AMENDED IN ASSEMBLY MAY 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 1546

Introduced by Committee on Revenue and Taxation (Charles Calderon (Chair), Beall, Coto, Ma, Portantino, and Saldana)

March 5, 2009

An act to amend Section 15902.09 of the Corporations Code, and to amend ~~Section~~ *Sections 19136.1 and* 19591 of the Revenue and Taxation Code, relating to ~~limited partnerships.~~ *taxation.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1546, as amended, Committee on Revenue and Taxation. ~~Limited~~ *Taxation: limited* partnerships: ~~revival: fees.~~ *estimated payments.*

Existing law sets forth rules of organization and governance for limited partnerships. Current law allows a canceled domestic limited partnership to revive by accompanying a certificate of revival, filed with the Secretary of State, with specified information confirmed by the Franchise Tax Board, including confirmation that all taxes owed by the partnership have been paid to the Franchise Tax Board.

This bill would require the partnership, on or after January 1, 2010, to accompany the certificate of revival with written confirmation, obtained from the Franchise Tax Board, that all required tax returns have been filed by the partnership. This bill would further authorize the Franchise Tax Board to assess a specialized tax service fee of $100 for a limited partnership revival confirmation letter request, until January 1, 2011, after which the amount of the fee shall be set by regulation.

Existing income tax laws require specified individuals to pay estimated income taxes in installments and impose additional liability for underpayments.

This bill would adjust the amount of those installments under specified circumstances.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 15902.09 of the Corporations Code is amended to read:

15902.09. (a) A domestic limited partnership whose certificate of limited partnership has been canceled pursuant to Section 15902.03 may be revived by filing with, and on a form prescribed by, the Secretary of State a certificate of revival. The certificate of revival shall be accompanied by written confirmation by the Franchise Tax Board that all of the following have occurred:

(1) All of the following have been paid to the Franchise Tax Board:

(A) The annual tax due under Section 17935 of the Revenue and Taxation Code.

(B) All fees and penalties, and interest thereof, for each year for which the domestic limited partnership failed to pay such annual tax, including each year between the cancellation of its certificate of limited partnership and its revival.

(2) All required tax returns have been filed, including returns for each taxable year between the cancellation of its certificate of limited partnership and its revival.

(b) The certificate of revival shall set forth all of the following:

(1) The name of the limited partnership at the time its certificate of limited partnership was cancelled, and if the name is not available at the time of revival, the name under which the limited partnership is to be revived.

(2) The date of filing of the original certificate of limited partnership.

(3) The address of the limited partnership's designated office.

(4) The name and address of the initial agent for service of process in accordance with paragraph (1) of subdivision (d) of Section 15901.16.

(5) A statement that the certificate of revival is filed by one or more general partners of the limited partnership authorized to

execute and file the certificate of revival to revive the limited partnership.

(6) The Secretary of State’s file number for the original limited partnership.

(7) The name and address of each general partner.

(8) Any other matters the general partner or partners executing the certificate of revival determine to include therein.

(c) The certificate of revival should be deemed to be an amendment to the certificate of limited partnership, and the limited partnership shall not be required to take any further action to amend its certificate of limited partnership pursuant to Section 15902.02 with respect to the matter set forth in the certificate of revival.

(d) Upon the filing of the certificate of revival, the limited partnership shall be revived with the same force and effect as if the certificate of limited partnership had not been canceled pursuant to Section 15902.03. The revival shall validate all contracts, acts, matters, and things made, done, and performed by the limited partnership, its partners, employees, and agents following the time its certificate of limited partnership was canceled pursuant to Section 15902.03 with the same force and effect and all intents and purposes as if the certificate of limited partnership had remained in full force and effect. This provision shall apply provided that third parties are relying on the acts of the partnership, its partners, employees, and agents. All real and personal property, and all rights and interests, that belong to a limited partnership at the time its certificate of limited partnership was cancelled pursuant to Section 15902.03 or that were acquired by the limited partnership following the cancellation of the certificate of limited partnership, that were not disposed of prior to the time of its revival, shall be vested in the limited partnership after its revival as fully as if they were held by the limited partnership at, and during the time after, as the case may be, the time the certificate of limited partnership was cancelled. After its revival, the limited partnership and its partners shall have all of the same liability for contracts, acts, matters, and things made, done, or performed in the limited partnership’s name and on behalf of its partners, employees, and agents, as the limited partnership and its partners would have had if the limited partnership’s certificate of limited partnership had at all times remained in full force and effect.

(e) The amendments made to this section by the act adding this subdivision shall apply to written confirmations made by the Franchise Tax Board on or after January 1, 2010.

SEC. 2. Section 19136.1 of the Revenue and Taxation Code is amended to read:

19136.1. (a) *(1)* Section 6654(d)(1)(A) of the Internal Revenue Code is modified to provide that in lieu of the required installments specified in that section, the amount of required installments shall instead be as follows:

~~(1)~~

(A) For the 1st and 2nd required installments, 30 percent of the required annual payment.

~~(2)~~

(B) For the 3rd and 4th required installments, 20 percent of the required annual payment.

(2) Section 6654(d)(2)(C)(ii) of the Internal Revenue Code, relating to applicable percentage, is modified by substituting "27" for "22.5," "54" for "45," and "72" for "67.5."

(b) This section, *including paragraph (2) of subdivision (a),* shall apply to installments due for each taxable year beginning on or after January 1, 2009.

~~SEC. 2.~~

SEC. 3. Section 19591 of the Revenue and Taxation Code is amended to read:

19591. (a) Specialized tax services fees shall be imposed upon the following services provided by the board:

(1) Installment payment programs.

(2) Expedited services for:

(A) Corporation revivor requests.

(B) Tax clearance certificate requests.

(C) Tax-exempt status requests.

(D) Limited partnership revival confirmation letter requests.

(b) (1) For periods on or after the effective date of this section and prior to January 1, 2006, the Franchise Tax Board shall publish by notice a schedule of specialized tax services fees to be imposed, which notice shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The amounts of these fees under this paragraph shall be calculated in the same general manner as required under paragraph (2).

(2) Commencing on January 1, 2006, the amount of the specialized tax services fees shall be established by the board through regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be established in the manner and in the amounts necessary to reimburse the board for the costs of administering the specialized services, including the board's direct and indirect costs for providing specialized tax services.

(3) For periods on or after the effective date of this section, and prior to January 1, 2011, the amount of the specialized tax service fee for limited partnership revival confirmation letter requests shall be one hundred dollars ($100). Commencing on January 1, 2011, the special tax service fee for limited partnership revival confirmation letter requests shall be calculated in the same general matter as required under paragraph (2).

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