



Analysis of Amended Bill

Author: Stern

Sponsor:

Bill Number: SB 626

Analyst: Toni Arnold

Phone: (916) 845-4743

Amended April 4, 2019, and
April 25, 2019

Attorney: Shane Hofeling

Related Bills: See Legislative
History

Subject: Exemption from Minimum Franchise Tax for Corporations Owned by a Deployed Member of the U.S. Armed Forces

Summary

This bill would, under the Corporation Tax Law (CTL), allow an exemption from the minimum franchise tax for a corporation that is a small business solely owned by a deployed member of the Armed Forces.

Recommendation – No position.

Summary of Amendments

The April 4, 2019, amendments removed the provisions related to Sales and Use Tax Law and replaced them with the provisions discussed in this analysis.

The April 25, 2019, amendments modified the bill's operative and repeal dates.

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

Reason for the Bill

The reason for the bill is to provide an exemption from the minimum franchise tax under certain circumstances for small business corporations owned by a deployed member of the United States Armed Forces.

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, 2029.

Federal/State Law

Federal law lacks a corporation minimum tax.

Unless specifically exempted by statute, every corporation that is organized or qualified to do business or doing business in this state (whether organized in state or out-of-state) is subject to the minimum franchise tax. Taxpayers must pay the minimum franchise tax only if it is more than their measured franchise tax. For taxable years beginning on or after January 1, 1997, only taxpayers whose net income is less than approximately \$9,040 pay the minimum franchise tax because their measured tax would be less than \$800 ($\$9,039 \times 8.84\% = \799).

Current state law lacks an exclusion from the minimum franchise tax similar to the exclusion this bill would allow.

This Bill

This bill would, under the CTL, replace the existing January 1, 2018, inoperative date with January 1, 2029, and re-establish for taxable years beginning on or after January 1, 2020, and before January 1, 2029, an exemption from the minimum franchise tax for a corporation that meets 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 negative net income as defined in Revenue and Taxation Code section 24341.
- “Small business” means a corporation with total income from all sources derived from, or attributable, to California, of \$250,000 or less.

Implementation Considerations

Implementing this bill would occur during the department's normal annual update.

Legislative History

AB 308 (Muratsuchi, et al., 2019/2020) would reinstate the exemption from the annual tax and the minimum franchise tax for certain deployed military-owned small business Limited Liability Companies (LLCs) and corporations. AB 308 is pending before the Assembly Committee on Appropriations.

AB 1256 (Brough, 2017/2018) would have reduced the minimum franchise tax or annual tax for the first or second year for new, small businesses corporations, LLCs Limited Liability Partnerships, and Limited Partnerships. AB 1256 failed passage out the Assembly by the constitutional deadline.

AB 328 (Grove, 2015/2016) would have eliminated the minimum franchise tax or annual tax for new veteran-owned small corporations and LLCs. AB 328 failed passage out of the Assembly by the constitutional deadline.

Other States' Information

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Illinois, Michigan, and Minnesota do not impose a minimum tax on corporations.

Massachusetts imposes a \$456 minimum excise tax on corporations, including small business corporations.

New York imposes a minimum income tax of \$25 on most corporations.

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.

Economic Impact

Revenue Estimate

This bill as amended on April 25, 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 business operates at a loss or cease to exist. Because the Franchise Tax Board is unable to predict future deployment and business operations, the revenue impact of reinstating the exemption 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.

Legislative Staff Contact

Toni Arnold
Legislative Analyst, FTB
(916) 845-4743
toni.arnold@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Jahna Carlson
Acting Legislative Director, FTB
(916) 845-5683
jahna.carlson@ftb.ca.gov