

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 799

Introduced by Assembly Member Travis Allen

February 26, 2015

An act to amend Section ~~17941~~ 23102 of the Revenue and Taxation Code, relating to ~~taxation~~ *taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

AB 799, as amended, Travis Allen. ~~Corporation taxes:~~ *Income taxes:* annual tax: limited liability company.

Existing law, 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, *as defined*, 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 provides that certain corporations, the activities of which are limited to the receipt and disbursement of dividends and interest on securities, are not considered as doing business in this state.*

~~This bill would make nonsubstantive changes to the provision imposing an annual tax on limited liability companies.~~

This bill, under those same circumstances related to the receipt and disbursement of dividends and interest on securities, would additionally provide that such a limited liability company is not considered as doing business in this state.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 23102 of the Revenue and Taxation Code
2 is amended to read:

3 23102. Any corporation or limited liability company holding
4 or organized to hold stock or bonds of any other corporation or
5 corporations, and not trading in stock or bonds or other securities
6 held, and engaging in no activities other than the receipt and
7 disbursement of dividends from stock or interest from bonds, and
8 no activities other than those exempted under subdivision (c) of
9 Section 191 of the Corporations Code, is not a corporation or
10 limited liability company doing business in this State for the
11 purposes of this chapter or Chapter 10.6.

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

14 SECTION 1. Section 17941 of the Revenue and Taxation Code,
15 as amended by Section 26 of Chapter 419 of the Statutes of 2012,
16 is amended to read:

17 17941. (a) For each taxable year beginning on or after January
18 1, 1997, a limited liability company doing business in this state,
19 as defined in Section 23101, shall pay annually to this state a tax
20 for the privilege of doing business in this state in an amount equal
21 to the applicable amount specified in subdivision (d) of Section
22 23153 for the taxable year.

23 (b) (1) In addition to any limited liability company that is doing
24 business in this state and is therefore subject to the tax imposed
25 by subdivision (a), for each taxable year beginning on or after
26 January 1, 1997, a limited liability company shall pay annually
27 the tax prescribed in subdivision (a) if articles of organization have
28 been accepted, or a certificate of registration has been issued, by
29 the office of the Secretary of State. The tax shall be paid for each
30 taxable year, or part thereof, until a certificate of cancellation of
31 registration or of articles of organization is filed on behalf of the
32 limited liability company with the office of the Secretary of State.

33 (2) If a taxpayer files a return with the Franchise Tax Board that
34 is designated as its final return, the Franchise Tax Board shall
35 notify the taxpayer that the annual tax shall continue to be due

1 annually until a certificate of dissolution is filed with the Secretary
2 of State pursuant to Section 17707.08 of the Corporations Code
3 or a certificate of cancellation is filed with the Secretary of State
4 pursuant to Section 17708.06 of the Corporations Code.

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

7 (d) For purposes of this section, “limited liability company”
8 means an organization, other than a limited liability company that
9 is exempt from the tax and fees imposed under this chapter
10 pursuant to Section 23701h or Section 23701x, that is formed by
11 one or more persons under the law of this state, any other country,
12 or any other state, as a “limited liability company” and that is not
13 taxable as a corporation for California tax purposes.

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

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

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

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

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

- 39 (i) Temporary duty for the sole purpose of training or processing.
40 (ii) A permanent change of station.

- 1 ~~(B) “Operates at a loss” means a limited liability company’s~~
- 2 ~~expenses exceed its receipts.~~
- 3 ~~(C) “Small business” means a limited liability company with~~
- 4 ~~total income from all sources derived from, or attributable, to the~~
- 5 ~~state of two hundred fifty thousand dollars (\$250,000) or less.~~
- 6 ~~(4) This subdivision shall become inoperative for taxable years~~
- 7 ~~beginning on or after January 1, 2018.~~

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