

ASSEMBLY BILL

No. 2495

Introduced by Assembly Member Melendez

February 21, 2014

An act to amend Sections 17935, 17941, 17948, and 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2495, as introduced, Melendez. Taxation: minimum franchise tax: exemptions.

Existing law generally 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 an annual tax in an amount equal to the minimum franchise tax 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 exempts a corporation from payment of minimum franchise tax in its first taxable year.

This bill would exempt from the minimum franchise tax every corporation incorporated in this state on or after January 1, 2015, for the first 5 consecutive taxable years during which the corporation does business within this state. This bill would also exempt from the annual tax every foreign or domestic limited partnership, limited liability partnership, and limited liability company that files its organizing document, or if a foreign entity its registration document, with the Secretary of State on or after January 1, 2015, as specified, for the first

5 consecutive taxable years during which that entity does business within the state.

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 17935 of the Revenue and Taxation Code
2 is amended to read:

3 17935. (a) For each taxable year beginning on or after January
4 1, 1997, every limited partnership doing business in this state ~~(as~~
5 ~~state, as~~ defined by Section ~~23101~~) 23101, and required to file a
6 return under Section 18633 shall pay annually to this state a tax
7 for the privilege of doing business in this state in an amount equal
8 to the applicable amount specified in Section 23153.

9 (b) (1) In addition to any limited partnership that is doing
10 business in this state and therefore is subject to the tax imposed
11 by subdivision (a), for each taxable year beginning on or after
12 January 1, 1997, every limited partnership that has executed,
13 acknowledged, and filed a certificate of limited partnership with
14 the Secretary of State pursuant to Section 15621 or 15902.01 of
15 the Corporations Code, and every foreign limited partnership that
16 has registered with the Secretary of State pursuant to Section 15692
17 or 15909.01 of the Corporations Code, shall pay annually the tax
18 prescribed in subdivision (a). The tax shall be paid for each taxable
19 year, or part thereof, until a certificate of cancellation is filed on
20 behalf of the limited partnership with the office of the Secretary
21 of State pursuant to Section 15623, 15696, 15902.03, or 15909.07
22 of the Corporations Code.

23 (2) If a taxpayer files a return with the Franchise Tax Board that
24 is designated its final return, that board shall notify the taxpayer
25 that the tax imposed by this chapter is due annually until a
26 certificate of cancellation is filed with the Secretary of State
27 pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the
28 Corporations Code.

29 (c) The tax imposed by this chapter shall be due and payable
30 on the date the return is required to be filed under former Section
31 18432 or 18633.

1 (d) For purposes of this section, “limited partnership” means
2 any partnership formed by two or more persons under the laws of
3 this state or any other jurisdiction and having one or more general
4 partners and one or more limited partners.

5 (e) Notwithstanding subdivision (b), any limited partnership
6 that ceased doing business prior to January 1, 1997, filed a final
7 return with the Franchise Tax Board for a taxable year ending
8 before January 1, 1997, and filed a certificate of dissolution with
9 the Secretary of State pursuant to Section 15623 of the
10 Corporations Code prior to January 1, 1997, shall not be subject
11 to the tax imposed by this chapter for any period following the
12 date the certificate of dissolution was filed with the Secretary of
13 State, but only if the limited partnership files a certificate of
14 cancellation with the Secretary of State pursuant to Section 15623
15 of the Corporations Code. In the case where a notice of proposed
16 deficiency assessment of tax or a notice of tax due (whichever is
17 applicable) is mailed after January 1, 2001, the first sentence of
18 this subdivision shall not apply unless the certificate of cancellation
19 is filed with the Secretary of State not later than 60 days after the
20 date of the mailing of the notice.

21 (f) *Notwithstanding subdivisions (a) and (b), every limited*
22 *partnership that files a certificate of limited partnership or a*
23 *certificate of registration with the Secretary of State on or after*
24 *January 1, 2015, shall not be subject to the tax imposed by this*
25 *chapter for the first five consecutive taxable years that it is doing*
26 *business within this state, as defined by Section 23101.*

27 SEC. 2. Section 17941 of the Revenue and Taxation Code is
28 amended to read:

29 17941. (a) For each taxable year beginning on or after January
30 1, 1997, a limited liability company doing business in this state
31 ~~(as state, as defined in Section 23101)~~ 23101, shall pay annually
32 to this state a tax for the privilege of doing business in this state
33 in an amount equal to the applicable amount specified in
34 subdivision (d) of Section 23153 for the taxable year.

