

AMENDED IN SENATE MAY 2, 2013  
AMENDED IN SENATE APRIL 17, 2013

**SENATE BILL**

**No. 641**

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**Introduced by Senator Anderson**

February 22, 2013

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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

SB 641, as amended, Anderson. Corporation taxes: minimum franchise tax: exemptions.

The Corporation Tax Law provides that all banks and corporations subject to tax and not otherwise exempt shall pay annually a minimum franchise tax of \$800, except as specified.

This bill would exempt from the minimum franchise tax a qualified new corporation, as defined, for its first 4 taxable years.

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,

1 if later, the date the corporation ceases to do business within the  
2 limits of this state.

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

5 (1) Every corporation that is incorporated under the laws of this  
6 state.

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

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

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

13 (1) Credit unions.

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

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

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

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

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

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

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

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

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

20 (3) “Qualified new corporation” means a corporation that is  
21 incorporated under the laws of this state or has qualified to transact  
22 intrastate business in this state, that begins business operations at  
23 or after the time of its incorporation and that reasonably estimates  
24 that it will have gross receipts, less returns and allowances,  
25 reportable to this state for the taxable year of one million dollars  
26 (\$1,000,000) or less. “Qualified new corporation” does not include  
27 any corporation that began business operations as a sole  
28 proprietorship, a partnership, or any other form of business entity  
29 prior to its incorporation. This subdivision shall not apply to any  
30 corporation that reorganizes solely for the purpose of reducing its  
31 minimum franchise tax.

32 (4) This subdivision shall not apply to a limited partnership, as  
33 defined in Section 17935, a limited liability company, as defined  
34 in Section 17941, a limited liability partnership, as described in  
35 Section 17948, a charitable organization, as described in Section  
36 23703, a regulated investment company, as defined in Section 851  
37 of the Internal Revenue Code, a real estate investment trust, as  
38 defined in Section 856 of the Internal Revenue Code, a real estate  
39 mortgage investment conduit, as defined in Section 860D of the  
40 Internal Revenue Code, a qualified Subchapter S subsidiary, as

1 defined in Section 1361(b)(3) of the Internal Revenue Code, or to  
2 the formation of any subsidiary corporation, to the extent  
3 applicable.

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

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

17 (2) This subdivision shall not apply to a limited partnership, as  
18 defined in Section 17935, a limited liability company, as defined  
19 in Section 17941, a limited liability partnership, as described in  
20 Section 17948, a charitable organization, as described in Section  
21 23703, a regulated investment company, as defined in Section 851  
22 of the Internal Revenue Code, a real estate investment trust, as  
23 defined in Section 856 of the Internal Revenue Code, a real estate  
24 mortgage investment conduit, as defined in Section 860D of the  
25 Internal Revenue Code, and a qualified Subchapter S subsidiary,  
26 as defined in Section 1361(b)(3) of the Internal Revenue Code, to  
27 the extent applicable.

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

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

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

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

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

12 (3) For the purposes of this subdivision, all of the following  
13 definitions apply:

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

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

19 (ii) A permanent change of station.

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

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

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

27 (j) Notwithstanding subdivision (a), for taxable years beginning  
28 on or after January 1, 2013, a qualified new corporation shall not  
29 be subject to the minimum franchise tax for its first four taxable  
30 years.

31 (1) (A) “Qualified new corporation” means a corporation that,  
32 on or after the effective date of the act adding this subdivision,  
33 meets both of the following:

34 (i) ~~Is incorporated~~ *Incorporates* under the laws of this state or  
35 ~~has qualified~~ *qualifies* to transact intrastate business in this state.

36 (ii) Commences business operations at or after the time of its  
37 incorporation.

38 (B) “Qualified new corporation” shall not include a corporation  
39 that commenced business operations as a sole proprietorship, a

1 partnership, or any other form of business entity immediately prior  
2 to its incorporation.

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

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

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

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

28 (5) The exemption under this ~~section~~ *subdivision* shall be  
29 allowed only for each of the first four taxable years in which the  
30 qualified new corporation reasonably estimates that it will have  
31 gross receipts, less returns and allowances, reportable to this state  
32 of ten thousand dollars (\$10,000) or less.

33 (6) *For any taxable year beginning on or after January 1, 2013,*  
34 *if a qualified new corporation has actual gross receipts, as*  
35 *determined under paragraphs (1) and (2), for the taxable year*  
36 *exceeding ten thousand dollars (\$10,000), an additional tax in the*  
37 *amount equal to eight hundred dollars (\$800) for the taxable year*  
38 *shall be due and payable by the corporation on the due date of its*  
39 *return, without regard to extension, for that taxable year.*

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

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