Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Laird	Analyst:	Gloria McConnell	Bill Number:	AB 1502
Related Bills:	See Legislative History	Telephone:	845-4336	Introduced Date:	02-21-03
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Natural Heritage Preservation Tax Credit/Public Entity Property Acquisitions

SUMMARY

This bill would allow state bond funds to be used to reimburse the General Fund for the amount of Natural Heritage Preservation Tax Credits (preservation tax credit) that are awarded.

PURPOSE OF THE BILL

According to the author's staff, this bill would allow funds from state bonds to be used to reimburse the General Fund for losses attributable to the preservation tax credit.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative January 1, 2004.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under existing federal and state tax law, when a taxpayer sells real property at a price higher than the cost of the property or tax basis of the property, a gain is realized. If the real property is sold for less than the tax basis, a loss is realized. Such items may be includible in the taxpayer's gross income.

Under existing federal and state tax laws, a donation of real property to or for the use of public, private, or governmental organizations qualifies as a charitable contribution, as follows:

- For corporations, the deduction for charitable contributions is limited to the amount of the adjusted basis of the property. In addition, the total deduction is limited to 10% of the taxpayer's net income. Contributions in excess of 10% may be carried over to the following five succeeding taxable years.
- For individuals, real property is typically considered capital-gain property. For contributions to governmental organizations, the full fair market value of the property may be deducted. However, the maximum allowable deduction in any one year is limited to 50% of the taxpayer's adjusted gross income (AGI). In the case of appreciated capital-gain property, the deduction may be limited to 30% of the taxpayer's AGI.

Board Position:			Department Director	Date
_____ S	_____ NA	_____ NP	Gerald H. Goldberg	04/11/03
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Under state tax law, a charitable contribution deduction greater than the taxpayer's adjusted basis in the property is deemed to be a tax preference item and is included in the calculation of alternative minimum taxable income.

Existing state and federal tax law provides various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., preservation tax credit explained below or economic development area hiring credits).

The Natural Heritage Preservation Tax Credit Act of 2000 was created under state law to encourage donations of land to the state, local governments, or designated nonprofit organizations. This act allows donors under state tax law a tax credit equal to 55% of the fair market value of the donated property, as appraised by the Department of General Services. The donated property must be approved for acceptance by the Wildlife Conservation Board (WCB), which notifies the Franchise Tax Board (FTB) of the preservation tax credit awarded for each donation. This act provides that a total of $100 million may be awarded for fiscal years beginning 2000-01 and ending before 2005-06, except due to budget constraints, no preservation tax credit can be awarded for this fiscal year 2002-03. Therefore, any preservation tax credit attributable to property donated in 2002-03 cannot be awarded in 2002-03 but may be awarded in subsequent years. However, any preservation tax credits that were awarded and unused before 2002-03 can be used for 2002-03. In any event, any unused credit may be carried forward to subsequent years until the credit is exhausted.

<u>THIS BILL</u>

This bill would allow public entities to expend state bond funds to acquire property donated pursuant to the Natural Heritage Preservation Tax Credit Act by reimbursing the General Fund for the amount of the preservation tax credit awarded by WCB. This expenditure would be made to the extent the acquired property is consistent with and furthers the purpose of the applicable bond act. The WCB and the Director of Finance would approve such transactions. The bill also expresses legislative finding and declarations.

<u>IMPLEMENTATION CONSIDERATIONS</u>

According to the author's staff, it is anticipated that the expenditure from the state bond funds to the General Fund would be done at the time the award is made by WCB. The bill would not require FTB to make the transaction, nor would the bill change the way the preservation tax credit is administered by FTB. As such, this bill would not affect FTB's programs or operations.

LEGISLATIVE HISTORY

SB 1647 (O'Connell; Statutes 2000, Chapter 113) created the preservation tax credit.

AB 3009 (Committee on Budget; Statutes 2002, Chapter 1033) suspended the awarding of the preservation tax credit for 2002-03.

OTHER STATES' INFORMATION

Review of *Florida, Illinois, Massachusetts, Michigan*, *Minnesota*, and *New York* tax information found no provisions comparable to the transaction that would be permitted under this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

Departmental Costs

This bill would not impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

The department's revenue estimate focuses on General Fund revenue. In the case of the preservation tax credit, the impact to the General Fund would be dependent upon changes to the tax credit amount awarded or claimed by taxpayers. Because this bill changes neither the amount awarded or claimed, this bill would not impact tax revenue. General Fund reimbursement transactions such as that contemplated by this bill would require an analysis by the Department of Finance and/or the Legislative Analysts Office

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