

AMENDED IN ASSEMBLY MAY 2, 2000
AMENDED IN SENATE JANUARY 19, 2000
AMENDED IN SENATE JANUARY 11, 2000

SENATE BILL

No. 785

Introduced by Senator Speier

February 25, 1999

An act to amend Sections 1088, 1110, ~~1117~~, ~~1114~~, ~~1115~~, ~~1116~~, ~~1117~~, ~~1118~~, and 13021 of, and to add Sections ~~1088.3~~ and ~~1116.5~~ ~~1088.1~~, ~~1114.5~~, ~~1116.5~~, and ~~1118.5~~ to, the Unemployment Insurance Code, relating to withholding.

LEGISLATIVE COUNSEL'S DIGEST

SB 785, as amended, Speier. Withholding of taxes: domestic worker employers: annual reporting.

Existing law requires employers to withhold tax and contribution amounts with respect to unemployment insurance, disability insurance, employee training funding, and personal income tax from the wages paid to their employees, and to report and return those amounts to the Employment Development Department on a quarterly basis. Existing law further authorizes certain employers, as described by statute, who employ individuals to perform domestic services to elect to return these amounts on an annual basis, rather than a quarterly basis.

This bill would, ~~for wages paid on and after January 1, 2002,~~ ~~allow an employer eligible for~~ *modify* this existing election to ~~both report and pay contribution amounts and withheld amounts of personal income taxes on an annual basis without~~

~~making a formal election. This bill would specify the manner in which the Employment Development Department is to make benefit determinations in conformity with this alternative reporting system. This bill would, as provided, require the Employment Development Department to request either the approval of the federal Department of Labor or a waiver from that federal department with respect to the provisions of this bill. This bill would, as provided, also specify that it will become inoperative upon a finding by the federal Department of Labor that the implementation of the provisions of this bill would result in nonconformity with federal law. This bill would, with respect to wages paid on or after January 1, 2002, prescribe certain deadlines for making the election as so modified, and would also prescribe the procedures for terminating the election. This bill would, as provided with respect to wages paid on or after January 1, 2002, require any employer making the modified election to file with the Director of Employment Development an annual report of contributions and wages paid to the employer's workers. This bill would specify certain penalties for failure to comply with this reporting requirement, and would authorize a subject employer to report wage and tax information by telephone. This bill would, as provided, also require an employer making the modified election to provide a wages, tax, and contribution report to an employee who has separated from that employer. This bill would also make conforming and technical, nonsubstantive changes.~~

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 1088 of the Unemployment
 2 Insurance Code is amended to read:
 3 1088. (a) (1) Each employer shall file with the
 4 director within the time required by subdivision (a) or
 5 (d) of Section 1110 for payment of employer
 6 contributions, a report of contributions and a report of
 7 wages paid to his or her workers in the form and
 8 containing any information as the director prescribes. An



1 electronic funds transfer of contributions pursuant to
2 subdivision (f) of Section 1110 shall satisfy the
3 requirement for a report of contributions. The report of
4 wages shall include individual amounts required to be
5 withheld under Section 13020 or withheld under Section
6 13028.

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

14 (B) For all periods beginning on or after January 1,
15 2000, the report of wages shall also include total wages
16 subject to personal income tax, as defined in Section
17 13009.5, paid to each employee.

18 (b) Each employer shall file with the director within
19 the time required by subdivision (b) or (d) of Section
20 1110 for payment of worker contributions, a report of
21 contributions containing the employer's business name,
22 address, and account number, the total amount of worker
23 contributions due, and any other information as the
24 director shall prescribe. The director shall prescribe the
25 form for the report of contributions. An electronic funds
26 transfer of contributions pursuant to subdivision (f) of
27 Section 1110 shall satisfy the requirement for a report of
28 contributions.

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

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



1 (e) In addition to the report of contributions and
2 report of wages described in subdivision (a), each
3 employer shall file with the director an annual
4 reconciliation return showing the total amount of wages,
5 employer contributions required under Sections 976 and
6 976.6, worker contributions required under Section 984,
7 the amounts required to be withheld under Section 13020
8 or withheld under Section 13028, and any other
9 information that the director shall prescribe. This annual
10 reconciliation return is due on the first day of January
11 following the close of the prior calendar year and is
12 delinquent if not filed on or before the last day of that
13 month.

14 ~~This subdivision does not apply to individuals electing~~
15 ~~coverage under Section 708 or 708.5 or employers~~
16 ~~electing financing under Section 821.~~ This subdivision
17 does not apply to ~~an employer described in Section 682 or~~
18 ~~684 that reports on an annual basis in accordance with~~
19 ~~paragraph (2) of subdivision (d) of Section 1110, to~~
20 individuals electing coverage under Section 708 or 708.5;
21 or to employers electing financing under Section 821.

