AMENDED IN ASSEMBLY FEBRUARY 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL No. 1605

Introduced by Assembly Member Garrick

February 7, 2012

An act to amend Sections 17935, 17941, 17948, and 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1605, as amended, Garrick. Minimum annual tax: exemptions.

Existing law generally imposes an annual 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 reduce that minimum tax, as provided, for ~~the first 10 taxable years of~~ a corporation, limited partnership, limited liability partnership, and limited liability company that is a small business, as defined, ~~and~~ that first commences business operations on or after January 1, 2013~~, and before January 1, 2018~~.

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 17935 of the Revenue and Taxation Code is amended to read:

17935. (a) For each taxable year beginning on or after January 1, 1997, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153.

(b) (1) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 or 15902.01 of the Corporations Code, and every foreign limited partnership that has registered with the Secretary of State pursuant to Section 15692 or 15909.01 of the Corporations Code, shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the Corporations Code.

(2) If a taxpayer files a return with the Franchise Tax Board that is designated its final return, that board shall notify the taxpayer that the tax imposed by this chapter is due annually until a certificate of cancellation is filed with the Secretary of State pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the Corporations Code.

(c) The tax imposed by this chapter shall be due and payable on the date the return is required to be filed under former Section 18432 or 18633.

(d) For purposes of this section, “limited partnership” means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

(e) Notwithstanding subdivision (b), any limited partnership that ceased doing business prior to January 1, 1997, filed a final return with the Franchise Tax Board for a taxable year ending before January 1, 1997, and filed a certificate of dissolution with the Secretary of State pursuant to Section 15623 of the Corporations Code prior to January 1, 1997, shall not be subject to the tax imposed by this chapter for any period following the date the certificate of dissolution was filed with the Secretary of State, but only if the limited partnership files a certificate of cancellation with the Secretary of State pursuant to Section 15623 of the Corporations Code. In the case where a notice of proposed deficiency assessment of tax or a notice of tax due (whichever is applicable) is mailed after January 1, 2001, the first sentence of this subdivision shall not apply unless the certificate of cancellation is filed with the Secretary of State not later than 60 days after the date of the mailing of the notice.

(f) (1) Notwithstanding subdivision (a), each limited partnership that is a small business and that first commences business operations on or after January 1, 2013~~, and before January 1, 2018,~~ shall not be subject to the minimum franchise tax for its first taxable year and shall pay annually to the state a minimum franchise tax of ninety-nine dollars ($99) ~~for each of its succeeding nine taxable years~~, provided that it is a small business in that taxable year.

(2) For purposes of this subdivision:

(A) "Gross receipts" means the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business income, in which the income, gain, or loss is recognized or would be recognized if the transaction were in the United States under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold. Gross receipts, even if business income under Part 11 (commencing with Section 23001), shall not include the following items:

(i) Repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument.

(ii) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

(iii) Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock.

(iv) Damages and other amounts received as the result of litigation.

(v) Property acquired as an agent on behalf of another.

(vi) Tax refunds and other tax benefit recoveries.

(vii) Pension reversions.

(viii) Contributions to capital, except for sales of securities by securities dealers.

(ix) Income from discharge of indebtedness.

(x) Amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code.

(xi) Amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer's business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets. For purposes of this clause, "treasury function" means the pooling, management, and investment of intangible assets for the purpose of satisfying the cashflow needs of the taxpayer's trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and business acquisitions, and also includes the use of futures contracts and options contracts to hedge foreign currency fluctuations. A taxpayer principally engaged in the trade or business of purchasing and selling intangible assets of the type typically held in a taxpayer's treasury function, such as a registered broker-dealer, is not performing a treasury function, for purposes of this clause, with respect to income so produced.

(xii) Amounts received from hedging transactions involving intangible assets. A "hedging transaction" means a transaction related to the taxpayer's trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer.

(B) "Small business" means a limited partnership that, for the previous taxable year, had gross receipts, less returns and allowances, reportable to this state of one million dollars ($1,000,000) or less.

(3) This subdivision shall not apply to any limited partnership that reorganizes solely for the purpose of reducing its minimum tax.

