

AMENDED IN ASSEMBLY APRIL 21, 2014

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~~ *Sections, 17935, 17941, 17948, and 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. ~~Corporation taxes:~~ *Business entities:* minimum franchise tax: *annual tax:* exemption.

Existing law imposes an annual minimum franchise tax, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state. Existing law exempts a corporation that incorporates or qualifies to do business in this state from the payment of the minimum franchise tax in its first taxable year.

Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability company, and limited liability partnership doing business in this state. In addition, existing law requires every limited partnership that has filed a certificate with the Secretary of State and every foreign limited partnership that has registered with the Secretary of State, every limited liability company if the articles of organization have been accepted by, or a certificate of registration has been issued by, the Secretary of State, and every registered limited liability partnership and every foreign

limited liability partnership that has registered with the Secretary of State, to pay an annual tax in an amount equal to the minimum franchise tax.

~~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 *additionally* 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. The bill would, for each taxable year beginning on or after January 1, 2015, exempt a those 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, partnerships, limited liability companies, and limited liability partnerships~~ from paying the minimum franchise annual tax for its first and second taxable year.

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 17935 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 17935. (a) (1) For each taxable year beginning on or after
- 4 January 1, 1997, every limited partnership doing business in this
- 5 state ~~(as state, as defined by Section 23101) 23101~~, and required
- 6 to file a return under Section 18633 shall pay annually to this state
- 7 a tax for the privilege of doing business in this state in an amount
- 8 equal to the applicable amount specified in *paragraph (1) of*
- 9 *subdivision (d)* Section 23153.
- 10 (2) *Notwithstanding paragraph (1), for each taxable year*
- 11 *beginning on or after January 1, 2015, every limited partnership*

1 *doing business in this state, as defined by Section 23101, and*
2 *required to file a return under Section 18633 shall not pay to this*
3 *state a tax for the privilege of doing business in this state in an*
4 *amount equal to the applicable amount specified in paragraph (1)*
5 *of subdivision (d) of Section 23153 for its first and second taxable*
6 *year.*

7 (b) (1) In addition to any limited partnership that is doing
8 business in this state and therefore is subject to the tax imposed
9 by subdivision (a), for each taxable year beginning on or after
10 January 1, 1997, every limited partnership that has executed,
11 acknowledged, and filed a certificate of limited partnership with
12 the Secretary of State pursuant to Section 15621 or 15902.01 of
13 the Corporations Code, and every foreign limited partnership that
14 has registered with the Secretary of State pursuant to Section 15692
15 or 15909.01 of the Corporations Code, shall pay annually the tax
16 prescribed in subdivision (a). The tax shall be paid for each taxable
17 year, or part thereof, until a certificate of cancellation is filed on
18 behalf of the limited partnership with the office of the Secretary
19 of State pursuant to Section 15623, 15696, 15902.03, or 15909.07
20 of the Corporations Code.

21 (2) If a taxpayer files a return with the Franchise Tax Board that
22 is designated its final return, that board shall notify the taxpayer
23 that the tax imposed by this chapter is due annually until a
24 certificate of cancellation is filed with the Secretary of State
25 pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the
26 Corporations Code.

27 (c) The tax imposed by this chapter shall be due and payable
28 on the date the return is required to be filed under former Section
29 18432 or 18633.

30 (d) For purposes of this section, “limited partnership” means
31 any partnership formed by two or more persons under the laws of
32 this state or any other jurisdiction and having one or more general
33 partners and one or more limited partners.

34 (e) Notwithstanding subdivision (b), any limited partnership
35 that ceased doing business prior to January 1, 1997, filed a final
36 return with the Franchise Tax Board for a taxable year ending
37 before January 1, 1997, and filed a certificate of dissolution with
38 the Secretary of State pursuant to Section 15623 of the
39 Corporations Code prior to January 1, 1997, shall not be subject
40 to the tax imposed by this chapter for any period following the

1 date the certificate of dissolution was filed with the Secretary of
2 State, but only if the limited partnership files a certificate of
3 cancellation with the Secretary of State pursuant to Section 15623
4 of the Corporations Code. In the case where a notice of proposed
5 deficiency assessment of tax or a notice of tax due (whichever is
6 applicable) is mailed after January 1, 2001, the first sentence of
7 this subdivision shall not apply unless the certificate of cancellation
8 is filed with the Secretary of State not later than 60 days after the
9 date of the mailing of the notice.

