

AMENDED IN ASSEMBLY APRIL 21, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2086

Introduced by Assembly Member Ian Calderon
(Principal coauthor: Assembly Member Dababneh)

February 20, 2014

An act to ~~amend Section 12182 of the Government Code, amend Sections 17941, 17942, and 19025 of the Revenue and Taxation Code, relating to state government.~~ *taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2086, as amended, Ian Calderon. ~~Secretary of State: filing fees. Business entities: annual tax: minimum franchise tax: fees.~~

Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited liability company doing business in this state. In addition, existing law requires 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, to pay an annual tax in an amount equal to the minimum franchise tax. Existing law requires the tax assessed under these provisions to be due and payable on or before the 15th day of the 4th month of the taxable year. 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 attributable to this state. Existing law makes this fee due and payable on the date the return of the limited liability company is required to be filed.

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 requires corporations subject to the minimum franchise tax to pay annually to the state a minimum franchise tax of \$800 and provides that the estimated tax shall not be less than the minimum tax. If the amount of estimated tax does not exceed the minimum franchise tax, existing law requires the entire amount of the estimated tax to be due and payable on or before the 15th day of the 4th month of the taxable year.

This bill would also provide for that annual tax, fee, and minimum franchise tax to be due and payable in 2 or 3 equal installments, on or before specified dates.

~~Existing law requires the Secretary of State to charge and collect fees for the filing of documents, issuing of certificates, and other services performed by the Secretary of State, as provided, and, as of July 1, 2014, requires copying and special handling fees to be paid into the Secretary of State’s Business Fees Fund.~~

~~This bill would authorize filing fees to be paid to the Secretary of State’s office up to one year after the forms are filed with the Secretary of State. The bill would also make technical, nonsubstantive changes.~~

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 subdivision (d) of Section
- 8 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

1 the tax prescribed in subdivision (a) if articles of organization have
2 been accepted, or a certificate of registration has been issued, by
3 the office of the Secretary of State. The tax shall be paid for each
4 taxable year, or part thereof, until a certificate of cancellation of
5 registration or of articles of organization is filed on behalf of the
6 limited liability company with the office of the Secretary of State.

7 (2) If a taxpayer files a return with the Franchise Tax Board that
8 is designated as its final return, the Franchise Tax Board shall
9 notify the taxpayer that the annual tax shall continue to be due
10 annually until a certificate of dissolution is filed with the Secretary
11 of State pursuant to Section 17707.08 of the Corporations Code
12 or a certificate of cancellation is filed with the Secretary of State
13 pursuant to Section 17708.06 of the Corporations Code.

14 (c) The tax assessed under this section shall be due and payable
15 ~~on~~ according to one of the following:

16 (1) On or before the 15th day of the fourth month of the taxable
17 year.

18 (2) In three equal installments on or before the 15th day of the
19 4th, 8th, and 12th months of the taxable year.

20 (3) In two equal installments, with the first installment on or
21 before the 15th day of the fourth month of the taxable year and
22 the second installment on or before 12 months of that date.

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

30 (e) Notwithstanding anything in this section to the contrary, if
31 the office of the Secretary of State files a certificate of cancellation
32 pursuant to Section 17707.02 of the Corporations Code for any
33 limited liability company, then paragraph (1) of subdivision (f) of
34 Section 23153 shall apply to that limited liability company as if
35 the limited liability company were properly treated as a corporation
36 for that limited purpose only, and paragraph (2) of subdivision (f)
37 of Section 23153 shall not apply. Nothing in this subdivision
38 entitles a limited liability company to receive a reimbursement for
39 any annual taxes or fees already paid.

1 (f) (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 (2) In the event a taxpayer is a commonly controlled limited
26 liability company, the total income from all sources derived from
27 or attributable to this state, taking into account any election under
28 Section 25110, may be determined by the Franchise Tax Board to
29 be the total income of all the commonly controlled limited liability
30 company members if it determines that multiple limited liability
31 companies were formed for the primary purpose of reducing fees
32 payable under this section. A determination by the Franchise Tax
33 Board under this subdivision may only be made with respect to
34 one limited liability company in a commonly controlled group.
35 However, each commonly controlled limited liability company
36 shall be jointly and severally liable for the fee. For purposes of
37 this section, commonly controlled limited liability companies shall
38 include the taxpayer and any other partnership or limited liability
39 company doing business (as defined in Section 23101) in this state
40 and required to file a return under Section 18633 or 18633.5, in

1 which the same persons own, directly or indirectly, more than 50
 2 percent of the capital interests or profits interests.

