



## Bill Analysis

Author: Chen, et al.

Sponsor:

Bill Number: AB 806

Related Bills: See Legislative  
History

Introduced February 16, 2021

### SUBJECT

Exemption from Annual & Minimum Franchise Tax for 2020-2022

### SUMMARY

This bill would, under the Personal Income Tax Law (PITL), exempt limited partnerships (LPs), limited liability partnerships (LLPs), and limited liability companies (LLCs) not classified as corporations from the payment of the annual tax for taxable years beginning on or after January 1, 2020, and before January 1, 2023.

In addition, this bill would, under the Corporation Tax Law (CTL), exempt corporations from the payment of minimum franchise tax for taxable years beginning on or after January 1, 2020, and before January 1, 2023.

### RECOMMENDATION

No position.

### SUMMARY OF AMENDMENTS

Not applicable.

### REASON FOR THE BILL

The reason for this bill is to provide tax relief to businesses in California during the economic disruption caused by the global pandemic and subsequent stay-at-home orders and quarantines.

### ANALYSIS

For taxable years beginning on or after January 1, 2020, and before January 1, 2023, this bill, under the PITL, would create an exemption from the annual tax for LPs, LLPs, and LLCs not classified as corporations, and under the CTL, would create an exemption from minimum franchise tax for corporations.

In uncodified law, on or before February 1, 2026, this bill would require the Franchise Tax Board (FTB) to provide a report to the Assembly Committee on Revenue and Taxation and the Senate Committee on Governance and Finance in compliance with Government Code (GC) section 9795 and include the following:

- The number of taxpayers that paid the minimum franchise tax for the last taxable year beginning prior to January 1, 2020, and
- The number of taxpayers that paid the tax in the first taxable year beginning on or after January 1, 2023.

#### *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, 2023.

#### *Federal/State Law*

##### *Federal Law*

Federal law does not require payment of an annual tax for LPs, LLPs, LLCs or a franchise minimum tax for corporations.

##### *State Law*

Unless specifically exempted by statute, every corporation or LLC classified as a 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 of \$800.

In general, LPs, LLPs, and LLCs not classified as corporations are subject to an annual tax equal to the \$800 minimum corporate franchise tax.

Every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, is exempt from the minimum franchise tax for its first taxable year. This exemption is inapplicable to a corporation that reorganizes solely for the purpose of avoiding payment of its minimum franchise tax.

Registered LPs, LLPs, and LLCs that did no business in California during a taxable year that is 15 days or less are not subject to the annual tax. The same exception applies to corporations with regard to the minimum franchise tax.

In addition, every LP, LLP and LLC not classified as a corporation that organizes, registers, or files with the California Secretary of State on or after January 1, 2021, and before January 1, 2024, is exempt from the annual tax for its first taxable year.

### *Implementation Considerations*

The department has identified the following implementation considerations, and is available to work with the author's office to resolve these and other considerations that may be identified.

This bill was introduced in the 2021 legislative session and would allow taxpayers refunds for annual tax and minimum franchise tax for taxable years beginning on or after January 1, 2020. To take advantage of this opportunity, the taxpayer's would have to amend their tax returns, which would increase the workload on the FTB and the taxpayers.

In addition, the department has already developed the forms and instructions for the 2020 taxable year. Thus, the department may incur additional costs to develop additional tax forms and instructions in the short time frame necessary to ensure they are available for taxpayers. To alleviate these concerns, the author may wish to change the operative date to January 1, 2021.

To clarify the requirements for the FTB's report to the Assembly Committee on Revenue and Taxation and the Senate Committee on Governance and Finance, section 5(b) of this bill should specify that it is the number of taxpayers that paid the "the minimum franchise tax or the annual tax" in the first taxable years beginning prior to January 1, 2023.

### *Technical Considerations*

None noted.

### *Policy Considerations*

The stated intent of the bill is to provide relief for small businesses. However, this bill provides for an annual tax exemption and a minimum franchise tax exemption for all entities covered in this section, not just for small businesses. If this is not the author's intent, it is recommended that the bill be amended.

## **LEGISLATIVE HISTORY**

AB 91 (Valladares, 2021/2022), under the PITL, would reduce the annual tax for LPs, LLPs, and LLCs not classified as corporations, that are small businesses or microbusinesses, as defined, from \$800 to \$400 or \$200, respectively. In addition, under the CTL, this bill would reduce the minimum franchise tax for corporations that are small businesses or microbusinesses, as defined, from \$800 to \$400 or \$200, respectively. AB 91 is currently in the committee process.

