

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 30, 2010

AMENDED IN SENATE JUNE 16, 2010

AMENDED IN ASSEMBLY MAY 17, 2010

AMENDED IN ASSEMBLY APRIL 27, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2671

**Introduced by Assembly Member Cook
(Coauthors: Assembly Members DeVore and Nestande)**

February 19, 2010

An act to amend Sections 17941 and 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2671, as amended, Cook. Taxes: corporations: LLCs minimum franchise tax: exemption: Armed Forces.

Existing law, generally, imposes a minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability partnership, and limited liability company registered, qualified to transact business, or doing business in this state, as specified.

This bill would, until taxable years beginning on or after January 1, 2018, exempt a corporation and a limited liability company that are small businesses solely owned by a deployed member of the United

States Armed Forces, as specified, from paying the minimum franchise tax, or the annual tax, for the privilege of doing business in this state if the corporation or limited liability company ceases operation or operates at a loss, as defined.

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 17941 of the Revenue and Taxation Code
2 is amended to read:

3 17941. (a) For each taxable year beginning on or after January
4 1, 1997, a limited liability company doing business in this state
5 (as defined in Section 23101) shall pay annually to this state a tax
6 for the privilege of doing business in this state in an amount equal
7 to the applicable amount specified in paragraph (1) of subdivision
8 (d) of Section 23153 for the taxable year.

9 (b) (1) In addition to any limited liability company that is doing
10 business in this state and is therefore subject to the tax imposed
11 by subdivision (a), for each taxable year beginning on or after
12 January 1, 1997, a limited liability company shall pay annually
13 the tax prescribed in subdivision (a) if articles of organization have
14 been accepted, or a certificate of registration has been issued, by
15 the office of the Secretary of State. The tax shall be paid for each
16 taxable year, or part thereof, until a certificate of cancellation of
17 registration or of articles of organization is filed on behalf of the
18 limited liability company with the office of the Secretary of State.

19 (2) If a taxpayer files a return with the Franchise Tax Board that
20 is designated as its final return, the Franchise Tax Board shall
21 notify the taxpayer that the annual tax shall continue to be due
22 annually until a certificate of cancellation is filed with the Secretary
23 of State pursuant to Section 17356 or 17455 of the Corporations
24 Code.

25 (c) The tax assessed under this section shall be due and payable
26 on or before the 15th day of the fourth month of the taxable year.

27 (d) For purposes of this section, "limited liability company"
28 means an organization, other than a limited liability company that
29 is exempt from the tax and fees imposed under this chapter
30 pursuant to Section 23701h or Section 23701x, that is formed by

1 one or more persons under the law of this state, any other country,
2 or any other state, as a “limited liability company” and that is not
3 taxable as a corporation for California tax purposes.

4 (e) Notwithstanding anything in this section to the contrary, if
5 the office of the Secretary of State files a certificate of cancellation
6 pursuant to Section 17350.5 of the Corporations Code for any
7 limited liability company, then paragraph (1) of subdivision (f) of
8 Section 23153 shall apply to that limited liability company as if
9 the limited liability company were properly treated as a corporation
10 for that limited purpose only, and paragraph (2) of subdivision (f)
11 of Section 23153 shall not apply. Nothing in this subdivision
12 entitles a limited liability company to receive a reimbursement for
13 any annual taxes or fees already paid.

14 (f) (1) ~~Notwithstanding subdivision (a) any provision of this~~
15 ~~section to the contrary,~~ a limited liability company that is a small
16 business solely owned by a deployed member of the United States
17 Armed Forces shall not be subject to the tax imposed under
18 ~~subdivision (a) this section~~ for any taxable year the owner is
19 deployed and the limited liability company operates at a loss or
20 ceases operation.

21 (2) The Franchise Tax Board may promulgate regulations as
22 necessary or appropriate to carry out the purposes of this
23 subdivision, including a definition for “ceases operation.”

24 (3) For the purposes of this subdivision, all of the following
25 definitions apply:

26 (A) “Deployed” means being called to active duty or active
27 service during a period when a Presidential Executive order
28 specifies that the United States is engaged in combat or homeland
29 defense. “Deployed” does not include either of the following:

- 30 (i) Temporary duty for the sole purpose of training or processing.
- 31 (ii) A permanent change of station.

32 (B) “Operates at a loss” means a limited liability company’s
33 expenses exceed its receipts.

34 (C) “Small business” means a limited liability company with
35 total income from all sources derived from, or attributable, to the
36 state of two hundred fifty thousand dollars (\$250,000) or less.

37 (4) This subdivision shall become inoperative for taxable years
38 beginning on or after January 1, 2018.

39 SEC. 2. Section 23153 of the Revenue and Taxation Code is
40 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 eight hundred
 34 dollars (\$800).

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) Notwithstanding subdivision (a), for taxable years beginning
9 on or after January 1, 1999, and before January 1, 2000, every
10 “qualified new corporation” shall pay annually to the state a
11 minimum franchise tax of five hundred dollars (\$500) for the
12 second taxable year. This subdivision shall apply to any corporation
13 that is a qualified new corporation and is incorporated on or after
14 January 1, 1999, and before January 1, 2000.

