

Senate Bill No. 13

CHAPTER 2

An act to amend Section 17653 of the Corporations Code, and to amend Sections 19172, 19604, 23091, 23092, and 60008 of the Revenue and Taxation Code, relating to limited liability companies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 1, 1995. Filed with
Secretary of State May 1, 1995.]

LEGISLATIVE COUNSEL'S DIGEST

SB 13, Beverly. Limited liability companies.

The California Limited Liability Company Act authorizes a limited liability company, as defined, to engage in any lawful business activity, as specified. The Personal Income Tax Law, the Bank and Corporation Tax Law, and the Diesel Fuel Tax Law impose specified filing and tax requirements on limited liability companies.

This bill would, under the Personal Income Tax Law, make a clarifying change to provisions that impose a penalty for failure to file a return. This bill would, under the Bank and Corporation Tax Law, make a clarifying change to provisions that impose a penalty for failure to pay specified taxes, and make clarifying and supplemental changes as to what constitutes commonly controlled partnerships or limited liability companies for purposes of determining the total income from all sources reportable to this state, as provided. This bill would make a clarifying change to the Diesel Fuel Tax Law to provide that the term "person" includes a limited liability company.

Existing law authorizes the Secretary of State, under certain circumstances, to waive the penalty for a limited liability company's failure to pay a specified fee.

This bill would delete that provision.

This bill would apply to taxable or income years beginning on or after January 1, 1994.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 17653 of the Corporations Code is amended to read:

17653. (a) Upon the failure of a limited liability company to file the statement required by Section 17060, the Secretary of State shall mail a notice of the delinquency to the limited liability company. The notice shall also contain information concerning the application of



this section, advise the limited liability company of the penalty imposed by Section 19141 of the Revenue and Taxation Code for failure to timely file the required statement after notice of delinquency has been mailed by the Secretary of State, and shall advise the limited liability company of its right to request relief from the Secretary of State because of reasonable cause or unusual circumstances that justify such failure to file. If, within 60 days after the mailing of the notice of delinquency, a statement pursuant to Section 17060 has not been filed by the limited liability company, the Secretary of State shall certify the name of such limited liability company to the Franchise Tax Board.

(b) Upon certification pursuant to subdivision (a), the Franchise Tax Board shall assess against the limited liability company the penalty provided in Section 19141 of the Revenue and Taxation Code.

(c) The penalty provided by Section 19141 shall not apply to a limited liability company that on or prior to the date of certification pursuant to subdivision (a) has dissolved or has been merged into another limited liability company or other business entity.

(d) The penalty herein provided shall not apply and the Secretary of State need not mail a notice of delinquency to a limited liability company the powers, rights and privileges of which have been suspended by the Franchise Tax Board pursuant to Section 23301, 23301.5 or 23775 of the Revenue and Taxation Code on or prior to, and remain suspended on, the last day of the filing period pursuant to Section 17060. The Secretary of State need not mail a form pursuant to Section 17060 to a limited liability company the powers, rights and privileges of which have been so suspended by the Franchise Tax Board on or prior to, and remain suspended on, the day the Secretary of State prepares the forms for mailing.

(e) If, after certification pursuant to subdivision (a) the Secretary of State finds (1) the required statement was filed or the required fee was paid before the expiration of the 60-day period after mailing of the notice of delinquency, or (2) the failure to provide notice of delinquency was due to an error of the Secretary of State, the Secretary of State shall promptly decertify the name of the limited liability company to the Franchise Tax Board. The Franchise Tax Board shall then promptly abate any penalty assessed against the limited liability company pursuant to Section 19141 of the Revenue and Taxation Code.

(f) If the Secretary of State determines that the failure of a limited liability company to file the statement required by Section 17060 is excusable because of reasonable cause or unusual circumstances that justify such failure, the Secretary of State may waive the penalty imposed by this section and by Section 19141 of the Revenue and Taxation Code, in which case the Secretary of State shall not certify the name of the limited liability company to the Franchise Tax Board,



or if already certified, the Secretary of State shall promptly decertify the name of the limited liability company.

SEC. 2. Section 19172 of the Revenue and Taxation Code is amended to read:

19172. (a) In addition to the penalty imposed by Section 19706 (relating to willful failure to file return, supply information, or pay tax), if any partnership required to file a return under Section 18633 or 18633.5 for any taxable year does either of the following:

(1) Fails to file the return at the time prescribed therefor (determined with regard to any extension of time for filing).

(2) Files a return which fails to show the information required under Section 18633 or 18633.5, that partnership shall be liable for a penalty determined under subdivision (b) for each month (or fraction thereof) during which that failure continues (but not to exceed five months), unless it is shown that the failure is due to reasonable cause.

