

Author: Cook Analyst: Gail Hall Bill Number: AB 2671

Related Bills: _____ Telephone: 845-6111 Amended Date: May 17, 2010

Attorney: Patrick Kusiak Sponsor: _____

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

- ANALYSIS NOT REQUIRED of this bill – Not within scope of responsibility of this department.
- TECHNICAL BILL – No program or fiscal changes to existing program.
- BILL AS AMENDED NO LONGER WITHIN SCOPE of responsibility or program of the department.
- TECHNICAL AMENDMENT – No change in previously submitted analysis required. Approved position of prior analysis is _____.
- MINOR AMENDMENT – Remainder of previous analysis of the bill as amended April 27, 2010, still applies.
- MINOR AMENDMENT – No change in approved position of _____.
See Comments below
- OTHER – See comments below.

COMMENTS:

The May 17, 2010, amendments removed provisions that would have 1) required the LAO to review and report to the Legislature on the effectiveness of the bill’s exemption, and 2) required the Assembly Committee on Revenue and Taxation to hold an informational hearing on the effectiveness of the exemption provided by this bill.

Except for the amendments discussed above, the department’s analysis of the bill as amended April 27, 2010, still applies. The “Implementation Considerations,” “Technical Considerations,” and “Legal Impact” discussions in the department’s analysis of the bill as amended April 27, 2010, are provided below for convenience.

Board Position:	Franchise Tax Board Staff	Date
<input type="checkbox"/> S <input type="checkbox"/> NA <input type="checkbox"/> NP		
<input type="checkbox"/> SA <input type="checkbox"/> O <input checked="" type="checkbox"/> NAR	Gail Hall	05/20/10
<input type="checkbox"/> N <input type="checkbox"/> OUA <input type="checkbox"/> PENDING		

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.

1. 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.
2. This bill would require the FTB to promulgate regulations to define the term "ceases operations." It is recommended that the author change "shall" to "may" and provide that the FTB may prescribe regulations as necessary or appropriate to carry out the purposes of this selection, including a definition for "ceases operations."
3. This bill would be specifically inoperative on January 1, 2018, which is problematic for fiscal year taxpayer's with year-ends that are different from December 31st. It is recommended that the inoperative date be revised to "taxable years beginning on or after January 1, 2018."

TECHNICAL CONSIDERATIONS

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

1. LLC's that are not classified as corporations pay an "annual tax" instead of a "minimum franchise tax." On page 3, line 12, the author should replace "minimum franchise tax" with "the tax imposed under subdivision (a)," which reference the annual tax.
2. The bill's reference to "the limited liability company operates at a loss" is technically incorrect because an LLC that is not classified as a corporation would compute the income or loss at the "owner" level and not at the LLC "entity" level.

LEGAL IMPACT

The bill limits the application of its provisions to a small business with "total income of \$250,000 or less." "Total income" would include worldwide income earned from within and outside of the state. The author may want to include after "total income" the phrase "from all sources derived from or attributable to the state" to limit the threshold to California receipts in order to avoid possible constitutional challenges in the future from using sources outside of the state to determine a California limitation.