

**ASSEMBLY BILL**

**No. 36**

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**Introduced by Assembly Member Laird**

September 15, 2008

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An act to amend Sections 18663 and 19025 of, and to add Sections 19136.1 and 19136.3 to, the Revenue and Taxation Code, and to amend Section 13020 of the Unemployment Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 36, as introduced, Laird. Income and corporation taxes.

Existing law requires the Franchise Tax Board to prepare wage withholding tables to be used by employers for purposes of withholding taxes on wages paid. Existing law allows, in lieu of the withholding tables, withholding at a rate of 6% with respect to supplemental wages and at a rate of 9.3% with respect to stock options and bonus payments.

This bill would, for calendar years beginning on or after January 1, 2009, require the wage withholding tables to produce a sum that is equal to 10% more than the sum specified for purposes of the withholding tables. This bill would, for taxable years beginning on or after January 1, 2009, also increase the withholding rates to 6.6% for supplemental wages and to 10.23% for stock options and bonus payments.

Existing income tax laws require specified individuals to pay estimated income taxes in installments and impose additional liability for underpayments.

This bill would adjust the amount of those installments.

Existing corporation tax laws provide, with a specified exception, that if the amount of estimated tax exceeds the minimum franchise tax imposed on corporations, the amount payable shall be payable in installments.

This bill would modify the percentages of the estimated taxes payable pursuant to those installment payments.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 10, 2008, pursuant to the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 18663 of the Revenue and Taxation Code  
2 is amended to read:

3 18663. (a) (1) The Franchise Tax Board shall annually (or  
4 more often if necessary) prepare and make available to the  
5 Employment Development Department, wage withholding tables  
6 that shall be used by every employer making payment of any wages  
7 to a resident employee for services performed either within or  
8 without this state; or to a nonresident employee for services  
9 performed in this state, to deduct and withhold from those wages  
10 for each payroll period, a tax computed in a manner as to produce,  
11 so far as practicable, with due regard to the credits for personal  
12 exemptions allowable under Section 17054, a sum that is  
13 substantially equivalent to the amount of tax reasonably estimated  
14 to be due under Part 10 (commencing with Section 17001) resulting  
15 from the inclusion in the gross income of the employee the wages  
16 which were subject to withholding.

17 (2) *For calendar years beginning on or after January 1, 2009,*  
18 *wage withholding tables prepared by the Franchise Tax Board*  
19 *pursuant to this subdivision shall produce, so far as practicable,*  
20 *with due regard to the credits for personal exemptions allowable*  
21 *under Section 17054, a sum that will significantly prevent*  
22 *underwithholding by using an amount equal to 10 percent more*  
23 *than the sum described in paragraph (1).*

24 (b) (1) (A) For supplemental wages paid on or after January  
25 1, 1992, the rate of withholding that may be applied to  
26 supplemental wages in lieu of the wage withholding tables  
27 specified in subdivision (a) shall be 6 percent.

28 (B) *For taxable years beginning on or after January 1, 2009,*  
29 *the rate of withholding pursuant to this subdivision shall be 6.6*  
30 *percent.*

(2) For purposes of this subdivision, “supplemental wages” includes, but is not limited to, bonus payments, overtime payments, commissions, sales awards, back pay including retroactive wage increases, and reimbursements for nondeductible moving expenses that are paid for the same or a different period, or without regard to a particular period.

(c) (1) For stock options and bonus payments that constitute wages paid on or after January 1, 2002, the rate of withholding that may be applied to those stock options and bonus payments in lieu of the wage withholding tables specified in subdivision (a) shall, notwithstanding subdivision (b), be 9.3 percent.

(2) For taxable years beginning on or after January 1, 2009, the rate of withholding pursuant to this subdivision shall be 10.23 percent.

SEC. 2. Section 19025 of the Revenue and Taxation Code is amended to read:

19025. (a) If the amount of estimated tax does not exceed the minimum tax specified by Section 23153, the entire amount of the estimated tax shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(b) Except as provided in subdivision (c), if the amount of estimated tax exceeds the minimum tax specified by Section 23153, the amount payable shall be paid in installments as follows:

If the requirements of this subdivision are first met—	The following percentages of the estimated tax shall be paid on the 15th day of the—			
	4th month	6th month	9th month	12th month
Before the 1st day of the 4th month of the taxable year.....	25-30 (but not less than the minimum tax provided in Section 23153 and	25-30	25-20	25-20

1		any tax under			
2		Section			
3		23800.5)			
4	After the last day of				
5	the 3rd month and				
6	before the 1st day				
7	of the 6th month				
8	of the taxable				
9	year.....	—	33 1/3 40	33 1/3 30	33 1/3 30
10	After the last day of				
11	the 5th month and				
12	before the 1st day				
13	of the 9th month				
14	of the taxable				
15	year.....	—	—	50	50
16	After the last day of				
17	the 8th month and				
18	before the 1st day				
19	of the 12th month				
20	of the taxable				
21	year.....	—	—	—	100
22					

