

Franchise Tax Board**ANALYSIS OF ORIGINAL BILL**

Author: Nguyen & Wilk Analyst: Janet Jennings Bill Number: SB 408
Related Bills: None Telephone: 845-3495 Introduced Date: February 15, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Withholding Exemption for Income of Active Duty Military Residents

SUMMARY

This bill would, under the Unemployment Insurance Code, provide an exemption from state income tax withholding for California residents that are in active military duty.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

RECOMMENDATION - NO POSITION**REASON FOR THE BILL**

The reason for the bill is to allow California's active duty military members flexibility to pay their income taxes through estimated tax payments.

EFFECTIVE/OPERATIVE DATE

This bill would become effective and operative January 1, 2018.

FEDERAL/STATE LAW

Current federal law requires wage information to be reported on the federal Wage and Tax Statement, Form W-2, for employees that receive compensation from an employer. In addition to reporting wage information, employers are required to withhold, report, and remit to the Internal Revenue Service (IRS) any federal income tax, employees' social security tax and Medicare tax. Federal law requires employers to regularly deposit funds withheld with an authorized federal depository, generally a bank.

Under the Servicemembers Civil Relief Act (SCRA) military members retain their state of legal residence when the military member has to move to another state on military orders. The SCRA prevents a military member from having to pay state taxes on the military income, or personal property, to any state other than the home state of legal residency. If a military member or their spouse earns non-military income, they may have to pay income taxes to the state where they are stationed, if that state has an income tax. However, the state is prohibited from using the military earnings to increase either the military member's tax liability or the spouse's.

Under current state income tax law, an individual domiciled in this state who is absent from the state for other than a temporary or transitory purpose is considered a nonresident. A member of the military on permanent assignment outside this state is considered absent for other than a temporary or transitory purpose, and, consequently a nonresident for income tax purposes.

Current state law parallels the federal government's information return requirements and wage withholding and reporting requirements.

THIS BILL

This bill would add an exemption from state income tax withholding requirements on the wages, salaries, fees, or other compensation paid to residents of California who are in active military duty.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

LEGISLATIVE HISTORY

None.

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, Massachusetts, Michigan, Minnesota, and New York tax laws do not provide an exemption from state income tax withholding for a resident in active military duty.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill as introduced on February 15, 2017, may impact the timing of withholding and estimated tax payments, but would not change the state income tax or franchise tax liability.

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

SUPPORT/OPPOSITION

Support: None on file.

Opposition: None on file.

ARGUMENTS

Proponents: Some may argue that California's active duty military members are better served by paying estimated tax rather than having their income subject to state income tax withholding.

Opponents: Some may argue that the risk of a California member on active military duty being subject to estimated payments and certain penalties outweighs the benefit of the ability to make estimated payments.

POLICY CONCERNS

This bill would exempt from state income tax withholding, the wages, salaries, fees or other compensation of a resident of California who is in active military duty. The bill does not exempt the income from taxation. Because the underlying income remains taxable, the exemption from state income tax withholding could result in California residents that are on active military duty being required to make estimated payments, subject them to underpayment penalties, or both.

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