

Assembly Bill No. 1634

CHAPTER 144

An act to amend Sections 1088, 13021, 13028, and 13050 of, and to add Section 13009.5 to, the Unemployment Insurance Code, relating to taxation.

[Approved by Governor July 21, 1999. Filed with Secretary of State July 22, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1634, Committee on Revenue and Taxation. Taxation: unemployment insurance benefits: wages.

Existing unemployment insurance law requires each employer to file a report of wages paid to his or her workers and to furnish to each employee a written statement showing, among other things, the total amount of wages.

This bill would require the report and statement to include the total amount of wages subject to personal income tax, as provided.

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

SECTION 1. Section 1088 of the Unemployment Insurance Code is amended to read:

1088. (a) (1) Each employer shall file with the director within the time required by subdivision (a) or (d) of Section 1110 for payment of employer contributions, a report of contributions and a report of wages paid to his or her workers in the form and containing any information as the director prescribes. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028.

(2) (A) In order to enhance efforts to reduce tax fraud and to reduce the personal income tax reporting burden, effective January 1, 1997, the report of wages shall also include the full first name of the employee and total wages, as defined in Section 13009, paid to each employee. This paragraph shall apply to reports of wages for all periods ending on or before December 31, 1999.

(B) For all periods beginning on or after January 1, 2000, the report of wages shall also include total wages subject to personal income tax, as defined in Section 13009.5, paid to each employee.

(b) Each employer shall file with the director within the time required by subdivision (b) or (d) of Section 1110 for payment of worker contributions, a report of contributions containing the



employer's business name, address, and account number, the total amount of worker contributions due, and any other information as the director shall prescribe. The director shall prescribe the form for the report of contributions. An electronic funds transfer of contributions pursuant to subdivision (f) of Section 1110 shall satisfy the requirement for a report of contributions.

(c) In addition to the report of contributions and report of wages required by employers under subdivision (a), an individual who has elected coverage under subdivision (a) of Section 708 is also required to file a separate report of contributions, subject to Part 2 (commencing with Section 2601).

(d) Any employer making an election under subdivision (d) of Section 1110 shall submit the report of wages described in subdivision (a), within the time required for submitting employer contributions under subdivision (a) of Section 1110.

(e) In addition to the report of contributions and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the total amount of wages, employer contributions required under Sections 976 and 976.6, worker contributions required under Section 984, the amounts required to be withheld under Section 13020 or withheld under Section 13028, and any other information as the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

This subdivision shall not apply to individuals electing coverage under Section 708 or 708.5 or employers electing financing under Section 821.

(f) For purposes of making a report of wages under subdivision (a), employers who are required under Section 6011 of the Internal Revenue Code and authorized regulations thereunder to file magnetic media returns, shall, within 90 days of becoming subject to this requirement, do one of the following:

(1) Submit a magnetic media format to the department for approval, and upon receiving approval from the department, submit any subsequent reports of wages on magnetic media.

(2) Establish to the satisfaction of the director that there is a lack of automation, a severe economic hardship, a current exemption from submitting magnetic media information returns for federal purposes, or other good cause for not complying with the provisions of this subdivision. Approved waivers shall be valid for six months or longer, at the discretion of the director.

(g) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

(h) If an employer demonstrates that an undue hardship would be imposed, the director may authorize an exemption from the requirement in subdivision (a) to report individual amounts



withheld under Section 13020 and the requirement in subdivision (e) to file the annual reconciliation return for the 1995 calendar year only. Any request for exemption must be filed on or before January 15, 1995. Upon approval of a request for exemption under this subdivision, the employer shall file quarterly returns and reports of wages in the manner and method prescribed by the director for the 1995 calendar year only.

SEC. 2. Section 13009.5 is added to the Unemployment Insurance Code, to read:

13009.5. (a) For purposes of the report required by subdivision (a) of Section 1088 and the statement required by Section 13050, “wages subject to personal income tax” means all of the following:

(1) Remuneration defined as wages by Section 13009, except that in the case of tips received by an employee in the course of his or her employment, the amounts shall include only those tips included in statements furnished to the employer, pursuant to Section 13055.

(2) Remuneration described in subdivisions (a), (b), (f), and (l) of Section 13009, to the extent included in gross income.

(3) Payments made by a third party for sick pay as specified in Section 931.5.

