

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Saldana Analyst: Victoria Favorito Bill Number: AB 2458
Related Bills: See Legislative History Telephone: 845-3825 Introduced Date: February 19, 2010
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Corporation Penalties

SUMMARY

This bill would specify that the 10 percent underpayment Limited Liability Companies (LLC) fee penalty and Secretary of State (SOS) certification penalty would be due and payable 60 days from the date a small business receives notification of the penalties.

PURPOSE OF THE BILL

According to the author’s office, allowing the additional time to pay the penalties would provide relief to small businesses experiencing financial hardship during the severe economic downturn.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2011, and apply to penalties imposed or assessed on or after January 1, 2011.

POSITION

Pending.

ANALYSIS

FEDERAL LAW

Federal law does not require an LLC to pay an annual tax or fee.

STATE LAW

LLC Fee and LLC 10 percent Underpayment Penalty

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 the LLC’s total income from all sources reportable to the state.

Board Position:	Department Director	Date
_____ S		
_____ SA		
_____ N		
_____ NA		
_____ O		
_____ OUA		
_____ NP		
_____ NAR		
_____ X PENDING	Selvi Stanislaus	04/02/10

Total income is defined as gross income from whatever source derived¹ plus the cost of goods sold that are paid or incurred in connection with a trade or business apportioned or attributable to this state. Total income excludes the flow-through of total income from one LLC to another LLC if that income has already been used to determine the annual LLC fee of an LLC. The following chart is used to determine the amount of the fee:

Total Income From All Sources Reportable To This State Is:

Equal To Or Over (\$)	But Not Over (\$)	LLC Fee (\$)
250,000	499,999	900
500,000	999,999	2500
1,000,000	4,999,999	6,000
5,000,000	And over	11,790

Beginning with the 2009 taxable year, the annual California LLC fee must be estimated and paid by the 15th day of the 6th month of the current taxable year and a penalty equal to 10 percent of the underpayment of the estimated fee will apply if the estimated LLC fee is underpaid. However, the penalty will not be imposed if the estimated payment is equal to or greater than the fee that was due for the preceding taxable year.

LLCs must also pay by the due date of the LLC’s return, any amount of the LLC fee due that was not paid as an estimated fee payment.

SOS Certification Penalty

Every domestic and registered foreign limited liability company and corporation is required to file a Statement of Information with the Secretary of State, within 90 days after filing its original Articles of Organization or Application for Registration, and biennially thereafter during the applicable filing period.²

Failure to file the Statement of Information with the SOS by the due date will result in the assessment of a penalty. Under the Corporations Code, the SOS will certify the name of the corporation to the Franchise Tax Board (FTB) and the FTB will assess the penalties as follows:

Entity Type	Penalty Amount
LLC and Corporation ³	\$250
Nonprofit Public Benefit Corporation and Nonprofit Mutual Benefit Corporation ⁴	\$50

The penalty assessment is collected in the same manner as other taxes, penalties, and interest, unless the SOS decertifies to the FTB the name of the corporation.

¹ Revenue and Taxation Code section 24271 and Internal Revenue Code 61.

² The applicable filing period is the calendar month during which the entity files its original Articles of Organization or Application for Registration and then immediately preceding five calendar months.

³ California Corporations Code sections 17653 and 2204.

⁴ California Corporations Code sections 6810 and 8810.

THIS BILL

This bill would allow a small business to pay the 10 percent penalty for underpayment of the estimated LLC fee 60 days from the date the small business is notified of the penalty. The 60 day notification period shall apply to penalties imposed on or after January 1, 2011.

Under this bill, the failure to file SOS certification penalty would be allowed to be paid within 60 days from the date the small business is notified of the penalty. The 60 day notification period for the biennial statement penalty applies to penalties assessed on or after January 1, 2011.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill uses the undefined term "small business." The absence of a definition for this term could lead to disputes with taxpayers and complicate the administration of this exclusion.

TECHNICAL CONSIDERATIONS

Subdivision (a) of Section 19141 should be amended where reference to Corporations Code section "17563" appears. The correct Corporations Code section should be "17653."

FISCAL IMPACT

As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact for this bill is anticipated to be a loss of less than \$150,000 per year caused by an insignificant delay in the timing of collection of the penalty for the underpayment of the estimate fee and interest thereon. Data to refine this estimate will be available in the next month, which may result in the need to revise this estimate.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Victoria Favorito
(916) 845-3825
victoria.favorito@ftb.ca.gov

Revenue Manager
Monica Trefz
(916) 845-3375
monica.trefz@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov