

AMENDED IN ASSEMBLY APRIL 5, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2458

Introduced by Assembly Member Saldana

February 19, 2010

An act to amend Sections 17942 and 19141 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2458, as amended, Saldana. Taxation: penalties: corporations.

Existing law requires every limited liability company subject to tax to pay an annual fee, as specified. Existing law requires this fee to be estimated and paid on a specified date, and requires a penalty of 10% of the amount of any underpayment to be added to the fee. Existing law also requires the Franchise Tax Board, upon certification by the Secretary of State, as specified, to assess a penalty against certain corporations, as provided, and requires the penalty to be due and payable at the time of the assessment.

This bill would, for ~~small businesses~~, *a small business, as defined*, instead require the penalties described above to be due and payable 60 days from the date the small business is notified of the penalty. This bill would require this provision to be applied to penalties imposed or assessed, as applicable, on or after January 1, 2011.

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 17942 of the Revenue and Taxation Code is amended to read:

17942. (a) In addition to the tax imposed under Section 17941, every limited liability company subject to tax under Section 17941 shall pay annually to this state a fee equal to:

(1) Nine hundred dollars (\$900), if the total income from all sources derived from or attributable 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) Two thousand five hundred dollars (\$2,500), if the total income from all sources derived from or attributable 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) Six thousand dollars (\$6,000), if the total income from all sources derived from or attributable 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) Eleven thousand seven hundred ninety dollars (\$11,790), if the total income from all sources derived from or attributable to this state for the taxable year is five million dollars (\$5,000,000) or more.

(b) (1) (A) For purposes of this section, “total income from all sources derived from or attributable to this state” 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. However, “total income from all sources derived from or attributable to this state” shall not include allocation or attribution of income or gain or distributions made to a limited liability company in its capacity as a member of, or holder of an economic interest in, another limited liability company if the allocation or attribution of income or gain or distributions are directly or indirectly attributable to income that is subject to the payment of the fee described in this section.

(B) For purposes of this section, “total income from all sources derived from or attributable to this state” shall be determined using the rules for assigning sales under Sections 25135 and 25136 and the regulations thereunder, as modified by regulations under

1 Section 25137, other than those provisions that exclude receipts
2 from the sales factor.

3 (2) In the event a taxpayer is a commonly controlled limited
4 liability company, the total income from all sources derived from
5 or attributable to this state, taking into account any election under
6 Section 25110, may be determined by the Franchise Tax Board to
7 be the total income of all the commonly controlled limited liability
8 company members if it determines that multiple limited liability
9 companies were formed for the primary purpose of reducing fees
10 payable under this section. A determination by the Franchise Tax
11 Board under this subdivision may only be made with respect to
12 one limited liability company in a commonly controlled group.
13 However, each commonly controlled limited liability company
14 shall be jointly and severally liable for the fee. For purposes of
15 this section, commonly controlled limited liability companies shall
16 include the taxpayer and any other partnership or limited liability
17 company doing business (as defined in Section 23101) in this state
18 and required to file a return under Section 18633 or 18633.5, in
19 which the same persons own, directly or indirectly, more than 50
20 percent of the capital interests or profits interests.

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

26 (d) (1) The fee imposed by this section shall be estimated and
27 paid on or before the 15th day of the sixth month of the current
28 taxable year.

29 (2) A penalty of 10 percent of the amount of any underpayment
30 shall be added to the fee. The underpayment amount shall be equal
31 to the difference between the total amount of the fee imposed by
32 this section for the taxable year less the amount paid under
33 paragraph (1) by the date specified in that paragraph. A penalty
34 shall not be imposed with respect to any fee estimated and paid
35 under this section if the amount paid by the date prescribed in this
36 subdivision is equal to or greater than the total amount of the fee
37 of the limited liability company for the preceding taxable year.

38 (3) (A) Notwithstanding paragraph (1), for ~~small businesses~~ a
39 *small business*, any penalty imposed under this subdivision shall

1 be due and payable 60 days from the date the small business is
2 notified of the penalty.

3 *(B) For purposes of this paragraph, a “small business” means*
4 *a business whose total income from all sources derived from or*
5 *attributable to this state for the taxable year is one million dollars*
6 *(\$1,000,000) or less.*

7 ~~(B)~~

8 *(C) This paragraph shall apply to penalties imposed on or after*
9 *January 1, 2011.*

10 SEC. 2. Section 19141 of the Revenue and Taxation Code is
11 amended to read:

12 19141. (a) Upon certification by the Secretary of State pursuant
13 to subdivision (a) of Section 2204 or subdivision (a) of Section
14 ~~17563~~ 17653 of the Corporations Code, the Franchise Tax Board
15 shall assess a penalty of two hundred fifty dollars (\$250). ~~Upon~~
16 ~~certification by the Secretary of State pursuant to subdivision (a)~~
17 ~~of Section 6810 or subdivision (a) of Section 8810 of the~~
18 ~~Corporations Code, the Franchise Tax Board shall assess a penalty~~
19 ~~of fifty dollars (\$50). Any penalty assessed under this section shall~~
20 ~~be a final assessment due and payable at the time of assessment~~
21 ~~but no interest shall accrue thereon. The assessment shall be~~
22 ~~collected as other taxes, interest, and penalties are collected by the~~
23 ~~Franchise Tax Board unless the Secretary of State decertifies the~~
24 ~~name of the corporation as provided in subdivision (e) or (f) of~~
25 ~~Section 2204, subdivision (e) of Section 6810, or subdivision (e)~~
26 ~~of Section 8810 of the Corporations Code.~~

27 *(b) Upon certification by the Secretary of State pursuant to*
28 *subdivision (a) of Section 6810 or subdivision (a) of Section 8810*
29 *of the Corporations Code, the Franchise Tax Board shall assess*
30 *a penalty of fifty dollars (\$50).*

31 *(c) Any penalty assessed under this section shall be a final*
32 *assessment due and payable at the time of assessment, but no*
33 *interest shall accrue thereon. The assessment shall be collected*
34 *as other taxes, interest, and penalties are collected by the*
35 *Franchise Tax Board, unless the Secretary of State decertifies the*
36 *name of the corporation, as provided in subdivision (e) or (f) of*
37 *Section 2204, subdivision (e) of Section 6810, or subdivision (e)*
38 *of Section 8810 of the Corporations Code.*

39 ~~(b)~~

1 (d) (1) Notwithstanding subdivision (a), for ~~small businesses~~
2 *a small business*, any penalty assessed under ~~this section~~
3 *subdivision (a)* shall be due and payable 60 days from the date the
4 small business is notified of the penalty.

5 (2) *For purposes of this subdivision, a “small business” means*
6 *a business whose total income from all sources derived from or*
7 *attributable to this state for the taxable year is one million dollars*
8 *(\$1,000,000) or less.*

9 (2)

10 (3) This subdivision shall apply to penalties assessed on or after
11 January 1, 2011.