

ASSEMBLY BILL

No. 1546

Introduced by Assembly Member Charles Calderon

February 23, 2007

An act to amend Section 17942 of the Revenue and Taxation Code, relating to limited liability companies, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1546, as introduced, Charles Calderon. Income taxes: limited liability companies: apportionment.

The Personal Income Tax Law requires every limited liability company subject to a specified tax to pay annually to this state a fee equal to specified amounts based upon total income from all sources reportable to this state. That law defines total income as gross income, as defined, plus the cost of goods sold, as specified.

This bill would clarify that total income from all sources reportable to this state means gross income, as defined, plus the cost of goods sold, as specified, derived from or attributable to this state within the meaning of specified provisions of the Corporation Tax Law relating to apportionment and allocation, as provided. This bill would make legislative findings and declarations regarding the necessity for the equitable treatment of limited liability companies.

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:

1 SECTION 1. The Legislature finds and declares that the
2 changes made by this act with respect to Section 17942 of the
3 Revenue and Taxation Code are necessary to provide for the
4 equitable tax treatment for limited liability companies in light of
5 the following:

6 (a) The California Limited Liability Act (Ch. 1200, Stats. 1994)
7 authorized limited liability companies for the first time to organize
8 and register in the state. The Legislature was advised that an
9 increasing number of businesses would organize as limited liability
10 companies rather than corporations, resulting in a decrease in
11 income and franchise tax revenue. To offset the loss in tax revenue,
12 certain limited liability companies are required to pay an annual
13 fee based on total income from all sources reportable to the state.

14 (b) The Legislature finds and declares that its intent in adopting
15 Section 17942 was to ensure that limited liability companies pay
16 a fair and appropriate amount to the State of California, consistent
17 with constitutional limits, and the changes made by this act with
18 respect to Section 17942 serve a public purpose and are in
19 furtherance of the public interest in the fair taxation of limited
20 liability companies doing business in the state by applying the
21 apportionment and allocation provisions to total income for
22 purposes of determining the amount of the limited liability
23 company fee.

24 (c) The Legislature further finds and declares that this act serves
25 a public purpose and sound tax policy by affording equitable tax
26 treatment to many taxpayers doing business in this state with the
27 expectation of paying a limited liability company fee that is relative
28 to the level of activity in the state.

29 SEC. 2. Section 17942 of the Revenue and Taxation Code is
30 amended to read:

31 17942. (a) In addition to the tax imposed under Section 17941,
32 every limited liability company subject to tax under Section 17941
33 shall pay annually to this state a fee equal to:

34 (1) Nine hundred dollars (\$900), if the total income from all
35 sources reportable to this state for the taxable year is two hundred
36 fifty thousand dollars (\$250,000) or more, but less than five
37 hundred thousand dollars (\$500,000).

1 (2) Two thousand five hundred dollars (\$2,500), if the total
2 income from all sources reportable to this state for the taxable year
3 is five hundred thousand dollars (\$500,000) or more, but less than
4 one million dollars (\$1,000,000).

5 (3) Six thousand dollars (\$6,000), if the total income from all
6 sources reportable to this state for the taxable year is one million
7 dollars (\$1,000,000) or more, but less than five million dollars
8 (\$5,000,000).

9 (4) Eleven thousand seven hundred ninety dollars (\$11,790), if
10 the total income from all sources reportable to this state for the
11 taxable year is five million dollars (\$5,000,000) or more.

12 (5) This subdivision shall apply to taxable years beginning on
13 or after January 1, 1997.

14 (6) The changes made to this subdivision by the act adding this
15 paragraph shall apply to taxable years beginning on or after January
16 1, 2001.

17 (b) (1) For purposes of this section, “~~total income~~” *income from*
18 *all sources reportable to this state*” means gross income, as defined
19 in Section 24271, plus the cost of goods sold that are paid or
20 incurred in connection with the trade or business of the taxpayer,
21 *derived from or attributable to this state within the meaning of*
22 *Chapter 17 (commencing with Section 25101) of Part 11.* However,
23 “~~total income~~” *income from all sources reportable to this state*”
24 shall not include allocation or attribution of income or gain or
25 distributions made to a limited liability company in its capacity as
26 a member of, or holder of an economic interest in, another limited
27 liability company if the allocation or attribution of income or gain
28 or distributions are directly or indirectly attributable to income
29 that is subject to the payment of the fee described in this section.

30 (2) In the event a taxpayer is a commonly controlled limited
31 liability company, the total income from all sources reportable to
32 this state, taking into account any election under Section 25110,
33 may be determined by the Franchise Tax Board to be the total
34 income of all the commonly controlled limited liability company
35 members if it determines that multiple limited liability companies
36 were formed for the primary purpose of reducing fees payable
37 under this section. A determination by the Franchise Tax Board
38 under this subdivision may only be made with respect to one
39 limited liability company in a commonly controlled group.
40 However, each commonly controlled limited liability company

1 shall be jointly and severally liable for the fee. For purposes of
2 this section, commonly controlled limited liability companies shall
3 include the taxpayer and any other partnership or limited liability
4 company doing business (as defined in Section 23101) in this state
5 and required to file a return under Section 18633 or 18633.5, in
6 which the same persons own, directly or indirectly, more than 50
7 percent of the capital interests or profits interests.

8 (c) The fee assessed under this section shall be due and payable
9 on the date the return of the limited liability company is required
10 to be filed under Section 18633.5, shall be collected and refunded
11 in the same manner as the taxes imposed by this part, and shall be
12 subject to interest and applicable penalties.

13 SEC. 3. This act provides for a tax levy within the meaning of
14 Article IV of the Constitution and shall go into immediate effect.