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

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

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



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

4 ~~SEC. 2. Section 1088.3 is added to the Unemployment~~
5 ~~Insurance Code, to read:~~

6 ~~1088.3. (a) Notwithstanding any other provision of~~
7 ~~law, no claim for unemployment insurance or disability~~
8 ~~insurance benefits shall be delayed because of insufficient~~
9 ~~wage information with respect to the claimant being on~~
10 ~~file with the department. In any case in which the~~
11 ~~department has not yet received wage information for~~
12 ~~the base period of a claim for unemployment insurance~~
13 ~~or disability insurance benefits, the department shall~~
14 ~~initially determine wages for the claimant in accordance~~
15 ~~with either of the following, as applicable:~~

16 (1) ~~The amount of wages estimated by the claimant to~~
17 ~~have been received by him or her, with any written~~
18 ~~evidence the claimant has submitted in support of that~~
19 ~~estimate.~~

20 (2) ~~If the claimant presents no estimate of wages as~~
21 ~~described in paragraph (1), the department shall~~
22 ~~determine the claimant's wages for that claimant during~~
23 ~~the base period. The department shall not delay benefits~~
24 ~~and shall make an initial determination of benefits. The~~
25 ~~department shall adjust the claim as the department~~
26 ~~obtains more complete wage information.~~

27 (b) ~~If, after determining a benefit amount pursuant to~~
28 ~~subdivision (a), the department determines on the basis~~
29 ~~of additional information that the benefit amount was~~
30 ~~calculated on the basis of an erroneous wage amount, the~~
31 ~~department shall retroactively adjust the benefit amount~~
32 ~~in accordance with the correct amount of wages.~~

33 (c) ~~The department shall notify each claimant who~~
34 ~~receives a benefit payment in accordance with this~~
35 ~~section that he or she is responsible for all benefit~~
36 ~~overpayments resulting from his or her overestimate of~~
37 ~~wages in filing a claim. The department shall give notice~~
38 ~~as required in this subdivision both verbally and in~~
39 ~~writing.~~



1 (h) This section does not apply to any employer;
2 described in Section 682 or 684, who has filed an election
3 under subdivision (d) of Section 1110 for wages paid on
4 or after January 1, 2002.

5 SEC. 2. Section 1088.1 is added to the Unemployment
6 Insurance Code, to read:

7 1088.1. (a) (1) For wages paid on or after January 1,
8 2002, each employer described in Section 682 or 684, who
9 has filed an election under subdivision (d) of Section
10 1110, shall file with the director an annual report of
11 contributions and wages paid to his or her workers. This
12 report shall include the employer's name, address,
13 account number, employer contributions due under
14 Sections 976 and 976.6, worker contributions due under
15 Section 984, the quarterly and total wages paid to each
16 worker, the total wages subject to personal income tax as
17 described in Section 13009.5 paid to each worker, and any
18 personal income tax withheld under Sections 13020 and
19 13028 for each worker, during the prior calendar year.
20 The director shall prescribe the form of this report. This
21 report is due on the January 1 next following the calendar
22 year to which it applies and is delinquent if not filed on
23 or before the next following January 31.

24 (2) Any employer who fails to file the report required
25 by paragraph (1) shall, within 15 days of the mailing or
26 personal delivery of a demand from the director, report
27 to the director the information required to be reported
28 on the annual report of contributions and wages
29 described in paragraph (1). For the purpose of any
30 penalty chargeable under Section 1114 with regard to a
31 demand issued under this paragraph, a "wage item"
32 means all information required to be reported under
33 paragraph (1) for each individual for each calendar year
34 specified in the demand.

35 (b) In addition to the report required in paragraph (1)
36 of subdivision (a), if a worker is no longer performing
37 services for an employer due to disability or separation
38 from employment and has filed a claim for benefits, the
39 director may issue a written demand for a report of wages
40 paid to that individual. The director shall prescribe the



1 *form of this report. This report is due within 15 days of the*
2 *mailing or personal delivery of the director's demand for*
3 *that report.*

4 *(c) For purposes of making a report of wages and*
5 *personal income tax withholdings under paragraph (1) of*
6 *subdivision (a), any employer who is required under*
7 *Section 6011 of the Internal Revenue Code and*
8 *authorized regulations thereunder to file magnetic*
9 *media returns, shall, within 90 days of becoming subject*
10 *to this requirement, do one of the following:*

11 *(1) Submit a magnetic media format to the*
12 *department for approval. Upon receiving approval from*
13 *the department, the employer shall submit any*
14 *subsequent reports of wages on magnetic media.*