(A) Any employer who receives a report of wages from a third-party payer as provided for in subdivisions (a) and (b) of Section 931.5 shall report those wages to the department as required under paragraph (2) of subdivision (a) of Section 1088.

(B) Any third-party payer described in Section 931.5 who fails to report wages to an employer as provided for in that section shall report those wages to the department as required under paragraph (2) of subdivision (a) of Section 1088.

(b) (1) A person or entity shall not be required to register with the Employment Development Department solely for the purpose of reporting wages subject to personal income tax pursuant to Section 1088 unless that registration is otherwise required by this code.

(2) A person or entity shall not be required to withhold any tax under Section 13020 for wages, as defined by this section, unless that person or entity is required to withhold tax for those wages as defined by Section 13009.

SEC. 3. Section 13021 of the Unemployment Insurance Code is amended to read:

13021. (a) Every employer required to withhold any tax under Section 13020 shall for each calendar quarter, whether or not wages or payments are paid in the quarter, file a withholding report and a report of wages in a form prescribed by the department, and pay over the taxes so required to be withheld. The report of wages shall include individual amounts required to be withheld under Section 13020 or withheld under Section 13028. Except as provided in subdivisions (c) and (d) of this section, the employer shall file a withholding report and remit the total amount of income taxes withheld during the



calendar quarter on or before the last day of the month following the close of the calendar quarter.

(b) Every employer electing to file a single annual return under subdivision (d) of Section 1110 shall report and pay any taxes withheld under Section 13020 on an annual basis within the time specified in subdivision (d) of Section 1110.

(c) (1) Effective January 1, 1995, whenever an employer is required, for federal income tax purposes, to remit the total amount of withheld federal income tax in accordance with Section 6302 of the Internal Revenue Code and regulations thereunder, and the accumulated amount of state income tax withheld is more than five hundred dollars (\$500), the employer shall remit the total amount of income tax withheld for state income tax purposes within the number of banking days as specified for withheld federal income taxes by Section 6302 of the Internal Revenue Code, and regulations thereunder.

(2) Effective January 1, 1996, the five hundred dollar (\$500) amount referred to in paragraph (1) shall be adjusted annually as follows, based on the annual average rate of interest earned on the Pooled Money Investment Fund as of June 30 in the prior fiscal year:

Average Rate of Interest	
Greater than or equal to 9 percent:	\$ 75
Less than 9 percent, but greater than or equal to 7 percent:	250
Less than 7 percent, but greater than or equal to 4 percent:	400
Less than 4 percent:	500

(d) (1) Notwithstanding subdivisions (a) and (c), for calendar years beginning prior to January 1, 1995, if in the 12-month period ending June 30 of the prior year the cumulative average payment made pursuant to this division or Section 1110, for eight-monthly periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was fifty thousand dollars (\$50,000) or more, the employer shall remit the total amount of income tax withheld within three banking days following the close of each eight-monthly period, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is



initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required to make payment by electronic funds transfer of these requirements.

(2) Notwithstanding subdivisions (a) and (c), for calendar years beginning on or after January 1, 1995, if in the 12-month period ending June 30 of the prior year, the cumulative average payment made pursuant to this division or Section 1110 for any deposit periods, as defined under Section 6302 of the Internal Revenue Code and regulations thereunder, was twenty thousand dollars (\$20,000) or more, the employer shall remit the total amount of income tax withheld within the number of banking days as specified for federal income taxes by Section 6302 of the Internal Revenue Code and regulations thereunder. For purposes of this subdivision, payment shall be made by electronic funds transfer in accordance with Section 13021.5, for one calendar year beginning on January 1. Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed complete on the date settlement occurs. The department shall, on or before October 31 of the prior year, notify all employers required by this paragraph to make payments by electronic funds transfer of these requirements.

(3) Notwithstanding paragraph (2), effective January 1, 1995, electronic funds transfer payments that are subject to the one-day deposit rule, as defined by Section 6302 of the Internal Revenue Code and regulations thereunder, shall be deemed timely if the payment settles to the state's demand account within three banking days after the date the employer meets the threshold for the one-day deposit rule.

(4) Any taxpayer required to remit payments pursuant to paragraphs (1) and (2) may request from the department a waiver of those requirements. The department may grant a waiver only if it determines that the particular amounts paid in excess of fifty thousand dollars (\$50,000) or twenty thousand dollars (\$20,000), as stated in paragraphs (1) and (2), respectively, were the result of an unprecedented occurrence for that employer, and were not representative of the employer's cumulative average payment in prior years.

