AMENDED IN ASSEMBLY MARCH 12, 2008

AMENDED IN ASSEMBLY MARCH 11, 2008

AMENDED IN ASSEMBLY MARCH 10, 2008

AMENDED IN ASSEMBLY FEBRUARY 7, 2008

CALIFORNIA LEGISLATURE—2007–08 THIRD EXTRAORDINARY SESSION

ASSEMBLY BILL No. 9

Introduced by Assembly Members Nunez, Arambula, Bass, Beall, Berg, Brownley, Caballero, Charles Calderon, Carter, *Coto*, Davis, De La Torre, De Leon, DeSaulnier, Dymally, Eng, Evans, Feuer, Fuentes, Furutani, Hancock, Hayashi, Hernandez, Huffman, Jones, Karnette, Krekorian, Laird, Leno, Levine, Lieber, Lieu, Ma, Mendoza, Mullin, Nava, Portantino, Price, Ruskin, Salas, Saldana, Swanson, and Torrico

February 4, 2008

An act to add Section 17044 to, to add Chapter 3.3 (commencing with Section 23580) to Part 11 of Division 2 of, and to add Part 21 (commencing with Section 42001) to Division 2 of, the Revenue and Taxation Code, relating to taxation, ~~to take effect immediately, tax levy~~ *making an appropriation therefor, and declaring the urgency thereof, to take effect immediately*.

LEGISLATIVE COUNSEL'S DIGEST

AB 9, as amended, Nunez. Income taxes: corporation taxes: petroleum industry.

The Personal Income Tax Law imposes a tax upon taxable income at various rates depending on the amount of that income. The Corporation Tax Law, in general, imposes an income tax and a franchise tax measured by the taxable or net income from California sources of the preceding taxable year.

This bill would, for taxable years beginning on or after January 1, 2008, impose a tax, subject to specified guidelines, at the rate of 2% on that portion of taxable income or net income, respectively, in excess of $10,000,000, on a taxpayer engaged in business activities in the petroleum industry, as defined, where the taxpayer has more than 50% of its gross business receipts derived from conducting one or more qualified business activities, as defined.

This bill would also impose an oil severance tax on and after July 1, 2008, upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use, as provided at the rate of 6% of the gross value of each barrel of oil severed.

This bill would ~~require~~ *appropriate* all revenues from the taxes imposed by the bill to ~~be appropriated only~~ *the Superintendent of Public Instruction* for education purposes *for the 2008–09 fiscal year*, as specified.

This bill would result in a change in state taxes for the purpose of increasing state revenues within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of ⅔ of the membership of each house of the Legislature.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 10, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 10, 2008, pursuant to the California Constitution.

~~This bill would take effect immediately as a tax levy.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ⅔. Appropriation: ~~no~~ *yes*. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 17044 is added to the Revenue and Taxation Code, to read:

17044. (a) For each taxable year beginning on or after January 1, 2008, there is hereby imposed, in addition to any other tax imposed by this part, a tax at the rate of 2 percent on that portion of taxable income in excess of ten million dollars ($10,000,000) of a taxpayer engaged in business activities in the petroleum industry.

(b) For purposes of this section:

(1) "Gross business receipts" means gross receipts described in subdivision (e) of Section 25120, including those gross business receipts separately stated to an investor by a pass-through entity as required by paragraph (1) of subdivision (d).

(2) "Qualified business activities" means those lines of business described in Codes 211, 32411, 4247, and 447 of the North American Industry Classification System Manual published by the United States Office of Management and Budget, 2007 Edition.

(3) A "taxpayer engaged in business activities in the petroleum industry" means a taxpayer that has more than 50 percent of its gross business receipts derived from conducting one or more qualified business activities.

(c) The following shall not apply to the tax imposed by this section:

(1) The provisions of Section 17041 relating to filing status and recomputation of the income tax brackets.

(2) The provisions of Section 17045 relating to joint returns.

(d) In the case of any investor in a pass-through entity, the following shall apply:

(1) The determination of whether a taxpayer meets the more than 50 percent requirement described in paragraph (3) of subdivision (b) shall be made at both the entity level and at the investor level. A taxpayer shall be treated as engaged in business activities in the petroleum industry if this test is satisfied at either the entity or investor level. A pass-through entity engaged in a qualified business activity shall separately state the gross business receipts of that qualified business activity.

(2) Any distributive or pro rata share of income subject to the additional tax imposed under subdivision (a) based on a determination that the net income of the pass-through entity exceeds ten million dollars ($10,000,000) shall be separately stated.

(3) Any distributive or pro rata share of income from a pass-through entity primarily engaged in business activities in the

petroleum industry that is not described in paragraph (2) shall be separately stated and aggregated at the investor level for purposes of applying the ten million dollar ($10,000,000) threshold.

