

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Calderon

Analyst: Jahna Alvarado

Bill Number: ABX3 29

Related Bills: See Legislative History

Telephone: 845-5683

Introduced Date: September 5, 2008

Attorney: Patrick Kusiak

Sponsor: _____

SUBJECT: Limited Liability Company Fee/Change LLC Fee Due Date To June 15

SUMMARY

This bill would require a limited liability company (LLC) to estimate and pay its LLC fee by a specific date of the taxable year.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to collect the LLC fee that is in a manner similar to other entities that are subject to tax.

EFFECTIVE/OPERATIVE DATE

Statutes enacted at a special session are effective on the 91st day after adjournment of the special session at which the bill was passed.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Federal law lacks provisions that require an LLC to pay an annual tax or fee.

Under current state law, an LLC not classified as a corporation must pay the \$800 annual LLC tax and the annual LLC fee if it is organized, doing business, or registered in California. The annual LLC fee is based on total income from all sources derived from or attributable to this state.

The LLC fee is due and payable on or before the 15th day of the 4th month following the close of the taxable year (for example, April 15th for calendar year taxpayers) and is subject to underpayment penalties, late penalties, and interest.

Board Position:

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Department Director

Date

Brian Putler

2/17/09

for Selvi Stanislaus

THIS BILL

This bill would require an LLC to estimate and pay its LLC fee by the 15th day of the 6th month of the taxable year (for example, June 15th for calendar year taxpayers).

In addition, this bill would impose a 10% penalty when an LLC underpays the estimated fee under certain circumstances. The underpayment penalty would not be imposed when the estimated fee payment for a taxable year is greater than or equal to the LLC's prior year fee liability.

IMPLEMENTATION CONCERNS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

SBX1 28 (Committee on Budget and Fiscal Review, Chap.1, Stats 2008) clarified that the operative date for the requirement for an LLC to pay its fee by the 15th day of the 6th month is specifically operative for taxable years beginning on or after January 1, 2009.

AB 1452 (Committee on Budget, Chap. 763, Stats. 2008) includes a provision requiring an LLC to estimate and pay its LLC fee by the 15th day of the 6th month of the taxable year and imposes a 10% underpayment penalty under certain circumstances. The enacted provision has the same effect as this bill would.

AB 1546 (Calderon, 2008) was similar to ABX3 29. AB 1546 would have required an LLC to estimate and pay its LLC fee by a specific date of the taxable year. This bill would have applied a penalty of 50 percent of the underpayment amount of estimated fees, but would have provided that the penalty should not be imposed when the taxpayer paid the same or higher amount of tax as the previous taxable year. AB 1546 failed passage out of the Assembly Revenue and Taxation Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Illinois, Massachusetts, and Michigan lack provisions requiring an LLC to pay an annual fee.

Minnesota requires a limited liability partnership and an LLC treated as a partnership to pay an annual entity level fee that ranges from \$0 to \$5,000. The fee is based on the sum of an entity's *Minnesota* property, payroll, and sales.

New York requires every domestic and foreign LLC that is treated as a partnership and has any income, gain, loss, or deduction from *New York* sources to pay an annual filing fee. The amount of the filing fee is \$50 multiplied by the total number of members in the LLC. The minimum fee an LLC must pay is \$325 and the maximum fee is \$10,000, annually. Members include resident and nonresident individuals, estates and trusts, corporations, or other LLCs or partnerships.

FISCAL IMPACT

The department's costs to administer this bill are estimated at approximately \$290,000 in the first year and approximately \$72,000 in each year thereafter.

ECONOMIC IMPACT

Revenue Estimate

The revenue for this bill is as follows:

Revenue Analysis for LLC Fee Due Payment Due Date Change ABXXX 29 Effective for Tax Year BOA January 1, 2009 (\$ in Millions)				
Fiscal Year	2007-08	2008-09	2009-10	2010-11
LLC Fee Payment Due Date	-0-	+ \$360	+ \$35	+ \$40

This analysis does not consider any possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill depends on the amount of LLC fees paid that would be accelerated into an earlier fiscal year. In 2005, LLC fees were \$285 million. Based on historical growth patterns and adjusting for the drop in revenue from the passage of AB 198, the amount of LLC fees will have grown to approximately \$370 million in 2009.

Based on taxpayer filing behavior, over 95% of LLCs file on a calendar year basis. It is estimated that the entire amount of 2009 LLC fees would be paid by the second estimated payment due in June for calendar year taxpayers. This would accelerate the LLC fee revenue from April, 2010, into June, 2009. There is no change for the LLC fee for 2008 to be paid with the LLC's 2008 taxable year return. The difference between current law and proposed law for 2008-09 is the \$360 million of 2009 LLC payments that would be accelerated from return payments to the second estimated payment of the current taxable year. In subsequent years, there would be continued net acceleration of revenue based on the growth in the amount of LLC fees.

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