

AMENDED IN SENATE DECEMBER 18, 2008

CALIFORNIA LEGISLATURE—2009—10 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 12

Introduced by Assembly Member Evans

December 8, 2008

~~An act relating to the Budget Act of 2008. An act to amend Sections 19002 and 19355 of the Revenue and Taxation Code, and to amend Sections 2118, 13000, 13010, 13021, 13022, 13052, and 13052.5 of, and to add Sections 13020.1 and 13050.1 to, the Unemployment Insurance Code, relating to taxation.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 12, as amended, Evans. ~~Budget Act of 2008.~~ Tax: withholding on payments for goods and services.

~~This bill would express the intent of the Legislature to enact statutory changes relating to the Budget Act of 2008.~~

Existing law requires every employer who pays wages to an 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 requirements for withholding of those taxes.

This bill would modify existing law to extend that withholding requirement to payments made to a private entity or person pursuant to a contract for goods or services, as provided. This bill would specify that the withholding rate applicable to those payments would be 3%, and would exempt from the withholding requirement, among other payments, the first \$600 of a payment for goods or services made to the contracting party in a calendar year.

This bill would allow the Franchise Tax Board to have access to the information filed with the Employment Development Department, and

would require the department to create and publish forms for reporting and remitting payments made pursuant to a contract for goods or services, as specified.

This bill would establish a new crime with respect to the failure to withhold taxes, and thus would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 1, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 1, 2008, pursuant to the California Constitution.

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

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

1 SECTION 1. Section 19002 of the Revenue and Taxation Code
2 is amended to read:

3 19002. (a) The amount withheld under Article 5 (commencing
4 with Section 18661) of Chapter 2 or Section 13020 or 13020.1 of
5 the Unemployment Insurance Code during any calendar year shall
6 be allowed to the recipient of the income *or payment for goods or*
7 *services* as a credit against the tax for the taxable year with respect
8 to which the amount was withheld.

9 (b) In the case of a partnership, limited liability company
10 classified as a partnership for California income tax purposes, or
11 § “S” corporation filing a group return as agent for electing
12 nonresident partners or shareholders in accordance with Section
13 18535, for purposes of this part, the amount withheld under Article
14 5 (commencing with Section 18661) of Chapter 2 during any
15 taxable year shall be allowed as a credit attributable to the
16 partnership, limited liability company, or-§ “S” corporation on

1 the group return for the taxable year with respect to which that
2 amount was withheld.

3 (c) (1) For purposes of Section 19306, any tax actually deducted
4 and withheld during any calendar year under Article 5
5 (commencing with Section 18661) of Chapter 2 or Section 13020
6 *or 13020.1* of the Unemployment Insurance Code shall, in respect
7 of the recipient of the income *or payment for goods or services*,
8 be deemed to have been paid on the last day prescribed for filing
9 the return under Article 1 (commencing with Section 18501) or
10 Article 2 (commencing with Section 18601) of Chapter 2 (without
11 regard to any extension of time for filing the return), with respect
12 to which the tax is allowable as a credit under subdivision (a) or
13 (b).

14 (2) For purposes of Sections 19306 and 19340, any amount paid
15 as estimated tax under Section 19025 or 19136 of this code or
16 Section 13043 of the Unemployment Insurance Code for any
17 taxable year shall be deemed to have been paid on the last day
18 prescribed for filing the return under Article 1 (commencing with
19 Section 18501) or Article 2 (commencing with Section 18601) of
20 Chapter 2 (without regard to any extension of time for filing the
21 return).

22 (d) Notwithstanding subdivision (b) or (c), for purposes of
23 Section 19306 with respect to any tax deducted and withheld under
24 Article 5 (commencing with Section 18661) of Chapter 2, or
25 Section 13020 *or 13020.1* of the Unemployment Insurance Code
26 both of the following shall apply:

27 (1) If a return is filed before the due date for that return, the
28 return shall be considered filed on the due date.

29 (2) If a tax with respect to an amount paid is paid before the
30 due date for that return, the tax shall be considered paid on the due
31 date.

