

**ASSEMBLY BILL**

**No. 91**

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**Introduced by Assembly Member Valladares**

December 7, 2020

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An act to amend Sections 17935, 17941, 17948, and 23153 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 91, as introduced, Valladares. Taxation: corporations: minimum franchise tax: limited liability companies: annual tax: small businesses: microbusinesses.

Existing law imposes an annual minimum franchise tax of \$800, except as provided, on every corporation incorporated in this state, qualified to transact intrastate business in this state, or doing business in this state. Existing law also imposes an annual tax in an amount equal to the minimum franchise tax on every limited partnership, limited liability partnership, and limited liability company doing business in this state, as specified. Existing law requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives the tax expenditure will achieve, detailed performance indicators, and data collection requirements.

This bill, for taxable years beginning on or after January 1, 2021, would reduce the minimum franchise tax to \$400 for small businesses, as defined, and to \$200 for microbusinesses, as defined. The bill, for taxable years beginning on or after January 1, 2021, would also reduce the annual tax for the limited liability companies described above that are small businesses to \$400 and that are microbusinesses to \$200. The bill would also state the intent of the Legislature to comply with the

additional information requirement for any bill authorizing a new tax expenditure.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 17935 of the Revenue and Taxation Code  
2 is amended to read:

3 17935. (a) ~~Except as provided in subdivision (f), for~~ For each  
4 taxable year beginning on or after January 1, 1997, every limited  
5 partnership doing business in this state (as defined by Section  
6 23101) and required to file a return under Section 18633 shall pay  
7 annually to this state a tax for the privilege of doing business in  
8 this state in an amount equal to the applicable amount specified  
9 in ~~Section 23153. 23153,~~ *except as otherwise provided in this*  
10 *section.*

11 (b) (1) In addition to any limited partnership that is doing  
12 business in this state and therefore is subject to the tax imposed  
13 by subdivision (a), for each taxable year beginning on or after  
14 January 1, 1997, every limited partnership that has executed,  
15 acknowledged, and filed a certificate of limited partnership with  
16 the Secretary of State pursuant to Section 15621 or 15902.01 of  
17 the Corporations Code, and every foreign limited partnership that  
18 has registered with the Secretary of State pursuant to Section 15692  
19 or 15909.01 of the Corporations Code, shall pay annually the tax  
20 prescribed in subdivision (a). The tax shall be paid for each taxable  
21 year, or part thereof, until a certificate of cancellation is filed on  
22 behalf of the limited partnership with the office of the Secretary  
23 of State pursuant to Section 15623, 15696, 15902.03, or 15909.07  
24 of the Corporations Code.

25 (2) If a taxpayer files a return with the Franchise Tax Board that  
26 is designated its final return, that board shall notify the taxpayer  
27 that the tax imposed by this chapter is due annually until a  
28 certificate of cancellation is filed with the Secretary of State  
29 pursuant to Section 15623, 15696, 15902.03, or 15909.07 of the  
30 Corporations Code.

1 (c) The tax imposed by this chapter shall be due and payable  
2 on the date the return is required to be filed under former Section  
3 18432 or 18633.

4 (d) For purposes of this section, “limited partnership” means  
5 any partnership formed by two or more persons under the laws of  
6 this state or any other jurisdiction and having one or more general  
7 partners and one or more limited partners.

8 (e) Notwithstanding subdivision (b), any limited partnership  
9 that ceased doing business prior to January 1, 1997, filed a final  
10 return with the Franchise Tax Board for a taxable year ending  
11 before January 1, 1997, and filed a certificate of dissolution with  
12 the Secretary of State pursuant to Section 15623 of the  
13 Corporations Code prior to January 1, 1997, shall not be subject  
14 to the tax imposed by this chapter for any period following the  
15 date the certificate of dissolution was filed with the Secretary of  
16 State, but only if the limited partnership files a certificate of  
17 cancellation with the Secretary of State pursuant to Section 15623  
18 of the Corporations Code. In the case where a notice of proposed  
19 deficiency assessment of tax or a notice of tax due (whichever is  
20 applicable) is mailed after January 1, 2001, the first sentence of  
21 this subdivision shall not apply unless the certificate of cancellation  
22 is filed with the Secretary of State not later than 60 days after the  
23 date of the mailing of the notice.

24 (f) (1) Every limited partnership doing business in this state as  
25 described in subdivision (a) that files a certificate of limited  
26 partnership or registers with the Secretary of the State pursuant to  
27 subdivision (b) on or after January 1, 2021, and before January 1,  
28 2024, shall not be subject to the tax imposed under this section for  
29 its first taxable year.

