

ASSEMBLY BILL

No. 2338

Introduced by Assembly Member Chávez

February 18, 2016

An act to amend Sections 17941, 18601, 18633, 19021, 23224, and 23281 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2338, as introduced, Chávez. 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 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 Corporate Tax Law requires “C” corporation and “S” corporation taxpayers to file returns on the 15th day of the third 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, partnerships and limited liability companies to file a return on the 15th day of the 3rd month, and “C” Corporations to file a return on the 15th day of the 4th month of the year, except “C” corporations with fiscal years ending on June 30 would use the new filing date for taxable years beginning on or after January 1, 2026. These tax return due dates would conform to federal income tax return due dates for taxable years beginning on and after January 1, 2016.

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 subdivision (d) of Section
8 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~~(1) For taxable years beginning before January 1, 2016,
27 the tax assessed under this section shall be due and payable on or
28 before the 15th day of the fourth month of the taxable year.

29 (2) For taxable years beginning on or after January 1, 2016,
30 the tax assessed under this section shall be due and payable on or
31 before the 15th day of the third month of the taxable year.

32 (d) For purposes of this section, “limited liability company”
33 means an organization, other than a limited liability company that
34 is exempt from the tax and fees imposed under this chapter
35 pursuant to Section 23701h or Section 23701x, that is formed by
36 one or more persons under the law of this state, any other country,
37 or any other state, as a “limited liability company” and that is not
38 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 SEC. 2. Section 18601 of the Revenue and Taxation Code is
36 amended to read:

37 18601. (a) ~~Except~~ *(1) For taxable years beginning before*
38 *January 1, 2016*, as provided in subdivision (b) or (c), every
39 taxpayer subject to the tax imposed by Part 11 (commencing with
40 Section 23001) shall, on or before the 15th day of the third month

1 following the close of its taxable year, transmit to the Franchise
2 Tax Board a return in a form prescribed by it, specifying for the
3 taxable year, all the facts as it may by rule, or otherwise, require
4 in order to carry out this part. A tax return, disclosing net income
5 for any taxable year, filed pursuant to Chapter 2 (commencing
6 with Section 23101) or Chapter 3 (commencing with Section
7 23501) of Part 11 shall be deemed filed pursuant to the proper
8 chapter of Part 11 for the same taxable period, if the chapter under
9 which the return is filed is determined erroneous.

10 (2) (A) (i) *For taxable years beginning on or after January 1,*
11 *2016, as provided in subdivision (b) or (c), every taxpayer subject*
12 *to the tax imposed by Part 11 (commencing with Section 23001)*
13 *that is a “C” corporation shall, on or before the 15th day of the*
14 *fourth month following the close of its taxable year, transmit to*
15 *the Franchise Tax Board a return in a form prescribed by it,*
16 *specifying for the taxable year, all the facts as it may by rule, or*
17 *otherwise, require in order to carry out this part. A tax return,*
18 *disclosing net income for any taxable year, filed pursuant to*
19 *Chapter 2 (commencing with Section 23101) or Chapter 3*
20 *(commencing with Section 23501) of Part 11 shall be deemed filed*
21 *pursuant to the proper chapter of Part 11 for the same taxable*
22 *period, if the chapter under which the return is filed is determined*
23 *erroneous.*

24 (ii) *In the case of a “C” corporation with a fiscal year ending*
25 *on June 30, the amendments made by clause (i) shall apply to*
26 *returns for taxable years beginning on or after January 1, 2026.*

27 (B) *For taxable years beginning on or after January 1, 2016,*
28 *as provided in subdivision (b) or (c), every taxpayer subject to the*
29 *tax imposed by Part 11 (commencing with Section 23001) that is*
30 *an “S” corporation shall, on or before the 15th day of the third*
31 *month following the close of its taxable year, transmit to the*
32 *Franchise Tax Board a return in a form prescribed by it, specifying*
33 *for the taxable year, all the facts as it may by rule, or otherwise,*
34 *require in order to carry out this part. A tax return, disclosing net*
35 *income for any taxable year, filed pursuant to Chapter 2*
36 *(commencing with Section 23101) or Chapter 3 (commencing with*
37 *Section 23501) of Part 11 shall be deemed filed pursuant to the*
38 *proper chapter of Part 11 for the same taxable period, if the*
39 *chapter under which the return is filed is determined erroneous.*

1 (b) In the case of cooperative associations described in Section
2 24404, returns shall be filed on or before the 15th day of the ninth
3 month following the close of its taxable year.

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

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

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

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

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

24 (i) Either of the following occurs:

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

28 (II) The corporation has not filed a return.

