

AMENDED IN SENATE MAY 6, 2009
AMENDED IN SENATE APRIL 21, 2009

SENATE BILL

No. 653

Introduced by Senator Correa

February 27, 2009

An act to amend Sections 17001, 17056, 17060, 17450, and 17451 of the Corporations Code, *and to amend Section 17941 of the Revenue and Taxation Code*, relating to business.

LEGISLATIVE COUNSEL'S DIGEST

SB 653, as amended, Correa. Foreign limited liability companies: Indian tribes.

Federally recognized tribes are those Indian tribes recognized by the United States Secretary of the Interior for certain federal government purposes. Existing federal law authorizes a federally recognized tribe to form a business entity.

Existing law requires every limited liability company and every foreign limited liability company registered to transact intrastate business in California to file certain information with the Secretary of State and to comply with various other procedures. Existing law defines "foreign limited liability company" as either an entity formed under the limited liability company laws of any state other than this state or a specified entity formed under the laws of a foreign country meeting certain requirements.

This bill would revise this definition to provide that a "foreign limited liability company" *also* includes an entity formed under the limited liability laws of ~~any jurisdiction, other than this state or a foreign country, or a specified entity formed under the laws of a foreign country meeting certain requirements~~ *a federally recognized Indian tribe*.

Existing law provides that the organization and internal affairs and various other matters relating to a foreign limited liability company are generally governed by the laws of the state or foreign jurisdiction under which the limited liability company is organized.

This bill would ~~instead~~ also refer to the laws of ~~the jurisdiction a~~ *federally recognized Indian tribe* under which ~~the a~~ a limited liability company ~~is may be~~ organized. The bill would make other conforming changes.

Existing law imposes a tax under the Personal Income Tax Law on a limited liability company doing business in this state, and defines “limited liability company” for these purposes to include limited liability companies formed under the laws of this state, another state, or a foreign country.

This bill would include within that definition a limited liability company formed under the laws of a federally recognized Indian tribe.

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

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

- 1 SECTION 1. Section 17001 of the Corporations Code is
- 2 amended to read:
- 3 17001. Unless the context otherwise indicates, the following
- 4 definitions govern the construction of this title:
- 5 (a) “Acknowledged” means that an instrument is either of the
- 6 following:
- 7 (1) Formally acknowledged as provided in Article 3
- 8 (commencing with Section 1180) of Chapter 4 of Title 4 of Part
- 9 4 of Division 2 of the Civil Code.
- 10 (2) Executed to include substantially the following wording
- 11 preceding the signature: It is hereby declared that I am the person
- 12 who executed this instrument, which execution is my act and deed.
- 13 Any certificate of acknowledgment taken without this state
- 14 before a notary public or a judge or clerk of a court of record
- 15 having an official seal need not be further authenticated.
- 16 (b) “Articles of organization” means articles of organization
- 17 filed under Section 17050, including all amendments thereto or
- 18 restatements thereof, or, in the case of a foreign limited liability
- 19 company, all documents that serve a like function under the laws

1 of the jurisdiction in which the foreign limited liability company
2 is organized.

3 (c) “Bankrupt” or “bankruptcy” means, with respect to any
4 person, being the subject of an order for relief under Title 11 of
5 the United States Code, or any successor statute or other statute
6 in any foreign jurisdiction having like import or effect.

7 (d) “Capital account” means, unless otherwise provided in the
8 operating agreement, the amount of the capital interest of a member
9 in the limited liability company consisting of that member’s
10 original contribution, as (1) increased by any additional
11 contributions and by that member’s share of the limited liability
12 company’s profits, and (2) decreased by any distribution to that
13 member and by that member’s share of the limited liability
14 company’s losses.

15 (e) “Constituent limited liability company” means a limited
16 liability company that is merged with or into one or more other
17 limited liability companies or other business entities and includes
18 a surviving limited liability company.

19 (f) “Constituent other business entity” means any other business
20 entity that is merged with or into one or more limited liability
21 companies and includes a surviving other business entity.

22 (g) “Contribution” means any money, property, or services
23 rendered, or a promissory note or other binding obligation to
24 contribute money or property, or to render services as permitted
25 in this title, which a member contributes to a limited liability
26 company as capital in that member’s capacity as a member pursuant
27 to an agreement between the members, including an agreement as
28 to value.

29 (h) “Disappearing limited liability company” means a constituent
30 limited liability company that is not the surviving limited liability
31 company.

32 (i) “Disappearing other business entity” means a constituent
33 other business entity that is not the surviving other business entity.

