

AMENDED IN SENATE APRIL 5, 2010

**SENATE BILL**

**No. 1244**

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**Introduced by Senator Walters**

February 19, 2010

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An act to amend Section 13009 of, and to add Sections ~~928.2~~ 928.7 and 929.5 to, the Unemployment Insurance Code, relating to employment taxes, *and* making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 1244, as amended, Walters. Employment: taxes and contributions: limited liability company.

Existing law requires employers to withhold tax and make contribution amounts with respect to unemployment insurance, disability insurance, employee training funding, and personal income tax from the wages paid to their employees. Existing law, with specified exceptions, requires that the determination of the employer-employee relationship be made pursuant to common-law principles, including a member of a limited liability company.

Existing law also defines "wages" for those purposes, and exempts from that definition certain remuneration.

This bill would provide that wages include reasonable compensation, as defined, paid to a managing member of a limited liability company with an "S" election filing income tax returns as an "S" corporation. This bill would provide that wages do not include remuneration paid to a nonmanaging member of a limited liability company filing income tax returns as a partnership as a guaranteed payment, as defined.

By expanding the base of wages subject to unemployment insurance taxes, this bill would deposit ~~of~~ additional moneys into the

Unemployment Fund, a continuously appropriated fund, and would make an appropriation.

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

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

- 1 SECTION 1. Section 928.7 is added to the Unemployment
- 2 Insurance Code, to read:
- 3 928.7. Notwithstanding any other law, “wages” includes
- 4 reasonable compensation, that is deductible under Section 162(a)(1)
- 5 of the Internal Revenue Code, paid to a managing member of a
- 6 limited liability company with an “S” election filing income tax
- 7 returns as an “S” corporation pursuant to Chapter 4.5 (commencing
- 8 with Section 23800) of Part 11 of Division 2 of the Revenue and
- 9 Taxation Code.
- 10 SEC. 2. Section 929.5 is added to the Unemployment Insurance
- 11 Code, to read:
- 12 929.5. Notwithstanding any other law, “wages” does not
- 13 include guaranteed payments, as defined by Section 707(c) of the
- 14 Internal Revenue Code, paid to a nonmanaging member of a limited
- 15 liability company filing income tax returns as a partnership.
- 16 SEC. 3. Section 13009 of the Unemployment Insurance Code
- 17 is amended to read:
- 18 13009. “Wages” means all remuneration, other than fees paid
- 19 to a public official, for services performed by an employee for his
- 20 or her employer, including all remuneration paid to a nonresident
- 21 employee for services performed in this state, and the cash value
- 22 of all remuneration paid in any medium other than cash, except as
- 23 provided by this section. “Wages” includes tips received by an
- 24 employee in the course of his or her employment. The wages shall
- 25 be deemed to be paid at the time a written statement including tips
- 26 is furnished to the employer pursuant to Section 13055 or, if no
- 27 statement including those tips is so furnished, at the time received.
- 28 “Wages” includes reasonable compensation, that is deductible
- 29 under Section 162(a)(1) of the Internal Revenue Code, paid to a
- 30 managing member of a limited liability company with an “S”
- 31 election filing income tax returns as an “S” corporation pursuant
- 32 to Chapter 4.5 (commencing with Section 23800) of Part 11 of
- 33 Division 2 of the Revenue and Taxation Code.

1 “Wages” shall not include remuneration paid under any of the  
2 following conditions:

3 (a) For agricultural labor, as defined in subdivision (g) of Section  
4 3121 of the Internal Revenue Code.

5 (b) For domestic service in a private home, local college club,  
6 or local chapter of a college fraternity or sorority.

7 (c) For service not in the course of the employer’s trade or  
8 business performed in any calendar quarter by an employee, unless  
9 the cash remuneration paid for that service is fifty dollars (\$50) or  
10 more and the service is performed by an individual who is regularly  
11 employed by the employer to perform the service. For purposes  
12 of this subdivision, an individual shall be deemed to be regularly  
13 employed by an employer during a calendar quarter only if either  
14 of the following conditions is met:

15 (1) On each of some 24 days during the quarter, the individual  
16 performs for the employer for some portion of the day service not  
17 in the course of the employer’s trade or business.

18 (2) The individual was regularly employed, as determined under  
19 paragraph (1), by the employer in the performance of the service  
20 during the preceding calendar quarter.

21 (d) For services by a citizen or resident of the United States for  
22 a foreign government or an international organization.

23 (e) For services performed by a nonresident alien individual as  
24 designated by regulations prescribed by the department.

25 (f) For services performed by a duly ordained, commissioned,  
26 or licensed minister of a church in the exercise of his or her  
27 ministry or by a member of a religious order in the exercise of  
28 duties required by the order.

