

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Cook Analyst: Victoria Favorito Bill Number: AB 2671
Related Bills: See Legislative History Telephone: 845-3825 Introduced Date: February 19, 2010
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Minimum Franchise Tax/Exempt Corporations Owned Solely By Deployed Member Of U.S. Armed Forces That Operate At A Loss Or Ceases Operation

SUMMARY

This bill would exempt certain corporations owned solely by a deployed member of the U.S. Armed Forces from the \$800 minimum franchise tax.

PURPOSE OF THE BILL

It appears that the purpose of the bill is to provide tax relief to members of the US Armed Forces called to service to defend the nation.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately and would apply for taxable years beginning on or after January 1, 2010.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Federal law has no minimum franchise tax on business entities comparable to the California minimum franchise or annual tax.

Every corporation, including a limited liability company (LLC) classified as a corporation, incorporated or organized in, qualified to do business in, or doing business in California must annually pay to the state a minimum franchise tax of \$800. The minimum franchise tax applies from the earlier of the date of incorporation or organization, qualification, or commencing to do business within California until the date of dissolution, surrender, or if later, the date the corporation ceases to do business in California. This liability exists regardless of whether the corporation is earning income. Every corporation that incorporates or is qualified to do business in this state on or after January 1, 2000, is not subject to the minimum franchise tax for its first taxable year.

Board Position:	Department Director	Date
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Certain nonprofit cooperative associations organized on or after January 1, 1994, are exempt from the minimum franchise tax for the first five consecutive taxable years after a certificate is issued under the Food and Agricultural Code. The minimum franchise tax expressly does not apply to credit unions. Certain inactive gold and silver mining corporations are subject to a reduced minimum franchise tax of \$25 instead of \$800.

THIS BILL

This bill would allow a corporation with a sole owner who is a member of the U.S. Armed Forces to be exempt from paying the minimum franchise tax for any taxable year if both of the following apply:

- The owner is deployed during that taxable year, and
- The corporation operates at a loss or ceases operation in that taxable year.

This bill would define the term “deployed” as being called to active duty or active service during a period when a Presidential Executive order specifies that the United States is engaged in combat or homeland defense.

Under this bill, the term “deployed” would exclude the following:

- A member of the Armed Forces called to temporary duty for the sole purpose of training or processing.
- A member of the Armed Forces called to a permanent change in station.

This bill defines the terms “operates at a loss” to mean negative net income as allowed under California law.¹

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.

Under this bill, a member of the Armed Forces could be deployed to a location where there is no combat during a period when a Presidential Executive order specifies that the U.S. is engaged in combat or homeland defense and be permitted the benefit the bill would create. If it is the intent of the author to limit the benefit of the bill to a member of the Armed Forces deployed to a combat zone, it is recommended that the bill be amended to specify the intended limitation.

This bill would apply only to corporations. If it is the intent of the author to provide an exemption of the \$800 minimum franchise tax to all business entities, namely LLCs, limited partnerships, Qualified Subchapter S, and foreign corporations, it is suggested that the bill be amended.

¹ Revenue and Taxation Code (R&TC) section 24321. Net income “means the gross income, computed under Chapter 6 (commencing with R&TC section 24271), less the deductions allowed under Article 2 (commencing with R&TC section 24401).

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 and Michigan have no minimum franchise tax.

Illinois, Massachusetts, Minnesota, and New York have a minimum franchise tax, but don't have a provision similar to this bill.

FISCAL IMPACT

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, this provision would result in the following revenue losses.

Estimated Revenue Impact of AB2671 Operative for Tax Years Beginning On or After January 1, 2010 Assumed Enactment Date before June 30, 2010		
2010/2011	2011/2012	2012/2013
*	*	*
* Negligible revenue loss, less than \$100,000.		

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

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