30 (2) This subdivision shall become operative only for a taxable  
31 year in which any budget measure appropriates one dollar (\$1) or  
32 more to the Franchise Tax Board for the costs associated with  
33 administration of this subdivision.

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

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

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

1 (2) For purposes of this subdivision, both of the following  
 2 definitions shall apply:

3 (A) “Microbusiness” has the same meaning as that term is  
 4 defined in Section 14837 of the Government Code.

5 (B) “Small business” has the same meaning as that term is  
 6 defined in Section 14837 of the Government Code.

7 SEC. 2. Section 17941 of the Revenue and Taxation Code is  
 8 amended to read:

9 17941. (a) ~~Except as provided in subdivision (g), for~~ For each  
 10 taxable year beginning on or after January 1, 1997, a limited  
 11 liability company doing business in this state (as defined in Section  
 12 23101) shall pay annually to this state a tax for the privilege of  
 13 doing business in this state in an amount equal to the applicable  
 14 amount specified in subdivision (d) of Section 23153 for the taxable  
 15 ~~year.~~ year, *except as otherwise provided in this section.*

16 (b) (1) In addition to any limited liability company that is doing  
 17 business in this state and is therefore subject to the tax imposed  
 18 by subdivision (a), for each taxable year beginning on or after  
 19 January 1, 1997, a limited liability company shall pay annually  
 20 the tax prescribed in subdivision (a) if articles of organization have  
 21 been accepted, or a certificate of registration has been issued, by  
 22 the office of the Secretary of State. The tax shall be paid for each  
 23 taxable year, or part thereof, until a certificate of cancellation of  
 24 registration or of articles of organization is filed on behalf of the  
 25 limited liability company with the office of the Secretary of State.

26 (2) If a taxpayer files a return with the Franchise Tax Board that  
 27 is designated as its final return, the Franchise Tax Board shall  
 28 notify the taxpayer that the annual tax shall continue to be due  
 29 annually until a certificate of dissolution is filed with the Secretary  
 30 of State pursuant to Section 17707.08 of the Corporations Code  
 31 or a certificate of cancellation is filed with the Secretary of State  
 32 pursuant to Section 17708.06 of the Corporations Code.

33 (c) The tax assessed under this section shall be due and payable  
 34 on or before the 15th day of the fourth month of the taxable year.

35 (d) For purposes of this section, “limited liability company”  
 36 means an organization, other than a limited liability company that  
 37 is exempt from the tax and fees imposed under this chapter  
 38 pursuant to Section 23701h or Section 23701x, that is formed by  
 39 one or more persons under the law of this state, any other country,

1 or any other state, as a “limited liability company” and that is not  
2 taxable as a corporation for California tax purposes.

3 (e) Notwithstanding anything in this section to the contrary, if  
4 the office of the Secretary of State files a certificate of cancellation  
5 pursuant to Section 17707.02 of the Corporations Code for any  
6 limited liability company, then paragraph (1) of subdivision (f) of  
7 Section 23153 shall apply to that limited liability company as if  
8 the limited liability company were properly treated as a corporation  
9 for that limited purpose only, and paragraph (2) of subdivision (f)  
10 of Section 23153 shall not apply. Nothing in this subdivision  
11 entitles a limited liability company to receive a reimbursement for  
12 any annual taxes or fees already paid.

13 (f) (1) Notwithstanding any provision of this section to the  
14 contrary, for taxable years beginning on or after January 1, 2020,  
15 a limited liability company that is a small business solely owned  
16 by a deployed member of the United States Armed Forces shall  
17 not be subject to the tax imposed under this section for any taxable  
18 year the owner is deployed and the limited liability company  
19 operates at a loss or ceases operation.

20 (2) The Franchise Tax Board may promulgate regulations as  
21 necessary or appropriate to carry out the purposes of this  
22 subdivision, including a definition for “ceases operation.”

23 (3) For the purposes of this subdivision, all of the following  
24 definitions apply:

25 (A) “Deployed” means being called to active duty or active  
26 service during a period when a Presidential Executive order  
27 specifies that the United States is engaged in combat or homeland  
28 defense. “Deployed” does not include either of the following:

- 29 (i) Temporary duty for the sole purpose of training or processing.
- 30 (ii) A permanent change of station.

31 (B) “Operates at a loss” means a limited liability company’s  
32 expenses exceed its receipts.

33 (C) “Small business” means a limited liability company with  
34 total income from all sources derived from, or attributable to, the  
35 state of two hundred fifty thousand dollars (\$250,000) or less.

