

ANALYSIS OF AMENDED BILL

Author: Obernolte Analyst: Davi Milam Bill Number: AB 1775
See Legislative
Related Bills: History Telephone: 845-2551 Amended Date: March 18, 2016
Attorney: Bruce Langston Sponsor _____

SUBJECT: Partnership and C Corporation Return Due Dates

SUMMARY

This bill would modify the California return due dates of partnerships and C corporations to be similar to the federal due dates for such returns, and would make other changes regarding due dates for certain taxes.

RECOMMENDATION

No position.

Summary of Amendments

The March 18, 2016, amendments removed provisions of the bill related to the Public Utilities Code and replaced them with the provisions discussed in this analysis.

This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for this bill is to change certain state return due dates to be similar to recent federal changes to such due dates to make it easier for taxpayers to comply with the law.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2017, and specifically operative for returns for taxable years beginning on or after January 1, 2016.

FEDERAL/STATE LAW***Federal Law***

Federal law requires persons to file income tax returns in the manner prescribed by the Secretary, in compliance with due dates established in the Internal Revenue Code (IRC), if any, or by regulations.

For taxable years beginning on or after January 1, 2016, Congress shortened the due date for partnership returns by one month and extended the due date for C corporation returns by one month so that, unlike prior law, the filing deadline for partnerships would precede the due dates of their individual and corporate investors.

Under federal law, for taxable years beginning on or after January 1, 2016:

- Partnership returns are due by the 15th day of the third month following the close of the taxable year (generally March 15th). Prior law's due date was the 15th day of the fourth month (generally April 15th).
- C corporation returns are due by the 15th day of the fourth month following the close of the taxable year—instead of the 15th day of the third month under prior law (March 15th in the case of a calendar year taxpayer).

However, a special rule delays the due-date change for C corporations with a fiscal year ending on June 30 until taxable years beginning on or after January 1, 2026; until then, returns for such corporations are due by the 15th day of the third month following the close of the fiscal year.

Federal law treats a limited liability company (LLC) as a partnership, corporation, or a disregarded entity¹ depending on facts and circumstances.

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

State Law

Return Due Dates

State law, rather than conforming to the federal due dates for filing tax returns of partnerships and C corporations, has stand-alone law that provides return due dates for partnerships and C corporations that are similar to the federal due dates that were in effect prior to the federal changes described above.

Under California law:

- Partnership returns are due by the 15th day of the fourth month following the close of the taxable year (generally April 15th), and
- C corporation and S corporation returns are due by the 15th day of the third month following the close of the taxable year (March 15th in the case of a calendar year taxpayer).

An LLC may be classified as a corporation, partnership, or disregarded entity, and the return due dates of LLC returns depends on how the LLC is classified:

- LLCs classified as corporations that organize in California, register in California, conduct business in California, or receive California source income, must file a corporation return by the 15th day of the third month following the close of the taxable year (March 15th in the case of a calendar year taxpayer).

¹ A disregarded entity is an LLC that is owned by a single member and is not a taxable entity, but instead reports all income, loss, deductions, and credits of the disregarded entity on the single member's tax return.

- LLCs classified as partnerships that organize in California, register in California, or conduct business in California, must file a California Form 568 LLC Return of Income by 15th day of the fourth month following the close of the taxable year (generally April 15th).
- LLCs that are disregarded as separate entities must file a Form 586 LLC return by the same due date as the owner.

An extension of time to file is not an extension of time to pay.

Tax Payment Due Dates

Under state law, corporations that incorporate, qualify or start doing business in California, are subject to the minimum franchise tax. The minimum franchise tax amount for the second tax year and all subsequent tax years is \$800.

State law requires estimated tax payments, generally in four installment dates, when the estimated tax exceeds the minimum franchise tax. The first estimated tax payment generally must be at least the minimum franchise tax amount. The estimated tax payment is submitted with a payment voucher rather than with the return.

Existing state law requires an LLC not classified as a corporation for tax purposes to pay both an annual tax and an annual fee. The annual tax is an amount equal to the minimum franchise tax and is paid annually and is due and payable on or before the 15th day of the fourth month of the taxable year. The annual fee is based on the LLC's total income from all sources reportable to this state for the taxable year, and is subject to estimate payment requirements on the 15th day of the sixth month of the current taxable year. Any fee still owed is due and payable on the date the return is due

LLCs must pay the full balance of any LLC fee as well as any nonconsenting nonresident (NCNR)² member's taxes by the original due date of the tax return to avoid penalties and interest. If the LLC does not owe any fee or NCNR members' taxes, then it does not need to file any forms on the regular due date of the tax return if it is filing under the automatic extension.