15 *(2) Establish to the satisfaction of the director that*
16 *there is a lack of automation, a severe economic hardship,*
17 *a current exemption from submitting magnetic media*
18 *information returns for federal purposes, or other good*
19 *cause for not complying with paragraph (1). Approved*
20 *waivers shall be valid for six months or longer, at the*
21 *discretion of the director.*

22 *(d) (1) The Franchise Tax Board shall be allowed*
23 *access to the information filed with the department*
24 *pursuant to this section.*

25 *(2) This section shall remain operative only as long as*
26 *Section 1137(a)(3) of the Social Security Act remains*
27 *operative, and, in the event that federal provision*
28 *becomes inoperative, shall become inoperative on the*
29 *same date.*

30 SEC. 3. Section 1110 of the Unemployment Insurance
31 Code is amended to read:

32 1110. (a) Employer contributions required under
33 Sections 976 and 976.6, the amount of benefits received by
34 any individual pursuant to this part that is deducted from
35 an award or settlement made by the employer under the
36 provisions of Section 1382, and, except as provided by
37 subdivision (b) of this section, worker contributions
38 required under Section 984 are due and payable on the
39 first day of the calendar month following the close of each



1 calendar quarter and shall become delinquent if not paid
2 on or before the last day of that month.

3 (b) Workers' contributions required under Section
4 984 are due and payable at the same time and by the same
5 method as amounts required to be withheld under
6 Section 13020 are paid to the department pursuant to
7 Section 13021, regardless of the amount of accumulated
8 unpaid liability for workers' contributions.

9 (c) Employer contributions submitted pursuant to
10 Section 976.5 shall be paid on or before the last working
11 day of March of the calendar year to which the reduced
12 contribution rate would be applicable. Any employer
13 whose eligibility for an unemployment insurance
14 contribution rate determination is redetermined to make
15 that employer eligible to submit voluntary
16 unemployment insurance contributions in accordance
17 with Section 976.5, may submit a voluntary
18 unemployment insurance contribution within 30 days of
19 the date of notification of the redetermination.

20 (d) (1) Except as provided in subdivision (e), any
21 employer described in ~~Sections 682 and 684, for wages~~
22 ~~paid before January 1, 2002, may elect to~~ *Section 682 or*
23 *684 may elect to annually* report and pay employer
24 contributions required under Sections 976 and 976.6, ~~and~~
25 worker contributions required under Section 984,
26 ~~annually and any amounts withheld under Sections 13020~~
27 ~~and 13028.~~ All contributions are due and payable on the
28 first day of January following the close of the prior
29 calendar year and shall become delinquent if not paid on
30 or before the last day of that month. An election under
31 this subdivision shall be effective the first day of the
32 calendar year in which it is approved by the department.
33 An election under this subdivision shall not be approved
34 if the employer has an outstanding return or report
35 delinquency on the records of the department, or an
36 unpaid amount owed to the department, that is not the
37 subject of a timely petition for reassessment pending
38 before the appeals board at the time the election is filed.

39 ~~(2) For wages paid on or after January 1, 2002, any~~
40 ~~employer described in Sections 682 and 684 who is~~



1 required to withhold any tax under Section 13020 may pay
2 employer contributions required under Sections 976 and
3 976.6, and worker contributions required under Section
4 984, on an annual basis. All contributions are due and
5 payable on the last day of January following the close of
6 the prior calendar year and shall become delinquent if
7 not paid on or before the last day of that month. Any
8 employer making annual payment in accordance with
9 this paragraph may, in lieu of quarterly reports of those
10 contributions and any taxes withheld under Section
11 13020, report those contributions and taxes in a single,
12 annual report that specifies employer and worker
13 contributions and withheld amounts of tax on a quarterly
14 basis. Any employer making an annual payment in
15 accordance with this subdivision shall make all payroll
16 schedules and supporting documents available to the
17 director, or his or her designee, upon request.

18 (3) Every employer filing a single annual return under
19 this subdivision shall pay any taxes withheld under
20 Section 13020 on an annual basis within the time specified
21 by this subdivision for the payment of employer and
22 worker contributions.

23 (4) The department shall seek the approval of the
24 federal Department of Labor for the reporting and
25 withholding system established by paragraph (2), or shall
26 request the federal Department of Labor to grant a
27 waiver from federal requirements with respect to that
28 system. In complying with this paragraph, the
29 department shall do all of the following:

30 (A) State that paragraph (2) is intended to improve
31 levels of employer compliance through an improved and
32 more efficient reporting and withholding process, and to
33 provide benefits to claimants in a timely and accurate
34 manner.

35 (B) Ask the federal Department of Labor to consider
36 the approval of the implementation of paragraph (2) on
37 a trial basis.

