

AMENDED IN ASSEMBLY AUGUST 13, 2020

AMENDED IN ASSEMBLY MARCH 9, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2088**

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**Introduced by Assembly Members ~~Ø'Donnell and Øbernolte~~ Bonta, Carrillo, Chiu, Gonzalez, Kalra, Santiago, Mark Stone, Ting, and Wicks**

*(Principal coauthor: Assembly Member Chu)*

*(Principal coauthor: Senator Skinner)*

*(Coauthor: Assembly Member Jones-Sawyer)*

*(Coauthors: Senators Durazo and Lena Gonzalez)*

February 5, 2020

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~~An act to amend Section 13117 of the Elections Code, relating to elections. An act to add Part 27 (commencing with Section 50301) to Division 2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2088, as amended, ~~Ø'Donnell~~ Bonta. ~~Statewide measures: numbering. Wealth tax.~~

*Existing law imposes taxes upon income and real property, as well as taxes upon certain transactions and excise taxes.*

*This bill would impose an annual tax at a rate of 0.4% of a resident of this state's worldwide net worth in excess of \$30,000,000, or in excess of \$15,000,000 in the case of a married taxpayer filing separately. The bill would describe worldwide net worth with reference to specific federal provisions and would provide that worldwide net worth does not include specific assets, including directly held real property or*

liabilities related to directly held real property. The bill would also authorize the Franchise Tax Board to adopt regulations to carry out these provisions, including regulations regarding the valuation of certain assets that are not publicly traded.

Existing law requires the Franchise Tax Board to administer the Personal Income Tax Law.

This bill would require the Franchise Tax Board to amend or create returns with regard to the Wealth Tax.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of <sup>2</sup>/<sub>3</sub> of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

~~Existing law requires that statewide measures submitted to the voters be numbered in a continuous sequence, commencing with the number “1,” in 10-year cycles.~~

~~This bill would prohibit the use of the number “13” in that sequence.~~

Vote: ~~majority~~<sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

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

1 SECTION 1. Part 27 (commencing with Section 50301) is  
2 added to Division 2 of the Revenue and Taxation Code, to read:

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PART 27. WEALTH TAX

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6

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

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50301. This part shall be known, and may be cited, as the  
9 Wealth Tax Act.

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50302. The collection and administration of the tax described  
12 in this part shall be governed by the provisions of Part 10.2  
13 (commencing with Section 18401) unless expressly superseded by  
14 the provisions of this part.

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50303. (a) The Wealth Tax shall be reported with, and is due  
at the same time as, the annual income taxes of a taxpayer under  
Part 10 (commencing with Section 17001). The Franchise Tax  
Board shall amend the Personal Income Tax Forms, and amend  
or create any other forms necessary, for the reporting of certain

1 *assets. Assets that must be reported separately shall include, but*  
2 *shall not be limited to, the following categories:*

- 3 (1) *Stock in any publicly and privately traded C-corporation.*
- 4 (2) *Stock in any S-corporation.*
- 5 (3) *Interests in any partnership.*
- 6 (4) *Interests in any private equity or hedge fund.*
- 7 (5) *Interests in any other noncorporate businesses.*
- 8 (6) *Bonds and interest bearing savings accounts.*
- 9 (7) *Cash and deposits.*
- 10 (8) *Farm assets.*
- 11 (9) *Interest in mutual funds or index funds.*
- 12 (10) *Put and call options.*
- 13 (11) *Futures contracts.*
- 14 (12) *Art and collectibles.*
- 15 (13) *Financial assets held offshore.*
- 16 (14) *Pension funds.*
- 17 (15) *Other assets, excluding real property.*
- 18 (16) *Debts other than mortgages or other liabilities secured by*  
19 *real property.*
- 20 (17) *Real property.*
- 21 (18) *Mortgages and other liabilities secured by real property.*

22 (b) *For the avoidance of doubt, directly held real property, and*  
23 *mortgages and other liabilities secured by directly held real*  
24 *property, must be listed separately in accordance with subdivision*  
25 *(a), but those items are not considered in calculating the taxpayer's*  
26 *worldwide net worth under this part pursuant to Section 50306.*

27 *50304. If any section, subdivision, paragraph, or provision of*  
28 *this part is found to be invalid, unconstitutional, or otherwise*  
29 *unenforceable that finding shall not affect any other section,*  
30 *subdivision, paragraph, or provision in this part that can be*  
31 *enforced without the use of the offending provision.*

