Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Cook	Analyst:	Gail Hall	Bill Number:	AB 2671
Related Bills:	See Prior Analysis	Telephone:	845-6111	Amended Date:	June 30, 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

X DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended June 16, 2010.

____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO _____.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 16, 2010, STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would exempt certain corporations and limited liability companies (LLCs) owned solely by a deployed member of the U.S. Armed Forces from the $800 annual tax or minimum franchise tax.

SUMMARY OF AMENDMENTS

The June 30, 2010, amendments resolved the implementation, technical, and legal concerns discussed in the department's analysis of the bill as amended June 16, 2010. (See Appendix A).

The department has identified an additional technical consideration that is discussed below. Except for the "This Bill" and "Technical Consideration" discussions, the remainder of the department's analysis of the bill as amended June 16, 2010, still applies.

POSITION

Pending.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Patrice Gau-Johnson	07/06/10
____ N	____ OUA	X PENDING	For Brian Putler	

ANALYSIS

THIS BILL

This bill would allow either a corporation or an LLC that is a small business with a sole owner who is a member of the U.S. Armed Forces to be exempt from paying the $800 minimum franchise tax (corporation) or annual tax (LLC) 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 or the LLC operates at a loss or ceases operation. (See Technical Consideration).

The bill would authorize the Franchise Tax Board (FTB) to promulgate necessary or appropriate regulations to carry out the purposes of the section, including specific authorization for FTB to provide for a definition of "ceases operation."

This bill would define the following terms:

- "Deployed" would mean being called to active duty or active service during a period when a Presidential Executive order specifies that the U.S. is engaged in combat or homeland defense. "Deployed" would specifically exclude temporary duty for the sole purpose of training or processing and a permanent change of station.
- Under the Personal Income Tax Law, "operates at a loss" would mean a LLC's expenses exceed its receipts.
- "Operates at a loss" would mean negative net income as allowed under California law.[1]
- "Small business" would mean a corporation or LLC with total income from all sources derived from, or attributable to, the state of $250,000 or less.

TECHNICAL CONSIDERATIONS

This bill would exempt LLCs doing business in the state from paying the $800 annual tax, but it would not exempt LLCs that are organized and registered in the state from paying the $800 annual tax. If this is not the intent of the author, the following amendments are necessary:

- On page 3, line 13, strikeout "subdivision (a)" and insert "this section".
- On page 3, line 16, strikeout "subdivision (a)" and insert "this section".

LEGISLATIVE STAFF CONTACT

Legislative Analyst	Revenue Manager	Legislative Director
Gail Hall	Monica Trefz	Brian Putler
(916) 845-6111	(916) 845-4002	(916) 845-6333
gail.hall@ftb.ca.gov	monica.trefz@ftb.ca.gov	brian.putler@ftb.ca.gov

[1] Revenue and Taxation Code (R&TC) section 24341. "Net income" means the gross income, computed under Chapter 6 (commencing with Section 24271), less the deductions allowed under this article and Article 2 (commencing with Section 24401).

APPENDIX A

RESOLVED IMPLEMENTATION AND TECHNICAL CONSIDERATIONS AND LEGAL IMPACT

Implementation Consideration Discussed in the Department's Analysis of The Bill As Amended June 16, 2010

1. 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."

Technical Consideration Discussed in the Department's Analysis of the Bill as Amended June 16, 2010

The bill's reference to "the limited liability company operation at a loss" is technically incorrect because an LLC with single owner that is not classified as a corporation would not compute income or loss at the LLC "entity" level. It is recommended "operation at a loss" be revised to "operates at a loss" and the definition of "operates at a loss" is changed to "its expenses exceed its receipts.".'

Legal Impact Discussed in the Department's Analysis of the Bill as Amended June 16, 2010

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.