
SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2019 - 2020 Regular

Bill No: AB 2660
Author: Burke
Version: 6/4/20 >
Consultant: Deitchman

Hearing Date: 7/29/20
Tax Levy: No
Fiscal: Yes

INCOME TAXES: ADMINISTRATION: NONRESIDENT ALIENS: IDENTIFYING NUMBERS: GROUP FILING

Allows certain nonresident taxpayers to file a group return if they receive taxable income for services that take place in this state.

Background

All income earned in or sourced to California must be reported and filed on an income tax return. Residents of California must file an individual (or joint if married or registered domestic partner) return. Non-residents can either file a non-resident return, or elect to be included in a group return.

Group returns. Current law allows for nonresidents to consent to file a group return to report their California source income. A group return is a way for nonresident individuals without a large presence in California to elect to submit one tax return collectively instead of each submitting an individual tax return. If individuals wish to be included in a group return, the individual must make an annual, irrevocable election for each taxable year. All group returns must include at least two nonresidents and cover one calendar year. The income included on the group return is taxed at the highest marginal tax rate (currently 12.3%), plus, if applicable, the additional mental health tax (currently 1% and only on taxable income over \$1 million), but does not allow any deductions (personal or dependent) or credits. Each nonresident must have either a social security number (SSN) or a federal individual tax identification number (ITIN) to be included in a group return.

SSN/Federal ITIN. SSNs are generally issued to all to U.S. citizens, permanent residents, and some temporary residents. The Internal Revenue Service (IRS) issues federal ITINs for tax administration purposes for certain nonresident and resident individuals, their spouses, and dependents who are not eligible to receive an SSN. To obtain a federal ITIN, an individual must file IRS Form W-7, *Application for ITIN* and provide specified documentation, including a copy of an original tax return, one document that verifies the individual's address, a document that demonstrates a connection to a country, and a valid form of identification. Generally, individuals that enter into the U.S. to work for only a short amount of time aren't eligible to receive an ITIN.

Current law does not allow a nonresident taxpayer without a SSN or ITIN to file a group return. The author wants to create an option for those unable to receive an SSN or ITIN to pay the taxes owed to the state in a fair and efficient manner by allowing them to be included in a group return.

Proposed Law

Assembly Bill 2660 allows electing nonresident taxpayers, who are not eligible for or have not been issued a federal SSN or ITIN, to be included in the group return or file an individual return to report their California source income without obtaining a SSN or ITIN. The bill applies beginning in the 2021 taxable year, and ending after the 2025 taxable year.

The agent preparing and filing the return for the electing nonresident individual would make all tax payments, additions to tax, interest, and penalties otherwise required to be paid by the electing nonresident alien. For a nonresident taxpayer electing to be included in a group return, the bill provides that the tax rate or rates applicable to each nonresident's taxable income for their California source income for that taxpayer would consist of the highest marginal rate or rates, plus any additional mental health tax, but prohibits claiming any deductions or credits. Any withholding payments made would be allowed as a credit against the tax of the nonresident taxpayer electing to file in a group return. In addition, Franchise Tax Board (FTB) may adjust the income of an electing nonresident taxpayer included in a group return. FTB may adopt regulations as necessary or appropriate to carry out the provisions regarding nonresident alien return filing.

AB 2660 states that "nonresident alien" means an individual other than a California resident who is neither a United States (U.S.) citizen nor a U.S. resident.

After the agent or the taxpayer files the group return, if the nonresident taxpayer subsequently becomes eligible for and is issued a SSN or ITIN, FTB may require the nonresident taxpayer to provide a letter or other form documenting the nonresident taxpayer's SSN or ITIN.

State Revenue Impact

According to FTB, AB 2660 results in increased 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. Purpose of the bill. According to the author, "This common sense 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. Everyone can file. Based on data from the Department of Homeland Security, approximately 410,000 nonimmigrant aliens (qualified workers) will work in California during calendar year 2021. These workers may earn anywhere from minimum wage to executive level wages. All residents and nonresidents with valid SSNs or ITINs must file and pay California taxes. This bill is a balanced approach to allow those unable to get the required identification the option to pay their California taxes for income earned in the state.

3. What's the alternative? If AB 2660 is not adopted, foreign non-resident taxpayers who come to work in California for a short time and are ineligible for an ITIN or SSN have no easy way to file their taxes with California. This bill offers an efficient option for those non-resident foreign taxpayers who want to properly file their taxes with California in a non-burdensome manner for both the taxpayer and the state.

Assembly Actions

Assembly Revenue & Taxation	11-0
Assembly Appropriations	18-0
Assembly Floor	78-0

Support and Opposition (7/24/20)

Support: Allianz of America, Inc.; California Lawyers Association, Taxation Section

Opposition: Unknown.

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