

## Franchise Tax Board

## ANALYSIS OF ORIGINAL BILL

Author: McGuire Analyst: Jessica Deitchman Bill Number: SB 289  
Related Bills: See Legislative History Telephone: 845-6310 Introduced Date: February 9, 2017  
Attorney: Bruce Langston Sponsor: \_\_\_\_\_

**SUBJECT:** Exclusion/Earned Income from Indian Country in This State

### SUMMARY

This bill would, under the Personal Income Tax Law (PITL), exclude certain earned income from gross income of an eligible individual, as defined.

### RECOMMENDATION - NO POSITION

### REASON FOR THE BILL

The reason for the bill is to allow Native American Indian tribal members flexibility in the location of their residence without compromising their income exclusion.

### EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2017.

### STATE LAW

Generally, the income of California residents is subject to California taxation, regardless of source.<sup>1</sup> However, current state law provides an exclusion from a tribal member's gross income, the earned income of these tribal members that meet any of the following conditions:

- Are an enrolled member of a federally recognized California Indian Tribe and live in their tribe's Indian country,<sup>2</sup> and earn or receive reservation source income from the same Indian country in which they live and are an enrolled tribal member.
- Are an active duty U.S. military service member who receives military pay and are stationed in California with orders to live outside Indian country.
- Are a retired military service member who receives a military pension and are residing on their tribe's reservation.
- Live outside California and receive per capita income from California sources.

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<sup>1</sup> California Revenue and Taxation Code section 17041.

<sup>2</sup> Indian Country definition can be found here: <https://www.gpo.gov/fdsys/granule/USCODE-2011-title18/USCODE-2011-title18-partI-chap53-sec1151>

## **THIS BILL**

For taxable years beginning on or after January 1, 2017, this bill would exclude from gross income the earned income of an eligible individual.

The bill would define the following terms:

- “Earned Income” has the same meaning as provided in the Earned Income Credit provision (Section 32(c)(2)) of the Internal Revenue Code, as modified to substitute the phrase “but only if such amounts would have been otherwise properly includable in gross income for the taxable year without regard to subdivision (a)” for the phrase “but only if such amounts are includable in gross income for the taxable year,” but only to the extent that the earned income is derived from, or attributable to, sources within Indian country in this state.
- “Eligible Person” means an individual who is a member of a federally recognized Indian tribe in this state who resides within Indian country in this state.
- “Indian country” has the same meaning as provided in Section 30101.7.<sup>3</sup>

This bill would exclude earned income as defined above. However, any per capita distributions received by an individual not residing on their tribe’s reservation would remain includable in gross income.

## **IMPLEMENTATION CONSIDERATIONS**

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

## **TECHNICAL CONSIDERATIONS**

For clarity and grammatical accuracy, on page 2, line 9, after “year” strike the end quotation mark and on page 2, line 11, after “state” insert an end quotation mark.

The definition of "earned income" uses the phrase, "derived from, or attributable to, sources," which is a phrase used in the Corporate Tax Law. For consistent use of terms and phrases within the PITL, it is recommended that this phrase be replaced with “derived from sources.”

The bill uses the defined term “eligible person” and the undefined term “eligible individual” interchangeably. For consistent use of terminology and internal harmony with existing provisions of the PITL, it is suggested that these terms be replaced with “eligible taxpayer.”

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<sup>3</sup> “Indian country” shall have the same meaning as provided in Section 1151 to Title 18 of the United States Code, and includes any other land held by the United States in trust or restricted status for one or more Indian tribes.

## LEGISLATIVE HISTORY

Research of California legislation found no legislation similar to the provisions of this bill.

## OTHER STATES' INFORMATION

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Illinois* does not have any federally recognized Indian tribes within the state and therefore has no exclusions available.

*Massachusetts* law states that American Indian tribal members living within Indian country are not considered residents of any state and, hence, could not be subject to tax as a Massachusetts resident.

*Michigan* law allows those American Indian tribal members who reside on their tribe's land and whose tribe has an implemented state/tribal tax agreement, to exclude income derived from or associated to their tribe based on their individual tribes' state/tribal tax agreement.

*Minnesota* law states that American Indian tribal members are not required to pay state income taxes on income earned on the reservation of the tribe in which the individual is enrolled.

*New York* law provides an income exclusion for American Indian tribal members who are an enrolled member of a tribe or nation recognized by the United States or by *New York State*. This exemption is provided only to those who work and live on that tribe's reservation in which the individual is a member.

## FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

## ECONOMIC IMPACT

### Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 289 As Introduced on February 9, 2017 Assumed Enactment After June 30, 2017 (\$ in Millions)		
2017-18	2018-19	2019-20
-\$1.6	-\$1.0	-\$1.0

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

### **Revenue Discussion**

This bill would allow American Indian tribal members living in Indian Country, whether their own or another tribe's reservation, to exclude from gross income their earned income that is derived from sources within any Indian Country in California.

Based on 2015 Census data for Native Americans in California, there are approximately 325,000 individuals in the labor force. Of those individuals, it is assumed 10,000 would reside in Indian Country. Of those, it is assumed that 10 percent, or 1,000, would reside in another tribe's Indian Country and would earn income sourced from Indian Country that would be excluded from income under this bill.

Using US Census data, it is estimated that the average earned income derived from sources within Indian Country in California for the California Native American population is approximately \$20,000. This results in an estimated \$20 million that would be eligible for the income exclusion in 2015. The estimate is then adjusted to reflect changes in the economy over time, resulting in an estimated \$25 million in 2017. An average tax rate of 4 percent is then applied resulting in an estimated revenue loss of \$1 million in 2017.

The tax year estimates are converted to fiscal years, and then rounded to arrive at the amounts reflected in the table above.

### **SUPPORT/OPPOSITION**

Support: None provided.

Opposition: None provided.

### **ARGUMENTS**

Proponents: Some may argue that this bill would allow California's Native American Indian tribal members the flexibility to live on any Indian nation and retain their income exclusion.

Opponents: Some may argue that this bill overly complicates an already complex area of law.

### **LEGISLATIVE STAFF CONTACT**

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