

AMENDED IN ASSEMBLY MAY 2, 2016  
AMENDED IN ASSEMBLY MARCH 28, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2807**

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**Introduced by Assembly Member ~~Mayes Steinorth~~  
(Coauthor: Assembly Member Lackey)**

February 19, 2016

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An act to amend Section ~~23153~~ 17052 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy: taxation, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2807, as amended, ~~Mayes Steinorth~~. ~~Income taxes: minimum franchise tax: annual tax.~~ *Personal income taxes: earned income credit.*

*The Personal Income Tax Law allows various credits against the taxes imposed by that law, including certain credits that are allowed in modified conformity to credits allowed by federal income tax laws. Federal income tax laws allow a refundable earned income tax credit for certain low-income individuals who have earned income from wages, salaries, tips, and other employee compensation plus net earnings from self-employment and who meet certain other requirements. The Personal Income Tax Law, for taxable years beginning on or after January 1, 2015, in modified conformity with federal income tax laws, allows an earned income credit against personal income tax, which is only for earned income from wages, salaries, tips, and other employee compensation, and a payment in excess of that credit amount, to an eligible individual that is equal to that portion of the earned income*

tax credit allowed by federal law as determined by the earned income tax credit adjustment factor as set forth in the annual Budget Act.

This bill would, for taxable years beginning on and after January 1, 2016, expand the earned income credit allowed by the Personal Income Tax Law by providing additional conformity with federal income tax law to include specified net earnings from self-employment in earned income thus allowing an earned income credit for taxpayers for those earnings.

Existing law establishes the continuously appropriated Tax Relief and Refund Account and provides that payments required to be made to taxpayers or other persons from the Personal Income Tax Fund are to be paid from that account, including any amount allowable as an earned income credit in excess of any tax liabilities.

By authorizing new payments from that account for additional amounts in excess of personal income tax liabilities, this bill would make an appropriation.

~~Existing law imposes an annual minimum franchise tax, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state. Existing law, until taxable years beginning on or after January 1, 2018, exempts a corporation and a limited liability company that are small businesses solely owned by a deployed member of the United States Armed Forces, as specified, from paying the minimum franchise tax, or the annual tax, for the privilege of doing business in this state if the corporation or limited liability company ceases operation or operates at a loss, as defined.~~

~~The bill would reduce the annual minimum franchise tax to \$150 for taxable years beginning on or after January 1, 2017, for specified corporations. This bill would also extend the exemption for corporations and limited liability companies solely owned by deployed members of the United States Armed Forces until January 1, 2020.~~

~~This bill would take effect immediately as a tax levy.~~

Vote: ~~majority~~<sup>2/3</sup>. Appropriation: ~~no~~<sup>yes</sup>. Fiscal committee: yes. State-mandated local program: no.

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

- 1 *SECTION 1. Section 17052 of the Revenue and Taxation Code*
- 2 *is amended to read:*

1 17052. (a) (1) For each taxable year beginning on or after  
 2 January 1, 2015, there shall be allowed against the “net tax,” as  
 3 defined by Section 17039, an earned income tax credit in an amount  
 4 equal to an amount determined in accordance with Section 32 of  
 5 the Internal Revenue Code, relating to earned income, as applicable  
 6 for federal income tax purposes for the taxable year, except as  
 7 otherwise provided in this section.

8 (2) (A) The amount of the credit determined under Section 32  
 9 of the Internal Revenue Code, relating to earned income, as  
 10 modified by this section, shall be multiplied by the earned income  
 11 tax credit adjustment factor for the taxable year.

12 (B) Unless otherwise specified in the annual Budget Act, the  
 13 earned income tax credit adjustment factor for a taxable year  
 14 beginning on or after January 1, 2015, shall be 0 percent.

15 (C) The earned income tax credit authorized by this section  
 16 shall only be operative for taxable years for which resources are  
 17 authorized in the annual Budget Act for the Franchise Tax Board  
 18 to oversee and audit returns associated with the credit.

