

Assembly Bill No. 1775

Passed the Assembly May 5, 2016

Chief Clerk of the Assembly

Passed the Senate August 16, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 18601, 18633, 18633.5, and 23281 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1775, Obernolte. Income taxes: returns: due dates.

The Personal Income Tax Law requires a partnership to file an informational return on the 15th day of the 4th month following the close of its taxable year, and a limited liability company classified as a partnership to file a return of the taxes due and payable on the 15th day of the 4th month following the close of its taxable year. The Corporation Tax Law requires a taxpayer subject to that law, including an "S corporation," to file a return on the 15th day of the 3rd month following the close of its taxable year. These tax return due dates conform to federal income tax return due dates for taxable years beginning before January 1, 2016.

This bill would require, instead, for taxable years beginning on or after January 1, 2016, a partnership and a limited liability company classified as a partnership to file a return on the 15th day of the 3rd month, and a taxpayer subject to the Corporation Tax Law, but not an "S corporation," to file a return on the 15th day of the 4th month, following the close of its taxable year. These tax return due dates would conform to federal income tax return due dates for taxable years beginning on and after January 1, 2016.

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

SECTION 1. Section 18601 of the Revenue and Taxation Code is amended to read:

18601. (a) Except as provided in subdivision (b), (c), or (d), every taxpayer subject to the tax imposed by Part 11 (commencing with Section 23001) shall, on or before the 15th day of the fourth month following the close of its taxable year, transmit to the Franchise Tax Board a return in a form prescribed by it, specifying for the taxable year, all the facts as it may by rule, or otherwise, require in order to carry out this part. A tax return, disclosing net

income for any taxable year, filed pursuant to Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) of Part 11 shall be deemed filed pursuant to the proper chapter of Part 11 for the same taxable period, if the chapter under which the return is filed is determined erroneous.

(b) In the case of cooperative associations described in Section 24404, returns shall be filed on or before the 15th day of the ninth month following the close of its taxable year.

(c) In the case of taxpayers required to file a return for a short period under Section 24634, the due date for the short period return shall be the same as the due date of the federal tax return that includes the net income of the taxpayer for that short period, or the due date specified in subdivision (a) if no federal return is required to be filed that would include the net income for that short period.

(d) (1) In the case of an “S corporation” described in Section 1361 of the Internal Revenue Code, relating to S corporation defined, returns shall be filed on or before the 15th day of the third month following the close of its taxable year.

(2) For taxable years beginning on or after January 1, 1997, each “S corporation” required to file a return under subdivision (a) for any taxable year shall, on or before the day on which the return for the taxable year was filed, furnish each person who is a shareholder at any time during the taxable year a copy of the information shown on the return.

(e) For taxable years beginning on or after January 1, 1997:

(1) A shareholder of an “S corporation” shall, on the shareholder’s return, treat a Subchapter S item in a manner that is consistent with the treatment of the item on the corporate return.

(2) (A) In the case of any Subchapter S item, paragraph (1) shall not apply to that item if both of the following occur:

(i) Either of the following occurs:

(I) The corporation has filed a return, but the shareholder’s treatment of the item on the shareholder’s return is, or may be, inconsistent with the treatment of the item on the corporate return.

(II) The corporation has not filed a return.

(ii) The shareholder files with the Franchise Tax Board a statement identifying the inconsistency.

(B) A shareholder shall be treated as having complied with clause (ii) of subparagraph (A) with respect to a Subchapter S item if the shareholder does both of the following:

(i) Demonstrates to the satisfaction of the Franchise Tax Board that the treatment of the Subchapter S item on the shareholder's return is consistent with the treatment of the item on the schedule furnished to the shareholder by the corporation.

(ii) Elects to have this paragraph apply with respect to that item.

(3) In any case described in subclause (I) of clause (i) of subparagraph (A) of paragraph (2), and in which the shareholder does not comply with clause (ii) of subparagraph (A) of paragraph (2), any adjustment required to make the treatment of the items by the shareholder consistent with the treatment of the items on the corporate return shall be treated as arising out of a mathematical error and assessed and collected under Section 19051.

