

January 11, 2012

Hon. Kamala D. Harris  
Attorney General  
1300 I Street, 17<sup>th</sup> Floor  
Sacramento, California 95814

Attention: Ms. Dawn McFarland  
Initiative Coordinator

Dear Attorney General Harris:

Pursuant to Elections Code Section 9005, we have reviewed the proposed statutory initiative related to payment of state income taxes by certain persons not eligible for Social Security numbers (A.G. File No. 11-0089).

## Background

***Immigration Law Enforcement Primarily a Federal Government Responsibility.*** Federal law specifies the conditions under which foreign nationals may be admitted to and remain in the U.S. and prohibits employers from hiring individuals not authorized to work in this country. Federal government agencies generally are responsible for enforcing immigration laws. Accordingly, state or local government agencies have only a limited role in assisting in immigration law enforcement.

***Social Security Numbers and Employment in the U.S.*** In the 1935 Social Security Act, Congress authorized the U.S. government to create a record-keeping system to track individuals' wages for Social Security eligibility purposes. The U.S. Department of the Treasury started requiring the issuance of an account number—known as the Social Security number (SSN)—to each person covered by Social Security. Over time, SSNs have become a common means of individual identification by government programs and others. In 1962, for example, the U.S. Internal Revenue Service (IRS) adopted the SSN as its official taxpayer identification number.

Persons legally employed in the U.S. generally need an SSN. Regulations of the IRS have long required workers subject to Social Security taxes to apply for an SSN. In general, only noncitizens authorized to work in the U.S. by the federal Department of Homeland Security can get an SSN.

***Tax Payments of Immigrants.*** Regardless of their immigration status, immigrants may have filing or reporting requirements under federal and state tax laws. In 1996, IRS introduced individual taxpayer identification numbers (ITINs) for such persons who are not eligible to obtain an SSN. An ITIN does not authorize work in the U.S. or provide eligibility for Social

Security benefits. Some undocumented workers do not have an ITIN, and some have income tax withholding from their wages even though they do not file tax returns. At this time, we have little information on income and tax withholding of these groups.

***Requirements for California Income Tax Filers.*** California's state personal income tax (PIT) forms generally require filers to report either their SSN or their ITIN. In 2010, about 624,000 state PIT returns listed an ITIN. A large portion of this group would be undocumented workers. In addition, around 416,000 returns were in a category that included those that omitted an SSN or listed the same SSN as used on another return. Some of the returns in this latter category probably were filed by undocumented immigrants.

## **Proposal**

***Establishes PIT Reporting Program Aimed at Undocumented Immigrants.*** The measure establishes a program under which certain individuals who are ineligible to receive SSNs, but who do file state tax returns, could pay a fee and apply with the state's Department of Justice (DOJ) for participation in a new program. The program would commence on January 1, 2013, and terminate on January 1, 2018. Undocumented immigrants likely would be the key group applying for the program. Eligible program participants would receive a confirmation of admission to the program valid for one year from the date of issue, subject to renewal.

The program requires the Franchise Tax Board (FTB) to use the names and ITINs of individuals enrolled in the program to prepare an annual report on income taxes paid by program participants. The measure also requires the Governor to request that the President direct federal agencies not to expend resources during the term of the program on enforcing certain immigration laws concerning program participants, their spouses, or eligible dependents, with specified exceptions.

Under the measure, FTB would issue these reports each year during the term of the program, and as soon as possible after the beginning of 2018, all program records would be destroyed, except for tax returns or other records deemed necessary to conduct tax audits or appeals or to process taxpayer refund claims. Under the measure, records containing identifying information for applicants or participants in the program could only be disclosed for certain limited purposes (such as enforcement of tax or Family Code liabilities) or as otherwise required by state or federal law. Such identifying information also would be exempt from disclosure under the state's Public Records Act.

## **Fiscal Effects**

***Changes in State Tax Revenues.*** This proposal would not change anyone's state tax liabilities. The measure could encourage some program participants to file state income tax returns who otherwise would not have. The net effect on state revenues would depend largely on whether the current income tax withholding of participants induced to file tax returns by this program exceeds their tax liabilities. If, for example, there were 250,000 new tax filers due to this program all with no prior tax withholding and average annual tax liabilities of \$300, the state's revenue gain would be \$75 million per year. Conversely, if the 250,000 new filers had prior tax withholding of \$350 per year and annual tax liabilities of \$300, the state would pay out

more in tax refunds and lose over \$10 million per year. Because of the limited data availability and uncertainty about withholding by prospective program participants, it is unknown whether the net effect on state tax revenues would be positive or negative. In any event, the measure probably would not have a significant impact on overall General Fund revenues.

***Program Costs to Be Paid at Least Partially by Participant Fees.*** The measure would require DOJ and FTB to administer its provisions. Such costs could total in the hundreds of thousands or low millions of dollars per year until soon after the scheduled termination of the program on January 1, 2018. The measure requires the state to charge each applicant a fee to cover some administrative costs for the program.

### **Summary of Fiscal Effects**

This measure would result in the following fiscal effects:

- Unknown net change in annual state tax revenues through 2017-18, but probably without a significant impact on overall General Fund revenues.
- Annual state administrative costs through 2017-18 in the hundreds of thousands or low millions of dollars, supported by required participant fees.

Sincerely,

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Mac Taylor  
Legislative Analyst

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Ana J. Matosantos  
Director of Finance