THIS BILL

For taxable years beginning on or after January 1, 2016, this bill would modify the California return due dates of partnerships and C corporations to be similar to federal law. Partnership returns would be required to be filed on or before the 15th day of the third month following the close of the taxable year, and C corporation returns would be due on or before the 15th day of the fourth month following the close of the taxable year.

² LLCs who have nonresident members, are required to file form FTB 3832 *LLC Nonresident Members' Consents*, with Form 568. Every nonresident member must sign this form consenting to be taxed on the distributive share of the LLC income attributable to California sources. The LLC must pay any member's taxes who fails to consent.

And, similar to federal law, the due date change for C corporations with a fiscal year ending on June 30 would be delayed—the new due date would not apply until taxable years beginning on or after January 1, 2026; until then, returns for such corporations would be due by the 15th day of the third month following the close of the fiscal year.

The return due dates as proposed by this bill are summarized in the table below:

Entity	Year End	Current Law	Under this Bill
<i>Corporations</i> ³	Fiscal Year ⁴	15 th day of the 3 rd month	15 th day of the 4 th month
	Calendar Year	March 15	April 15
<i>Partnerships</i>	Fiscal Year	15 th day of the 4 th month	15 th day of the 3 rd month
	Calendar Year	April 15	March 15

S corporation returns would continue to be due on or before the 15th day of the third month following the close of the taxable year consistent with federal law.

The extensions to file under state law would remain unchanged; partnerships would continue to have a six-month extension, and C corporations would continue to have a seven-month extension.

For taxable years beginning on or after January 1, 2016, this bill also would:

- Accelerate by one month the due date of the LLC annual tax;
- Modify certain payment due dates, including the estimated tax for banks and financials that are corporations and the tax for corporations resuming business; and
- Modify the return due date for corporations resuming business and commencing to do business in the state.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill would modify the return due date for LLCs classified as corporations, but would fail to amend Revenue and Taxation Code (R&TC) section 18633.5 that provides the return due dates for LLCs classified as partnerships or single-member disregarded entities. If this is inconsistent with the author's intent, the bill should be amended.

³ Includes LLCs classified as corporations. However, the due date for S Corporation returns would be unchanged, i.e. they would continue to be due by the 15th day of the third month.

⁴ Fiscal-year is a taxable year that differs from the calendar year.

This bill would accelerate by one month the due date for the LLC annual tax; however, the bill would leave unchanged the due date of the LLC annual fee (the balance due after estimate, if any, is generally paid with the filing of the return). If this is inconsistent with the author's intent, the bill should be amended.

This bill would modify certain due dates for payments and returns that would fail to correlate to any federal law change. For example, the bill would delay by one month the due date of the first installment of the estimated tax for banks and financials that are corporations. If this is inconsistent with the author's intent, the bill should be amended.

TECHNICAL CONSIDERATIONS

Department staff has identified the following technical considerations. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill language contains a number of inconsistencies. For example:

- Under R&TC section 19021, this bill would apply the special rule for certain C Corporations with a June 30 fiscal year end to returns for taxable years beginning on or after January 1, 2026; however, R&TC section 19021 relates to estimated payment due dates that are made with vouchers separate and apart from the return.
- Because the LLCs annual tax is due during the LLCs taxable year, as the bill is currently written, the annual tax for a 2016 calendar year filer would have been due on March 15, 2016. The bill should be amended to either provide relief from a late payment penalty or change the effective date of this provision to 2017.

LEGISLATIVE HISTORY

AB 2338 (Chavez, 2015/2016), identical to this bill, would modify California return due dates of partnerships and C corporations and would make other changes. AB 2338 is pending before the Assembly Revenue and Taxation Committee.

AB 367 (Brown, 2013/2014) would have required LLCs to annually file their statement of information as part of the LLC's income tax return. AB 367 failed to pass by the constitutional deadline.

AB 2086 (Calderon & Dababneh, 2013/2014) would have modified the due dates for payments of the annual tax and the minimum tax due. AB 2086 failed to pass by the constitutional deadline.

AB 190 (Ackerman, 1999/2000) would have made the annual tax of an LLC due and payable on the same date as the LLC return. AB 190 failed to pass by the constitutional deadline.

OTHER STATES' INFORMATION

Because this bill would only modify state tax return due dates, a review of other states' tax information is not relevant.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process and the implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

Assuming implementation considerations relating to corporate estimated payment and LLC annual tax due dates, discussed above, have been resolved, this bill as amended March 18, 2016, would not impact state income or franchise tax revenue.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may say that by conforming to federal return due dates this bill would simplify the preparation of California tax returns and encourage compliance.

Opponents: Some may argue that inconsistent state return due dates and payment due dates could cause taxpayer confusion and complicate tax administration.

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