ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Conway	Analyst:	Diane Deatherage	Bill Number:	AB 990
Related Bills:	See Legislative History	Telephone:	845-4783	Amended Date:	March 21, 2013
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Minimum Franchise Tax/Reduce to $700 for Taxable Years Beginning On or After January 1, 2013

SUMMARY

This bill would reduce the minimum franchise tax (MFT) from $800 to $700.

RECOMMENDATION

No position.

Summary of Amendments

The March 21, 2013, amendments removed provisions of the bill that would have made nonsubstantive changes to Corporation Tax Law and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

REASON FOR THE BILL

The reason for this bill is to reduce the MFT to $700 for certain business entities.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2013.

ANALYSIS

FEDERAL LAW

Federal law does not require that a corporation pay a minimum tax.

STATE LAW

Under existing state law, unless specifically exempted by statute, every corporation that is organized or qualified to do business or doing business in this state (whether organized in state or out-of-state) is subject to the MFT. Currently the MFT is $800 except for domestic qualified inactive gold or quicksilver mining corporations that are subject to a $25 MFT. Taxpayers must pay the MFT only if it is more than their measured franchise tax. For taxable years beginning on or after January 1, 1997, only corporations whose net income is less than approximately $9,040 pay the MFT because their measured tax would be less than $800 ($9,039 x 8.84% = $799).

Board Position:			Executive Officer	Date
______ S	______ NA	X NP		
______ SA	______ O	______ NAR	Selvi Stanislaus	5/3/13
______ N	______ OUA			

Existing state law provides that real estate mortgage investment conduits (REMICs) and financial asset securitization investment trusts (FASITs)[1] are subject to and required to pay the MFT. Additionally, regulated investment companies (RICs) and real estate investment trusts (REITs) organized as corporations are also subject to and required to pay the MFT.

The annual tax on limited partnerships (LPs), limited liability companies (LLCs) not classified as corporations, limited liability partnerships (LLPs), and qualified Subchapter S subsidiaries (QSSS) is equal to the amount of MFT applicable to corporations, which under current law is set at $800.

Existing state law provides that every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, is exempt from the MFT for its first taxable year.

This exemption does not apply to any corporation that reorganizes solely for the purpose of avoiding payment of its MFT. It also does not apply to LPs, LLCs not classified as corporations, LLPs, charitable organizations, RICs, REITs, REMICs, FASITs, and QSSSs.

A corporation is subject to the MFT until the corporation dissolves or withdraws or, if later, until it stops doing business in California.

THIS BILL

This bill would reduce the existing MFT from $800 to $700 for taxable years beginning on or after January 1, 2013, excluding corporations that are exempt from paying the MFT during the first taxable year and those subject to the $25 MFT.

By reference to the MFT, the annual tax for the LPs, LLCs not classified as corporations, LLPs, and QSSSs would also be reduced to $700.

IMPLEMENTATION CONSIDERATIONS

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

LEGISLATIVE HISTORY

AB 166 (Cook, 2011/2012) would have eliminated the MFT. AB 166 failed passage out of the Assembly Revenue and Taxation Committee.

AB 821 (Garrick, 2011/2012) would have reduced the MFT to $100 for qualified small businesses. AB 821 failed passage out of the Assembly Revenue and Taxation Committee.

AB 327 (Garrick, 2009/2010) would have reduced the MFT from $800 to $100. AB 327 failed passage out of the Assembly by the constitutional deadline.

AB 1179 (Garrick, 2007/2008) would have reduced the MFT from $800 to $100. AB 1179 failed passage out of the Assembly Revenue and Taxation Committee.

[1] Sec. 835(c), PL 108-357, 10/22/2004. Effective January 1, 2005 FASIT laws were repealed. However, the laws would still apply to FASITs in existence prior to 10/22/2004 (date of enactment).

AB 2178 (Garrick, 2007/2008) would have reduced the MFT from $800 to $200. AB 2178 failed passage out of the Assembly Revenue and Taxation Committee.

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, and Minnesota do not impose a minimum tax on business entities.

Arizona imposes a $50 minimum tax on corporations.

Illinois imposes a $25 minimum tax on corporations.

Massachusetts imposes a minimum tax of $456 tax on corporations.

Nevada does not impose income tax on business entities conducting business within the state. *Nevada* does require all businesses to pay an annual “business license fee” to the Nevada Department of Taxation for the privilege of doing business within the state. For the first year an entity does business within the state, the entity is required to pay a $200 license fee and is required to pay a $100 license fee for each subsequent year it does business within the state.

New York imposes a minimum tax on corporations of $25 to $5,000 based on the corporation's in-state receipts. It also imposes a minimum tax of $25 to $4,500 for LPs, LLCs, and LLPs based on their in-state receipts.

Oregon imposes a $150 minimum tax on corporations, LPs, LLCs, and LLPs.

Utah imposes a $100 minimum tax on corporations.

FISCAL IMPACT

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

ECONOMIC IMPACT

<u>Revenue Estimate</u>

Estimated Revenue Impact of AB 990 As Amended March 21, 2013 For Taxable Years Beginning On or After January 1, 2013 Assumed Enactment After June 30, 2013 ($ in Millions)		
2013-14	2014-15	2015-16
- $110	- $110	- $110

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

Proponents: Supporters could argue that reducing the MFT would make California more competitive with other states for businesses.

Opponents: Some could argue that reducing the MFT shifts the burden of paying for government supported programs and infrastructure away from corporations that use these services.

LEGISLATIVE STAFF CONTACT

Diane Deatherage	Mandy Hayes	Gail Hall
Legislative Analyst, FTB	Revenue Manager, FTB	Legislative Director, FTB
(916) 845-4783	(916) 845-5125	(916) 845-6333
diane.deatherage@ftb.ca.gov	mandy.hayes@ftb.ca.gov	gail.hall@ftb.ca.gov