AB 664 (Bigelow, 2021/2022), under the PITL, would suspend the due date for payment of the annual tax for LPs, LLPs, and LLCs not classified as corporations, that are small businesses, until the end of the state of emergency declared by the Governor on March 4, 2020. This bill would also suspend the accrual of penalties or interest related to the payment of the annual tax for the specified taxable years for small businesses. AB 664 is currently in the committee process.

AB 632 (Ramos, 2021/2022), under the CTL, would reduce the \$800 minimum franchise tax for corporations, and, by reference, the annual tax for LPs, LLPs, or LLCs not classified as corporations, based on gross receipts. AB 632 is currently in the committee process.

AB 85 (Committee on Budget, Chapter 8, Statutes of 2020), under the PITL, provided a first year exemption from the annual tax for LPs, LLPs, and LLCs not classified as corporations.

AB 308 (Muratsuchi, Chapter 421, Statutes of 2019), under the PITL and the CTL, allowed an exemption from the annual tax or the minimum franchise tax for certain small business LLCs and corporations that are solely owned by a deployed member of the U.S. Armed Forces, and the LLC or corporation operates at a loss or ceases to operate, for taxable years beginning on or after January 1, 2020.

AB 250 (Choi, 2019/2020) under the CTL, would have modified the minimum franchise tax for corporations having less than \$15 million in gross receipts, and under the PITL, would have retained the \$800 minimum annual tax. AB 250 did not pass out of the Assembly by the constitutional deadline

AB 364 (Calderon, 2019/2020), under the PITL, would exempt new LPs and new LLCs that are small businesses, from the payment of the annual tax for their first taxable year. AB 364 did not pass by the constitutional deadline.

AB 2306 (Melendez, 2019/2020) would, under the CTL, repeal the \$800 corporate minimum franchise tax for corporations doing business in the state for taxable years beginning on or after January 1, 2020. AB 2306 did not pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 2929 (Arambula and Muratsuchi, 2019/2020) would, under the PITL and the CTL, reduce the annual tax for certain single-member LLCs and the minimum franchise tax for certain single-owner corporations to provide that these taxpayers would not be subject to the tax in their first taxable year, and for the following four years, the tax would incrementally increase annually by two hundred dollars (\$200); with a limitation of minimum tax reduction of one hundred million dollars (\$100,000,000) per taxable year and annual tax reduction of one hundred million dollars (\$100,000,000) per taxable year, administered by the FTB on a first-come-first-served basis. AB 2929 did not pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

SB 626 (Stern, 2019/2020) under the CTL, would 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. SB 626 did not pass out of the Assembly by the constitutional deadline.

SB 349 (Portantino, 2019/2020), under the PITL and the CTL, would have modified the minimum franchise tax for corporations having less than \$15 million in gross receipts and would have allowed an exemption from the annual tax or the minimum franchise tax for certain small business LLCs and corporations that were solely owned by a deployed member of the U.S. Armed Forces. SB 349 was vetoed by the governor whose veto message stated in part, "The intent of this bill is to provide tax relief for smaller California businesses and to encourage economic growth. Both are important goals which I support, and helping small businesses is certainly a priority I share with the Legislature. However, this bill would be better addressed through the annual budget process."

**PROGRAM BACKGROUND**

None noted.

**FISCAL IMPACT**

This bill would impact the department's systems, resulting in programming and processing revisions. The department's costs to implement this bill have yet to be determined. As the bill continues to move through the legislative process, costs will be identified.

**ECONOMIC IMPACT**

*Revenue Estimate*

This bill would result in the following revenue loss:

Estimated Revenue Loss of AB 806 as Introduced February 16, 2021  
Assumed Enactment after June 30, 2021

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2020-2021	-\$700
2021-2022	-1,100
2022-2023	-\$600
2023-2024	-\$55

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.

**LEGAL IMPACT**

None noted.

**APPOINTMENTS**

None noted.

**SUPPORT/OPPOSITION**

To be determined.

**ARGUMENTS**

To be determined.

**LEGISLATIVE CONTACT**

[FTBLegislativeServices@ftb.ca.gov](mailto:FTBLegislativeServices@ftb.ca.gov)