35 (b) (1) In addition to any limited liability company that is doing
36 business in this state and is therefore subject to the tax imposed
37 by subdivision (a), for each taxable year beginning on or after
38 January 1, 1997, a limited liability company shall pay annually
39 the tax prescribed in subdivision (a) if articles of organization have
40 been accepted, or a certificate of registration has been issued, by

1 the office of the Secretary of State. The tax shall be paid for each
2 taxable year, or part thereof, until a certificate of cancellation of
3 registration or of articles of organization is filed on behalf of the
4 limited liability company with the office of the Secretary of State.

5 (2) If a taxpayer files a return with the Franchise Tax Board that
6 is designated as its final return, the Franchise Tax Board shall
7 notify the taxpayer that the annual tax shall continue to be due
8 annually until a certificate of dissolution is filed with the Secretary
9 of State pursuant to Section 17707.08 of the Corporations Code
10 or a certificate of cancellation is filed with the Secretary of State
11 pursuant to Section 17708.06 of the Corporations Code.

12 (c) The tax assessed under this section shall be due and payable
13 on or before the 15th day of the fourth month of the taxable year.

14 (d) For purposes of this section, “limited liability company”
15 means an organization, other than a limited liability company that
16 is exempt from the tax and fees imposed under this chapter
17 pursuant to Section 23701h or Section 23701x, that is formed by
18 one or more persons under the law of this state, any other country,
19 or any other state, as a “limited liability company” and that is not
20 taxable as a corporation for California tax purposes.

21 (e) Notwithstanding anything in this section to the contrary, if
22 the office of the Secretary of State files a certificate of cancellation
23 pursuant to Section 17707.02 of the Corporations Code for any
24 limited liability company, then paragraph (1) of subdivision (f) of
25 Section 23153 shall apply to that limited liability company as if
26 the limited liability company were properly treated as a corporation
27 for that limited purpose only, and paragraph (2) of subdivision (f)
28 of Section 23153 shall not apply. Nothing in this subdivision
29 entitles a limited liability company to receive a reimbursement for
30 any annual taxes or fees already paid.

31 (f) (1) Notwithstanding any provision of this section to the
32 contrary, a limited liability company that is a small business solely
33 owned by a deployed member of the United States Armed Forces
34 shall not be subject to the tax imposed under this section for any
35 taxable year the owner is deployed and the limited liability
36 company operates at a loss or ceases operation.

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

1 (3) For the purposes of this subdivision, all of the following
2 definitions apply:

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

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

9 (B) “Operates at a loss” means a limited liability company’s
10 expenses exceed its receipts.

11 (C) “Small business” means a limited liability company with
12 total income from all sources derived from, or attributable, to the
13 state of two hundred fifty thousand dollars (\$250,000) or less.

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

16 (g) *Notwithstanding any provision of this section to the contrary,*
17 *a limited liability company that files articles of organization or a*
18 *certificate of registration with the Secretary of State on or after*
19 *January 1, 2015, shall not be subject to the tax imposed under this*
20 *section for the first five consecutive taxable years that it is doing*
21 *business within this state, as defined by Section 23101.*

22 SEC. 3. Section 17948 of the Revenue and Taxation Code is
23 amended to read:

24 17948. (a) For each taxable year beginning on or after January
25 1, 1997, every limited liability partnership doing business in this
26 state ~~(as state, as defined in Section 23101)~~ 23101, and required
27 to file a return under Section 18633 shall pay annually to the
28 Franchise Tax Board a tax for the privilege of doing business in
29 this state in an amount equal to the applicable amount specified
30 in paragraph (1) of subdivision (d) of Section 23153 for the taxable
31 year.

