

BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Saldana	AB 2458

SUBJECT

Underpayment Penalty for Small Businesses\Due Date Extension

SUMMARY

This bill would extend the due date for paying the underpayment penalty imposed on limited liability companies (LLCs) that qualify as a small business.

PURPOSE OF 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, and before January 1, 2016.

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.

Total income is defined as gross income from whatever source derived 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:

Brian Putler, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 8/25/10
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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.

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 imposition of the penalty by the Franchise Tax Board. The 60-day extension period would apply to penalties imposed on or after January 1, 2011, and before January 1, 2016.

“Small Business” would be defined as a business with total income from or attributable to California sources that is less than \$500,000 during the taxable year.

FISCAL IMPACT

Staff estimates costs of approximately \$40,000 to develop, program, and test revisions to existing systems to make the changes needed to implement this bill. Due to the current fiscal environment and the need for increased resources necessary to implement other pending bills, implementation of this bill is contingent on funding. If this bill is enacted without appropriation language, the department will pursue a budget augmentation (“legislative budget change proposal”) through the normal budgetary processes, which could delay implementation of the bill’s provisions. If approval of a legislative budget change proposal is denied, the department may be unable to implement the provisions of this bill.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2458 Assumed Enactment by September 30, 2010 Operative as of January 1, 2011 (\$ in Dollars)		
2009-10	2010-11	2011-12
-\$20,000	-\$1,000	-\$1,000

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

Appointments

None.

Support/Opposition

Support: California Taxpayers Association

Opposition: None

VOTES

Assembly Floor – Ayes: 72 , Noes: 0

Senate Floor – Ayes: 33 , Noes: 0

Concurrence – Ayes: 72 , Noes:

LEGISLATIVE STAFF CONTACT

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