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

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

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

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

39 (3) In any case described in subclause (I) of clause (i) of
40 subparagraph (A) of paragraph (2), and in which the shareholder

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

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

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

15 SEC. 3. Section 18633 of the Revenue and Taxation Code is
 16 amended to read:

17 18633. (a) (1) ~~Every~~ (A) *For taxable years beginning before*
 18 *January 1, 2016, every* partnership, on or before the 15th day of
 19 the fourth month following the close of its taxable year, shall make
 20 a return for that taxable year, stating specifically the items of gross
 21 income and the deductions allowed by Part 10 (commencing with
 22 Section 17001). Except as otherwise provided in Section 18621.5,
 23 the return shall include the names, addresses, and taxpayer
 24 identification numbers of the persons, whether residents or
 25 nonresidents, who would be entitled to share in the net income if
 26 distributed and the amount of the distributive share of each person.
 27 The return shall contain or be verified by a written declaration that
 28 it is made under penalty of perjury, signed by one of the partners.

29 ~~(2)~~
 30 (B) In addition to returns required by ~~paragraph (1),~~
 31 *subparagraph (A)*, every limited partnership subject to the tax
 32 imposed by subdivision (b) of Section 17935, on or before the 15th
 33 day of the fourth month following the close of its taxable year,
 34 shall make a return for that taxable year, containing the information
 35 identified in ~~paragraph (1), subparagraph (A)~~. In the case of a
 36 limited partnership not doing business in this state, the Franchise
 37 Tax Board shall prescribe the manner and extent to which the
 38 information identified in ~~paragraph (1) subparagraph (A)~~ shall be
 39 included with the return required by this ~~paragraph~~. *subparagraph*.

1 (2) (A) *For taxable years beginning on or after January 1,*
2 *2016, every partnership, on or before the 15th day of the third*
3 *month following the close of its taxable year, shall make a return*
4 *for that taxable year, stating specifically the items of gross income*
5 *and the deductions allowed by Part 10 (commencing with Section*
6 *17001). Except as otherwise provided in Section 18621.5, the*
7 *return shall include the names, addresses, and taxpayer*
8 *identification numbers of the persons, whether residents or*
9 *nonresidents, who would be entitled to share in the net income if*
10 *distributed and the amount of the distributive share of each person.*
11 *The return shall contain or be verified by a written declaration*
12 *that it is made under penalty of perjury, signed by one of the*
13 *partners.*

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

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

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

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

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

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

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

7 SEC. 4. Section 19021 of the Revenue and Taxation Code is
8 amended to read:

9 19021. ~~In~~(a) *For taxable years beginning before January 1,*
10 *2016, the case of taxpayers subject to the tax imposed by Article*
11 *3 (commencing with Section 23181) of Chapter 2 of Part 11, there*
12 *shall be due and payable on or before the 15th day of the third*
13 *month following the close of the preceding year from each taxpayer*
14 *a percentage of its net income as disclosed by its return which is*
15 *equal to the rate applicable to corporations subject to the tax*
16 *imposed by Article 2 (commencing with Section 23151) of Chapter*
17 *2 of Part 11 plus the personal property tax rate equivalent included*
18 *in the bank and financial corporation tax rate determination by the*
19 *Franchise Tax Board pursuant to Sections 23186 and 23186.1. The*
20 *payment required by this section shall not be less than the minimum*
21 *tax specified in Section 23153.*

22 (b) (1) (A) *For taxable years beginning on or after January 1,*
23 *2016, in the case of taxpayers that are “C” corporations subject*
24 *to the tax imposed by Article 3 (commencing with Section 23181)*
25 *of Chapter 2 of Part 11, there shall be due and payable on or*
26 *before the 15th day of the fourth month following the close of the*
27 *preceding year from each taxpayer a percentage of its net income*
28 *as disclosed by its return which is equal to the rate applicable to*
29 *corporations subject to the tax imposed by Article 2 (commencing*
30 *with Section 23151) of Chapter 2 of Part 11 plus the personal*
31 *property tax rate equivalent included in the bank and financial*
32 *corporation tax rate determination by the Franchise Tax Board*
33 *pursuant to Section 23186. The payment required by this section*
34 *shall not be less than the minimum tax specified in Section 23153.*

35 (B) *In the case of a “C” corporation with a fiscal year ending*
36 *on June 30, the amendments made by subparagraph (A) shall apply*
37 *to returns for taxable years beginning on or after January 1, 2026.*

38 (2) *For taxable years beginning on or after January 1, 2016,*
39 *in the case of taxpayers that are “S” corporations subject to the*
40 *tax imposed by Article 3 (commencing with Section 23181) of*

1 Chapter 2 of Part 11, there shall be due and payable on or before
2 the 15th day of the fourth month following the close of the
3 preceding year from each taxpayer a percentage of its net income
4 as disclosed by its return which is equal to the rate applicable to
5 corporations subject to the tax imposed by Article 2 (commencing
6 with Section 23151) of Chapter 2 of Part 11 plus the personal
7 property tax rate equivalent included in the bank and financial
8 corporation tax rate determination by the Franchise Tax Board
9 pursuant to Section 23186. The payment required by this section
10 shall not be less than the minimum tax specified in Section 23153.

