

## Senate Bill No. 298

### CHAPTER 475

An act to amend Sections 18662 and 19183 of the Revenue and Taxation Code, and to amend Section 13020 of the Unemployment Insurance Code, relating to taxation.

[Approved by Governor September 26, 1995. Filed  
with Secretary of State September 26, 1995.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 298, T. Campbell. Income taxes: withholding.

Existing law requires every employer who pays wages to a nonresident employee for services performed in this state to withhold from those wages, except as provided, specified income taxes, and authorizes the Franchise Tax Board to impose specified withholding of tax requirements.

This bill would provide that withholding shall not be required by those provisions with respect to wages, salaries, fees, or other compensation paid to a nonresident corporate director by a corporation for director services, as specified, performed in California for that corporation. It would require the payor of those payments to make a return and to provide a payee with a statement in connection therewith, and would impose a specified penalty for failure to do so.

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

SECTION 1. Section 18662 of the Revenue and Taxation Code is amended to read:

18662. (a) The Franchise Tax Board may, by regulation, require any person, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and any officer or department of the state or any political subdivision or agency of the state, or any city organized under a freeholder's charter, or any political body not a subdivision or agency of the state), having the control, receipt, custody, disposal, or payment of items of income specified in subdivision (b), to withhold an amount, determined by the Franchise Tax Board to reasonably represent the amount of tax due when the items of income are included with other income of the taxpayer, and to transmit the amount withheld to the Franchise Tax Board at the time as it may designate.

(b) The items of income referred to in subdivision (a) are interest, dividends, rent, prizes and winnings, premiums, annuities, emoluments, compensation for services, including bonuses,

partnership income or gains, and other fixed or determinable annual or periodical gains, profits, and income.

(c) The Franchise Tax Board may authorize the tax under subdivision (a) to be deducted and withheld from the interest upon any securities the owners of which are not known to the withholding agent.

(d) Any person failing to withhold from any payments any amounts required by subdivision (a) to be withheld is liable for the amount withheld or the amount of taxes due from the person to whom the payments are made to an extent not in excess of the amounts required to be withheld, whichever is greater, unless it is shown that the failure to withhold is due to reasonable cause.

(e) (1) In the case of any disposition of a California real property interest by a person (but not a partnership as determined in accordance with Subchapter K of Chapter 1 of Subtitle A of the Internal Revenue Code, or a corporation), when the return required to be filed with the Secretary of the Treasury under Section 6045(e) of the Internal Revenue Code indicates, or the authorization for the disbursement of the transaction's funds instructs, that the funds be disbursed either to a transferor with a last known street address outside the boundaries of this state at the time of the transfer of the title to the California real property or to the financial intermediary of the transferor, the transferee shall be required to withhold an amount equal to  $3\frac{1}{3}$  percent of the sales price of the California real property conveyed.

(2) In the case of any disposition of a California real property interest by a corporation, the transferee shall be required to withhold an amount equal to  $3\frac{1}{3}$  percent of the sales price of the California real property conveyed, if the corporation immediately after the transfer of the title to the California real property has no permanent place of business in California. For purposes of this subdivision, a corporation has no permanent place of business in California if all of the following apply:

(A) It is not organized and existing under the laws of California.

(B) It does not qualify with the office of the Secretary of State to transact business in California.

(C) It does not maintain and staff a permanent office in California.

(3) Notwithstanding any other provision of this subdivision, all of the following shall apply:

(A) No transferee shall be required to withhold any amount under this subdivision if the sales price of the California real property conveyed does not exceed one hundred thousand dollars (\$100,000).

(B) No transferee shall be required to withhold any amount under this subdivision unless written notification of the withholding requirements of this subdivision has been provided by the real estate escrow person.



(C) No transferee shall be required to withhold under this subdivision when the transferor is a bank acting as trustee other than a trustee of a deed of trust.

(D) No transferee shall be required to withhold under this subdivision when the transferee is a bank or corporate beneficiary under a mortgage or beneficiary under a deed of trust and the California real property is acquired in judicial or nonjudicial foreclosure or by a deed in lieu of foreclosure.

