

ANALYSIS OF AMENDED BILLAuthor: Migden Analyst: Norm Catelli Bill Number: AB 2791Related Bills: See Legislative History Telephone: 845-5117 Amended Date: 04-01-2002Attorney: Patrick Kusiak Sponsor:**SUBJECT:** Notice to Pay Annual Tax/Extend to More Entities**SUMMARY**

This bill would require the following:

- That the Secretary of State (SOS) notify certain business entities about the obligation to pay an annual tax at the time the entity is created, and
- That the Franchise Tax Board (FTB) notify certain business entities about the obligation to pay an annual tax until the existence of the business entity is properly ended.

SUMMARY OF AMENDMENTS

The April 1, 2002, amendments added new provisions as described in the "SUMMARY" above. The amendments also deleted the earlier language of the bill that made technical, nonsubstantive changes to the Revenue and Taxation Code related to federal conformity. This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to assist business entities by informing them about the obligations of conducting business in this state and the proper method of canceling the existence of their business entity.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2003.

POSITION

Pending.

ANALYSISFEDERAL/STATE LAW

Current federal law does not impose an annual minimum tax on business entities.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

04/09/2002

Current state law requires that every limited partnership (LP), limited liability partnership (LLP), and limited liability company (LLC) not classified as a corporation doing business in this state and required to file a return shall pay an annual tax of \$800 for the privilege of doing business in this state.

Current state law requires every LP, LLP, and LLC not classified as a corporation that organized in this state (domestic) and every LP, LLP, and LLC organized in some other state (foreign) that is registered with the SOS to pay the annual tax until a certificate of cancellation is filed with the SOS, or the entity ceases doing business in this state, whichever is later, without regard to a final return being filed.

Also, **state law** requires FTB to notify domestic and foreign LPs, when they file a final return, that the LPs' annual tax is payable until the appropriate certificate of cancellation is filed with the Secretary of State. (See attachment A.)

In addition, state law requires the SOS to include additional instructions in its registration forms for creating domestic LLPs and its articles of organization forms for creating domestic LLCs. The instructions state that creating a domestic LLP or filing articles of organization to create a domestic LLC will obligate the entity to pay an annual tax to FTB. Similar advice is not required to be provided to foreign LLPs and foreign LLCs that register with the SOS.

THIS BILL

This bill would require the SOS to include additional instructions in its registration forms for creating domestic LPs. The instructions would state that creating an LP would obligate the entity to pay an annual tax to the FTB.

This bill also would require FTB to notify domestic and foreign LLPs and LLCs that file a final return, that the entity is still obligated to pay the annual tax until an appropriate certificate of cancellation is filed with the SOS.

IMPLEMENTATION CONSIDERATIONS

Currently, the department has an informational form letter (See attachment A) that is generated automatically whenever any Limited Partnership files a final return. This letter informs the Limited Partnership that it is obligated to pay the annual tax until the entity is properly ended. The additional programming necessary to expand the form letter to apply to LLPs and LLCs could be done during normal annual updates.

TECHNICAL CONSIDERATIONS

As a technical matter, a taxable year is an accounting period that does not necessarily correspond to a calendar year. Therefore, the LP notification provision and its reference to the tax as being imposed for a calendar year are inaccurate and also may create confusion. Since the SOS would administer this provision, this concern would not significantly impact the department's programs and operations.

This bill does not require the SOS to provide notice to foreign entities registering to do business in California. It would be desirable to amend Corporation Code Sections 16959, 17451, and 15692 relating to the registration of foreign LLPs, LLCs, and LPs to require that the notices be sent to foreign entities also.

A technical correction should be made to R&TC Section 17948(b)(1) because it uses the word "AND" when the correct word would be "OR".

LEGISLATIVE HISTORY

SB 1741 (Alpert) (Stats. 1998, Ch. 417) requires FTB to notify LPs, when they file a final return, that the annual tax is due annually until a certificate of cancellation is filed with the SOS.

SB 263 (Johnson) (Stats. 2001, Ch. 425) requires the SOS to include additional instructions in its registration and articles of organization forms for LLPs and LLCs.

OTHER STATES' INFORMATION

The states of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* were reviewed because the tax laws in those states have similarities to California's tax laws.

Each of these states has a different process for creating and ending the existence of a business entity. The states reviewed did not have an "annual tax" payable to a revenue agency, but had fees payable to the agency equivalent to the SOS. These fees did not appear to be annual. Therefore, the provisions of this bill are unique to California taxpayers.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the state's income tax revenues.

LEGISLATIVE STAFF CONTACT

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Franchise Tax Board
845-5117

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Franchise Tax Board
845-6333



ATTACHMENT A

Notice Date:

LIMITED PARTNERSHIP FINAL RETURN INFORMATION

FEIN:

Taxable Year(s):

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We received your Form 565, *Partnership Return of Income*, indicating it is your “Final Return”.

California tax requires a limited partnership to file a **Certificate of Cancellation** with the Secretary of State to end the partnership’s existence (Revenue & Taxation Code Sections 17935 and 17936). A limited partnership is required to file tax returns and pay an annual tax for each year, or part of a year, through the date the partnership files the **Certificate of Cancellation** with the Secretary of State.

If you have already filed a **Certificate of Cancellation** with the Secretary of State, please disregard this notice.

Failure to file returns and pay annual tax until the **Certificate of Cancellation** is filed with the Secretary of State will result in tax assessments including interest and penalties. The partnership may be liable for the following penalties:

- Late payment penalty
- Late filing penalty (including a penalty of \$10 per partner for each month or part of a month the return is late up to a maximum of five months)

To cancel your certificate of limited partnership or registration as a limited partnership, you are required to file the following with the Secretary of State:

- Domestic Limited Partnerships: file **both** the Secretary of State Form LP-3, Certificate of Dissolution **and** Secretary of State Form LP-4/7, Certificate of Cancellation.
- Out-of State and Foreign Limited Partnerships: file the Secretary of State Form LP-4/7, Certificate of Cancellation.

For more information contact:

In Person:

SECRETARY OF STATE
LIMITED PARTNERSHIPS
1500 11TH STREET SUITE 345
SACRAMENTO CA 95814

By mail:

SECRETARY OF STATE
LIMITED PARTNERSHIPS
PO BOX 944225
SACRAMENTO CA 94244-2250

Phone Number: (916) 653-3365

Website: www.ss.ca.gov

Office hours are Monday through Friday

8 a.m. to 5 p.m.

Please see the enclosure for important information.