

## ASSEMBLY THIRD READING

AB 2660 (Burke)

As Amended June 4, 2020

Majority vote

**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.

**Major Provisions**

- 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) 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) 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.

## COMMENTS:

*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.

*What would this bill do?* This bill 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.

### According to the Author:

"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."

**Arguments in Support:**

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.

**Arguments in Opposition:**

None on file

**FISCAL COMMENTS:**

According to the Assembly Appropriations Committee, annual General Fund revenue of \$12 million in 2020-21, \$27 million in 2021-22, and \$34 million in 2022-23.

**VOTES:****ASM REVENUE AND TAXATION: 11-0-0**

**YES:** Burke, Brough, Chu, Gray, Levine, Mayes, Mullin, Petrie-Norris, Gloria, Luz Rivas, Voepel

**ASM APPROPRIATIONS: 18-0-0**

**YES:** Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

**UPDATED:**

VERSION: June 4, 2020

CONSULTANT: M. David Ruff / REV. & TAX. / (916) 319-2098

FN: 0003025