



## MEMORANDUM

**TO:** CAGLAR CAGLAYAN

Date: March 27, 2002

Case:

Case Unit:

In reply refer to: 410:CCC

**FROM:** CODY CINNAMON

**RE:** MINIMUM FRANCHISE TAX  
REVENUE AND TAXATION CODE SECTION 23153(f)(1)  
MEANING OF "FIRST TAXABLE YEAR"

### Question:

What is the plain meaning of the phrase "first taxable year" in Revenue and Taxation Code (Rev. & Tax. Code) section 23153(f)(1) as amended by AB 1843? Rev. and Tax. Code section 23153(f)(1) as amended by AB1843 chaptered on September 29, 2000 states:

Notwithstanding subdivision (a), every corporation that incorporates or qualifies to do business in this state on or after January 1, 2000, shall not be subject to the minimum franchise tax for its first taxable year.

### Answer:

The phrase "first taxable year" means the corporation's **earliest** fiscal or calendar year beginning on or after January 1, 2000, that the corporation incorporates, qualifies or begins doing business in California. This option is consistent with Rev. and Tax. Code section 23153, subdivisions (a) and (b).

This interpretation allows the first year exemption for the first year that the company begins doing business in the state. However, to get the exemption it would have to qualify with the Secretary of State within the four-year statute of limitations (SOL). For example, a corporation that began doing business in California in 2000 and qualifies with the SOS in 2006 will be time-barred from claiming the first year exemption from minimum franchise tax for 2000. However, this interpretation helps the taxpayer in its first year of business in California and provides an incentive for nonqualified corporations to qualify with the SOS within a reasonable time after they begin doing business in the state.

Additionally, due to the effective date of the AB 1843 amendments to Rev. & Tax. Code section 23153(f)(1), a nonqualified corporation is not entitled to the first year exemption from minimum franchise tax if it began doing business in California in a fiscal or calendar year beginning prior to January 1, 2000, even though it qualifies with the Secretary of State in a fiscal or calendar year

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beginning on or after January 1, 2000. Nevertheless, Rev. & Tax. Code section 23153(f)(1) as amended by AB1843 permits a nonqualified corporation the first year exemption of minimum franchise tax if in a taxable year beginning on or after January 1, 2000, it commences doing business in California even though it thereafter qualifies with the Secretary of State within the SOL.

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