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**AB-2660 Income taxes: administration: nonresident aliens: identifying numbers: group filing.** (2019-2020)

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**Assembly Bill No. 2660**

**CHAPTER 102**

An act to amend, repeal, and add Sections 18624 and 19002 of, and to add and repeal Sections 17132.1 and 18537 of, the Revenue and Taxation Code, relating to taxation.

[ Approved by Governor September 18, 2020. Filed with Secretary of State September 18, 2020. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2660, Burke. Income taxes: administration: nonresident aliens: identifying numbers: group filing.

The Personal Income Tax Law imposes a tax on the entire taxable income of an individual taxpayer subject to that law, and provides for a specified treatment of the income of nonresidents. Existing law requires every taxpayer subject to tax under the law to file a return with the Franchise Tax Board, and authorizes the Franchise Tax Board to provide for the filing of a group return for electing nonresident partners or nonresident directors of a corporation, as specified.

Existing law requires identifying numbers to be included on state tax returns, statements, and other documents, and in conformity with federal law, defines identifying numbers to mean a federal social security number (SSN) or individual tax identification number (ITIN), unless otherwise provided.

This bill, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, would prohibit the Franchise Tax Board from requiring a nonresident alien, as defined, to provide a SSN or ITIN when filing a state tax return, statement, or other document if the nonresident alien is not eligible for or has not been issued a SSN or ITIN. The bill would require the Franchise Tax Board, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, to provide for the filing of a group return for electing nonresident aliens, as specified, and would exclude from gross income any payments made by an agent on behalf of a nonresident income in a group filing.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 17132.1 is added to the Revenue and Taxation Code, to read:

**17132.1.** (a) For taxable years beginning on or after January 1, 2021, and until January 1, 2026, a nonresident alien's gross income does not include any payment made by an agent pursuant to subdivision (c) of Section 18537.

(b) This section shall remain in effect only until December 1, 2026, and as of that date is repealed.

**SEC. 2.** Section 18537 is added to the Revenue and Taxation Code, to read:

**18537.** (a) For taxable years beginning on or after January 1, 2021, and until January 1, 2026, in lieu of nonresident aliens filing a return pursuant to Section 18501, the Franchise Tax Board shall provide for the filing of a group return by a taxpayer, or an entity authorized by the taxpayer to file on its behalf, for one or more electing nonresident aliens who receive taxable income as computed under paragraph (1) of subdivision (i) of Section 17041 from that taxpayer for services that take place in this state.

(b) For a nonresident alien electing to file in a group return pursuant to subdivision (a), the tax rate or rates applicable to each nonresident's taxable income for services performed in this state for that taxpayer shall consist of the highest marginal rate or rates provided for by Part 10 (commencing with Section 17001) plus, in the case of any electing nonresident alien included on the group return who would be subject to Section 17043 when filing individually, an additional tax rate of 1 percent, and no deductions or credits shall be allowed, except credits allowed under Section 19002.

(c) The taxpayer, or an entity authorized by the taxpayer to file on its behalf, as the agent for the electing nonresident aliens, shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by, or imposed on, the electing nonresident aliens.

(d) Pursuant to Section 18624, the Franchise Tax Board shall not require a nonresident alien who is not eligible for or has not been issued a federal social security number (SSN) or a federal individual taxpayer identification number (ITIN) to provide a SSN or ITIN in order to file in a group return under this section. If the nonresident alien subsequently becomes eligible for and is issued a SSN or ITIN, the Franchise Tax Board may require the nonresident alien to provide a letter or other form documenting the nonresident alien's SSN or ITIN.

(e) The Franchise Tax Board may adjust the income of an electing nonresident alien taxpayer included in a group return filed under this section to properly reflect the income under Part 10 (commencing with Section 17001).

(f) (1) The Franchise Tax Board may adopt regulations as necessary or appropriate to carry out the purposes of this section.

(2) Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board.

(g) For purposes of this section, "nonresident alien" shall have the same meaning as described in subdivision (f) of Section 18624.

(h) This section shall remain in effect only until December 1, 2026, and as of that date is repealed.

**SEC. 3.** Section 18624 of the Revenue and Taxation Code is amended to read:

**18624.** (a) Section 6109 of the Internal Revenue Code, relating to identifying numbers, shall apply, except as otherwise provided.

(b) Identifying numbers shall be required on state tax returns, statements, or other documents in the form and manner as the Franchise Tax Board may require.

(c) Section 6109(h) of the Internal Revenue Code, relating to identifying information required with respect to certain seller-provided financing, shall not apply.

(d) The amendments made to Section 6109(a) of the Internal Revenue Code, relating to identifying number of income tax return preparer, by Public Law 105-206 shall apply.

(e) The amendments made by Chapter 931 of the Statutes of 1999 shall be operative on the effective date of that chapter.

(f) (1) For taxable years beginning on or after January 1, 2021, and before January 1, 2026, the Franchise Tax Board shall not require a nonresident alien who is not eligible for or has not been issued a federal social security number (SSN) or a federal individual taxpayer identification number (ITIN) to provide a SSN or ITIN in order to file a state tax return, statement, or other document required under this part. If a nonresident alien subsequently becomes eligible for and is issued a SSN or ITIN, the Franchise Tax Board may require the nonresident alien to provide a letter or other form documenting the nonresident alien's SSN or ITIN.

