



Bill Analysis

Author: Committee on
Revenue and Taxation

Sponsor:

Bill Number: AB1518

Related Bills: See Legislative
History

Introduced: March 13, 2025

SUBJECT

Nonresident Group Return with Nonresident Alien

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and Administration of Franchise and Income Tax Law (AFITL), would remove the January 1, 2026, sunset date and make permanent the group return election for nonresident aliens. The bill would make permanent the exemption from the requirement that nonresident aliens provide a social security number (SSN) or individual tax identification number (ITIN) when filing a state return, statement, or other document with the Franchise Tax Board (FTB), and make estimate payment penalties inapplicable for nonresident individuals electing to file in a group return.

RECOMMENDATION

No position—The three-member Franchise Tax Board has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to extend provisions that allow a nonresident alien that is not eligible or has not been issued an SSN or ITIN to file with FTB and to elect to file in a group return.

ANALYSIS

This bill would make permanent the law allowing the filing of a nonresident group return in lieu of the nonresident alien filing an individual return.

This bill would make permanent the prohibition on FTB requiring a nonresident alien to provide an SSN or ITIN in order to file a state tax return, statement, or other document.

This bill would make permanent the allowance of a credit against the tax for the taxable year to the nonresident alien electing to file in a group return in the amount that is withheld under the Unemployment Insurance Code.

This bill would also make permanent the gross income exclusion of a nonresident alien for the amount included in a nonresident group return which is paid by an agent authorized to file on their behalf.

This bill would also exempt a nonresident alien electing to file a group return from estimated tax penalties.

Effective/Operative Date

This bill would be effective and operative on January 1, 2026. The provision exempting nonresident individuals electing to file in a group return from estimated payment penalties would be specifically operative for taxable years beginning on or after January 1, 2026.

Federal/State Law

Federal Law

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

Under federal law, estimated tax payments are required if an individual does not pay through withholding. Federal law imposes a penalty on individuals for underpayment of estimated tax. The estimated tax penalty is equal to the application of the underpayment rate to the amount of the underpayment for the period of underpayment.

State Law

For taxable years beginning on or after January 1, 2021, and until January 1, 2026, state law allows a nonresident alien to elect to file in a group return if the nonresident alien receives taxable income from a taxpayer for services that take place in this state. The taxpayer, as the agent for the electing nonresident aliens, makes all tax payments, additions to tax, interest, and penalties otherwise required to be paid by the electing nonresident alien.

The tax rate or rates applicable to each nonresident alien'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 are excluded from the electing nonresident alien's income. Any withholding payments made are allowed as a credit against the tax of the nonresident alien electing to file in a group return. In addition, the FTB may adjust the income of an electing nonresident alien taxpayer included in a group return.

The nonresident alien, or entity authorized on their behalf, is allowed to file a return without providing a SSN or ITIN.

State law also 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. 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 an SSN or an ITIN in order to file as part of the group return.

On an annual basis, the FTB is required to provide the Employment Development Department (EDD) with wage withholding tables to be used by employers to withhold taxes on wages paid to their employees. Taxpayers are required to make estimated tax payments if the amount of taxes withheld or otherwise available for a taxable year is less than the amount due.

California conforms, with modifications, to the federal penalty for underpayment of estimated tax payments. The California estimated tax penalty is imposed at the California adjusted annual interest rate, which is 7 percent for the period January 1, 2024, through June 30, 2024; (2) 8 percent, for the period July 1, 2024, through December 31, 2024; and (3) 8 percent, for the January 1, 2025, through June 30, 2025.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 2660 (Burke, Chapter 102, Statutes of 2020) under the PITL and the AFITL, allows a nonresident group return to be filed on behalf of electing nonresident aliens receiving California source income. A nonresident alien, who is not eligible for or has not been issued a federal SSN or ITIN can be included in the group return or file an individual return without obtaining an SSN or ITIN.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

The FTB's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be determined.

ECONOMIC IMPACT*Revenue Estimate*

Based on FTB data for non-resident group returns, it is estimated the revenue gain from extending the ability for a nonresident individual with no SSN or ITIN to be included in a nonresident group return would be approximately \$100,000 for each fiscal year for 2025-26 through 2027-28. Should more nonresident aliens choose to make the election over time, the revenue could increase.

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.

LEGAL IMPACT

None noted.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None on file.

ARGUMENTS

None on file.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov