

AMENDED IN ASSEMBLY APRIL 9, 2018

AMENDED IN SENATE APRIL 18, 2017

SENATE BILL

No. 274

**Introduced by Senator Glazer
(Coauthor: Senator Berryhill)**

February 9, 2017

An act to amend Section 19614 of the Business and Professions Code, relating to horse racing, and making an appropriation therefor. 19311 of, and to add Section 18622.5 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 274, as amended, Glazer. ~~Horse racing; fairs; funding. Administration of taxes; notice of deficiency assessment.~~

Existing law requires an individual taxpayer to notify the Franchise Tax Board of any change in the amount of gross income or deductions, as reported on the individual's federal tax return, within 6 months of the final determination, as defined, of that change, unless the change does not increase the amount of California income tax due. Existing law authorizes the Franchise Tax Board, within 2 years of the date of a final determination, to allow a credit, make a refund, or mail to the taxpayer a notice of proposed overpayment resulting from the final federal determination, as specified.

This bill would require a partnership, if any item required to be shown on a federal partnership return is changed or corrected by the Commissioner of Internal Revenue or other officer of the United States or other competent authority, and the partnership is issued an adjustment or made a federal election for alternative to payment, to

report each change or correction with the Franchise Tax Board for the reviewed year within 6 months after the date of each final federal determination, as specified.

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

~~(1) The Horse Racing Law requires, except as specified, for a fair conducting a live racing meeting, that 1% of the total amount handled on live races, excluding wagering at a satellite facility, be retained by the fair association for payment to the state as a license fee. That law also requires any fair racing association to additionally deduct 1% from the total amount handled in its daily conventional and exotic parimutuel pools and requires that this additional amount be deposited in the Fair and Exposition Fund and, with the approval of the Department of Food and Agriculture, authorizes the expenditure of these funds for the construction or operation of recreational and cultural facilities of general public interest.~~

~~This bill would provide that the 1% retained for payment to the state as a license fee and the additional 1% deducted from the total amount handled by any fair racing association in its daily conventional and exotic parimutuel pools may be used by the state as payment, as specified, to a fair conducting a live racing meeting at a fair or as payment to a joint powers authority involved in conducting live racing meetings at fairs for purposes of improving a fair enclosure, racetrack maintenance, safety at fairs, or other similar activities. The bill would provide that these provisions are retroactive to January 1, 2016.~~

~~(2) By appropriating an amount of money deposited in the Fair and Exposition Fund, which is a continuously appropriated fund, for new purposes, the bill would make an appropriation.~~

Vote: $\frac{2}{3}$. Appropriation: ~~yes-no~~. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 18622.5 is added to the Revenue and
2 Taxation Code, to read:
3 18622.5. (a) Notwithstanding Section 18622, if any item
4 required to be shown on a federal partnership return, including
5 any gross income, deduction, penalty, credit, or tax for any year
6 of any partnership, including any amount of any partner's
7 distributive share, is changed or corrected by the Commissioner

1 of Internal Revenue or other officer of the United States or other
2 competent authority, and the partnership is issued an adjustment
3 under Section 6225 of the Internal Revenue Code or makes a
4 federal election for alternative payment by the Internal Revenue
5 Service as part of a Partnership Level Audit, the partnership shall
6 report each change or correction with the Franchise Tax Board
7 for the reviewed year within six months after the date of each final
8 federal determination. The report of adjustments or return
9 reporting the adjustments shall be sufficiently detailed to allow
10 computation of the California tax change resulting from the federal
11 adjustment and shall be reported in the form and manner as
12 prescribed by the Franchise Tax Board.

13 (b) For purposes of this section the following terms have the
14 following meanings:

15 (1) “Administrative adjustment request” means an
16 administrative adjustment request filed by a partnership under
17 Section 6227 of the Internal Revenue Code, as enacted by the
18 Bipartisan Budget Act of 2015, Public Law 114-74.

19 (2) “California share of the adjustments” means the adjustments
20 described in subdivision (a), subject to the provisions of Chapter
21 11 (commencing with Section 17951) of Part 10 and the provisions
22 of Chapter 17 (commencing with Section 25101) of Part 11.

23 (3) “Date of each final federal determination” means the date
24 on which each adjustment or resolution resulting from an Internal
25 Revenue Service examination is assessed pursuant to Section 6203
26 of the Internal Revenue Code.

27 (4) “Direct partner” means a partner that holds an interest
28 directly in a partnership or pass-through entity.”

