

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2625**

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**Introduced by Assembly Member Lopez**

February 19, 2016

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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 2625, as amended, Lopez. Corporation taxes: minimum franchise tax: annual tax: microbusiness.

Existing law imposes an annual minimum franchise tax, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state; or doing business in this state. Existing law exempts a corporation that incorporates or qualifies to do business in this state from the payment of the minimum franchise tax in its first taxable year.

Existing law imposes an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability company, and limited liability partnership that is doing business in this state or that has filed or registered with the Secretary of State.

The minimum franchise tax imposed on a corporation, and the annual tax imposed on a limited liability company, must be paid by the 15th day of the 4th month of the taxable year. The annual tax imposed on a limited partnership or on a limited liability partnership, must be paid by the original due date of the partnership return.

This bill, for taxable years beginning on or after January 1, ~~2016~~, 2017, would reduce that minimum franchise tax to specified amounts,

in the 2nd, 3rd, 4th, and 5th taxable years, for a corporation that is a new microbusiness, or that annual tax, ~~in the first 5 taxable years, for each of the first 5 taxable years of its existence,~~ for a limited liability company, limited partnership, or limited liability partnership that is a new microbusiness, as defined.

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

3 17935. (a) For each taxable year beginning on or after January  
4 1, 1997, every limited partnership doing business in this state, as  
5 defined by Section 23101, and required to file a return under  
6 Section 18633 shall pay annually to this state a tax for the privilege  
7 of doing business in this state in an amount equal to the applicable  
8 amount specified in paragraph (1) of subdivision (d) of Section  
9 23153.

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

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

1 (c) The tax imposed by this chapter shall be due and payable  
2 on the date the return is required to be filed under former Section  
3 18432 or 18633.

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

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

24 (f) (1) Notwithstanding subdivision (a) or (b), for taxable years  
25 beginning on or after January 1, ~~2016~~, 2017, every limited  
26 partnership that is a new microbusiness shall, for ~~its first five~~  
27 ~~taxable years~~, *each of the first five taxable years of its existence*  
28 *for which it qualifies as a new microbusiness*, pay to the state an  
29 annual tax of:

30 (A) Two hundred dollars (\$200) for a new microbusiness that  
31 has gross receipts, less returns and allowances, ~~reportable derived~~  
32 ~~from or attributable~~ to this state for the taxable year of ~~one hundred~~  
33 ~~thousand dollars (\$100,000)~~ *fifty thousand dollars (\$50,000)* or  
34 less.

35 (B) Four hundred dollars (\$400) for a new microbusiness that  
36 has gross receipts, less returns and allowances, ~~reportable derived~~  
37 ~~from or attributable~~ to this state for the taxable year of ~~two hundred~~  
38 ~~thousand dollars (\$200,000)~~ *one hundred thousand dollars*  
39 *(\$100,000)* or less, but more than ~~one hundred thousand dollars~~  
40 ~~(\$100,000)~~; *fifty thousand dollars (\$50,000)*.

1 (C) Six hundred dollars (\$600) for a new microbusiness that  
 2 has gross receipts, less returns and allowances, ~~reportable derived~~  
 3 ~~from or attributable~~ to this state for the taxable year of ~~three~~  
 4 ~~hundred thousand dollars (\$300,000)~~ *one hundred fifty thousand*  
 5 *dollars (\$150,000)* or less, but more than ~~two hundred thousand~~  
 6 ~~dollars (\$200,000)~~; *one hundred thousand dollars (\$100,000)*.

7 (2) For purposes of this subdivision, the following definitions  
 8 shall apply:

9 (A) (i) ~~“Gross receipts, less returns and allowances reportable~~  
 10 ~~to this state;”~~ *allowances,”* means the sum of the gross receipts  
 11 from the production of business income, as defined in subdivision  
 12 (a) of Section 25120, and the gross receipts from the production  
 13 of nonbusiness income, as defined in subdivision (d) of Section  
 14 25120.