19 (b) (1) In lieu of the table prescribed in Section 32(b)(1) of the  
 20 Internal Revenue Code, relating to percentages, the credit  
 21 percentage and the phaseout percentage shall be determined as  
 22 follows:

23

24 In the case of an eligible individual	The credit	The phaseout
25 with:	percentage is:	percentage is:
26 No qualifying children	7.65%	7.65%
27 1 qualifying child	34%	34%
28 2 or more qualifying children	40%	40%

29

30 (2) (A) In lieu of the table prescribed in Section 32(b)(2)(A)  
 31 of the Internal Revenue Code, the earned income amount and the  
 32 phaseout amount shall be determined as follows:

33

34 In the case of an eligible individual	The earned income	The phaseout
35 with:	amount is:	amount is:
36 No qualifying children	\$3,290	\$3,290
37 1 qualifying child	\$4,940	\$4,940
38 2 or more qualifying children	\$6,935	\$6,935

39

1 (B) Section 32(b)(2)(B) of the Internal Revenue Code, relating  
2 to joint returns, shall not apply.

3 (3) Section 32(b)(3)(A) of the Internal Revenue Code, relating  
4 to increased percentage for three or more qualifying children, is  
5 modified by substituting “the credit percentage and phaseout  
6 percentage is 45 percent” for “the credit percentage is 45 percent.”

7 (c) (1) Section 32(c)(1)(A)(ii)(I) of the Internal Revenue Code  
8 is modified by substituting “this state” for “the United States.”

9 (2) Section 32(c)(2)(A) of the Internal Revenue Code is modified  
10 as follows:

11 (A) Section 32(c)(2)(A)(i) of the Internal Revenue Code is  
12 modified by deleting “plus” and inserting in lieu thereof the  
13 following: “and only if such amounts are subject to withholding  
14 pursuant to Division 6 (commencing with Section 13000) of the  
15 Unemployment Insurance Code.” *Code, plus*”

16 (B) *In lieu of* Section 32(c)(2)(A)(ii) of the Internal Revenue  
17 ~~Code shall not apply.~~ *Code, substitute the following: “the amount*  
18 *of the taxpayer’s reportable gross income from self-employment*  
19 *for the taxable year.” For purposes of this section, “reportable*  
20 *gross income from self-employment” means gross income derived*  
21 *by an individual from any trade or business carried on by such*  
22 *individual that is properly reported to the Secretary on an*  
23 *information return for the taxable year and reported on a written*  
24 *statement furnished to that individual as required pursuant to*  
25 *Section 6041 of the Internal Revenue Code, relating to information*  
26 *at source, or Section 6041A of the Internal Revenue Code, relating*  
27 *to returns regarding payments of remuneration for services and*  
28 *direct sales.*

29 (3) Section 32(c)(3)(C) of the Internal Revenue Code, relating  
30 to place of abode, is modified by substituting “this state” for “the  
31 United States.”

32 (d) Section 32(i)(1) of the Internal Revenue Code is modified  
33 by substituting “\$3,400” for “\$2,200.”

34 (e) In lieu of Section 32(j) of the Internal Revenue Code, relating  
35 to inflation adjustments, for taxable years beginning on or after  
36 January 1, 2016, the amounts specified in paragraph (2) of  
37 subdivision (b) and in subdivision (d) shall be recomputed annually  
38 in the same manner as the recomputation of income tax brackets  
39 under subdivision (h) of Section 17041.

1 (f) If the amount allowable as a credit under this section exceeds  
2 the tax liability computed under this part for the taxable year, the  
3 excess shall be credited against other amounts due, if any, and the  
4 balance, if any, shall be paid from the Tax Relief and Refund  
5 Account and refunded to the taxpayer.

6 (g) The Franchise Tax Board may prescribe rules, guidelines,  
7 or procedures necessary or appropriate to carry out the purposes  
8 of this section. Chapter 3.5 (commencing with Section 11340) of  
9 Part 1 of Division 3 of Title 2 of the Government Code shall not  
10 apply to any rule, guideline, or procedure prescribed by the  
11 Franchise Tax Board pursuant to this section.

12 (h) Notwithstanding any other law, amounts refunded pursuant  
13 to this section shall be treated in the same manner as the federal  
14 earned income refund for the purpose of determining eligibility to  
15 receive benefits under Division 9 (commencing with Section  
16 10000) of the Welfare and Institutions Code or amounts of those  
17 benefits.

18 (i) (1) For the purpose of implementing the credit allowed by  
19 this section for the 2015 taxable year, the Franchise Tax Board  
20 shall be exempt from the following:

21 (A) Special Project Report requirements under State  
22 Administrative Manual Sections 4819.36, 4945, and 4945.2.

23 (B) Special Project Report requirements under Statewide  
24 Information Management Manual Section 30.

