

AMENDED IN ASSEMBLY MARCH 19, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1694

Introduced by Assembly Member Ackerman

January 26, 1998

An act to amend Sections 18633 and ~~18633.5~~, 18633.5, and 23305.5 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1694, as amended, Ackerman. Personal income taxes: partnership returns.

The Personal Income Tax Law requires partnerships and limited liability companies classified as partnerships for California tax purposes to file certain information returns. *The Bank and Corporation Tax Law provides for the suspension and revivor of specified taxpayers, including limited liability companies.*

This bill would make technical changes in those provisions relating to the time for filing the information returns *and suspension and revivor.*

Vote: majority. Appropriation: no. Fiscal committee: no. 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:

1 18633. (a) (1) Every partnership, on or before the
2 fifteenth day of the fourth month following the close of its
3 taxable year, shall make a return for that taxable year,
4 stating specifically the items of gross income and the
5 deductions allowed by Part 10 (commencing with Section
6 17001). Except as otherwise provided in Section 18621.5,
7 the return shall include the names, addresses, and
8 taxpayer identification numbers of the persons, whether
9 residents or nonresidents, who would be entitled to share
10 in the net income if distributed and the amount of the
11 distributive share of each person. The return shall contain
12 or be verified by a written declaration that it is made
13 under the penalties of perjury, signed by one of the
14 partners.

15 (2) In addition to returns required by paragraph (1),
16 every limited partnership subject to the tax imposed by
17 subdivision (b) of Section 17935 or 23081, on or before the
18 fifteenth day of the fourth month following the close of its
19 taxable year, shall make a return for that taxable year. In
20 the case of a limited partnership not doing business in this
21 state, the Franchise Tax Board shall prescribe the manner
22 and extent to which the information identified in
23 paragraph (1) shall be included with the return required
24 by this paragraph.

25 (b) Each partnership required to file a return under
26 subdivision (a) for any taxable year shall (on or before the
27 day on which the return for that taxable year was
28 required to be filed) furnish to each person who is a
29 partner or who holds an interest in that partnership as a
30 nominee for another person at any time during that
31 taxable year a copy of that information required to be
32 shown on that return as may be required by regulations.

33 (c) Any person who holds an interest in a partnership
34 as a nominee for another person shall do both of the
35 following:

36 (1) Furnish to the partnership, in the manner
37 prescribed by the Franchise Tax Board, the name,
38 address, and taxpayer identification number of that other
39 person, and any other information for that taxable year as



1 the Franchise Tax Board may by form and regulation
2 prescribe.

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

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

9 (e) The amendments made to this section by the act
10 adding this subdivision shall apply to returns required to
11 be filed under subdivision (a) after the effective date of
12 that act.

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

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

18 18633.5. (a) Every limited liability company which is
19 classified as a partnership for California tax purposes that
20 is doing business in this state, organized in this state, or
21 registered with the Secretary of State shall file its return
22 on or before the fifteenth day of the fourth month
23 following the close of its taxable year, shall make a return
24 for that taxable year, stating specifically the items of gross
25 income and the deductions allowed by Part 10
26 (commencing with Section 17001). The return shall
27 include the names, addresses, and taxpayer identification
28 numbers of the persons, whether residents or
29 nonresidents, who would be entitled to share in the net
30 income if distributed and the amount of the distributive
31 share of each person. The return shall contain or be
32 verified by a written declaration that it is made under the
33 penalties of perjury, signed by one of the limited liability
34 company members. In the case of a limited liability
35 company not doing business in this state, and subject to
36 the tax imposed by subdivision (b) of Section 17941 or
37 23091, the Franchise Tax Board shall, for returns required
38 to be filed on or after January 1, 1998, prescribe the
39 manner and extent to which the information identified in



1 this subdivision shall be included with the return
2 required by this subdivision.

3 (b) Each limited liability company required to file a
4 return under subdivision (a) for any limited liability
5 company taxable or income year shall, on or before the
6 day on which the return for that taxable or income year
7 was required to be filed, furnish to each person who holds
8 an interest in that limited liability company at any time
9 during that taxable or income year a copy of that
10 information required to be shown on that return as may
11 be required by forms and instructions prescribed by the
12 Franchise Tax Board.

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

16 (1) Furnish to the limited liability company, in the
17 manner prescribed by the Franchise Tax Board, the
18 name, address, and taxpayer identification number of
19 that person, and any other information for that taxable or
20 income year as the Franchise Tax Board may prescribe by
21 forms and instructions.

22 (2) Furnish to that other person, in the manner
23 prescribed by the Franchise Tax Board, the information
24 provided by that limited liability company under
25 subdivision (b).