34 (j) “Distribution” means the transfer of money or property by
35 a limited liability company to its members without consideration.

36 (k) “Domestic” means organized under the laws of this state
37 when used in relation to any limited liability company, other
38 business entity or person (other than a natural person).

39 (l) “Domestic corporation” means a corporation as defined in
40 Section 162.

1 (m) “Domestic limited partnership” means a partnership formed
2 by two or more persons under the laws of this state and having
3 one or more general partners and one or more limited partners.

4 (n) “Economic interest” means a person’s right to share in the
5 income, gains, losses, deductions, credit, or similar items of, and
6 to receive distributions from, the limited liability company, but
7 does not include any other rights of a member, including, without
8 limitation, the right to vote or to participate in management, or,
9 except as provided in Section 17106, any right to information
10 concerning the business and affairs of the limited liability company.

11 (o) (1) “Electronic transmission by the limited liability
12 company” means a communication (a) delivered by (1) facsimile
13 telecommunication or electronic mail when directed to the facsimile
14 number or electronic mail address, respectively, for that recipient
15 on record with the limited liability company, (2) posting on an
16 electronic message board or network that the limited liability
17 company has designated for those communications, together with
18 a separate notice to the recipient of the posting, which transmission
19 shall be validly delivered upon the later of the posting or delivery
20 of the separate notice thereof, or (3) other means of electronic
21 communication, (b) to a recipient who has provided an unrevoked
22 consent to the use of those means of transmission, and (c) that
23 creates a record that is capable of retention, retrieval, and review,
24 and that may thereafter be rendered into clearly legible tangible
25 form. However, an electronic transmission by a limited liability
26 company to an individual member is not authorized unless, in
27 addition to satisfying the requirements of this section, the
28 transmission satisfies the requirements applicable to consumer
29 consent to electronic records as set forth in the Electronic
30 Signatures in Global and National Commerce Act (15 U.S.C. Sec.
31 7001(c)(1)).

32 (2) “Electronic transmission to the limited liability company”
33 means a communication (a) delivered by (1) facsimile
34 telecommunication or electronic mail when directed to the facsimile
35 number or electronic mail address, respectively, which the limited
36 liability company has provided from time to time to members or
37 managers for sending communications to the limited liability
38 company, (2) posting on an electronic message board or network
39 that the limited liability company has designated for those
40 communications, and which transmission shall be validly delivered

1 upon the posting, or (3) other means of electronic communication,
2 (b) as to which the limited liability company has placed in effect
3 reasonable measures to verify that the sender is the member or
4 manager (in person or by proxy) purporting to send the
5 transmission, and (c) that creates a record that is capable of
6 retention, retrieval, and review, and that may thereafter be rendered
7 into clearly legible tangible form.

8 (p) “Foreign corporation” means a corporation formed under
9 the laws of any state other than this state or under the laws of the
10 United States or of a foreign country.

11 (q) “Foreign limited liability company” means either (1) an
12 entity formed under the limited liability company laws of any
13 ~~jurisdiction, other than this state or a foreign country~~ *state other*
14 *than this state, or any federally recognized Indian tribe*, or (2) an
15 entity organized under the laws of any foreign country that is (A)
16 an unincorporated association, (B) organized under a statute
17 pursuant to which an association may be formed that affords each
18 of its members limited liability with respect to the liabilities of the
19 entity, and (C) not an entity that is required to be registered or
20 qualified pursuant to the provisions of Title 1 (commencing with
21 Section 100) or Title 2 (commencing with Section 15001); but the
22 term “foreign limited liability company” does not include a foreign
23 association, as defined in Section 170.

24 (r) “Foreign limited partnership” means a partnership formed
25 under the laws of any state other than this state or under the laws
26 of a foreign country, including a limited liability limited
27 partnership, and having as partners one or more general partners
28 and one or more limited partners or their equivalents under any
29 name.

30 (s) “Foreign other business entity” means any other business
31 entity formed under the laws of any state other than this state or
32 under the laws of the United States or of a foreign country.

33 (t) “Limited liability company” or “domestic limited liability
34 company” means an entity having one or more members that is
35 organized under this title and is subject to the provisions of Section
36 17101.

37 (u) “Mail” unless otherwise provided in the operating agreement,
38 means first-class mail, postage prepaid, unless registered mail is
39 specified. Registered mail includes certified mail.

(v) “Majority in interest of the members,” unless otherwise provided in the operating agreement, means more than 50 percent of the interests of members in current profits of the limited liability company.

