

ASSEMBLY BILL

No. 328

Introduced by Assembly Member Grove

February 13, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 328, as introduced, Grove. Minimum franchise tax: annual tax: exemption: veteran-owned small businesses.

Existing law imposes an annual minimum franchise tax, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state. Existing law exempts a corporation that incorporates or qualifies to do business in this state from the payment of the minimum franchise tax in its first taxable year.

Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited liability company doing business in this state. In addition, existing law requires every limited liability company if the articles of organization have been accepted by, or a certificate of registration has been issued by, the Secretary of State to pay an annual tax in an amount equal to the minimum franchise tax.

This bill, for taxable years beginning on or after January 1, 2016, would additionally eliminate that minimum franchise tax, in the 2nd and 3rd taxable years, for a corporation that is a new veteran-owned small business, and that annual tax, in the first 3 taxable years, for a limited liability company that is a new veteran-owned small business, as defined.

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 17941 of the Revenue and Taxation Code
 2 is amended to read:
 3 17941. (a) For each taxable year beginning on or after January
 4 1, 1997, a limited liability company doing business in this state
 5 (as defined in Section 23101) shall pay annually to this state a tax
 6 for the privilege of doing business in this state in an amount equal
 7 to the applicable amount specified in *paragraph (1)* of subdivision
 8 (d) of Section 23153 for the taxable year.
 9 (b) (1) In addition to any limited liability company that is doing
 10 business in this state and is therefore subject to the tax imposed
 11 by subdivision (a), for each taxable year beginning on or after
 12 January 1, 1997, a limited liability company shall pay annually
 13 the tax prescribed in subdivision (a) if articles of organization have
 14 been accepted, or a certificate of registration has been issued, by
 15 the office of the Secretary of State. The tax shall be paid for each
 16 taxable year, or part thereof, until a certificate of cancellation of
 17 registration or of articles of organization is filed on behalf of the
 18 limited liability company with the office of the Secretary of State.
 19 (2) If a taxpayer files a return with the Franchise Tax Board that
 20 is designated as its final return, the Franchise Tax Board shall
 21 notify the taxpayer that the annual tax shall continue to be due
 22 annually until a certificate of dissolution is filed with the Secretary
 23 of State pursuant to Section 17707.08 of the Corporations Code
 24 or a certificate of cancellation is filed with the Secretary of State
 25 pursuant to Section 17708.06 of the Corporations Code.
 26 (c) The tax assessed under this section shall be due and payable
 27 on or before the 15th day of the fourth month of the taxable year.
 28 (d) For purposes of this section, “limited liability company”
 29 means an organization, other than a limited liability company that
 30 is exempt from the tax and fees imposed under this chapter
 31 pursuant to Section 23701h or ~~Section 23701x~~, that is formed by
 32 one or more persons under the law of this state, any other country,
 33 or any other state, as a “limited liability company” and that is not
 34 taxable as a corporation for California tax purposes.

1 (e) Notwithstanding anything in this section to the contrary, if
2 the office of the Secretary of State files a certificate of cancellation
3 pursuant to Section 17707.02 of the Corporations Code for any
4 limited liability company, then paragraph (1) of subdivision (f) of
5 Section 23153 shall apply to that limited liability company as if
6 the limited liability company were properly treated as a corporation
7 for that limited purpose only, and paragraph (2) of subdivision (f)
8 of Section 23153 shall not apply. Nothing in this subdivision
9 entitles a limited liability company to receive a reimbursement for
10 any annual taxes or fees already paid.

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

30 (C) “Small business” means a limited liability company with
31 total income from all sources derived from, or attributable, to the
32 state of two 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 (g) (1) *Notwithstanding subdivision (a) or (b), for taxable years*
36 *beginning on or after January 1, 2016, a limited liability company*
37 *that is a new veteran-owned small business shall not be subject to*
38 *the tax imposed by this section for its first three taxable years.*

39 (2) *For purposes of this subdivision:*

1 (A) “New veteran-owned small business” means a
2 veteran-owned limited liability company that is formed under the
3 laws of this state or has qualified to transact intrastate business
4 in this state that begins business operations at or after the time of
5 its formation, and that has a total income derived from, or
6 attributable to, the state of two hundred fifty thousand dollars
7 (\$250,000) or less. “New veteran-owned small business” does not
8 include any limited liability company that began business
9 operations as a sole proprietorship, a partnership, a corporation,
10 or any other form of business entity prior to its formation.

11 (B) “Veteran” means an individual honorably discharged from
12 the Armed Forces of the United States.

13 (C) “Veteran-owned limited liability company” means a limited
14 liability company in which more than 50 percent of the membership
15 interest is owned by one or more veterans.

16 (3) This subdivision shall not apply to any limited liability
17 company that reorganizes solely for the purpose of reducing its
18 tax imposed under this section.

19 SEC. 2. Section 23153 of the Revenue and Taxation Code is
20 amended to read:

21 23153. (a) Every corporation described in subdivision (b) shall
22 be subject to the minimum franchise tax specified in subdivision
23 (d) from the earlier of the date of incorporation, qualification, or
24 commencing to do business within this state, until the effective
25 date of dissolution or withdrawal as provided in Section 23331 or,
26 if later, the date the corporation ceases to do business within the
27 limits of this state.

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

30 (1) Every corporation that is incorporated under the laws of this
31 state.

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

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

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

38 (1) Credit unions.

39 (2) Nonprofit cooperative associations organized pursuant to
40 Chapter 1 (commencing with Section 54001) of Division 20 of the

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

9 (d) (1) Except as provided in paragraph (2), paragraph (1) of
10 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
11 of Section 23181, and paragraph (1) of subdivision (c) of Section
12 23183, corporations subject to the minimum franchise tax shall
13 pay annually to the state a minimum franchise tax of eight hundred
14 dollars (\$800).

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

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

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

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

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

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

39 (2) “Gross receipts, less returns and allowances reportable to
40 this state,” means the sum of the gross receipts from the production

1 of business income, as defined in subdivision (a) of Section 25120,
2 and the gross receipts from the production of nonbusiness income,
3 as defined in subdivision (d) of Section 25120.

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

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

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

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

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

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

15 (g) Notwithstanding subdivision (a), a domestic corporation, as
16 defined in Section 167 of the Corporations Code, that files a
17 certificate of dissolution in the office of the Secretary of State
18 pursuant to subdivision (b) of Section 1905 of the Corporations
19 Code, prior to its amendment by the act amending this subdivision,
20 and that does not thereafter do business shall not be subject to the
21 minimum franchise tax for taxable years beginning on or after the
22 date of that filing.

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

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

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

34 (3) For the purposes of this subdivision, all of the following
35 definitions apply:

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

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

1 (ii) A permanent change of station.
2 (B) “Operates at a loss” means negative net income as defined
3 in Section 24341.

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

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

9 (j) *(1) Notwithstanding subdivision (a) or (b) and subject to*
10 *subdivision (f), for taxable years beginning on or after January 1,*
11 *2016, every corporation that is a new veteran-owned small business*
12 *shall not be subject to the tax imposed by this section for its second*
13 *and third taxable years.*

14 (2) *For purposes of this subdivision:*

15 (A) *“New veteran-owned small business” means a*
16 *veteran-owned corporation that is incorporated under the laws of*
17 *this state or has qualified to transact intrastate business in this*
18 *state that begins business operations at or after the time of its*
19 *incorporation, and that has a total income derived from, or*
20 *attributable to, the state of two hundred fifty thousand dollars*
21 *(\$250,000) or less. “New veteran-owned small business” does not*
22 *include any corporation that began business operations as a sole*
23 *proprietorship, a partnership, or any other form of business entity*
24 *prior to its incorporation.*

25 (B) *“Veteran” means an individual honorably discharged from*
26 *the Armed Forces of the United States.*

27 (C) *“Veteran-owned corporation” means a corporation in which*
28 *stock representing more than 50 percent of the voting power of*
29 *the corporation and representing more than 50 percent value of*
30 *the stock of the corporation is owned by one or more veterans.*

31 (3) *This subdivision shall not apply to any corporation that*
32 *reorganizes solely for the purpose of reducing its minimum*
33 *franchise tax.*

34 SEC. 3. This act provides for a tax levy within the meaning
35 of Article IV of the Constitution and shall go into immediate effect.

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