

**ASSEMBLY BILL**

**No. 2466**

---

---

**Introduced by Assembly Member Nestande**

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 2466, as introduced, Nestande. Minimum annual tax: exemptions.

Existing law generally imposes an annual 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 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 provides an exemption from that tax to a corporation for its first taxable year.

This bill would, for taxable years beginning on or after January 1, 2015, and before January 1, 2018, reduce that minimum tax, as provided, for a corporation, limited partnership, limited liability partnership, and limited liability company that is a new veteran-owned small business, as defined, and would eliminate the tax if the business operates at a loss or ceases operation.

This bill would take effect immediately as a tax levy.

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

31 (d) (1) Except as provided in paragraph (2), paragraph (1) of  
32 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)  
33 of Section 23181, and paragraph (1) of subdivision (c) of Section  
34 23183, corporations subject to the minimum franchise tax shall  
35 pay annually to the state a minimum franchise tax of eight hundred  
36 dollars (\$800).

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

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

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

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

12 (e) Notwithstanding subdivision (a), for taxable years beginning  
13 on or after January 1, 1999, and before January 1, 2000, every  
14 “qualified new corporation” shall pay annually to the state a  
15 minimum franchise tax of five hundred dollars (\$500) for the  
16 second taxable year. This subdivision shall apply to any corporation  
17 that is a qualified new corporation and is incorporated on or after  
18 January 1, 1999, and before January 1, 2000.

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

23 (2) “Gross receipts, less returns and allowances reportable to  
24 this state,” means the sum of the gross receipts from the production  
25 of business income, as defined in subdivision (a) of Section 25120,  
26 and the gross receipts from the production of nonbusiness income,  
27 as defined in subdivision (d) of Section 25120.

28 (3) “Qualified new corporation” means a corporation that is  
29 incorporated under the laws of this state or has qualified to transact  
30 intrastate business in this state, that begins business operations at  
31 or after the time of its incorporation and that reasonably estimates  
32 that it will have gross receipts, less returns and allowances,  
33 reportable to this state for the taxable year of one million dollars  
34 (\$1,000,000) or less. “Qualified new corporation” does not include  
35 any corporation that began business operations as a sole  
36 proprietorship, a partnership, or any other form of business entity  
37 prior to its incorporation. This subdivision shall not apply to any  
38 corporation that reorganizes solely for the purpose of reducing its  
39 minimum franchise tax.

1 (4) 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 ~~organizations~~ *corporations*, as described  
5 in Section 23703, regulated investment companies, as defined in  
6 Section 851 of the Internal Revenue Code, real estate investment  
7 trusts, as defined in Section 856 of the Internal Revenue Code,  
8 real estate mortgage investment conduits, as defined in Section  
9 860D of the Internal Revenue Code, qualified Subchapter S  
10 subsidiaries, as defined in Section 1361(b)(3) of the Internal  
11 Revenue Code, or to the formation of any subsidiary corporation,  
12 to the extent applicable.

13 (5) For any taxable year beginning on or after January 1, 1999,  
14 and before January 1, 2000, if a corporation has qualified to pay  
15 five hundred dollars (\$500) for the second taxable year under this  
16 subdivision, but in its second taxable year, the corporation's gross  
17 receipts, as determined under paragraphs (1) and (2), exceed one  
18 million dollars (\$1,000,000), an additional tax in the amount equal  
19 to three hundred dollars (\$300) for the second taxable year shall  
20 be due and payable by the corporation on the due date of its return,  
21 without regard to extension, for that year.

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

26 (2) This subdivision shall not apply to limited partnerships, as  
27 defined in Section 17935, limited liability companies, as defined  
28 in Section 17941, limited liability partnerships, as described in  
29 Section 17948, charitable ~~organizations~~ *corporations*, as described  
30 in Section 23703, regulated investment companies, as defined in  
31 Section 851 of the Internal Revenue Code, real estate investment  
32 trusts, as defined in Section 856 of the Internal Revenue Code,  
33 real estate mortgage investment conduits, as defined in Section  
34 860D of the Internal Revenue Code, and qualified Subchapter S  
35 subsidiaries, as defined in Section 1361(b)(3) of the Internal  
36 Revenue Code, to the extent applicable.

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

1 (g) Notwithstanding subdivision (a), a domestic corporation, as  
2 defined in Section 167 of the Corporations Code, that files a  
3 certificate of dissolution in the office of the Secretary of State  
4 pursuant to subdivision (b) of Section 1905 of the Corporations  
5 Code, prior to its amendment by the act amending this subdivision,  
6 and that does not thereafter do business shall not be subject to the  
7 minimum franchise tax for taxable years beginning on or after the  
8 date of that filing.

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

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

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

20 (3) For the purposes of this subdivision, all of the following  
21 definitions apply:

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

26 (i) Temporary duty for the sole purpose of training or processing.  
27 (ii) A permanent change of station.

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

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

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

35 (j) (1) *Notwithstanding subdivision (a) and subject to*  
36 *subdivision (f), for taxable years beginning on or after January 1,*  
37 *2015, and before January 1, 2018, a corporation that is a new*  
38 *veteran-owned small business shall pay annually to the state a*  
39 *minimum franchise tax of ninety-nine dollars (\$99) for those*  
40 *taxable years, provided that it reasonably estimates that it will*

1 have gross receipts, less returns and allowances, reportable to  
2 this state of one million dollars (\$1,000,000) or less in that taxable  
3 year.

4 (2) Notwithstanding paragraph (1), for taxable years beginning  
5 on or after January 1, 2015, and before January 1, 2018, a  
6 corporation that is a new veteran-owned small business shall not  
7 be subject to the minimum franchise tax for those taxable years if  
8 the business operates at a loss or ceases operation.

9 (3) For purposes of this subdivision:

10 (A) (i) "Gross receipts, less returns and allowances reportable  
11 to this state," means the sum of the gross receipts from the  
12 production of business income, as defined in subdivision (a) of  
13 Section 25120, and the gross receipts from the production of  
14 nonbusiness income, as defined in subdivision (d) of Section 25120.

15 (ii) The determination of the gross receipts of a corporation,  
16 for purposes of this subdivision, shall be made by including the  
17 gross receipts of each member of the commonly controlled group,  
18 as defined in Section 25105, of which the corporation is a member.

19 (B) "New veteran-owned small business" means a corporation  
20 that is incorporated under the laws of this state or has qualified  
21 to transact intrastate business in this state on or after January 1,  
22 2015, and that begins business operations at or after the time of  
23 its incorporation. "New veteran-owned small business" does not  
24 include any corporation that began business operations as a sole  
25 proprietorship, a partnership, or any other form of business entity  
26 prior to its incorporation. This subdivision shall not apply to any  
27 corporation that reorganizes solely for the purpose of reducing  
28 its minimum franchise tax.

29 (C) "Operates at a loss" means negative income as defined in  
30 Section 24341.

31 (D) "Veteran" means a person honorably discharged from the  
32 Armed Forces of the United States.

33 SEC. 2. This act provides for a tax levy within the meaning  
34 of Article IV of the Constitution and shall go into immediate effect.