

**Introduced by Senator Hertzberg**February 26, 2015

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An act to add Sections 17952.7 and 18501.5 to the Revenue and Taxation Code, and to add Section 13020.5 to the Unemployment Insurance Code, relating to taxation.

## LEGISLATIVE COUNSEL'S DIGEST

SB 500, as introduced, Hertzberg. Personal income taxes: nonresident de minimis income.

Existing law, the Personal Income Tax Law, imposes a tax on the entire taxable income of a taxpayer subject to that law, but provides for a specified treatment of the income of nonresidents. For purposes of computing the taxable income of a nonresident, the gross income of a nonresident includes only the gross income from sources within this state. Existing law requires every taxpayer subject to tax under the Personal Income Tax Law to file a return with the Franchise Tax Board, stating specifically the items of the gross income from all sources and the deductions and credits allowable, as provided.

This bill would provide, for purposes of computing the taxable income of a nonresident that the gross income of a nonresident from sources within this state does not include "de minimis income," defined as compensation subject to specified withholding if the nonresident has no other income from sources within this state, is present in this state to perform employment duties on behalf of an employer and any other related person for not more than 20 calendar days during the taxable year in which the compensation is received, compensation is received on or after January 1, 2016, for any part of the taxable year during which the taxpayer was not a resident of this state, and the nonresident's state of residence provides a substantially similar exclusion or does not

impose an individual income tax. Except as specified, the bill would provide that a nonresident whose only income from sources in this state is compensation excluded pursuant to these provisions has no tax liability and is not required to file a return.

Existing law requires every employer who pays wages to a nonresident employee for services performed in this state to deduct and withhold from those wages, except as provided, specified income taxes.

This bill would provide that no amount is required to be deducted or withheld from compensation paid to a nonresident for employment duties performed in this state if that compensation is excluded from income subject to tax pursuant to the aforementioned provisions.

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 17952.7 is added to the Revenue and  
 2 Taxation Code, to read:  
 3 17952.7. (a) For purposes of computing “taxable income of a  
 4 nonresident or part-year resident” under paragraph (1) of  
 5 subdivision (i) of Section 17041, gross income of a nonresident,  
 6 as defined in Section 17015, from sources within this state shall  
 7 not include “de minimis income” received on or after January 1,  
 8 2016, for any part of the taxable year during which the taxpayer  
 9 was not a resident of this state.  
 10 (b) For purposes of this section, the following definitions shall  
 11 apply:  
 12 (1) “De minimis income” means compensation subject to  
 13 withholding under Chapter 2 (commencing with Section 13020)  
 14 of Division 6 of the Unemployment Insurance Code, without regard  
 15 to Section 13020.5 of the Unemployment Insurance Code, that is  
 16 received by a nonresident if the following apply:  
 17 (A) The nonresident has no other income from sources within  
 18 this state for the taxable year in which the compensation was  
 19 received.  
 20 (B) The nonresident is present in this state to perform  
 21 employment duties on behalf of an employer and any other related  
 22 person for not more than 20 calendar days during the taxable year  
 23 in which the compensation is received. For purposes of this

1 subparagraph, presence in this state for any part of a day constitutes  
2 presence in this state for that day unless such presence is solely  
3 for purposes of transit through the state.

4 (C) The nonresident’s state of residence provides a substantially  
5 similar exclusion or does not impose an individual income tax.

6 (2) “Related person” means a person that, with respect to the  
7 employer during all or any portion of the taxable year, is one of  
8 the following:

9 (A) A related entity.

10 (B) A member of a commonly controlled group, within the  
11 meaning of Section 25105.

12 (C) A person to or from whom there is attribution of stock  
13 ownership in accordance with subdivision (e) of Section 25105.

14 (D) A person that, notwithstanding its form of organization,  
15 bears the same relationship to the employer as a person described  
16 in subparagraphs (A), (B), or (C), inclusive.

17 (3) “Related entity” means any of the following:

18 (A) A stockholder who is an individual, or a member of the  
19 stockholder’s family set forth in Section 318 of the Internal  
20 Revenue Code, relating to constructive ownership of stock, if the  
21 stockholder and the members of the stockholder’s family own,  
22 directly, indirectly, beneficially, or constructively, in the aggregate,  
23 at least 50 percent of the value of the employer’s outstanding stock.

24 (B) A stockholder, or a stockholder’s partnership, limited  
25 liability company, estate, trust, or corporation, if the stockholder  
26 and the stockholder’s partnerships, limited liability companies,  
27 estates, trusts, and corporations own directly, indirectly,  
28 beneficially, or constructively, in the aggregate, at least 50 percent  
29 of the value of the employer’s outstanding stock.

