

AMENDED IN ASSEMBLY APRIL 24, 2014

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: *annual 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~~ *an annual* 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.

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~~ *with its return for the taxable year* 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~~ *that* 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

1 the Food and Agricultural Code. The association shall be exempt
2 from the minimum franchise tax for five consecutive taxable years,
3 commencing with the first taxable year for which the certificate
4 is issued pursuant to subdivision (b) of Section 54042 of the Food
5 and Agricultural Code. This paragraph only applies to nonprofit
6 cooperative associations organized on or after January 1, 1994.

7 (d) (1) Except as provided in paragraph (2), paragraph (1) of
8 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
9 of Section 23181, and paragraph (1) of subdivision (c) of Section
10 23183, corporations subject to the minimum franchise tax shall
11 pay annually to the state a minimum franchise tax of eight hundred
12 dollars (\$800).

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

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

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

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

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

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

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

1 and the gross receipts from the production of nonbusiness income,
2 as defined in subdivision (d) of Section 25120.

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

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

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

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

1 (2) This subdivision shall not apply to limited partnerships, as
2 defined in Section 17935, limited liability companies, as defined
3 in Section 17941, limited liability partnerships, as described in
4 Section 17948, charitable corporations, as described in Section
5 23703, regulated investment companies, as defined in Section 851
6 of the Internal Revenue Code, real estate investment trusts, as
7 defined in Section 856 of the Internal Revenue Code, real estate
8 mortgage investment conduits, as defined in Section 860D of the
9 Internal Revenue Code, and qualified Subchapter S subsidiaries,
10 as defined in Section 1361(b)(3)(B) of the Internal Revenue Code,
11 to the extent applicable.

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

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

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

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

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

34 (3) For the purposes of this subdivision, all of the following
35 definitions apply:

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

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

1 (ii) A permanent change of station.

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

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

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

9 (j) (1) (A) Notwithstanding subdivision (a), Section 17935,
10 Section 17941, or Section 17948, for taxable years beginning on
11 or after January 1, 2015, every dormant business entity shall pay
12 annually to the state a tax of two hundred dollars (\$200) for a
13 taxable year, and every inactive business entity shall pay annually
14 to the state a tax of fifty dollars (\$50) for a taxable year.

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

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

26 (D) *A business entity shall not be a dormant business entity or*
27 *an inactive business entity, or both, for more than a total of five*
28 *taxable years.*

29 (2) For the purposes of this subdivision:

30 (A) “Business entity” means a corporation, a limited partnership,
31 as defined in Section 17935, a limited liability company, as defined
32 in Section 17941, a limited liability partnership, as defined in
33 Section 17948, a charitable corporation, as described in Section
34 23703, a regulated investment company, as defined in Section 851
35 of the Internal Revenue Code, a real estate investment trust, as
36 defined in Section 856 of the Internal Revenue Code, a real estate
37 mortgage investment conduit, as defined in Section 860D of the
38 Internal Revenue Code, or a qualified Subchapter S subsidiary, as
39 defined in Section 1361(b)(3)(B) of the Internal Revenue Code.

1 (B) “Dormant business entity” means a business entity that is
2 organized under the laws of this state or has qualified to transact
3 intrastate business in this state, and that certifies, under penalty of
4 perjury, ~~on its tax return~~ *with its return for the taxable year*, that
5 it was not doing business, within the meaning of ~~subdivision (a)~~
6 of Section 23101, in this state for ~~the~~ *that* taxable year. A business
7 entity may be a dormant business entity for no more than *one*
8 *period of no more than five consecutive taxable years.*

9 (C) “Inactive business entity” means a business entity, other
10 than a limited partnership or a limited liability partnership, that is
11 organized under the laws of this state or has qualified to transact
12 intrastate business in this state, and that reasonably believes that
13 it will not be doing business, within the meaning of ~~subdivision~~
14 ~~(a)~~ of Section 23101, in this state for ~~the~~ *that* taxable year. A
15 business entity may be an inactive business entity for no more than
16 *one period of no more than five consecutive taxable years.*

17 SEC. 2. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.

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