

ASSEMBLY BILL

No. 831

Introduced by Assembly Member Silva

February 17, 2011

An act to amend Sections 17941, 17942, 18633.5, and 23701d of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 831, as introduced, Silva. Minimum annual tax: exemption: single member limited liability company.

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. Existing law requires every limited liability company subject to the annual tax to pay annually to this state a fee equal to specified amounts based upon total income from all sources reportable to this state. Existing law also requires limited liability companies classified as partnerships for California tax purposes to file certain information returns.

This bill would exempt a single member limited liability company, as defined, or a federal, state, or local governmental entity from that annual tax, that annual fee, and that information return.

The Corporation Tax Law, in modified conformity with federal income tax laws, exempts various types of organizations from state income taxes imposed by that law. Existing law allows organizations that have obtained a ruling or determination from the Internal Revenue

Code that it is exempt from federal income taxes as an organization described in Section 501(c)(3) of the Internal Revenue Code to obtain exemption from state income taxes by submitting to the Franchise Tax Board a copy of the notification issued by the Internal Revenue Service approving the organization’s tax-exempt status, as specified. Existing law requires the board to issue an acknowledgment of an organization’s exemption from state income taxes, as provided.

This bill would prohibit an organization formed as a California corporation or qualified to do business in California that, as of the date of receipt by the Franchise Tax Board of that notification, is listed by the Secretary of State or Franchise Tax Board as “suspended” or “forfeited” from establishing its exemption from state income taxes and would provide that the organization would not receive an acknowledgement from the board of the organization’s exemption until that corporation is listed by the Secretary of State and the board as an “active” corporation.

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.

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

7 *(c) Notwithstanding subdivisions (a) and (b) of this section and*
8 *clause (iii) of subparagraph (B) of paragraph (2) of subdivision*
9 *(b) of Section 23038, a limited liability company whose separate*
10 *existence is disregarded pursuant to Section 23038 and whose sole*
11 *member is either an entity exempt under Chapter 7 (commencing*
12 *with Section 17631) of Part 10, or an entity exempt under Chapter*
13 *4 (commencing with Section 23701) of Part 11, or a federal, state,*
14 *or local governmental entity shall not be subject to the tax imposed*
15 *under this section, except for an insurance company described in*
16 *Section 28 of Article XIII of the California Constitution.*

17 ~~(e)~~

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

20 ~~(d)~~

21 (e) For purposes of this section, “limited liability company”
22 means an organization, other than a limited liability company that
23 is exempt from the tax and fees imposed under this chapter
24 pursuant to Section 23701h or Section 23701x, that is formed by
25 one or more persons under the law of this state, any other country,
26 or any other state, as a “limited liability company” and that is not
27 taxable as a corporation for California tax purposes.

28 ~~(e)~~

29 (f) Notwithstanding anything in this section to the contrary, if
30 the office of the Secretary of State files a certificate of cancellation
31 pursuant to Section 17350.5 of the Corporations Code for any
32 limited liability company, then paragraph (1) of subdivision (f) of
33 Section 23153 shall apply to that limited liability company as if
34 the limited liability company were properly treated as a corporation
35 for that limited purpose only, and paragraph (2) of subdivision (f)
36 of Section 23153 shall not apply. Nothing in this subdivision
37 entitles a limited liability company to receive a reimbursement for
38 any annual taxes or fees already paid.

39 ~~(f)~~

1 (g) (1) Notwithstanding any provision of this section to the
2 contrary, a limited liability company that is a small business solely
3 owned by a deployed member of the United States Armed Forces
4 shall not be subject to the tax imposed under this section for any
5 taxable year the owner is deployed and the limited liability
6 company operates at a loss or ceases operation.

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

10 (3) For the purposes of this subdivision, all of the following
11 definitions apply:

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

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

17 (ii) A permanent change of station.

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

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

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

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

27 17942. (a) In addition to the tax imposed under Section 17941,
28 every limited liability company subject to tax under Section 17941
29 shall pay annually to this state a fee equal to:

30 (1) Nine hundred dollars (\$900), if the total income from all
31 sources derived from or attributable to this state for the taxable
32 year is two hundred fifty thousand dollars (\$250,000) or more, but
33 less than five hundred thousand dollars (\$500,000).