(E) No transferee shall be required to withhold any amount under this subdivision if the transferee, in good faith and based on all the information of which he or she has knowledge, relies on a written certificate executed by the transferor, certifying under penalty of perjury, any of the following:

(i) That the transferor is a resident of California.

(ii) That the California real property being conveyed is the principal residence of the transferor, within the meaning of Section 1034 of the Internal Revenue Code.

(iii) The transferor, if a corporation, has a permanent place of business in California.

(4) (A) At the request of the transferor, the Franchise Tax Board may authorize that a reduced amount or no amount be withheld under this subdivision if the Franchise Tax Board determines that to substitute a reduced amount or no amount shall not jeopardize the collection of tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). If the transferor provides documentation sufficient for the Franchise Tax Board to determine the actual gain required to be recognized on the transaction, the Franchise Tax Board may authorize a reduced amount based on the amount of the gain, as determined, which will result in a sum which is substantially equivalent to the amount of tax reasonably estimated to be due under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) from the inclusion of the gain in the gross amount of the transferor.

(B) Within 45 days after receiving a request that a reduced amount or no amount be withheld, the Franchise Tax Board shall either authorize a reduced amount or no amount, or deny the request.

(C) In the case where the parties to the transaction are requesting that a reduced amount or no amount be withheld and the response by the Franchise Tax Board to the request has not been received at the time title to the California real property is transferred, the parties may direct the real estate escrow person to hold in trust for 45 days the amount required to be withheld under this subdivision. The parties shall instruct the real estate escrow person that at the end of 45 days the real estate escrow person shall remit the amount withheld to the Franchise Tax Board in accordance with this section, unless the



Franchise Tax Board has authorized that a reduced amount or no amount be withheld.

(5) Amounts withheld and payments made in accordance with this subdivision shall be reported and remitted to the Franchise Tax Board in the form and at the time as the Franchise Tax Board shall determine.

(6) “California real property interest” means an interest in real property located in California and defined in Section 897(c)(1)(A)(i) of the Internal Revenue Code.

(7) For purposes of this subdivision, “financial intermediary” means an agent for the purpose of receiving and transferring funds to a principal.

(8) For purposes of this subdivision, “real estate escrow person” means any of the following persons involved in the real estate transaction:

(A) The person (including any attorney, escrow company, or title company) responsible for closing the transaction.

(B) If no other person described in subparagraph (A) is responsible for closing the transaction, then any other person who receives and disburses the consideration or value for the interest or property conveyed.

(9) (A) Unless the real estate escrow person provides “assistance,” it shall be unlawful for any real estate escrow person to charge any customer for complying with the requirements of this subdivision.

(B) For purposes of this paragraph, “assistance” includes, but is not limited to, helping the parties clarify with the Franchise Tax Board the issue of whether withholding is required under this subdivision, helping the parties request that the Franchise Tax Board authorize a reduced amount or no amount be withheld under this subdivision, or, upon request of the parties, withholding an amount under this subdivision and remitting the amount to the Franchise Tax Board.

(C) For purposes of this paragraph, “assistance” does not include providing the written notification of the withholding requirements of this subdivision, or providing the certification that either:

(i) The transferor is a resident of California or that the California real property being conveyed is the transferor’s principal residence.

(ii) The transferor, if a corporation, has a permanent place of business in California.

(D) In a case where the real estate escrow person provides “assistance” in complying with the withholding requirements of this subdivision, it shall be unlawful for the real estate escrow person to charge any customer a fee that exceeds forty-five dollars (\$45).

(10) For purposes of this subdivision, “sales price” means the sum of all of the following:



(A) The cash paid, or to be paid. The term “cash paid, or to be paid” does not include stated or unstated interest or original issue discount (as determined by Sections 1271 to 1275, inclusive, of the Internal Revenue Code).

(B) The fair market value of other property transferred, or to be transferred.

(C) The outstanding amount of any liability assumed by the transferee or to which the California real property interest is subject immediately before and after the transfer.

(f) Whenever any person has withheld any amount pursuant to this section, the amount so withheld shall be held in trust for the State of California. The amount of the fund shall be assessed, collected, and paid in the same manner and subject to the same provisions and limitations (including penalties) as are applicable with respect to the taxes imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

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

(h) In the case of any payment described in subdivision (g), the person making the payment shall do each of the following:

(1) File a return with the Franchise Tax Board at the time and in the form and manner specified by the Franchise Tax Board.