29 (g) (1) For services performed by an individual under the age  
30 of 18 *years* in delivery or distribution of newspapers or shopping  
31 news, not including delivery or distribution to any point for  
32 subsequent delivery or distribution.

33 (2) For services performed by an individual in, and at the time  
34 of, the sale of newspapers or magazines to ultimate consumers,  
35 under an arrangement under which the newspapers or magazines  
36 are to be sold by him or her at a fixed price, his or her  
37 compensation being based on the retention of the excess of the  
38 price over the amount at which the newspapers or magazines are  
39 charged to him or her whether or not he or she is guaranteed a  
40 minimum amount of compensation for the services, or is entitled

1 to be credited with the unsold newspapers or magazines turned  
2 back.

3 (h) For services not in the course of the employer’s trade or  
4 business, to the extent paid in any medium other than cash.

5 (i) To, or on behalf of, an employee or his or her beneficiary  
6 under any of the following situations:

7 (1) From or to a trust which is exempt from tax under Section  
8 17631 of the Revenue and Taxation Code at the time of payment,  
9 unless the payment is made to an employee of the trust as  
10 remuneration for services rendered as an employee and not as a  
11 beneficiary of the trust.

12 (2) Under or to an annuity plan which, at the time of payment,  
13 is a plan qualified pursuant to Chapter 5 (commencing with Section  
14 17501) of Part 10 of Division 2 of the Revenue and Taxation Code.

15 (3) Under or to a bond purchase plan which, at the time of  
16 payment, is a bond purchase plan qualified pursuant to Chapter 5  
17 (commencing with Section 17501) of Part 10 of Division 2 of the  
18 Revenue and Taxation Code.

19 (4) For a payment which qualifies for deduction by an employee  
20 pursuant to Section 219 of the Internal Revenue Code if, at the  
21 time of payment, it is reasonable to believe that the employee will  
22 be entitled to a deduction under that section for payment.

23 (5) Under a cafeteria plan (within the meaning of Section 125  
24 of the Internal Revenue Code).

25 (j) To a master, officer, or any other seaman who is a member  
26 of a crew on a vessel engaged in foreign, coastwise, intercoastal,  
27 interstate, or noncontiguous trade.

28 (k) Pursuant to any provision of law other than Section 5(c) or  
29 6(l) of the Peace Corps Act, for service performed as a volunteer  
30 or volunteer leader within the meaning of that act.

31 (l) In the form of group-term life insurance on the life of an  
32 employee.

33 (m) To or on behalf of an employee, and to the extent that, at  
34 the time of the payment of remuneration it is reasonable to believe  
35 that a corresponding deduction is allowable for moving expenses  
36 pursuant to Article 6 (commencing with Section 17201) of Chapter  
37 3 of Part 10 of Division 2 of the Revenue and Taxation Code.

38 (n) (1) As tips in any medium other than cash.

1 (2) As cash tips to an employee in any calendar month in the  
2 course of his or her employment by an employer, unless the amount  
3 of the cash tips is twenty dollars (\$20) or more.

4 (o) For service performed by an individual on a boat engaged  
5 in catching fish or other forms of aquatic animal life under an  
6 arrangement with the owner or operator of the boat pursuant to  
7 which all of the following apply:

8 (1) The individual does not receive any cash remuneration, other  
9 than as provided in paragraph (2).

10 (2) The individual receives a share of the boat's (or the boats'  
11 in the case of a fishing operation involving more than one boat)  
12 catch of fish or other forms of aquatic animal life or a share of the  
13 proceeds from the sale of the catch.

14 (3) The amount of the individual's share depends on the amount  
15 of the boat's (or the boats' in the case of a fishing operation  
16 involving more than one boat) catch of fish or other forms of  
17 aquatic animal life.

18 This subdivision shall apply only where the operating crew of  
19 the boat (or each boat from which the individual receives a share  
20 in the case of a fishing operation involving more than one boat) is  
21 normally made up of fewer than 10 individuals.

22 (p) For any medical care reimbursement made to, or for the  
23 benefit of, an employee under a self-insured medical reimbursement  
24 plan pursuant to Section 105(h)(6) of the Internal Revenue Code.

25 (q) To, or on behalf of, an employee to the extent not includable  
26 in gross income pursuant to Section 13006.

27 (r) For services to which Section 633 applies.

28 (s) To a nonmanaging member of a limited liability company  
29 filing income tax returns as a partnership as a guaranteed ~~payments~~  
30 *payment*, as defined by Section 707(c) of the Internal Revenue  
31 Code.