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PAPER**

**CALIFORNIA TAX REPORTING FOR
INTERNATIONAL BUSINESS TRAVELERS:
A PROPOSAL FOR COMPOSITE RETURNS**

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EXECUTIVE SUMMARY

International employees who are California non-residents routinely travel to California on business trips. International business travelers (IBTs) from outside the US often are not eligible for a US social security number (SSN) because they do not have a visa type that permits them to apply. While many companies actively track the business travel of their international employees and can identify when state employer withholding and reporting tax responsibilities exist, they do not have an effective mechanism to remit taxes with respect to this group of employees.

This paper proposes that California's Legislature revise the California Revenue and Taxation Code to create a mechanism that would allow a US affiliate employer to file on a composite basis on behalf of specific nonresident employees of a related entity group. The proposed solution would be modelled on existing statutes that allow corporations to file composite returns on behalf of nonresident partners and directors. Revisions to existing statutes would be required because many IBTs are not eligible to receive SSNs. To generate higher rates of participation, filing the composite return would allow employers to fulfill both their W-2 reporting obligations and the non-residents' individual income tax return filing obligations.

DISCUSSION

I. INTRODUCTION

International employees who are non-resident to California (CA) routinely travel into the state on business trips. These IBTs are not working in California long enough to be placed on a short-term assignment but many companies still actively track their business travel and can identify when state-mandated employer withholding and reporting tax responsibilities exist. Although companies want to comply with the tax reporting requirements for their IBTs, they currently do not have an effective mechanism to satisfy all the compliance requirements.

To operate payroll, there is a requirement that employers report their employees' US SSNs. IBTs from outside the US often are not eligible to apply for a SSN, even in situations when they are legitimately present in the US for work, because they do not have a visa type that permits application for a SSN.

According to the Employment Development Department (EDD), an Individual Tax Identification Number (ITIN) may be used for CA (but not Federal) employment tax and income tax payroll reporting purposes, however most IBTs do not have an ITIN. The process for obtaining an ITIN requires an IBT to attach an application to a timely filed federal income tax return. Thus, it not practical for an IBT to obtain a new ITIN and provide it to an employer before the employer's deadline to remit CA taxes. We understand that the EDD generally is willing to accept remittances with no identifying numbers, however significant challenges are created in matching the remitted funds to the appropriate taxpayers.

II. THE PROBLEM FOR THE FRANCHISE TAX BOARD

Because employers cannot pay the income tax via payroll, and it is often difficult for non-US employees to file individual income tax returns, many employers may be at a loss for how to comply in an administratively feasible way. A very limited number of non-US employees will file CA tax returns. Collection of CA employment and income tax from employers and/or non-US employees would require significant enforcement efforts through payroll and individual audits.

III. CHALLENGE FOR EMPLOYERS

Many employers are motivated to operate a compliant payroll but cannot make payroll deposits for income taxes for their IBTs via their existing payroll processes. We understand that the EDD generally is willing to accept employment taxes without identifying numbers, but the remittance of income taxes would create significant challenges matching the remitted funds to the appropriate taxpayers. Employees can file a federal tax return to obtain an ITIN and then file a CA tax return to pay the CA tax. Employers can support those efforts, however this approach presents the following challenges for employers:

A. *Withholding Obligation*

Even if employees obtain an ITIN and file a CA tax return, it does not relieve their foreign employers from the obligation to withhold.

B. *Time and Effort Burden*

Employers seek to remove or significantly reduce the time and effort burden on their employees to file and report worldwide income to CA for incidental business travel.

C. *Tax Preparation Costs*

There is a high cost for employers to pay tax service providers to prepare tax returns on behalf of the employer's business travelers.

D. *Penalties and Interest*

Even where employers encourage individual compliance, employees may be subject to penalties and interest on the tax return if no income tax withholding occurred. In addition, the employee will have had to wait until the IRS issues the ITIN before filing the California return, which can result in late payment of income tax.

E. *Tracking Travel and Gathering Compensation Data*

There is an inherent complexity in tracking an IBT's travel to CA. Even

when an employer tracks an IBT's travel, employers must gather and analyze each IBT's compensation data to comply. This involves the manual process of contacting each IBT's foreign employer's payroll department and can be especially challenging when there are a large number of IBTs with different foreign employers.

