

AMENDED IN ASSEMBLY MAY 7, 2014  
AMENDED IN ASSEMBLY APRIL 21, 2014  
AMENDED IN ASSEMBLY MARCH 28, 2014  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2086**

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

February 20, 2014

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An act to amend Sections 17941, ~~17942~~, and 19025 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2086, as amended, Ian Calderon. 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.

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
- 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.
- 19 (2) If a taxpayer files a return with the Franchise Tax Board that
- 20 is designated as its final return, the Franchise Tax Board shall

1 notify the taxpayer that the annual tax shall continue to be due  
2 annually until a certificate of dissolution is filed with the Secretary  
3 of State pursuant to Section 17707.08 of the Corporations Code  
4 or a certificate of cancellation is filed with the Secretary of State  
5 pursuant to Section 17708.06 of the Corporations Code.

6 (c) (1) The tax assessed under this section shall be due and  
7 payable according to one of the following:

8 ~~(1)~~

9 (A) On or before the 15th day of the fourth month of the taxable  
10 year.

11 ~~(2)~~

12 (B) In three equal installments on or before the 15th day of the  
13 4th, 8th, and 12th months of the taxable year.

14 ~~(3)~~

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

18 (2) *The Franchise Tax Board shall develop procedures for*  
19 *taxpayers to notify the Franchise Tax Board of the payment option*  
20 *used under this subdivision.*

21 (3) *Penalties and interest shall not be imposed on a taxpayer*  
22 *for electing to use an alternative payment option under this*  
23 *subdivision.*

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

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

9 (2) In three equal installments on or before the 15th day of the  
10 4th, 8th, and 12th months from the date the return of the limited  
11 liability company is required to be filed under Section 18633.5.

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

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

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

29 ~~SEC. 3.~~

30 *SEC. 2.* Section 19025 of the Revenue and Taxation Code is  
31 amended to read:

32 19025. (a) (1) If the amount of estimated tax does not exceed  
33 the minimum tax specified by Section 23153, the entire amount  
34 of the estimated tax shall be due and payable according to one of  
35 the following:

36 (1)

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

39 (2)

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

3 ~~(3)~~

4 (C) In two equal installments, with the first installment on or  
5 before the 15th day of the fourth month of the taxable year and  
6 the second installment on or before 12 months of that date.

7 (2) *The Franchise Tax Board shall develop procedures for*  
8 *taxpayers to notify the Franchise Tax Board of the payment option*  
9 *used under this subdivision.*

10 (3) *Penalties and interest shall not be imposed on a taxpayer*  
11 *for electing to use an alternative payment option under this*  
12 *subdivision.*

13 (b) Except as provided in subdivision (c), if the amount of  
14 estimated tax exceeds the minimum tax specified by Section 23153,  
15 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
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
After the last day of the 3rd month and before the 1st day of the 6th month of the taxable year .....	—	60	0	40
After the last day of the 5th month and before the 1st day of the 9th month of the taxable year .....	—	—	70	30
After the last day of the 8th month and before the 1st day of the	—	—	—	100

1 12th month of the  
2 taxable year .....

3  
4 (c) If a wholly owned subsidiary is first subject to tax under  
5 Section 23800.5 after the last day of the third month of the taxable  
6 year of owner, the amount of the next installment of estimated tax  
7 under subdivision (b) after the wholly owned subsidiary is subject  
8 to tax under Section 23800.5 shall not be less than the amount of  
9 the tax of the wholly owned subsidiary under Section 23800.5 and  
10 an amount equal to that amount shall be due and payable on the  
11 date the installment is required to be paid. For purposes of  
12 determining which installment is the next installment of estimated  
13 tax under subdivision (b), subdivision (b) shall be modified by  
14 substituting “includes the tax of a wholly owned subsidiary under  
15 Section 23800.5” for “exceeds the minimum tax specified by  
16 Section 23153.”

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

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