(4) For purposes of this subdivision:

(A) "Pass-through entity" means any partnership, or any "S" corporation.

(B) "Investor" means a partner or shareholder of a pass-through entity.

(e) For purposes of this part and Part 10.2 (commencing with Section 18401), the tax imposed under this section shall be treated as if it was imposed under Section 17041.

(f) The Franchise Tax Board may prescribe appropriate rules and regulations to implement this section.

SEC. 2. Chapter 3.3 (commencing with Section 23580) is added to Part 11 of Division 2 of the Revenue and Taxation Code, to read:

Chapter 3.3. Petroleum Surtax

23580. (a) For each taxable year beginning on or after January 1, 2008, there is hereby imposed, in addition to any other tax imposed by Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), a tax at the rate of 2 percent on that portion of net income in excess of ten million dollars ($10,000,000) of a corporation engaged in business activities in the petroleum industry.

(b) For purposes of this section:

(1) "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.

(2) "Gross business receipts" means gross receipts described in subdivision (e) of Section 25120, including those gross business receipts separately stated to an investor by a pass-through entity as required by paragraph (1) of subdivision (d), 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, regardless of whether the receipts are excluded from the sales factor by Section 25137.

(3) "Qualified business activities" means those lines of business described in Codes 211, 32411, 4247, and 447 of the North American Industry Classification System Manual published by the United States Office of Management and Budget, 2007 Edition.

(4) A "taxpayer engaged in business activities in the petroleum industry" means a taxpayer that has more than 50 percent of its gross business receipts derived from conducting one or more qualified business activities.

(c) In the case where the income and apportionment factors of two or more corporations are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110, the application of the more than 50 percent test of paragraph (4) of subdivision (b) shall be made with respect to the "gross business receipts" of the entire apportioning trade or business group.

(d) In the case of any investor in a pass-through entity, the following shall apply:

(1) The determination of whether a taxpayer meets more than 50 percent requirement described in paragraph (4) of subdivision (b) shall be made at both the entity level and at the investor level. A taxpayer shall be treated as engaged in business activities in the petroleum industry if this test is satisfied at either the entity or investor level. A pass-through entity engaged in a qualified business activity shall separately state the gross business receipts of that qualified business activity.

(2) Any distributive or pro rata share of income subject to the additional tax imposed under subdivision (a) based on a determination that the net income of the pass-through entity exceeds ten million dollars ($10,000,000) shall be separately stated.

(3) Any distributive or pro rata share of income from a pass-through entity primarily engaged in business activities in the petroleum industry that is not described in paragraph (2) shall be separately stated and aggregated at the investor level for purposes of applying the ten million dollar ($10,000,000) threshold.

(4) For purposes of this subdivision:

(A) "Pass-through entity" means any partnership, or any "S" corporation.

(B) "Investor" means a partner or shareholder of a pass-through entity.

(e) For purposes of this part and Part 10.2 (commencing with Section 18401), the tax imposed under this section shall be treated as if it was imposed under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501).

(f) The Franchise Tax Board may prescribe appropriate rules and regulations to implement this section.

SEC. 3. Part 21 (commencing with Section 42001) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 21. OIL SEVERANCE TAX

42001. This part shall be known and may be cited as the Oil Severance Tax Law.

42002. For purposes of this part, the following definitions shall apply:

(a) "Oil" means petroleum, or other crude oil, condensate, casing head gasoline, or other mineral oil that is mined, produced, or withdrawn from below the surface of the soil or water in this state.

(b) "Producer" means any person or entity who takes oil from the earth or water in this state in any manner; any person who owns, controls, manages, or leases any oil well in the earth or water of this state; any person who produces or extracts in any manner any oil by taking it from the earth or water in this state; any person who acquires the severed oil from a person or agency exempt from property taxation under the United States Constitution or other laws of the United States or under the California Constitution or other laws of the State of California; and any person who owns an interest, including a royalty interest, in oil or its value, whether the oil is produced by the person owning the interest or by another on his, her, or its behalf by lease, contract, or other arrangement.

(c) "Production" means the total gross amount of oil produced, including the gross amount thereof attributable to a royalty or other interest.

(d) "Severed" or "severing" means the extraction or withdrawing from below the surface of the earth or water of any oil, regardless of whether the extraction or withdrawal shall be by natural flow, mechanical flow, forced flow, pumping, or any other means employed to get the oil from below the surface of the earth or water, and shall include the extraction or withdrawal by any means whatsoever of oil upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface.