38 (C) State that the department recognizes that the
39 federal Department of Labor may rescind its approval of



1 ~~the implementation of paragraph (2) should that~~
2 ~~implementation result in delayed or inaccurate benefits.~~

3 ~~(e) Any~~

4 (2) *For wages paid on or after January 1, 2002, an*
5 *election under this subdivision shall be submitted to the*
6 *director on or before the last day of April of the year for*
7 *which the election is being requested or the last day of the*
8 *month following the close of the calendar quarter in*
9 *which the employer becomes subject to this code,*
10 *whichever is later.*

11 (3) *An election approved by the director pursuant to*
12 *this subdivision may be terminated as of January 1 of any*
13 *calendar year only if the election has been in effect for*
14 *two calendar years and the employer, on or before the last*
15 *day of January of that year, has notified the director in*
16 *writing of the termination of the election. The director*
17 *may allow an additional 30 days to file the termination*
18 *notification if good cause is shown for the delay.*

19 (4) *An election approved by the director pursuant to*
20 *this subdivision for wages paid before January 1, 2002,*
21 *shall continue in effect for wages paid on or after January*
22 *1, 2002, unless the employer notifies the director of the*
23 *termination of the election as provided in paragraph (2).*
24 *An election approved by the director on or after January*
25 *1, 2001, and before January 1, 2002, may be terminated*
26 *effective January 1, 2002, if the employer notifies the*
27 *director of the termination of the election on or before*
28 *January 31, 2002. The director may allow an additional 30*
29 *days to file the termination notification if good cause is*
30 *shown for the delay.*

31 (e) (1) *Except as otherwise provided in paragraph*
32 *(2), any employer described in Sections 682 and 684 who*
33 *pays more than twenty thousand dollars (\$20,000) in*
34 *wages annually, shall not be entitled to any election or*
35 *option allowed in subdivision (d). If at any time during*
36 *the year the total wages paid by an employer electing to*
37 *file under subdivision (d) exceeds twenty thousand*
38 *dollars (\$20,000), the election or option shall be*
39 *terminated at the close of that calendar quarter. In*
40 *addition to the report of wages due for that quarter, the*



1 employer shall file a return and pay any contributions due
2 for that portion of the year during which the election was
3 in effect, and shall pay contributions in accordance with
4 subdivisions (a), (b), and (c) for the remainder of that
5 year.

6 *(2) This subdivision does not apply to wages paid on or*
7 *after January 1, 2002.*

8 (f) Contributions due pursuant to this section may be
9 submitted by electronic funds transfer, as defined in
10 Section 13021.5. Contributions submitted by electronic
11 funds transfer shall be deemed complete in accordance
12 with paragraph (4) of subdivision (e) of Section 13021.

13 SEC. 4. *Section 1114 of the Unemployment Insurance*
14 *Code is amended to read:*

15 1114. (a) *Except as provided in subdivision (b), both*
16 *of the following apply:*

17 (1) Any employer who, without good cause, fails to file
18 within 15 days after service by the director of notice
19 pursuant to Section 1206 of a specific written demand
20 therefor, a report of wages of each of his or her workers
21 required by this division, shall pay in addition to other
22 amounts required, for each unreported wage item a
23 penalty of ten dollars (\$10).

24 ~~(b)~~

25 (2) Any employer required by this division to file a
26 report of wages of each of his or her workers on magnetic
27 media as prescribed by subdivision (f) of Section 1088,
28 who, without good cause, instead files a report of wages
29 on paper or in another form, shall pay in addition to other
30 amounts required, for each wage item a penalty of ten
31 dollars (\$10).

32 *(b) This section does not apply to demands issued*
33 *under subdivision (b) of Section 1088.1.*

34 SEC. 5. *Section 1114.5 is added to the Unemployment*
35 *Insurance Code, to read:*

36 1114.5. *Any employer described in Section 682 or 684*
37 *who fails to comply with subdivision (b) of Section 1088.1*
38 *shall pay a penalty in the amount of fifty dollars (\$50) with*
39 *respect to each demand with which the employer did not*
40 *comply, except for those demands for which the*



1 employer shows to the director's satisfaction that there
2 was good cause for the failure to comply.

3 SEC. 6. Section 1115 of the Unemployment Insurance
4 Code is amended to read:

5 1115. (a) Except as provided in subdivision (b), all of
6 the following apply:

7 (1) If the director finds that the collection of any
8 contributions will be jeopardized in any case where an
9 employing unit is insolvent, or is delinquent in a
10 substantial amount of contributions due under this
11 division, or is about to discontinue business at any of its
12 known places of business, or the business is of a temporary
13 or seasonal nature, the director may, upon giving the
14 employing unit 10 days' notice pursuant to Section 1206:

15 ~~(1)~~

16 (A) Require payment of contributions with respect to
17 wages paid from the beginning date of the calendar
18 quarter in which notice is given to the date designated in
19 the notice.