36 (4) This subdivision shall become inoperative for taxable years  
37 beginning on or after January 1, 2030.

38 (g) (1) Every limited liability company doing business in this  
39 state as described in subdivision (a) that organizes or registers with  
40 the Secretary of the State pursuant to subdivision (b) on or after

1 January 1, 2021, and before January 1, 2024, shall not be subject  
2 to the tax imposed under this section for its first taxable year.

3 (2) This subdivision shall become operative only for a taxable  
4 year in which any budget measure appropriates one dollar (\$1) or  
5 more to the Franchise Tax Board for the costs associated with  
6 administration of this subdivision.

7 *(h) (1) Except as otherwise provided, for taxable years*  
8 *beginning on or after January 1, 2021, a limited liability company*  
9 *shall pay to the state an annual tax of:*

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

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

14 *(2) For purposes of this subdivision, both of the following*  
15 *definitions shall apply:*

16 *(A) "Microbusiness" has the same meaning as that term is*  
17 *defined in Section 14837 of the Government Code.*

18 *(B) "Small business" has the same meaning as that term is*  
19 *defined in Section 14837 of the Government Code.*

20 SEC. 3. Section 17948 of the Revenue and Taxation Code is  
21 amended to read:

22 17948. (a) ~~Except as provided in subdivision (e), for~~ For each  
23 taxable year beginning on or after January 1, 1997, every limited  
24 liability partnership doing business in this state (as defined in  
25 Section 23101) and required to file a return under Section 18633  
26 shall pay annually to the Franchise Tax Board a tax for the privilege  
27 of doing business in this state in an amount equal to the applicable  
28 amount specified in paragraph (1) of subdivision (d) of Section  
29 23153 for the taxable ~~year~~ year; *except as otherwise provided in*  
30 *this section.*

31 (b) In addition to any limited liability partnership that is doing  
32 business in this state and therefore is subject to the tax imposed  
33 by subdivision (a), for each taxable year beginning on or after  
34 January 1, 1997, every registered limited liability partnership that  
35 has registered with the Secretary of State pursuant to Section 16953  
36 of the Corporations Code and every foreign limited liability  
37 partnership that has registered with the Secretary of State pursuant  
38 to Section 16959 of the Corporations Code shall pay annually the  
39 tax prescribed in subdivision (a). The tax shall be paid for each  
40 taxable year, or part thereof, until any of the following occurs:

1 (1) A notice of cessation is filed with the Secretary of State  
2 pursuant to subdivision (b) of Section 16954 or 16960 of the  
3 Corporations Code.

4 (2) A foreign limited liability partnership withdraws its  
5 registration pursuant to subdivision (a) of Section 16960 of the  
6 Corporations Code.

7 (3) The registered limited liability partnership or foreign limited  
8 liability partnership has been dissolved and finally wound up.

9 (c) The tax assessed under this section shall be due and payable  
10 on the date the return is required to be filed under Section 18633.

11 (d) If a taxpayer files a return with the Franchise Tax Board that  
12 is designated as its final return, the Franchise Tax Board shall  
13 notify the taxpayer that the annual tax shall continue to be due  
14 annually until a certificate of cancellation is filed with the Secretary  
15 of State pursuant to Section 16954 or 16960 of the Corporations  
16 Code.

17 (e) (1) Every limited liability partnership doing business in this  
18 state as described in subdivision (a) that registers with the Secretary  
19 of the State pursuant to subdivision (b) on or after January 1, 2021,  
20 and before January 1, 2024, shall not be subject to the tax imposed  
21 under this section for its first taxable year.

22 (2) This subdivision shall become operative only for a taxable  
23 year in which any budget measure appropriates one dollar (\$1) or  
24 more to the Franchise Tax Board for the costs associated with  
25 administration of this subdivision.

26 (f) (1) *Except as otherwise provided, for taxable years*  
27 *beginning on or after January 1, 2021, a limited liability*  
28 *partnership shall pay to the state an annual tax of:*

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

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

33 (2) *For purposes of this subdivision, both of the following*  
34 *definitions shall apply:*

35 (A) *“Microbusiness” has the same meaning as that term is*  
36 *defined in Section 14837 of the Government Code.*

37 (B) *“Small business” has the same meaning as that term is*  
38 *defined in Section 14837 of the Government Code.*

39 SEC. 4. Section 23153 of the Revenue and Taxation Code is  
40 amended to read:

1 23153. (a) Every corporation described in subdivision (b) shall  
2 be subject to the minimum franchise tax specified in subdivision  
3 (d) from the earlier of the date of incorporation, qualification, or  
4 commencing to do business within this state, until the effective  
5 date of dissolution or withdrawal as provided in Section 23331 or,  
6 if later, the date the corporation ceases to do business within the  
7 limits of this state.