29 (5) “Federal adjustment” means a change to an item or amount
30 determined under the Internal Revenue Code that is used by a
31 partner or partnership to compute state tax owed for the reviewed
32 year whether that change results from action by the IRS, including
33 a Partnership Level Audit, or the filing of a federal refund claim,
34 or an Administrative Adjustment Request by the partnership. A
35 Federal Adjustment is positive to the extent that it increases taxable
36 income as determined under Part 10 (commencing with Section
37 17001) or net income as determined under Part 11 (commencing
38 with Section 23001) and is negative to the extent that it decreases
39 taxable income as determined under Part 10 (commencing with

1 Section 17001) or net income as determined under Part 11
2 (commencing with Section 23001).

3 (6) “Federal election for alternative payment” refers to the
4 election described in Section 6226 of the Internal Revenue Code,
5 relating to alternative to payment of imputed underpayment by
6 partnership, as amended by Section 1101 of Public Law 114-74.

7 (7) “Indirect partner” means a partner in a partnership or
8 pass-through entity that itself holds an interest directly, or through
9 another indirect partner, in a partnership or pass-through entity.

10 (8) “Partnership level audit” means an examination by the IRS
11 at the partnership level pursuant to Subchapter C of Chapter 63
12 of Subtitle F of Title 26 of the Internal Revenue Code, as enacted
13 by the Bipartisan Budget Act of 2015, Public Law 114-74, which
14 results in a federal adjustment.

15 (9) “Reallocation adjustment” means a federal adjustment that
16 changes the shares of items of partnership income, gain, loss,
17 expense, or credit allocated to direct partners. A positive
18 reallocation adjustment means a reallocation adjustment that
19 would increase state taxable income for direct partners, and a
20 negative reallocation adjustment means a reallocation adjustment
21 that would decrease state taxable income for direct partners.

22 (10) “Reviewed year” has the meaning provided in Section
23 6225(d)(1) of the Internal Revenue Code, as enacted by the
24 Bipartisan Budget Act of 2015, Public Law 114-74.

25 (11) “Tiered partner” means any partner that is a partnership
26 or pass-through entity.

27 (c) (1) Notwithstanding Section 17024.5, and except as
28 otherwise provided in this subdivision, any election made for
29 federal purposes under the provisions of Subchapter C of Chapter
30 63 of the Internal Revenue Code (commencing with Section 6221),
31 as amended by Section 1101 of Public Law 114-74, shall be
32 applicable for purposes of Part 10 (commencing with Section
33 17001), this part, and Part 11 (commencing with Section 23001),
34 and a separate election shall not be allowed.

35 (2) In the case of any unitary partner whose distributive share
36 of a partnership’s income and apportionment factors would
37 properly be included in the computation of that partner’s business
38 income (within the meaning of subdivision (a) of Section 25120)
39 apportioned to California on that partner’s original California
40 franchise or income tax return, subparagraph (A) of paragraph

1 (1) of subdivision (d) shall not apply and instead such partner
2 shall be treated as having filed an amended return within the
3 meaning of Section 6225(c)(2) of the Internal Revenue Code for
4 purposes of this section and that partner shall file an amended
5 return to separately report its California share of the adjustments
6 under Section 18622.

7 (3) Notwithstanding paragraph (1), and subject to the
8 requirement of paragraph (2), a partnership may file a request,
9 in the form and manner specified by the Franchise Tax Board, to
10 make an election different from their federal election under this
11 section, and the Franchise Tax Board shall grant such request,
12 provided that the partnership is able to establish to the satisfaction
13 of to the Franchise Tax Board that the Franchise Tax Board's
14 ability to collect any state income or franchise taxes would not be
15 impeded, and the partnership properly computes the amount of
16 tax due under the provisions specified in subparagraph (A) of
17 paragraph (1) of subdivision (d) or properly follows the provisions
18 specified in paragraph (2) of subdivision (d) as appropriate.

19 (4) (A) Each tiered partner and each indirect partner of an
20 audited partnership shall be subject to the applicable election,
21 reporting and payment requirements for audited partnerships and
22 their direct partners under this section.

23 (B) Each tiered partner and indirect partner must make all
24 reports and payments required to be made by such partners under
25 this section no later than 90 days after the time for filing and
26 furnishing statements to tiered partners and their partners, as
27 required under Section 6226 of the Internal Revenue Code and
28 any regulations thereunder.

