

**ASSEMBLY BILL**

**No. 166**

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**Introduced by Assembly Member Cook**

January 20, 2011

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An act to amend Sections 23151.1, 23151.2, and 23282 of, and to amend and repeal Sections 23153 and 23221 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 166, as introduced, Cook. Corporation taxes: minimum franchise tax.

The Corporation Tax Law generally imposes a franchise tax on corporations doing business within the limits of this state, including a minimum franchise tax on specified corporations, as provided.

This bill would eliminate the minimum franchise tax and make related technical amendments.

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 all of the  
2 following:  
3 (a) This act will level the playing field with neighboring states  
4 that either do not have a minimum franchise tax or one that is a  
5 small fraction of California's.  
6 (c) Nevada does not assess a tax on corporate income but rather  
7 imposes a minimum fee of \$100.

1 (d) Arizona assesses only a minimum tax of \$50 on financial  
2 institutions, corporations, and limited liability companies that elect  
3 to be taxed as corporations, and imposes a business license fee of  
4 \$15.

5 (e) Oregon assesses a minimum excess tax of \$10 on financial  
6 institutions, corporations, and limited liability corporations that  
7 elect to be taxed as corporations.

8 (f) Utah imposes only a minimum tax of \$100 on “C”  
9 corporations.

10 (g) California has chronic high unemployment compared to  
11 neighboring states due to the unfavorable business climate, which  
12 includes excessively high taxes on small businesses.

13 (h) This act will both update and improve California’s outdated  
14 taxation system and make it more reflective of our state’s economy,  
15 and make it competitive in the national and international markets.

16 SEC. 2. Section 23151.1 of the Revenue and Taxation Code  
17 is amended to read:

18 23151.1. Notwithstanding Section 23151, every corporation  
19 (except banks and financial corporations) doing business within  
20 the limits of this state and not exempted from taxation by the  
21 provisions of the Constitution of this state or by this part, shall  
22 annually pay to the state for the privilege of exercising its corporate  
23 franchises within this state, a tax determined as follows:

24 (a) With respect to corporations, other than those described in  
25 subdivision (b), which commence doing business within the state  
26 after December 31, 1971, and before January 1, 2000, the tax for  
27 the taxable year of commencement, whether or not for 12 full  
28 months, shall be the minimum franchise tax prescribed in Section  
29 23153.

30 (b) If after December 31, 1972, a corporation commences to do  
31 business and ceases doing business in the same taxable year, the  
32 tax for that taxable year shall be according to or measured by its  
33 net income for the year, to be computed at the rate prescribed in  
34 Section 23151.

35 (c) (1) With respect to taxable years beginning after December  
36 31, 1972, and before January 1, 2000, other than the year of  
37 commencement described in subdivision (a) or (b) or the year of  
38 cessation described in subdivision (d), the tax for that taxable year  
39 shall be according to or measured by its net income for the next

1 preceding taxable year, to be computed at the rate prescribed in  
2 Section 23151.

3 (2) With respect to taxable years beginning on or after January  
4 1, 2000, (other than the first taxable year beginning on or after that  
5 date), the tax for the taxable year (including the taxable year of  
6 commencement and the taxable year of cessation) shall be  
7 according to or measured by its net income for the taxable year to  
8 be computed at the rate prescribed in Section 23151.

9 (d) With respect to corporations which cease doing business in  
10 a taxable year beginning after December 31, 1972, and before  
11 January 1, 2000, other than those described in subdivision (b), the  
12 tax for the taxable year of cessation shall be:

13 (1) According to or measured by its net income for the next  
14 preceding taxable year, to be computed at the rate prescribed in  
15 Section 23151, plus

16 (2) According to or measured by its net income for the taxable  
17 year during which the corporation ceased doing business, to be  
18 computed at the rate prescribed in Section 23151.

19 ~~(e) In any event, the tax for any taxable year shall not be less  
20 than the minimum tax provided for in Section 23153 for that  
21 taxable year.~~

22 SEC. 3. Section 23151.2 of the Revenue and Taxation Code  
23 is amended to read:

24 23151.2. Notwithstanding Section 23151, every corporation  
25 (except banks and financial corporations) not exempted from  
26 taxation by the provisions of the Constitution of this state or by  
27 this part which dissolves or withdraws, shall pay a tax for its  
28 taxable year of dissolution or withdrawal according to or measured  
29 by its net income for the taxable year in which it ceased doing  
30 business, unless that income has previously been included in the  
31 measure of tax for any taxable year, to be computed at the rate  
32 prescribed in Section 23151 for its taxable year of dissolution or  
33 withdrawal. ~~In any event, the tax for the taxable year of its  
34 dissolution or withdrawal shall not be less than the minimum tax  
35 provided for in Section 23153 for that taxable year.~~

36 SEC. 4. Section 23153 of the Revenue and Taxation Code is  
37 amended to read:

38 23153. (a) Every corporation described in subdivision (b) shall  
39 be subject to the minimum franchise tax specified in subdivision  
40 (d) from the earlier of the date of incorporation, qualification, or

1 commencing to do business within this state, until the effective  
2 date of dissolution or withdrawal as provided in Section 23331 or,  
3 if later, the date the corporation ceases to do business within the  
4 limits of this state.

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

7 (1) Every corporation that is incorporated under the laws of this  
8 state.

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

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

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

15 (1) Credit unions.