15 (1) The determination of the gross receipts of a corporation, for
16 purposes of this subdivision, shall be made by including the gross
17 receipts of each member of the commonly controlled group, as
18 defined in Section 25105, of which the corporation is a member.

19 (2) “Gross receipts, less returns and allowances reportable to
20 this state,” means the sum of the gross receipts from the production
21 of business income, as defined in subdivision (a) of Section 25120,
22 and the gross receipts from the production of nonbusiness income,
23 as defined in subdivision (d) of Section 25120.

24 (3) “Qualified new corporation” means a corporation that is
25 incorporated under the laws of this state or has qualified to transact
26 intrastate business in this state, that begins business operations at
27 or after the time of its incorporation and that reasonably estimates
28 that it will have gross receipts, less returns and allowances,
29 reportable to this state for the taxable year of one million dollars
30 (\$1,000,000) or less. “Qualified new corporation” does not include
31 any corporation that began business operations as a sole
32 proprietorship, a partnership, or any other form of business entity
33 prior to its incorporation. This subdivision shall not apply to any
34 corporation that reorganizes solely for the purpose of reducing its
35 minimum franchise tax.

36 (4) This subdivision shall not apply to limited partnerships, as
37 defined in Section 17935, limited liability companies, as defined
38 in Section 17941, limited liability partnerships, as defined in
39 Section 17948, charitable organizations, as described in Section
40 23703, regulated investment companies, as defined in Section 851

1 of the Internal Revenue Code, real estate investment trusts, as
2 defined in Section 856 of the Internal Revenue Code, real estate
3 mortgage investment conduits, as defined in Section 860D of the
4 Internal Revenue Code, qualified Subchapter S subsidiaries, as
5 defined in Section 1361(b)(3) of the Internal Revenue Code, or to
6 the formation of any subsidiary corporation, to the extent
7 applicable.

8 (5) For any taxable year beginning on or after January 1, 1999,
9 and before January 1, 2000, if a corporation has qualified to pay
10 five hundred dollars (\$500) for the second taxable year under this
11 subdivision, but in its second taxable year, the corporation's gross
12 receipts, as determined under paragraphs (1) and (2), exceed one
13 million dollars (\$1,000,000), an additional tax in the amount equal
14 to three hundred dollars (\$300) for the second taxable year shall
15 be due and payable by the corporation on the due date of its return,
16 without regard to extension, for that year.

17 (f) (1) Notwithstanding subdivision (a), every corporation that
18 incorporates or qualifies to do business in this state on or after
19 January 1, 2000, shall not be subject to the minimum franchise tax
20 for its first taxable year.

21 (2) This subdivision shall not apply to limited partnerships, as
22 defined in Section 17935, limited liability companies, as defined
23 in Section 17941, limited liability partnerships, as defined in
24 Section 17948, charitable organizations, as described in Section
25 23703, regulated investment companies, as defined in Section 851
26 of the Internal Revenue Code, real estate investment trusts, as
27 defined in Section 856 of the Internal Revenue Code, real estate
28 mortgage investment conduits, as defined in Section 860D of the
29 Internal Revenue Code, and qualified Subchapter S subsidiaries,
30 as defined in Section 1361(b)(3) of the Internal Revenue Code, to
31 the extent applicable.

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

35 (g) Notwithstanding subdivision (a), a domestic corporation, as
36 defined in Section 167 of the Corporations Code, that files a
37 certificate of dissolution in the office of the Secretary of State
38 pursuant to subdivision (b) of Section 1905 of the Corporations
39 Code, prior to its amendment by the act amending this subdivision,
40 and that does not thereafter do business shall not be subject to the

1 minimum franchise tax for taxable years beginning on or after the
2 date of that filing.

3 (h) The minimum franchise tax imposed by paragraph (1) of
4 subdivision (d) shall not be increased by the Legislature by more
5 than 10 percent during any calendar year.

6 (i) (1) Notwithstanding subdivision (a), a corporation that is a
7 small business solely owned by a deployed member of the United
8 States Armed Forces shall not be subject to the minimum franchise
9 tax for any taxable year the owner is deployed and the corporation
10 operates at a loss or ceases operation.

11 (2) The Franchise Tax Board may promulgate regulations as
12 necessary or appropriate to carry out the purposes of this
13 subdivision, including a definition for “ceases operation.”

14 (3) For the purposes of this subdivision, all of the following
15 definitions apply:

16 (A) “Deployed” means being called to active duty or active
17 service during a period when a Presidential Executive order
18 specifies that the United States is engaged in combat or homeland
19 defense. “Deployed” does not include either of the following:

20 (i) Temporary duty for the sole purpose of training or processing.

21 (ii) A permanent change of station.

22 (B) “Operates at a loss” means negative net income as defined
23 in Section 24341.

24 (C) “Small business” means a corporation with total income
25 from all sources derived from, or attributable, to the state of two
26 hundred fifty thousand dollars (\$250,000) or less.

27 (4) This subdivision shall become inoperative for taxable years
28 beginning on or after January 1, 2018.

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