

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.

- 1 (iii) Proceeds from issuance of the taxpayer's own stock or from
2 sale of treasury stock.
- 3 (iv) Damages and other amounts received as the result of
4 litigation.
- 5 (v) Property acquired as an agent on behalf of another.
- 6 (vi) Tax refunds and other tax benefit recoveries.
- 7 (vii) Pension reversions.
- 8 (viii) Contributions to capital, except for sales of securities by
9 securities dealers.
- 10 (ix) Income from discharge of indebtedness.
- 11 (x) Amounts realized from exchanges of inventory that are not
12 recognized under the Internal Revenue Code.
- 13 (xi) Amounts received from transactions in intangible assets
14 held in connection with a treasury function of the taxpayer's
15 business and the gross receipts and overall net gains from the
16 maturity, redemption, sale, exchange, or other disposition of those
17 intangible assets. For purposes of this clause, "treasury function"
18 means the pooling, management, and investment of intangible
19 assets for the purpose of satisfying the cashflow needs of the
20 taxpayer's trade or business, such as providing liquidity for a
21 taxpayer's business cycle, providing a reserve for business
22 contingencies, and business acquisitions, and also includes the use
23 of futures contracts and options contracts to hedge foreign currency
24 fluctuations. A taxpayer principally engaged in the trade or business
25 of purchasing and selling intangible assets of the type typically
26 held in a taxpayer's treasury function, such as a registered
27 broker-dealer, is not performing a treasury function, for purposes
28 of this clause, with respect to income so produced.
- 29 (xii) Amounts received from hedging transactions involving
30 intangible assets. A "hedging transaction" means a transaction
31 related to the taxpayer's trading function involving futures and
32 options transactions for the purpose of hedging price risk of the
33 products or commodities consumed, produced, or sold by the
34 taxpayer.
- 35 (B) "Small business" means a limited partnership that, for the
36 previous taxable year, had gross receipts, less returns and
37 allowances, reportable to this state of one million dollars
38 (\$1,000,000) or less.

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

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

6 17941. (a) For each taxable year beginning on or after January
7 1, 1997, a limited liability company doing business in this state
8 (as defined in Section 23101) shall pay annually to this state a tax
9 for the privilege of doing business in this state in an amount equal
10 to the applicable amount specified in paragraph (1) of subdivision
11 (d) of Section 23153 for the taxable year.

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

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

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

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

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

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

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

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

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

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

- 22 (i) Temporary duty for the sole purpose of training or processing.
23 (ii) A permanent change of station.

24 (B) “Operates at a loss” means a limited liability company’s
25 expenses exceed its receipts.

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

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

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

39 (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

1 fluctuations. A taxpayer principally engaged in the trade or business
2 of purchasing and selling intangible assets of the type typically
3 held in a taxpayer's treasury function, such as a registered
4 broker-dealer, is not performing a treasury function, for purposes
5 of this clause, with respect to income so produced.

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

12 (B) "Small business" means a limited liability company that,
13 for the previous taxable year, had gross receipts, less returns and
14 allowances, reportable to this state of one million dollars
15 (\$1,000,000) or less.

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

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

21 17948. (a) For each taxable year beginning on or after January
22 1, 1997, every limited liability partnership doing business in this
23 state (as defined in Section 23101) and required to file a return
24 under Section 18633 shall pay annually to the Franchise Tax Board
25 a tax for the privilege of doing business in this state in an amount
26 equal to the applicable amount specified in paragraph (1) of
27 subdivision (d) of Section 23153 for the taxable year.

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

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

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

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

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

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

14 (e) (1) Notwithstanding subdivision (a), each limited liability
15 partnership that is a small business and that first commences
16 business operations on or after January 1, 2013, ~~and before January~~
17 ~~1, 2018,~~ shall not be subject to the minimum franchise tax for its
18 first taxable year and shall pay annually to the state a minimum
19 franchise tax of ninety-nine dollars (\$99) ~~for each of its succeeding~~
20 ~~nine taxable years,~~ provided that it is a small business in that
21 taxable year.

22 (2) For purposes of this subdivision:

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

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

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

- 1 (iii) Proceeds from issuance of the taxpayer's own stock or from
2 sale of treasury stock.
- 3 (iv) Damages and other amounts received as the result of
4 litigation.
- 5 (v) Property acquired as an agent on behalf of another.
- 6 (vi) Tax refunds and other tax benefit recoveries.
- 7 (vii) Pension reversions.
- 8 (viii) Contributions to capital, except for sales of securities by
9 securities dealers.
- 10 (ix) Income from discharge of indebtedness.
- 11 (x) Amounts realized from exchanges of inventory that are not
12 recognized under the Internal Revenue Code.
- 13 (xi) Amounts received from transactions in intangible assets
14 held in connection with a treasury function of the taxpayer's
15 business and the gross receipts and overall net gains from the
16 maturity, redemption, sale, exchange, or other disposition of those
17 intangible assets. For purposes of this clause, "treasury function"
18 means the pooling, management, and investment of intangible
19 assets for the purpose of satisfying the cashflow needs of the
20 taxpayer's trade or business, such as providing liquidity for a
21 taxpayer's business cycle, providing a reserve for business
22 contingencies, and business acquisitions, and also includes the use
23 of futures contracts and options contracts to hedge foreign currency
24 fluctuations. A taxpayer principally engaged in the trade or business
25 of purchasing and selling intangible assets of the type typically
26 held in a taxpayer's treasury function, such as a registered
27 broker-dealer, is not performing a treasury function, for purposes
28 of this clause, with respect to income so produced.
- 29 (xii) Amounts received from hedging transactions involving
30 intangible assets. A "hedging transaction" means a transaction
31 related to the taxpayer's trading function involving futures and
32 options transactions for the purpose of hedging price risk of the
33 products or commodities consumed, produced, or sold by the
34 taxpayer.
- 35 (B) "Small business" means a limited liability partnership that,
36 for the previous taxable year, had gross receipts, less returns and
37 allowances, reportable to this state of one million dollars
38 (\$1,000,000) or less.

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

4 SEC. 4. Section 23153 of the Revenue and Taxation Code is
5 amended to read:

6 23153. (a) Every corporation described in subdivision (b) shall
7 be subject to the minimum franchise tax specified in subdivision
8 (d) from the earlier of the date of incorporation, qualification, or
9 commencing to do business within this state, until the effective
10 date of dissolution or withdrawal as provided in Section 23331 or,
11 if later, the date the corporation ceases to do business within the
12 limits of this state.

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

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

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

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

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

23 (1) Credit unions.

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

34 (d) (1) Except as provided in paragraph (2), paragraph (1) of
35 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)
36 of Section 23181, and paragraph (1) of subdivision (c) of Section
37 23183, corporations subject to the minimum franchise tax shall
38 pay annually to the state a minimum franchise tax of eight hundred
39 dollars (\$800).

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

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

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

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

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

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

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

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

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

3 (4) This subdivision shall not apply to limited partnerships, as
4 defined in Section 17935, limited liability companies, as defined
5 in Section 17941, limited liability partnerships, as described in
6 Section 17948, charitable organizations, as described in Section
7 23703, regulated investment companies, as defined in Section 851
8 of the Internal Revenue Code, real estate investment trusts, as
9 defined in Section 856 of the Internal Revenue Code, real estate
10 mortgage investment conduits, as defined in Section 860D of the
11 Internal Revenue Code, qualified Subchapter S subsidiaries, as
12 defined in Section 1361(b)(3) of the Internal Revenue Code, or to
13 the formation of any subsidiary corporation, to the extent
14 applicable.

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

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

28 (2) This subdivision shall not apply to limited partnerships, as
29 defined in Section 17935, limited liability companies, as defined
30 in Section 17941, limited liability partnerships, as described in
31 Section 17948, charitable organizations, as described in Section
32 23703, regulated investment companies, as defined in Section 851
33 of the Internal Revenue Code, real estate investment trusts, as
34 defined in Section 856 of the Internal Revenue Code, real estate
35 mortgage investment conduits, as defined in Section 860D of the
36 Internal Revenue Code, and qualified Subchapter S subsidiaries,
37 as defined in Section 1361(b)(3) of the Internal Revenue Code, to
38 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 ~~1, 2017, 2013~~, shall not be subject to the minimum franchise tax
2 for its first taxable year and shall pay annually to the state a
3 minimum franchise tax of ninety-nine dollars (\$99) ~~for each of its~~
4 ~~succeeding nine taxable years~~, provided that it is a small business
5 in that taxable year.

6 (2) For purposes of this subdivision:

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

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

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

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

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

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

29 (vi) Tax refunds and other tax benefit recoveries.

30 (vii) Pension reversions.

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

33 (ix) Income from discharge of indebtedness.

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

36 (xi) Amounts received from transactions in intangible assets
37 held in connection with a treasury function of the taxpayer's
38 business and the gross receipts and overall net gains from the
39 maturity, redemption, sale, exchange, or other disposition of those
40 intangible assets. For purposes of this clause, "treasury function"

1 means the pooling, management, and investment of intangible
2 assets for the purpose of satisfying the cashflow needs of the
3 taxpayer's trade or business, such as providing liquidity for a
4 taxpayer's business cycle, providing a reserve for business
5 contingencies, and business acquisitions, and also includes the use
6 of futures contracts and options contracts to hedge foreign currency
7 fluctuations. A taxpayer principally engaged in the trade or business
8 of purchasing and selling intangible assets of the type typically
9 held in a taxpayer's treasury function, such as a registered
10 broker-dealer, is not performing a treasury function, for purposes
11 of this clause, with respect to income so produced.

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

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

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

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