

ASSEMBLY BILL

No. 799

Introduced by Assembly Member Travis Allen

February 26, 2015

An act to amend Section 17941 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 799, as introduced, Travis Allen. Corporation taxes: annual tax: limited liability company.

Existing law, imposes a 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 an annual tax in an amount equal to the minimum franchise tax 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 make nonsubstantive changes to the provision imposing an annual tax on limited liability companies.

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

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

- 1 SECTION 1. Section 17941 of the Revenue and Taxation Code,
- 2 as amended by Section 26 of Chapter 419 of the Statutes of 2012,
- 3 is amended to read:
- 4 17941. (a) For each taxable year beginning on or after January
- 5 1, 1997, a limited liability company doing business in this state

1 (as, *as* defined in Section ~~23101~~) 23101, shall pay annually to this
2 state a tax for the privilege of doing business in this state in an
3 amount equal to the applicable amount specified in subdivision
4 (d) of Section 23153 for the taxable year.

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

15 (2) If a taxpayer files a return with the Franchise Tax Board that
16 is designated as its final return, the Franchise Tax Board shall
17 notify the taxpayer that the annual tax shall continue to be due
18 annually until a certificate of dissolution is filed with the Secretary
19 of State pursuant to Section 17707.08 of the Corporations Code
20 or a certificate of cancellation is filed with the Secretary of State
21 pursuant to Section 17708.06 of the Corporations Code.

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

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

31 (e) Notwithstanding anything in this section to the contrary, if
32 the office of the Secretary of State files a certificate of cancellation
33 pursuant to Section 17707.02 of the Corporations Code for any
34 limited liability company, then paragraph (1) of subdivision (f) of
35 Section 23153 shall apply to that limited liability company as if
36 the limited liability company were properly treated as a corporation
37 for that limited purpose only, and paragraph (2) of subdivision (f)
38 of Section 23153 shall not apply. Nothing in this subdivision
39 entitles a limited liability company to receive a reimbursement for
40 any annual taxes or fees already paid.

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

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

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

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

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

17 (ii) A permanent change of station.

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

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

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