Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	AR &T Committee	Analyst:	Jane Tolman	Bill Number:	AB 1742
Related Bills:	See Legislative History	Telephone:	845-6111	Introduced Date:	03-11-2003
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Exemption/Golden State Scholarshare Trust Technical Clean Up/Erroneous Refund Interest Computation Simplification

SUMMARY

This Franchise Tax Board (FTB) sponsored bill would:

- renumber the tax law code section for the Golden State Scholarshare Trust, and
- simplify the computation of interest on erroneous refunds.

PURPOSE OF THE BILL

The purpose of this bill is to relocate the Golden State Scholarshare Trust to the appropriate chapter of the Revenue and Taxation Code (R&TC) and to make abatement of interest on erroneous refunds consistent.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative beginning on or after January 1, 2004.

POSITION

Support. On November 26, 2002, the Franchise Tax Board voted to sponsor the legislation introduced in this bill.

1. EXEMPTION/GOLDEN STATE SCHOLARSHARE TRUST TECHNICAL CLEAN UP

ANALYSIS

FEDERAL/STATE LAW

Under federal law, Internal Revenue Code (IRC) Section 529 provides tax-exempt status to "qualified tuition programs." No amount is included in the gross income of a contributor to, or a beneficiary of, a qualified state tuition program with respect to any distribution from, or earnings under, such program, except to the extent such distributions exceed qualified higher education expenses.

California law conforms to federal law as it relates to tax-exempt qualified tuition programs. Distributions, earnings, or contributions to or from the Scholarshare under the Revenue and Taxation Code (R&TC) are excluded from gross income during the taxable year.

Board Position:			Department Director	Date
_____ S	_____ NA	_____ NP	Gerald H. Goldberg	4/17/03
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_____ N	_____ OUA	___X___ PENDING		

THIS BILL

This bill would renumber the Scholarshare Trust Section to place it in the exempt corporations chapter (Chapter 4, Article 1) of the Corporate Tax Law (CTL) and make a technical change to the statute.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not impact the department's programs and operations.

LEGISLATIVE HISTORY

AB 530 (Stats. 1997, Ch. 851) established the California Golden State Scholarshare program, which, in conformity with the federal qualified state tuition criteria, provided an exemption from state taxation and tax deferred treatment for contributions to and earnings from the Scholarshare program.

OTHER STATES' INFORMATION

This bill relates to the organization of the California R&TC. Accordingly, a comparison to other states is not relevant.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the state's income tax revenue or FTB's administration of state income tax.

2. ERRONEOUS REFUND INTEREST COMPUTATION SIMPLIFICATION

ANALYSIS

FEDERAL/STATE LAW

The current federal law provides that if the Internal Revenue Service (IRS) issues an erroneous refund, that erroneous refund may be recovered by notice and demand or by suit in court. Interest on the amount due back from the taxpayer accrues, but upon receipt of prepayment, it is abated for the period between the issuance of the erroneous refund and 30 days after the IRS sends a notice and demand for repayment. Under federal law, interest is not abated if the taxpayer contributed to causing the erroneous refund or if the erroneous refund exceeds $50,000.

The current state law on erroneous refund interest generally conforms to the federal law on erroneous refunds using stand-alone language. That section assumes interest accrues on the erroneous refund from the date issued, but abates interest for the period between issuance of the erroneous refund and a date 30 days after the date repayment is demanded. This section conforms to the federal abatement exceptions where the taxpayer contributed to causing the erroneous refund or where the erroneous refund exceeds $50,000.

There are three other erroneous refund provisions that provide that interest begins accruing 30 days after repayment is demanded. In addition, these sections do not expressly require imposition of interest for the entire period the taxpayer had use of the erroneous refund where the taxpayer contributed to causing the erroneous refund or where the refund exceeds $50,000.

THIS BILL

This bill would amend three sections in the R&TC to conform to federal law. This clarify that the general method for calculating interest on an erroneous refund is for interest to accrue from the date the refund is erroneously made, but interest must be abated for the period from the date the erroneous refund is made to 30 days after demand for repayment is made by FTB.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would occur during the normal annual update.

LEGISLATIVE HISTORY

AB 2892 (Revenue & Taxation Committee, Stats. 2000, Ch. 863) conformed more closely to the language and structure of the IRC.

AB 2897 (Assembly Revenue & Taxation Committee, Stats. 2000, Ch. 415) clarified that interest on erroneous refund amounts begins to accrue 30 days form the date of notice and demand for repayment.

OTHER STATES' INFORMATION

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota*, and *New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Illinois and *Michigan* follow the federal law on abatement of interest on erroneous refunds. *Massachusetts, Minnesota,* and *New York* do not impose interest on erroneous refunds if repaid within 30 to 60 days of the request. If repayment is not received within the prescribed time, interest starts accruing on the first day after the 30 to 60 day period expires.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

Jane Tolman
Franchise Tax Board
845-6111
Jane.Tolman@ftb.ca.gov

Brian Putler
Franchise Tax Board
845-6333
Brian.Putler@ftb.ca.gov