32  
33 *CHAPTER 2. IMPOSITION OF TAX ON WEALTH*  
34

35 *50305. (a) For the benefit of accumulating excessive wealth*  
36 *in this state, there shall be imposed an annual tax of 0.4 percent*  
37 *upon the worldwide net worth of every resident in this state in*  
38 *excess of the following:*

- 39 (1) *For married taxpayers filing separately, fifteen million*  
40 *dollars (\$15,000,000).*

1 (2) For all other taxpayers, thirty million dollars (\$30,000,000).

2 (b) (1) Except as explicitly provided for in this part, for  
3 purposes of subdivision (a) worldwide net worth shall be calculated  
4 in the manner set for calculation of the Federal Estate Tax under  
5 Chapter 11 (commencing with Section 2001) of Subtitle B of the  
6 Internal Revenue Code as that chapter reads as of June 15, 2020.

7 (2) Except as otherwise provided in this part, and only to the  
8 extent allowable under the California Constitution, United States  
9 Constitution, and other governing federal law, worldwide net  
10 worth shall be the value of all worldwide property owned by the  
11 taxpayer on December 31 of each year. Any transaction, a primary  
12 purpose of which is to reduce the valuation of a taxpayer's  
13 worldwide net worth as of December 31, shall be disregarded.  
14 The Franchise Tax Board shall adopt regulations designed to  
15 prevent the avoidance or evasion of the tax imposed under this  
16 part.

17 50306. Worldwide net worth shall not include any real property  
18 directly held by the taxpayer. However, worldwide net worth shall  
19 include the value of real property held indirectly, as through a  
20 corporation, partnership, limited liability company, trust, or other  
21 such legal form, except to the extent that such inclusion is  
22 prohibited by the California Constitution, by the United States  
23 Constitution, or other governing federal law.

24 50307. The Franchise Tax Board shall adopt regulations on  
25 the following subjects to clarify valuation methods.

26 (a) Valuation Method.

27 (1) For publicly traded assets, the value of the assets will be  
28 presumed to be their market value at the end of the tax year.

29 (2) (A) For nonpublicly traded assets, the best available  
30 methodology and information shall be used to estimate a current  
31 value at the end of the tax year.

32 (B) The estimated value in subparagraph (A) shall be subject  
33 to later reconciliation with market transactions, or any other  
34 objective indicator of value, involving the formerly nonpublicly  
35 traded assets or substantially similar assets. For this purpose,  
36 objective indicators of value shall include, but not be limited to,  
37 sales or partial sales of the taxpayer's ownership interests in the  
38 relevant assets or entity, any substantial transfer of the entity's  
39 assets to taxpayers on account of their ownership interests, or  
40 issuance of new stock to investors. Reconciliation procedures

1 *established under this subparagraph shall give rise to a tax liability*  
2 *or refund as necessary where the reconciled value diverges from*  
3 *the value estimated under subparagraph (A).*

4 *(3) In establishing estimated valuations under paragraph (2),*  
5 *the Franchise Tax Board may use a methodology that applies a*  
6 *deemed growth rate to broad categories of assets, similar to the*  
7 *application of depreciation schedules for broad categories of assets*  
8 *under Section 168 of the Internal Revenue Code.*

9 *(4) For taxpayers with nonpublicly traded assets that have not*  
10 *been subject to reconciliation under paragraph (2), the Franchise*  
11 *Tax Board shall adopt regulations requiring the taxpayer to*  
12 *confirm to the Franchise Tax Board each year whether a*  
13 *reconciliation event has occurred.*

14 *(5) The Franchise Tax Board shall create any additional tax*  
15 *forms necessary to allow item-by-item reporting of transactions*  
16 *where a taxpayer that has been subject to the tax imposed by this*  
17 *part realizes capital gains or losses by selling assets in a given*  
18 *year. The forms shall allow the taxpayer to report the basis, amount*  
19 *realized, and most recent fair market value reported for purposes*  
20 *of this part.*

21 *(6) The Franchise Tax Board shall adopt regulations detailing*  
22 *abusive transactions whose aim is to change the nature of an asset*  
23 *from public to nonpublic or vice versa.*