(w) “Manager” means a person elected by the members of a limited liability company to manage the limited liability company if the articles of organization contain the statement referred to in subdivision (b) of Section 17151 or, if the articles of organization do not contain that statement, “manager” means each of the members of the limited liability company.

(x) “Member” means a person who:

(1) Has been admitted to a limited liability company as a member in accordance with the articles of organization or operating agreement, or an assignee of an interest in a limited liability company who has become a member pursuant to Section 17303.

(2) Has not resigned, withdrawn, or been expelled as a member or, if other than an individual, been dissolved.

(y) “Member of record” means a member named as a member on the list maintained in accordance with paragraph (1) of subdivision (a) of Section 17058.

(z) “Membership interest” means a member’s rights in the limited liability company, collectively, including the member’s economic interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(aa) “Officer” means any person elected or appointed pursuant to Section 17154.

(ab) “Operating agreement” means any agreement, written or oral, between all of the members as to the affairs of a limited liability company and the conduct of its business in any manner not inconsistent with law or the articles of organization, including all amendments thereto, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized. The term “operating agreement” may include, without more, an agreement between all the members to organize a limited liability company pursuant to the provisions of this title.

(ac) “Other business entity” means a corporation, limited partnership, general partnership, business trust, real estate investment trust, or an unincorporated association (other than a

1 nonprofit association), but excluding a domestic limited liability
2 company and a foreign limited liability company.

3 (ad) “Parent,” when used in relation to a specified limited
4 liability company, means a person who owns, directly or indirectly,
5 membership interests possessing more than 50 percent of the voting
6 power of the specified limited liability company. When used in
7 relation to a specified corporation or limited partnership, the term
8 “parent” shall have the meanings set forth in Section 175 and
9 subdivision (w) of Section 15611 or subdivision (v) of Section
10 15901.02 respectively.

11 (ae) “Person” means an individual, partnership, limited
12 partnership, trust, estate, association, corporation, limited liability
13 company, or other entity, whether domestic or foreign.

14 (af) [RESERVED]

15 (ag) [RESERVED]

16 (ah) [RESERVED]

17 (ai) “Proxy,” unless otherwise provided in the operating
18 agreement, means a written authorization signed or an electronic
19 transmission authorized by a member or the member’s
20 attorney-in-fact giving another person the power to exercise the
21 voting rights of that member. “Signed,” for the purpose of this
22 section, means the placing of the member’s name on the proxy
23 (whether by manual signature, typewriting, telegraphic or electronic
24 transmission, or otherwise) by the member or member’s
25 attorney-in-fact.

26 A proxy may be transmitted by an oral telephonic transmission
27 if it is submitted with information from which it may be determined
28 that the proxy was authorized by the member, or by the member’s
29 attorney-in-fact.

30 (aj) “Return of capital,” unless otherwise provided in the
31 operating agreement, means any distribution to a member to the
32 extent that the member’s capital account, immediately after the
33 distribution, is less than the amount of that member’s contributions
34 to the limited liability company as reduced by prior distributions
35 that were a return of capital.

36 (ak) “State” means a state, territory, or possession of the United
37 States, the District of Columbia, or the Commonwealth of Puerto
38 Rico.

39 (al) “Subsidiary of a specified limited liability company” means
40 a limited liability company or other business entity in which shares,

1 interests, or other securities possessing more than 50 percent of
2 the voting power are owned by the specified limited liability
3 company.

4 (am) “Surviving limited liability company” means a limited
5 liability company into which one or more other limited liability
6 companies or other business entities are merged.

7 (an) “Surviving other business entity” means an other business
8 entity into which one or more limited liability companies are
9 merged.

10 (ao) “Time a notice is given or sent,” unless otherwise expressly
11 provided, means the time a written notice is deposited in the United
12 States mail; is personally delivered to the recipient, is delivered
13 to a common carrier for transmission, or is actually transmitted by
14 the person giving the notice by electronic transmission, to the
15 recipient; or the time any oral notice is communicated, in person
16 or by telephone, to the recipient or to a person at the office of the
17 recipient who the person giving the notice has reason to believe
18 will promptly communicate it to the recipient.

19 (ap) “Transact intrastate business” means to enter into repeated
20 and successive transactions of business in this state, other than in
21 interstate or foreign commerce.

22 (1) Without excluding other activities which may not be
23 considered to be transacting intrastate business, a foreign limited
24 liability company shall not be considered to be transacting intrastate
25 business merely because its subsidiary transacts intrastate business,
26 or merely because of its status as any one or more of the following:

27 (A) A shareholder of a domestic corporation.