(5) Any state agency required to remit payments pursuant to paragraphs (1) and (2) may request a waiver of those requirements from the department. The department may grant a waiver if it determines that there will not be a negative impact on the interest earnings of the General Fund. If there is a negative impact to the General Fund, the department may grant a waiver if the requesting



state agency follows procedures designated by the department to mitigate the impact to the General Fund.

(e) Any employer not required to make payment pursuant to subdivision (d) of this section may elect to make payment by electronic funds transfer in accordance with Section 13021.5 under the following conditions:

(1) The election shall be made in a form, and shall contain information, as prescribed by the director, and shall be subject to approval by the department.

(2) If approved, the election shall be effective on the date specified in the notification to the employer of approval.

(3) The election shall be operative from the date specified in the notification of approval, and shall continue in effect until terminated by the employer or the department.

(4) Funds remitted by electronic funds transfer pursuant to this subdivision shall be deemed complete in accordance with subdivision (d) or as deemed appropriate by the director to encourage use of this payment method.

(f) Notwithstanding Section 1112, no interest or penalties shall be assessed against any employer who remits at least 95 percent of the amount required by subdivision (c) or (d), provided that the failure to remit the full amount is not willful and any remaining amount due is paid with the next payment. The director may allow any employer to submit the amounts due from multiple locations upon a showing that those submissions are necessary to comply with the provisions of subdivision (c) or (d).

(g) The department may, if it believes that action is necessary, require any employer to make the report required by this section and pay to it the tax deducted and withheld at any time, or from time to time but no less frequently than provided for in subdivision (a).

(h) Any employer required to withhold any tax and who is not required to make payment under subdivision (c) shall remit the total amount of income tax withheld during each month of each calendar quarter, on or before the 15th day of the subsequent month if the income tax withheld for any of the three months or, cumulatively for two or more months, is three hundred fifty dollars (\$350) or more.

(i) For purposes of subdivisions (a), (c), and (h), payment is deemed complete when it is placed in a properly addressed envelope, bearing the correct postage, and it is deposited in the United States mail.

(j) In addition to the withholding report and report of wages described in subdivision (a), each employer shall file with the director an annual reconciliation return showing the amount required to be withheld under Section 13020, and any other information the director shall prescribe. This annual reconciliation return shall be due on the first day of January following the close of



the prior calendar year and shall become delinquent if not filed on or before the last day of that month.

(k) If an employer demonstrates that an undue hardship would be imposed, the director may authorize an exemption from the requirement in subdivision (a) to report individual amounts withheld under Section 13020 and the requirement in subdivision (j) to file the annual reconciliation return for the 1995 calendar year only. Any request for exemption must be filed on or before January 15, 1995. Upon approval of a request for exemption under this subdivision, the employer shall file quarterly returns reporting the amount withheld under Section 13020, the statement required to be furnished under Section 13050, and the annual return required by Section 13053, for the 1995 calendar year only.

SEC. 4. Section 13028 of the Unemployment Insurance Code is amended to read:

13028. (a) (1) For purposes of this division (and so much of Part 10 (commencing with Section 17001) and Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code as relates to this division) pensions, annuities, and other deferred income, as described in Section 3405 of the Internal Revenue Code, are wages and subject to withholding under this division. Amounts withheld shall be treated as if the amounts are withheld by an employer for a payroll period and only amounts withheld shall be reported to the department pursuant to Section 1088 and Section 13021.

(2) Notwithstanding paragraph (1), amounts excluded from gross income by Section 17131.5 of the Revenue and Taxation Code are not wages and are not subject to withholding under this division.

(b) If an individual makes an election under Section 3405(a)(2) or Section 3405(b)(3) of the Internal Revenue Code not to have tax withheld, that election shall apply to withholding under this division, unless the individual elects, with the consent of the payer, to have those payments subject to withholding under this division. If an individual has not made an election under Section 3405(a)(2) or Section 3405(b)(3) of the Internal Revenue Code, that individual may elect to exclude those payments from withholding under this division. Elections provided in this subdivision shall be made pursuant to regulations of the director.

(c) Where Section 3405 of the Internal Revenue Code provides that tables or other computational procedures shall be prescribed by the Secretary of the Treasury, for the purposes of this division, any of the following amounts may be withheld, upon election of the payer:

(1) An amount determined by the method prescribed under Section 13020.