SEC. 2. Section 17941 of the Revenue and Taxation Code is amended to read:

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

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

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

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

(d) For purposes of this section, "limited liability company" means an organization, other than a limited liability company that is exempt from the tax and fees imposed under this chapter pursuant to Section 23701h or Section 23701x, that is formed by one or more persons under the law of this state, any other country, or any other state, as a "limited liability company" and that is not taxable as a corporation for California tax purposes.

(e) Notwithstanding anything in this section to the contrary, if the office of the Secretary of State files a certificate of cancellation pursuant to Section 17350.5 of the Corporations Code for any limited liability company, then paragraph (1) of subdivision (f) of

Section 23153 shall apply to that limited liability company as if the limited liability company were properly treated as a corporation for that limited purpose only, and paragraph (2) of subdivision (f) of Section 23153 shall not apply. Nothing in this subdivision entitles a limited liability company to receive a reimbursement for any annual taxes or fees already paid.

(f) (1) Notwithstanding any provision of this section to the contrary, a limited liability company that is a small business solely owned by a deployed member of the United States Armed Forces shall not be subject to the tax imposed under this section for any taxable year the owner is deployed and the limited liability company operates at a loss or ceases operation.

(2) The Franchise Tax Board may promulgate regulations as necessary or appropriate to carry out the purposes of this subdivision, including a definition for "ceases operation."

(3) For the purposes of this subdivision, all of the following definitions apply:

(A) "Deployed" means being called to active duty or active service during a period when a Presidential Executive order specifies that the United States is engaged in combat or homeland defense. "Deployed" does not include either of the following:

(i) Temporary duty for the sole purpose of training or processing.

(ii) A permanent change of station.

(B) "Operates at a loss" means a limited liability company's expenses exceed its receipts.

(C) "Small business" means a limited liability company with total income from all sources derived from, or attributable, to the state of two hundred fifty thousand dollars ($250,000) or less.

(4) This subdivision shall become inoperative for taxable years beginning on or after January 1, 2018.

(g) (1) Notwithstanding subdivision (a), each limited liability company that is a small business and that first commences business operations on or after January 1, 2013~~, and before January 1, 2018,~~ shall not be subject to the minimum franchise tax for its first taxable year and shall pay annually to the state a minimum franchise tax of ninety-nine dollars ($99) ~~for each of its succeeding nine taxable years~~, provided that it is a small business in that taxable year.

(2) For purposes of this subdivision:

(A) "Gross receipts" means the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business income, in which the income, gain, or loss is recognized or would be recognized if the transaction were in the United States under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold. Gross receipts, even if business income under Part 11 (commencing with Section 23001), shall not include the following items:

(i) Repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument.

(ii) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

(iii) Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock.

(iv) Damages and other amounts received as the result of litigation.

(v) Property acquired as an agent on behalf of another.

(vi) Tax refunds and other tax benefit recoveries.

(vii) Pension reversions.

(viii) Contributions to capital, except for sales of securities by securities dealers.

(ix) Income from discharge of indebtedness.

(x) Amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code.

(xi) Amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer's business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets. For purposes of this clause, "treasury function" means the pooling, management, and investment of intangible assets for the purpose of satisfying the cashflow needs of the taxpayer's trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and business acquisitions, and also includes the use of futures contracts and options contracts to hedge foreign currency fluctuations. A taxpayer principally engaged in the trade or business of purchasing and selling intangible assets of the type typically held in a taxpayer's treasury function, such as a registered broker-dealer, is not performing a treasury function, for purposes of this clause, with respect to income so produced.

(xii) Amounts received from hedging transactions involving intangible assets. A "hedging transaction" means a transaction related to the taxpayer's trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer.

(B) "Small business" means a limited liability company that, for the previous taxable year, had gross receipts, less returns and allowances, reportable to this state of one million dollars ($1,000,000) or less.

(3) This subdivision shall not apply to any limited liability company that reorganizes solely for the purpose of reducing its minimum tax.