15 (B) ~~“New microbusiness” means a limited partnership that on~~  
 16 ~~or after January 1, 2016, is organized under the laws of this state~~  
 17 ~~or has qualified to transact intrastate business in this state that~~  
 18 ~~begins business operations at or after the time of its organization.~~  
 19 ~~“New microbusiness” does not include any limited partnership~~  
 20 ~~that began business operations as, or acquired its business~~  
 21 ~~operations from, a sole proprietorship, a limited liability company,~~  
 22 ~~a general partnership, a corporation, or any other form of business~~  
 23 ~~entity prior to its organization or that acquired its business~~  
 24 ~~operations from a partnership.~~

25 (3) ~~This subdivision shall not apply to a new microbusiness that~~  
 26 ~~is owned directly or indirectly by a limited partnership, limited~~  
 27 ~~liability company, limited liability partnership, or corporation~~  
 28 ~~subject to this part or Part 11 (commencing with Section 23101).~~

29 (4) ~~This subdivision shall not apply to any limited partnership~~  
 30 ~~that reorganizes solely for the purpose of reducing its annual tax.~~

31 (ii) ~~“Gross receipts, less returns and allowances, derived from~~  
 32 ~~or attributable to this state” shall be determined using the rules~~  
 33 ~~for assigning sales under Sections 25135 and 25136 and the~~  
 34 ~~regulations thereunder, as modified by the regulations under~~  
 35 ~~Section 25137, other than those provisions that exclude receipts~~  
 36 ~~from the sales factor.~~

37 (B) ~~“New microbusiness” means a limited partnership that on~~  
 38 ~~or after January 1, 2017, is organized under the laws of this state~~  
 39 ~~or has qualified to transact intrastate business in this state and~~  
 40 ~~has first commenced doing business in this state on or after the~~

1 *time of its organization. In determining whether the taxpayer has*  
2 *first commenced doing business in this state during the taxable*  
3 *year, subdivision (f) of Section 17276, without application of*  
4 *paragraph (7) of that subdivision, shall apply, except that “new*  
5 *microbusiness” shall be substituted for “new business.”*

6 *(3) For purposes of this subdivision, the gross receipts derived*  
7 *from or attributable to the state of any other business, in whatever*  
8 *form conducted, that is owned, directly or indirectly, by persons,*  
9 *within the meaning of Section 17007, that are treated as related,*  
10 *within the meaning of Section 267, 318, or 707 of the Internal*  
11 *Revenue Code, to the new microbusiness, shall be aggregated with*  
12 *the gross receipts derived from or attributable to the state of the*  
13 *new microbusiness to determine whether the new microbusiness*  
14 *qualifies for the reduced annual tax under this subdivision.*

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

17 17941. (a) For each taxable year beginning on or after January  
18 1, 1997, a limited liability company doing business in this state,  
19 as defined in Section 23101, shall pay annually to this state a tax  
20 for the privilege of doing business in this state in an amount equal  
21 to the applicable amount specified in paragraph (1) of subdivision  
22 (d) of Section 23153 for the taxable year.

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

33 (2) If a taxpayer files a return with the Franchise Tax Board that  
34 is designated as its final return, the Franchise Tax Board shall  
35 notify the taxpayer that the annual tax shall continue to be due  
36 annually until a certificate of dissolution is filed with the Secretary  
37 of State pursuant to Section 17707.08 of the Corporations Code  
38 or a certificate of cancellation is filed with the Secretary of State  
39 pursuant to Section 17708.06 of the Corporations Code.

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

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

10 (e) Notwithstanding anything in this section to the contrary, if  
11 the office of the Secretary of State files a certificate of cancellation  
12 pursuant to Section 17707.02 of the Corporations Code for any  
13 limited liability company, then paragraph (1) of subdivision (f) of  
14 Section 23153 shall apply to that limited liability company as if  
15 the limited liability company were properly treated as a corporation  
16 for that limited purpose only, and paragraph (2) of subdivision (f)  
17 of Section 23153 shall not apply. Nothing in this subdivision  
18 entitles a limited liability company to receive a reimbursement for  
19 any annual taxes or fees already paid.

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

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

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

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

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

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

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

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

6 (g) (1) ~~Notwithstanding any provision of this section to the~~  
7 ~~contrary, subdivision (a) or (b),~~ for taxable years beginning on or  
8 after January 1, ~~2016, 2017,~~ every limited liability company that  
9 is a new microbusiness shall, ~~for its first five taxable years, each~~  
10 ~~of the first five taxable years of its existence for which it qualifies~~  
11 ~~as a new microbusiness,~~ pay to the state an annual tax of:

12 (A) Two hundred dollars (\$200) for a new microbusiness that  
13 *reasonably estimates it will have gross receipts, less returns and*  
14 *allowances, reportable derived from or attributable to this state*  
15 *for the taxable year of one hundred thousand dollars (\$100,000)*  
16 *fifty thousand dollars (\$50,000) or less.*