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

38 (3) Six thousand dollars (\$6,000), if the total income from all
39 sources derived from or attributable to this state for the taxable

1 year is one million dollars (\$1,000,000) or more, but less than five
2 million dollars (\$5,000,000).

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

7 (b) (1) (A) For purposes of this section, “total income from all
8 sources derived from or attributable to this state” means gross
9 income, as defined in Section 24271, plus the cost of goods sold
10 that are paid or incurred in connection with the trade or business
11 of the taxpayer. However, “total income from all sources derived
12 from or attributable to this state” shall not include allocation or
13 attribution of income or gain or distributions made to a limited
14 liability company in its capacity as a member of, or holder of an
15 economic interest in, another limited liability company if the
16 allocation or attribution of income or gain or distributions are
17 directly or indirectly attributable to income that is subject to the
18 payment of the fee described in this section.

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

25 (C) *Notwithstanding clause (iii) of subparagraph (B) of*
26 *paragraph (2) of subdivision (b) of Section 23038, a limited*
27 *liability company whose separate existence is disregarded pursuant*
28 *to Section 23038 and whose sole member is either an entity exempt*
29 *under Chapter 7 (commencing with Section 17631) of Part 10, or*
30 *an entity exempt under Chapter 4 (commencing with Section*
31 *23701) of Part 11, or a federal, state, or local governmental entity*
32 *shall not be subject to the fee imposed under this section, except*
33 *for an insurance company described in Section 28 of Article XIII*
34 *of the California Constitution.*

35 (2) In the event a taxpayer is a commonly controlled limited
36 liability company, the total income from all sources derived from
37 or attributable to this state, taking into account any election under
38 Section 25110, may be determined by the Franchise Tax Board to
39 be the total income of all the commonly controlled limited liability
40 company members if it determines that multiple limited liability

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

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

18 (d) (1) The fee imposed by this section shall be estimated and
19 paid on or before the 15th day of the sixth month of the current
20 taxable year.

21 (2) A penalty of 10 percent of the amount of any underpayment
22 shall be added to the fee. The underpayment amount shall be equal
23 to the difference between the total amount of the fee imposed by
24 this section for the taxable year less the amount paid under
25 paragraph (1) by the date specified in that paragraph. A penalty
26 shall not be imposed with respect to any fee estimated and paid
27 under this section if the amount paid by the date prescribed in this
28 subdivision is equal to or greater than the total amount of the fee
29 of the limited liability company for the preceding taxable year.

30 SEC. 3. Section 18633.5 of the Revenue and Taxation Code
31 is amended to read:

32 18633.5. (a) Every limited liability company which is classified
33 as a partnership for California tax purposes that is doing business
34 in this state, organized in this state, or registered with the Secretary
35 of State shall file its return on or before the fifteenth day of the
36 fourth month following the close of its taxable year, stating
37 specifically the items of gross income and the deductions allowed
38 by Part 10 (commencing with Section 17001). The return shall
39 include the names, addresses, and taxpayer identification numbers
40 of the persons, whether residents or nonresidents, who would be

1 entitled to share in the net income if distributed and the amount
2 of the distributive share of each person. The return shall contain
3 or be verified by a written declaration that it is made under penalty
4 of perjury, signed by one of the limited liability company members.
5 In the case of a limited liability company not doing business in
6 this state, and subject to the tax imposed by subdivision (b) of
7 Section 17941, the Franchise Tax Board shall, for returns required
8 to be filed on or after January 1, 1998, prescribe the manner and
9 extent to which the information identified in this subdivision shall
10 be included with the return required by this subdivision.

11 (b) Each limited liability company required to file a return under
12 subdivision (a) for any limited liability company taxable year shall,
13 on or before the day on which the return for that taxable year was
14 required to be filed, furnish to each person who holds an interest
15 in that limited liability company at any time during that taxable
16 year a copy of that information required to be shown on that return
17 as may be required by forms and instructions prescribed by the
18 Franchise Tax Board.