32 (b) In addition to any limited liability partnership that is doing
33 business in this state and therefore is subject to the tax imposed
34 by subdivision (a), for each taxable year beginning on or after
35 January 1, 1997, every registered limited liability partnership that
36 has registered with the Secretary of State pursuant to Section 16953
37 of the Corporations Code and every foreign limited liability
38 partnership that has registered with the Secretary of State pursuant
39 to Section 16959 of the Corporations Code shall pay annually the

1 tax prescribed in subdivision (a). The tax shall be paid for each
2 taxable year, or part thereof, until any of the following occurs:

3 (1) A notice of cessation is filed with the Secretary of State
4 pursuant to subdivision (b) of Section 16954 or 16960 of the
5 Corporations Code.

6 (2) A foreign limited liability partnership withdraws its
7 registration pursuant to subdivision (a) of Section 16960 of the
8 Corporations Code.

9 (3) The registered limited liability partnership or foreign limited
10 liability partnership has been dissolved and finally wound up.

11 (c) The tax assessed under this section shall be due and payable
12 on the date the return is required to be filed under Section 18633.

13 (d) If a taxpayer files a return with the Franchise Tax Board that
14 is designated as its final return, the Franchise Tax Board shall
15 notify the taxpayer that the annual tax shall continue to be due
16 annually until a certificate of cancellation is filed with the Secretary
17 of State pursuant to Section 16954 or 16960 of the Corporations
18 Code.

19 (e) *Notwithstanding subdivisions (a) and (b), a limited liability*
20 *partnership that registers as a limited liability partnership with*
21 *the Secretary of State on or after January 1, 2015, shall not be*
22 *subject to the tax imposed under this section for the first five*
23 *consecutive taxable years that it is doing business within this state,*
24 *as defined by Section 23101.*

25 SEC. 4. Section 23153 of the Revenue and Taxation Code is
26 amended to read:

27 23153. (a) Every corporation described in subdivision (b) shall
28 be subject to the minimum franchise tax specified in subdivision
29 (d) from the earlier of the date of incorporation, qualification, or
30 commencing to do business within this state, until the effective
31 date of dissolution or withdrawal as provided in Section 23331 or,
32 if later, the date the corporation ceases to do business within the
33 limits of this state.

34 (b) Unless expressly exempted by this part or the California
35 Constitution, subdivision (a) shall apply to each of the following:

36 (1) Every corporation that is incorporated under the laws of this
37 state.

38 (2) Every corporation that is qualified to transact intrastate
39 business in this state pursuant to Chapter 21 (commencing with
40 Section 2100) of Division 1 of Title 1 of the Corporations Code.

1 (3) Every corporation that is doing business in this state.
2 (c) The following entities are not subject to the minimum
3 franchise tax specified in this section:

4 (1) Credit unions.

5 (2) Nonprofit cooperative associations organized pursuant to
6 Chapter 1 (commencing with Section 54001) of Division 20 of the
7 Food and Agricultural Code that have been issued the certificate
8 of the board of supervisors prepared pursuant to Section 54042 of
9 the Food and Agricultural Code. The association shall be exempt
10 from the minimum franchise tax for five consecutive taxable years,
11 commencing with the first taxable year for which the certificate
12 is issued pursuant to subdivision (b) of Section 54042 of the Food
13 and Agricultural Code. This paragraph only applies to nonprofit
14 cooperative associations organized on or after January 1, 1994.

15 (d) (1) Except as provided in paragraph (2), paragraph (1) of
16 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
17 of Section 23181, and paragraph (1) of subdivision (c) of Section
18 23183, corporations subject to the minimum franchise tax shall
19 pay annually to the state a minimum franchise tax of eight hundred
20 dollars (\$800).

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

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

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

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

34 (e) Notwithstanding subdivision (a), for taxable years beginning
35 on or after January 1, 1999, and before January 1, 2000, every
36 “qualified new corporation” shall pay annually to the state a
37 minimum franchise tax of five hundred dollars (\$500) for the
38 second taxable year. This subdivision shall apply to any corporation
39 that is a qualified new corporation and is incorporated on or after
40 January 1, 1999, and before January 1, 2000.

