

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Logue Analyst: Jessica Matus Bill Number: AB 1240  
Related Bills: See Legislative History Telephone: 845-6310 Amended Date: April 15, 2011  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Eliminate Limited Liability Company Annual Fee

## SUMMARY

This bill would eliminate the annual fee measured by income that is paid by certain Limited Liability Companies (LLCs).

## RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

## Summary of Amendments

The April 15, 2011, amendments removed provisions that would have reduced the amount of the annual tax for certain small businesses and added provisions to repeal mandated LLC fees. As a result of the amendments, the department's analysis of the bill as amended March 31, 2011, no longer applies. This analysis replaces the prior analysis of the bill.

## PURPOSE OF THE BILL

It appears the purpose of the bill is to encourage LLCs to continue to operate in California by reducing the mandatory fee.

## EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2011.

## ANALYSIS

### STATE LAW

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 derived from or attributable to the state.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA        X   NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA

Executive Officer

Date

Selvi Stanislaus

05/03/11

Total income is defined as gross income from whatever source derived<sup>1</sup> plus the cost of goods sold that are paid or incurred in connection with a trade or business. Total income excludes the flow-through of income from one LLC to another LLC if that income has already been subject to California's annual LLC fee.

The following chart is used to compute the **fee**:

**If Total Income from All Sources Reportable To This State Is:**

<b>Equal To or Over (\$)</b>	<b>But Not Over (\$)</b>	<b>LLC Fee (\$)</b>
250,000	499,999	900
500,000	999,999	2,500
1,000,000	4,999,999	6,000
5,000,000	And over	11,790

**THIS BILL**

This bill would repeal the annual **fee** required to be paid by LLCs. The annual **tax** paid by LLCs would remain unchanged<sup>2</sup>.

**IMPLEMENTATION CONSIDERATIONS**

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.

**LEGISLATIVE HISTORY**

AB 198 (Committee on Budget, Stats. 2007, Ch. 381) changed the computation of LLC fees to be based on total income derived from or attributable to California.

AB 1546 (Calderon, 2007/2008) would have determined LLC fees based on assigned total income to California rather than worldwide total income. AB 1546 failed passage out of the Senate Revenue and Taxation Committee by the constitutional deadline.

SB 469 (Beverly/Killea, Stats. 1994, Ch. 1200) known as the Beverly-Killea Limited Liability Act, authorized LLCs for the first time to organize and register in the state. To offset the estimated loss in tax revenue due to the increase in businesses organizing as LLCs instead of corporations, an annual LLC fee was required based on the total income from all sources reportable to the state.

<sup>1</sup> Revenue & Taxation Code (R&TC) Section 24271

<sup>2</sup> CR&TC Section 17941

## OTHER STATES' INFORMATION

The states surveyed include *Arizona, Florida, Illinois, Massachusetts, Michigan, Minnesota, Nevada, New York, Oregon, and Utah*. These states were selected due to their geographic proximity to California or their similarities to California's economy, business entity types, and tax laws.

*Florida, Michigan, Minnesota, Arizona, Illinois, and Utah* do not impose a minimum tax or specific fees on LLCs.

*Massachusetts* imposes a filing fee of \$500 on LLCs.

*Nevada* does not impose income tax on business entities conducting business within the state, but does require all businesses to pay an annual "business license fee" for the privilege of doing business in the state. For the first year of doing business, the license fee is \$200 and each subsequent year the fee is \$100.

*New York* imposes a minimum tax of \$25 to \$4,500 on LLCs based on their in-state receipts. *Oregon* imposes a \$150 minimum tax on LLCs.

## FISCAL IMPACT

This bill would not significantly impact the department's costs.

## ECONOMIC IMPACT

### Revenue Estimate

Estimated Revenue Impact of AB 1240 For Taxable Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2011 (\$ in Millions)			
2011-12	2012-13	2013-14	2014-15
-\$800	-\$450	-\$500	-\$550

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

## SUPPORT/OPPOSITION

Support: None provided.

Opposition: None Provided.

## **ARGUMENTS**

Pro: Proponents would argue that this bill would make California more competitive with other states for LLCs.

Con: Opponents would argue that this bill would give an unfair advantage to one specific type of business entity while denying this advantage to other business entities.

## **LEGISLATIVE STAFF CONTACT**

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