IV. DESIRED OBJECTIVE AND PROPOSED SOLUTION TO BE USED FOR INTERNATIONAL TRAVELERS TO CALIFORNIA WITHOUT A SSN OR ITIN

The objective of this proposal is to create a mechanism that allows a US affiliate employer to file a CA income tax return on a composite basis on behalf of specific nonresident employees of a related entity group in lieu of individual income tax return filing. The proposed solution would be modeled after existing rules for other types of composite returns.

V. BENEFITS FOR FTB AND EMPLOYERS

Changing the law to allow a US affiliate employer to file composite returns for IBTs could increase employers' ability to comply and reduce their risk, cost and administrative effort while improving the employee experience for IBTs.

VI. PROPOSED PROVISIONS

The proposal would include the following provisions:

A. Filing Composite returns on behalf of IBTs

1. *Uses an existing approach*

Similar to existing provisions in the California Revenue and Taxation Code (Cal. Rev. & Tax) which provide for composite returns, the proposed provision would allow a CA company to file a composite return to report CA income tax on behalf of an IBT employed by a related legal entity.

2. *Applies a 30-day Safe Harbor*

Given that California companies would need to gather compensation data for each IBT from the IBT's foreign employer's payroll department, a safe harbor would help induce more CA companies to comply. A thirty day de minimis safe harbor would be established before an employer becomes subject to withholding and reporting requirements with respect to IBTs.

3. *Who can be included*

IBTs who are not eligible for a SSN would be allowed to be included on a composite return.

4. *Taxpayer identification would be issued*

Employers would not be required to report a SSN or ITIN for an IBT included on the composite return. The FTB would issue a California tax ID number for each IBT included on the composite return.

B. Calculation of Taxes

1. *Applies existing principles*

An IBT's California source income would be calculated in a manner consistent with existing principles used to allocate income to California and, as described in the Form 1067A worksheet, would equal the sum of the IBT's:

- Current year wages multiplied by a fraction (total California workdays over 240), *plus*
- Bonuses paid in the current year that relate to prior year performance, multiplied by a fraction (total California workdays in the earnings period year over the total days in the earnings period, *plus*
- Compensation paid in the current year that relates to a multi-year performance period (e.g., equity) multiplied by a fraction (total California workdays in the multi-year performance period over total workdays in the multi-year performance period (assuming 240 workdays per year)).

2. *Reasonable estimates of prior year travel data*

Income is sourced to CA based on actual workdays spent in the state. Employers will be permitted to use reasonable estimates of prior year travel data to the extent actual data is not available but the use of estimates will be limited to four tax years preceding the effective date of the law.

3. *Taxed at the highest marginal rate*

An IBT's tax would be calculated at the highest marginal rate, consistent with tax rates applicable for other types of composite returns.

4. *Non-wage treatment for taxes paid on behalf of employees*

Taxes remitted on behalf of an IBT would be treated as a non-wage payment that does not need to be grossed up.

C. *Filing requirements and obligations*

1. *Single annual employer return*

The employer's composite return filing requirements with respect to IBTs included on the composite return would be limited to a single annual composite return.

2. *Tax payments remitted quarterly*

Employers could remit taxes quarterly with employee names.

3. *Single return fulfills employer's income tax withholding and reporting obligations*

The annual return would be treated as fulfilling the actual employer's income tax withholding and reporting obligations.

4. *The composite return would not impact non-income tax payroll obligations*

Employers would still be required to register with the EDD and remit California unemployment insurance tax, state disability tax and employee training tax (the “EDD Payroll Taxes”) for the IBT. We understand that the EDD is willing to allow EDD Payroll Taxes to be reported and remitted without providing the IBT’s SSN or ITIN.

5. *Employee notification requirements*

Employers must obtain consent from the IBT to be included on the composite return before the return has been filed. However, the IBT would not be required to opt-in before an employer remits quarterly taxes on the IBT’s behalf.

6. *Single return fulfills employees’ tax filing obligation unless otherwise required to file*

The composite return would be treated as fulfilling the IBT’s personal income tax filing obligation unless the IBT later becomes a California resident or has an unrelated CA income tax filing obligation.

7. *Tax payments credited to IBT’s personal income tax return*

If the IBT files a personal income tax return for the year, taxes remitted on behalf of the IBT for that year would be allowed to be credited against the IBT’s personal income tax liability.

VII. APPLICABLE STATUTES AND PROPOSED REVISIONS

To implement the proposed solution a number of key issues under current law will need to be addressed and some existing rules need to be revised.

A. Employer payroll tax return obligations

Under existing rules, employers cannot issue a Form W-2 for IBTs without providing the IBT's SSN, however, many IBTs are not eligible to obtain a US social security number.

Under current law, foreign employers are required to register in California and withhold and report wages and remit CA employment tax and income taxes related to their IBTs. Cal. Unemp. Ins. Code §1086 and §13020. When the employer files payroll tax returns with the CA EDD the employer is supposed to include the SSN of each employee included on the return Cal. Unemp. Ins. Code §1088 and §13056; EDD Form DE 9C, however we understand that the EDD generally is willing to accept filings without identification numbers.

The proposal would revise the current requirement for foreign employers to register in California by allowing US affiliates to report wages to the EDD for the purpose of remitting employment taxes on their behalf.

The proposal would also allow remittance of income taxes to the FTB and allow California companies to fulfill filing requirements on behalf of nonresident employees of a related entity group by filing a composite return. Under this proposal, SSNs would not be required for IBTs included on composite tax returns.

B. IBT Personal Income Tax returns

Existing rules for filing state income tax returns require that a nonresident with California source income must file an individual income tax return on Form 540NR. Cal. Rev. & Tax Code §18501 and §17041. To file such individual tax returns, the IBT must provide a SSN or ITIN. However, some IBTs are not eligible to obtain a SSN and obtaining an ITIN can be difficult. Cal. Rev. & Tax Code §18624. In lieu of nonresident IBTs filing a return pursuant to R&TC §18501, the Cal. Rev. & Tax Code would be amended to allow Employers to file a composite return. IBTs included on such composite returns would not require a SSN or ITIN. Each IBT would receive an individual ID number issued by the FTB to allow their records to be joined if the employee later obtained an ITIN.

VIII. THE PROPOSED LAW IS MODELED ON EXISTING RULES THAT APPLY TO COMPOSITE RETURNS

A. Business entities and corporations can currently file group returns for nonresidents under Cal. Rev. & Tax Code §§18535 and 18536

The proposed solution would be modeled on existing statutes that allow business entities and corporations to file group returns on behalf of nonresident payees in limited circumstances. For example, group returns can be filed for one or more electing nonresident partners by a partnership doing business in, or deriving income from, California. Cal. Rev. & Tax Code §18535. Group returns can also be filed by a corporation for one or more electing nonresident individuals who receive wages, salaries, fees, or other compensation from that corporation for director services. Cal. Rev. & Tax Code §18535.

B. Guidelines for filing group returns exist under FTB Pub 1067

FTB Pub. 1067 provides guidelines applicable to group returns for nonresident partners and directors. Many of these guidelines could also be extended to apply to nonresident IBTs.

1. *Who may file a group nonresident return*

FTB Pub. 1067 states that a group nonresident return may be filed by: (1) a business entity, acting as the authorized agent for its electing nonresident individual shareholders, partners or members, to report the distributive shares of income or from doing business in California; or (2) a corporation, acting as the authorized agent for its electing nonresident directors, to report the directors' wages, salaries fees, or other compensation from that corporation for directors services performed in California, including attendance of board of directors' meetings in California.

2. *Inclusion on a group return satisfies the individual return filing requirement*

FTB Pub. 1067 provides that "A group nonresident return is considered

a group of individual returns that meets the California individual income tax return filing requirement. Thus, a qualified nonresident individual who elects to be included in the group nonresident return does not file a separate personal income tax return for the year.” Provisions of the proposed law would apply this rule to composite returns for IBTs.

3. *The maximum tax rate would be used for composite returns*

Section A of the FTB Pub. 1067 also provides that income reported on a group return is taxed at the highest marginal rate of 13.3%. The proposed law would extend this to composite returns filed for IBTs.

4. *Estimated tax payments would be required on a calendar year basis*

FTB 1067 provides the deadline for making payment of estimated tax, stating that “the group nonresident return and any estimate payments are due on a calendar year basis, even if the business entity or corporation has a fiscal year end.” This provision would also be applied to IBTs under the proposal.