19 (c) Any person who holds an interest in a limited liability
20 company as a nominee for another person shall do both of the
21 following:

22 (1) Furnish to the limited liability company, in the manner
23 prescribed by the Franchise Tax Board, the name, address, and
24 taxpayer identification number of that person, and any other
25 information for that taxable year as the Franchise Tax Board may
26 prescribe by forms and instructions.

27 (2) Furnish to that other person, in the manner prescribed by
28 the Franchise Tax Board, the information provided by that limited
29 liability company under subdivision (b).

30 (d) The provisions of Section 6031(d) of the Internal Revenue
31 Code, relating to the separate statement of items of unrelated
32 business taxable income, shall apply.

33 (e) (1) A limited liability company shall file with its return
34 required under subdivision (a), in the form required by the
35 Franchise Tax Board, the agreement of each nonresident member
36 to file a return pursuant to Section 18501, to make timely payment
37 of all taxes imposed on the member by this state with respect to
38 the income of the limited liability company, and to be subject to
39 personal jurisdiction in this state for purposes of the collection of
40 income taxes, together with related interest and penalties, imposed

1 on the member by this state with respect to the income of the
2 limited liability company. If the limited liability company fails to
3 timely file the agreements on behalf of each of its nonresident
4 members, then the limited liability company shall, at the time set
5 forth in subdivision (f), pay to this state on behalf of each
6 nonresident member of whom an agreement has not been timely
7 filed an amount equal to the highest marginal tax rate in effect
8 under Section 17041, in the case of members which are individuals,
9 estates, or trusts, and Section 23151, in the case of members that
10 are corporations, multiplied by the amount of the member's
11 distributive share of the income source to the state reflected on the
12 limited liability company's return for the taxable period, reduced
13 by the amount of tax previously withheld and paid by the limited
14 liability company pursuant to Section 18662 and the regulations
15 thereunder with respect to each nonresident member. A limited
16 liability company shall be entitled to recover the payment made
17 from the member on whose behalf the payment was made.

18 (2) If a limited liability company fails to attach the agreement
19 or to timely pay the payment required by paragraph (1), the
20 payment shall be considered the tax of the limited liability company
21 for purposes of the penalty prescribed by Section 19132 and interest
22 prescribed by Section 19101 for failure to timely pay the tax.
23 Payment of the penalty and interest imposed on the limited liability
24 company for failure to timely pay the amount required by this
25 subdivision shall extinguish the liability of a nonresident member
26 for the penalty and interest for failure to make timely payment of
27 all taxes imposed on that member by this state with respect to the
28 income of the limited liability company.

29 (3) No penalty or interest shall be imposed on the limited
30 liability company under paragraph (2) if the nonresident member
31 timely files and pays all taxes imposed on the member by this state
32 with respect to the income of the limited liability company.

33 (f) Any agreement of a nonresident member required to be filed
34 pursuant to subdivision (e) shall be filed at either of the following
35 times:

36 (1) The time the annual return is required to be filed pursuant
37 to this section for the first taxable period for which the limited
38 liability company became subject to tax pursuant to Chapter 10.6
39 (commencing with Section 17941).

1 (2) The time the annual return is required to be filed pursuant
2 to this section for any taxable period in which the limited liability
3 company had a nonresident member on whose behalf an agreement
4 described in subdivision (e) has not been previously filed.

5 (g) Any amount paid by the limited liability company to this
6 state pursuant to paragraph (1) of subdivision (e) shall be
7 considered to be a payment by the member on account of the
8 income tax imposed by this state on the member for the taxable
9 period.

10 (h) Every limited liability company that is classified as a
11 corporation for California tax purposes shall be subject to the
12 requirement to file a tax return under the provisions of Part 10.2
13 (commencing with Section 18401) and the applicable taxes
14 imposed by Part 11 (commencing with Section 23001).