3 (c) The fee assessed under this section *shall be collected and*
 4 *refunded in the same manner as the taxes imposed by this part,*
 5 *shall be subject to interest and applicable penalties, and shall be*
 6 *due and payable*~~on~~ *according to one of the following:*

7 (1) *On the date the return of the limited liability company is*
 8 *required to be filed under Section 18633.5, shall be collected and*
 9 *refunded in the same manner as the taxes imposed by this part,*
 10 *and shall be subject to interest and applicable penalties 18633.5.*

11 (2) *In three equal installments on or before the 15th day of the*
 12 *4th, 8th, and 12th months from the date the return of the limited*
 13 *liability company is required to be filed under Section 18633.5.*

14 (3) *In two equal installments, with the first installment on or*
 15 *before the 15th day of the fourth month from the date the return*
 16 *of the limited liability company is required to be filed under Section*
 17 *18633.5 and the second installment on or before 12 months of that*
 18 *date.*

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

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

31 *SEC. 3. Section 19025 of the Revenue and Taxation Code is*
 32 *amended to read:*

33 19025. (a) If the amount of estimated tax does not exceed the
 34 minimum tax specified by Section 23153, the entire amount of the
 35 estimated tax shall be due and payable~~on~~ *according to one of the*
 36 *following:*

37 (1) *On or before the 15th day of the fourth month of the taxable*
 38 *year.*

39 (2) *In three equal installments on or before the 15th day of the*
 40 *4th, 8th, and 12th months of the taxable year.*

1 (3) *In two equal installments, with the first installment on or*
2 *before the 15th day of the fourth month of the taxable year and*
3 *the second installment on or before 12 months of that date.*

4 (b) Except as provided in subdivision (c), if the amount of
5 estimated tax exceeds the minimum tax specified by Section 23153,
6 the amount payable shall be paid in installments as follows:

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		The following percentages of the estimated tax shall be paid on the 15th day of the—			
If the requirements of this subdivision are first met—		4th month	6th month	9th month	12th month
7	Before the 1st day of the 4th month of the taxable year	30 (but not less than the minimum tax provided in Section 23153 and any tax under Section 23800.5)	40	0	30
23	After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year	—	60	0	40
28	After the last day of the 5th month and before the 1st day of the 9th month of the taxable year	—	—	70	30
33	After the last day of the 8th month and before the 1st day of the 12th month of the taxable year	—	—	—	100

35 (c) If a wholly owned subsidiary is first subject to tax under
 36 Section 23800.5 after the last day of the third month of the taxable
 37 year of owner, the amount of the next installment of estimated tax
 38 under subdivision (b) after the wholly owned subsidiary is subject
 39 to tax under Section 23800.5 shall not be less than the amount of
 40 the tax of the wholly owned subsidiary under Section 23800.5 and

1 an amount equal to that amount shall be due and payable on the
2 date the installment is required to be paid. For purposes of
3 determining which installment is the next installment of estimated
4 tax under subdivision (b), subdivision (b) shall be modified by
5 substituting “includes the tax of a wholly owned subsidiary under
6 Section 23800.5” for “exceeds the minimum tax specified by
7 Section 23153.”

8 (d) The amendments made to this section by Section 1 of
9 Chapter 1 of the First Extraordinary Session of the Statutes of 2008
10 shall apply to installments due for each taxable year beginning on
11 or after January 1, 2009, and before January 1, 2010.

12 (e) The amendments made to this section by the act adding this
13 subdivision shall apply to installments due for each taxable year
14 beginning on or after January 1, 2010.

15 ~~SECTION 1. Section 12182 of the Government Code, as added~~
16 ~~by Section 4 of Chapter 364 of the Statutes of 2013, is amended~~
17 ~~to read:~~

18 ~~12182. (a) The Secretary of State shall charge and collect fees~~
19 ~~as provided in this article. Filing fees, as provided for in this article,~~
20 ~~may be paid to the Secretary of State’s office up to one year after~~
21 ~~the forms are filed with the Secretary of State. The Secretary of~~
22 ~~State may also by regulation establish fees to be charged and~~
23 ~~collected for copying and special handling in connection with filing~~
24 ~~documents, issuing of certificates, and other services performed~~
25 ~~by the office.~~

26 ~~(b) Except as provided in subdivision (c), the fees shall~~
27 ~~approximate the estimated cost of copying and special handling.~~

28 ~~(c) Fees charged for preclearance of documents and expedited~~
29 ~~filings may be in different amounts, that shall not exceed one~~
30 ~~thousand dollars (\$1,000). Those fees may be charged only if the~~
31 ~~special handling does not cause disruption or delay in the process~~
32 ~~of normal handling of documents.~~

33 ~~(d) Copying and special handling fees shall be paid into the~~
34 ~~Secretary of State’s Business Fees Fund.~~

35 ~~(e) The preclearance or expedited filing of documents by the~~
36 ~~Secretary of State or his or her employees pursuant to this section~~
37 ~~shall be considered discretionary pursuant to Section 820.2.~~

- 1 _____
- 2 **CORRECTIONS:**
- 3 **Text—Pages 3, 6, 7, and 8.**
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