

**ASSEMBLY BILL**

**No. 1769**

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**Introduced by Assembly Member Dababneh**

February 14, 2014

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An act to amend Section 17942 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1769, as introduced, Dababneh. Limited liability company: fees: exception.

The Corporation Tax Law imposes a tax according to or measured by net income, computed at a specified rate upon the basis of the net income for that taxable year, on every corporation, except as provided. Existing law, generally, also 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 that 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.

This bill would eliminate that annual fee, as provided, for a new limited liability company, as defined, that is a small business, as defined for its first 2 taxable years.

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 17942 of the Revenue and Taxation Code  
2 is amended to read:

3 17942. (a) In addition to the tax imposed under Section 17941,  
4 every limited liability company subject to tax under Section 17941  
5 shall pay annually to this state a fee equal to:

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

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

14 (3) Six thousand dollars (\$6,000), if the total income from all  
15 sources derived from or attributable to this state for the taxable  
16 year is one million dollars (\$1,000,000) or more, but less than five  
17 million dollars (\$5,000,000).

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

22 (b) (1) (A) For purposes of this section, “total income from all  
23 sources derived from or attributable to this state” means gross  
24 income, as defined in Section 24271, plus the cost of goods sold  
25 that are paid or incurred in connection with the trade or business  
26 of the taxpayer. However, “total income from all sources derived  
27 from or attributable to this state” shall not include allocation or  
28 attribution of income or gain or distributions made to a limited  
29 liability company in its capacity as a member of, or holder of an  
30 economic interest in, another limited liability company if the  
31 allocation or attribution of income or gain or distributions are  
32 directly or indirectly attributable to income that is subject to the  
33 payment of the fee described in this section.

34 (B) For purposes of this section, “total income from all sources  
35 derived from or attributable to this state” shall be determined using  
36 the rules for assigning sales under Sections 25135 and 25136 and  
37 the regulations thereunder, as modified by regulations under

1 Section 25137, other than those provisions that exclude receipts  
2 from the sales factor.

3 (2) In the event a taxpayer is a commonly controlled limited  
4 liability company, the total income from all sources derived from  
5 or attributable to this state, taking into account any election under  
6 Section 25110, may be determined by the Franchise Tax Board to  
7 be the total income of all the commonly controlled limited liability  
8 company members if it determines that multiple limited liability  
9 companies were formed for the primary purpose of reducing fees  
10 payable under this section. A determination by the Franchise Tax  
11 Board under this subdivision may only be made with respect to  
12 one limited liability company in a commonly controlled group.  
13 However, each commonly controlled limited liability company  
14 shall be jointly and severally liable for the fee. For purposes of  
15 this section, commonly controlled limited liability companies shall  
16 include the taxpayer and any other partnership or limited liability  
17 company doing business (as defined in Section 23101) in this state  
18 and required to file a return under Section 18633 or 18633.5, in  
19 which the same persons own, directly or indirectly, more than 50  
20 percent of the capital interests or profits interests.

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

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

29 (2) A penalty of 10 percent of the amount of any underpayment  
30 shall be added to the fee. The underpayment amount shall be equal  
31 to the difference between the total amount of the fee imposed by  
32 this section for the taxable year less the amount paid under  
33 paragraph (1) by the date specified in that paragraph. A penalty  
34 shall not be imposed with respect to any fee estimated and paid  
35 under this section if the amount paid by the date prescribed in this  
36 subdivision is equal to or greater than the total amount of the fee  
37 of the limited liability company for the preceding taxable year.

38 (e) (1) *Notwithstanding subdivision (a), for taxable years*  
39 *beginning on or after January 1, 2015, a "new limited liability*  
40 *company" that is a small business shall not be subject to the annual*

1 *fee imposed under subdivision (a) for its first two taxable years,*  
2 *provided that it is a small business in each taxable year.*

3 *(2) For purposes of this subdivision:*

4 *(A) "Gross receipts, less returns and allowances reportable to*  
5 *this state," means the sum of the gross receipts from the production*  
6 *of business income, as defined in subdivision (a) of Section 25120,*  
7 *and the gross receipts from the production of nonbusiness income,*  
8 *as defined in subdivision (d) of Section 25120.*

9 *(B) "New limited liability company" means a limited liability*  
10 *company that is organized under the laws of this state or has*  
11 *qualified to transact intrastate business in this state that begins*  
12 *business operations at or after the time of its organization. "New*  
13 *limited liability company" does not include any limited liability*  
14 *company that began business operations as a sole proprietorship,*  
15 *a partnership, a corporation, or any other form of business entity*  
16 *prior to its organization. This subdivision shall not apply to any*  
17 *limited liability company that reorganizes solely for the purpose*  
18 *of reducing its annual fee.*

19 *(C) "Small business" means a limited liability company that*  
20 *reasonably estimates that it will have gross receipts, less returns*  
21 *and allowances, reportable to this state for the taxable year of five*  
22 *thousand dollars (\$5,000) or less.*