24 *(b) For assets held within trusts or other entities that are owned*  
25 *or partially owned by a taxpayer, the Franchise Tax Board shall*  
26 *adopt regulations determining the assessed value of the taxpayer's*  
27 *ownership rights in these entities. Any feature of an asset intended*  
28 *to, and having the effect of, decreasing the value of the asset, such*  
29 *as a "poison pill," shall be disregarded. Additionally, no valuation*  
30 *discount, or any other discount, shall apply if the effect of the*  
31 *discount would be to reduce the value of a pro rata economic*  
32 *interest in an asset below the pro rata value of the entire asset.*

33 *(c) (1) Liquidity-constrained taxpayers with ownership interests*  
34 *in hard-to-value assets and business entities, such as startup*  
35 *businesses, shall be able to elect for an unliquidated and deferred*  
36 *tax liability to be attached to these assets instead of the net value*  
37 *of these assets being assessed at the end of a tax year. The tax*  
38 *liability shall be backed by a contract with the state specifying the*  
39 *reference for the eventual valuation of the unliquidated and*  
40 *deferred tax liability. The contract shall also list the actions or*

1 situations that trigger the tax liability becoming liquidated and  
2 due.

3 (2) The Legislature presumes that any taxpayer subject to the  
4 Wealth Tax is not a liquidity-constrained taxpayer if the taxpayer's  
5 hard-to-value assets are less than 80 percent of the taxpayer's  
6 total net worth. The Franchise Tax Board shall adopt regulations  
7 in regard to substantiating who is or is not a liquidity-constrained  
8 taxpayer. For the removal of doubt, the Legislature finds that most  
9 taxpayers subject to the Wealth Tax should not be found liquidity  
10 constrained.

11 (3) The Franchise Tax Board shall adopt regulations specifying  
12 how contracts entered into pursuant to paragraph (1) are to be  
13 structured, allowing for valuation to be made by reference to the  
14 taxpayer's percentage ownership interests, such as stock or  
15 partnerships interest in a privately held business. These regulations  
16 shall further specify the scenarios under which any such  
17 unliquidated and deferred tax liabilities would later be required  
18 to become due and liquidated. The scenarios that the Franchise  
19 Tax Board shall specify as triggering a liquidation of previously  
20 unliquidated and deferred tax liabilities shall include, but shall  
21 not be limited to, sales or partial sales of the taxpayers' ownership  
22 interests in the relevant assets or entities, any substantial transfer  
23 of an entity's assets to taxpayers on account of their ownership  
24 interests, or issuance of new stock to investors.

25 50308. (a) The value of all assets subject to the Wealth Tax  
26 shall be reported annually, but any amount of net-worth wealth  
27 tax on those assets paid to another jurisdiction shall be credited  
28 against the Wealth Tax. Any credits created by this section,  
29 however, shall not exceed the total tax owed under the Wealth Tax.  
30 For the avoidance of doubt, this section shall only provide a credit  
31 for a tax on net worth, or a tax on real property as described in  
32 subdivision (b), and no credit shall be created by any tax on  
33 transactions, income, capital gains, or other taxes.

34 (b) Notwithstanding subdivision (a), a taxpayer who owns real  
35 property indirectly, as through a corporation, partnership, limited  
36 liability company, trust, or other such legal form, shall receive a  
37 credit for their pro rata share of any property taxes paid on the  
38 gross or net value of real property to any jurisdiction. This credit  
39 is limited to taxes paid with regard to ownership of the real  
40 property, and no credit shall be created by any transactions tax,

1 *excise tax, or any other tax based on use of the property. The credit*  
2 *created by this subdivision for each separate unit of real property*  
3 *shall not exceed the portion of the taxpayer's total Wealth Tax*  
4 *liability attributable to the taxpayer's ownership interest in the*  
5 *real property.*

6 *(c) To claim the credits described in subdivision (b), a taxpayer*  
7 *must separately report each of the following items:*

8 *(1) The fair market value of each unit of real property.*

9 *(2) The assessed value used to calculate any creditable property*  
10 *taxes imposed on each unit of real property.*

11 *(3) The property taxes paid, for which credit is being claimed.*

12 *(4) All mortgages and other liabilities secured by or used for*  
13 *the purpose of each unit of real property.*