17 (B) Four hundred dollars (\$400) for a new microbusiness that  
18 *reasonably estimates it will have gross receipts, less returns and*  
19 *allowances, reportable derived from or attributable to this state*  
20 *for the taxable year of two hundred thousand dollars (\$200,000)*  
21 *one hundred thousand dollars (\$100,000) or less, but more than*  
22 ~~one hundred thousand dollars (\$100,000).~~ *fifty thousand dollars*  
23 *(\$50,000).*

24 (C) Six hundred dollars (\$600) for a new microbusiness that  
25 *reasonably estimates it will have gross receipts, less returns and*  
26 *allowances, reportable derived from or attributable to this state*  
27 *for the taxable year of three hundred thousand dollars (\$300,000)*  
28 *one hundred fifty thousand dollars (\$150,000) or less, but more*  
29 ~~than two hundred thousand dollars (\$200,000).~~ *one hundred*  
30 *thousand dollars (\$100,000).*

31 (2) For purposes of this subdivision, the following definitions  
32 shall apply:

33 (A) (i) ~~“Gross receipts, less returns and allowances reportable~~  
34 ~~to this state,”~~ *allowances”* means the sum of the gross receipts  
35 from the production of business income, as defined in subdivision  
36 (a) of Section 25120, and the gross receipts from the production  
37 of nonbusiness income, as defined in subdivision (d) of Section  
38 25120.

39 (B) ~~“New microbusiness” means a limited liability company~~  
40 ~~that on or after January 1, 2016, is organized under the laws of~~

1 this state or has qualified to transact intrastate business in this state  
2 that begins business operations at or after the time of its  
3 organization. “New microbusiness” does not include any limited  
4 liability company that began business operations as, or acquired  
5 its business operations from, a sole proprietorship, a partnership,  
6 a limited liability company, a corporation, or any other form of  
7 business entity prior to its organization or that acquired its business  
8 operations from a limited liability corporation.

9 ~~(3) This subdivision shall not apply to a new microbusiness that~~  
10 ~~is owned directly or indirectly by a limited liability company,~~  
11 ~~limited partnership, limited liability partnership, or corporation~~  
12 ~~subject to this part or Part 11 (commencing with Section 23101).~~

13 ~~(4) This subdivision shall not apply to any limited liability~~  
14 ~~company that reorganizes solely for the purpose of reducing its~~  
15 ~~annual tax.~~

16 *(ii) “Gross receipts, less returns and allowances, derived from*  
17 *or attributable to this state” shall be determined using the rules*  
18 *for assigning sales under Sections 25135 and 25136 and the*  
19 *regulations thereunder, as modified by the regulations under*  
20 *Section 25137, other than those provisions that exclude receipts*  
21 *from the sales factor.*

22 *(B) “New microbusiness” means a limited liability company*  
23 *that on or after January 1, 2017, is organized under the laws of*  
24 *this state or has qualified to transact intrastate business in this*  
25 *state and has first commenced doing business in this state on or*  
26 *after the time of its organization. In determining whether the*  
27 *taxpayer has first commenced doing business in this state during*  
28 *the taxable year, subdivision (f) of Section 17276, without*  
29 *application of paragraph (7) of that subdivision, shall apply, except*  
30 *that “new microbusiness” shall be substituted for “new business.”*

31 *(3) For purposes of this subdivision, the gross receipts derived*  
32 *from or attributable to the state of any other business, in whatever*  
33 *form conducted, that is owned, directly or indirectly, by persons,*  
34 *within the meaning of Section 17007, that are treated as related,*  
35 *within the meaning of Section 267, 318, or 707 of the Internal*  
36 *Revenue Code, to the new microbusiness, shall be aggregated with*  
37 *the gross receipts derived from or attributable to the state of the*  
38 *new microbusiness to determine whether the new microbusiness*  
39 *qualifies for the reduced annual tax under this subdivision.*

1     (4) *For any taxable year beginning on or after January 1, 2017,*  
2 *if a limited liability company has qualified to pay a reduced annual*  
3 *tax under this subdivision for any taxable year, but in that taxable*  
4 *year, the limited liability company's gross receipts, less returns*  
5 *and allowances, derived from or attributable to this state, exceed*  
6 *the amount specified for that reduced amount, an additional tax*  
7 *in an amount equal to six hundred dollars (\$600), four hundred*  
8 *dollars (\$400), or two hundred dollars (\$200), as applicable, for*  
9 *that taxable year shall be due and payable by the limited liability*  
10 *company on the due date of its return, without regard to extension,*  
11 *for that taxable year.*

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

14     17948. (a) For each taxable year beginning on or after January  
15 1, 1997, every limited liability partnership doing business in this  
16 state, as defined in Section 23101, and required to file a return  
17 under Section 18633 shall pay annually to the Franchise Tax Board  
18 a tax for the privilege of doing business in this state in an amount  
19 equal to the applicable amount specified in paragraph (1) of  
20 subdivision (d) of Section 23153 for the taxable year.

