

Author: Cedillo Analyst: John Pavalasky Bill Number: SB 615Related Bills: _____ Telephone: 845-4335 Amended Date: April 1, 2004Attorney: Patrick Kusiak Sponsor: _____**SUBJECT:** Conformity To Federal Servicemembers Civil Relief Act

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended February 5, 2004.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED February 5, 2004 STILL APPLIES.
- OTHER - See comments below.

SUMMARY

This bill would make California law compatible with the federal Servicemembers Civil Relief Act (SCRA) (PL 108-189) that was enacted on December 19, 2003.

SUMMARY OF AMENDMENTS

The April 1, 2004, amendments make technical amendments necessary to correct cross-references to federal sections as well as a cross-reference to a California section.

In addition, the April 1, 2004, amendments make a technical amendment to provide that the term "Native American" has the same meaning as the term Indian has for federal purposes.

The POSITION, FISCAL IMPACT, ECONOMIC IMPACT, LEGAL IMPACT, and POLICY ARGUMENTS/CONCERNS have not changed from the previous analysis but are restated below for convenience.

POSITION

Pending.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Legislative Director

Date

Brian Putler

4/9/04

FISCAL IMPACT

No departmental costs are associated with this bill.

ECONOMIC IMPACT

Revenue Estimate

Fiscal Year	2003-2004	2004-2005	2005-2006
Personal Income Tax [1]	\$0	\$0	\$0
Total	\$0	\$0	\$0

[1] Federal law changes will reduce state personal income tax baseline revenue in the range of \$1 million annually. Making California law compatible with the federal law will have no incremental impact.

Revenue Discussion

This bill would have no impact on state income revenues since the new federal law precludes the use of nonresident military income in the calculation of state income tax.

However, it is estimated that the federal law change already reduced personal income tax baseline revenue on the order of \$1 million annually. Under current law, military personnel that are married can file separate tax returns in California even though they file joint federal returns. The practical effect of filing separate tax returns is that none of the military income is included on the non-military spouse's return (the primary change made by the new federal law). The \$1 million baseline revenue loss is, therefore, due primarily to single nonresident military personnel (66,107 using 2002 data) now being able to exclude their military income in computing their tax rate on non-military income.

LEGAL IMPACT

The SCRA explicitly conflicts with existing provisions of the Revenue and Taxation Code regarding the taxation of nonresidents, thereby implicating provisions of the California Constitution. Article III, sec. 3.5 of the California Constitution prohibits an administrative agency from refusing to enforce a California statute on grounds that federal law prohibits the enforcement of that statute unless an appellate court has determined that federal law prohibits enforcement of the California statute. Thus, unless the applicable law is amended, the Franchise Tax Board will be required to continue to enforce the current law unless and until an appellate court rules otherwise.

ARGUMENTS/POLICY CONCERNS

This federal law applies to returns currently being filed for the 2003 and prior tax years as well as to all future tax years. It is urgent that state law be amended to be compatible with the SCRA so that the Franchise Tax Board can implement this change. Otherwise taxpayers will have to wait for a court of appeal decision declaring the California statute unconstitutional, which would be a certain outcome. Waiting for a court decision would require impacted taxpayers to file amended returns or to ignore California law under color of federal law, all of which would result in additional customer service and processing costs for the department. This bill would avoid those additional administrative costs.

In 1996, Section 114 of Title 4 of the United States Code was enacted to limit state income taxation on a source basis with respect to certain pension income. During that same year, California enacted a conforming provision¹ that, for 1996 and later years, specifically provides that gross income of a nonresident from sources within this state does not include "qualified retirement income." This conforming section applies only during the period that the provisions of Section 114 of Title 4 of the United States Code, relating to limitation on state income taxation of certain pension income, are effective.

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¹ Revenue and Taxation Code section 17952.5.