

AMENDED IN ASSEMBLY JUNE 19, 2015  
AMENDED IN ASSEMBLY MARCH 26, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 799**

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**Introduced by Assembly Member Members Travis Allen and Quirk**  
**(Coauthors: Assembly Members Chang, Mullin, and Obernolte)**  
**(Coauthor: Senator Runner)**

February 26, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

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

Existing ~~law;~~ *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 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. Existing law requires every limited liability company subject to that annual tax to pay annually to this state a fee equal to specified amounts based upon total income from all sources attributable to this state. Existing law requires every partnership to file a return that includes specified information, verified~~

by a written declaration made under the penalty of perjury and signed by one of the partners, within a specified time period.

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 exempt a limited liability company that is a qualified investment partnership, as defined, from that annual tax and fee by excluding it from the definition of a limited liability company. The bill would require that entity to submit a return under the conditions applicable to a partnership.*

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 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    ~~SECTION 1. Section 17941 of the Revenue and Taxation Code~~  
13    ~~is amended to read:~~

14    ~~17941. (a) For each taxable year beginning on or after January~~  
15    ~~1, 1997, a limited liability company doing business in this state~~  
16    ~~(as state, as defined in Section 23101) 23101, shall pay annually~~  
17    ~~to this state a tax for the privilege of doing business in this state~~  
18    ~~in an amount equal to the applicable amount specified in paragraph~~  
19    ~~(1) of subdivision (d) of Section 23153 for the taxable year.~~

20    ~~(b) (1) In addition to any limited liability company that is doing~~  
21    ~~business in this state and is therefore subject to the tax imposed~~  
22    ~~by subdivision (a), for each taxable year beginning on or after~~  
23    ~~January 1, 1997, a limited liability company shall pay annually~~

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

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

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

16 (d) ~~For (1) Except as provided in paragraph (2), for purposes~~  
17 ~~of this section, a “limited liability company” means an~~  
18 ~~organization, other than a limited liability company that is exempt~~  
19 ~~from the tax and fees imposed under this chapter pursuant to~~  
20 ~~Section 23701h or Section 23701x, organization~~ that is formed  
21 by one or more persons under the law of this state, any other  
22 country, or any other state, as a “limited liability company” and  
23 that is not taxable as a corporation for California tax purposes.

24 (2) *Notwithstanding subdivisions (a) and (b), a limited liability*  
25 *company is not subject to the tax imposed under this section if it*  
26 *is either of the following:*

27 (A) *The limited liability company is exempt from the tax and*  
28 *fees imposed under this chapter pursuant to Section 23701h or*  
29 *23701x.*

30 (B) (i) *The limited liability company is a qualified investment*  
31 *partnership.*

32 (ii) *For purposes of this subparagraph, a qualified investment*  
33 *partnership means a limited liability company that meets all of*  
34 *the following requirements:*

35 (I) *It is classified as a partnership for California income tax*  
36 *purposes.*

37 (II) *No less than 90 percent of the costs of its total assets consist*  
38 *of qualifying investment securities, deposits at banks or other*  
39 *financial institutions, interest or investments in a partnership, or*

1 office space and equipment reasonably necessary to carry on its  
2 activities as a qualified investment partnership.

3 (III) No less than 90 percent of its gross income consists of  
4 interest, dividends, and gains from the sale or exchange of  
5 qualifying investment securities or investments in a partnership.

6 (iii) For purposes of this subparagraph, “qualifying investment  
7 securities” has the same meaning as that term is described in  
8 subparagraph (A) of paragraph (3) of subdivision (c) of Section  
9 17955.

10 (iv) Notwithstanding Section 18633.5, the following rules shall  
11 apply with respect to the filing requirements of a qualified  
12 investment partnership.

13 (I) A qualified investment partnership required to file a federal  
14 return pursuant to Section 6031 of the Internal Revenue Code,  
15 relating to return of partnership income, shall file a partnership  
16 return pursuant to Section 18633 for that taxable year.

17 (II) A qualified investment partnership that is not required to  
18 file a federal return pursuant to Section 6031 of the Internal  
19 Revenue Code, relating to return of partnership income, shall file  
20 an information return as prescribed by the Franchise Tax Board  
21 for that taxable year.

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

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

38 (2) The Franchise Tax Board may promulgate regulations as  
39 necessary or appropriate to carry out the purposes of this  
40 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 SEC. 2. This act provides for a tax levy within the meaning of  
17 Article IV of the Constitution and shall go into immediate effect.

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