

**ASSEMBLY BILL**

**No. 2544**

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

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2544, as introduced, Travis Allen. Income taxes: limited liability company: qualified investment partnership.

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 liability company registered, qualified to transact business, or doing business in this state, as specified. 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 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 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 state, as defined in Section 23101)~~ 23101, shall pay annually  
6 to this state a tax for the privilege of doing business in this state  
7 in an amount equal to the applicable amount specified in *paragraph*  
8 *(1)* of subdivision (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 (1) Except as provided in paragraph (2), for purposes~~  
29 ~~of this section, a “limited liability company” means an~~  
30 ~~organization, other than a limited liability company that is exempt~~  
31 ~~from the tax and fees imposed under this chapter pursuant to~~  
32 ~~Section 23701h or Section 23701x, organization that is formed~~  
33 by one or more persons under the law of this state, any other

country, or any other state, as a “limited liability company” and that is not taxable as a corporation for California tax purposes.

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

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

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

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

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

(II) *No less than 90 percent of the costs of its total assets consist of qualifying investment securities, deposits at banks or other financial institutions, interest or investments in a partnership, or office space and equipment reasonably necessary to carry on its activities as a qualified investment partnership.*

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

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

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

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

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

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

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

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

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

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

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

(B) “Operates at a loss” means a limited liability company’s expenses exceed its receipts.

(C) “Small business” means a limited liability company with total income from all sources derived from, or ~~attributable to~~, *attributable to*, the state of two hundred fifty thousand dollars (\$250,000) or less.

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

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