

AB 36 Becomes Law; California Employers Face Corrective Reporting for 2010

April 10, 2011

Governor Jerry Brown signed [AB 36](#) into law on April 7, 2011. This law brings California income and certain employment tax laws into parity with federal tax law, retroactive to March 30, 2010, regarding group health coverage extended to employees' children up to age 26. That is the date that federal law first permitted treatment of "overage" dependents to be excluded from employees' income, for tax purposes, through the year in which their child turns age 26, and irrespective of the child's student or marital status. Prior to passage of AB 36, California employers were required to track overage dependent coverage, assign it a value, and add that value to employees' taxable wages as "imputed income."

Now California employers who offered overage dependent coverage in 2010 and properly tracked imputed state income have to amend 2010 state payroll tax returns retroactive to the date the employer first permitted overage dependent coverage. Employers will have to identify how much imputed state income each employee received in 2010, and prepare amended W-2s (Forms W-2C) for employees excluding this amount from Box 16.

Preparation of amended employer returns is made more complicated in 2011 as the California Employment Development Department (EDD), which collects employment taxes, has just changed its payroll withholding returns and forms effective this year. Fortunately, the EDD has already posted online guidance for employers [here](#). It directs employers to use EDD Form DE 678 to report corrections of income reported on DE 6 quarterly withholding reports for 2010. Employers have until the end of this month to file quarterly withholding reports for the first quarter of this year, and the EDD guidance states that employers may exclude imputed income from their DE 9 returns (quarterly withholding reports that replace DE 6) and file returns that are accurate with the new retroactive law. Employers that have already submitted their DE 9 are directed to report corrections for first quarter of 2011 using the new version of DE 678, Form DE ADJ.

All employers will still have deposited payroll taxes in excess of the corrected amount reported. Detailed instructions for correcting excess deposits are found on pages 77-78 of the [California Employer's Tax Guide for 2011](#); note that the instructions differ depending on whether taxes were deposited using Form 88, or electronically, and that correction of over-withheld personal income tax differs from correction of over-withheld employment taxes (state disability insurance, unemployment insurance, etc.).

The Franchise Tax Board, governing personal and business income tax, also has updated its website with [guidance](#) for employees who included overage dependents in their coverage last year. They are directed to file amended state income tax returns (FTB Form 540X), once they receive their Forms W-2C omitting the imputed state income. They are also told to use FTB Form 3525 as a substitute for federal Form W-2C if unable to obtain a Form W-2C from their employer.

http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/ab_36_bill_20110407_chaptered.html

http://www.edd.ca.gov/Payroll_Taxes/New_state_law_to_conform_income_taxes_with_Federal_Health_Care_Act.htm

http://www.edd.ca.gov/pdf_pub_ctr/de44.pdf

http://www.ftb.ca.gov/professionals/taxnews/Patient_Protection_and_Affordable_Care_Act.shtml