28 (B) A shareholder of a foreign corporation transacting intrastate
29 business.

30 (C) A limited partner of a foreign limited partnership transacting
31 intrastate business.

32 (D) A limited partner of a domestic limited partnership.

33 (E) A member or manager of a foreign limited liability company
34 transacting intrastate business.

35 (F) A member or manager of a domestic limited liability
36 company.

37 (2) Without excluding other activities which may not be
38 considered to be transacting intrastate business, a foreign limited
39 liability company shall not be considered to be transacting intrastate
40 business within the meaning of this subdivision solely by reason

1 of carrying on in this state any one or more of the following
2 activities:

3 (A) Maintaining or defending any action or suit or any
4 administrative or arbitration proceeding, or effecting the settlement
5 thereof, or the settlement of claims or disputes.

6 (B) Holding meetings of its managers or members or carrying
7 on any other activities concerning its internal affairs.

8 (C) Maintaining bank accounts.

9 (D) Maintaining offices or agencies for the transfer, exchange,
10 and registration of the foreign limited liability company's securities
11 or maintaining trustees or depositaries with respect to those
12 securities.

13 (E) Effecting sales through independent contractors.

14 (F) Soliciting or procuring orders, whether by mail or through
15 employees or agents or otherwise, where those orders require
16 acceptance without this state before becoming binding contracts.

17 (G) Creating or acquiring evidences of debt or mortgages, liens,
18 or security interests in real or personal property.

19 (H) Securing or collecting debts or enforcing mortgages and
20 security interests in property securing the debts.

21 (I) Conducting an isolated transaction that is completed within
22 180 days and not in the course of a number of repeated transactions
23 of a like nature.

24 (3) A person shall not be deemed to be transacting intrastate
25 business in this state merely because of its status as a member or
26 manager of a domestic limited liability company or a foreign
27 limited liability company registered to transact intrastate business
28 in this state.

29 (aq) "Vote" includes authorization by written consent.

30 (ar) "Voting power" means the power to vote on any matter at
31 the time any determination of voting power is made and does not
32 include the right to vote upon the happening of some condition or
33 event which has not yet occurred.

34 (as) "Withdrawal" includes the resignation or retirement of a
35 member as a member.

36 (at) "Written" or "in writing" includes facsimile, telegraphic,
37 and other electronic communication as authorized by this code.

38 SEC. 2. Section 17056 of the Corporations Code is amended
39 to read:

1 17056. (a) Unless otherwise specified in any other section of
2 this title, any document required by this title to be executed and
3 filed with the Secretary of State shall be executed:

4 (1) By the person or persons organizing the limited liability
5 company when the limited liability company has not yet been
6 formed.

7 (2) By any manager.

8 (3) If the limited liability company is in the hands of a receiver,
9 trustee, or other court-appointed fiduciary, by that fiduciary.

10 (4) In the case of a foreign limited liability company, in the
11 manner required by the laws of the ~~jurisdiction state or the~~
12 *federally recognized Indian tribe* of its organization.

13 (b) Any person may execute any document referred to in
14 subdivision (a) by an attorney-in-fact. Powers of attorney relating
15 to the signing of those documents by an attorney-in-fact need not
16 be sworn to, verified, or acknowledged, and need not be filed with
17 the Secretary of State.

18 (c) Any instrument filed with respect to a limited liability
19 company, other than the original articles of organization, may
20 provide that it is to become effective not more than 90 days after
21 its filing date. In case a delayed effective date is specified, the
22 instrument may be prevented from becoming effective by a
23 certificate stating that by appropriate action it has been revoked
24 and is null and void. This certificate shall be executed in the same
25 manner as the original instrument and shall be filed before the
26 specified effective date. In the case of a merger agreement or
27 certificate of merger, a certificate revoking the earlier filing need
28 only be executed on behalf of one of the constituent parties to the
29 merger. If no revocation certificate is filed, the instrument becomes
30 effective on the date specified.

31 (d) If the Secretary of State determines that an instrument
32 submitted for filing or otherwise submitted does not conform to
33 the law and returns it to the person submitting it, the instrument
34 may be resubmitted accompanied by a written opinion of a member
35 of the State Bar of California submitting the instrument or
36 representing the person submitting it, to the effect that the specific
37 provisions of the instrument objected to by the Secretary of State
38 does conform to law and stating the points and authorities upon
39 which the opinion is based. The Secretary of State shall rely, with
40 respect to any disputed point of law, other than the application of

1 Sections 17052, 17053, 17451, and 17452, upon that written
2 opinion in determining whether the instrument conforms to law.
3 The date of filing in that case shall be the date the instrument is
4 received on resubmission.

