

**ASSEMBLY BILL**

**No. 2487**

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**Introduced by Assembly Member Berg**

February 21, 2008

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An act to add Section 18533.1 to the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2487, as introduced, Berg. Income taxes: refunds.

The Franchise Tax Board administers the Personal Income Tax Law and other laws, under which taxpayers must report and pay tax to the board. Existing law generally provides, with respect to married persons, that the community estate is liable for a debt incurred by a spouse before or during marriage, regardless of whether both spouses are parties to the debt.

Existing law provides that an income tax liability that is unreported, understated, or unpaid due to certain omissions of one spouse, and the other spouse did not know of, and had no reason to know of, the understatement or nonpayment, and certain other criteria are met, then the other spouse may be relieved of liability for the tax, interest, and penalties attributable to that understatement or nonpayment.

This bill would allow a spouse who filed a joint income tax return with his or her spouse to recover a portion of a tax refund attributable to his or her tax payments and credits, if the refund had been applied to a tax liability of his or her spouse that arose before marriage.

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 18533.1 is added to the Revenue and  
2 Taxation Code, to read:  
3 18533.1. (a) Notwithstanding the provisions of Sections 910  
4 and 911 of the Family Code, an injured spouse may recover from  
5 the state his or her share of a refund due to an overpayment of tax  
6 attributable to income or refundable credit of the injured spouse,  
7 if all the following conditions are met:  
8 (1) The injured spouse filed a joint return with his or her spouse.  
9 (2) The injured spouse received income.  
10 (3) The injured spouse made tax payments or claimed a  
11 refundable credit.  
12 (4) The injured spouse reported his or her income and tax  
13 payments or refundable credits on the joint tax return.  
14 (b) “Injured spouse” means an individual, who is the spouse of  
15 a person who has a liability to the state under Part 10 (commencing  
16 with Section 17001) of Division 2 of the Revenue and Taxation  
17 Code that arose before the marriage.