8 (b) Unless expressly exempted by this part or the California  
9 Constitution, subdivision (a) shall apply to each of the following:

10 (1) Every corporation that is incorporated under the laws of this  
11 state.

12 (2) Every corporation that is qualified to transact intrastate  
13 business in this state pursuant to Chapter 21 (commencing with  
14 Section 2100) of Division 1 of Title 1 of the Corporations Code.

15 (3) Every corporation that is doing business in this state.

16 (c) The following entities are not subject to the minimum  
17 franchise tax specified in this section:

18 (1) Credit unions.

19 (2) Nonprofit cooperative associations organized pursuant to  
20 Chapter 1 (commencing with Section 54001) of Division 20 of the  
21 Food and Agricultural Code that have been issued the certificate  
22 of the board of supervisors prepared pursuant to Section 54042 of  
23 the Food and Agricultural Code. The association shall be exempt  
24 from the minimum franchise tax for five consecutive taxable years,  
25 commencing with the first taxable year for which the certificate  
26 is issued pursuant to subdivision (b) of Section 54042 of the Food  
27 and Agricultural Code. This paragraph only applies to nonprofit  
28 cooperative associations organized on or after January 1, 1994.

29 (d) (1) Except as provided in paragraph (2), paragraph (1) of  
30 subdivision (f) of Section 23151, paragraph (1) of subdivision (f)  
31 of Section 23181, and paragraph (1) of subdivision (c) of Section  
32 23183, corporations subject to the minimum franchise tax shall  
33 pay annually to the state a minimum franchise tax of ~~eight hundred~~  
34 ~~dollars (\$800)~~. of:

35 (A) *Except as otherwise provided in subparagraph (B), eight*  
36 *hundred dollars (\$800).*

37 (B) (i) *For taxable years beginning on or after January 1, 2021:*

38 (I) *If the corporation is a small business, four hundred dollars*  
39 *(\$400).*



1 (II) If the corporation is a microbusiness, two hundred dollars  
2 (\$200).

3 (ii) For purposes of this subparagraph, both of the following  
4 definitions shall apply:

5 (I) "Microbusiness" has the same meaning as that term is  
6 defined in Section 14837 of the Government Code.

7 (II) "Small business" has the same meaning as that term is  
8 defined in Section 14837 of the Government Code.

9 (2) The minimum franchise tax shall be twenty-five dollars  
10 (\$25) for each of the following:

11 (A) A corporation formed under the laws of this state whose  
12 principal business when formed was gold mining, which is inactive  
13 and has not done business within the limits of the state since 1950.

14 (B) A corporation formed under the laws of this state whose  
15 principal business when formed was quicksilver mining, which is  
16 inactive and has not done business within the limits of the state  
17 since 1971, or has been inactive for a period of 24 consecutive  
18 months or more.

19 (3) For purposes of paragraph (2), a corporation shall not be  
20 considered to have done business if it engages in business other  
21 than mining.

22 (e) Notwithstanding subdivision (a), for taxable years beginning  
23 on or after January 1, 1999, and before January 1, 2000, every  
24 "qualified new corporation" shall pay annually to the state a  
25 minimum franchise tax of five hundred dollars (\$500) for the  
26 second taxable year. This subdivision shall apply to any corporation  
27 that is a qualified new corporation and is incorporated on or after  
28 January 1, 1999, and before January 1, 2000.

29 (1) The determination of the gross receipts of a corporation, for  
30 purposes of this subdivision, shall be made by including the gross  
31 receipts of each member of the commonly controlled group, as  
32 defined in Section 25105, of which the corporation is a member.

33 (2) "Gross receipts, less returns and allowances reportable to  
34 this state," means the sum of the gross receipts from the production  
35 of business income, as defined in subdivision (a) of Section 25120,  
36 and the gross receipts from the production of nonbusiness income,  
37 as defined in subdivision (d) of Section 25120.

38 (3) "Qualified new corporation" means a corporation that is  
39 incorporated under the laws of this state or has qualified to transact  
40 intrastate business in this state, that begins business operations at

1 or after the time of its incorporation and that reasonably estimates  
2 that it will have gross receipts, less returns and allowances,  
3 reportable to this state for the taxable year of one million dollars  
4 (\$1,000,000) or less. “Qualified new corporation” does not include  
5 any corporation that began business operations as a sole  
6 proprietorship, a partnership, or any other form of business entity  
7 prior to its incorporation. This subdivision shall not apply to any  
8 corporation that reorganizes solely for the purpose of reducing its  
9 minimum franchise tax.