15 (i) (1) Every limited liability company doing business in this
16 state, organized in this state, or registered with the Secretary of
17 State, that is disregarded pursuant to Section 23038 shall file a
18 return that includes information necessary to verify its liability
19 under Sections 17941 and 17942, provides its sole owner's name
20 and taxpayer identification number, includes the consent of the
21 owner to California tax jurisdiction, and includes other information
22 necessary for the administration of this part, Part 10 (commencing
23 with Section 17001), or Part 11 (commencing with Section 23001).

24 (2) If the owner's consent required under paragraph (1) is not
25 included, the limited liability company shall pay on behalf of its
26 owner an amount consistent with, and treated the same as, the
27 amount to be paid under subdivision (e) by a limited liability
28 company on behalf of a nonresident member for whom an
29 agreement required by subdivision (e) is not attached to the return
30 of the limited liability company.

31 (3) The return required under paragraph (1) shall be filed on or
32 before the fifteenth day of the fourth month after the close of the
33 taxable year of the owner subject to tax under Part 10 (commencing
34 with Section 17001) of Division 2 or on or before the fifteenth day
35 of the third month after the close of the taxable year of the owner
36 subject to tax under Chapter 2 (commencing with Section 23101)
37 of Part 11 of Division 2, whichever is applicable.

38 (4) For limited liability companies disregarded pursuant to
39 Section 23038, "taxable year of the owner" shall be substituted
40 for "taxable year" in Sections 17941 and 17942.

1 (5) Notwithstanding paragraph (1) of this subdivision and clause
2 (iii) of subparagraph (B) of paragraph (2) of subdivision (b) of
3 Section 23038, a limited liability company whose separate
4 existence is disregarded pursuant to Section 23038 and whose sole
5 member is either an entity exempt under Chapter 7 (commencing
6 with Section 17631) of Part 10, or an entity exempt under Chapter
7 4 (commencing with Section 23701) of Part 11, or a federal, state,
8 or local governmental entity shall not file a return under this
9 section, except for an insurance company described in Section 28
10 of Article XIII of the California Constitution.

11 (j) The amendments made by the act adding this subdivision
12 apply to taxable years beginning on or after January 1, 2005.

13 SEC. 4. Section 23701d of the Revenue and Taxation Code is
14 amended to read:

15 23701d. (a) A corporation, community chest or trust, organized
16 and operated exclusively for religious, charitable, scientific, testing
17 for public safety, literary, or educational purposes, or to foster
18 national or international amateur sports competition (but only if
19 no part of its activities involved the provision of athletic facilities
20 or equipment), or for the prevention of cruelty to children or
21 animals, no part of the net earnings of which inures to the benefit
22 of any private shareholder or individual, no substantial part of the
23 activities of which is carrying on propaganda or otherwise
24 attempting to influence legislation, (except as otherwise provided
25 in Section 23704.5), and which does not participate in, or intervene
26 in (including the publishing or distribution of statements), any
27 political campaign on behalf of (or in opposition to) any candidate
28 for public office. An organization is not organized exclusively for
29 exempt purposes listed above unless its assets are irrevocably
30 dedicated to one or more purposes listed in this section. Dedication
31 of assets requires that in the event of dissolution of an organization
32 or the impossibility of performing the specific organizational
33 purposes the assets would continue to be devoted to exempt
34 purposes. Assets shall be deemed irrevocably dedicated to exempt
35 purposes if the articles of organization provide that upon
36 dissolution the assets will be distributed to an organization which
37 is exempt under this section or Section 501(c)(3) of the Internal
38 Revenue Code or to the federal government, or to a state or local
39 government for public purposes; or by a provision in the articles
40 of organization, satisfactory to the Franchise Tax Board; that the

1 property will be distributed in trust for exempt purposes; or by
2 establishing that the assets are irrevocably dedicated to exempt
3 purposes by operation of law. The irrevocable dedication
4 requirement shall not be a sole basis for revocation of an exempt
5 determination made by the Franchise Tax Board prior to the
6 effective date of this amendment.

7 (b) (1) In the case of a qualified amateur sports organization—

8 (A) The requirement of subdivision (a) that no part of its
9 activities involves the provision of athletic facilities or equipment
10 shall not apply.

