

AMENDED IN ASSEMBLY MARCH 20, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1645

Introduced by Assembly Member Alejo

February 11, 2014

An act to amend Section ~~2188.3~~ 23153 of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1645, as amended, Alejo. ~~Property taxation: condominiums: assessment.~~ *Corporation taxes: minimum franchise tax: exemption.*

The Corporation Tax Law imposes taxes measured by income, as specified. The Corporation Tax Law 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 a tax in an amount equal to the minimum franchise tax on every limited liability company, limited partnership, and limited liability partnership registered, qualified to transact intrastate business, or doing business in this state, as specified. Existing law exempts a corporation from the payment of the minimum tax in its first taxable year.

This bill would exempt a corporation that incorporates or qualifies to do business in this state on or after January 1, 2015, from paying the minimum franchise tax for its second taxable year and would exempt a limited liability company, limited partnership, and limited liability partnership that registers, qualifies to transact intrastate business, or is doing business in this state on or after January 1, 2015, from paying the minimum franchise tax for its first and second taxable year.

This bill would take effect immediately as a tax levy.

~~Existing property tax law requires real property to be assessed in a specified manner when it has been divided into condominiums, as defined.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ 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:

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

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

12 (1) Every corporation that is incorporated under the laws of this
13 state.

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

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

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

20 (1) Credit unions.

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

1 (d) (1) Except as provided in paragraph (2), paragraph (1) of
2 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
3 of Section 23181, and paragraph (1) of subdivision (c) of Section
4 23183, corporations subject to the minimum franchise tax shall
5 pay annually to the state a minimum franchise tax of eight hundred
6 dollars (\$800).

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

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

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

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

20 (e) Notwithstanding subdivision (a), for taxable years beginning
21 on or after January 1, 1999, and before January 1, 2000, every
22 “qualified new corporation” shall pay annually to the state a
23 minimum franchise tax of five hundred dollars (\$500) for the
24 second taxable year. This subdivision shall apply to any corporation
25 that is a qualified new corporation and is incorporated on or after
26 January 1, 1999, and before January 1, 2000.

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

31 (2) “Gross receipts, less returns and allowances reportable to
32 this state,” means the sum of the gross receipts from the production
33 of business income, as defined in subdivision (a) of Section 25120,
34 and the gross receipts from the production of nonbusiness income,
35 as defined in subdivision (d) of Section 25120.

36 (3) “Qualified new corporation” means a corporation that is
37 incorporated under the laws of this state or has qualified to transact
38 intrastate business in this state, that begins business operations at
39 or after the time of its incorporation and that reasonably estimates
40 that it will have gross receipts, less returns and allowances,

1 reportable to this state for the taxable year of one million dollars
 2 (\$1,000,000) or less. “Qualified new corporation” does not include
 3 any corporation that began business operations as a sole
 4 proprietorship, a partnership, or any other form of business entity
 5 prior to its incorporation. This subdivision shall not apply to any
 6 corporation that reorganizes solely for the purpose of reducing its
 7 minimum franchise tax.

8 (4) This subdivision shall not apply to limited partnerships, as
 9 defined in Section 17935, limited liability companies, as defined
 10 in Section 17941, limited liability partnerships, as described in
 11 Section 17948, charitable organizations, as described in Section
 12 23703, regulated investment companies, as defined in Section 851
 13 of the Internal Revenue Code, real estate investment trusts, as
 14 defined in Section 856 of the Internal Revenue Code, real estate
 15 mortgage investment conduits, as defined in Section 860D of the
 16 Internal Revenue Code, qualified Subchapter S subsidiaries, as
 17 defined in Section 1361(b)(3) of the Internal Revenue Code, or to
 18 the formation of any subsidiary corporation, to the extent
 19 applicable.