29 (d) (1) (A) If the change or correction described in subdivision
30 (a) results in an increase of the amount of tax payable under Part
31 10 (commencing with Section 17001), this part, or Part 11
32 (commencing with Section 23001), and if paragraph (2) does not
33 apply, then a tax is hereby imposed on the partnership determined
34 as follows, in lieu of taxes owed by its direct partners and indirect
35 partners:

36 (i) Exclude from federal adjustments and any positive
37 reallocation adjustments the distributive share of these adjustments
38 made to a tax-exempt partner that is not unrelated business taxable
39 income within the meaning of Section 23731.

1 (ii) Exclude from federal adjustments and any positive
2 reallocation adjustments the distributive share of the adjustments
3 made to a partner that has previously filed an amended return
4 under Section 18622 reporting the distributive share and paid any
5 additional state tax liability due.

6 (iii) With respect to any corporate partner or tax-exempt partner
7 that is not excluded under paragraph (2) of subdivision (c) or
8 clauses (i) or (ii), determine the total distributive share of all
9 federal adjustments and positive reallocation adjustments, and
10 apportion and allocate the adjustments as provided in Chapter 17
11 (commencing with Section 25101) of Part 11, and multiply that
12 amount by the highest marginal tax rate provided in Sections 23151
13 or 23501, as applicable, for the reviewed year.

14 (iv) With respect to all tiered partners, nonresident individual
15 partners, or nonresident fiduciary partners not excluded under
16 paragraph (2) of subdivision (c) or clause (i) or (ii) or taken into
17 account under clause (iii), determine the total distributive share
18 of all federal adjustments and positive reallocation adjustments
19 and compute the amount of California source income attributable
20 to the adjustments as provided in Chapter 11 (commencing with
21 Section 17951) of Part 10 and the provisions of Chapter 17
22 (commencing with Section 25101) of Part 11, and multiply that
23 amount by the highest marginal tax rate applicable to individuals
24 for the reviewed year.

25 (v) With respect to all resident partners, resident fiduciary
26 partners, or any other partners not excluded under paragraph (2)
27 of subdivision (c) or clauses (i) or (ii) or taken into account under
28 clauses (iii) or (iv), determine the total distributive share of all
29 federal adjustments and positive reallocation adjustments that is
30 subject to tax under subdivisions (a) or (c) of Section 17041, and
31 multiply that amount by the highest marginal tax rate applicable
32 to individual for the reviewed year.

33 (vi) The total tax imposed under this paragraph shall be equal
34 to the sum of the amounts determined under clauses (iii), (iv), and
35 (v). The tax imposed under this subdivision shall be due and
36 payable as provided in Section 19001 and treated as if imposed
37 under Part 10 (commencing with Section 17001).

38 (B) Penalties and interest, as applicable, shall be imposed under
39 Article 6 of Chapter 4 (commencing with Section 19101) and

1 Article 7 of Chapter 4 (commencing with Section 19131) from the
2 original due date of the partnership return for the reviewed year.

3 (2) If the partnership makes a federal election for alternative
4 payment under Section 6226 of the Internal Revenue Code, then
5 the partnership shall file an amended California Nonresident
6 Group Return for all nonresident direct partners under Section
7 18535 and pay the additional amount of tax due that would have
8 been due had the federal adjustments been reported properly as
9 required. For any partners not included in the amended California
10 Nonresident Group Return, the amount reported to each partner
11 shall be an adjustment to the partner's share of partnership items
12 as a result of the change or correction in subdivision (a) and each
13 partner shall report any adjustments in accordance with Section
14 18622.

15 (e) Subject to the approval of the Franchise Tax Board, an
16 audited partnership or tiered partner may use a different reporting
17 and payment method if the audited partnership or tiered partner
18 demonstrates that the requested method will reasonably provide
19 for the reporting and payment of taxes, penalties, and interest
20 owed.

21 (f) (1) If a partnership files a report or return as required under
22 subdivision (a) after the six month period specified in subdivision
23 (a) or if the partnership or partner does not pay the tax required
24 under subdivision (c) when due and payable, the Franchise Tax
25 Board shall mail notice to the partnership of the deficiency
26 proposed to be assessed pursuant to Section 19033. The deficiency
27 proposed to be assessed must be mailed within four years from
28 the date the change or correction was reported pursuant to
29 subdivision (a), the return or payment was due, or within four
30 years from the date the return was filed, whichever period expires
31 later.