5. *Participation in a group nonresident return is voluntary*

Existing rules already address participation requirements for individuals on a group nonresident return. According to Section F of the FTB Pub. 1067, “The business entity/corporation is responsible for:

- Allowing each nonresident individual the annual option of being included in the group nonresident return.
- Informing each nonresident individual of the terms and conditions of filing a group nonresident return specified on Form FTRB 3864, Group Nonresident Return Election.

Under the proposal, these provisions would apply equally to composite returns.

6. *The business entity can file an annual election*

Existing rules under FTB Pub. 1067 provide that “the business entity/corporation makes an annual election to file a group nonresident return on behalf of the electing nonresident individuals. Once made, the election is irrevocable for the taxable year. Make the election by attaching a completed and signed form FTB 3864, to the Form 540NR filed for the group.” FTB Pub. 1067. Under the proposed law, this provision would also apply to composite returns for IBTs.

C. Group Nonresident Return Election (Form 3864)

The election required to file group returns on behalf of nonresident IBTs could be modeled on FTB Form 3864, which is currently used by business entities/corporations to elect to file a group nonresident return.

D. Group Nonresident Tax Returns (Form 540NR)

The composite tax return that would be used to report amounts paid to nonresident IBTs could be modeled on FTB Long Form 540NR, which is currently used by a business entity/corporation filing a group nonresident return.

IX. ANALOGIES THAT EXIST IN CURRENT LAW

There is no perfectly analogous state proposal that we are aware of. There is a similar proposal that we are aware of at the federal level called the Mobile Workforce State Income Tax Simplification Act of 2019 which would mandate that business travelers other than athletes and entertainers would not be subject to income tax in a non-resident state until they had performed services in that state for more than 30 days.

X. CONCLUSION

California statutes require foreign employers to register in California and pay employment and income taxes for nonresident IBT's, yet California does not provide an effective mechanism for foreign employers to comply

with these requirements. The proposed legislation would enable employers to fulfill their W-2 reporting obligations and the income tax filing obligations of their nonresident IBTs.

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Exhibit A – Existing Law

1. California statutes applicable to payroll tax returns for nonresident IBTs.

Cal. Unemp. Ins. Code §1086 – Employer registration

UNEMPLOYMENT INSURANCE CODE - UIC

DIV 1. UNEMPLOYMENT AND DISABILITY COMPENSATION
[100 - 4751]

PART 1. UNEMPLOYMENT COMPENSATION [100 - 2129]

CHAPTER 4. Contributions and Reports [901 - 1243] ARTICLE

6. Records, Reports and Contribution Payments

Section 1086. (a) Each employing unit within 15 days after becoming an employer as defined in this part shall register with the department on a form prescribed by the department.

Cal. Unemp. Ins. Code §13020 – Employer withholding on wages paid to non-residents

UNEMPLOYMENT INSURANCE CODE - UIC

DIVISION 6. WITHHOLDING TAX ON WAGES [13000 - 13101]

CHAPTER 2. Withholding and Payment of Tax [13020 - 13031]

Section 13020. (a) (1) Every employer who pays wages to a resident employee for services performed either within or without this state, or to a nonresident employee for services performed in this state, shall deduct and withhold from those wages, except as provided in subdivision (c) and Sections 13025 and 13026, for each payroll period, a tax computed in that manner as to produce, so far as practicable, with due regard to the credits for personal exemptions allowable under Section 17054 of the Revenue and Taxation Code, a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code resulting from the inclusion in the gross income of the employee of the wages which were subject to withholding. The method of determining the amount to be withheld shall be prescribed by the Franchise Tax Board pursuant to Section 18663 of the Revenue and Taxation Code.

(2) For each payroll period ending on or after November 1, 2009, the sum shall comport with the changes made to Section 18663 of the Revenue and Taxation Code, by the act adding this paragraph.

Cal. Unemp. Ins. Code §1088 – Employer filing requirements (see also §13021)

UNEMPLOYMENT INSURANCE CODE - UIC

DIVISION 1. UNEMPLOYMENT AND DISABILITY COMPENSATION

PART 1. UNEMPLOYMENT COMPENSATION [100 - 2129]

CHAPTER 4. Contributions and Reports [901 - 1243]

ARTICLE 6. Records, Reports and Contribution Payments

Section 1088. (a) (1) Each employer shall file with the director within the time required by subdivision (a) or (d) of Section 1110 for payment of employer contributions, a report of contributions, a quarterly return, and a report of wages paid to the employer's workers in the form and containing any information as the director prescribes. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions. The quarterly return shall include the total amount of wages, employer contributions required under Sections 976 and 976.6, worker contributions required under Section 984, the amounts required to be withheld under Section 13020, or withheld under Section 13028, and any other information as the director shall prescribe. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028.