(2) For purposes of this subdivision, "nonresident alien" shall mean a nonresident, as defined in Section 17015, who also meets the requirements of Section 7701(b)(1)(B) of the Internal Revenue Code.

(g) This section shall remain in effect only until December 1, 2026, and as of that date is repealed.

**SEC. 4.** Section 18624 is added to the Revenue and Taxation Code, to read:

**18624.** (a) Section 6109 of the Internal Revenue Code, relating to identifying numbers, shall apply, except as otherwise provided.

(b) Identifying numbers shall be required on state tax returns, statements, or other documents in the form and manner as the Franchise Tax Board may require.

(c) Section 6109(h) of the Internal Revenue Code, relating to identifying information required with respect to certain seller-provided financing, shall not apply.

(d) The amendments made to Section 6109(a) of the Internal Revenue Code, relating to identifying number of income tax return preparer, by Public Law 105-206 shall apply.

(e) The amendments made by Chapter 931 of the Statutes of 1999 shall be operative on the effective date of that chapter.

(f) This section shall become operative on December 1, 2026.

**SEC. 5.** Section 19002 of the Revenue and Taxation Code is amended to read:

**19002.** (a) The amount withheld under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code during any calendar year shall be allowed to the recipient of the income as a credit against the tax for the taxable year with respect to which the amount was withheld.

(b) In the case of a partnership, limited liability company classified as a partnership for California income tax purposes, or S corporation filing a group return as agent for electing nonresident partners or shareholders in accordance with Section 18535, for purposes of this part, the amount withheld under Article 5 (commencing with Section 18661) of Chapter 2 during any taxable year shall be allowed as a credit attributable to the partnership, limited liability company, or S corporation on the group return for the taxable year with respect to which that amount was withheld.

(c) (1) For purposes of Section 19306, any tax actually deducted and withheld during any calendar year under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code shall, in respect of the recipient of the income, be deemed to have been paid on the last day prescribed for filing the return under Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2 (without regard to any extension of time for filing the return), with respect to which the tax is allowable as a credit under subdivision (a) or (b).

(2) For purposes of Sections 19306 and 19340, any amount paid as estimated tax under Section 19025 or 19136 of this code or Section 13043 of the Unemployment Insurance Code for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2 (without regard to any extension of time for filing the return).

(d) Notwithstanding subdivision (b) or (c), for purposes of Section 19306 with respect to any tax deducted and withheld under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code both of the following shall apply:

(1) If a return is filed before the due date for that return, the return shall be considered filed on the due date.

(2) If a tax with respect to an amount paid is paid before the due date for that return, the tax shall be considered paid on the due date.

(e) If any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, that amount shall be considered as a payment of estimated tax in accordance with Section 19007, for the succeeding taxable year, and no claim for credit or refund of the overpayment shall be allowed for the taxable year in which the overpayment arises.

(f) In the case of a nonresident alien electing to file in a group return pursuant to Section 18537, the amount withheld under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code during any calendar year shall be allowed to the recipient of the income as a credit against the tax for the taxable year with respect to which the amount was withheld.

(g) This section shall remain in effect only until December 1, 2026, and as of that date is repealed.

**SEC. 6.** Section 19002 is added to the Revenue and Taxation Code, to read:

**19002.** (a) The amount withheld under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code during any calendar year shall be allowed to the recipient of the income as a credit against the tax for the taxable year with respect to which the amount was withheld.

(b) In the case of a partnership, limited liability company classified as a partnership for California income tax purposes, or S corporation filing a group return as agent for electing nonresident partners or shareholders in accordance with Section 18535, for purposes of this part, the amount withheld under Article 5 (commencing with Section 18661) of Chapter 2 during any taxable year

shall be allowed as a credit attributable to the partnership, limited liability company, or S corporation on the group return for the taxable year with respect to which that amount was withheld.

(c) (1) For purposes of Section 19306, any tax actually deducted and withheld during any calendar year under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code shall, in respect of the recipient of the income, be deemed to have been paid on the last day prescribed for filing the return under Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2 (without regard to any extension of time for filing the return), with respect to which the tax is allowable as a credit under subdivision (a) or (b).

(2) For purposes of Sections 19306 and 19340, any amount paid as estimated tax under Section 19025 or 19136 of this code or Section 13043 of the Unemployment Insurance Code for any taxable year shall be deemed to have been paid on the last day prescribed for filing the return under Article 1 (commencing with Section 18501) or Article 2 (commencing with Section 18601) of Chapter 2 (without regard to any extension of time for filing the return).

(d) Notwithstanding subdivision (b) or (c), for purposes of Section 19306 with respect to any tax deducted and withheld under Article 5 (commencing with Section 18661) of Chapter 2 or Section 13020 of the Unemployment Insurance Code both of the following shall apply:

(1) If a return is filed before the due date for that return, the return shall be considered filed on the due date.

(2) If a tax with respect to an amount paid is paid before the due date for that return, the tax shall be considered paid on the due date.

(e) If any overpayment of income tax is claimed as a credit against estimated tax for the succeeding taxable year, that amount shall be considered as a payment of estimated tax in accordance with Section 19007, for the succeeding taxable year, and no claim for credit or refund of the overpayment shall be allowed for the taxable year in which the overpayment arises.

(f) This section shall become operative on December 1, 2026.