5 SEC. 3. Section 17060 of the Corporations Code is amended
6 to read:

7 17060. (a) Every limited liability company and every foreign
8 limited liability company registered to transact intrastate business
9 in this state shall file within 90 days after the filing of its original
10 articles of organization and biennially thereafter during the
11 applicable filing period, on a form prescribed by the Secretary of
12 State, a statement containing:

13 (1) The name of the limited liability company and the Secretary
14 of State's file number and, in the case of a foreign limited liability
15 company, the ~~jurisdiction state or the~~ *federally recognized Indian*
16 *tribe* under the laws of which it is organized.

17 (2) The name and address of the agent for service of process
18 required to be maintained pursuant to subdivision (b) of Section
19 17057. If a corporate agent is designated, only the name of the
20 agent shall be set forth.

21 (3) The street address of its principal executive office and, in
22 the case of a domestic limited liability company, of the office
23 required to be maintained pursuant to Section 17057.

24 (4) The name and complete business or residence addresses of
25 any manager or managers and the chief executive officer, if any,
26 appointed or elected in accordance with the articles of organization
27 or operating agreement or, if no manager has been so elected or
28 appointed, the name and business or residence address of each
29 member.

30 (5) The general type of business that constitutes the principal
31 business activity of the limited liability company (for example,
32 manufacturer of aircraft; wholesale liquor distributor; or retail
33 department store).

34 (b) If there has been no change in the information in the last
35 filed statement of the limited liability company on file in the
36 Secretary of State's office, the limited liability company may, in
37 lieu of filing the statement required by subdivision (a), advise the
38 Secretary of State, on a form prescribed by the Secretary of State,
39 that no changes in the required information have occurred during
40 the applicable filing period.

(c) For the purposes of this section, the applicable filing period for a limited liability company shall be the calendar month during which its original articles of organization were filed or, in the case of a foreign limited liability company, the month during which its application for registration was filed, and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each limited liability company approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the limited liability company according to the records of the Secretary of State. The failure of the limited liability company to receive the form shall not exempt the limited liability company from complying with this section.

(d) Whenever any of the information required by subdivision (a) changes, other than the name and address of the agent for service of process, the limited liability company may file a current statement containing all the information required by subdivision (a). When changing its agent for service of process or when the address of the agent changes, the limited liability company shall file a current statement containing all the information required by subdivision (a). Whenever any statement is filed pursuant to this section changing the name and address of the agent for service of process, that statement supersedes any previously filed statement pursuant to this section, the statement in the original articles of organization, and the statement in any restated articles of organization that have been filed, or in the case of a foreign limited liability company, in the application for registration. Whenever restated articles of organization are filed, the statement therein, if any, of the name and address of the agent for service of process supersedes any previously filed statement pursuant to this section.

(e) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(f) This section shall not be construed to place any person dealing with the limited liability company on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

SEC. 4. Section 17450 of the Corporations Code is amended to read:

1 17450. Subject to the provisions of Section 17453:

2 (a) The laws of the ~~jurisdiction~~ *state or the federally recognized*
3 *Indian tribe* under which a foreign limited liability company is
4 organized shall govern its organization and internal affairs and the
5 liability and authority of its managers and members.

6 (b) A foreign limited liability company may not be denied
7 registration by reason of any difference between those laws and
8 the laws of this state.

9 SEC. 5. Section 17451 of the Corporations Code is amended
10 to read:

11 17451. (a) Before transacting intrastate business in this state,
12 a foreign limited liability company shall register with the Secretary
13 of State. In order to register, a foreign limited liability company
14 shall submit to the Secretary of State an application for registration
15 as a foreign limited liability company, signed by a person with
16 authority to do so under the laws of the ~~jurisdiction~~ *state or the*
17 *federally recognized Indian tribe* of its organization, on a form
18 prescribed by the Secretary of State and setting forth:

19 (1) The name of the foreign limited liability company and, if
20 different, the name under which it proposes to transact business
21 in this state.

22 (2) The ~~jurisdiction~~ *state or the federally recognized Indian*
23 *tribe* and date of its organization and a statement that the foreign
24 limited liability company is authorized to exercise its powers and
25 privileges in that jurisdiction.