10 *SEC. 2. Section 17941 of the Revenue and Taxation Code is*
11 *amended to read:*

12 17941. (a) (1) For each taxable year beginning on or after
13 January 1, 1997, a limited liability company doing business in this
14 state ~~(as state, as defined in Section 23101)~~ 23101, shall pay
15 annually to this state a tax for the privilege of doing business in
16 this state in an amount equal to the applicable amount specified
17 in *paragraph (1) of subdivision (d) of Section 23153* for the taxable
18 year.

19 (2) *Notwithstanding paragraph (1), for each taxable year*
20 *beginning on or after January 1, 2015, a limited liability company*
21 *doing business in this state, as defined in Section 23101, shall not*
22 *pay to this state a tax for the privilege of doing business in this*
23 *state in an amount equal to the applicable amount specified in*
24 *paragraph (1) of subdivision (d) of Section 23153 for its first and*
25 *second taxable year.*

26 (b) (1) In addition to any limited liability company that is doing
27 business in this state and is therefore subject to the tax imposed
28 by subdivision (a), for each taxable year beginning on or after
29 January 1, 1997, a limited liability company shall pay annually
30 the tax prescribed in subdivision (a) if articles of organization have
31 been accepted, or a certificate of registration has been issued, by
32 the office of the Secretary of State. The tax shall be paid for each
33 taxable year, or part thereof, until a certificate of cancellation of
34 registration or of articles of organization is filed on behalf of the
35 limited liability company with the office of the Secretary of State.

36 (2) If a taxpayer files a return with the Franchise Tax Board that
37 is designated as its final return, the Franchise Tax Board shall
38 notify the taxpayer that the annual tax shall continue to be due
39 annually until a certificate of dissolution is filed with the Secretary
40 of State pursuant to Section 17707.08 of the Corporations Code

1 or a certificate of cancellation is filed with the Secretary of State
2 pursuant to Section 17708.06 of the Corporations Code.

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

5 (d) For purposes of this section, “limited liability company”
6 means an organization, other than a limited liability company that
7 is exempt from the tax and fees imposed under this chapter
8 pursuant to Section 23701h or Section 23701x, that is formed by
9 one or more persons under the law of this state, any other country,
10 or any other state, as a “limited liability company” and that is not
11 taxable as a corporation for California tax purposes.

12 (e) Notwithstanding anything in this section to the contrary, if
13 the office of the Secretary of State files a certificate of cancellation
14 pursuant to Section 17707.02 of the Corporations Code for any
15 limited liability company, then paragraph (1) of subdivision (f) of
16 Section 23153 shall apply to that limited liability company as if
17 the limited liability company were properly treated as a corporation
18 for that limited purpose only, and paragraph (2) of subdivision (f)
19 of Section 23153 shall not apply. Nothing in this subdivision
20 entitles a limited liability company to receive a reimbursement for
21 any annual taxes or fees already paid.

22 (f) (1) Notwithstanding any provision of this section to the
23 contrary, a limited liability company that is a small business solely
24 owned by a deployed member of the United States Armed Forces
25 shall not be subject to the tax imposed under this section for any
26 taxable year the owner is deployed and the limited liability
27 company operates at a loss or ceases operation.

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

31 (3) For the purposes of this subdivision, all of the following
32 definitions apply:

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

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

38 (ii) A permanent change of station.

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

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

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

6 *SEC. 3. Section 17948 of the Revenue and Taxation Code is*
 7 *amended to read:*

8 17948. (a) (1) For each taxable year beginning on or after
 9 January 1, 1997, every limited liability partnership doing business
 10 in this ~~state~~ *(as state, as defined in Section ~~23101~~ 23101,* and
 11 required to file a return under Section 18633 shall pay annually to
 12 the Franchise Tax Board a tax for the privilege of doing business
 13 in this state in an amount equal to the applicable amount specified
 14 in paragraph (1) of subdivision (d) of Section 23153 for the taxable
 15 year.