25 (C) Section 11.00 of the 2015 Budget Act.

26 (D) Sections 12101, 12101.5, 12102, and 12102.1 of the Public  
27 Contract Code.

28 (2) The Franchise Tax Board shall formally incorporate the  
29 scope, costs, and schedule changes associated with the  
30 implementation of the credit allowed by this section in its next  
31 anticipated Special Project Report for its Enterprise Data to  
32 Revenue Project.

33 (j) (1) In accordance with Section 41 of the Revenue and  
34 Taxation Code, the purpose of the California Earned Income Tax  
35 Credit is to reduce poverty among California's poorest working  
36 families and individuals. To measure whether the credit achieves  
37 its intended purpose, the Franchise Tax Board shall annually  
38 prepare a written report on the following:

39 (A) The number of tax returns claiming the credit.

1 (B) The number of individuals represented on tax returns  
2 claiming the credit.

3 (C) The average credit amount on tax returns claiming the credit.

4 (D) The distribution of credits by number of dependents and  
5 income ranges. The income ranges shall encompass the phase-in  
6 and phaseout ranges of the credit.

7 (E) Using data from tax returns claiming the credit, including  
8 an estimate of the federal tax credit determined under Section 32  
9 of the Internal Revenue Code, an estimate of the number of families  
10 who are lifted out of deep poverty by the credit and an estimate of  
11 the number of families who are lifted out of deep poverty by the  
12 combination of the credit and the federal tax credit. For the  
13 purposes of this subdivision, a family is in “deep poverty” if the  
14 income of the family is less than 50 percent of the federal poverty  
15 threshold.

16 (2) The Franchise Tax Board shall provide the written report to  
17 the Senate Committee on Budget and Fiscal Review, the Assembly  
18 Committee on Budget, the Senate and Assembly Committees on  
19 Appropriations, the Senate Committee on Governance and Finance,  
20 the Assembly Committees on Revenue and Taxation, and the  
21 Senate and Assembly Committees on Human Services.

22 (k) The tax credit allowed by this section shall be known as the  
23 California Earned Income Tax Credit.

24 (l) *The amendments made to this section by the act adding this*  
25 *subdivision shall apply for taxable years beginning on or after*  
26 *January 1, 2016.*

27 ~~SECTION 1. Section 23153 of the Revenue and Taxation Code~~  
28 ~~is amended to read:~~

29 ~~23153. (a) Every corporation described in subdivision (b) shall~~  
30 ~~be subject to the minimum franchise tax specified in subdivision~~  
31 ~~(d) from the earlier of the date of incorporation, qualification, or~~  
32 ~~commencing to do business within this state, until the effective~~  
33 ~~date of dissolution or withdrawal as provided in Section 23331 or,~~  
34 ~~if later, the date the corporation ceases to do business within the~~  
35 ~~limits of this state.~~

36 ~~(b) Unless expressly exempted by this part or the California~~  
37 ~~Constitution, subdivision (a) shall apply to each of the following:~~

38 ~~(1) Every corporation that is incorporated under the laws of this~~  
39 ~~state.~~

1 ~~(2) Every corporation that is qualified to transact intrastate~~  
2 ~~business in this state pursuant to Chapter 21 (commencing with~~  
3 ~~Section 2100) of Division 1 of Title 1 of the Corporations Code.~~

4 ~~(3) Every corporation that is doing business in this state.~~

5 ~~(e) The following entities are not subject to the minimum~~  
6 ~~franchise tax specified in this section:~~

7 ~~(1) Credit unions.~~

8 ~~(2) Nonprofit cooperative associations organized pursuant to~~  
9 ~~Chapter 1 (commencing with Section 54001) of Division 20 of the~~  
10 ~~Food and Agricultural Code that have been issued the certificate~~  
11 ~~of the board of supervisors prepared pursuant to Section 54042 of~~  
12 ~~the Food and Agricultural Code. The association shall be exempt~~  
13 ~~from the minimum franchise tax for five consecutive taxable years,~~  
14 ~~commencing with the first taxable year for which the certificate~~  
15 ~~is issued pursuant to subdivision (b) of Section 54042 of the Food~~  
16 ~~and Agricultural Code. This paragraph only applies to nonprofit~~  
17 ~~cooperative associations organized on or after January 1, 1994.~~

