

AMENDED IN ASSEMBLY APRIL 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, Melendez. ~~Taxation: minimum~~ *Minimum franchise tax: exemptions. annual tax: exemption.*

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 *qualified new* corporation incorporated *or qualified to do business* in this state on or after January 1, 2015, for ~~the its~~ 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~~ *its* 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 defined by Section 23101, and required to file a return under
6 Section 18633 shall pay annually to this state a tax for the privilege
7 of doing business in this state in an amount equal to the applicable
8 amount specified in *paragraph (1) of subdivision (d) of Section*
9 *23153.*

10 (b) (1) In addition to any limited partnership that is doing
11 business in this state and therefore is subject to the tax imposed
12 by subdivision (a), for each taxable year beginning on or after
13 January 1, 1997, every limited partnership that has executed,
14 acknowledged, and filed a certificate of limited partnership with
15 the Secretary of State pursuant to Section 15621 or 15902.01 of
16 the Corporations Code, and every foreign limited partnership that
17 has registered with the Secretary of State pursuant to Section 15692
18 or 15909.01 of the Corporations Code, shall pay annually the tax
19 prescribed in subdivision (a). The tax shall be paid for each taxable
20 year, or part thereof, until a certificate of cancellation is filed on
21 behalf of the limited partnership with the office of the Secretary
22 of State pursuant to Section ~~15623, 15696, 15902.03, 15902.03~~ or
23 15909.07 of the Corporations Code.

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

30 (c) The tax imposed by this chapter shall be due and payable
31 on the date the return is required to be filed under former Section
32 18432 or *Section* 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~~ *an application for registration* with the
24 Secretary of State on or after January 1, 2015, shall not be subject
25 to the tax imposed by this chapter ~~for the first five consecutive~~
26 ~~taxable years that it is doing business within this state, as defined~~
27 ~~by Section 23101~~ *chapter for its first five consecutive taxable*
28 *years. This subdivision shall not apply to any limited partnership*
29 *that reorganizes solely for the purpose of avoiding payment of its*
30 *annual tax.*

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

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

39 (b) (1) In addition to any limited liability company that is doing
40 business in this state and is therefore subject to the tax imposed

1 by subdivision (a), for each taxable year beginning on or after
2 January 1, 1997, a limited liability company shall pay annually
3 the tax prescribed in subdivision (a) if articles of organization have
4 been accepted, or a certificate of registration has been issued, by
5 the office of the Secretary of State. The tax shall be paid for each
6 taxable year, or part thereof, until a certificate of cancellation of
7 registration or of articles of organization is filed on behalf of the
8 limited liability company with the office of the Secretary of State.

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

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

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

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

35 (f) (1) Notwithstanding any provision of this section to the
36 contrary, a limited liability company that is a small business solely
37 owned by a deployed member of the United States Armed Forces
38 shall not be subject to the tax imposed under this section for any
39 taxable year the owner is deployed and the limited liability
40 company 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 a limited liability company’s
13 expenses exceed its receipts.

14 (C) “Small business” means a limited liability company with
15 total income from all sources derived from, or attributable, to the
16 state of two 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 (g) Notwithstanding any provision of this section to the contrary,
20 a limited liability company that files articles of organization or a
21 certificate of registration with the Secretary of State on or after
22 January 1, 2015, shall not be subject to the tax imposed under this
23 section for the first five consecutive taxable years that it is doing
24 business within this state, as defined by Section 23101 section for
25 its first five consecutive taxable years. *This subdivision shall not*
26 *apply to any limited liability company that reorganizes solely for*
27 *the purpose of avoiding payment of its annual tax.*

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

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

37 (b) In addition to any limited liability partnership that is doing
38 business in this state and therefore is subject to the tax imposed
39 by subdivision (a), for each taxable year beginning on or after
40 January 1, 1997, every registered limited liability partnership that

1 has registered with the Secretary of State pursuant to Section 16953
 2 of the Corporations Code and every foreign limited liability
 3 partnership that has registered with the Secretary of State pursuant
 4 to Section 16959 of the Corporations Code shall pay annually the
 5 tax prescribed in subdivision (a). The tax shall be paid for each
 6 taxable year, or part thereof, until any of the following occurs:

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

10 (2) A foreign limited liability partnership withdraws its
 11 registration pursuant to subdivision (a) of Section 16960 of the
 12 Corporations Code.

