

Important California Pending Legislation

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May 2010

Bills AB 1935, dealing with single sales factor apportionment, and AB 1936, dealing with net operating loss carrybacks, were recently approved by the California Assembly Revenue and Taxation Committee and sent to the full Assembly with a recommendation of passage.

Apportionment

Under current California law, income of companies doing business in California and other states is apportioned based on a three-factor formula (property, payroll and sales within and without the state) with a double counting of the sales factor. Starting in 2011, corporations may make an annual election to apportion income on the basis of a single factor, sales within and without the state.

Under AB 1935, if enacted, single-sales-factor apportionment would be mandatory for all corporations in 2011, except those in agriculture, banking and finance or extraction (e.g., oil and gas and minerals). This would constitute a major change for corporations headquartered outside of California or with factories outside of California as the payroll and property factors would be eliminated with the result that more of their income would be taxed in California than would otherwise be the case. Existing California law, which double counts the sales factor, already goes in that direction, but the new provision, if it becomes law, appears to go considerably further. It is possible that some large industrial corporations with considerable payroll and property outside of California may find it necessary to challenge the constitutionality of the single factor sales apportionment.

Net Operating Losses

We previously [reported](#) (T08-01; 257865) the suspension of carryovers of net operating losses (NOLs) to 2008 and 2009 for taxpayers with net business income of \$500,000 along with a favorable change in law which would permit NOLs for 2011 and subsequent years to be carried back to the two preceding years with a phase-in over three years. However, AB 1936 would repeal the provision allowing the carrying back of NOLs.