(4) For purposes of this subdivision, "Subchapter S item" means any item of an "S corporation" to the extent provided by regulations that, for purposes of Part 10 (commencing with Section 17001) or this part, the item is more appropriately determined at the corporation level than at the shareholder level.

(5) The penalties imposed under Article 7 (commencing with Section 19131) of Chapter 4 shall apply in the case of a shareholder's negligence in connection with, or disregard of, the requirements of this section.

(f) The amendments made to this section by the act adding this subdivision shall apply to returns for taxable years beginning on or after January 1, 2016.

SEC. 2. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) (1) Every partnership, on or before the 15th day of the third month following the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written

declaration that it is made under penalty of perjury, signed by one of the partners.

(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17935, on or before the 15th day of the third month following the close of its taxable year, shall make a return for that taxable year, containing the information identified in paragraph (1). In the case of a limited partnership not doing business in this state, the Franchise Tax Board shall prescribe the manner and extent to which the information identified in paragraph (1) shall be included with the return required by this paragraph.

(b) Each partnership required to file a return under subdivision (a) for any taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership as a nominee for another person at any time during that taxable year a copy of the information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) The provisions of Section 6031(f) of the Internal Revenue Code, relating to electing investment partnerships, shall apply, except as otherwise provided.

(f) The amendments made to this section by the act adding this subdivision shall apply to returns for taxable years beginning on or after January 1, 2016.

SEC. 3. Section 18633.5 of the Revenue and Taxation Code is amended to read:

18633.5. (a) Every limited liability company that is classified as a partnership for California tax purposes that is doing business in this state, organized in this state, or registered with the Secretary of State shall file its return on or before the 15th day of the third month following the close of its taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). The return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under penalty of perjury, signed by one of the limited liability company members. In the case of a limited liability company not doing business in this state, and subject to the tax imposed by subdivision (b) of Section 17941, the Franchise Tax Board shall, for returns required to be filed on or after January 1, 1998, prescribe the manner and extent to which the information identified in this subdivision shall be included with the return required by this subdivision.

(b) Each limited liability company required to file a return under subdivision (a) for any limited liability company taxable year shall, on or before the day on which the return for that taxable year was required to be filed, furnish to each person who holds an interest in that limited liability company at any time during that taxable year a copy of that information required to be shown on that return as may be required by forms and instructions prescribed by the Franchise Tax Board.

(c) Any person who holds an interest in a limited liability company as a nominee for another person shall do both of the following:

(1) Furnish to the limited liability company, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that person, and any other information for that taxable year as the Franchise Tax Board may prescribe by forms and instructions.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that limited liability company under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) (1) A limited liability company shall file with its return required under subdivision (a), in the form required by the Franchise Tax Board, the agreement of each nonresident member to file a return pursuant to Section 18501, to make timely payment of all taxes imposed on the member by this state with respect to the income of the limited liability company, and to be subject to personal jurisdiction in this state for purposes of the collection of income taxes, together with related interest and penalties, imposed on the member by this state with respect to the income of the limited liability company. If the limited liability company fails to timely file the agreements on behalf of each of its nonresident members, then the limited liability company shall, at the time set forth in subdivision (f), pay to this state on behalf of each nonresident member of whom an agreement has not been timely filed an amount equal to the highest marginal tax rate in effect under Section 17041, in the case of members that are individuals, estates, or trusts, and Section 23151, in the case of members that are corporations, multiplied by the amount of the member's distributive share of the income source to the state reflected on the limited liability company's return for the taxable period, reduced by the amount of tax previously withheld and paid by the limited liability company pursuant to Section 18662 and the regulations thereunder with respect to each nonresident member. A limited liability company shall be entitled to recover the payment made from the member on whose behalf the payment was made.

(2) If a limited liability company fails to attach the agreement or to timely pay the payment required by paragraph (1), the payment shall be considered the tax of the limited liability company for purposes of the penalty prescribed by Section 19132 and interest prescribed by Section 19101 for failure to timely pay the tax. Payment of the penalty and interest imposed on the limited liability company for failure to timely pay the amount required by this subdivision shall extinguish the liability of a nonresident member for the penalty and interest for failure to make timely payment of all taxes imposed on that member by this state with respect to the income of the limited liability company.