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

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

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

23 (e) Notwithstanding subdivisions (a) and (b), a limited liability
 24 partnership that registers as a limited liability partnership with the
 25 Secretary of State on or after January 1, 2015, shall not be subject
 26 to the tax imposed under this section for ~~the its~~ first five
 27 ~~consecutive taxable years that it is doing business within this state,~~
 28 ~~as defined by Section 23101~~ consecutive taxable years. *This*
 29 *subdivision shall not apply to any limited liability partnership that*
 30 *reorganizes solely for the purpose of avoiding payment of its*
 31 *annual tax.*

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

34 23153. (a) Every corporation described in subdivision (b) shall
 35 be subject to the minimum franchise tax specified in subdivision
 36 (d) from the earlier of the date of incorporation, qualification, or
 37 commencing to do business within this state, until the effective
 38 date of dissolution or withdrawal as provided in Section 23331 or,
 39 if later, the date the corporation ceases to do business within the
 40 limits of this state.

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

3 (1) Every corporation that is incorporated under the laws of this
4 state.

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

8 (3) Every corporation that is doing business in this state.

9 (c) The following entities are not subject to the minimum
10 franchise tax specified in this section:

11 (1) Credit unions.

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

22 (d) (1) Except as provided in paragraph (2), paragraph (1) of
23 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
24 of Section 23181, and paragraph (1) of subdivision (c) of Section
25 23183, corporations subject to the minimum franchise tax shall
26 pay annually to the state a minimum franchise tax of eight hundred
27 dollars (\$800).

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

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

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

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

1 (e) Notwithstanding subdivision (a), for taxable years beginning
2 on or after January 1, 1999, and before January 1, 2000, every
3 “qualified new corporation” shall pay annually to the state a
4 minimum franchise tax of five hundred dollars (\$500) for the
5 second taxable year. This subdivision shall apply to any corporation
6 that is a qualified new corporation and is incorporated on or after
7 January 1, 1999, and before January 1, 2000.

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

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

17 (3) “Qualified new corporation” means a corporation that is
18 incorporated under the laws of this state or has qualified to transact
19 intrastate business in this state, that begins business operations at
20 or after the time of its incorporation and that reasonably estimates
21 that it will have gross receipts, less returns and allowances,
22 reportable to this state for the taxable year of one million dollars
23 (\$1,000,000) or less. “Qualified new corporation” does not include
24 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 its
28 minimum franchise tax.

29 (4) 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 organizations, 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, qualified Subchapter S subsidiaries, as
38 defined in Section 1361(b)(3) of the Internal Revenue Code, or to
39 the formation of any subsidiary corporation, to the extent
40 applicable.

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

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

14 (B) (i) Notwithstanding subdivision (a), *for taxable years*
15 *beginning on or after January 1, 2015*, every corporation ~~that~~
16 ~~incorporates or qualifies to do business in this state on or after~~
17 ~~January 1, 2015~~; *that is a qualified new corporation* shall not be
18 subject to the minimum franchise tax for its first five consecutive
19 taxable years.

20 (ii) *For purposes of this subparagraph, a "qualified new*
21 *corporation" means a corporation that is incorporated under the*
22 *laws of this state or has qualified to transact business in this state*
23 *on or after January 1, 2015, and that begins business operations*
24 *at or after the time of its incorporation. "Qualified new*
25 *corporation" does not include any corporation that began business*
26 *operations as a sole proprietorship, a partnership, or any other*
27 *form of business entity prior to its incorporation.*

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

1 SEC. 5. This act provides for a tax levy within the meaning of
2 Article IV of the Constitution and shall go into immediate effect.

O