11 SEC. 5. Section 23224 of the Revenue and Taxation Code is
12 amended to read:

13 23224. (a) Notwithstanding the provisions of Section 23222
14 and Section 23223, if a corporation, which has been subject to the
15 provisions of Chapter 3 (commencing with Section 23501)
16 commences to do business in this state, its tax shall be computed
17 as follows:

18 (1) Such corporation shall pay a tax under Chapter 3
19 (commencing with Section 23501) for the whole of the year it
20 commences to do such business;

21 (2) Such corporation shall, for the taxable year succeeding the
22 year it commences to do business in this state, pay a tax under this
23 chapter measured by its income for that taxable year;

24 (3) Such corporation shall, for its third taxable year, pay a tax,
25 under this chapter, measured by its income for its second taxable
26 year;

27 (4) (A) Notwithstanding any other provisions of this part, for
28 taxable years beginning before January 1, 2016, such corporation
29 shall file its return for such second and third taxable years on or
30 before the 15th day of the third month following the close of its
31 second taxable year.

32 (B) (i) (I) Notwithstanding any other provisions of this part,
33 for taxable years beginning on or after January 1, 2016, such
34 corporation that is a "C" corporation shall file its return for such
35 second and third taxable years on or before the 15th day of the
36 fourth month following the close of its second taxable year.

37 (II) In the case of a "C" corporation with a fiscal year ending
38 on June 30, the amendments made by subclause (I) shall apply to
39 returns for taxable years beginning on or after January 1, 2026.

1 (ii) *Notwithstanding any other provisions of this part, for taxable*
 2 *years beginning on or after January 1, 2016, such corporation*
 3 *that is a “S” corporation shall file its return for such second and*
 4 *third taxable years on or before the 15th day of the third month*
 5 *following the close of its second taxable year.*

6 (b) The provisions of subdivision (a) shall be applicable only
 7 if a taxpayer commenced doing business in this state before January
 8 1, 1972.

9 SEC. 6. Section 23281 of the Revenue and Taxation Code is
 10 amended to read:

11 23281. (a) (1) When a taxpayer ceases to do business within
 12 the state during any taxable year and does not dissolve or withdraw
 13 from the state during that year, and does not resume doing business
 14 during the succeeding taxable year, its tax for the taxable year in
 15 which it resumes doing business prior to January 1, 2000, shall be
 16 the greater of the following:

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

21 (B) The minimum tax prescribed in Section 23153.

22 (2) When a taxpayer ceases to do business within the state during
 23 any taxable year and does not dissolve or withdraw from the state
 24 during that year, and does not resume doing business during the
 25 succeeding taxable year, its tax for the taxable year in which it
 26 resumes doing business, on or after January 1, 2000, shall be
 27 according to or measured by its net income for the taxable year in
 28 which it resumes doing business.

29 (b) ~~The~~ (1) *For taxable years beginning before January 1,*
 30 *2016, the tax shall be due and payable at the time the corporation*
 31 *resumes doing business, or on or before the 15th day of the third*
 32 *month following the close of its taxable year, whichever is later.*
 33 *All the provisions of this part relating to delinquent taxes shall be*
 34 *applicable to the tax if it is not paid on or before its due date.*

35 (2) (A) (i) *For taxable years beginning on or after January 1,*
 36 *2016, the tax shall be due and payable at the time the “C”*
 37 *corporation resumes doing business, or on or before the 15th day*
 38 *of the fourth month following the close of its taxable year,*
 39 *whichever is later. All the provisions of this part relating to*

1 *delinquent taxes shall be applicable to the tax if it is not paid on*
2 *or before its due date.*

3 *(ii) In the case of a “C” corporation with a fiscal year ending*
4 *on June 30, the amendments made by clause (i) shall apply to*
5 *returns for taxable years beginning on or after January 1, 2026.*

6 *(B) For taxable years beginning on or after January 1, 2016,*
7 *the tax shall be due and payable at the time the “S” corporation*
8 *resumes doing business, or on or before the 15th day of the third*
9 *month following the close of its taxable year, whichever is later.*

10 *All the provisions of this part relating to delinquent taxes shall be*
11 *applicable to the tax if it is not paid on or before its due date.*

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