

AMENDED IN ASSEMBLY APRIL 15, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1240**

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**Introduced by Assembly Member Logue**

February 18, 2011

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An act to amend Section 17941 *repeal Section 17942* of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1240, as amended, Logue. ~~Minimum franchise tax: small businesses. Income taxes: limited liability company: annual fee.~~

Existing law, generally, imposes a minimum franchise tax of \$800, except as provided, on every ~~limited liability company registered, qualified to transact business, or doing business in this state, as specified corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state, and an annual tax in an amount equal to the minimum franchise tax on every limited liability company registered, qualified to transact business, or doing business in this state, as specified.~~ Existing law requires every limited liability company subject to that annual tax to pay annually to this state a fee equal to specified amounts based upon total income from all sources reportable to this state.

This bill would, ~~instead, for a limited liability company that is a small business, as defined, impose a minimum franchise tax of \$100~~ *repeal that fee.*

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:*

1     SECTION 1. Section 17942 of the Revenue and Taxation Code  
2     is repealed.

3     17942. (a) In addition to the tax imposed under Section 17941,  
4     every limited liability company subject to tax under Section 17941  
5     shall pay annually to this state a fee equal to:

6         (1) ~~Nine hundred dollars (\$900), if the total income from all~~  
7         ~~sources derived from or attributable to this state for the taxable~~  
8         ~~year is two hundred fifty thousand dollars (\$250,000) or more, but~~  
9         ~~less than five hundred thousand dollars (\$500,000).~~

10        (2) ~~Two thousand five hundred dollars (\$2,500), if the total~~  
11        ~~income from all sources derived from or attributable to this state~~  
12        ~~for the taxable year is five hundred thousand dollars (\$500,000)~~  
13        ~~or more, but less than one million dollars (\$1,000,000).~~

14        (3) ~~Six thousand dollars (\$6,000), if the total income from all~~  
15        ~~sources derived from or attributable to this state for the taxable~~  
16        ~~year is one million dollars (\$1,000,000) or more, but less than five~~  
17        ~~million dollars (\$5,000,000).~~

18        (4) ~~Eleven thousand seven hundred ninety dollars (\$11,790), if~~  
19        ~~the total income from all sources derived from or attributable to~~  
20        ~~this state for the taxable year is five million dollars (\$5,000,000)~~  
21        ~~or more.~~

22        (b) (1) (A) ~~For purposes of this section, “total income from all~~  
23        ~~sources derived from or attributable to this state” means gross~~  
24        ~~income, as defined in Section 24271, plus the cost of goods sold~~  
25        ~~that are paid or incurred in connection with the trade or business~~  
26        ~~of the taxpayer. However, “total income from all sources derived~~  
27        ~~from or attributable to this state” shall not include allocation or~~  
28        ~~attribution of income or gain or distributions made to a limited~~  
29        ~~liability company in its capacity as a member of, or holder of an~~  
30        ~~economic interest in, another limited liability company if the~~  
31        ~~allocation or attribution of income or gain or distributions are~~  
32        ~~directly or indirectly attributable to income that is subject to the~~  
33        ~~payment of the fee described in this section.~~

34        (B) ~~For purposes of this section, “total income from all sources~~  
35        ~~derived from or attributable to this state” shall be determined using~~

1 the rules for assigning sales under Sections 25135 and 25136 and  
2 the regulations thereunder, as modified by regulations under  
3 Section 25137, other than those provisions that exclude receipts  
4 from the sales factor.

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

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

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

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

1 SECTION 1. Section 17941 of the Revenue and Taxation Code  
2 is amended to read:

3 17941. (a) For each taxable year beginning on or after January  
4 1, 1997, a limited liability company doing business in this state  
5 (as defined in Section 23101) shall pay annually to this state a tax  
6 for the privilege of doing business in this state in an amount equal  
7 to the applicable amount specified in paragraph (1) of subdivision  
8 (d) of Section 23153 for the taxable year.

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

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

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

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

34 (e) Notwithstanding anything in this section to the contrary, if  
35 the office of the Secretary of State files a certificate of cancellation  
36 pursuant to Section 17350.5 of the Corporations Code for any  
37 limited liability company, then paragraph (1) of subdivision (f) of  
38 Section 23153 shall apply to that limited liability company as if  
39 the limited liability company were properly treated as a corporation  
40 for that limited purpose only, and paragraph (2) of subdivision (f)

1 of Section 23153 shall not apply. Nothing in this subdivision  
2 entitles a limited liability company to receive a reimbursement for  
3 any annual taxes or fees already paid.

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

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

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

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

19 (i) Temporary duty for the sole purpose of training or processing.  
20 (ii) A permanent change of station.

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

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

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

28 (g) Notwithstanding any other law, for each taxable year  
29 beginning on or after January 1, 2011, a small business as defined  
30 in subparagraph (C) of paragraph (3) of subdivision (f) shall pay  
31 a minimum franchise tax of one hundred dollars (\$100).

32 SEC. 2. This act provides for a tax levy within the meaning of  
33 Article IV of the Constitution and shall go into immediate effect.