30 (C) A corporation, or a party related to the corporation in a  
31 manner that would require an attribution of stock from the  
32 corporation to the party or from the party to the corporation under  
33 the attribution rules of the Internal Revenue Code if the employer  
34 owns, directly, indirectly, beneficially, or constructively, at least  
35 50 percent of the value of the corporation’s outstanding stock. The  
36 attribution rules of the Internal Revenue Code shall apply for  
37 purposes of determining whether the ownership requirement of  
38 this definition has been met.

39 (c) This section shall not apply to compensation received by  
40 any of the following:

1 (1) An individual who is a professional athlete or member of a  
2 professional athletic team.

3 (2) An individual who is a professional entertainer who performs  
4 services in the professional performing arts.

5 (3) An individual of prominence who performs services for  
6 compensation on a per-event basis.

7 (4) An individual who is identified as a key employee, within  
8 the meaning of Section 416(i)(1)(A)(i) of the Internal Revenue  
9 Code, for the taxable year immediately preceding the current  
10 taxable year.

11 SEC. 2. Section 18501.5 is added to the Revenue and Taxation  
12 Code, to read:

13 18501.5. (a) (1) Notwithstanding Section 18501 and except  
14 as provided in paragraph (2), a nonresident whose only income  
15 from sources in this state is compensation that is excluded pursuant  
16 to Section 17952.7 has no tax liability under Section 17041 and is  
17 not required to file a return.

18 (2) Upon request by the Franchise Tax Board, a nonresident  
19 may be required to file an informational return.

20 (b) This section is applicable to the determination of an  
21 individual income taxpayer’s filing requirement and has no  
22 application to the imposition of, or jurisdiction to impose, a tax  
23 under Part 10 (commencing with Section 17001) or any other tax  
24 on any taxpayer.

25 (c) Nothing contained in this section is intended to have any  
26 bearing on the sourcing rules for determining the taxability by this  
27 state of deferred compensation earned by performing services in  
28 this state during any portion of the applicable vesting period,  
29 whether by stock option, restricted stock units, or any other means,  
30 based on a formula comparing the number of working days in this  
31 state to the number of working days elsewhere, and no de minimis  
32 period, as described in Section 17952.7, applies to those  
33 determinations.

34 SEC. 3. Section 13020.5 is added to the Unemployment  
35 Insurance Code, to read:

36 13020.5. (a) Notwithstanding Section 13020, no amount is  
37 required to be deducted or withheld from compensation paid to a  
38 nonresident for employment duties performed in this state if that  
39 compensation is excluded from income subject to tax pursuant to  
40 Section 17952.7 of the Revenue and Taxation Code. The number

1 of days a nonresident employee is present in this state for purposes  
2 of Section 17952.7 of the Revenue and Taxation Code shall include  
3 all such days the nonresident employee is present and performing  
4 employment duties in the state on behalf of the employer and any  
5 other related person, as defined in subdivision (b) of Section  
6 17952.7 of the Revenue and Taxation Code. For purposes of this  
7 subdivision, presence in this state for any part of a day constitutes  
8 presence in this state for that day unless such presence is solely  
9 for purposes of transit through the state.

10 (b) An employer that has erroneously applied the exception  
11 provided by this section solely as a result of miscalculating the  
12 number of days a nonresident employee is present in this state to  
13 perform employment duties shall not be subject to a penalty  
14 resulting from the erroneous application of the exception provided  
15 in this section if one of the following applies:

16 (1) The employer relied on a regularly maintained time and  
17 attendance system that satisfies both of the following conditions:

18 (A) The system requires the employee to record, on a  
19 contemporaneous basis, his or her work location each day the  
20 employee is present in a state other than the state of residence or  
21 the state where services are considered performed under the  
22 Unemployment Insurance Code.

23 (B) The system is used by the employer to allocate the  
24 employee's wages between all taxing jurisdictions in which the  
25 employee performs duties.

26 (2) The employer does not maintain a time and attendance  
27 system described in paragraph (1) and relied on employee travel  
28 records that the employer requires the employee to maintain and  
29 record on a regular and contemporaneous basis.

30 (3) The employer does not maintain a time and attendance  
31 system described in paragraph (1), does not require the maintenance  
32 of employee records described in paragraph (2), and relied on  
33 travel expense reimbursement records that the employer requires  
34 the employee to submit on a regular and contemporaneous basis.

35 (c) This section establishes an exception to withholding and  
36 deduction requirements and has no application to the imposition  
37 of, or jurisdiction to impose, this or any other tax on any employee.

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