



## Bill Analysis

Author: Valladares

Sponsor:

Bill Number: AB 91

Related Bills: See Legislative  
History

Introduced: December 7, 2020

### SUBJECT

Reduced Annual & Minimum Franchise Tax for Small Businesses and Microbusinesses

### SUMMARY

This bill, under the Personal Income Tax Law (PITL), would reduce the annual tax for limited partnerships (LPs), limited liability partnerships (LLPs), and limited liability companies (LLCs) not classified as corporations, that are small businesses or microbusinesses, as defined, from \$800 to \$400 or \$200, respectively. In addition, under the Corporation Tax Law (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.

### RECOMMENDATION

No position.

### SUMMARY OF AMENDMENTS

Not applicable.

### REASON FOR THE BILL

The reason for this bill is to provide relief to California's struggling small businesses by reducing the annual \$800 minimum franchise tax to \$400 for small businesses and to \$200 for microbusinesses.

### ANALYSIS

For taxable years beginning on or after January 1, 2021, this bill would reduce the annual tax or minimum franchise tax for certain entities doing business in the state.

This bill, under the PITL, would reduce the annual tax for LPs, LLPs, and LLCs not classified as corporations, which are small businesses, as defined, from \$800 to \$400, and that are microbusinesses, as defined, from \$800 to \$200.

In addition, this bill, under the CTL, would reduce the minimum franchise tax for corporations that are small businesses, as defined, from \$800 to \$400, and that are microbusinesses, as defined, from \$800 to \$200.

This bill states that “small business” and “microbusiness” have the same meaning as those terms defined under Government Code (GC) Section 14837. For purposes of this bill:

A “small business” means either:

An independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of fifteen million dollars (\$15,000,000) or less over the previous three years.

Or is a manufacturer with 100 or fewer employees.

A “microbusiness” is either:

A small business which, together with affiliates, has average annual gross receipts of five million dollars (\$5,000,000) or less over the previous three years.

Or is a manufacturer with 25 or fewer employees.

A “manufacturer” means a business that meets both of the following requirements, it is:

Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

Classified between Codes 31 to 33, inclusive, of the North American Industry Classification System.

Section 5 of this bill contains language that would not be included in the numbered sections of the Revenue and Taxation Code (RTC), and provides that it is the intent of the Legislature to comply with the requirements of RTC section 41.

#### *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, 2021.

#### *Federal/State Law*

##### *Federal Law*

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

For taxable years beginning on or after January 1, 2020, an LLC or corporation that is a small business solely owned by a deployed member of the United States (U.S.) Armed Forces is not subject to the annual tax or minimum franchise tax for any taxable year that the owner is deployed and the LLC or corporation operates at a loss or ceases operation.

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*

Department staff has identified the following implementation consideration, and is available to work with the author's office to resolve this and other concerns that may be identified.

The bill's definition of a "small business," "microbusiness," or "manufacturer," pursuant to GC 14837, refers to the term "gross receipts." Typically, these thresholds would refer to the term "gross income." For clarity, and consistency within the RTC, it is recommended that the bill be amended to refer to "gross income."

### *Technical Considerations*

For clarity that exceptions, i.e., first taxable year exception and small business solely owned by a deployed member of the U.S. Armed Forces exception, do apply before application of this bill, the following changes are recommended:

17935. (g) (1) Except as otherwise provided *in subdivision (f)*, for taxable years beginning on or after January 1, 2021, a limited partnership shall pay to the state an annual tax of:

(A) If the limited partnership is a small business, four hundred dollars (\$400).

(B) If the limited partnership is a microbusiness, two hundred dollars (\$200).

17941. (h) (1) Except as otherwise provided in subdivisions (f) and (g), for taxable years beginning on or after January 1, 2021, a limited liability company shall pay to the state an annual tax of:

(A) If the limited liability company is a small business, four hundred dollars (\$400).

(B) If the limited liability company is a microbusiness, two hundred dollars (\$200).

17948. (f) (1) Except as otherwise provided in subdivision (e), for taxable years beginning on or after January 1, 2021, a limited liability partnership shall pay to the state an annual tax of:

(A) If the limited liability partnership is a small business, four hundred dollars (\$400).

(B) If the limited liability partnership is a microbusiness, two hundred dollars (\$200).

23153. (d) (1) Except as provided in paragraph (2), paragraph (1) of subdivision (f) of Section 23151, paragraph (1) of subdivision (f) of Section 23181, and paragraph (1) of subdivision (c) of Section 23183, corporations subject to the minimum franchise tax shall pay annually to the state a minimum franchise tax of:

(A) Except as otherwise provided in subdivision (f) and in subparagraph (B), eight hundred dollars (\$800).

### *Policy Considerations*

None noted.

### **LEGISLATIVE HISTORY**

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 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. AB 664 is currently in the committee process.

AB 806 (Chen, et al., 2021/2022) would, under the PITL, exempt LPs, LLPs, and 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 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. AB 806 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) would have, under the CTL, 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 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 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."

AB 2131 (Melendez, 2017/2018) would have reduced the minimum franchise tax from \$800 to \$400. AB 2131 did not pass out of the Assembly by the constitutional deadline.

AB 2410 (Grayson, 2017/18) would have reduced the annual tax for LLCs that were small businesses, as defined, within the first two years of operation from \$800 to \$400. AB 2410 did not pass out of the Assembly by the constitutional deadline.

**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 Impact of AB 91 as Introduced December 7, 2020  
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2021-2022	-\$550
2022-2023	-\$500
2023-2024	-\$500

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**

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