26 (3) The name and address of an agent for service of process on
27 the foreign limited liability company meeting the qualifications
28 specified in paragraph (1) of subdivision (d) of Section 17061,
29 unless a corporate agent is designated, in which case only the name
30 of the agent shall be set forth.

31 (4) A statement that the Secretary of State is appointed the agent
32 of the foreign limited liability company for service of process if
33 the agent has resigned and has not been replaced or if the agent
34 cannot be found or served with the exercise of reasonable diligence.

35 (5) The address of the principal executive office of the foreign
36 limited liability company and of its principal office in this state,
37 if any.

38 (b) Annexed to the application for registration shall be a
39 certificate from an authorized public official of the foreign limited
40 liability company's jurisdiction of organization to the effect that

1 the foreign limited liability company is in good standing in that
2 jurisdiction, if the laws of that jurisdiction permit the issuance of
3 those certificates; or, in the alternative, a statement by the foreign
4 limited liability company that the laws of its jurisdiction of
5 organization do not permit the issuance of those certificates.

6 (c) The Secretary of State may cancel the application and
7 certificate of registration of a foreign limited liability company if
8 a check or other remittance accepted in payment of the filing fee
9 is not paid upon presentation. Upon receiving written notification
10 that the item presented for payment has not been honored for
11 payment, the Secretary of State shall give a first written notice of
12 the applicability of this section to the agent for service of process
13 or to the person submitting the instrument. Thereafter, if the amount
14 has not been paid by cashier's check or equivalent, the Secretary
15 of State shall give a second written notice of cancellation and the
16 cancellation shall thereupon be effective. The second notice shall
17 be given 20 days or more after the first notice and 90 days or less
18 after the original filing.

19 (d) The Secretary of State shall include with instructional
20 materials, provided in conjunction with registration under
21 subdivision (a), a notice that filing the registration will obligate
22 the limited liability company to pay an annual tax to the Franchise
23 Tax Board pursuant to Section 17941 of the Revenue and Taxation
24 Code. That notice shall be updated annually to specify the dollar
25 amount of the tax.

26 *SEC. 6. Section 17941 of the Revenue and Taxation Code is*
27 *amended to read:*

28 17941. (a) For each taxable year beginning on or after January
29 1, 1997, a limited liability company doing business in this state
30 (as defined in Section 23101) shall pay annually to this state a tax
31 for the privilege of doing business in this state in an amount equal
32 to the applicable amount specified in paragraph (1) of subdivision
33 (d) of Section 23153 for the taxable year.

34 (b) (1) In addition to any limited liability company that is doing
35 business in this state and is therefore subject to the tax imposed
36 by subdivision (a), for each taxable year beginning on or after
37 January 1, 1997, a limited liability company shall pay annually
38 the tax prescribed in subdivision (a) if articles of organization have
39 been accepted, or a certificate of registration has been issued, by
40 the office of the Secretary of State. The tax shall be paid for each

1 taxable year, or part thereof, until a certificate of cancellation of
2 registration or of articles of organization is filed on behalf of the
3 limited liability company with the office of the Secretary of State.

4 (2) If a taxpayer files a return with the Franchise Tax Board that
5 is designated as its final return, the Franchise Tax Board shall
6 notify the taxpayer that the annual tax shall continue to be due
7 annually until a certificate of cancellation is filed with the Secretary
8 of State pursuant to Section 17356 or 17455 of the Corporations
9 Code.

10 (c) The tax assessed under this section shall be due and payable
11 on or before the 15th day of the fourth month of the taxable year.

12 (d) For purposes of this section, “limited liability company”
13 means an organization, other than a limited liability company that
14 is exempt from the tax and fees imposed under this chapter
15 pursuant to Section 23701h or Section 23701x, that is formed by
16 one or more persons under the law of this state, any other country,
17 ~~or~~ any other state, *or any federally recognized Indian tribe* as a
18 “limited liability company” and that is not taxable as a corporation
19 for California tax purposes.

20 (e) Notwithstanding anything in this section to the contrary, if
21 the office of the Secretary of State files a certificate of cancellation
22 pursuant to Section 17350.5 of the Corporations Code for any
23 limited liability company, then paragraph (1) of subdivision (f) of
24 Section 23153 shall apply to that limited liability company as if
25 the limited liability company were properly treated as a corporation
26 for that limited purpose only, and paragraph (2) of subdivision (f)
27 of Section 23153 shall not apply. Nothing in this subdivision
28 entitles a limited liability company to receive a reimbursement for
29 any annual taxes or fees already paid.