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

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

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

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

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

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

7 (e) (1) Notwithstanding subdivision (a) or (b), for taxable years  
 8 beginning on or after January 1, ~~2016~~, 2017, every limited liability  
 9 partnership that is a new microbusiness shall, ~~for its first five~~  
 10 ~~taxable years, each year of the first five taxable years of its~~  
 11 ~~existence for which it qualifies as a new microbusiness,~~ pay  
 12 annually to the state an annual tax of:

13 (A) Two hundred dollars (\$200) for a new microbusiness that  
 14 has gross receipts, less returns and allowances, ~~reportable derived~~  
 15 ~~from or attributable~~ to this state for the taxable year of ~~one hundred~~  
 16 ~~thousand dollars (\$100,000)~~ *fifty thousand dollars (\$50,000)* or  
 17 less.

18 (B) Four hundred dollars (\$400) for a new microbusiness that  
 19 has gross receipts, less returns and allowances, ~~reportable derived~~  
 20 ~~from or attributable~~ to this state for the taxable year of ~~two hundred~~  
 21 ~~thousand dollars (\$200,000)~~ *one hundred thousand dollars*  
 22 *(\$100,000)* or less, but more than ~~one hundred thousand dollars~~  
 23 ~~(\$100,000)~~; *fifty thousand dollars (\$50,000)*.

24 (C) Six hundred dollars (\$600) for a new microbusiness that  
 25 has gross receipts, less returns and allowances, ~~reportable derived~~  
 26 ~~from or attributable~~ to this state for the taxable year of ~~three~~  
 27 ~~hundred thousand dollars (\$300,000)~~ *one hundred fifty thousand*  
 28 *dollars (\$150,000)* or less, but more than ~~two hundred thousand~~  
 29 ~~dollars (\$200,000)~~; *one hundred thousand dollars (\$100,000)*.

30 (2) For purposes of this subdivision, the following definitions  
 31 shall apply:

32 (A) (i) ~~“Gross receipts, less returns and allowances reportable~~  
 33 ~~to this state,”~~ *allowances,*” means the sum of the gross receipts  
 34 from the production of business income, as defined in subdivision  
 35 (a) of Section 25120, and the gross receipts from the production  
 36 of nonbusiness income, as defined in subdivision (d) of Section  
 37 25120.

38 (B) ~~“New microbusiness” means a limited liability partnership~~  
 39 ~~that on or after January 1, 2016, is organized under the laws of~~  
 40 ~~this state or has qualified to transact intrastate business in this state~~

1 ~~that begins business operations at or after the time of its~~  
2 ~~organization. “New microbusiness” does not include any limited~~  
3 ~~liability partnership that began business operations as, or acquired~~  
4 ~~its business operations from, a sole proprietorship, a limited~~  
5 ~~liability company, a partnership, a corporation, or any other form~~  
6 ~~of business entity prior to its organization or that acquired its~~  
7 ~~business operations from a limited partnership.~~

8 ~~(3) This subdivision shall not apply to a new microbusiness that~~  
9 ~~is owned directly or indirectly by a corporation subject to Part 11~~  
10 ~~(commencing with Section 23101).~~

11 ~~(4) This subdivision shall not apply to any limited liability~~  
12 ~~partnership that reorganizes solely for the purpose of reducing its~~  
13 ~~annual tax.~~

14 ~~(ii) “Gross receipts, less returns and allowances, derived from~~  
15 ~~or attributable to this state” shall be determined using the rules~~  
16 ~~for assigning sales under Sections 25135 and 25136 and the~~  
17 ~~regulations thereunder, as modified by the regulations under~~  
18 ~~Section 25137, other than those provisions that exclude receipts~~  
19 ~~from the sales factor.~~

20 ~~(B) “New microbusiness” means a limited liability partnership~~  
21 ~~that on or after January 1, 2017, is organized under the laws of~~  
22 ~~this state or has qualified to transact intrastate business in this~~  
23 ~~state and has first commenced doing business in this state on or~~  
24 ~~after the time of its organization. In determining whether the~~  
25 ~~taxpayer has first commenced doing business in this state during~~  
26 ~~the taxable year, subdivision (f) of Section 17276, without~~  
27 ~~application of paragraph (7) of that subdivision, shall apply, except~~  
28 ~~that “new microbusiness” shall be substituted for “new business.”~~