(2) Provide the payee with a statement at the time and in the form and manner specified by the Franchise Tax Board.

SEC. 2. Section 19183 of the Revenue and Taxation Code is amended to read:

19183. (a) (1) A penalty shall be imposed for failure to file correct information returns, as required by this part, and that penalty shall be determined in accordance with Section 6721 of the Internal Revenue Code.

(2) Section 6721(e) of the Internal Revenue Code is modified as follows:

(A) To refer to subdivision (a) of Section 18641 in lieu of Section 6045(a) of the Internal Revenue Code.

(B) The reference to Section 6041A(b) of the Internal Revenue Code shall not apply.

(b) (1) A penalty shall be imposed for failure to furnish correct payee statements as required by this part, and that penalty shall be determined in accordance with Section 6722 of the Internal Revenue Code.

(2) Section 6722(c) of the Internal Revenue Code is modified as follows:

(A) To refer to subdivision (b) of Section 18641 in lieu of Section 6045(b) of the Internal Revenue Code.



(B) The references to Sections 6041A(b) and 6041A(e) of the Internal Revenue Code shall not apply.

(c) A penalty shall be imposed for failure to comply with other information reporting requirements under this part, and that penalty shall be determined in accordance with Section 6723 of the Internal Revenue Code.

(d) (1) The provisions of Section 6724 of the Internal Revenue Code relating to waiver, definitions, and special rules, shall apply, except as otherwise provided.

(2) Section 6724(d)(1) is modified as follows:

(A) The following references are substituted:

(i) Section 18637, in lieu of Section 6041(a) of the Internal Revenue Code.

(ii) Section 18638, in lieu of Section 6041A(a) of the Internal Revenue Code.

(iii) Subdivision (a) of Section 18640, in lieu of Section 6044(a)(1) of the Internal Revenue Code.

(iv) Subdivision (a) of Section 18641, in lieu of Section 6045(a) of the Internal Revenue Code.

(v) Subdivision (a) of Section 18644, in lieu of Section 6050A(a) of the Internal Revenue Code.

(vi) Subdivision (a) of Section 18647, in lieu of Section 6052(a) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4), 4093(e), 4101(d), 6041(b), 6041A(b), 6045(d), 6051(d), and 6053(c)(1) of the Internal Revenue Code shall not apply.

(C) The term “information return” shall also include the return required by paragraph (1) of subdivision (h) of Section 18662.

(3) Section 6724(d)(2) is modified as follows:

(A) The following references are substituted:

(i) Subdivision (b) of Section 18505, in lieu of Section 6034A of the Internal Revenue Code.

(ii) Subdivision (a) of Section 18636, in lieu of Section 6039(a) of the Internal Revenue Code.

(iii) Subdivision (b) of Section 18640, in lieu of Section 6044(e) of the Internal Revenue Code.

(iv) Subdivision (b) of Section 18641, in lieu of Section 6045(b) of the Internal Revenue Code.

(v) Subdivision (b) of Section 18644, in lieu of Section 6050A(b) of the Internal Revenue Code.

(vi) Subdivision (b) of Section 18647, in lieu of Section 6052(b) of the Internal Revenue Code.

(B) References to Sections 4093(c)(4)(B), 6031(b), 6037(b), 6041A(e), 6045(d), 6051(d), 6053(b), and 6053(c) of the Internal Revenue Code shall not apply.

(C) The term “payee statement” shall also include the statement required by paragraph (2) of subdivision (h) of Section 18662.



(e) In the case of each failure to provide a written explanation as required by Section 402(f) of the Internal Revenue Code, at the time prescribed therefor, unless it is shown that the failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Franchise Tax Board and in the same manner as tax, by the person failing to provide that written explanation, an amount equal to ten dollars (\$10) for each failure, but the total amount imposed on that person for all those failures during any calendar year shall not exceed five thousand dollars (\$5,000).

(f) Any penalty imposed by this part shall be paid on notice and demand by the Franchise Tax Board and in the same manner as tax.

SEC. 3. Section 13020 of the Unemployment Insurance Code is amended to read:

13020. (a) 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.

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

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

