STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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Related Bills: See Legislative History

Bill Number: AB 2247

Introduced: February 13, 2020

SUBJECT

Dependent exemption credit/Alternate identifying information for dependent ineligible for federal individual taxpayer identification number (ITIN)

SUMMARY

This bill, under the Personal Income Tax Law (PITL), would allow a taxpayer with a nonresident alien dependent who is ineligible to receive a federal ITIN the option of providing other identifying information, as prescribed by the Franchise Tax Board (FTB), for purposes of the dependent exemption credit.

RECOMMENDATION

Support.

On December 3, 2019, the three-member Franchise Tax Board voted 2-0, with Deputy-Member Gayle Miller, Department of Finance abstaining, to sponsor this language.

SUMMARY OF AMENDMENTS

None noted.

REASON FOR THE BILL

The reason for this bill is to allow certain taxpayers the option of providing other identifying information, for the purpose of claiming the dependent exemption credit, thereby preserving the identification requirement while providing relief to the affected taxpayers. Additionally, this bill would promote equitable treatment amongst similarly-situated taxpayers and foster an equitable tax system by allowing alternate documentation.

ANALYSIS

For taxable years beginning on or after January 1, 2018, this bill, under the PITL, would allow a taxpayer with an elgible nonresident alien dependent, who is ineligible to receive a federal ITIN, the option of providing other identifying information, as prescribed by the FTB, for purposes of meeting the requirement of the California dependent exemption credit.

Effective/Operative Date

This bill would be effective January 1, 2021, and retroactively operative for taxable years beginning on or after January 1, 2018. Based on the premise that the bill would be enacted by September 30, 2020.

Federal/State Law

Federal Law

Dependent Exemption Deduction

Federal law, prior to taxable year 2018, provided a "personal-exemption" deduction for taxpayers themselves, and a personal exemption deduction for each claimed dependent. For taxable years beginning on or after January 1, 2018, and before January 1, 2026, federal law suspended the personal exemptions by setting the deduction amount at zero dollars ($0).[1]

For the purpose of the federal dependent exemption deduction, a "dependent" includes a qualifying child or qualifying relative, including an individual who is not a citizen or national of the U.S. if that individual is a resident of the U.S., Mexico, or Canada (Internal Revenue Code (IRC) section 152). The dependent's identification number, either a social security number (SSN) or federal ITIN, must be included on the return for the exemption to be allowed.

Federal ITINs

The Internal Revenue Service (IRS) issues federal ITINs for tax administration purposes to certain nonresident and resident aliens, their spouses, and dependents who are ineligible for an SSN. To obtain a federal ITIN, an individual must file IRS Form W-7, *Application for ITIN* and provide specified documentation. The IRS recently ceased granting or renewing ITINs for nonresident alien dependents whose sole purpose for requesting an ITIN was to claim the personal exemption deduction amount. Since the deduction amount was set to zero, the IRS determined there was no longer a federal purpose to request the ITIN.[2]

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[1] On December 22, 2017, H.R. 1, Public Law (PL) 115-97, known as the Tax Cuts and Jobs Act of 2017 was signed. Under PL 115-97, the personal exemption deduction for 2018 through 2025 is set at zero dollars ($ 0), and then resumes for taxable years beginning on or after January 1, 2026. (IRC section 151(d)(5)).
[2] See IRS instructions for form W-7. https://www.irs.gov/pub/irs-pdf/iw7.pdf.

State Law

State law allows a dependent exemption credit, rather than a deduction, for each dependent as defined under federal law (R&TC section 17054(d) and IRC section 152). For taxable years beginning on or after January 1, 2015, a dependent exemption credit is only allowed if the dependent's identification number, either an SSN or federal ITIN, as defined under federal law (IRC section 6109), is included on the return.

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

None noted.

Policy Concerns

None noted.

LEGISLATIVE HISTORY

AB 2754 (Assembly Committee on Revenue and Taxation, Chapter 478, Statutes of 2014), provides that for taxable years beginning on or after January 1, 2015, a dependent exemption credit will only be allowed if the dependent's taxpayer identification number, either an SSN or a federal ITIN, is included on the respective return.

PROGRAM BACKGROUND

California law provides various exemption credits, including a personal exemption credit and exemption credits for dependents. Starting in tax year 2015, the dependent's taxpayer identification number, either an SSN or federal ITIN, must be provided on the California tax return or the dependent exemption credit will be disallowed. The FTB sponsored this legislation to assure that a dependent exemption credit is claimed only once for each identification number.

The FTB recently learned that the IRS has ceased granting or renewing federal ITINs for certain nonresident alien dependents.[3] This effectively results in ineligibility for the California dependent exemption credit for an otherwise qualifying nonresident alien dependent.

Taxpayers claiming the California dependent exemption credit are adversely impacted by the IRS's decision because current state law strictly requires a tax return to include either an SSN or ITIN for each dependent for the credit to be allowed.

FISCAL IMPACT

Staff estimates that the costs to implement this bill would be insignificant and absorbable based on information available to estimate the universe of impacted dependents. While unlikely, should the actual universe of impacted dependents significantly differ from the estimated universe, the actual cost may require the department to pursue a budget change proposal.

ECONOMIC IMPACT

Revenue Estimate

This bill, as introduced February 13, 2020, would not change the computation of income tax or the taxpayer’s total tax liability.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

This bill would allow taxpayers claiming the dependent exemption credit the option of providing relevant documentation, when a nonresident alien dependent is not eligible to receive a federal ITIN. This bill would not change the computation of income tax or the taxpayer’s total tax liability due under current law.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

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[3] See IRS News Release, IR-2019-168, Oct. 10, 2019. (https://www.irs.gov/newsroom/2-million-itins-set-to-expire-in-2019-to-avoid-refund-delays-apply-soon) This applies to dependents who are residents of Canada or Mexico.

SUPPORT/OPPOSITION

Support: The three-member Franchise Tax Board.

Opposition: None noted.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

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