

AMENDED IN ASSEMBLY MARCH 27, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2466

Introduced by Assembly Member Nestande
(Coauthors: Assembly Members Harkey, Jones, Patterson, and Wilk)
(Coauthors: Senators Berryhill, Gaines, Huff, and Vidak)

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 amended, Nestande. Minimum annual tax: ~~exemptions.~~
exemption: veterans small businesses.

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

1 pay annually to the state a minimum franchise tax of eight hundred
2 dollars (\$800).

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

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

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

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

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

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

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

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

1 prior to its incorporation. This subdivision shall not apply to any
2 corporation that reorganizes solely for the purpose of reducing its
3 minimum franchise tax.

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

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

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

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

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

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

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

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

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

23 (3) For the purposes of this subdivision, all of the following
24 definitions apply:

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

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

30 (ii) A permanent change of station.

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

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

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

38 (j) (1) Notwithstanding subdivision (a) and subject to
39 subdivision (f), for taxable years beginning on or after January 1,
40 2015, and before January 1, 2018, a corporation that is a new

1 veteran-owned small business shall pay annually to the state a
2 minimum franchise tax of ninety-nine dollars (\$99) for those
3 taxable years, ~~provided that it reasonably estimates that it will have~~
4 ~~gross receipts, less returns and allowances, reportable to this state~~
5 ~~of one million dollars (\$1,000,000) or less in that taxable year.~~
6 ~~years.~~

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

13 (3) For purposes of this subdivision:

14 (A) (i) ~~“Gross receipts, less returns and allowances reportable~~
15 ~~to this state,” means the sum of the gross receipts from the~~
16 ~~production of business income, as defined in subdivision (a) of~~
17 ~~Section 25120, and the gross receipts from the production of~~
18 ~~nonbusiness income, as defined in subdivision (d) of Section~~
19 ~~25120.~~

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

24 ~~(B)~~

25 (A) “New veteran-owned small business” means a
26 *veteran-owned* corporation that is incorporated under the laws of
27 this state or has qualified to transact intrastate business in this state
28 on or after January 1, 2015, ~~and~~ that begins business operations at
29 or after the time of its incorporation, *and that has a total income*
30 *derived from, or attributable to, the state of two hundred fifty*
31 *thousand dollars (\$250,000) or less.* “New veteran-owned small
32 business” does not include any corporation that began business
33 operations as a sole proprietorship, a partnership, or any other form
34 of business entity prior to its incorporation. This subdivision shall
35 not apply to any corporation that reorganizes solely for the purpose
36 of reducing its minimum franchise tax.

37 ~~(C)~~

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

40 ~~(D)~~

1 (C) “Veteran” means ~~a person~~ *an individual* honorably
2 discharged from the Armed Forces of the United States.

3 (D) “Veteran-owned corporation” means *a corporation in*
4 *which stock representing more than 50 percent of the voting power*
5 *of the corporation and representing more than 50 percent value*
6 *of the stock of the corporation is owned by one or more veterans.*

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

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