

AMENDED IN ASSEMBLY APRIL 29, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2178

Introduced by Assembly Member Garrick

(Coauthors: Assembly Members Anderson, DeVore, La Malfa, and Maze)

(Coauthors: Senators Hollingsworth and Runner)

February 20, 2008

An act to amend Section 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2178, as amended, Garrick. Minimum franchise tax.

The Corporation Tax Law imposes, among other things, a minimum franchise tax on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, but exempts from that tax certain corporations meeting specified requirement. The tax is imposed annually at the rate of \$800, except as provided.

This bill would reduce that rate to \$200. This bill would also make technical changes to delete obsolete provisions of that law.

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. Section 23153 of the Revenue and Taxation Code
- 2 is amended to read:

1 23153. (a) Every corporation described in subdivision (b) shall
2 be subject to the minimum franchise tax specified in subdivision
3 (d) from the earlier of the date of incorporation, qualification, or
4 commencing to do business within this state, until the effective
5 date of dissolution or withdrawal as provided in Section 23331 or,
6 if later, the date the corporation ceases to do business within the
7 limits of this state.

8 (b) Unless expressly exempted by this part or the California
9 Constitution, subdivision (a) shall apply to each of the following:

10 (1) Every corporation that is incorporated under the laws of this
11 state.

12 (2) Every corporation that is qualified to transact intrastate
13 business in this state pursuant to Chapter 21 (commencing with
14 Section 2100) of Division 1 of Title 1 of the Corporations Code.

15 (3) Every corporation that is doing business in this state.

16 (c) The following entities are not subject to the minimum
17 franchise tax specified in this section:

18 (1) Credit unions.

19 (2) Nonprofit cooperative associations organized pursuant to
20 Chapter 1 (commencing with Section 54001) of Division 20 of the
21 Food and Agricultural Code that have been issued the certificate
22 of the board of supervisors prepared pursuant to Section 54042 of
23 the Food and Agricultural Code. The association shall be exempt
24 from the minimum franchise tax for five consecutive taxable years,
25 commencing with the first taxable year for which the certificate
26 is issued pursuant to subdivision (b) of Section 54042 of the Food
27 and Agricultural Code. This paragraph only applies to nonprofit
28 cooperative associations organized on or after January 1, 1994.

29 (d) (1) Except as provided in paragraph (2), paragraph (1) of
30 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
31 of Section 23181, and paragraph (1) of subdivision (c) of Section
32 23183, corporations subject to the minimum franchise tax shall
33 pay annually to the state a minimum franchise tax of two hundred
34 dollars (\$200).

35 (2) The minimum franchise tax shall be twenty-five dollars
36 (\$25) for each of the following:

37 (A) A corporation formed under the laws of this state whose
38 principal business when formed was gold mining, which is inactive
39 and has not done business within the limits of the state since 1950.

1 (B) A corporation formed under the laws of this state whose
2 principal business when formed was quicksilver mining, which is
3 inactive and has not done business within the limits of the state
4 since 1971, or has been inactive for a period of 24 consecutive
5 months or more.

6 (3) For purposes of paragraph (2), a corporation shall not be
7 considered to have done business if it engages in other than mining.

8 (e) (1) Notwithstanding subdivision (a), every corporation that
9 incorporates or qualifies to do business in this state on or after
10 January 1, 2000, shall not be subject to the minimum franchise tax
11 for its first taxable year.

12 (2) This subdivision shall not apply to limited partnerships, as
13 defined in Section 17935, limited liability companies, as defined
14 in Section 17941, limited liability partnerships, as defined in
15 Section 17948, charitable organizations, as described in Section
16 23703, regulated investment companies, as defined in Section 851
17 of the Internal Revenue Code, real estate investment trusts, as
18 defined in Section 856 of the Internal Revenue Code, real estate
19 mortgage investment conduits, as defined in Section 860D of the
20 Internal Revenue Code, financial asset securitization investment
21 trusts, as defined in Section 860L of the Internal Revenue Code,
22 and qualified Subchapter S subsidiaries, as defined in Section
23 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

24 (3) This subdivision shall not apply to any corporation that
25 reorganizes solely for the purpose of avoiding payment of its
26 minimum franchise tax.

27 (f) Notwithstanding subdivision (a), a domestic corporation, as
28 defined in Section 167 of the Corporations Code, that files a
29 certificate of dissolution in the office of the Secretary of State
30 pursuant to subdivision (c) of Section 1905 of the Corporations
31 Code, prior to its amendment by the act amending this subdivision,
32 and that does not thereafter do business shall not be subject to the
33 minimum franchise tax for ~~taxable years~~ *each taxable year*
34 beginning on or after the date of that filing.

35 (g) The minimum franchise tax imposed by paragraph (1) of
36 subdivision (d) shall not be increased by the Legislature by more
37 than 10 percent during any calendar year.

1 SEC. 2. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.

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