

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
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December 5, 2001

Chief Counsel Ruling
[410:DJH:CR-2001-1231]

Re: *****

Dear *****:

This is in response to your letter dated *****, in which you requested a chief counsel ruling on behalf of *****, regarding whether ***** is subject to the minimum franchise tax for the *****. Your request makes the following factual representations, upon which the conclusions expressed in this ruling specifically rely:

- A. The articles of organization were filed with the Secretary of State on *****.
- B. ***** transacted no business in California during the calendar *****.
- C. ***** elected to be taxed as a corporation.
- D. ***** elected to use the calendar year for tax accounting purposes.

In your letter, you suggest that ***** is not subject to tax for the ***** because the Secretary of State registration was not issued until January 17, 2001. You assert that ***** is entitled to be taxed as a corporation, and so is not subject to the minimum franchise tax in its initial year of operation in California.

As explained below, we agree that ***** is not subject to the minimum franchise tax for *****, because that taxable year was less than 15 days. We also agree that since ***** elected to be taxed as a corporation, it is not subject to the minimum franchise tax in its initial year of operation which is 2001 (it however is still subject to the tax measured by net income under Rev. & Tax. Code § 23151).

The existence of an L.L.C. begins upon the filing of the articles of organization with the Secretary of State. (Corp. Code § 17050.) Therefore, ***** came into existence on December 19, 2000, the date on which the articles of organization were filed with the Secretary of State.

An L.L.C. classified as an association for California tax purposes is defined as a corporation for the purpose of exercising its franchise within the state. (Rev. & Tax. Code § 23038.) A corporation is not liable for taxes and fees if the company does no business in California during the taxable year and the tax year was 15 days or less. (Rev. & Tax. Code § 23114.) If ***** transacted no business in California during the calendar *****, and elected to be taxed as a corporation on a calendar year basis, then no minimum franchise tax is due for the calendar and *****.

An L.L.C. electing to be taxed as a corporation is required to pay the minimum franchise tax of \$800 unless it qualifies under an exception to the general rule. (Rev. & Tax. Code § 23153, subd. (d)(1).) There are exceptions to the requirement of paying the minimum franchise tax for corporations under Rev. & Tax. Code section 23153. Under subd.(f)(1), since ***** elected to be taxed as a corporation and came into existence after January 1, 2000, it is not subject to the minimum franchise tax for its first taxable year, which was 2001. It however is still subject to the tax measured by net income under Rev. & Tax. Code section 23151 for 2001.

Please be advised that the tax consequences expressed in this Chief Counsel Ruling are applicable only to the named taxpayer and are based upon and limited to the facts you have submitted. In the event of a change in relevant statutory, judicial or administrative case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your request upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes, should they occur.

This letter is a legal ruling by the Franchise Tax Board Chief Counsel within the meaning of Revenue and Taxation Code section 21012, subd. (a)(1). Please attach a copy of this letter and your request to the back of the appropriate return(s) (if any) when filed or in response to any notices or inquiries that might be issued.

Dennis J. Haase
Tax Counsel