29 ~~(3) For purposes of this subdivision, the gross receipts derived~~  
30 ~~from or attributable to the state of any other business, in whatever~~  
31 ~~form conducted, that is owned, directly or indirectly, by persons,~~  
32 ~~within the meaning of Section 17007, that are treated as related,~~  
33 ~~within the meaning of Section 267, 318, or 707 of the Internal~~  
34 ~~Revenue Code, to the new microbusiness, shall be aggregated with~~  
35 ~~the gross receipts derived from or attributable to the state of the~~  
36 ~~new microbusiness to determine whether the new microbusiness~~  
37 ~~qualifies for the reduced annual tax under this subdivision.~~

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

1 23153. (a) Every corporation described in subdivision (b) shall  
2 be subject to the minimum franchise tax specified in subdivision  
3 (d) from the earlier of the date of incorporation, qualification, or  
4 commencing to do business within this state, until the effective  
5 date of dissolution or withdrawal as provided in Section 23331 or,  
6 if later, the date the corporation ceases to do business within the  
7 limits of this state.

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

10 (1) Every corporation that is incorporated under the laws of this  
11 state.

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

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

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

18 (1) Credit unions.

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

29 (d) (1) Except as provided in paragraph (2), paragraph (1) of  
30 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)  
31 of Section 23181, and paragraph (1) of subdivision (c) of Section  
32 23183, corporations subject to the minimum franchise tax shall  
33 pay annually to the state a minimum franchise tax of eight hundred  
34 dollars (\$800).

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

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

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

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

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

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

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

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

37 (4) This subdivision shall not apply to limited partnerships, as  
38 defined in Section 17935, limited liability companies, as defined  
39 in Section 17941, limited liability partnerships, as described in  
40 Section 17948, charitable corporations, as described in Section

1 23703, regulated investment companies, as defined in Section 851  
2 of the Internal Revenue Code, real estate investment trusts, as  
3 defined in Section 856 of the Internal Revenue Code, real estate  
4 mortgage investment conduits, as defined in Section 860D of the  
5 Internal Revenue Code, qualified Subchapter S subsidiaries, as  
6 defined in Section 1361(b)(3)(B) of the Internal Revenue Code,  
7 or to the formation of any subsidiary corporation, to the extent  
8 applicable.

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

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

22 (B) Notwithstanding subdivision (a), for taxable years beginning  
23 on or after January 1, ~~2016~~, 2017, every corporation that is a new  
24 microbusiness ~~in~~ up to its first five taxable years shall annually  
25 pay to the state a minimum franchise tax in an amount specified  
26 in clause (i) for its second, third, fourth, and fifth taxable ~~years~~  
27 *years, as long as it is a microbusiness in each year.*

28 (i) (I) Two hundred dollars (\$200) for a new microbusiness  
29 that reasonably estimates that it will have gross receipts, less  
30 returns and allowances, ~~reportable derived from or attributable~~ to  
31 this state for the taxable year of ~~one hundred thousand dollars~~  
32 *(\$100,000) fifty thousand dollars (\$50,000) or less.*

33 (II) Four hundred dollars (\$400) for a new microbusiness that  
34 reasonably estimates that it will have gross receipts, less returns  
35 and allowances, ~~reportable derived from or attributable~~ to this  
36 state for the taxable year of ~~two hundred thousand dollars~~  
37 *(\$200,000) one hundred thousand dollars (\$100,000) or less, but*  
38 *more than one hundred thousand dollars (\$100,000). fifty thousand*  
39 *dollars (\$50,000).*

1 (III) Six hundred dollars (\$600) for a new microbusiness that  
2 reasonably estimates that it will have gross receipts, less returns  
3 and allowances, ~~reportable derived from or attributable~~ to this  
4 state for the taxable year of ~~three hundred thousand dollars~~  
5 ~~(\$300,000)~~ *one hundred fifty thousand dollars (\$150,000)* or less,  
6 but more than ~~two hundred thousand dollars (\$200,000)~~. *one*  
7 *hundred thousand dollars (\$100,000)*.

8 (ii) For purposes of this ~~subdivision~~, *subparagraph*, the  
9 following definitions shall apply:

10 (I) (ia) “Gross receipts, less returns and allowances ~~reportable~~  
11 ~~to this state;~~” *allowances,*” means the sum of the gross receipts  
12 from the production of business income, as defined in subdivision  
13 (a) of Section 25120, and the gross receipts from the production  
14 of nonbusiness income, as defined in subdivision (d) of Section  
15 25120.

16 (H) “~~New microbusiness~~” means a corporation that on or after  
17 January 1, 2016, is ~~organized under the laws of this state or has~~  
18 ~~qualified to transact intrastate business in this state that begins~~  
19 ~~business operations at or after the time of its organization.~~ “~~New~~  
20 ~~microbusiness~~” does not include any corporation that began  
21 business operations as, or acquired its business operations from,  
22 a sole proprietorship, a limited liability company, a partnership,  
23 or any other form of business entity prior to its organization or  
24 that acquired its business operations from a corporation.

25 (iii) ~~This subdivision shall not apply to a corporation that is~~  
26 ~~owned directly or indirectly by another corporation.~~

27 (ib) “*Gross receipts, less returns and allowances, derived from*  
28 *or attributable to this state*” shall be determined using the rules  
29 for assigning sales under Sections 25135 and 25136 and the  
30 regulations thereunder, as modified by the regulations under  
31 Section 25137, other than those provisions that exclude receipts  
32 from the sales factor.

33 (II) “*New microbusiness*” means a limited liability company  
34 that on or after January 1, 2017, is organized under the laws of  
35 this state or has qualified to transact intrastate business in this  
36 state and has first commenced doing business in this state on or  
37 after the time of its organization. In determining whether the  
38 taxpayer has first commenced doing business in this state during  
39 the taxable year, subdivision (f) of Section 17276, without

1 application of paragraph (7) of that subdivision, shall apply, except  
 2 that “new microbusiness” shall be substituted for “new business.”  
 3 (iii) For purposes of this subdivision, the gross receipts derived  
 4 from or attributable to the state of any other business, in whatever  
 5 form conducted, that is owned, directly or indirectly, by persons,  
 6 within the meaning of Section 17007, that are treated as related,  
 7 within the meaning of Section 267, 318, or 707 of the Internal  
 8 Revenue Code, to the new microbusiness, shall be aggregated with  
 9 the gross receipts derived from or attributable to the state of the  
 10 new microbusiness to determine whether the new microbusiness  
 11 qualifies for the reduced annual tax under this subdivision.  
 12 (2) ~~Subparagraph (1) of paragraph (A)~~ (A) of paragraph (1)  
 13 shall not apply to limited partnerships, as defined in Section 17935,  
 14 limited liability companies, as defined in Section 17941, limited  
 15 liability partnerships, as described in Section 17948, charitable  
 16 corporations, as described in Section 23703, regulated investment  
 17 companies, as defined in Section 851 of the Internal Revenue Code,  
 18 real estate investment trusts, as defined in Section 856 of the  
 19 Internal Revenue Code, real estate mortgage investment conduits,  
 20 as defined in Section 860D of the Internal Revenue Code, and  
 21 qualified Subchapter S subsidiaries, as defined in Section  
 22 1361(b)(3)(B) of the Internal Revenue Code, to the extent  
 23 applicable.  
 24 (3) ~~This subdivision~~ Subparagraph (A) of paragraph (1) shall  
 25 not apply to any corporation that reorganizes solely for the purpose  
 26 of avoiding payment of its minimum franchise tax.  
 27 (g) Notwithstanding subdivision (a), a domestic corporation, as  
 28 defined in Section 167 of the Corporations Code, that files a  
 29 certificate of dissolution in the office of the Secretary of State  
 30 pursuant to subdivision (b) of Section 1905 of the Corporations  
 31 Code, prior to its amendment by the act amending this subdivision,  
 32 and that does not thereafter do business shall not be subject to the  
 33 minimum franchise tax for taxable years beginning on or after the  
 34 date of that filing.  
 35 (h) The minimum franchise tax imposed by paragraph (1) of  
 36 subdivision (d) shall not be increased by the Legislature by more  
 37 than 10 percent during any calendar year.  
 38 (i) (1) Notwithstanding subdivision (a), a corporation that is a  
 39 small business solely owned by a deployed member of the United  
 40 States Armed Forces shall not be subject to the minimum franchise

1 tax for any taxable year the owner is deployed and the corporation  
2 operates at a loss or ceases operation.

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

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

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

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

13 (ii) A permanent change of station.

14 (B) “Operates at a loss” means negative net income as defined  
15 in Section 24341.

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

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

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