

Date of Hearing: May 18, 2020

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Autumn R. Burke, Chairwoman

AB 2660 (Burke) – As Amended May 11, 2020

Majority vote. Fiscal committee.

SUBJECT: Income taxes: administration: nonresident aliens: identifying numbers: group filing

SUMMARY: Provides for the filing of a group return for electing nonresident aliens who receive taxable income for services that take place in this state. Specifically, **this bill:**

- 1) Requires the Franchise Tax Board (FTB), for taxable years beginning on or after January 1, 2021, and until January 1, 2026, to provide for the filing of a group return for electing nonresident aliens. Specifically:
 - a) Provides that, in lieu of nonresident aliens filing a return under Revenue and Taxation Code (R&TC) Section 18501, the FTB shall provide for the filing of a group return by a taxpayer, or an entity authorized by the taxpayer to file on its behalf, for one or more electing nonresident aliens who receive taxable income as computed under R&TC Section 17041(i)(1) from that taxpayer for services that take place in this state.
 - b) Provides that, for a nonresident alien electing to file in a group return, the tax rate or rates applicable to each nonresident's taxable income for services performed in this state for that taxpayer shall consist of the highest marginal rate or rates provided for by the Personal Income Tax (PIT) Law plus, in the case of any electing nonresident alien included on the group return who would be subject to R&TC Section 17043 when filing individually, an additional tax rate of 1%, and no deductions or credits shall be allowed, except as provided.
 - c) Provides that the taxpayer, or an entity authorized by the taxpayer to file on its behalf, as the agent for the electing nonresident aliens, shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by, or imposed on, the electing nonresident aliens.
 - d) Provides that the FTB shall not require a nonresident alien who is not eligible for or has not been issued a federal Social Security number (SSN) or a federal individual taxpayer identification number (ITIN) to provide a SSN or ITIN in order to file in a group return under this bill. However, if the nonresident alien subsequently becomes eligible for and is issued a SSN or ITIN, the FTB may require the nonresident alien to provide a letter or other form documenting the nonresident alien's SSN or ITIN.

- e) Authorizes the FTB to adjust the income of an electing nonresident alien taxpayer included in a group return filed under this bill to properly reflect the income under the PIT Law.
 - f) Authorizes the FTB to adopt regulations as necessary or appropriate to carry out the purposes of this bill.
 - g) Provides that the term "nonresident alien" shall have the same meaning as in R&TC Section 18624(f).
 - h) Repeals these provisions automatically on December 1, 2026.
- 2) Provides that, for taxable years beginning on or after January 1, 2021, and until January 1, 2026, a nonresident alien's gross income does not include any payment of tax made by an agent pursuant to this bill. This gross income exclusion remains in effect only until December 1, 2026, and as of that date is repealed.
- 3) Prohibits the FTB, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, from requiring a nonresident alien who is not eligible for or has not been issued a federal SSN or a federal ITIN to provide a SSN or ITIN in order to file a state tax return, statement, or other document.
- a) Provides that if a nonresident alien subsequently becomes eligible for and is issued a SSN or ITIN, the FTB may require the nonresident alien to provide a letter or other form documenting the nonresident alien's SSN or ITIN.
 - b) Defines a nonresident alien, for purposes of this provision, as a nonresident, as defined in R&TC Section 17015, who also meets the requirements of Internal Revenue Code Section 7701(b)(1)(B).
 - c) Specifies that this provision shall remain in effect only until December 1, 2026, and as of that date is repealed.
- 4) Provides that in the case of a nonresident alien electing to file in a group return, the amount withheld during any calendar year shall be allowed to the recipient of the income as a credit against the tax for the taxable year with respect to which the amount was withheld. This provision shall remain in effect only until December 1, 2026, and as of that date is repealed.
- 5) Provides that, for purposes of the withholding statement required by Unemployment Insurance Code (UIC) Section 13050, if an employee is a nonresident alien who is not eligible for or has not been issued a SSN or identifying number, a SSN or identifying number shall not be shown for that employee. Further specifies that this provision shall remain in effect only until January 1, 2026, and as of that date is repealed.
- 6) Provides that, beginning January 1, 2021, the Employment Development Department (EDD) shall not require a person or employer to make a return, report, statement, or other document to include in the return the federal SSN or federal ITIN of an employee who is a nonresident alien and who is not eligible for or has not been issued a SSN or ITIN, and in place of an

identifying number, the EDD shall authorize the person or employer to use the nonresident alien employee's name.

- a) Specifies that, for purposes of this provision, "nonresident alien" shall have the same meaning as described in R&TC Section 18624(f).
 - b) Specifies that this provision shall remain in effect only until January 1, 2026, and as of that date is repealed.
- 7) Provides that UIC Section 13057, which imposes penalties for failure to provide identifying numbers, shall not apply to a person or employer who uses a nonresident alien employee's name in place of an identifying number pursuant to this bill. Further specifies that this exemption shall remain in effect only until January 1, 2026.

