



Bill Analysis

Author: Burke

Sponsor:

Bill Number: AB 2660

Analyst: Elaine Warneke

Phone: (916) 845-7746

Amended: May 11, 2020

Attorney: Shane Hofeling

Related Bills: See Legislative
History

SUBJECT

Nonresident Group Return with Nonresident Aliens

SUMMARY

This bill, under the Personal Income Tax Law and the Administration of Franchise and Income Tax Law, would allow a nonresident group return to be filed on behalf of electing nonresident aliens receiving California source income from a taxpayer. A nonresident alien, who is not eligible for or has not been issued a federal social security number (SSN) or individual tax identification number (ITIN), could be included in the group return or file an individual return without obtaining a SSN or ITIN. In addition, this bill would, under the Unemployment Insurance Code, allow the SSN or ITIN of a nonresident alien, as defined, without a SSN or ITIN, to be left blank on various forms.

This analysis only addresses the provisions that would impact the department.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 11, 2020, amendments made several technical changes and modified provisions of the bill to allow a withholding credit upon filing, and to provide that any overpayment of income tax in one year is to be considered an estimated payment for the following year and cannot be claimed as a credit in the year of the overpayment.

These amendments resolved the implementation consideration as discussed in the department's analysis of the bill as introduced on February 20, 2020.

REASON FOR THE BILL

The reason for the bill is to allow a nonresident alien that does not have or is not eligible for a SSN or an ITIN to report California income and pay California income tax.

ANALYSIS

For taxable years beginning on or after January 1, 2021, and until January 1, 2026, this bill would allow an entity authorized by the taxpayer to include that taxpayer's income in a group return filed on his or her behalf. As the agent for the electing nonresident aliens, the entity would make all tax payments, additions to tax, interest, and penalties otherwise required to be paid by the electing nonresident alien.

For a nonresident alien electing to be included in a group return, the tax rate or rates applicable to each nonresident's taxable income for services performed in this state for that taxpayer would consist of the highest marginal rate or rates, plus, if applicable, the additional mental health tax, and no deductions or credits would be allowed. Payments of tax made by the entity filing the nonresident group return would be excluded from the electing nonresident alien's income. In addition, any withholding payments made would be allowed as a credit against the tax of the nonresident alien.

The nonresident alien, or entity authorized on their behalf, would be allowed to file a return without providing a SSN or ITIN. If the nonresident alien subsequently becomes eligible for and is issued a SSN or ITIN, the Franchise Tax Board (FTB) may require the nonresident alien to provide a letter or other form documenting the nonresident alien's SSN or ITIN. In addition, the FTB may adjust the income of an electing nonresident alien taxpayer included in a group return.

For purposes of this bill, "nonresident alien" means every individual other than a California resident who is neither a United States (U.S.) citizen nor a U.S. resident.

The FTB may adopt regulations as necessary or appropriate to carry out the provisions regarding nonresident alien return filing.

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, 2021, and until January 1, 2026. This bill would remain in effect only until December 1, 2026, and as of that date is repealed.

Federal/State Law

State law allows the filing of a group nonresident return on behalf of certain electing nonresident individuals for their convenience. When filing an individual return, a nonresident must report all income from all sources in addition to the California source income. On the group nonresident return, only the California source pass-through income or compensation is reported.

The nonresident individual included in the group return must make an annual election, irrevocable for the taxable year, to be included in a group nonresident return. The return must be for a calendar year and must include at least two electing nonresidents. A nonresident individual can be included on more than one group nonresident return.

The business entity or corporation files the group nonresident return and pays the tax on behalf of the electing nonresidents. The income is taxed at the highest marginal tax rate, 12.3 percent, and if applicable, pays the 1 percent mental health tax, and no deductions or credits are allowed except those directly attributable to the business entity or corporation's activity.

The law requires that every nonresident included in the group return have either a SSN or an ITIN in order to file as part of the group return.

For federal purposes, every nonresident alien is required to file its own separate U.S. nonresident return. There is no group nonresident return. Nonresident aliens can file without a SSN or ITIN, or with an expired ITIN. However, when a nonresident alien files without a SSN or an ITIN, the Internal Revenue Service may disallow certain credits and deductions.