(2) A designated dollar amount as requested by the payee.



(3) Ten percent of the amount of federal withholding computed pursuant to Section 3405 of the Internal Revenue Code.

(d) Where the amount of withholding computed pursuant to subdivision (c) is less than ten dollars (\$10) per month, the payer shall not be required to withhold that amount.

(e) This section shall not apply to pensions, annuities, and other deferred income of payees with addresses outside this state, as shown on the most current records of the payer.

(f) The department shall, in consultation with the affected payers and payees, issue regulations to implement this section.

Those regulations shall provide for delay (but not beyond July 1, 1987) of the application of this section with respect to any payer or class of payers until that time as the payers are able to comply without undue hardship with the requirements of this section. In that case, no retroactive compliance shall be required.

SEC. 5. Section 13050 of the Unemployment Insurance Code is amended to read:

13050. (a) Every employer or person required to deduct and withhold from an employee a tax under Section 986, 3260, or 13020, or who would have been required to deduct and withhold a tax under Section 13020 (determined without regard to Section 13025) if the employee had claimed no more than one withholding exemption, shall furnish to each employee in respect of the remuneration paid by the person to the employee during the calendar year, on or before January 31 of the succeeding year, or, if his or her employment is terminated before the close of the calendar year, on the day on which the last payment of remuneration is made, a written statement showing all of the following:

(1) The name of the person.

(2) The name of the employee, and his or her social security or identifying number if wages have been paid.

(3) The total amount of wages subject to personal income tax, as defined by Section 13009.5.

(4) The total amount deducted and withheld as tax under Section 13020.

(5) The total amount of worker contributions paid by the employee pursuant to Section 986.

(6) The total amount of worker contributions paid by the employee pursuant to Section 3260.

(7) The total amount of elective deferrals (within the meaning of Section 402(g)(3) of the Internal Revenue Code) and compensation deferred pursuant to Section 457 of the Internal Revenue Code.

(b) The statement required to be furnished pursuant to this section in respect of any remuneration shall be furnished at other times, shall contain other information, and shall be in a form, as the department may by authorized regulations prescribe.



(c) (1) A duplicate of any statement made pursuant to this section and in accordance with authorized regulations prescribed by the department shall, when required by the regulations, be filed with the department.

(2) Effective January 1, 1995, this subdivision shall apply only to those employers exempted under subdivision (h) of Section 1088 or subdivision (k) of Section 13021 from the requirements to report individual amounts withheld on the report of wages and to file the annual reconciliation return for the 1995 calendar year only. This subdivision shall remain in effect only until March 1, 1996, and on that date is repealed, unless a later enacted statute that is enacted before March 1, 1996, deletes or extends that date.

(d) If, during any calendar year, any person makes a payment of third-party sick pay to an employee, that person shall, on or before January 15 of the succeeding year, furnish a written statement to the employer in respect of whom the payment was made showing all of the following:

(1) The name and, if there is withholding under this division, the social security number of that employee.

(2) The total amount of the third-party sick pay paid to that employee during the calendar year.

(3) The total amount, if any, deducted and withheld from that sick pay under this division. For purposes of the preceding sentence, the term “third-party sick pay” means any sick pay, as defined in subdivision (b) of Section 13028.6, which does not constitute wages for purposes of this division, determined without regard to subdivision (a) of Section 13028.6.

(A) The reporting requirements of subdivision (a) with respect to any payments shall, with respect to those payments, be in lieu of the requirements of subdivision (a) and of Section 18637 of the Revenue and Taxation Code.

(B) For purposes of Chapter 10 (commencing with Section 2101) of Part 1 of Division 1, the statements required to be furnished by this subdivision shall be treated as statements required under this section to be furnished to employees.

(C) Every employer who receives a statement under this subdivision with respect to sick pay paid to any employee during any calendar year shall, on or before January 31 of the succeeding year, furnish a written statement to that employee showing all of the following:

(i) The information shown on the statement furnished under this subdivision.

(ii) If any portion of the sick pay is excludable from gross income pursuant to Article 3 (commencing with Section 17131) of Chapter 3 of Part 10 of Division 2 of the Revenue and Taxation Code, the portion that is not so excludable and the portion that is so excludable. To the extent practicable, the information required under the



preceding sentence shall be furnished on or with the statement, if any, required under subdivision (a).

(e) The Franchise Tax Board shall be allowed access to the information filed with the department pursuant to this section.

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