

Assembly Bill No. 2458

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

Passed the Senate August 19, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2458, Saldaña. Taxation: penalties: limited liability companies.

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.

This bill would, for 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 on or after January 1, 2011, and before January 1, 2016.

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

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

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

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

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

(3) (A) Notwithstanding paragraph (1), for a small business, any penalty imposed under this subdivision shall be due and payable 60 days from the date the small business is notified of the penalty.

(B) For purposes of this paragraph, a “small business” means a business whose total income from all sources derived from or attributable to this state for the taxable year is less than five hundred thousand dollars (\$500,000).

(C) This paragraph shall apply to penalties imposed on or after January 1, 2011, and before January 1, 2016.

Approved _____, 2010

Governor