20 ~~(2)~~

21 (B) Require payment of contributions for reporting
22 periods less than calendar quarters.

23 ~~(b)~~

24 (2) As used in this section "reporting period" means
25 that period less than a calendar quarter which is
26 established by the director.

27 ~~(c)~~

28 (3) Contributions required under ~~subdivision (a)(1)~~
29 ~~of this section~~ paragraph (1) of subdivision (a) are due
30 and payable on the date designated in the notice and shall
31 become delinquent if not paid within 10 days of the due
32 date.

33 ~~(d)~~

34 (4) Contributions required under ~~subdivision (a)(2)~~
35 ~~of this section~~ paragraph (2) of subdivision (a) are due
36 and payable on the first day of the reporting period
37 following the close of each reporting period and shall
38 become delinquent if not paid within 10 days of the due
39 date.

40 ~~(e)~~



1 (5) The employing unit shall file within the time
2 required for payment of contributions under this section
3 a report or return as required by Section 1088, in the form
4 and containing the information that the director
5 prescribes.

6 (b) *This section does not apply to any employer*
7 *described in Section 682 or 684 who has filed an election*
8 *under subdivision (d) of Section 1110 for wages paid on*
9 *or after January 1, 2002.*

10 SEC. 7. *Section 1116 of the Unemployment Insurance*
11 *Code is amended to read:*

12 1116. (a) ~~(1) Every~~ *Except as otherwise provided by*
13 *subdivision (b), all of the following apply:*

14 (1) (A) *Every* employing unit except a domestic or
15 foreign corporation or a domestic or foreign limited
16 liability company shall, within 10 days of quitting
17 business, file with the director a final return and report
18 of wages of its workers, in such form and containing such
19 information as the director prescribes.

20 ~~(2)~~

21 (B) *Every* domestic corporation and domestic limited
22 liability company shall, within 10 days of quitting business
23 or within 10 days of the commencement of proceedings
24 to windup its affairs and voluntarily dissolve, whichever
25 expires the earlier, file with the director a return and a
26 report of wages of its workers, in such form and
27 containing such information as the director prescribes.

28 ~~(3)~~

29 (C) *Every* foreign corporation and foreign limited
30 liability company shall, within 10 days of quitting business
31 or within 10 days of the surrender of its right to engage
32 in business of this state in accordance with Section 2112
33 and subdivision (d) of Section 2114 of the Corporations
34 Code for foreign corporations or Section 17455 of the
35 Corporations Code for foreign limited liability
36 companies, whichever expires the earlier, file with the
37 director a final return and report of wages of its workers,
38 in such form and containing such information as the
39 director prescribes.

40 ~~(4)~~



1 (D) As used in this section, “quitting business” does
2 not include any change in the form or membership of an
3 employing unit if before and after such change 50 percent
4 or more of the control of management is held by the same
5 individual, or is held by an individual before death and
6 after the individual’s death by the individual’s estate or
7 heirs.

8 ~~(b)~~

9 (2) Contributions with respect to a return required
10 under subdivision (a) are due and payable on the first day
11 of the applicable 10-day period established pursuant to
12 subdivision (a) and shall become delinquent if not paid
13 within 10 days of the due date.

14 ~~(c)~~

15 (3) The director for good cause may extend for not to
16 exceed 30 days the time for making a return or paying
17 without penalty or interest any amount required to be
18 paid under this section.

19 *(b) This section does not apply to any employer*
20 *described in Section 682 or 684 who has filed an election*
21 *under subdivision (d) of Section 1110 for wages paid on*
22 *or after January 1, 2002.*

23 SEC. 8. Section 1116.5 is added to the Unemployment
24 Insurance Code, to read:

25 1116.5. ~~Within 30 days of the~~ After separation of an
26 employee from an employer, described in either Section
27 682 or 684, that reports on an annual basis in accordance
28 with ~~paragraph (2) of~~ subdivision (d) of Section 1110, that
29 employer shall ~~report~~ *provide the employee with a report*
30 *of all wages, withheld taxes, employer contributions, and*
31 *worker contributions not otherwise reported in*
32 *accordance with that paragraph at the time that the*
33 *employer is required to provide the employee with the*
34 *final payment of wages. Any information reported in*
35 *accordance with this section shall be specified for each*
36 *quarter and partial quarter to which the report applies.*
37 ~~The director may, for good cause, extend for no more~~
38 ~~than 30 days the period specified by the preceding~~
39 ~~sentence for making a report and payment.~~