10 (4) This subdivision shall not apply to limited partnerships, as  
11 defined in Section 17935, limited liability companies, as defined  
12 in Section 17941, limited liability partnerships, as described in  
13 Section 17948, charitable organizations, as described in Section  
14 23703, regulated investment companies, as defined in Section 851  
15 of the Internal Revenue Code, real estate investment trusts, as  
16 defined in Section 856 of the Internal Revenue Code, real estate  
17 mortgage investment conduits, as defined in Section 860D of the  
18 Internal Revenue Code, qualified Subchapter S subsidiaries, as  
19 defined in Section 1361(b)(3) of the Internal Revenue Code, or to  
20 the formation of any subsidiary corporation, to the extent  
21 applicable.

22 (5) For any taxable year beginning on or after January 1, 1999,  
23 and before January 1, 2000, if a corporation has qualified to pay  
24 five hundred dollars (\$500) for the second taxable year under this  
25 subdivision, but in its second taxable year, the corporation’s gross  
26 receipts, as determined under paragraphs (1) and (2), exceed one  
27 million dollars (\$1,000,000), an additional tax in the amount equal  
28 to three hundred dollars (\$300) for the second taxable year shall  
29 be due and payable by the corporation on the due date of its return,  
30 without regard to extension, for that year.

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

35 (2) This subdivision shall not apply to limited partnerships, as  
36 defined in Section 17935, limited liability companies, as defined  
37 in Section 17941, limited liability partnerships, as described in  
38 Section 17948, charitable organizations, as described in Section  
39 23703, regulated investment companies, as defined in Section 851  
40 of the Internal Revenue Code, real estate investment trusts, as

1 defined in Section 856 of the Internal Revenue Code, real estate  
2 mortgage investment conduits, as defined in Section 860D of the  
3 Internal Revenue Code, and qualified Subchapter S subsidiaries,  
4 as defined in Section 1361(b)(3) of the Internal Revenue Code, to  
5 the extent applicable.

6 (3) This subdivision shall not apply to any corporation that  
7 reorganizes solely for the purpose of avoiding payment of its  
8 minimum franchise tax.

9 (g) Notwithstanding subdivision (a), a domestic corporation, as  
10 defined in Section 167 of the Corporations Code, that files a  
11 certificate of dissolution in the office of the Secretary of State  
12 pursuant to subdivision (b) of Section 1905 of the Corporations  
13 Code, prior to its amendment by the act amending this subdivision,  
14 and that does not thereafter do business shall not be subject to the  
15 minimum franchise tax for taxable years beginning on or after the  
16 date of that filing.

17 (h) The minimum franchise tax imposed by paragraph (1) of  
18 subdivision (d) shall not be increased by the Legislature by more  
19 than 10 percent during any calendar year.

20 (i) (1) Notwithstanding subdivision (a), for taxable years  
21 beginning on or after January 1, 2020, a corporation that is a small  
22 business solely owned by a deployed member of the United States  
23 Armed Forces shall not be subject to the minimum franchise tax  
24 for any taxable year the owner is deployed and the corporation  
25 operates at a loss or ceases operation.

26 (2) The Franchise Tax Board may promulgate regulations as  
27 necessary or appropriate to carry out the purposes of this  
28 subdivision, including a definition for “ceases operation.”

29 (3) For the purposes of this subdivision, all of the following  
30 definitions apply:

31 (A) “Deployed” means being called to active duty or active  
32 service during a period when a Presidential Executive order  
33 specifies that the United States is engaged in combat or homeland  
34 defense. “Deployed” does not include either of the following:

35 (i) Temporary duty for the sole purpose of training or processing.

36 (ii) A permanent change of station.

37 (B) “Operates at a loss” means negative net income as defined  
38 in Section 24341.

1 (C) “Small business” means a corporation with total income  
2 from all sources derived from, or attributable to, the state of two  
3 hundred fifty thousand dollars (\$250,000) or less.

4 (4) This subdivision shall become inoperative for taxable years  
5 beginning on or after January 1, 2030.

6 SEC. 5. It is the intent of the Legislature to comply with Section  
7 41 of the Revenue and Taxation Code.

8 SEC. 6. This act provides for a tax levy within the meaning of  
9 Article IV of the California Constitution and shall go into  
10 immediate effect.