(e) “Gross value” means the sale price at the mouth of the well in the case of oil, including any bonus, premium, or other thing of value paid for the oil. If oil is exchanged for something other than cash, or if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the board shall determine the value of the oil subject to the tax based on the cash price paid to producers for like quality oil in the vicinity of the well.

(f) “Barrel of oil” means 42 United States gallons of 231 cubic inches per gallon computed at a temperature of 60 degrees Fahrenheit.

(g) “Stripper well” means a well that has been certified by the board as an oil well incapable of producing an average of more than 10 barrels of oil per day during the entire taxable month. Once a well has been certified as a stripper well, that stripper well shall remain certified as a stripper well until the well produces an average of more than 10 barrels of oil per day during an entire taxable month.

(h) “Board” means the State Board of Equalization.

42010. On and after July 1, 2008, there is hereby imposed an oil severance tax upon any producer for the privilege of severing oil from the earth or water in this state for sale, transport, consumption, storage, profit, or use. The tax shall be applied equally to all portions of the gross value of each barrel of oil severed, and shall be imposed at the rate of 6 percent.

42011. Except as otherwise provided in this part, the tax shall be upon the entire production in this state, regardless of the place of sale or to whom sold or by whom used, or the fact that the delivery may be made to points outside the state.

42012. The tax imposed by this part shall be in addition to any ad valorem taxes imposed by the state, or any of its political subdivisions, or any local business license taxes which may be incurred as a privilege of severing oil from the earth or water or doing business in that locality. No equipment, material, or property shall be exempt from payment of ad valorem tax by reason of the payment of the gross severance tax pursuant to this part.

42013. The tax imposed by this part shall not be passed through to consumers by way of higher prices for oil, gasoline, or diesel fuel. The board shall monitor and, if necessary, investigate any instance where producers or purchasers of the oil have attempted to gouge consumers by using the tax as a pretext to materially raise the price of oil, gasoline, or diesel fuel.

42014. Two or more producers that are corporations and are owned or controlled directly or indirectly, as defined in Section 25105, by the same interests shall be considered as a single producer for purposes of application of the tax prescribed in Section 42010.

42015. There shall be exempted from the imposition of the oil severance tax imposed pursuant to this part oil produced by a stripper well in which the average value of oil as of January 1 of the prior year is less than fifty dollars ($50) per barrel.

42016. There shall be exempted from the imposition of the oil severance tax imposed pursuant to this part all oil owned or produced by any political subdivision of this state, including that political subdivision's proprietary share of oil produced under any unit, cooperative, or other pooling agreement.

42020. The tax imposed by this part shall be due and payable monthly on or before the 15th day of the month following each monthly period. The payments shall be accompanied by a return in the form as prescribed by the board, which may include electronic media. The board may require the payment of the tax and the filing of returns for other than monthly periods.

42022. The board may prescribe those forms and reporting requirements as necessary to implement the tax, including, but not limited to, information regarding the location of the well by county, the gross amount of oil produced, the price paid therefor, the prevailing market price of oil, and the amount of tax due.

42112. In all proceedings under this part, the board may act on behalf of the people of the State of California.

42145. The board shall administer and collect the tax imposed by this part pursuant to the Fee Collections Procedures Law (Part 30 (commencing with Section 55001) of Division 2). For purposes of this part, the reference in the Fee Collection Procedures Law to "feepayer" shall include a person required to pay the oil severance tax.

42146. The board shall, upon appropriation, be reimbursed for expenses incurred in the administration and collection of the tax imposed by this part.

42167. With the exception of payments of refunds and reimbursement to the board for expenses incurred in the administration and collection of the tax imposed by this part, all taxes, interest, penalties, and other amounts collected pursuant to this part shall be deposited in the General Fund.

~~SEC. 4. The revenues derived from the taxes levied pursuant to this act shall only be appropriated to the Superintendent of Public Instruction for allocation to school districts and county offices of education for the 2008–09 fiscal year, and each subsequent fiscal year for which the revenues are received, for the purpose of mitigating the impact of the 2008–09 budget reductions on layoffs of school employees.~~

~~SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.~~

SEC. 4. The revenues derived from the taxes levied pursuant to this act are hereby appropriated from the General Fund to the Superintendent of Public Instruction for allocation to school districts and county offices of education for the 2008—09 fiscal year exclusively for the purpose of mitigating the impact of the 2008—09 budget reductions on layoffs of school employees. The Superintendent of Public Instruction shall allocate the funds appropriated by this section pursuant to an allocation plan which shall be approved by the Director of Finance.

SEC. 5. This act addresses the fiscal emergency declared by the Governor by proclamation of January 10, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessary are:

In order to provide immediate and essential funding for public education, it is necessary that this act take effect immediately.

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