32 (e) If any overpayment of income tax is claimed as a credit
33 against estimated tax for the succeeding taxable year, that amount
34 shall be considered as a payment of estimated tax in accordance
35 with Section 19007, for the succeeding taxable year, and no claim
36 for credit or refund of the overpayment shall be allowed for the
37 taxable year in which the overpayment arises.

38 *SEC. 2. Section 19355 of the Revenue and Taxation Code is*
39 *amended to read:*

1 19355. Any action of the Franchise Tax Board in refunding
2 the excess of tax withheld under Section 18662 or 18666 or
3 estimated tax paid pursuant to Section 19136, or any action of the
4 Employment Development Department in refunding to the
5 employer the excess tax withheld under Section 13020 *or 13020.1*
6 of the Unemployment Insurance Code, shall not constitute a
7 determination of the correctness of the return of the taxpayer for
8 purposes of this part.

9 *SEC. 3. Section 2118 of the Unemployment Insurance Code is*
10 *amended to read:*

11 2118. Any person or employer who, with or without intent to
12 evade, fails to withhold, pursuant to Section 13020 *or 13020.1*, or
13 fails to pay over any tax withheld, is guilty of a ~~misdemeanor~~
14 *misdemeanor* and, upon conviction, shall be fined an amount not
15 to exceed one thousand dollars (\$1,000), or imprisoned for not
16 more than one year, or both the fine and imprisonment, at the
17 discretion of the court.

18 *SEC. 4. Section 13000 of the Unemployment Insurance Code*
19 *is amended to read:*

20 13000. The department shall have the powers and duties
21 necessary to administer the reporting, collection, refunding to the
22 employer, and enforcement of taxes required to be withheld by
23 employers pursuant to Section 13020 *or by service-recipients*
24 *pursuant to Section 13020.1*, except as otherwise provided by this
25 division.

26 *SEC. 5. Section 13010 of the Unemployment Insurance Code*
27 *is amended to read:*

28 13010. “Withholding agent” means any person required to
29 deduct and withhold any tax under the provisions of Section 13020
30 *or 13020.1*.

31 *SEC. 6. Section 13020.1 is added to the Unemployment*
32 *Insurance Code, to read:*

33 13020.1. (a) *Effective January 1, 2010, any service-recipient*
34 *that enters into a contract for goods or services shall deduct and*
35 *withhold tax prescribed in subdivision (b) on any payment for*
36 *goods or services made to the contracting party in any calendar*
37 *year.*

38 (b) *The rate of tax to be deducted and withheld shall be 3*
39 *percent.*

1 (c) All of the following payments required under this section
2 are exempt from withholding:

3 (1) The first six hundred dollars (\$600) of remuneration for
4 goods or services paid to a contracting party in a calendar year.

5 (2) Payments to tax-exempt entities, foreign governments, and
6 intragovernmental payments.

7 (3) Payments of wages or any other payment with respect to
8 which mandatory withholding applies under Section 13020.

9 (d) For purposes of this section, “service-recipient” means any
10 business or government entity that is required to file a federal
11 Form 1099-MISC for services performed by an independent
12 contractor, including any individual, person, corporation,
13 association, or partnership, or agent thereof, doing business in
14 this state, deriving trade or business income from sources within
15 this state, or in any manner in the course of trade or business
16 subject to the laws of this state. A “service-recipient” also includes
17 this state or any political subdivision thereof, including the Regents
18 of the University of California, any charter city, or any political
19 body not a subdivision or agency of the state, and any person,
20 employee, department, or agent.

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

23 (f) The department shall develop and publish forms for reporting
24 and remitting payments made and taxes withheld under this section.

25 SEC. 7. Section 13021 of the Unemployment Insurance Code
26 is amended to read:

27 13021. (a) Every employer required to withhold any tax under
28 Section 13020 and any service-recipient required to withhold any
29 tax under Section 13020.1 shall for each calendar quarter, whether
30 or not wages or payments are paid in the quarter, file a withholding
31 report and a report of wages or payments for goods or services in
32 a form prescribed by the department, and pay over the taxes so
33 required to be withheld. The report of wages or payments for goods
34 or services shall include individual amounts required to be withheld
35 under Section 13020 or withheld under Section 13028. Except as
36 provided in subdivisions (c) and (d), the employer or
37 service-recipient shall file a withholding report and remit the total
38 amount of income taxes withheld during the calendar quarter on
39 or before the last day of the month following the close of the
40 calendar quarter.