14 *50309. Notwithstanding the provisions of Section 50306, the*  
15 *value of directly held real property excluded from calculation of*  
16 *a taxpayer's worldwide net worth shall be reported on the*  
17 *taxpayer's annual return, along with any liabilities secured by or*  
18 *used for the benefit of directly held real property. Liabilities*  
19 *secured by or used for the benefit of directly held real property*  
20 *shall not be considered in determining worldwide net worth of a*  
21 *taxpayer. The Franchise Tax Board shall adopt regulations for*  
22 *apportioning taxpayer's overall liabilities to exclude liabilities*  
23 *related to directly held real property. These regulations shall*  
24 *provide that, at a minimum, a percentage of each taxpayer's overall*  
25 *liabilities, equal to the percentage the taxpayer's directly held real*  
26 *property interest bears to all of the taxpayer's worldwide assets,*  
27 *shall be excluded from the calculation of the taxpayer's worldwide*  
28 *net worth.*

29 *50310. (a) (1) For purposes of this part, a taxpayer is*  
30 *considered a resident of California for a given year, if such*  
31 *taxpayer is a California resident for purposes of the California*  
32 *income tax as determined by Section 17014.*

33 *(2) Part-Year Resident. A part-year resident is determined as*  
34 *by Section 17015.5. Part-year residents shall be taxed on their*  
35 *worldwide net worth according to this part, but for purposes of*  
36 *calculating such tax, the taxpayer's worldwide net worth shall be*  
37 *multiplied by the percentage of days in the year such taxpayer was*  
38 *present in this state.*

39 *(3) Temporary Resident. A taxpayer who spends more than 60*  
40 *days in California, but who does not qualify as a resident under*

1 Section 17014 or part-year resident under 17015.5, shall be treated  
2 as a temporary resident. Temporary residents shall be taxed on  
3 their worldwide net worth according to this part, but for purposes  
4 of calculating that tax, the taxpayer's worldwide net worth shall  
5 be multiplied by the percentage of days in the year the taxpayer  
6 was present in this state.

7 (4) *Wealth Tax Resident.* Any taxpayer with extreme wealth  
8 sourced to this state according to the rule of paragraph (3) of  
9 subdivision (b).

10 (b) *Special Apportionment Rules for Wealth Tax.*

11 (1) *General Rule.* In general, the portion of a taxpayer's wealth  
12 subject to the tax imposed by this part shall be multiplied by a  
13 fraction, the numerator of which shall be years of residence in  
14 California over the 10 last years, and the denominator of which  
15 shall be 10. For the purpose of calculating the numerator described  
16 in the previous sentence, any partial year of residence as calculated  
17 under paragraphs (2) and (3) of subdivision (a) and shall be  
18 included in the numerator.

19 (2) *Special Rule for New Residents.* For residents of California  
20 who have never been a California resident before, the calculation  
21 of the numerator under paragraph (1) of subdivision (b) shall, for  
22 the first year of residence in California, be a fraction between 0  
23 and 1, as calculated under paragraph (2) of subdivision (a). For  
24 each subsequent year, the number 1 should be added until the  
25 numerator reaches 10.

26 (3) *Special Rule for Wealth Tax Residents.*

27 (A) For taxpayers who were subject to the Wealth Tax in one  
28 of the preceding 10 years, and are no longer residents of this state  
29 as residence is defined in Section 50310, and do not have the  
30 reasonable expectation to return to this state, the calculation of  
31 the numerator under paragraph (1) shall be as follows. For the  
32 first year of nonresidence in California, a fraction between 0 and  
33 1, as calculated under subdivision (b) of Section 50310, plus the  
34 years of residence in California over the nine previous years shall  
35 be the numerator. For each subsequent year, the number 1 should  
36 be subtracted until the numerator reaches 0.

37 (B) For any taxpayer who pays tax under this part as a former  
38 resident, but then returns to California, the apportionment rule  
39 shall be the general rule of paragraph (1) of subdivision (b).



1 (4) *Petition for Alternative Apportionment.* If apportionment  
2 provisions of this part do not fairly represent the extent of the  
3 benefit granted to the taxpayer to accumulate extreme wealth in  
4 this state, then the taxpayer may petition for, or the tax  
5 administrator may require, in respect to all or any part of the  
6 taxpayer's wealth, the use of an alternative apportionment method.