SEC. 3. Section 17948 of the Revenue and Taxation Code is amended to read:

17948. (a) For each taxable year beginning on or after January 1, 1997, every limited liability partnership doing business in this state (as defined in Section 23101) and required to file a return under Section 18633 shall pay annually to the Franchise Tax Board a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) In addition to any limited liability partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every registered limited liability partnership that has registered with the Secretary of State pursuant to Section 16953 of the Corporations Code and every foreign limited liability partnership that has registered with the Secretary of State pursuant to Section 16959 of the Corporations Code shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until any of the following occurs:

(1) A notice of cessation is filed with the Secretary of State pursuant to subdivision (b) of Section 16954 or 16960 of the Corporations Code.

(2) A foreign limited liability partnership withdraws its registration pursuant to subdivision (a) of Section 16960 of the Corporations Code.

(3) The registered limited liability partnership or foreign limited liability partnership has been dissolved and finally wound up.

(c) The tax assessed under this section shall be due and payable on the date the return is required to be filed under Section 18633.

(d) If a taxpayer files a return with the Franchise Tax Board that is designated as its final return, the Franchise Tax Board shall notify the taxpayer that the annual tax shall continue to be due annually until a certificate of cancellation is filed with the Secretary of State pursuant to Section 16954 or 16960 of the Corporations Code.

(e) (1) Notwithstanding subdivision (a), each limited liability partnership that is a small business and that first commences business operations on or after January 1, 2013~~, and before January 1, 2018,~~ shall not be subject to the minimum franchise tax for its first taxable year and shall pay annually to the state a minimum franchise tax of ninety-nine dollars ($99)~~ for each of its succeeding nine taxable years~~, provided that it is a small business in that taxable year.

(2) For purposes of this subdivision:

(A) “Gross receipts” means the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business income, in which the income, gain, or loss is recognized or would be recognized if the transaction were in the United States under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold. Gross receipts, even if business income under Part 11 (commencing with Section 23001), shall not include the following items:

(i) Repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument.

(ii) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

(iii) Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock.

(iv) Damages and other amounts received as the result of litigation.

(v) Property acquired as an agent on behalf of another.

(vi) Tax refunds and other tax benefit recoveries.

(vii) Pension reversions.

(viii) Contributions to capital, except for sales of securities by securities dealers.

(ix) Income from discharge of indebtedness.

(x) Amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code.

(xi) Amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer's business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets. For purposes of this clause, "treasury function" means the pooling, management, and investment of intangible assets for the purpose of satisfying the cashflow needs of the taxpayer's trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and business acquisitions, and also includes the use of futures contracts and options contracts to hedge foreign currency fluctuations. A taxpayer principally engaged in the trade or business of purchasing and selling intangible assets of the type typically held in a taxpayer's treasury function, such as a registered broker-dealer, is not performing a treasury function, for purposes of this clause, with respect to income so produced.

(xii) Amounts received from hedging transactions involving intangible assets. A "hedging transaction" means a transaction related to the taxpayer's trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer.

(B) "Small business" means a limited liability partnership that, for the previous taxable year, had gross receipts, less returns and allowances, reportable to this state of one million dollars ($1,000,000) or less.

(3) This subdivision shall not apply to any limited liability partnership that reorganizes solely for the purpose of reducing its minimum tax.

SEC. 4. 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:

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

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

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

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

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

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

(3) "Qualified new corporation" means a corporation that is incorporated under the laws of this state or has qualified to transact intrastate business in this state, that begins business operations at or after the time of its incorporation and that reasonably estimates that it will have gross receipts, less returns and allowances, reportable to this state for the taxable year of one million dollars ($1,000,000) or less. "Qualified new corporation" does not include any corporation that began business operations as a sole proprietorship, a partnership, or any other form of business entity prior to its incorporation. This subdivision shall not apply to any

corporation that reorganizes solely for the purpose of reducing its minimum franchise tax.

(4) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as described in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, or to the formation of any subsidiary corporation, to the extent applicable.