(b) For purposes of subdivision (a), the amount determined under this subdivision for any month is the product of the following:

(1) Ten dollars (\$10), multiplied by

(2) The number of persons who were partners in the partnership during any part of the taxable year.

(c) The penalty imposed by subdivision (a) shall be assessed against the partnership.

(d) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

SEC. 3. Section 19604 of the Revenue and Taxation Code is amended to read:

19604. (a) Except for fees received for services under Section 23305e, all moneys and remittances received by the Franchise Tax Board as tax imposed under Part 11 (commencing with Section 23001), and related penalties, additions to tax, fees, and interest imposed under this part, shall be deposited in a special fund in the State Treasury, to be designated the Bank and Corporation Tax Fund. The moneys in the fund shall, upon the order of the Controller, be drawn therefrom for the purpose of making refunds under this part or be transferred into the General Fund. All undelivered refund warrants shall be redeposited into the Bank and Corporation Tax Fund upon receipt by the Controller. Fees received for services under Section 23305e shall be treated as reimbursement of the Franchise Tax Board's costs and shall be deposited into the General Fund.

(b) Notwithstanding Section 13340 of the Government Code, all moneys in the Bank and Corporation Tax Fund are hereby continuously appropriated, without regard to fiscal year, to the



Franchise Tax Board for purposes of making all payments as provided in this section.

SEC. 4. Section 23091 of the Revenue and Taxation Code is amended to read:

23091. (a) For each taxable year beginning on or after January 1, 1994, every limited liability company doing business in this state (as defined in Section 23101) and required to file a return under Section 18633.5, shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) In addition to any limited liability company which is doing business in this state and is therefore subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1994, a limited liability company shall pay annually the tax prescribed in subdivision (a) if articles of organization have been accepted, or a certificate of registration has been issued, by the office of the Secretary of State. The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation of registration or of articles of organization is filed on behalf of the limited liability company with the office of the Secretary of State.

(c) The tax assessed under this section shall be due and payable on or before the 15th day of the fourth month of the taxable year. Notwithstanding the preceding sentence, no penalty under Section 19132, and no interest under Section 19101, shall be imposed for failure to pay this tax prior to January 3, 1995.

(d) For purposes of this section, “limited liability company” means any organization formed by one or more persons under the law of this state, any other country, or any other state, as a “limited liability company” and which is classified as a partnership for California tax purposes.

SEC. 5. Section 23092 of the Revenue and Taxation Code is amended to read:

23092. (a) In addition to the tax imposed under Section 23091, every limited liability company subject to tax under Section 23091 shall pay annually to this state a fee equal to:

(1) Five hundred dollars (\$500), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand dollars (\$500,000).

(2) One thousand dollars (\$1,000), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Two thousand dollars (\$2,000), if the total income from all sources reportable to this state for the taxable year is one million



dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000).

(4) Four thousand dollars (\$4,000), if the total income from all sources reportable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(5) This subdivision shall be operative for taxable years beginning on or before December 31, 1995.

(b) In addition to the tax imposed under Section 23091, every limited liability company subject to tax under subdivision (b) of Section 23091 shall pay annually to this state a fee equal to:

(1) Five hundred dollars (\$500), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars (\$250,000) or more, but less than five hundred thousand dollars (\$500,000).

(2) One thousand five hundred dollars (\$1,500), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars (\$500,000) or more, but less than one million dollars (\$1,000,000).

(3) Three thousand dollars (\$3,000), if the total income from all sources reportable to this state for the taxable year is one million dollars (\$1,000,000) or more, but less than five million dollars (\$5,000,000).

(4) Four thousand five hundred dollars (\$4,500), if the total income from all sources reportable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(5) This subdivision shall apply to taxable years beginning on or after January 1, 1996.

(c) (1) For purposes of this section, “total income” means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer.

(2) In the event a taxpayer is a commonly controlled limited liability company, the total income from all sources reportable to this state, taking into account any election under Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or



indirectly, more than 50 percent of the capital interests or profits interests.

(d) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

SEC. 6. Section 60008 of the Revenue and Taxation Code is amended to read:

60008. "Person" includes any individual, firm, copartnership, joint venture, limited liability company, association, corporation, estate, trust, business trust, receiver, syndicate, the United States, this state, any county, city and county, municipality, district, or other political subdivision thereof, or any other group or combination acting as a unit.

SEC. 7. This act shall apply to taxable and income years beginning on or after January 1, 1994.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the proper application of laws relating to limited liability companies for the 1994 taxable and income years, it is necessary that this act go into immediate effect.