18 ~~(d) (1) Except as provided in paragraph (2), paragraph (1) of~~  
19 ~~subdivision (f) of Section 23151, paragraph (1) of subdivision (f)~~  
20 ~~of Section 23181, and paragraph (1) of subdivision (c) of Section~~  
21 ~~23183, corporations subject to the minimum franchise tax shall~~  
22 ~~pay annually to the state a minimum franchise tax of eight hundred~~  
23 ~~dollars (\$800).~~

24 ~~(2) The minimum franchise tax shall be twenty-five dollars~~  
25 ~~(\$25) for each of the following:~~

26 ~~(A) A corporation formed under the laws of this state whose~~  
27 ~~principal business when formed was gold mining, which is inactive~~  
28 ~~and has not done business within the limits of the state since 1950.~~

29 ~~(B) A corporation formed under the laws of this state whose~~  
30 ~~principal business when formed was quicksilver mining, which is~~  
31 ~~inactive and has not done business within the limits of the state~~  
32 ~~since 1971, or has been inactive for a period of 24 consecutive~~  
33 ~~months or more.~~

34 ~~(3) For purposes of paragraph (2), a corporation shall not be~~  
35 ~~considered to have done business if it engages in business other~~  
36 ~~than mining.~~

37 ~~(e) Notwithstanding subdivision (a), for taxable years beginning~~  
38 ~~on or after January 1, 1999, and before January 1, 2000, every~~  
39 ~~“qualified new corporation” shall pay annually to the state a~~  
40 ~~minimum franchise tax of five hundred dollars (\$500) for the~~

1 second taxable year. This subdivision shall apply to any corporation  
2 that is a qualified new corporation and is incorporated on or after  
3 January 1, 1999, and before January 1, 2000.

4 (1) ~~The determination of the gross receipts of a corporation, for~~  
5 ~~purposes of this subdivision, shall be made by including the gross~~  
6 ~~receipts of each member of the commonly controlled group, as~~  
7 ~~defined in Section 25105, of which the corporation is a member.~~

8 (2) ~~“Gross receipts, less returns and allowances reportable to~~  
9 ~~this state,” means the sum of the gross receipts from the production~~  
10 ~~of business income, as defined in subdivision (a) of Section 25120,~~  
11 ~~and the gross receipts from the production of nonbusiness income,~~  
12 ~~as defined in subdivision (d) of Section 25120.~~

13 (3) ~~“Qualified new corporation” means a corporation that is~~  
14 ~~incorporated under the laws of this state or has qualified to transact~~  
15 ~~intrastate business in this state, that begins business operations at~~  
16 ~~or after the time of its incorporation and that reasonably estimates~~  
17 ~~that it will have gross receipts, less returns and allowances,~~  
18 ~~reportable to this state for the taxable year of one million dollars~~  
19 ~~(\$1,000,000) or less. “Qualified new corporation” does not include~~  
20 ~~any corporation that began business operations as a sole~~  
21 ~~proprietorship, a partnership, or any other form of business entity~~  
22 ~~prior to its incorporation. This subdivision shall not apply to any~~  
23 ~~corporation that reorganizes solely for the purpose of reducing its~~  
24 ~~minimum franchise tax.~~

25 (4) ~~This subdivision shall not apply to limited partnerships, as~~  
26 ~~defined in Section 17935, limited liability companies, as defined~~  
27 ~~in Section 17941, limited liability partnerships, as described in~~  
28 ~~Section 17948, charitable organizations, as described in Section~~  
29 ~~23703, regulated investment companies, as defined in Section 851~~  
30 ~~of the Internal Revenue Code, relating to definition of regulated~~  
31 ~~investment company, real estate investment trusts, as defined in~~  
32 ~~Section 856 of the Internal Revenue Code, relating to definition~~  
33 ~~of real estate investment trust, real estate mortgage investment~~  
34 ~~conduits, as defined in Section 860D of the Internal Revenue Code,~~  
35 ~~relating to REMIC defined, qualified Subchapter S subsidiaries,~~  
36 ~~as defined in Section 1361(b)(3) of the Internal Revenue Code,~~  
37 ~~relating to treatment of wholly owned subsidiaries, or to the~~  
38 ~~formation of any subsidiary corporation, to the extent applicable.~~

39 (5) ~~For any taxable year beginning on or after January 1, 1999,~~  
40 ~~and before January 1, 2000, if a corporation has qualified to pay~~

1 five hundred dollars (\$500) for the second taxable year under this  
2 subdivision, but in its second taxable year, the corporation's gross  
3 receipts, as determined under paragraphs (1) and (2), exceed one  
4 million dollars (\$1,000,000), an additional tax in the amount equal  
5 to three hundred dollars (\$300) for the second taxable year shall  
6 be due and payable by the corporation on the due date of its return,  
7 without regard to extension, for that year.

