

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Anderson Analyst: David Scott Bill Number: SB 641  
 Related Bills: See Prior Analysis Telephone: 845-5806 Amended Date: April 17, 2013  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Minimum Franchise Tax/Exempt Qualified New Corporations First Four Taxable Years

**SUMMARY**

This bill would exempt certain new corporations from paying the minimum franchise tax for its first four taxable years.

**RECOMMENDATION**

No position.

**SUMMARY OF AMENDMENTS**

The April 17, 2013, amendments resolved several, but not all, of the implementation/technical concerns as discussed in the department’s analysis of the bill as introduced February 22, 2013. As a result of the April 17, 2013, amendments, the department has identified additional implementation/technical considerations. For convenience, all new and existing concerns are provided below. Except for the “This Bill, “Implementation Considerations,” and “Technical Considerations,” the remainder of the department’s analysis of the bill as introduced February 22, 2013, still applies.

**Summary of Suggested Amendments**

Amendments 1-3 resolve the implementation and technical considerations included in this analysis.

**ANALYSIS**

THIS BILL

For taxable years beginning on or after January 1, 2013, this bill would exempt a qualified new corporation, as defined, from the minimum franchise tax for its first four taxable years.

The exemption would be allowed only for the first four taxable years in which the qualified new corporation reasonably estimates that it will have gross receipts, less returns and allowances, reportable to this state of \$10,000 or less.

Board Position:	Legislative Director	Date
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This bill would define the following terms:

- “Qualified new corporation” means a corporation that, on or after the effective date of this bill, meets both of the following:
  - Is incorporated under the laws of this state or has qualified to transact intrastate business in this state, and
  - Commences business operations at or after the time of its incorporation.
- “Qualified new corporation” shall not include a corporation that commenced business operations as a sole proprietorship, a partnership, or any other form of business entity immediately prior to its incorporation.
- “Gross receipts, less returns and allowances reportable to this state,” means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120<sup>1</sup> and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.<sup>2</sup>

The determination of gross receipts shall include all members of a commonly controlled group, as defined in Section 25105, of which the corporation is a member.

The exemption would not apply to any corporation that reorganizes for the purpose of reducing its minimum franchise tax, limited partnerships, limited liability companies, limited liability partnerships, charitable organizations, regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, Subchapter S subsidiaries, or to the formation of any subsidiary corporation.

### 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.

Entities incorporated prior to the effective date of this bill that meet the definition of a qualified new corporation 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. Amendment 1 would resolve this issue.

The bill would allow taxpayers to “reasonably estimate” the gross receipts without a mechanism to verify the “reasonable estimate” against actual gross receipts. This could result in disputes between the department and taxpayers. The author may wish to amend the bill to disallow the exemption if actual gross receipts for the taxable year exceed the \$10,000 threshold amount. Amendment 3 would resolve this issue.

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<sup>1</sup> “Business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations.

<sup>2</sup> “Nonbusiness income” means all income other than business income.

### TECHNICAL CONSIDERATIONS

On page 7, line 3, the term “section” was used when “subdivision” should have been used. Amendment 2 has been provided to resolve this issue.

### **SUPPORT/OPPOSITION**

Support: None provided.

Opposition: None provided.

### **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO  
SB 641 as Amended on April 17, 2013

AMENDMENT 1

On page 5, strikeout line 38, and insert:

- (i) Incorporates under the laws of this state or qualifies

AMENDMENT 2

On page 7, line 3, strikeout out "section" and insert:

subdivision

AMENDMENT 3

On page 7, between lines 7 and 8, insert:

(6) For any taxable year beginning on or after January 1, 2013, if a qualified new corporation has actual gross receipts, as determined under paragraphs (1) and (2), for the taxable year exceeding ten thousand dollars (\$10,000), an additional tax in the amount equal to eight hundred dollars (\$800) for the taxable year shall be due and payable by the corporation on the due date of its return, without regard to extension, for that taxable year.