

SUMMARY ANALYSIS OF AMENDED BILL

Author: Melendez Analyst: Jessica Deitchman Bill Number: AB 2495
 Related Bills: See Prior Analysis Telephone: 845-6310 Amended Date: April 28, 2014
 Attorney: Bruce Langston Sponsor: _____

SUBJECT: Minimum Franchise Tax/Exempt New Corporations, LLC, Limited Partnerships, & Limited Liability Partnerships First Consecutive Five Taxable Years

SUMMARY

This bill would, under both Corporation Income Tax Law and Personal Income Tax Law, exempt newly organized or registered business entities from the minimum tax or annual tax for the first five taxable years.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 28, 2014, amendments resolved two implementation considerations and the technical consideration discussed in the analysis of the bill as amended February 21, 2014, by adding a definition of a qualified new corporation, addressing Limited Partnerships (LPs), Limited Liability Corporations (LLCs), and Limited Liability Partnerships (LLPs) that reorganize, and correcting cross references. In addition, a new technical consideration has been identified. Except for the "This Bill," "Implementation Considerations," "Economic Impact," and "Technical Consideration" discussions, the remainder of the departments' analysis of the bill as amended February 21, 2014, still applies.

ANALYSIS

THIS BILL

This bill would exempt every qualified new corporation on or after January 1, 2015, from the minimum franchise tax for its first five taxable years.

"Qualified new corporation" means a corporation that is incorporated under the laws of this stat or has qualified to transact business in this state on or after January 1, 2015, and that begins business operations at or after the time of its incorporation. Qualified new corporation does not include any corporation that began business operations as a sole proprietorship, a partnership, or any other form of business entity prior to its incorporation.

Board Position: <input type="checkbox"/> S <input type="checkbox"/> NA <input checked="" type="checkbox"/> NP <input type="checkbox"/> SA <input type="checkbox"/> O <input type="checkbox"/> NAR <input type="checkbox"/> N <input type="checkbox"/> OUA	<table style="width: 100%; border: none;"> <tr> <td style="border: none;">Legislative Director</td> <td style="border: none; text-align: right;">Date</td> </tr> <tr> <td style="border: none;">Gail Hall</td> <td style="border: none; text-align: right;">5/2/14</td> </tr> </table>	Legislative Director	Date	Gail Hall	5/2/14
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In addition, the bill would exempt the following entities from the annual tax¹ for the first five consecutive taxable years that it is doing business² in the state:

- Limited Partnership that files a certificate of limited partnership or a certificate of registration with the Secretary of State (SOS) on or after January 1, 2015.
- Limited Liability Company that files articles of organization or a certificate of registration with the SOS on or after January 1, 2015.
- Limited Liability Partnership that registers as a limited liability partnership with the SOS on or after January 1, 2015.

The exemption would not apply to any LLCs, LPs, or LLPs that reorganizes solely for the purpose of avoiding payment of its line annual or minimum franchise tax.

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.

Corporations that organized prior to the effective date of this bill, but do not qualify to do business in the state until after January 1, 2015, would be exempt from payment of the minimum franchise tax, therefore, existing corporations, not just new corporations, could qualify for this bill's exemption. If this is contrary to the author's intent, this bill should be amended.

TECHNICAL CONSIDERATIONS

Because the bill fails to specify otherwise, the changes made to the LLCs annual tax law³ may be interpreted to exclude LLCs from paying the fee because the LLCs fee law⁴ applies to LLCs subject to the annual tax. It is recommended the bill be amended to clarify that the exclusion from the annual tax does not exclude LLCs from the annual fee.

¹ In an amount equal to the minimum franchise tax (\$800).

² Revenue and Taxation Code Section 23101.

³ R&TC Section 17941

⁴ R&TC Section 17942.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2495 As Amended April 28, 2014 For Taxable Years Beginning On Or After January 1, 2015 Assumed Enactment After June 30, 2014 (\$ in Millions)		
2014-15	2015-16	2016-17
-\$38	-\$120	-\$220

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

LEGISLATIVE STAFF CONTACT

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