32 (2) If a partnership files a report, or files a return required
33 under subdivision (a) within six months of the final federal
34 determination, the Franchise Tax Board shall mail notice to the
35 partnership of the deficiency proposed to be assessed pursuant to
36 Section 19033. The deficiency proposed to be assessed must be
37 mailed within two years from the date the change or correction
38 was reported pursuant to subdivision (a).

1 (3) *If the partnership fails to file a report or return as required*
2 *by subdivision (a), a notice of proposed deficiency assessment*
3 *resulting from the federal determination may be made at any time.*

4 (g) (1) *Nothing in this section is intended to prevent the*
5 *Franchise Tax Board from assessing direct partners or indirect*
6 *partners for taxes they owe in the event that an audited partnership*
7 *or tiered partner fails to timely make any report or payment*
8 *required by this section for any reason.*

9 (2) *If a partnership's report of the California tax changes*
10 *resulting from the adjustments filed pursuant to subdivision (a)*
11 *results in an overstatement of California taxable or net income,*
12 *the adjustment shall be applied as follows:*

13 (A) *If the original adjustments were passed through to the*
14 *partners under paragraph (2) of subdivision (c), the revised*
15 *adjustment shall be passed through to the partners. The partnership*
16 *shall file or amend the return as described in subdivision (a).*

17 (B) *If the tax on the adjustments was originally paid by the*
18 *partnership under paragraph (1) of subdivision (c), the partnership*
19 *may amend the return filed under paragraph (1) of subdivision (c)*
20 *to claim a refund of that overpayment within the time periods*
21 *provided by Section 19311. This subparagraph shall not allow a*
22 *partnership to claim an overpayment for amounts not actually*
23 *paid by the partnership.*

24 (3) *If properly reported and paid by the partnership or tiered*
25 *partner, the amount determined in subparagraph (A) of paragraph*
26 *(1) of subdivision (d) or similarly under an optional election, will*
27 *be treated as paid in lieu of taxes owed by its direct and indirect*
28 *partners on the same federal adjustments. The direct partners or*
29 *indirect partners may not take any deduction or credit for this*
30 *amount or claim a refund of the amount in this state. Nothing in*
31 *this subdivision shall preclude a partner from claiming a credit*
32 *against taxes paid to this state pursuant to Chapter 12*
33 *(commencing with Section 18001) of Part 10 of Division 2, with*
34 *respect to any amount paid by the partnership, or any amount paid*
35 *by any tiered partnership that is a direct partner or indirect partner*
36 *in the partnership, on that partner's behalf to another state.*

37 (h) (1) *Chapter 3.5 (commencing with Section 11340) of Part*
38 *1 of Division 3 of Title 2 of the Government Code shall not apply*
39 *to any standard, criterion, procedure, determination, rule, notice,*
40 *or guideline established or issued by the Franchise Tax Board*

1 *pursuant to this section, including any requirements or procedures*
2 *necessary to seek a written consent under paragraph (3) of*
3 *subdivision (g).*

4 *(2) The Franchise Tax Board may prescribe regulations*
5 *necessary or appropriate to implement the purposes of this section,*
6 *including regulations to determine the California share of*
7 *adjustments.*

8 *(i) (1) With respect to an action required or permitted to be*
9 *taken by a partnership under this section and a proceeding under*
10 *this part with respect to federal adjustments arising from a*
11 *partnership level audit or an administrative adjustment request,*
12 *the state partnership representative for the reviewed year shall*
13 *have the sole authority to act on behalf of the partnership, and its*
14 *partners and indirect partners shall be bound by those actions.*

15 *(2) The state partnership representative for the reviewed year*
16 *is the partnership's federal partnership representative, unless the*
17 *partnership designates in writing another person as its state*
18 *partnership representative.*

19 *(3) The Franchise Tax Board may establish reasonable*
20 *qualifications for and procedures for designating a person, other*
21 *than the federal partnership representative, to be the state*
22 *partnership representative.*

23 *(j) This section shall apply to final federal determinations*
24 *assessed pursuant to amendments made to Subchapter C of Chapter*
25 *63 of the Internal Revenue Code by Section 1101 of Public Law*
26 *114-74.*

27 *SEC. 2. Section 19311 of the Revenue and Taxation Code is*
28 *amended to read:*

29 19311. (a) (1) If a change or correction is made or allowed
30 by the Commissioner of Internal Revenue or other officer of the
31 United States or other competent authority, a claim for credit or
32 refund resulting from the adjustment may be filed by the taxpayer
33 within two years from the date of the final federal determination
34 (as defined in Section 18622), or within the period provided in
35 Section 19306, 19307, 19308, or 19316, whichever period expires
36 later.