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

26 (d) (1) Except as provided in paragraph (2), paragraph (1) of  
27 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)  
28 of Section 23181, and paragraph (1) of subdivision (c) of Section  
29 23183, corporations subject to the minimum franchise tax shall  
30 pay annually to the state a minimum franchise tax of eight hundred  
31 dollars (\$800).

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

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

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

1 since 1971, or has been inactive for a period of 24 consecutive  
2 months or more.

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

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

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

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

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

33 (4) This subdivision shall not apply to limited partnerships, as  
34 defined in Section 17935, limited liability companies, as defined  
35 in Section 17941, limited liability partnerships, as defined in  
36 Section 17948, charitable organizations, as described in Section  
37 23703, regulated investment companies, as defined in Section 851  
38 of the Internal Revenue Code, real estate investment trusts, as  
39 defined in Section 856 of the Internal Revenue Code, real estate  
40 mortgage investment conduits, as defined in Section 860D of the

1 Internal Revenue Code, qualified Subchapter S subsidiaries, as  
2 defined in Section 1361(b)(3) of the Internal Revenue Code, or to  
3 the formation of any subsidiary corporation, to the extent  
4 applicable.

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

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

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

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

32 (g) Notwithstanding subdivision (a), a domestic corporation, as  
33 defined in Section 167 of the Corporations Code, that files a  
34 certificate of dissolution in the office of the Secretary of State  
35 pursuant to subdivision (b) of Section 1905 of the Corporations  
36 Code, prior to its amendment by the act amending this subdivision,  
37 and that does not thereafter do business shall not be subject to the  
38 minimum franchise tax for taxable years beginning on or after the  
39 date of that filing.

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

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

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

12 (3) For the purposes of this subdivision, all of the following  
13 definitions apply:

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

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

19 (ii) A permanent change of station.

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

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

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

27 (j) *This section shall remain in effect until January 1, 2011, and*  
28 *as of that date is repealed.*

29 SEC. 5. Section 23221 of the Revenue and Taxation Code is  
30 amended to read:

31 23221. (a) Any credit union that incorporates under the laws  
32 of this state or qualifies to transact intrastate business in this state  
33 shall thereupon prepay a tax of twenty-five dollars (\$25) as  
34 provided in Section 23153. The prepayment shall be made to the  
35 Secretary of State with the filing of the articles of incorporation  
36 or the statement and designation by a foreign corporation. The  
37 Secretary of State shall transmit the amount of the prepayment to  
38 the Franchise Tax Board. The Franchise Tax Board shall certify  
39 to the Secretary of State on an individual or class basis those

1 domestic or foreign corporations that are exempt from prepayment  
 2 or for which prepayment to the Secretary of State is waived.

3 (b) This section shall become operative and apply beginning on  
 4 or after January 1, 2001.

5 (c) *This section shall remain in effect until January 1, 2011,*  
 6 *and as of that date is repealed.*

7 SEC. 6. Section 23282 of the Revenue and Taxation Code is  
 8 amended to read:

9 23282. (a) The tax imposed upon any taxpayer which has  
 10 suffered the suspension or forfeiture provided in Section 23301,  
 11 and which revives in any taxable year other than the taxable year  
 12 in which suspension or forfeiture occurred, shall be computed in  
 13 the same manner as provided in Sections 23222 to 23224, inclusive,  
 14 relative to the computation of taxes upon taxpayers commencing  
 15 to do business for the first time after incorporation or qualification.  
 16 In addition to the taxes, penalties, and interest specified in Section  
 17 23305, such taxpayer shall prepay a tax in an amount equal to the  
 18 minimum tax provided for in Section 23153 as a condition  
 19 precedent to the issuance of a certificate of revivor.

20 (b) After December 31, 1971, and before January 1, 2000, the  
 21 tax imposed upon any taxpayer which has suffered the suspension  
 22 or forfeiture provided in Section 23301, and which revives in any  
 23 taxable year other than the taxable year in which suspension or  
 24 forfeiture occurred, shall be—

25 (1) In the case of a taxpayer which was doing business in the  
 26 year next preceding the year in which revivor took place,  
 27 computed upon the basis of the net income for that next  
 28 preceding income year,

29 (2) In the case of a taxpayer which resumed doing business  
 30 in the year of revivor, computed upon the basis of the net income  
 31 for the year in which it ceased doing business, unless such  
 32 income is or has otherwise been subject to ~~tax~~, *tax*.

33 ~~—(3) In the case of a taxpayer which first commences to do~~  
 34 ~~business in the year of revivor, the minimum tax provided in~~  
 35 ~~Section 23153,~~

36 ~~—(4) In no event less than the minimum tax provided in Section~~  
 37 ~~23153.~~

38 ~~In addition to the taxes, penalties, and interest specified in Section~~  
 39 ~~23305, such taxpayer shall prepay the minimum tax imposed by~~

1 ~~this subdivision as a condition precedent to the issuance of a~~  
2 ~~certificate of revivor.~~

3 (c) After December 31, 1999, the tax imposed upon any taxpayer  
4 that has suffered the suspension or forfeiture provided in Section  
5 23301, and that revives in any taxable year other than the taxable  
6 year in which suspension or forfeiture occurred, shall be computed  
7 upon the basis of the net income for the taxable year in which it  
8 revives, but in no event less than the minimum tax provided in  
9 Section 23153.

10 SEC. 7. This act provides for a tax levy within the meaning of  
11 Article IV of the Constitution and shall go into immediate effect.

O