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

29 (e) (1) A limited liability company shall file with its
30 return required under subdivision (a), in the form
31 required by the Franchise Tax Board, the agreement of
32 each nonresident member to file a return pursuant to
33 Section 18501, to make timely payment of all taxes
34 imposed on the member by this state with respect to the
35 income of the limited liability company, and to be subject
36 to personal jurisdiction in this state for purposes of the
37 collection of income taxes, together with related interest
38 and penalties, imposed on the member by this state with
39 respect to the income of the limited liability company. If
40 the limited liability company fails to timely file the



1 agreements on behalf of each of its nonresident members,
2 then the limited liability company shall, at the time set
3 forth in subdivision (f), pay to this state on behalf of each
4 nonresident member of whom an agreement has not
5 been timely filed an amount equal to the highest marginal
6 tax rate in effect under Section 17041, in the case of
7 members which are individuals, estates, or trusts, and
8 Section 23151, in the case of members which are
9 corporations, multiplied by the amount of the member's
10 distributive share of the income source to the state
11 reflected on the limited liability company's return for the
12 taxable period. A limited liability company shall be
13 entitled to recover the payment made from the member
14 on whose behalf the payment was made.

15 (2) If a limited liability company fails to attach the
16 agreement or to timely pay the payment required by
17 paragraph (1), the payment shall be considered the tax
18 of the limited liability company for purposes of the
19 penalty prescribed by Section 19132 and interest
20 prescribed by Section 19101 for failure to timely pay the
21 tax. Payment of the penalty and interest imposed on the
22 limited liability company for failure to timely pay the
23 amount required by this subdivision shall extinguish the
24 liability of a nonresident member for the penalty and
25 interest for failure to make timely payment of all taxes
26 imposed on that member by this state with respect to the
27 income of the limited liability company.

28 (3) No penalty or interest shall be imposed on the
29 limited liability company under paragraph (2) if the
30 nonresident member timely files and pays all taxes
31 imposed on the member by this state with respect to the
32 income of the limited liability company.

33 (f) Any agreement of a nonresident member required
34 to be filed pursuant to subdivision (e) shall be filed at
35 either of the following times:

36 (1) The time the annual return is required to be filed
37 pursuant to this section for the first taxable period for
38 which the limited liability company became subject to tax
39 pursuant to *Chapter 10.6 (commencing with Section*
40 *17941) or Chapter 1.6 (commencing with Section 23091).*



1 (2) The time the annual return is required to be filed
2 pursuant to this section for any taxable period in which
3 the limited liability company had a nonresident member
4 on whose behalf an agreement described in subdivision
5 (e) has not been previously filed.

6 (g) Any amount paid by the limited liability company
7 to this state pursuant to paragraph (1) of subdivision (e)
8 shall be considered to be a payment by the member on
9 account of the income tax imposed by this state on the
10 member for the taxable period.

11 (h) Every limited liability company that is classified as
12 a corporation for California tax purposes shall be subject
13 to the requirement to file a tax return under the
14 provisions of Part 10.2 (commencing with Section 18401)
15 and the applicable taxes imposed by Part 11
16 (commencing with Section 23001) including Section
17 23221 relating to the prepayment of the minimum tax to
18 the Secretary of State.

19 (i) (1) Every limited liability company doing business
20 in this state, organized in this state, or registered with the
21 Secretary of State, that is disregarded pursuant to Section
22 23038 shall file a return that includes information
23 necessary to verify its liability under Sections 17941 and
24 17942, provides its sole owner's name and taxpayer
25 identification number, includes the consent of the owner
26 to California tax jurisdiction, and includes other
27 information necessary for the administration of this part,
28 Part 10 (commencing with Section 17001), or Part 11
29 (commencing with Section 23001).

30 (2) If the owner's consent required under paragraph
31 (1) is not included, the limited liability company shall pay
32 on behalf of its owner an amount consistent with, and
33 treated the same as, the amount to be paid under
34 subdivision (e) by a limited liability company on behalf
35 of a nonresident member for whom an agreement
36 required by subdivision (e) is not attached to the return
37 of the limited liability company.

38 (3) The return required under paragraph (1) shall be
39 filed on or before the fifteenth day of the fourth month
40 after the close of the taxable year of the owner or on or



1 before the fifteenth day of the third month after the close
2 of the income year of the owner, whichever is applicable.

3 (4) For limited liability companies disregarded
4 pursuant to Section 23038, “taxable or income year of the
5 owner” shall be substituted for “taxable year” in Sections
6 17941 and 17942.

7 *SEC. 3. Section 23305.5 of the Revenue and Taxation*
8 *Code is amended to read:*

9 23305.5. (a) For the purposes of this article,
10 “taxpayer” shall include any limited liability company,
11 foreign or domestic, that is organized in this state or
12 registered with the Secretary of State.

13 (b) For purposes of this article, in the case of a limited
14 liability company:

15 (1) “Articles of incorporation” shall include a limited
16 liability company’s articles of organization.

17 (2) “Tax” shall include the tax and fee imposed by
18 Sections 17941 and 17942, or Sections 23091 and 23092,
19 respectively, with respect to a limited liability company
20 classified as a partnership for California tax purposes.