8 (f) (1) Notwithstanding subdivision (a), every corporation that  
9 incorporates or qualifies to do business in this state on or after  
10 January 1, 2000, shall not be subject to the minimum franchise tax  
11 for its first taxable year.

12 (2) ~~This subdivision shall not apply to limited partnerships, as~~  
13 ~~defined in Section 17935, limited liability companies, as defined~~  
14 ~~in Section 17941, limited liability partnerships, as described in~~  
15 ~~Section 17948, charitable organizations, as described in Section~~  
16 ~~23703, regulated investment companies, as defined in Section 851~~  
17 ~~of the Internal Revenue Code, relating to definition of regulated~~  
18 ~~investment company, real estate investment trusts, as defined in~~  
19 ~~Section 856 of the Internal Revenue Code, relating to definition~~  
20 ~~of real estate investment trust, real estate mortgage investment~~  
21 ~~conduits, as defined in Section 860D of the Internal Revenue Code,~~  
22 ~~relating to REMIC defined, and qualified Subchapter S subsidiaries,~~  
23 ~~as defined in Section 1361(b)(3) of the Internal Revenue Code,~~  
24 ~~relating to treatment of wholly owned subsidiaries, to the extent~~  
25 ~~applicable.~~

26 (3) ~~This subdivision shall not apply to any corporation that~~  
27 ~~reorganizes solely for the purpose of avoiding payment of its~~  
28 ~~minimum franchise tax.~~

29 (g) ~~Notwithstanding subdivision (a), a domestic corporation, as~~  
30 ~~defined in Section 167 of the Corporations Code, that files a~~  
31 ~~certificate of dissolution in the office of the Secretary of State~~  
32 ~~pursuant to subdivision (b) of Section 1905 of the Corporations~~  
33 ~~Code, prior to its amendment by the act amending this subdivision,~~  
34 ~~and that does not thereafter do business shall not be subject to the~~  
35 ~~minimum franchise tax for taxable years beginning on or after the~~  
36 ~~date of that filing.~~

37 (h) ~~The minimum franchise tax imposed by paragraph (1) of~~  
38 ~~subdivision (d) shall not be increased by the Legislature by more~~  
39 ~~than 10 percent during any calendar year.~~

1 (i) ~~(1) Notwithstanding subdivision (a), a corporation that is a~~  
2 ~~small business solely owned by a deployed member of the United~~  
3 ~~States Armed Forces shall not be subject to the minimum franchise~~  
4 ~~tax for any taxable year the owner is deployed and the corporation~~  
5 ~~operates at a loss or ceases operation.~~

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

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

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

15 ~~(i) Temporary duty for the sole purpose of training or processing.~~

16 ~~(ii) A permanent change of station.~~

17 ~~(B) “Operates at a loss” means negative net income as defined~~  
18 ~~in Section 24341.~~

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

22 ~~(4) This subdivision shall become inoperative for taxable years~~  
23 ~~beginning on or after January 1, 2020.~~

24 ~~(j) Notwithstanding subdivision (a), for taxable years beginning~~  
25 ~~on or after January 1, 2017, corporations subject to the minimum~~  
26 ~~franchise tax shall pay annually to the state a minimum franchise~~  
27 ~~tax of one hundred fifty dollars (\$150).~~

28 ~~(2) This subdivision shall not apply to limited partnerships, as~~  
29 ~~defined in Section 17935, limited liability companies, as defined~~  
30 ~~in Section 17941, limited liability partnerships, as described in~~  
31 ~~Section 17948, charitable organizations, as described in Section~~  
32 ~~23703, regulated investment companies, as defined in Section 851~~  
33 ~~of the Internal Revenue Code, relating to definition of regulated~~  
34 ~~investment company, real estate investment trusts, as defined in~~  
35 ~~Section 856 of the Internal Revenue Code, relating to the definition~~  
36 ~~of real estate investment trust, and real estate mortgage investment~~  
37 ~~conduits, as defined in Section 860D of the Internal Revenue Code,~~  
38 ~~relating to REMIC defined.~~

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

O