
CONSENT

Bill No: AB 2660
Author: Burke (D)
Amended: 6/4/20 in Assembly
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 7-0, 7/29/20
AYES: McGuire, Moorlach, Beall, Hertzberg, Hurtado, Nielsen, Wiener

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 78-0, 6/10/20 - See last page for vote

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

SOURCE: Author

DIGEST: This bill allows certain nonresident taxpayers to file a group return if they receive taxable income for services that take place in this state.

ANALYSIS:

Existing law:

- 1) Requires all income earned in or sourced to California to be reported and filed on an income tax return.
- 2) Requires all residents of California to file an individual (or joint if married or registered domestic partner) return.
- 3) Allows non-residents to file either a non-resident return, or elect to be included in a group return.

- 4) Allows nonresidents to consent to file a group return to report their California source income only if the individuals included in the group return have either a Social Security Number (SSN) or a federal individual tax identification number (ITIN).

This bill:

- 1) 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 beginning in the 2021 taxable year and ending after the 2025 taxable year.
- 2) Requires the agent preparing and filing the return for the electing nonresident individual to make all tax payments, additions to tax, interest, and penalties otherwise required to be paid by the electing nonresident alien.
- 3) Applies a 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 for a nonresident taxpayer electing to be included in a group return.
- 4) Directs any withholding payments made to be allowed as a credit against the tax of the nonresident taxpayer electing to file in a group return.
- 5) Allows the Franchise Tax Board (FTB) to adjust the income of an electing nonresident taxpayer included in a group return.
- 6) Allows FTB to adopt regulations as necessary or appropriate to carry out the provisions regarding nonresident alien return filing.
- 7) Defines a "nonresident alien" as an individual other than a California resident who is neither a United States (U.S.) citizen nor a U.S. resident.
- 8) Allows FTB to require the nonresident taxpayer to provide a letter or other form documenting the nonresident taxpayer's SSN or ITIN if a nonresident taxpayer who has filed a group return and subsequently becomes eligible for and is issued a SSN or ITIN.

Background

SSN/Federal ITIN. SSNs are generally issued to all 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.

Group Returns. 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. Current law requires that 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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

SUPPORT: (Verified 8/13/20)

Allianz of America, Inc.

California Lawyers Association, Taxation Section

OPPOSITION: (Verified 8/13/20)

None received

ARGUMENTS IN SUPPORT: 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 SNN 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.”

ASSEMBLY FLOOR: 78-0, 6/10/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Quirk

Prepared by: Jessica Deitchman / GOV. & F. / (916) 651-4119
8/15/20 7:35:31

**** END ****