that income, and the taxpayer is subsequently required to repay that item, the taxpayer may deduct the repayment in the year the repayment is made and that his or her taxes are to be calculated in a specified manner. That law provides that the deduction may not be claimed if the taxpayer takes a claim of right deduction on his or her federal return.

This bill would apply those provisions to any taxable year of an individual for which a claim for refund may be filed, and for any taxable year for which an individual has a pending claim for refund that has not been finally adjudicated. This bill would delete the limitation that a deduction may not be claimed if a deduction was taken on the federal return.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 17049 of the Revenue and Taxation Code is amended to read:

17049. (a) If an item of income was included in the California adjusted gross income of an individual for a preceding taxable year or years because it appeared that the individual had an unrestricted right to that item, and, based on the repayment of the item by the individual during the taxable year, that individual properly determines his or her federal income tax liability for the taxable year under Section 1341(a)(4) or (5) of the Internal Revenue Code, then the tax imposed by this chapter for the taxable year on that individual shall be an amount equal to (1) the tax for the taxable year computed without regard to this section, minus (2) the decrease in tax under this chapter for the preceding taxable year or years which would result solely from the exclusion of the item or portion thereof from the adjusted gross income required to be shown on the California return of that individual for the preceding taxable year or years.

(b) In determining the decrease in tax under this chapter for the preceding taxable year or years that would result solely from the exclusion of the item or portion thereof from the California adjusted gross income of that individual for the preceding taxable year or years, any item excluded from the California adjusted gross income of an individual for a preceding year or years in which the individual was a nonresident individual or part-year resident individual, shall, to the extent that the item is derived from or connected with sources within this state, be excluded from California adjusted gross income derived from or connected with sources within this state for that preceding year or years.

(c) If the decrease in tax under this chapter for the preceding taxable year or years, that would result solely from the exclusion of the item or portion thereof from the adjusted gross income required to be shown on the California return of that individual for the preceding taxable year or years, exceeds the tax for the taxable year computed without regard to this section, that excess shall be considered to be a payment of tax on the last day prescribed for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for the taxable year.

(d) This section shall apply to any taxable year of an individual for which a claim for refund may be filed, and for any taxable year for which an individual has a pending claim for refund that has not been finally adjudicated.

(e) This section shall not apply to any income derived from illegal activity.

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

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