40 SEC. 5. ~~applies.~~



1 SEC. 9. Section 1117 of the Unemployment Insurance
2 Code is amended to read:

3 1117. (a) If any employer, *other than an employer*
4 *described in Section 682 or 684 who has filed an election*
5 *under subdivision (d) of Section 1110*, fails to file the
6 annual reconciliation return described in subdivision (e)
7 of Section 1088 or subdivision (j) of Section 13021 on or
8 before 30 days after notice has been given to the
9 employer of his or her failure to file, unless the failure is
10 due to good cause, the employer, in addition to any other
11 penalties imposed by this code, shall pay a penalty of one
12 thousand dollars (\$1,000), or 5 percent of the employer
13 and worker contributions required to be reconciled by
14 subdivision (e) of Section 1088, whichever is less.

15 ~~(b) This section does not apply to an employer~~
16 ~~described in Section 682 or 684 that reports on an annual~~
17 ~~basis in accordance with paragraph (2) of subdivision (d)~~
18 ~~of Section 1110.~~

19 ~~SEC. 6.—~~

20 *(b) If any employer described in Section 682 or 684,*
21 *who has filed an election under subdivision (d) of Section*
22 *1110, fails to file the annual report of wages and personal*
23 *income tax withheld described in subdivision (a) of*
24 *Section 1088.1 on or before 30 days after notice has been*
25 *given to the employer of his or her failure to file, the*
26 *employer, in addition to any other penalties imposed by*
27 *this code, shall, unless the failure is due to good cause, pay*
28 *a penalty of one hundred dollars (\$100) or an amount*
29 *equal to the total amount of employer and worker*
30 *contributions required to be reported under subdivision*
31 *(a) of Section 1088.1, whichever is less.*

32 SEC. 10. Section 1118 of the Unemployment
33 Insurance Code is amended to read:

34 1118. (a) ~~This section applies only to employers who~~
35 ~~employ individuals to perform domestic service, as~~
36 ~~described in Sections 682 and 684.~~

37 ~~(b) Except for any employer described in Section 682~~
38 ~~or 684 who has filed an election under subdivision (d) of~~
39 ~~Section 1110 for wages paid on or after January 1, 2002, all~~
40 ~~of the following apply to an employer who employs~~



1 *individuals to perform domestic service as described in*
2 *Sections 682 and 684:*

3 (a) Effective July 1, 1997, notwithstanding Section
4 1088, a domestic service employer shall be authorized to
5 file the report of wages required by Section 1088 by
6 telephone. This does not apply to the filing of Internal
7 Revenue Service Form W-2.

8 ~~(e)~~

9 (b) The department shall notify all domestic service
10 employers of the availability of the telephone reporting
11 system. A domestic service employer shall be required to
12 make an election to report by telephone or by mail. After
13 a domestic service employer elects to report by
14 telephone, the employer is required to report in that
15 mode for the remainder of the calendar year. If a
16 domestic service employer makes this election in the
17 second or subsequent quarter of a calendar year, the
18 employer shall be required to report by telephone for the
19 remainder of the calendar year and for all four quarters
20 of the subsequent calendar year. A domestic service
21 employer who has elected to report by telephone and
22 who is eligible under this subdivision to change the
23 reporting mode shall provide 30 days' notice to the
24 department in order to begin reporting by mail.

25 ~~(d)~~

26 (c) A domestic service employer reporting by
27 telephone shall be required to provide the department
28 with the employer's account number, the social security
29 numbers of all employees, and the wages paid to each
30 employee for the reporting period. The department may
31 request additional information in order to determine the
32 amount of wages that are taxable.

33 ~~(e)~~

34 (d) The department shall compute the contributions
35 owed based upon the wage information reported by the
36 domestic service employer.

37 ~~(f)~~

38 (e) A domestic service employer reporting by
39 telephone shall be permitted to pay the contributions
40 owed by credit card or charge card. The payment shall be



1 subject to the State Payment Card Act (~~Ch. 2.6~~
2 ~~(commencing with Section 6160)~~ of Div. 7, Title 1, Gov.
3 ~~C.~~) (Chapter 2.6 (commencing with Section 6160) of
4 Division 7 of Title 1 of the Government Code).

5 ~~(g)~~

6 (f) If a domestic service employer reporting by
7 telephone does not pay by credit card or charge card, the
8 department shall advise the employer of the due date for
9 the payment and of any penalties and interest that will be
10 charged if a payment is late.