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

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

(2) This subdivision shall not apply to limited partnerships, as defined in Section 17935, limited liability companies, as defined in Section 17941, limited liability partnerships, as described in Section 17948, charitable organizations, as described in Section 23703, regulated investment companies, as defined in Section 851 of the Internal Revenue Code, real estate investment trusts, as defined in Section 856 of the Internal Revenue Code, real estate mortgage investment conduits, as defined in Section 860D of the Internal Revenue Code, and qualified Subchapter S subsidiaries, as defined in Section 1361(b)(3) of the Internal Revenue Code, to the extent applicable.

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

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

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

(i) (1) Notwithstanding subdivision (a), a corporation that is a small business solely owned by a deployed member of the United States Armed Forces shall not be subject to the minimum franchise tax for any taxable year the owner is deployed and the corporation operates at a loss or ceases operation.

(2) The Franchise Tax Board may promulgate regulations as necessary or appropriate to carry out the purposes of this subdivision, including a definition for "ceases operation."

(3) For the purposes of this subdivision, all of the following definitions apply:

(A) "Deployed" means being called to active duty or active service during a period when a Presidential Executive order specifies that the United States is engaged in combat or homeland defense. "Deployed" does not include either of the following:

(i) Temporary duty for the sole purpose of training or processing.

(ii) A permanent change of station.

(B) "Operates at a loss" means negative net income as defined in Section 24341.

(C) "Small business" means a corporation with total income from all sources derived from, or attributable, to the state of two hundred fifty thousand dollars ($250,000) or less.

(4) This subdivision shall become inoperative for taxable years beginning on or after January 1, 2018.

(j) (1) Notwithstanding subdivisions (a) and (f), each corporation that is a small business and that first commences business operation on or after January 1~~, 2012, and before January~~

~~1, 2017,~~ *2013,* shall not be subject to the minimum franchise tax for its first taxable year and shall pay annually to the state a minimum franchise tax of ninety-nine dollars ($99) ~~for each of its succeeding nine taxable years~~, provided that it is a small business in that taxable year.

(2) For purposes of this subdivision:

(A) "Gross receipts" means the gross amounts realized (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital, including rents, royalties, interest, and dividends, in a transaction that produces business income, in which the income, gain, or loss is recognized or would be recognized if the transaction were in the United States under the Internal Revenue Code, as applicable for purposes of this part. Amounts realized on the sale or exchange of property shall not be reduced by the cost of goods sold or the basis of property sold. Gross receipts, even if business income under Part 11 (commencing with Section 23001), shall not include the following items:

(i) Repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or similar marketable instrument.

(ii) The principal amount received under a repurchase agreement or other transaction properly characterized as a loan.

(iii) Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock.

(iv) Damages and other amounts received as the result of litigation.

(v) Property acquired by an agent on behalf of another.

(vi) Tax refunds and other tax benefit recoveries.

(vii) Pension reversions.

(viii) Contributions to capital, except for sales of securities by securities dealers.

(ix) Income from discharge of indebtedness.

(x) Amounts realized from exchanges of inventory that are not recognized under the Internal Revenue Code.

(xi) Amounts received from transactions in intangible assets held in connection with a treasury function of the taxpayer's business and the gross receipts and overall net gains from the maturity, redemption, sale, exchange, or other disposition of those intangible assets. For purposes of this clause, "treasury function" means the pooling, management, and investment of intangible assets for the purpose of satisfying the cashflow needs of the taxpayer's trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and business acquisitions, and also includes the use of futures contracts and options contracts to hedge foreign currency fluctuations. A taxpayer principally engaged in the trade or business of purchasing and selling intangible assets of the type typically held in a taxpayer's treasury function, such as a registered broker-dealer, is not performing a treasury function, for purposes of this clause, with respect to income so produced.

(xii) Amounts received from hedging transactions involving intangible assets. A "hedging transaction" means a transaction related to the taxpayer's trading function involving futures and options transactions for the purpose of hedging price risk of the products or commodities consumed, produced, or sold by the taxpayer.

(B) "Small business" means any taxpayer that, for the previous taxable year, had gross receipts, less returns and allowances, reportable to this state of one million dollars ($1,000,000) or less.

(3) This subdivision shall not apply to any corporation that reorganizes solely for the purpose of reducing its minimum franchise tax.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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