

AMENDED IN ASSEMBLY MAY 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**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 amended, 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~~ *bill, for each taxable year beginning before January 1, 2020,* 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. This act shall be known, and may be cited, as the*  
2     *Access to Angel Investors Act.*

3     *SEC. 2. It is the intent of the Legislature that this act improve*  
4     *access to capital.*

5     ~~SECTION 1.~~

6     *SEC. 3.* Section 17941 of the Revenue and Taxation Code is  
7     amended to read:

8     17941. (a) For each taxable year beginning on or after January  
9     1, 1997, a limited liability company doing business in this state,  
10    as defined in Section 23101, shall pay annually to this state a tax  
11    for the privilege of doing business in this state in an amount equal  
12    to the applicable amount specified in paragraph (1) of subdivision  
13    (d) of Section 23153 for the taxable year.

14    (b) (1) In addition to any limited liability company that is doing  
15    business in this state and is therefore subject to the tax imposed  
16    by subdivision (a), for each taxable year beginning on or after  
17    January 1, 1997, a limited liability company shall pay annually  
18    the tax prescribed in subdivision (a) if articles of organization have  
19    been accepted, or a certificate of registration has been issued, by  
20    the office of the Secretary of State. The tax shall be paid for each  
21    taxable year, or part thereof, until a certificate of cancellation of  
22    registration or of articles of organization is filed on behalf of the  
23    limited liability company with the office of the Secretary of State.

24    (2) If a taxpayer files a return with the Franchise Tax Board that  
25    is designated as its final return, the Franchise Tax Board shall  
26    notify the taxpayer that the annual tax shall continue to be due  
27    annually until a certificate of dissolution is filed with the Secretary  
28    of State pursuant to Section 17707.08 of the Corporations Code  
29    or a certificate of cancellation is filed with the Secretary of State  
30    pursuant to Section 17708.06 of the Corporations Code.

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

1 (d) (1) Except as provided in paragraph (2), for purposes of  
2 this section, a “limited liability company” means an organization  
3 that is formed by one or more persons under the law of this state,  
4 any other country, or any other state, as a “limited liability  
5 company” and that is not taxable as a corporation for California  
6 tax purposes.

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

10 (A) The limited liability company is exempt from the tax and  
11 fees imposed under this chapter pursuant to Section 23701h or  
12 23701x.

13 (B) (i) ~~The~~ *For each taxable year beginning before January 1,*  
14 *2020, the* limited liability company is a qualified investment  
15 partnership.

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

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

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

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

29 (iii) For purposes of this subparagraph, “qualifying investment  
30 securities” has the same meaning as that term is described in  
31 subparagraph (A) of paragraph (3) of subdivision (c) of Section  
32 17955.

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

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

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

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

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

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

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

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

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

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

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

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

1     ~~SEC. 2.~~

2     ~~SEC. 4.~~ This act provides for a tax levy within the meaning of  
3 Article IV of the *California* Constitution and shall go into  
4 immediate effect.

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