(3) (A) In order to enhance efforts to reduce tax fraud and to reduce the personal income tax reporting burden, effective January 1, 1997, the report of wages shall also include the full first name of the employee and total wages, as defined in Section 13009, paid to each employee. This paragraph shall apply to reports of wages for all periods ending on or before December 31, 1999. (B) For all periods beginning on or after January 1, 2000, the report of wages shall also include total wages subject to personal income tax, as defined in Section 13009.5, paid to each employee.

(h) (1) Notwithstanding subdivision (e), effective January 1, 2017, an employer with 10 or more employees shall file the report of contributions, quarterly return, and report of wages electronically. (2) Notwithstanding subdivision (e), effective January 1, 2018, all employers shall file the report of contributions, quarterly return, and report of wages electronically.

Cal. Unemp. Ins. Code §13056 – Information required

UNEMPLOYMENT INSURANCE CODE - UIC

DIVISION 6. WITHHOLDING TAX ON WAGES [13000 - 13101]

CHAPTER 4. Reports, Returns, and Statements [13050 - 13059]

Section 13056. (a) When required by authorized regulations prescribed by the department:

(1) Any person or employer required under the authority of this division to make a return, report, statement, or other document shall include in the return, report, statement, or other document the identifying number as may be prescribed for securing proper identification of the person. (2) Any person with respect to whom a return, report, statement, or other document is required under the authority of this division to be made by another person shall furnish to the other person the identifying number as may be prescribed for securing his or her proper identification. (3) Any person or employer required under the authority of this division to make a return, report, statement, or other document with respect to another person shall request from the other person, and shall include in the return, report, statement, or other document, the identifying number as may be prescribed for securing proper identification of the other person.

Instructions for Form DE 9C Quarterly Contribution Return and Report of Wages – Requiring ITIN/SSN

ITEM D. SOCIAL SECURITY NUMBER (SSN): Enter the SSN of each employee or individual to whom you paid wages in subject employment, paid Personal Income Tax (PIT) wages, and/or from whom you withheld PIT during the quarter. If someone does not have an SSN, report their name, wages, and/or withholdings without the SSN and TAKE IMMEDIATE STEPS TO SECURE ONE. Report the correct SSN to the EDD as soon as possible on a Quarterly Contribution and Wage Adjustment Form (DE 9ADJ).

20 CFR 422.104 – Who can be assigned a social security number

Section 422.104 Who can be assigned a social security number.

(a) Persons eligible for SSN assignment. We can assign you a social security number if you meet the evidence requirements in §422.107 and you are:

- (1) A United States citizen; or
- (2) An alien lawfully admitted to the United States for permanent residence or under other authority of law permitting you to work in the United States (§422.105 describes how we determine if a nonimmigrant alien is permitted to work in the United States); or
- (3) An alien who cannot provide evidence of alien status showing lawful admission to the U.S., or an alien with evidence of lawful admission but without authority to work in the U.S., if the evidence described in § 422.107(e) does not exist, but only for a valid nonwork reason. We consider you to have a valid nonwork reason if:

- (i) You need a social security number to satisfy a Federal statute or regulation that requires you to have a social security number

in order to receive a Federally-funded benefit to which you have otherwise established entitlement and you reside either in or outside the U.S., or

(ii) You need a social security number to satisfy a State or local law that requires you to have a social security number in order to receive public assistance benefits to which you have otherwise established entitlement, and you are legally in the United States.

2. California statutes applicable to a nonresident's personal income tax filing requirement. Cal. Rev. & Tax Code §18501 – Requiring Tax returns be filed with the FTB.

