

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Johnson Analyst: Roger Lackey Bill Number: SB 263

Related Bills: See Legislative History Telephone: 845-3627 Amended Date: 03-19-2001

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Limited Liability Partnerships and Limited Liability Companies/Notice To Pay Annual Tax

SUMMARY

This bill would require the Secretary of State (SOS) to include in the registration instructions for limited liability partnerships (LLPs) and in the articles of organization instructions for limited liability companies (LLCs) notification that the entities are obligated to pay an annual tax to the Franchise Tax Board (FTB).

SUMMARY OF AMENDMENT

The March 19, 2001, amendments changed the language of the bill to refer to the annual tax paid by LLPs and LLCs rather than the minimum franchise tax paid by corporations.

This is the department's first analysis of the bill.

PURPOSE OF THE BILL

The author's staff indicated that the purpose of this bill is to provide notice to taxpayers that upon registering or organizing as an LLP or LLC, the taxpayer would be obligated to pay an annual tax.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2002, and operative for instructional materials prepared by the SOS after that date.

POSITION

Pending.

Summary of Suggested Amendments

Department staff is available to assist the author's office with resolving the implementation considerations discussed below.

Board Position:

_____ S	_____ NA	_____ NP
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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

05/30/01

ANALYSIS

FEDERAL/STATE LAW

Current state law requires every LLC (not classified as a corporation) that is organized in this state, registered to do business in this state, or doing business in this state, to file a return and pay an annual tax for the privilege of doing business in this state. The annual tax is equal to \$800 by reference to the minimum franchise tax imposed on corporations. The annual tax must be paid until the later of the date the LLC files a certificate of cancellation with the SOS or ceases doing business in this state. LLCs required to pay the annual tax are also required to pay an annual fee based on total income. The amount of the fee is adjusted annually.

Current state law requires every LLP organized under the laws of this state, registered with the SOS to do business in this state, or doing business in this state, to pay the annual tax in an amount equal to \$800. The annual tax is payable until a certificate of cancellation is filed with the SOS.

An annual tax of \$800 is also imposed on limited partnerships (LPs) that are organized in California, registered to do business in California, or doing business in California.

THIS BILL

This bill would require the SOS to include additional instructions in its registration and articles of organization forms for LLPs and LLCs. The instructions would state that registering as an LLP or filing articles of organization to create an LLC will obligate the entity to pay an annual tax to the FTB. This bill would require the notice to be updated annually to specify the dollar amount of the minimum franchise tax.

IMPLEMENTATION CONSIDERATIONS

Provisions of the bill relating to the tax imposed on LLCs refer to the annual tax imposed on LLCs not classified as corporations. However, the provision of current law being amended is applicable to the creation of all LLCs, including LLCs classified as corporations, which are not subject to this annual tax. LLCs classified as corporations for tax purposes are subject to the corporate income and franchise tax, and where applicable, the applicable minimum franchise tax. As a result, the bill, as amended, may confuse some taxpayers regarding the tax obligations of LLCs.

LLPs and LLCs organized in this state are not just required to pay an annual tax for the year they organize, but they are also required to pay an annual tax for each taxable year thereafter until they cease to exist as an LLP or LLC. The author may wish to remove or revise the phrase "for that calendar year" to eliminate any confusion.

As a technical matter, the tax imposed on LLPs and LLCs is imposed for an accounting period referred to as a taxable year. The bill refers to the tax as being imposed for a calendar year.

In addition, this bill would require the notice to be updated to specify the dollar amount of the "minimum franchise tax." The term "minimum franchise tax" should be replaced with "annual tax."

LEGISLATIVE HISTORY

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

FISCAL IMPACT

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

ECONOMIC IMPACT

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

LEGISLATIVE STAFF CONTACT

Roger Lackey
Franchise Tax Board
845-3627

Brian Putler
Franchise Tax Board
845-6333