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

5 (2) “Gross receipts, less returns and allowances reportable to
6 this state,” means the sum of the gross receipts from the production
7 of business income, as defined in subdivision (a) of Section 25120,
8 and the gross receipts from the production of nonbusiness income,
9 as defined in subdivision (d) of Section 25120.

10 (3) “Qualified new corporation” means a corporation that is
11 incorporated under the laws of this state or has qualified to transact
12 intrastate business in this state, that begins business operations at
13 or after the time of its incorporation and that reasonably estimates
14 that it will have gross receipts, less returns and allowances,
15 reportable to this state for the taxable year of one million dollars
16 (\$1,000,000) or less. “Qualified new corporation” does not include
17 any corporation that began business operations as a sole
18 proprietorship, a partnership, or any other form of business entity
19 prior to its incorporation. This subdivision shall not apply to any
20 corporation that reorganizes solely for the purpose of reducing its
21 minimum franchise tax.

22 (4) This subdivision shall not apply to limited partnerships, as
23 defined in Section 17935, limited liability companies, as defined
24 in Section 17941, limited liability partnerships, as described in
25 Section 17948, charitable organizations, as described in Section
26 23703, regulated investment companies, as defined in Section 851
27 of the Internal Revenue Code, real estate investment trusts, as
28 defined in Section 856 of the Internal Revenue Code, real estate
29 mortgage investment conduits, as defined in Section 860D of the
30 Internal Revenue Code, qualified Subchapter S subsidiaries, as
31 defined in Section 1361(b)(3) of the Internal Revenue Code, or to
32 the formation of any subsidiary corporation, to the extent
33 applicable.

34 (5) For any taxable year beginning on or after January 1, 1999,
35 and before January 1, 2000, if a corporation has qualified to pay
36 five hundred dollars (\$500) for the second taxable year under this
37 subdivision, but in its second taxable year, the corporation’s gross
38 receipts, as determined under paragraphs (1) and (2), exceed one
39 million dollars (\$1,000,000), an additional tax in the amount equal
40 to three hundred dollars (\$300) for the second taxable year shall

1 be due and payable by the corporation on the due date of its return,
2 without regard to extension, for that year.

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

7 (B) *Notwithstanding subdivision (a), every corporation that*
8 *incorporates or qualifies to do business in this state on or after*
9 *January 1, 2015, shall not be subject to the minimum franchise*
10 *tax for its first five consecutive taxable years.*

11 (2) 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 organizations, 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, and qualified Subchapter S subsidiaries,
20 as defined in Section 1361(b)(3) of the Internal Revenue Code, to
21 the extent applicable.

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

25 (g) Notwithstanding subdivision (a), a domestic corporation, as
26 defined in Section 167 of the Corporations Code, that files a
27 certificate of dissolution in the office of the Secretary of State
28 pursuant to subdivision (b) of Section 1905 of the Corporations
29 Code, prior to its amendment by the act amending this subdivision,
30 and that does not thereafter do business shall not be subject to the
31 minimum franchise tax for taxable years beginning on or after the
32 date of that filing.

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

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

- 1 (2) The Franchise Tax Board may promulgate regulations as
2 necessary or appropriate to carry out the purposes of this
3 subdivision, including a definition for “ceases operation.”
- 4 (3) For the purposes of this subdivision, all of the following
5 definitions apply:
- 6 (A) “Deployed” means being called to active duty or active
7 service during a period when a Presidential Executive order
8 specifies that the United States is engaged in combat or homeland
9 defense. “Deployed” does not include either of the following:
- 10 (i) Temporary duty for the sole purpose of training or processing.
11 (ii) A permanent change of station.
- 12 (B) “Operates at a loss” means negative net income as defined
13 in Section 24341.
- 14 (C) “Small business” means a corporation with total income
15 from all sources derived from, or attributable, to the state of two
16 hundred fifty thousand dollars (\$250,000) or less.
- 17 (4) This subdivision shall become inoperative for taxable years
18 beginning on or after January 1, 2018.
- 19 SEC. 5. This act provides for a tax levy within the meaning of
20 Article IV of the Constitution and shall go into immediate effect.