



Summary Analysis of Amended Bill

Author: Muratsuchi, et al. Sponsor: Bill Number: AB 308
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Attorney: Shane Hofeling Related Bills: See Prior Analysis

Subject: Exemption from Annual Tax and Minimum Franchise Tax for Small Business, Limited Liability Companies, and Corporations Owned by a Deployed Member of the U.S. Armed Forces

Summary

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow an exemption from the annual tax or the minimum franchise tax for certain small business, Limited Liability Companies (LLCs), and corporations that are solely owned by a deployed member of the Armed Forces.

Recommendation – No position.

Summary of Amendments

The June 13, 2019, amendments modified the effective dates and made other technical changes.

As a result of these amendments, one of the implementation considerations discussed in the department's analysis of the bill as amended March 18, 2019, and March 25, 2019, was resolved. Except for the "Effective/Operative Date," "This Bill," "Implementation Considerations," "Fiscal Impact," and "Economic Impact" sections, the remainder of the department's analysis of the bill as amended March 18, 2019, and March 25, 2019, still applies. The "Policy Concern" section has been restated below for convenience.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2020, and before January 1, 2030.

This Bill

This bill would, under the PITL and CTL, replace the existing January 1, 2018, inoperative date with January 1, 2030, and re-establish for taxable years beginning on or after January 1, 2020, and before January 1, 2030, an exemption from the annual tax or minimum franchise tax as applicable, for LLCs and corporations that are small businesses that meet all of the following:

- Is solely owned by a deployed member of the United States Armed Forces,
- Is a small business, and
- Operates at a loss or ceases operation for the taxable year.

The following definitions would apply for purposes of the exemption:

- “Deployed” means being called to active duty or active service during a period when a Presidential Executive order specifies that the United States is engaged in combat or homeland defense. Deployed would specifically exclude temporary duty for the sole purpose of training or processing, or a permanent change of station.
- “Operates at a loss” means:
 - Expenses that exceeds receipts with respect to an LLC.
 - Negative net income as defined in Revenue and Taxation Code section 24341 with respect to a corporation.
- “Small business” means an LLC or a corporation with total income from all sources derived from, or attributable, to California of \$250,000 or less.

The Franchise Tax Board (FTB) would be allowed to promulgate regulations as necessary or appropriate, including defining “ceases operation.”

The FTB would be required, on or before January 1, 2021, and on or before January 1 annually thereafter through January 1, 2031, to submit a report to the Legislature on the performance of LLCs and corporations that are small businesses solely owned by a deployed member of the Armed Forces, that would include:

- The number of small business LLCs and corporations that are solely owned by a deployed member of the Armed Forces in the state,
- The number of individuals employed by these businesses, and
- The number of these businesses that close.

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 would require the department to expand data collection to include specified data on small business LLCs and corporations that are solely owned by a deployed member of the Armed Forces. Collecting this data would require the department to change its systems, forms, and processes, which could be costly.

The initial report required by this bill would be due on or before January 1, 2021. The department generally processes returns within six months of receipt. If the author's intent is to have the report to the Legislature contain complete information for each taxable year, the due date of the report should be changed. For example, the extended due date for the taxable year ended December 31, 2020, may be as late as October 15, 2021, and the extended due date for a fiscal-year filer may be as late as September 15, 2022. Thus, the earliest that data from all 2020 returns could be included in a report would be approximately June 2023.

Fiscal Impact

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

Economic Impact

Revenue Estimate

This bill as amended on June 13, 2019, would have a revenue impact on the general fund, but the amount of the loss is unknown.

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

Previous law allowed a minimum franchise tax and an annual tax exemption to small businesses solely owned by deployed members of the Armed Forces, whose businesses operated at a loss or ceased to exist. Because the FTB is unable to predict future deployment and business operations, the revenue impact of reinstating the exemptions is unknown. It is expected that for every 100 small businesses that would have paid the annual tax there would be a revenue loss of \$80,000.

Policy Concerns

This bill would provide a tax benefit for specified LLCs subject to the PITL that would be unavailable to other business types subject to the PITL, including LPs and LLPs. Thus, this bill would provide differing treatment based solely on classification.

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