EXISTING LAW:

- 1) Imposes a tax on the entire taxable income of an individual taxpayer subject to the PIT Law, and provides for the specified treatment of the income of nonresidents.
- 2) Requires every taxpayer subject to tax under the PIT Law to file a return with the FTB, and authorizes the FTB to provide for the filing of a group return for electing nonresident partners or nonresident directors of a corporation, as specified.
- 3) Requires identifying numbers to be included on state tax returns, statements, or other documents, and in conformity with federal law, defines identifying numbers to mean a federal SSN or ITIN, unless otherwise provided.
- 4) Requires employers who pay wages to employees, including nonresident employees, for services performed in the state to deduct and withhold from those wages specified taxes and to make returns, reports, statements, and other documents related to the wages paid and withheld.
- 5) Requires employers to include in the returns, reports, statements, and other documents each employee's SSN or other identifying number, as specified.

FISCAL EFFECT: The FTB estimates increased General Fund revenues of \$12 million in fiscal year (FY) 20-21, \$27 million in FY 21-22, and \$34 million in FY 22-23.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

This commonsense bill gives international companies the option of filing a group return for their foreign employees who travel to California for work and incur a personal income tax liability. For foreign employees who choose to take advantage of this option, this bill would eliminate the current requirement to file tax returns individually. This bill would also eliminate the requirement for employers or foreign employees to provide a SSN or ITIN – given that these identification methods are either not available for such employees or extremely challenging to obtain. In this manner, this bill provides a significant benefit

to the business community by easing tax compliance and administrative burdens for both companies and employees alike.

- 2) This bill is supported by the Taxation Section of the California Lawyers Association, which notes:

International employees often travel to California on business for short periods of time. International business travelers, however, are commonly ineligible to apply for a Social Security number which is required for an employer to remit and withhold taxes via payroll. While many companies actively track the business travel of their international employees and can identify when tax withholding and reporting responsibilities exist, they lack an effective mechanism to remit taxes with respect to this group of employees. Moreover, only a very limited number of non-domestic employees file income tax returns on an individual basis.

AB 2660 proposes a novel and entirely voluntary solution to this problem. Specifically, this bill offers companies the option of filing a group return as a way to simplify and handle filings for their international travelers to California. This bill provides a significant benefit to the business community by easing tax compliance and administrative burdens for both companies and employees alike. For these reasons, the Taxation Section of the California Lawyers Association is pleased to offer its enthusiastic support for AB 2660 and urges its passage when heard in your committee.

- 3) The FTB notes the following in its staff analysis of this bill:

Because of the statutory requirement that every member of a group nonresident return must provide a SSN or ITIN upon filing, currently, there is no mechanism in place to file a group return on behalf of nonresident aliens without SSNs or ITINs. Generally, international business travelers from outside the U.S., nonresident aliens, as defined, are not eligible to apply for an SSN for a number of reasons, including that they do not have the visa type that permits application for a SSN. In addition, temporary work assignments in the U.S. do not warrant the effort and time necessary to apply for an ITIN.

- 4) Committee Staff Comments:

- a) *General background:* International employees often travel to California on business for short periods of time and their work in California can give rise to state income tax payment and filing obligations. Existing law requires "identifying numbers" to be included on state income tax returns and, in conformity with federal law, defines "identifying numbers" as a federal SSN or ITIN. International business travelers, however, are commonly ineligible to apply for a SSN or ITIN. As such, only a small number of these non-domestic employees file income tax returns on an individual basis.

Moreover, while many *companies* actively track the business travel of their international employees and can identify when tax withholding and reporting responsibilities exist, these companies currently lack an effective mechanism to remit taxes with respect to this group of employees.

- b) *What would this bill do?* AB 2660 proposes a novel and completely voluntary solution to this problem. Specifically, this bill offers companies the *option* of filing a "group" or "composite" return as a way to simplify and handle filings for their international travelers to California. This approach is partially modeled on existing law, which authorizes the FTB to provide for the filing of a group return for electing nonresident partners or nonresident directors of a corporation.
- c) *Filling in the details:* This bill provides that, in lieu of nonresident aliens filing individual income tax returns, the FTB will allow the filing of a single group return for *electing* nonresident aliens who receive taxable income for services performed in this state. Thus, if an international company sends 100 of its employees to California during the course of a year to perform services here, those employees would not have to file individual income tax returns with the FTB. Instead, if they elect, they could be included in a single group return filed by their employer.

For those international employees voluntarily choosing to file using a group return, the tax rate applied to their taxable income will be set at the highest marginal rate provided for by the PIT Law. This is being done to promote administrative efficiency, both for the companies preparing the returns and for the FTB. It bears repeating, however, that an employee's decision whether or not to participate in this program is entirely voluntary. The employee's company, or other authorized entity, would then be responsible for making payments of tax on behalf of their electing employees. This bill would, in turn, specifically exclude these payments from the international business travelers' gross income.

To enable the filing of these group returns, this bill specifies that nonresident aliens who are not eligible for or who have not been issued a SSN or ITIN shall not be required to provide a SSN or ITIN to be included in a group return. However, if the nonresident alien subsequently becomes eligible for and is issued a SSN or ITIN, the FTB may require the nonresident alien to provide a letter documenting the nonresident alien's SSN or ITIN.

Finally, this bill would automatically sunset these various provisions after five years to allow the state, international companies, and individual employees to assess its effectiveness and utilization.

REGISTERED SUPPORT / OPPOSITION:

Support

Allianz of America, Inc.
California Lawyers Association, Taxation Section

Opposition

None on file

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