

ASSEMBLY BILL

No. 1520

Introduced by Assembly Member Vincent

February 28, 1997

An act to amend Sections 18633 and 18633.5 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1520, as introduced, Vincent. Income taxes: partnerships: returns.

The Personal Income Tax Law, among other things, requires partnerships and limited liability companies to make returns that include specified information.

This bill would require the Franchise Tax Board to prescribe the manner and extent to which the specified information shall be included in the returns, as provided.

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 18633 of the Revenue and
2 Taxation Code is amended to read:
3 18633. (a) (1) Every partnership, within three
4 months and 15 days after the close of its taxable year, shall
5 make a return for that taxable year, stating specifically
6 the items of gross income and the deductions allowed by
7 Part 10 (commencing with Section 17001). Except as
8 otherwise provided in Section 18621.5, the return shall

1 include the names, addresses, and taxpayer identification
2 numbers of the persons, whether residents or
3 nonresidents, who would be entitled to share in the net
4 income if distributed and the amount of the distributive
5 share of each person. The return shall contain or be
6 verified by a written declaration that it is made under the
7 penalties of perjury, signed by one of the partners.

8 (2) In addition to returns required by paragraph (1),
9 every limited partnership subject to the tax imposed by
10 subdivision (b) of Section 17935 or 23081, within three
11 months and 15 days after the close of its taxable year, shall
12 make a return for that year ~~that satisfies the requirements~~
13 ~~of paragraph (1)~~. *The Franchise Tax Board shall*
14 *prescribe the manner and extent to which the*
15 *information identified in paragraph (1) shall be included*
16 *with the return required by this paragraph.*

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

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

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

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

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



1 (e) The amendments made to this section by the act
2 adding this subdivision shall apply to returns required to
3 be filed under subdivision (a) after the effective date of
4 that act.

5 (f) *The amendments made to this section by the act*
6 *adding this subdivision shall apply to returns required to*
7 *be filed on or after January 1, 1998.*

8 SEC. 2. Section 18633.5 of the Revenue and Taxation
9 Code is amended to read:

10 18633.5. (a) Every limited liability company which is
11 classified as a partnership for California tax purposes that
12 is doing business in this state, organized in this state, or
13 registered with the Secretary of State shall file its return
14 within three months and 15 days after the close of its
15 taxable or income year, shall make a return for that
16 taxable year, stating specifically the items of gross income
17 and the deductions allowed by Part 10 (commencing with
18 Section 17001). The return shall include the names,
19 addresses, and taxpayer identification numbers of the
20 persons, whether residents or nonresidents, who would
21 be entitled to share in the net income if distributed and
22 the amount of the distributive share of each person. The
23 return shall contain or be verified by a written
24 declaration that it is made under the penalties of perjury,
25 signed by one of the limited liability company members.
26 *In the case of a limited liability company subject to the tax*
27 *imposed by subdivision (b) of Section 17941 or 23091, the*
28 *Franchise Tax Board shall prescribe the manner and*
29 *extent to which the information identified in this*
30 *paragraph shall be included with the return required by*
31 *this paragraph.*

32 (b) Each limited liability company required to file a
33 return under subdivision (a) for any limited liability
34 company taxable or income year shall, on or before the
35 day on which the return for that taxable or income year
36 was required to be filed, furnish to each person who holds
37 an interest in that limited liability company at any time
38 during that taxable *or income* year a copy of that
39 information required to be shown on that return as may



1 be required by forms and instructions prescribed by the
2 Franchise Tax Board.

3 (c) Any person who holds an interest in a limited
4 liability company as a nominee for another person shall
5 do both of the following:

6 (1) Furnish to the limited liability company, in the
7 manner prescribed by the Franchise Tax Board, the
8 name, address, and taxpayer identification number of
9 that person, and any other information for that taxable or
10 income year as the Franchise Tax Board may prescribe by
11 forms and instructions.

12 (2) Furnish to that other person, in the manner
13 prescribed by the Franchise Tax Board, the information
14 provided by that limited liability company under
15 subdivision (b).

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

19 (e) (1) A limited liability company shall file with its
20 return required under subdivision (a), in the form
21 required by the Franchise Tax Board, the agreement of
22 each nonresident member to file a return pursuant to
23 Section 18501, to make timely payment of all taxes
24 imposed on the member by this state with respect to the
25 income of the limited liability company, and to be subject
26 to personal jurisdiction in this state for purposes of the
27 collection of income taxes, together with related interest
28 and penalties, imposed on the member by this state with
29 respect to the income of the limited liability company. If
30 the limited liability company fails timely to file the
31 agreements on behalf of each of its nonresident members,
32 then the limited liability company shall, at the time set
33 forth in subdivision (f), pay to this state on behalf of each
34 nonresident member of whom an agreement has not
35 been timely filed an amount equal to the highest marginal
36 tax rate in effect under Section 17041 in the case of
37 members which are individuals, estates, or trusts, and
38 Section 23151 in the case of members which are
39 corporations, multiplied by the amount of the member's
40 distributive share of the income source to the state



1 reflected on the limited liability company's return for the
2 taxable period. A limited liability company shall be
3 entitled to recover the payment made from the member
4 on whose behalf the payment was made.

5 (2) If a limited liability company fails to attach the
6 agreement or to timely pay the payment required by
7 paragraph (1), the payment shall be considered the tax
8 of the limited liability company for purposes of the
9 penalty prescribed by Section 19132 and interest
10 prescribed by Section 19101 for failure to timely pay tax.
11 Payment of the penalty and interest imposed on the
12 limited liability company for failure to timely pay the
13 amount required by this subdivision shall extinguish the
14 liability of a nonresident member for the penalty and
15 interest for failure to make timely payment of all taxes
16 imposed on that member by this state with respect to the
17 income of the limited liability company.

18 (3) No penalty or interest shall be imposed on the
19 limited liability company under paragraph (2) if the
20 nonresident member timely files and pays all taxes
21 imposed on the member by this state with respect to the
22 income of the limited liability company.

23 (f) Any agreement of a nonresident member required
24 to be filed pursuant to subdivision (e) shall be filed at
25 either of the following times:

26 (1) The time the annual return is required to be filed
27 pursuant to this section for the first taxable period for
28 which the limited liability company became subject to tax
29 pursuant to Chapter 1.6 (commencing with Section
30 23091).

31 (2) The time the annual return is required to be filed
32 pursuant to this section for any taxable period in which
33 the limited liability company had a nonresident member
34 on whose behalf such an agreement has not been
35 previously filed.

36 (g) Any amount paid by the limited liability company
37 to this state pursuant to paragraph (1) of subdivision (e)
38 shall be considered to be a payment by the member on
39 account of the income tax imposed by this state on the
40 member for the taxable period.



1 (h) Every limited liability company that is classified as
2 a corporation for California tax purposes shall be subject
3 to the requirement to file a tax return under the
4 provisions of Part 10.2 (commencing with Section 18401)
5 and *subject to* the applicable taxes imposed by Part 11
6 (commencing with Section 23001), including Section
7 23221, relating to the prepayment of the minimum tax to
8 the Secretary of State.

9 *(i) The amendments made to this section by the act*
10 *adding this subdivision shall apply to returns required to*
11 *be filed on or after January 1, 1998.*

