

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2126

Introduced by Assembly Member Garrick
(Coauthors: Assembly Members Conway, Fuller, Gilmore, Harkey,
Logue, and Nestande)

February 18, 2010

An act to amend Section 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2126, as amended, Garrick. Minimum annual tax: exemptions: corporations.

Existing law, generally, imposes a minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and on every limited partnership, limited liability partnership, and limited liability company registered, qualified to transact business, or doing business in this state, as specified.

This bill would, for the first 10 taxable years of a corporation that first commences business operations on or after January 1, ~~2009~~, 2011, reduce that minimum tax, as provided.

This bill would take effect immediately as a tax levy.

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 23153 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

(c) The following entities are not subject to the minimum franchise tax specified in this section:

(1) Credit unions.

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

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

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

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

4 (B) A corporation formed under the laws of this state whose
5 principal business when formed was quicksilver mining, which is
6 inactive and has not done business within the limits of the state
7 since 1971, or has been inactive for a period of 24 consecutive
8 months or more.

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

11 (e) Notwithstanding subdivision (a), for taxable years beginning
12 on or after January 1, 1999, and before January 1, 2000, every
13 “qualified new corporation” shall pay annually to the state a
14 minimum franchise tax of five hundred dollars (\$500) for the
15 second taxable year. This subdivision shall apply to any corporation
16 that is a qualified new corporation and is incorporated on or after
17 January 1, 1999, and before January 1, 2000.

18 (1) The determination of the gross receipts of a corporation, for
19 purposes of this subdivision, shall be made by including the gross
20 receipts of each member of the commonly controlled group, as
21 defined in Section 25105, of which the corporation is a member.

22 (2) “Gross receipts, less returns and allowances reportable to
23 this state,” means the sum of the gross receipts from the production
24 of business income, as defined in subdivision (a) of Section 25120,
25 and the gross receipts from the production of nonbusiness income,
26 as defined in subdivision (d) of Section 25120.

27 (3) “Qualified new corporation” means a corporation that is
28 incorporated under the laws of this state or has qualified to transact
29 intrastate business in this state, that begins business operations at
30 or after the time of its incorporation and that reasonably estimates
31 that it will have gross receipts, less returns and allowances,
32 reportable to this state for the taxable year of one million dollars
33 (\$1,000,000) or less. “Qualified new corporation” does not include
34 any corporation that began business operations as a sole
35 proprietorship, a partnership, or any other form of business entity
36 prior to its incorporation. This subdivision shall not apply to any
37 corporation that reorganizes solely for the purpose of reducing its
38 minimum franchise tax.

39 (4) This subdivision shall not apply to limited partnerships, as
40 defined in Section 17935, limited liability companies, as defined

1 in Section 17941, limited liability partnerships, as defined in
2 Section 17948, charitable organizations, as described in Section
3 23703, regulated investment companies, as defined in Section 851
4 of the Internal Revenue Code, real estate investment trusts, as
5 defined in Section 856 of the Internal Revenue Code, real estate
6 mortgage investment conduits, as defined in Section 860D of the
7 Internal Revenue Code, financial asset securitization investment
8 trusts, as defined in Section 860L of the Internal Revenue Code,
9 qualified Subchapter S subsidiaries, as defined in Section
10 1361(b)(3) of the Internal Revenue Code, or to the formation of
11 any subsidiary corporation, to the extent applicable.

12 (5) For any taxable year beginning on or after January 1, 1999,
13 and before January 1, 2000, if a corporation has qualified to pay
14 five hundred dollars (\$500) for the second taxable year under this
15 subdivision, but in its second taxable year, the corporation's gross
16 receipts, as determined under paragraphs (1) and (2), exceed one
17 million dollars (\$1,000,000), an additional tax in the amount equal
18 to three hundred dollars (\$300) for the second taxable year shall
19 be due and payable by the corporation on the due date of its return,
20 without regard to extension, for that year.

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

25 (2) 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 defined 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, real estate investment trusts, as
31 defined in Section 856 of the Internal Revenue Code, real estate
32 mortgage investment conduits, as defined in Section 860D of the
33 Internal Revenue Code, financial asset securitization investment
34 trusts, as defined in Section 860L of the Internal Revenue Code,
35 and qualified Subchapter S subsidiaries, as defined in Section
36 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

37 (3) This subdivision shall not apply to any corporation that
38 reorganizes solely for the purpose of avoiding payment of its
39 minimum franchise tax.

1 (g) Notwithstanding subdivision (a), a domestic corporation, as
2 defined in Section 167 of the Corporations Code, that files a
3 certificate of dissolution in the office of the Secretary of State
4 pursuant to subdivision (c) of Section 1905 of the Corporations
5 Code, prior to its amendment by the act amending this subdivision,
6 and that does not thereafter do business shall not be subject to the
7 minimum franchise tax for taxable years beginning on or after the
8 date of that filing.

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

12 (i) Notwithstanding subdivision (a), each corporation that first
13 commences business operation on or after January 1, ~~2009~~, 2011,
14 shall not be subject to the minimum franchise tax for its first
15 taxable year and shall pay annually to the state a minimum
16 franchise tax of one hundred dollars (\$100) for each of its
17 succeeding nine taxable years. This subdivision shall not apply to
18 the following:

19 (1) Any corporation that began business operations as a sole
20 proprietorship, a partnership, or any other form of business entity
21 prior to its incorporation, or any corporation that reorganizes solely
22 for the purpose of reducing its minimum franchise tax.

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