11 (B) That organization shall not fail to meet the requirements of
12 subdivision (a) merely because its membership is local or regional
13 in nature.

14 (2) For purposes of this subdivision, “qualified amateur sports
15 organization” means any organization organized and operated
16 exclusively to foster national or international amateur sports
17 competition if that organization is also organized and operated
18 primarily to conduct national or international competition in sports
19 or to support and develop amateur athletes for national or
20 international competition in sports.

21 (c) (1) Notwithstanding subdivisions (a), (b), and (c) of Section
22 23701, an organization organized and operated for nonprofit
23 purposes in accordance with this section shall be exempt from
24 taxes imposed by this part, except as provided in this article or in
25 Article 2 (commencing with Section 23731), upon its submission
26 to the Franchise Tax Board of one of the following:

27 (A) A copy of the determination letter or ruling issued by the
28 Internal Revenue Service recognizing the organization’s exemption
29 from federal income tax under Section 501(a) of the Internal
30 Revenue Code, as an organization described in Section 501(c)(3)
31 of the Internal Revenue Code.

32 (B) A copy of the group exemption letter issued by the Internal
33 Revenue Service that states that both the central organization and
34 all of its subordinates are tax-exempt under Section 501(c)(3) of
35 the Internal Revenue Code and substantiation that the organization
36 is included in the federal group exemption letter as a subordinate
37 organization.

38 (2) (A) Upon receipt of the documents required in subparagraph
39 (A) or (B) of paragraph (1), the Franchise Tax Board shall issue
40 an acknowledgment that the organization is exempt from taxes

1 imposed by this part, except as provided in this article or in Article
2 2 (commencing with Section 23731). The acknowledgment may
3 refer to the organization's recognition by the Internal Revenue
4 Service of exemption from federal income tax as an organization
5 described in Section 501(c)(3) of the Internal Revenue Code and,
6 if applicable, the organization's subordinate organization status
7 under a federal group exemption letter. The effective date of an
8 organization's exemption from state income tax pursuant to this
9 subdivision shall be no later than the effective date of the
10 organization's recognition of exemption from federal income tax
11 as an organization described in Section 501(c)(3) of the Internal
12 Revenue Code, or its status as a subordinate organization under a
13 federal group exemption letter, as applicable.

14 *(B) Notwithstanding any other provision of this subdivision, an*
15 *organization formed as a California corporation or qualified to*
16 *do business in California that, as of the date of receipt by the*
17 *Franchise Tax Board of the documents required under paragraph*
18 *(1), is listed by the Secretary of State or Franchise Tax Board as*
19 *"suspended" or "forfeited" may not establish its exemption under*
20 *paragraph (1) and shall not receive an acknowledgement referred*
21 *to under subparagraph (A) from the Franchise Tax Board until*
22 *that corporation is listed by the Secretary of State and Franchise*
23 *Tax Board as an "active" corporation.*

24 (3) If, for federal income tax purposes, an organization's
25 exemption from tax as an organization described in Section
26 501(c)(3) of the Internal Revenue Code is suspended or revoked,
27 the organization shall notify the Franchise Tax Board of the
28 suspension or revocation, in the form and manner prescribed by
29 the Franchise Tax Board. Upon notification, the board shall
30 suspend or revoke, whichever is applicable, for state income tax
31 purposes, the organization's exemption under paragraph (1) of this
32 subdivision.

33 (4) This subdivision shall not be construed to prevent the
34 Franchise Tax Board from revoking the exemption of an
35 organization that is not organized or operated in accordance with
36 this chapter or Section 501(c)(3) of the Internal Revenue Code.

37 (5) If the Franchise Tax Board suspends or revokes the
38 exemption of an organization pursuant to paragraph (3) or (4), the
39 exemption shall be reinstated only upon compliance with Section

- 1 23701, regardless of whether the organization can establish
- 2 exemption under paragraph (1).
- 3 (d) The Franchise Tax Board may prescribe rules and regulations
- 4 to implement this section.

O