



Summary Analysis of Amended Bill

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Sponsor:

Bill Number: AB 2410

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Amended: May 1, 2018

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Related Bills: See Prior Analysis

Subject: Annual Tax/Reduce to \$400 for Limited Liability Company (LLC) Small Business within First 2 Years of Operation

Summary

This bill would, under the Personal Income Tax Law, reduce the annual tax for certain small business LLCs in California.

Recommendation – No position.

Summary of Amendments

The May 1, 2018, amendments added a sunset date. These amendments resolved one of the policy concerns discussed in the department's analysis of the bill as amended April 16, 2018. Except for the "Effective/Operative Date," "This Bill," and "Policy Concerns" sections, the remainder of the department's analysis of the bill as amended April 16, 2018, still applies. The "Implementation Considerations," "Technical Concerns," "Fiscal Impact," and "Economic Impact" sections are restated for convenience.

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, 2020, and before January 1, 2025.

This Bill

For taxable years beginning on or after January 1, 2020, and before January 1, 2025, this bill would reduce the annual tax for an LLC that is a small business, as defined, from \$800 to \$400 during the two taxable years after the date on which the articles of organization have been accepted or a certification of registration has been issued.

The bill would define the following terms and phrases:

- “Gross receipts, less return and allowances reportable to this state,” means the sum of the gross receipts from the production of business income,¹ and the gross receipts from the production of nonbusiness income.²
- “Small business” means an LLC that reasonably estimates it will have, gross receipts, less returns and allowances, reportable to this state for the taxable year of \$250,000 or less.

The LLC's return for a taxable year must be filed by the due date of the return without regard to extension for the reduced annual tax to apply.

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.

This bill uses the undefined term, i.e., “reasonable estimates.” The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the terms.

It is unclear whether an LLC taxpayer would be subject to the full amount of the annual tax and applicable interest and penalties if the LLC taxpayer incorrectly estimates the gross receipts when paying the estimated payment for the annual tax and it is later determined that the gross receipts were in excess of \$250,000.

Technical Considerations

For consistent use of terminology and harmony within the Revenue and Taxation Code (R&TC) and the Corporations Code, subdivision (g) needs to be amended where the phrase “articles of organization have been accepted or a certificate of registration has been issued” appears, as it should be “LLC filed articles of organization in this State or registered to transact intrastate business in this State.”

Fiscal Impact

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

¹ As defined in R&TC section 25120(a).

² As defined in R&TC section 25120(d).

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2410 as Amended May 1, 2018
Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue
2018-2019	n/a
2019-2020	- \$25
2020-2021	- \$45
2021-2022	- \$49

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Based on Franchise Tax Board income data for LLCs for the 2015 taxable year, it is estimated that in the 2020 taxable year there would be approximately 105,000 first- and second-year LLCs with gross receipts of \$250,000 or less that would be subject to the annual tax under current law and would benefit from the reduction of the annual tax to \$400. This would result in an estimated revenue loss of \$42 million in the 2020 taxable year. For the 2021 taxable year, it is estimated that 115,000 first- and second-year LLCs would benefit from the annual tax reduction for a total estimated revenue loss of \$46 million.

The tax-year estimates are then converted to fiscal-year estimates and rounded to arrive at the amounts in the above table.

Policy Concerns

This bill would provide a tax benefit for certain LLCs that would not be provided to other business entities subject to the annual or minimum franchise tax.

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