

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wiggins Analyst: Norm Catelli Bill Number: AB 1353

Related Bills: See Legislative History Telephone: 845-5117 Amended Date: May 16, 2001

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Political Contributions Refundable Credit

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced February 23, 2001.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 23, 2001.
- FURTHER AMENDMENTS NECESSARY.
- \_\_\_\_\_ DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED February 23, 2001 STILL APPLIES.
- \_\_\_\_\_ OTHER - See comments below.

## SUMMARY

The bill would create a refundable income tax credit for political contributions made by certain individuals.

## SUMMARY OF AMENDMENTS

The May 16, 2001 amendments would:

- Define relevant terms by reference to the Government Code;
- Reduce the amount of the allowable credit from \$200 to \$100 and from \$100 to \$50, depending on filing status;
- Prevent lobbyists, their employees, and certain large donors from claiming the credit;
- Eliminate individuals whose adjusted gross income (AGI) is \$60,000 or more, or \$30,000 or more, depending on filing status, from claiming the credit;
- Repeals the section on December 1, 2009; and
- Requires the FTB to annually report to the Legislature.

The May 16th amendments did not resolve the department's implementation or policy concerns. These concerns are provided below for convenience. Also, a new revenue estimate is provided.

Board Position:

\_\_\_\_\_ S                      \_\_\_\_\_ NA                      \_\_\_\_\_ NP  
\_\_\_\_\_ SA                      \_\_\_\_\_ O                      \_\_\_\_\_ NAR  
\_\_\_\_\_ N                      \_\_\_\_\_ OUA                      \_\_\_\_\_ X PENDING

Department Director

Date

Alan Hunter for GHG

06/26/01

## **PURPOSE OF THE BILL**

According to the author's staff, the purpose of the bill is to encourage individuals to contribute to political campaigns, thereby de-emphasizing the importance of large donors in political campaigns.

## **EFFECTIVE/OPERATIVE DATE**

This bill is a tax levy and would be effective immediately upon enactment. The credit would be operative for taxable years beginning on or after January 1, 2001, and before January 1, 2009.

## **POSITION**

Pending.

### **Summary of Suggested Amendments**

An amendment is suggested to provide appropriation language to fund the department costs associated with administering the proposed credit.

## **ANALYSIS**

### THIS BILL

Under the Personal Income Tax Law (PITL), this bill would allow a refundable credit equal to 100% of the amount of any political contributions made by an individual to a controlled committee of a candidate, political party committee, or small contributor committee. The credit would be available beginning on or after January 1, 2001, and before January 1, 2009.

The bill specifies the credit shall not exceed \$100 for married couples filing joint returns, heads of household, and surviving spouses, or \$50 for all other individuals.

The bill specifies that the credit would not be allowed to taxpayers whose AGI is \$60,000 or more in the case of a married couple filing a joint return, a head of household, or a surviving spouse, or \$30,000 or more for all other individuals.

The bill specifies that the credit would not be allowed to any taxpayer that is a lobbyist, lobbyist employee, or a major donor, all as defined in the Government Code.

This bill specifies that any credit in excess of the taxpayer's tax liability would first be credited against other amounts due, and the balance, upon appropriation by the Legislature, would be refunded to the taxpayer.

The bill requires the FTB to report to the Legislature annually about the utilization of the credit and the FTB's costs to administer the credit.

The bill would repeal the section on December 1, 2009.