11 SEC. 11. Section 1118.5 is added to the
12 Unemployment Insurance Code, to read:

13 1118.5. (a) (1) Notwithstanding Sections 1088 and
14 1088.1, any employer described in Section 682 or 684 who
15 has filed an election under subdivision (d) of Section 1110
16 may file the annual report of wages and personal income
17 tax withheld required by subdivision (a) of Section 1088.1
18 by telephone.

19 (2) The department shall notify all domestic service
20 employers of the availability of the telephone reporting
21 system.

22 (3) Any domestic service employer making an
23 election under this section shall register the election in
24 the manner prescribed by the director prior to filing any
25 reports using the telephone filing system.

26 (b) After a domestic service employer registers his or
27 her election to report by telephone, the employer shall
28 report in that mode any wages paid to his or her
29 employees for that calendar year and the subsequent
30 calendar year. A domestic service employer who has
31 elected to report by telephone, and who is eligible under
32 this subdivision to change the reporting mode, shall
33 provide 30 days' notice to the department in order to
34 begin reporting by mail.

35 (c) A domestic service employer reporting by
36 telephone shall be required to provide the department
37 with the employer's account number, the name and social
38 security number of each employee, the quarterly and
39 total wages paid to each employee for the reporting
40 period, the total wages subject to personal income tax, as



1 described in Section 13009.5, paid to each employee, and
2 the total amount of any personal income tax withheld
3 under Sections 13020 and 13028 for each employee. The
4 department may request additional information in order
5 to determine the amount of wages that are taxable.

6 (d) The department shall compute the contributions
7 owed based upon the wage information reported by the
8 domestic service employer.

9 (e) A domestic service employer reporting by
10 telephone may pay the contributions owed by credit card
11 or charge card. The payment shall be subject to the State
12 Payment Card Act (Chapter 2.6 (commencing with
13 Section 6160) of Division 7 of Title 1 of the Government
14 Code).

15 (f) If a domestic service employer reporting by
16 telephone does not pay by credit card or charge card, the
17 department shall advise the employer of the due date for
18 the payment and of any penalties and interest that will be
19 charged if a payment is late.

20 SEC. 12. Section 13021 of the Unemployment
21 Insurance Code is amended to read:

22 ~~13021. (a) Except as otherwise provided in~~
23 ~~paragraph (2) of subdivision (d) of Section 1110 with~~
24 ~~respect to an employer described in Section 682 or 684,~~
25 ~~every~~

26 *13021. (a) Every* employer required to withhold any
27 tax under Section 13020 shall for each calendar quarter,
28 whether or not wages or payments are paid in the
29 quarter, file a withholding report and a report of wages
30 in a form prescribed by the department, and pay over the
31 taxes so required to be withheld. The report of wages shall
32 include individual amounts required to be withheld
33 under Section 13020. Except as provided in subdivisions
34 (c) and (d) of this section, the employer shall file a
35 withholding report and remit the total amount of income
36 taxes withheld during the calendar quarter on or before
37 the last day of the month following the close of the
38 calendar quarter.

39 (b) (1) Effective January 1, 1995, whenever an
40 employer is required, for federal income tax purposes, to



1 remit the total amount of withheld federal income tax in
 2 accordance with Section 6302 of the Internal Revenue
 3 Code and regulations thereunder, and the accumulated
 4 amount of state income tax withheld is more than five
 5 hundred dollars (\$500), the employer shall remit the total
 6 amount of income tax withheld for state income tax
 7 purposes within the number of banking days as specified
 8 for withheld federal income taxes by Section 6302 of the
 9 Internal Revenue Code, and regulations thereunder.

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

15		
16	Average Rate of Interest	
17	Greater than or equal to 9 percent:	\$ 75
18	Less than 9 percent, but greater than or equal to 7 per-	250
19	cent:	
20	Less than 7 percent, but greater than or equal to 4 per-	400
21	cent:	
22	Less than 4 percent:	500
23		

24 (c) (1) Notwithstanding subdivisions (a) and (b), for
 25 calendar years beginning prior to January 1, 1995, if in the
 26 12-month period ending June 30 of the prior year the
 27 cumulative average payment made pursuant to this
 28 division or Section 1110, for eighth-monthly periods, as
 29 defined under Section 6302 of the Internal Revenue Code
 30 and regulations thereunder, was fifty thousand dollars
 31 (\$50,000) or more, the employer shall remit the total
 32 amount of income tax withheld within three banking days
 33 following the close of each eighth-monthly period, as
 34 defined by Section 6302 of the Internal Revenue Code
 35 and regulations thereunder. For purposes of this
 36 subdivision, payment shall be made by electronic funds
 37 transfer in accordance with Section 13021.5, for one
 38 calendar year beginning on January 1. Payment is
 39 deemed complete on the date the electronic funds
 40 transfer is initiated, if settlement to the state's demand



1 account occurs on or before the banking day following the
2 date the transfer is initiated. If settlement to the state's
3 demand account does not occur on or before the banking
4 day following the date the transfer is initiated, payment
5 is deemed complete on the date settlement occurs. The
6 department shall, on or before October 31 of the prior
7 year, notify all employers required to make payment by
8 electronic funds transfer of these requirements.

