Date of Hearing: June 2, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 2660 (Burke) – As Amended May 11, 2020

Policy Committee: Revenue and Taxation Vote: 11 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill creates a voluntary process for an employer to file a group return on behalf of nonresident aliens who owe income tax for services that take place in California. Specifically, this bill

1) Allows for the filing of a group return by a taxpayer for one or more electing nonresident aliens who receive taxable income from the taxpayer for services that take place in the state. This group return would be in lieu of each nonresident alien filing an individual income tax return.

2) Sets the tax rate for the group return at the highest marginal tax rate allowed under state law and allows the taxpayer (or an entity authorized to file on behalf of the taxpayer) to pay the tax, interest and penalties otherwise required to be paid for by the nonresident alien.

3) Authorizes the FTB to allow a nonresident alien who is ineligible for a federal social security number (SSN) or federal individual taxpayer identification number (ITIN), or who has not received one yet, to participate in the group return.

4) Authorizes the Employment Development Department (EDD) to allow a person or employer to use a nonresident alien's name on a return, report, statement or other document instead of an SSN or ITIN when that employee cannot, or has not yet, obtained an SSN or ITIN. This bill also provides that for the purposes of a withholding statement, an SSN or ITIN will not be shown for an employee who is a nonresident alien who is not eligible for or has not been issued an SSN or ITIN.

5) Makes the above provisions operative from January 1, 2021 to January 1, 2026.

FISCAL EFFECT:

1) Annual General Fund (GF) revenue of $12 million in 2020-21, $27 million in 2021-22, and $34 million in 2022-23.

2) Unknown, but potential significant, GF costs for EDD to develop new processes to accept additional information from taxpayers.

COMMENTS:

1) **Group returns**. Current law allows nonresident taxpayers (including out-of-state taxpayers) to participate in a group tax return. An individual taxpayer must elect to join this group return, and the group return reports all of the participants' California-sourced income and compensation. Generally, the business or corporation files the return and pays the tax on behalf of the taxpayers, and this income is taxed at the highest marginal tax rate (12.3%) as well as the mental health tax (1%), if it applies. The nonresident taxpayer must have either an SSN or an ITIN to elect to join a group return. Companies that use this option typically value the ease of administration and compliance.

2) **Business travelers.** A subset of nonresidents working in California are business travelers here for a brief period. Both domestic and international companies will occasionally send a group of foreign-born employees into California, typically for a conference or for a short-term project. These workers, like anyone employed in California, owe income taxes on the income earned. Typically, the company will attempt to pay these taxes on behalf of the workers. However, because of the nature of the visit, these short-term workers do not receive an SSN. Moreover, even if these workers are eligible for an ITIN, it can be overly onerous to get one or take so long the taxpayer becomes past due on tax obligations. Moreover, income taxes cannot be paid through paycheck withholdings because the Employment Development Department (EDD) requires either an SSN or an ITIN. Therefore, the company must file individual income tax returns for each employee.

3) **Purpose**. According to the author, this bill will create a streamlined process that allows international companies to more easily pay income taxes owed by their employees because of their visit to California.

4) **How would this bill work?** As the Assembly Committee on Revenue & Taxation notes in its analysis, this bill streamlines tax payments in instances when a single company sends workers into California to perform services in the state. The process mirrors the current process for group returns, but creates additional allowances for those workers without an SSN or ITIN.

   This new process also simplifies other FTB processes and calculations. First, any taxpayer choosing to file using the group return would be subject to the highest marginal rate provided for by state law. Second, any participating nonresident taxpayer who does not have an SSN or ITIN will not be required to provide one in order to be included in the group return.

5) **How EDD fits.** This bill contains a number of provisions related to EDD. As mentioned above, EDD does not allow payroll taxes to be withheld without a valid SSN or ITIN. This bill allows EDD to accept a name in lieu of an SSN or ITIN in cases when an employee cannot obtain either of them. This provision could potentially be costly because EDD would need to develop new processes and forms to accept these types of returns. And, it is unclear whether these provisions would even be effective. Given these questions, the committee suggests focusing only – for now – on the income tax component of this bill.

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