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

5 (c) (1) Effective January 1, 1995, whenever an employer *or*
6 *service-recipient* is required, for federal income tax purposes, to
7 remit the total amount of withheld federal income tax in accordance
8 with Section 6302 of the Internal Revenue Code and regulations
9 thereunder, and the accumulated amount of state income tax
10 withheld is more than five hundred dollars (\$500), the employer
11 shall remit the total amount of income tax withheld for state income
12 tax purposes within the number of banking days as specified for
13 withheld federal income taxes by Section 6302 of the Internal
14 Revenue Code, and regulations thereunder.

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

21	Average Rate of Interest	
22	Greater than or equal to 9 percent:	\$ 75
23	Less than 9 percent, but greater than or equal to	
24	7 percent:	250
25	Less than 7 percent, but greater than or equal to	
26	4 percent:	400
27	Less than 4 percent:	500

28
29 (d) (1) Notwithstanding subdivisions (a) and (c), for calendar
30 years beginning prior to January 1, 1995, if in the 12-month period
31 ending June 30 of the prior year the cumulative average payment
32 made pursuant to this division or Section 1110, for eight-month
33 periods, as defined under Section 6302 of the Internal Revenue
34 Code and regulations thereunder, was fifty thousand dollars
35 (\$50,000) or more, the employer *or service-recipient* shall remit
36 the total amount of income tax withheld within three banking days
37 following the close of each eight-month period, as defined by
38 Section 6302 of the Internal Revenue Code and regulations
39 thereunder. For purposes of this subdivision, payment shall be
40 made by electronic funds transfer in accordance with Section

1 13021.5, for one calendar year beginning on January 1. Payment
2 is deemed complete on the date the electronic funds transfer is
3 initiated if settlement to the state's demand account occurs on or
4 before the banking day following the date the transfer is initiated.
5 If settlement to the state's demand account does not occur on or
6 before the banking day following the date the transfer is initiated,
7 payment is deemed complete on the date settlement occurs. The
8 department shall, on or before October 31 of the prior year, notify
9 all employers required to make payment by electronic funds
10 transfer of these requirements.

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

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

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

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

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

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

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

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

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

34 (f) Notwithstanding Section 1112, no interest or penalties shall
35 be assessed against any employer who remits at least 95 percent
36 of the amount required by subdivision (c) or (d) if the failure to
37 remit the full amount is not willful and any remaining amount due
38 is paid with the next payment. The director may allow any
39 employer to submit the amounts due from multiple locations upon

1 a showing that those submissions are necessary to comply with
2 subdivision (c) or (d).

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

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

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

19 (j) In addition to the withholding report and report of wages *or*
20 *payments for goods or services* described in subdivision (a), each
21 employer *or service-recipient* shall file with the director an annual
22 reconciliation return showing the amount required to be withheld
23 under Section 13020, and any other information the director shall
24 prescribe. This annual reconciliation return shall be due on the
25 first day of January following the close of the prior calendar year
26 and shall become delinquent if not filed on or before the last day
27 of that month.

28 *SEC. 8. Section 13022 of the Unemployment Insurance Code*
29 *is amended to read:*

30 13022. In determining the amount to be deducted and withheld
31 under ~~Section~~ *Sections 13020 and 13020.1*, the wages *and*
32 *payments for goods or services* may, at the election of the employer
33 *or service-recipient*, be computed to the nearest dollar.

34 *SEC. 9. Section 13050.1 is added to the Unemployment*
35 *Insurance Code, to read:*

36 *13050.1. (a) Every service-recipient required to withhold*
37 *under Section 13020.1 shall furnish to each person whose name*
38 *is required to be set forth in a return reporting withholding*
39 *pursuant to Section 13020.1 a written statement during the*

1 *calendar year, or before January 31 of the succeeding calendar*
 2 *year, showing all of the following:*

3 *(1) The full name, address, and taxpayer identification number*
 4 *of the person with respect to whom a return or statement is*
 5 *required under this section.*

6 *(2) The service-recipient’s name, business name, address, and*
 7 *telephone number.*