20 (5) For any taxable year beginning on or after January 1, 1999,
 21 and before January 1, 2000, if a corporation has qualified to pay
 22 five hundred dollars (\$500) for the second taxable year under this
 23 subdivision, but in its second taxable year, the corporation’s gross
 24 receipts, as determined under paragraphs (1) and (2), exceed one
 25 million dollars (\$1,000,000), an additional tax in the amount equal
 26 to three hundred dollars (\$300) for the second taxable year shall
 27 be due and payable by the corporation on the due date of its return,
 28 without regard to extension, for that year.

29 (f) (1) (A) Notwithstanding subdivision (a), every corporation
 30 that incorporates or qualifies to do business in this state on or after
 31 January 1, 2000, *and before January 1, 2015*, shall not be subject
 32 to the minimum franchise tax for its first taxable year.

33 ~~(2) This subdivision~~
 34 (B) *Subparagraph (A)* shall not apply to limited partnerships,
 35 as defined in Section 17935, limited liability companies, as defined
 36 in Section 17941, limited liability partnerships, as described in
 37 Section 17948, charitable-organizations *corporations*, as described
 38 in Section 23703, regulated investment companies, as defined in
 39 Section 851 of the Internal Revenue Code, real estate investment
 40 trusts, as defined in Section 856 of the Internal Revenue Code,

1 real estate mortgage investment conduits, as defined in Section
2 860D of the Internal Revenue Code, and qualified ~~Subchapter~~
3 *subchapter S* subsidiaries, as defined in Section 1361(b)(3) of the
4 Internal Revenue Code, to the extent applicable.

5 (2) (A) *Notwithstanding subdivision (a), every corporation that*
6 *incorporates or qualifies to do business in this state on or after*
7 *January 1, 2015, shall not be subject to the minimum franchise*
8 *tax for its first and second taxable year.*

9 (B) *Subparagraph (A) shall not apply to charitable corporations,*
10 *as described in Section 23703, regulated investment companies,*
11 *as defined in Section 851 of the Internal Revenue Code, real estate*
12 *investment trusts, as defined in Section 856 of the Internal Revenue*
13 *Code, real estate mortgage investment conduits, as defined in*
14 *Section 860D of the Internal Revenue Code, and qualified*
15 *subchapter S subsidiaries, as defined in Section 1361(b)(3) of the*
16 *Internal Revenue Code, to the extent applicable.*

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

20 (g) Notwithstanding subdivision (a), a domestic corporation, as
21 defined in Section 167 of the Corporations Code, that files a
22 certificate of dissolution in the office of the Secretary of State
23 pursuant to subdivision (b) of Section 1905 of the Corporations
24 Code, prior to its amendment by the act amending this subdivision,
25 and that does not thereafter do business shall not be subject to the
26 minimum franchise tax for taxable years beginning on or after the
27 date of that filing.

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

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

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

39 (3) For the purposes of this subdivision, all of the following
40 definitions apply:

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

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

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

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

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

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

16 ~~SECTION 1. Section 2188.3 of the Revenue and Taxation~~
17 ~~Code is amended to read:~~

18 ~~2188.3. Whenever real property has been divided into~~
19 ~~condominiums, as defined in Section 783 of the Civil Code, both~~
20 ~~of the following shall apply:~~

21 ~~(a) Each condominium owned in fee shall be separately assessed~~
22 ~~to the owner thereof, and the tax on each condominium shall~~
23 ~~constitute a lien solely thereon.~~

24 ~~(b) Each condominium not owned in fee shall be separately~~
25 ~~assessed, as if it were owned in fee, to the owner of the~~
26 ~~condominium or the owner of the fee or both (and the tax on each~~
27 ~~condominium shall be a lien solely on the interest of the owner of~~
28 ~~the fee in the real property included in the condominium and on~~
29 ~~the condominium), if so agreed by the assessor in a writing of~~
30 ~~record; the agreement shall be binding upon the assessor and his~~
31 ~~or her successors in office with respect to the project so long as it~~
32 ~~continues to be divided into condominiums in the same manner~~
33 ~~as that in effect when the agreement was made.~~