

AMENDED IN ASSEMBLY MARCH 26, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2244

Introduced by Assembly Member Chau

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2244, as amended, Chau. Corporation taxes: minimum franchise tax: dormant and inactive business entities.

The Corporation Tax Law imposes taxes *on, or* 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~~ *company*, limited partnership, and limited liability partnership registered, qualified to transact intrastate business, or doing business in this state, as specified.

This bill would reduce the minimum franchise tax to \$200 for a dormant business entity and to \$50 for an inactive business entity. This bill would define “dormant business entity” as a business entity that is organized under state law or has qualified to transact intrastate business in this state and that certifies under penalty of perjury on a tax return that it was not doing business in this state. This bill defines “inactive business entity” as a business entity, other than a limited partnership or a limited liability partnership, that is organized under state law or has qualified to transact intrastate business and that reasonably believes that it will not be doing business in this state for the taxable year.

By expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 is issued pursuant to subdivision (b) of Section 54042 of the Food
2 and Agricultural Code. This paragraph only applies to nonprofit
3 cooperative associations organized on or after January 1, 1994.

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

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

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

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

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

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

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

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

39 (3) “Qualified new corporation” means a corporation that is
40 incorporated under the laws of this state or has qualified to transact

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

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

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

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

36 (2) This subdivision shall not apply to limited partnerships, as
37 defined in Section 17935, limited liability companies, as defined
38 in Section 17941, limited liability partnerships, as described in
39 Section 17948, charitable corporations, as described in Section
40 23703, regulated investment companies, as defined in Section 851

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

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

10 (g) Notwithstanding subdivision (a), a domestic corporation, as
11 defined in Section 167 of the Corporations Code, that files a
12 certificate of dissolution in the office of the Secretary of State
13 pursuant to subdivision (b) of Section 1905 of the Corporations
14 Code, prior to its amendment by the act amending this subdivision,
15 and that does not thereafter do business shall not be subject to the
16 minimum franchise tax for taxable years beginning on or after the
17 date of that filing.

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

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

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

29 (3) For the purposes of this subdivision, all of the following
30 definitions apply:

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

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

36 (ii) A permanent change of station.

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

1 (C) “Small business” means a corporation with total income
2 from all sources derived from, or attributable, to the state of two
3 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 (j) (1) (A) Notwithstanding subdivision (a), Section 17935,
7 Section 17941, or Section 17948, for taxable years beginning on
8 or after January 1, 2015, every dormant business entity shall pay
9 annually to the state a tax of two hundred dollars (\$200) for a
10 taxable year, and every inactive business entity shall pay annually
11 to the state a tax of fifty dollars (\$50) for a taxable year.

12 (B) For any taxable year beginning on or after January 1, 2015,
13 if an inactive business entity was doing business in this state, within
14 the meaning of subdivision (a) of Section 23101, in a taxable year,
15 an additional tax in the amount equal to seven hundred fifty dollars
16 (\$750) for the taxable year shall be due and payable by the business
17 entity on the due date of its return, without regard to extension,
18 for that year.

19 (C) *This subdivision shall not apply to a business entity that is*
20 *a majority or wholly-owned subsidiary or an affiliated business*
21 *entity of a business entity subject to this part or Part 10*
22 *(commencing with Section 17001).*

23 (2) For the purposes of this subdivision:

24 (A) “Business entity” means a corporation, a limited partnership,
25 as defined in Section 17935, a limited liability company, as defined
26 in Section 17941, a limited liability partnership, as defined in
27 Section 17948, a charitable corporation, as described in Section
28 23703, a regulated investment company, as defined in Section 851
29 of the Internal Revenue Code, a real estate investment trust, as
30 defined in Section 856 of the Internal Revenue Code, a real estate
31 mortgage investment conduit, as defined in Section 860D of the
32 Internal Revenue Code, or a qualified Subchapter S subsidiary, as
33 defined in Section 1361(b)(3)(B) of the Internal Revenue Code.

34 (B) “Dormant business entity” means a business entity that is
35 organized under the laws of this state or has qualified to transact
36 intrastate business in this state, and that certifies, under penalty of
37 perjury, on its tax return, that it was not doing business, within the
38 meaning of subdivision (a) of Section 23101, in this state for the
39 taxable year. A business entity may be a dormant business entity
40 for no more than five consecutive taxable years.

1 (C) “Inactive business entity” means a business entity, other
2 than a limited partnership or a limited liability partnership, that is
3 organized under the laws of this state or has qualified to transact
4 intrastate business in this state, and that reasonably believes that
5 it will not be doing business, within the meaning of subdivision
6 (a) of Section 23101, in this state for the taxable year. A business
7 entity may be an inactive business entity for no more than five
8 consecutive taxable years.

9 SEC. 2. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 SEC. 3. This act provides for a tax levy within the meaning of
19 Article IV of the Constitution and shall go into immediate effect.