8 *(3) The service-recipient’s federal employer identification*
 9 *number, California state employer account number, social security*
 10 *number, or other identifying number as required by the department*
 11 *in consultation with the Franchise Tax Board.*

12 *(4) The aggregate amount of payments to the person required*
 13 *to be shown on the return.*

14 *(5) The amount withheld pursuant to Section 13020.1.*

15 *(b) The statement required to be furnished pursuant to this*
 16 *section shall be furnished at other times and shall contain other*
 17 *information as the department may by authorized regulations*
 18 *prescribe.*

19 *(c) A duplicate of any statement made pursuant to subdivision*
 20 *(a) shall be filed with the department by February 28 of the*
 21 *succeeding calendar year.*

22 *(d) An itemized statement showing the information required*
 23 *under subdivision (a) shall be furnished to each service-provider*
 24 *at the time of payment of remuneration.*

25 *SEC. 10. Section 13052 of the Unemployment Insurance Code*
 26 *is amended to read:*

27 *13052. Any person or employer required under Section 13050*
 28 *or Section 13050.1 to furnish a statement to an employee or to a*
 29 *person who furnishes a false or fraudulent statement, or who fails*
 30 *to furnish a statement in the manner, at the time, and showing the*
 31 *information required under Section 13050 or 13050.1, or*
 32 *regulations prescribed thereunder, shall for each such failure, unless*
 33 *due to reasonable cause, pay a penalty of fifty dollars (\$50). The*
 34 *penalty shall be assessed and collected in the same manner as the*
 35 *tax.*

36 *SEC. 11. Section 13052.5 of the Unemployment Insurance*
 37 *Code is amended to read:*

38 *13052.5. (a) In addition to the penalty imposed by Section*
 39 *19183 of the Revenue and Taxation Code (relating to failure to*
 40 *file information returns), if any person, or entity fails to report*

1 amounts paid as remuneration for personal services as required
 2 under Section 13050 *or* 13050.1 of this code or Section 6041A of
 3 the Internal Revenue Code on the date prescribed thereof
 4 (determined with regard to any extension of time for filing), that
 5 person or entity may be liable for a penalty determined under
 6 subdivision (b).

7 (b) For purposes of subdivision (a), the amount determined
 8 under this subdivision is the maximum rate under Section 17041
 9 of the Revenue and Taxation Code multiplied by the unreported
 10 amounts paid as remuneration for personal services.

11 (c) The penalty imposed by subdivision (a) shall be assessed
 12 against that person or entity required to file a return under Section
 13 13050 *or* 13050.1 of this code or Section 6041A of the Internal
 14 Revenue Code.

15 (d) Sections 1221 and 1222 of the Unemployment Insurance
 16 Code shall not apply to assessments imposed by this section.

17 (e) The penalty imposed under this section shall be in lieu of
 18 the penalty imposed under Section 19175 of the Revenue and
 19 Taxation Code. In the event that a penalty is imposed under both
 20 this section and Section 19175 of the Revenue and Taxation Code,
 21 only the penalty imposed under this section shall apply.

22 (f) The penalty imposed by this section may be assessed in lieu
 23 of, or in addition to, the penalty imposed by Section 13052 with
 24 respect to the failure to furnish a withholding statement to an
 25 employee *or to a person*.

26 *SEC. 12. No reimbursement is required by this act pursuant*
 27 *to Section 6 of Article XIII B of the California Constitution because*
 28 *the only costs that may be incurred by a local agency or school*
 29 *district will be incurred because this act creates a new crime or*
 30 *infraction, eliminates a crime or infraction, or changes the penalty*
 31 *for a crime or infraction, within the meaning of Section 17556 of*
 32 *the Government Code, or changes the definition of a crime within*
 33 *the meaning of Section 6 of Article XIII B of the California*
 34 *Constitution.*

35 ~~SECTION 1. It is the intent of the Legislature to enact statutory~~
 36 ~~changes relating to the Budget Act of 2008.~~

37 ~~SEC. 2.~~

38 *SEC. 13.* This act addresses the fiscal emergency declared by
 39 the Governor by proclamation on December 1, 2008, pursuant to

- 1 subdivision (f) of Section 10 of Article IV of the California
- 2 Constitution.

O