## IMPLEMENTATION CONSIDERATIONS

The amended bill defines terms with reference to the Government Code. Those references are somewhat problematic. For example, Govt. Code § 82016 does define a "controlled committee" to mean a committee that is controlled directly or indirectly by a candidate or state measure proponent. The bill appears to limit the definition to a controlled committee of a candidate, thereby excluding contributions to the controlled committee of a state measure proponent. According to the Legislative Counsel's website compilation of the Govt. Code there are two sections 85205 and 85203. In addition, Govt. Code § 84503, which is referred in the bill to identify a "major donor," is problematic in that 84503 established requirements for the disclosure in advertising for ballot measures the two highest contributors that donated more than \$50,000 in support of or opposition to the ballot measure. As a result, the reference would be interpreted to mean the two highest donors that made contributions to a ballot measure in excess of \$50,000. Other persons that made donations in excess of \$50,000 for a ballot measure (but not one of the two highest) or donations in excess of \$50,000 to a candidate would be excluded. Also, does the label "major donor" prevent the donor from getting the credit for modest contributions unrelated to major contributions? The terms defined by reference should be specifically defined in this section. The terms that should be defined are: "controlled committee of a candidate," "political party committee," "small contributor committee," "lobbyist," "lobbyist employee," and "major donor." Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill would require regular appropriations by the Legislature to pay for the refundable portion of this credit. If sufficient funds were not appropriated to cover all of the refunds due, the department would suspend payment of the refunds until additional funds were appropriated. This delay would result in additional contacts to the department by refund recipients, which would likely increase departmental costs.

Since the proposed credit is refundable, the credit would need to be shown in the payment section on all personal income tax (PIT) returns except the Form 540 2EZ. This would increase PIT return Forms 540, 540NR, 540X, and potentially the Form 540A by one page. Adding a page to these forms would result in a significant impact on FTB's operations and costs, would slow return processing, and would increase the amount of return storage space. The department may be required to lease additional office and file storage space; however the department would work within available space to the extent possible.

## **FISCAL IMPACT**

First year implementation costs are estimated to be \$489,000, which includes one-time programming costs of approximately \$383,000. Ongoing costs are estimated to be \$43,000 to process this credit. It is estimated that this bill would require the department to incur five additional personnel years (PYs) in 2001-02, decreasing to approximately one PY in the ongoing years. The department would have to begin working on programming immediately to process this credit for the 2001 taxable year.

The estimated costs are associated with the processing of the refundable credit, changes to the personal income tax computer systems, and increased taxpayer telephone calls and correspondence.

Amendment 1 is provided to suggest language for an appropriation to fund these departmental costs.

**ECONOMIC IMPACT**

Revenue Estimate

Based on the data and assumptions below, revenue losses are estimated as follows:

Estimated Revenue Impact			
Taxable Years Beginning On or After January 1, 2001			
Enactment Assumed After June 30, 2001			
Fiscal Years			
(In Millions)			
	2001-2	2002-3	2003-4
Political Contribution Credit	-\$5.5	-\$5.6	-\$5.7

Note: For purposes of this estimate, it is assumed that documentation substantiating the amount of qualifying contributions would be required with the appropriate income tax form.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Discussion

The impact of this bill would depend on the number of taxpayers qualified to claim the credit and the amount of qualified contributions.

For purposes of this estimate, prior year tax data for the previous nonrefundable credit was used. It is projected that approximately 55,000 individuals will claim an average credit of \$80 in 2001. This number was arrived at by taking the most claimants in any given year under the prior credit for the appropriate adjusted gross income ranges, which was adjusted upward for normal growth, and the incentive effect from the proposed larger “refundable” credit.

**ARGUMENTS/POLICY CONCERNS**

Historically, refundable credits, such as the former state renter’s credit and the federal Earned Income Credit, have had significant problems with invalid and fraudulent returns. These problems are aggravated if a refund is made that is later determined to be fraudulent. In such cases the refund commonly cannot be recovered.

Credits generally are provided as a percentage of actual amounts. This bill would allow a 100% credit, up to certain limits, which is unprecedented.

Assembly Bill 1353 (Wiggins)

Amended May 16, 2001

Page 5

This bill does not contain any recapture provision in the event that the political contributions are returned to the donor (taxpayer).

**LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 1353  
As Introduced February 23, 2001

AMENDMENT 1

On page 3, line 5 following "SEC. 3" insert:

(a) There is hereby appropriated from the General Fund for expenditure in the 2001-2002 fiscal year the sum of four hundred eighty nine thousand dollars (\$489,000) for allocation to the Franchise Tax Board in augmentation of Item 1730-001-0001 of the Budget Act of 2001.

(b) Any funds that are allocated pursuant to subdivision (a) shall be expended by the Franchise Tax Board solely for the purposes of administration of the Political Contributions Refundable Credit under Section 17053.15 of the Revenue and Taxation Code.

SEC. 4