37 (2) Within two years of the date of the final determination (as
38 defined in Section ~~18622~~ 18622 or 18622.5) or within the period
39 provided in Section 19306, 19307, or 19308, whichever period
40 expires later, the Franchise Tax Board may allow a credit, make

1 a refund, or mail to the taxpayer a notice of proposed overpayment
2 resulting from the final federal determination.

3 (b) The amendments made by the act adding this paragraph
4 shall apply, without regard to taxable year, to federal
5 determinations that become final on or after the effective date of
6 the act adding this paragraph.

7 (c) (1) *For adjustments resulting in a tax imposed under*
8 *paragraph (1) of subdivision (c) of Section 18622.5, paragraph*
9 *(1) of subdivision (a) is modified by substituting “partnership”*
10 *for “taxpayer.”*

11 (2) *This subdivision shall apply to final federal determinations*
12 *assessed pursuant to amendments made to Subchapter C of Chapter*
13 *63 of the Internal Revenue Code by Section 1101 of Public Law*
14 *114-74.*

15 *SEC. 3. This act is an urgency statute necessary for the*
16 *immediate preservation of the public peace, health, or safety within*
17 *the meaning of Article IV of the California Constitution and shall*
18 *go into immediate effect. The facts constituting the necessity are:*

19 *In order to provide much needed tax administration relief to*
20 *taxpayers in conformity with federal tax law changes enacted in*
21 *2015 and to alleviate costly administrative burdens on state tax*
22 *agencies, it is necessary that this act go into immediate effect.*

23 ~~SECTION 1. Section 19614 of the Business and Professions~~
24 ~~Code is amended to read:~~

25 ~~19614. (a) Notwithstanding Sections 19611 and 19612, and~~
26 ~~except for an association that qualifies pursuant to Section 19612.6,~~
27 ~~for a fair conducting a live racing meeting, 1 percent of the total~~
28 ~~amount handled on live races, excluding wagering at a satellite~~
29 ~~facility, shall be retained by the fair association for payment to the~~
30 ~~state as a license fee.~~

31 ~~(b) Additionally, 0.48 percent of the total amount handled on~~
32 ~~live racing, excluding wagering at a satellite facility, shall be~~
33 ~~deposited with the official registering agency pursuant to~~
34 ~~subdivision (a) of Section 19617.2, and shall thereafter be~~
35 ~~distributed in accordance with subdivisions (b), (c), and (d) of~~
36 ~~Section 19617.2.~~

37 ~~(c) (1) After distribution of the applicable amounts as set forth~~
38 ~~in subdivisions (a) and (b) and the payments made pursuant to~~
39 ~~other relevant sections of this chapter, all funds remaining from~~
40 ~~the deductions provided in Section 19610 shall be distributed 47.5~~

1 percent as commissions and 52.5 percent as purses. From the
2 amount distributed as thoroughbred purses, a sum equal to 0.07
3 percent of the total handle shall be held by the association to be
4 deposited with the official registering agency pursuant to
5 subdivision (a) of Section 19617.2, and shall thereafter be
6 distributed in accordance with subdivisions (b), (c), and (d) of
7 Section 19617.2.

8 (2) Any additional amount generated for purses and not
9 distributed during the previous corresponding meeting shall be
10 added to the purses at the current meeting.

11 (d) In addition to the amounts deducted pursuant to Section
12 19610, any fair racing association shall deduct 1 percent from the
13 total amount handled in its daily conventional and exotic
14 parimutuel pools. The additional 1 percent shall be deposited in
15 the Fair and Exposition Fund and is hereby appropriated for the
16 purposes specified in subdivision (e).

17 (e) (1) The state may use the amounts described in subdivisions
18 (a) and (d) as payment, in the form of a grant or as payment
19 pursuant to a memorandum of understanding or other mechanism,
20 to a fair conducting a live racing meeting at a fair or as payment
21 to a joint powers authority involved in conducting live racing
22 meetings at fairs for purposes of improving a fair enclosure,
23 racetrack maintenance, safety at fairs, or other similar activities.

24 (2) This subdivision shall be retroactive to January 1, 2016.