(3) No penalty or interest shall be imposed on the limited liability company under paragraph (2) if the nonresident member timely files and pays all taxes imposed on the member by this state with respect to the income of the limited liability company.

(f) Any agreement of a nonresident member required to be filed pursuant to subdivision (e) shall be filed at either of the following times:

(1) The time the annual return is required to be filed pursuant to this section for the first taxable period for which the limited liability company became subject to tax pursuant to Chapter 10.6 (commencing with Section 17941).

(2) The time the annual return is required to be filed pursuant to this section for any taxable period in which the limited liability company had a nonresident member on whose behalf an agreement described in subdivision (e) has not been previously filed.

(g) Any amount paid by the limited liability company to this state pursuant to paragraph (1) of subdivision (e) shall be considered to be a payment by the member on account of the income tax imposed by this state on the member for the taxable period.

(h) Every limited liability company that is classified as a corporation for California tax purposes shall be subject to the requirement to file a tax return under the provisions of Part 10.2 (commencing with Section 18401) and the applicable taxes imposed by Part 11 (commencing with Section 23001).

(i) (1) Every limited liability company doing business in this state, organized in this state, or registered with the Secretary of State, that is disregarded pursuant to Section 23038 shall file a return that includes information necessary to verify its liability under Sections 17941 and 17942, provides its sole owner's name and taxpayer identification number, includes the consent of the owner to California tax jurisdiction, and includes other information necessary for the administration of this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(2) If the owner's consent required under paragraph (1) is not included, the limited liability company shall pay on behalf of its owner an amount consistent with, and treated the same as, the amount to be paid under subdivision (e) by a limited liability company on behalf of a nonresident member for whom an

agreement required by subdivision (e) is not attached to the return of the limited liability company.

(3) (A) Except as provided in subparagraph (B), the return required under paragraph (1) shall be filed on or before the 15th day of the fourth month after the close of the taxable year of the owner subject to tax under Part 10 (commencing with Section 17001) or Chapter 2 (commencing with Section 23101) of Part 11.

(B) In the event that the owner is an “S corporation,” a partnership, or a limited liability company classified as a partnership for California tax purposes, the return required under paragraph (1) shall be filed on or before the 15th day of the third month after the close of the taxable year.

(4) For limited liability companies disregarded pursuant to Section 23038, “taxable year of the owner” shall be substituted for “taxable year” in Sections 17941 and 17942.

(j) The amendments made by Chapter 264 of the Statutes of 2005 apply to taxable years beginning on or after January 1, 2005.

(k) The amendments made to this section by the act adding this subdivision shall apply to returns for taxable years beginning on or after January 1, 2016.

SEC. 4. Section 23281 of the Revenue and Taxation Code is amended to read:

23281. (a) (1) When a taxpayer ceases to do business within the state during any taxable year and does not dissolve or withdraw from the state during that year, and does not resume doing business during the succeeding taxable year, its tax for the taxable year in which it resumes doing business prior to January 1, 2000, shall be the greater of the following:

(A) The tax computed upon the basis of the net income of the income year in which it ceased doing business, except where the income has already been included in the measure of a tax imposed by this chapter.

(B) The minimum tax prescribed in Section 23153.

(2) When a taxpayer ceases to do business within the state during any taxable year and does not dissolve or withdraw from the state during that year, and does not resume doing business during the succeeding taxable year, its tax for the taxable year in which it resumes doing business, on or after January 1, 2000, shall be

according to or measured by its net income for the taxable year in which it resumes doing business.

(b) The tax shall be due and payable at the time the corporation resumes doing business, or on or before the due date of the return for its taxable year, whichever is later. All the provisions of this part relating to delinquent taxes shall be applicable to the tax if it is not paid on or before its due date.

(c) This section does not apply to a corporation that became subject to Chapter 3 (commencing with Section 23501) after it discontinued doing business in this state (see Section 23224.5).

(d) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2016.

Approved _____, 2016

Governor