Implementation Considerations

None noted.

Technical Considerations

Sec. 1 of this bill provides Revenue and Taxation Code (R&TC) sections 17132.1(a) and 18537(a) for the period, "Taxable years beginning on or after January 1, 2021, and until January 1, 2026," and states that the sections shall remain in effect until December 1, 2026, and as of that date is repealed.

For clarity of operation, Sec. 1, page 2, lines 3-4, "(a) For taxable years beginning on or after January 1, 2021, and until January 1, 2026," should be replaced with, "(a) For taxable years beginning on or after January 1, 2021, and before January 1, 2026,"; and Sec. 2, page 2, lines 11-12, "(a) For taxable years beginning on or after January 1, 2021, and until January 1, 2026," should be replaced with, "(a) For taxable years beginning on or after January 1, 2021, and before January 1, 2026,".

Policy Concerns

None Noted.

LEGISLATIVE HISTORY

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

PROGRAM BACKGROUND

Because of the statutory requirement that every member of a group nonresident return must provide a SSN or ITIN upon filing, currently, there is no mechanism in place to file a group return on behalf of nonresident aliens without SSNs or ITINs. Generally, international business travelers from outside the U.S., nonresident aliens, as defined, are not eligible to apply for an SSN for a number of reasons, including that they do not have the visa type that permits application for a SSN. In addition, temporary work assignments in the U.S. do not warrant the effort and time necessary to apply for an ITIN.

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.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue gain:

Estimated Revenue Impact of AB 2660 as amended on May 11, 2020
Assumed Enactment after June 30, 2020

(\$ in Millions)

Fiscal Year	Revenue
2020-2021	\$12
2021-2022	\$27
2022-2023	\$34

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.

Because the impact of current economic circumstances is unknown, this estimate is subject to change.

Revenue Discussion

The estimated revenue gain from this bill depends on the number of nonresident alien business travelers that would be subject to withholding based wages and would opt into a group return for California income tax purposes.

Based on data from the Department of Homeland Security, related to Nonimmigrant Admissions to the U.S., it is estimated that approximately 410,000 nonimmigrant aliens (qualified workers) would work in California during calendar year 2021. Of those, it is assumed that two and half percent, or approximately 10,000, would earn withholding based wages and opt into a group return. It is estimated the number of participating qualified workers would double over the five-year operative period.

To estimate the amount of income earned while in California, assumptions regarding both wages earned and length of stay were made. Research indicates that qualified workers could spend anywhere from 30 days to an entire year working in the state and could earn anywhere from minimum wage to executive level wages. Because the number of variations that could occur are too numerous to evaluate, 16 potential combinations for duration of stay and wages were evaluated. This calculation resulted in estimated average earned wages of \$20,000 per qualified worker per stay. Multiplying this times the estimated number of qualified workers, results in total wages reported on group returns of approximately \$190 million. Applying the highest marginal tax rate of 12.3 percent results in an estimated revenue gain of \$23 million, peaking at \$50 million in the 2025 taxable year.

To arrive at the offsetting tax effect from the deduction that would be claimed, it is estimated that the taxpayer would deduct an addition \$23 million in business expenses from paying the income tax on behalf of the qualified workers. Applying an average tax rate of 8.84 percent, results in an estimated revenue loss of approximately \$2 million.

The May 11, 2020, amendments made technical changes, modified provisions to allow the wage withholding from the non-resident alien as a withholding credit upon filing, and specified that an overpayment of income tax in one year is to be considered an estimated payment for the following year and cannot be claimed as a credit in the year of the overpayment.

The estimates above were then combined to reflect a net revenue gain of \$21 million in 2021, increasing to \$45 million in the 2025 taxable year.

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

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

Elaine Segarra Warneke
Legislative Analyst, FTB
(916) 845-7746
elaine.warneke@ftb.ca.gov

Tiffany Christiansen
Revenue Manager, FTB
(916) 845-5346
tiffany.christiansen@ftb.ca.gov

Annette Kunze
Legislative Director, FTB
(916) 845-6333
annette.kunze@ftb.ca.gov