9 (2) Notwithstanding subdivisions (a) and (b), for
10 calendar years beginning on or after January 1, 1995, if in
11 the 12-month period ending June 30 of the prior year, the
12 cumulative average payment made pursuant to this
13 division or Section 1110 for any deposit periods, as defined
14 under Section 6302 of the Internal Revenue Code and
15 regulations thereunder, was twenty thousand dollars
16 (\$20,000) or more, the employer shall remit the total
17 amount of income tax withheld within the number of
18 banking days as specified for federal income taxes by
19 Section 6302 of the Internal Revenue Code and
20 regulations thereunder. For purposes of this subdivision,
21 payment shall be made by electronic funds transfer in
22 accordance with Section 13021.5, for one calendar year
23 beginning on January 1. Payment is deemed complete on
24 the date the electronic funds transfer is initiated, if
25 settlement to the state's demand account occurs on or
26 before the banking day following the date the transfer is
27 initiated. If settlement to the state's demand account does
28 not occur on or before the banking day following the date
29 the transfer is initiated, payment is deemed complete on
30 the date settlement occurs. The department shall, on or
31 before October 31 of the prior year, notify all employers
32 required by this paragraph to make payments by
33 electronic funds transfer of these requirements.

34 (3) Notwithstanding paragraph (2), effective January
35 1, 1995, electronic funds transfer payments that are
36 subject to the one-day deposit rule, as defined by Section
37 6302 of the Internal Revenue Code and regulations
38 thereunder, shall be deemed timely if the payment settles
39 to the state's demand account within three banking days



1 after the date the employer meets the threshold for the
2 one-day deposit rule.

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

13 (5) Any state agency required to remit payments
14 pursuant to paragraphs (1) and (2) may request a waiver
15 of those requirements from the department. The
16 department may grant a waiver if it determines that
17 there will not be a negative impact on the interest
18 earnings of the General Fund. If there is a negative
19 impact to the General Fund, the department may grant
20 a waiver if the requesting state agency follows procedures
21 designated by the department to mitigate the impact to
22 the General Fund.

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

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

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

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

37 (4) Funds remitted by electronic funds transfer
38 pursuant to this subdivision shall be deemed complete in
39 accordance with subdivision (c) or as deemed



1 appropriate by the director to encourage use of this
2 payment method.

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

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

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

26 (h) For purposes of subdivisions (a), (b), and (g),
27 payment is deemed complete when it is placed in a
28 properly addressed envelope, bearing the correct
29 postage, and it is deposited in the United States mail.

30 (i) In addition to the withholding report and report of
31 wages described in subdivision (a), each employer shall
32 file with the director an annual reconciliation return
33 showing the amount required to be withheld under
34 Section 13020, and any other information the director
35 shall prescribe. This annual reconciliation return shall be
36 due on the first day of January following the close of the
37 prior calendar year and shall become delinquent if not
38 filed on or before the last day of that month.

39 (j) If an employer demonstrates that an undue
40 hardship would be imposed, the director may authorize



1 an exemption from the requirement in subdivision (a) to
2 report individual amounts withheld under Section 13020
3 and the requirement in subdivision (i) to file the annual
4 reconciliation return for the 1995 calendar year only. Any
5 request for exemption must be filed on or before January
6 15, 1995. Upon approval of a request for exemption under
7 this subdivision, the employer shall file quarterly returns
8 reporting the amount withheld under Section 13020, the
9 statement required to be furnished under Section 13050,
10 and the annual return required by Section 13053, for the
11 1995 calendar year only.

12 ~~SEC. 7. This act shall become inoperative if the~~
13 ~~federal Department of Labor determines that the~~
14 ~~implementation of this act would result in nonconformity~~
15 ~~with the Federal Unemployment Tax Act (Chapter 23 of~~
16 ~~Subtitle C of Title 26 of the United States Code~~
17 ~~(commencing with Section 3301)). This act shall become~~
18 ~~operative January 1 succeeding the year that the federal~~
19 ~~Department of Labor determines that amendments to~~
20 ~~federal or state law have placed this act in conformity~~
21 ~~with federal law.~~

22 *(k) This section does not apply to any employer*
23 *described in Section 682 or 684 who has filed an election*
24 *under subdivision (d) of Section 1110 for wages paid on*
25 *or after January 1, 2002.*