REVENUE AND TAXATION CODE - RTC DIVISION 2. OTHER TAXES [6001 - 60709]
PART 10.2. ADMINISTRATION OF FRANCHISE AND INCOME TAX LAWS CHAPTER 2. Returns [18501 - 18677]
ARTICLE 1. Individuals and Fiduciaries [18501 - 18572]

Section 18501. (a) Every individual taxable under Part 10 (commencing with Section 17001) shall make a return to the Franchise Tax Board, stating specifically the items of the individual's gross income from all sources and the deductions and credits allowable, if the individual has any of the following for the taxable year:

Cal. Rev. & Tax Code §17041 – Imposing tax on income of non-residents

REVENUE AND TAXATION CODE - RTC
DIVISION 2. OTHER TAXES [6001 - 60709]
PART 10. PERSONAL INCOME TAX [17001 - 18181]
CHAPTER 2. Imposition of Tax [17041 - 17061]

Section 17041. (b) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident, except the head of a household as defined in Section 17042, a tax as calculated in paragraph (2). (2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(d) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax as calculated in paragraph (2). (2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income

of a nonresident or part-year resident,” as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (c) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

Cal. Rev. & Tax Code §18624 – Identifying numbers required on tax returns

REVENUE AND TAXATION CODE - RTC DIVISION 2. OTHER TAXES
[6001 - 60709]

PART 10.2. ADMINISTRATION OF FRANCHISE AND INCOME
TAX LAWS CHAPTER 2. Returns [18501 - 18677]

ARTICLE 3. General Provisions Applicable to All Persons
[18621 - 18628]

Section 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. 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. (d) The amendments made by the act adding this subdivision shall be operative on the effective date of the act adding this subdivision.

3. California statutes applicable to group returns filed for nonresidents.

Cal. Rev. & Tax Code §18535 – Relating to nonresident partners

REVENUE AND TAXATION CODE - RTC

DIVISION 2. OTHER TAXES [6001 - 60709]

PART 10.2. ADMINISTRATION OF FRANCHISE AND
INCOME TAX LAWS CHAPTER 2. Returns [18501 - 18677]

ARTICLE 1. Individuals and Fiduciaries [18501 - 18572]

Section 18535. (a) In lieu of electing nonresident partners filing a return pursuant to Section 18501, the Franchise Tax Board may, pursuant to requirements and conditions set forth in forms and instructions, provide for the filing of a group return for one or more electing nonresident partners by a partnership doing business in, or deriving income from, sources in California. The tax rate or rates applicable to each electing partner's distributive share shall consist of the highest marginal rate or rates provided by Part 10 (commencing with Section 17001) plus, in the

case of any electing nonresident partner included on the group return who would be subject to Section 17043 when filing individually, an additional tax rate of 1 percent. Except as provided in subdivision (b), no deductions shall be allowed except those necessary to determine each partner's distributive share, and no credits shall be allowed except those directly attributable to the partnership. As required by the Franchise Tax Board, the partnership as agent for the electing partners shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by the electing partners.

Cal. Rev. & Tax Code §18536 – Relating to nonresident directors

REVENUE AND TAXATION CODE - RTC DIVISION 2. OTHER TAXES

[6001 - 60709]

PART 10.2. ADMINISTRATION OF FRANCHISE AND INCOME TAX

LAWS CHAPTER 2. Returns [18501 - 18677]

ARTICLE 1. Individuals and Fiduciaries [18501 - 18572]

Section 18536. (a) In lieu of electing nonresident directors filing a return pursuant to Section 18501, the Franchise Tax Board may, pursuant to requirements and conditions set forth in applicable forms and instructions, provide for the filing of a group return by a corporation for one or more electing nonresident individuals who receive wages, salaries, fees, or other compensation from that corporation for director services, including attendance of board of directors' meetings that take place in this state. The tax rate or rates applicable to each director's compensation for services performed in this state shall consist of highest marginal rate or rates provided for by Part 10 (commencing with Section 17001) of Division 2 plus, in the case of any electing nonresident director 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. As required by the Franchise Tax Board, the corporation, as the agent for the electing nonresident directors, shall make the payments of tax, additions to tax, interest, and penalties otherwise required to be paid by, or imposed on, the electing directors. (b) The Franchise Tax Board may adjust the income of an electing nonresident taxpayer included in a group return filed under this section to properly reflect the income under Part 10 (commencing with Section 17001) of Division 2.

(Amended by Stats. 2008, Ch. 751, Sec. 66. Effective September 30, 2008.)