7 (A) *Burden of Proof.* In any proceeding for alternative  
8 apportionment, the burden shall be on the petitioning party to  
9 demonstrate by clear and convincing evidence that the standard  
10 method is unfair and that a more fair and reasonable method is  
11 available.

12 (B) *Authority to Adopt Regulations.* In case of recurring fact  
13 patterns involving taxpayers, the Franchise Tax Board may, in  
14 addition to the authority provided in this part, adopt appropriate  
15 rules or regulations for determining alternative apportionment  
16 methods for those taxpayers.

17 (c) *For purposes of calculating who is a resident under this*  
18 *part, the taxpayer is only considered a resident when no longer a*  
19 *dependent of another taxpayer, as dependent is defined in Section*  
20 *17056.*

21 (d) *In the event any provision of this section, including, but not*  
22 *limited to, paragraphs (2), (3), and (4) of subdivision (a), is found*  
23 *by a court to be invalid, unconstitutional, or otherwise*  
24 *unenforceable, that finding shall not affect the enforceability of*  
25 *any other provision of this section.*

26 50311. (a) *A taxpayer subject to the tax imposed under this*  
27 *part with an understatement of tax for any taxable year shall be*  
28 *subject to the penalty imposed under this section if that*  
29 *understatement exceeds the greater of the following:*

30 (1) *One million dollars (\$1,000,000).*

31 (2) *Twenty percent of the tax shown on an original return or*  
32 *shown on an amended return filed on or before the original or*  
33 *extended due date of the return for the taxable year.*

34 (b) *The penalty under this section shall be an amount equal to*  
35 *20 percent of any understatement of tax. For purposes of this*  
36 *section, "understatement of tax" means the amount by which the*  
37 *tax imposed by this part exceeds the amount of tax shown on an*  
38 *original return or shown on an amended return filed on or before*  
39 *the original or extended due date of the return for the taxable year.*

1 (c) *The penalty imposed by this section shall be in addition to*  
2 *any other penalty imposed under Part 10.2 (commencing with*  
3 *Section 18401).*

4 (d) *A refund or credit for any amounts paid to satisfy a penalty*  
5 *imposed under this section may be allowed only on the grounds*  
6 *that the amount of the penalty was not properly computed by the*  
7 *Franchise Tax Board.*

8 (e) *No penalty shall be imposed under this section on any*  
9 *understatement to the extent that the understatement is attributable*  
10 *to any of the following:*

11 (1) *A change in law that is enacted, adopted, issued, or becomes*  
12 *final after the earlier of either of the following dates:*

13 (A) *The date the taxpayer files the return for the taxable year*  
14 *for which the change is operative.*

15 (B) *The extended due date for the return of the taxpayer for the*  
16 *taxable year for which the change is operative.*

17 (2) *For purposes of this subdivision, a “change of law” means*  
18 *a statutory change or an interpretation of law or rule of law by*  
19 *regulation, legal ruling of counsel, within the meaning of*  
20 *subdivision (b) of Section 11340.9 of the Government Code, or a*  
21 *published federal or California court decision.*

22 (3) *The Franchise Tax Board shall implement this subdivision*  
23 *in a reasonable manner.*

24 (f) *No penalty shall be imposed under this section to the extent*  
25 *that a taxpayer’s understatement is attributable to the taxpayer’s*  
26 *reasonable reliance on written advice of the Franchise Tax Board,*  
27 *but only if the written advice was a legal ruling by the chief*  
28 *counsel, within the meaning of paragraph (1) of subdivision (a)*  
29 *of Section 21012.*

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

33 **SECTION 1.** ~~Section 13117 of the Elections Code is amended~~  
34 ~~to read:~~

35 ~~13117. (a) Commencing with the November 3, 1998 general~~  
36 ~~election, all statewide measures submitted to the voters in all~~  
37 ~~elections shall be numbered in a continuous sequence, commencing~~  
38 ~~with the number “1” and continuing in numerical sequence for a~~  
39 ~~period of 10 years from the year of commencement, except that~~  
40 ~~the number “13” shall not be used.~~

1     ~~(b) At the completion of a 10-year cycle, the numbering~~  
2     ~~sequence shall recommence with the number “1” at the next~~  
3     ~~election at which statewide measures are submitted to the voters,~~  
4     ~~except that the number “13” shall not be used.~~

O