16 (2) *Notwithstanding paragraph (1), for each taxable year*
 17 *beginning on or after January 1, 2015, every limited liability*
 18 *partnership doing business in this state, as defined in Section*
 19 *23101, and required to file a return under Section 18633 shall not*
 20 *pay to the Franchise Tax Board a tax for the privilege of doing*
 21 *business in this state in an amount equal to the applicable amount*
 22 *specified in paragraph (1) of subdivision (d) of Section 23153 for*
 23 *its first and second taxable year.*

24 (b) In addition to any limited liability partnership that is doing
 25 business in this state and therefore is subject to the tax imposed
 26 by subdivision (a), for each taxable year beginning on or after
 27 January 1, 1997, every registered limited liability partnership that
 28 has registered with the Secretary of State pursuant to Section 16953
 29 of the Corporations Code and every foreign limited liability
 30 partnership that has registered with the Secretary of State pursuant
 31 to Section 16959 of the Corporations Code shall pay annually the
 32 tax prescribed in subdivision (a). The tax shall be paid for each
 33 taxable year, or part thereof, until any of the following occurs:

34 (1) A notice of cessation is filed with the Secretary of State
 35 pursuant to subdivision (b) of Section 16954 or 16960 of the
 36 Corporations Code.

37 (2) A foreign limited liability partnership withdraws its
 38 registration pursuant to subdivision (a) of Section 16960 of the
 39 Corporations Code.

1 (3) The registered limited liability partnership or foreign limited
2 liability partnership has been dissolved and finally wound up.

3 (c) The tax assessed under this section shall be due and payable
4 on the date the return is required to be filed under Section 18633.

5 (d) If a taxpayer files a return with the Franchise Tax Board that
6 is designated as its final return, the Franchise Tax Board shall
7 notify the taxpayer that the annual tax shall continue to be due
8 annually until a certificate of cancellation is filed with the Secretary
9 of State pursuant to Section 16954 or 16960 of the Corporations
10 Code.

11 **SECTION 4.**

12 *SEC. 4.* Section 23153 of the Revenue and Taxation Code is
13 amended to read:

14 23153. (a) Every corporation described in subdivision (b) shall
15 be subject to the minimum franchise tax specified in subdivision
16 (d) from the earlier of the date of incorporation, qualification, or
17 commencing to do business within this state, until the effective
18 date of dissolution or withdrawal as provided in Section 23331 or,
19 if later, the date the corporation ceases to do business within the
20 limits of this state.

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

23 (1) Every corporation that is incorporated under the laws of this
24 state.

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

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

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

31 (1) Credit unions.

32 (2) Nonprofit cooperative associations organized pursuant to
33 Chapter 1 (commencing with Section 54001) of Division 20 of the
34 Food and Agricultural Code that have been issued the certificate
35 of the board of supervisors prepared pursuant to Section 54042 of
36 the Food and Agricultural Code. The association shall be exempt
37 from the minimum franchise tax for five consecutive taxable years,
38 commencing with the first taxable year for which the certificate
39 is issued pursuant to subdivision (b) of Section 54042 of the Food

1 and Agricultural Code. This paragraph only applies to nonprofit
2 cooperative associations organized on or after January 1, 1994.

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

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

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

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

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

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

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

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

38 (3) “Qualified new corporation” means a corporation that is
39 incorporated under the laws of this state or has qualified to transact
40 intrastate business in this state, that begins business operations at

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

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

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

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

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

1 defined in Section 856 of the Internal Revenue Code, real estate
2 mortgage investment conduits, as defined in Section 860D of the
3 Internal Revenue Code, and qualified subchapter S subsidiaries,
4 as defined in Section 1361(b)(3) of the Internal Revenue Code, to
5 the extent applicable.

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

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

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

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

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

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

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

1 (3) For the purposes of this subdivision, all of the following
2 definitions apply:

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

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

8 (ii) A permanent change of station.

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

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

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

16 ~~SEC. 2.~~

17 *SEC. 5.* This act provides for a tax levy within the meaning of
18 Article IV of the Constitution and shall go into immediate effect.

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