

AMENDED IN ASSEMBLY MAY 9, 2007

AMENDED IN ASSEMBLY MAY 3, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1546**

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**Introduced by Assembly Member Charles Calderon**

February 23, 2007

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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 amended, 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, *for taxable years beginning on and after January 1, 2007*, 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 derived from or attributable to this state for the taxable

1 year is two hundred fifty thousand dollars (\$250,000) or more, but  
2 less than five hundred thousand dollars (\$500,000).

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

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

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

15 ~~(5) This subdivision shall apply to taxable years beginning on~~  
16 ~~or after January 1, 1997.~~

17 ~~(6) The changes made to this subdivision by the act adding this~~  
18 ~~paragraph shall apply to taxable years beginning on or after January~~  
19 ~~1, 2001.~~

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

32 (B) For purposes of this section, “total income from all sources  
33 derived from or attributable to this state” shall be determined using  
34 the rules for assigning sales under Sections 25135 and 25136 and  
35 the regulations thereunder, as modified by regulations under  
36 Section 25137, other than those provisions that exclude receipts  
37 from the sales factor.

38 (2) In the event a taxpayer is a commonly controlled limited  
39 liability company, the total income from all sources derived from  
40 or attributable to this state, taking into account any election under

1 Section 25110, may be determined by the Franchise Tax Board to  
 2 be the total income of all the commonly controlled limited liability  
 3 company members if it determines that multiple limited liability  
 4 companies were formed for the primary purpose of reducing fees  
 5 payable under this section. A determination by the Franchise Tax  
 6 Board under this subdivision may only be made with respect to  
 7 one limited liability company in a commonly controlled group.  
 8 However, each commonly controlled limited liability company  
 9 shall be jointly and severally liable for the fee. For purposes of  
 10 this section, commonly controlled limited liability companies shall  
 11 include the taxpayer and any other partnership or limited liability  
 12 company doing business (as defined in Section 23101) in this state  
 13 and required to file a return under Section 18633 or 18633.5, in  
 14 which the same persons own, directly or indirectly, more than 50  
 15 percent of the capital interests or profits interests.

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

21 *SEC. 3. The amendments made by Section 2 of this act to*  
 22 *Section 17942 of the Revenue and Taxation Code shall apply to*  
 23 *taxable years beginning on and after January 1, 2007.*

24 ~~SEC. 3.~~

25 *SEC. 4. It is the intent of the Legislature that no inference be*  
 26 *drawn in connection with the amendments made to Section 17942*  
 27 *of the Revenue and Taxation Code by this act for any taxable year*  
 28 *beginning before January 1, 2007.*

29 ~~SEC. 4.~~

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