23 (c) If a wholly owned subsidiary is first subject to tax under  
 24 Section 23800.5 after the last day of the third month of the taxable  
 25 year of owner, the amount of the next installment of estimated tax  
 26 under subdivision (b) after the wholly owned subsidiary is subject  
 27 to tax under Section 23800.5 shall not be less than the amount of  
 28 the tax of the wholly owned subsidiary under Section 23800.5 and  
 29 an amount equal to that amount shall be due and payable on the  
 30 date the installment is required to be paid. For purposes of  
 31 determining which installment is the next installment of estimated  
 32 tax under subdivision (b), subdivision (b) shall be modified by  
 33 substituting “includes the tax of a wholly owned subsidiary under  
 34 Section 23800.5” for “exceeds the minimum tax specified by  
 35 Section 23153.”

36 (d) *The amendments to this section by the act adding this*  
 37 *subdivision shall apply to installments due for each taxable year*  
 38 *beginning on or after January 1, 2009.*

39 SEC. 3. Section 19136.1 is added to the Revenue and Taxation  
 40 Code, to read:

1 19136.1. (a) Section 6654(d)(1)(A) of the Internal Revenue  
2 Code is modified to provide that in lieu of the required installments  
3 specified in that section, the amount of required installments shall  
4 instead be as follows:

5 (1) For the 1st and 2nd required installments, 30 percent of the  
6 required annual payment.

7 (2) For the 3rd and 4th required installments, 20 percent of the  
8 required annual payment.

9 (b) This section shall apply to installments due for each taxable  
10 year beginning on or after January 1, 2009.

11 SEC. 4. Section 19136.3 is added to the Revenue and Taxation  
12 Code, to read:

13 19136.3. (a) Section 6654(d)(1)(B) of the Internal Revenue  
14 Code is modified to additionally provide that clause (ii) shall not  
15 apply if the adjusted gross income shown on the return of the  
16 individual for the preceding taxable year beginning in any calendar  
17 year is equal to or greater than \$1 million (\$500,000 in the case  
18 of a married individual filing a separate return).

19 (b) The amendments made to this section by the act adding this  
20 subdivision shall apply to taxable years beginning on or after  
21 January 1, 2009.

22 SEC. 5. Section 13020 of the Unemployment Insurance Code  
23 is amended to read:

24 13020. (a) Every employer who pays wages to a resident  
25 employee for services performed either within or without this state,  
26 or to a nonresident employee for services performed in this state,  
27 shall deduct and withhold from those wages, except as provided  
28 in subdivision (c) and Sections 13025 and 13026, for each payroll  
29 period, a tax computed in that manner as to produce, so far as  
30 practicable, with due regard to the credits for personal exemptions  
31 allowable under Section 17054 of the Revenue and Taxation Code,  
32 a sum which is substantially equivalent to the amount of tax  
33 reasonably estimated to be due under Part 10 (commencing with  
34 Section 17001) of Division 2 of the Revenue and Taxation Code  
35 resulting from the inclusion in the gross income of the employee  
36 of the wages which were subject to withholding. The method of  
37 determining the amount to be withheld shall be prescribed by the  
38 Franchise Tax Board pursuant to Section 18663 of the Revenue  
39 and Taxation Code. *For each payroll period ending on or after*  
40 *January 1, 2009, the sum shall comport to the changes made to*

1 *Section 18663 of the Revenue and Taxation Code by the act adding*  
2 *this sentence.*

3 (b) The department upon request may permit the use of  
4 accounting machines to calculate the proper amount to be deducted  
5 and withheld from wages, if the calculation produces an amount  
6 substantially equivalent to the amount of tax required to be  
7 withheld under subdivision (a).

8 (c) Withholding shall not be required by this section with respect  
9 to wages, salaries, fees, or other compensation paid by a  
10 corporation for services performed in California for that corporation  
11 to a nonresident corporate director for director services, including  
12 attendance at a board of directors' meeting.

13 SEC. 6. The Legislature has been made aware of substantial  
14 numbers of taxpayers who have incurred the unanticipated  
15 consequence of owing tax to the State of California as a result of  
16 underwithholding despite withholding in accordance with  
17 withholding tables prescribed under current law. To remedy this  
18 problem and ease the burden resulting from an unexpected amount  
19 of tax owed, the amendments made by Section 1 of this act require  
20 a moderate increase in amounts to be withheld to avoid these  
21 consequences. To the extent the modest change in the withholding  
22 required by the amendments made by Section 1 of this act results  
23 in overwithholding for some taxpayers, those taxpayers can adjust  
24 the amounts withheld to accommodate their needs.

25 SEC. 7. This act addresses the fiscal emergency declared by  
26 the Governor by proclamation on January 10, 2008, pursuant to  
27 subdivision (f) of Section 10 of Article IV of the California  
28 Constitution.

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31 **CORRECTIONS:**

32 **Text—Pages 2, 4, and 5.**

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