

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Mendoza Analyst: Jennifer Bettencourt Bill Number: AB 2291

Related Bills: See Legislative History Telephone: 845-5163 Introduced Date: February 21, 2008

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Low Cost/Free Spay-Neuter Fund

SUMMARY

This bill would establish and add the Low Cost/Free Spay-Neuter Fund to the personal income tax (PIT) return as a voluntary contribution.

PURPOSE OF THE BILL

According to the author's staff, the intent of this bill is to provide a mechanism to make charitable contributions that would fund low cost or free spay or neuter programs.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2009, and would apply to tax returns filed on or after that date.

POSITION

Pending.

Summary of Suggested Amendments

Amendments 1 and 2 have been provided to resolve technical issues.

ANALYSIS

STATE LAW

Current state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their PIT returns to any of the 11 voluntary contribution funds (VCFs) listed on the return.

Board Position:

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Department Director

Date

Selvi Stanislaus

3/20/08

With the following exceptions, VCFs remain on the PIT return until they are either repealed or fail to meet their minimum contribution amount.

- Except for the California Seniors Special Fund, which has no sunset date, each VCF has a specific sunset date.
- Except for the California Seniors Special Fund, the California Firefighters Memorial Fund, and the California Peace Officer Foundation Memorial Fund, each VCF must meet an initial minimum contribution amount of \$250,000.
- Except for the California Fund for Senior Citizens, the required minimum contribution amount is adjusted annually for inflation for each VCF.

The annual inflation adjustment is based on the percentage change in the California Consumer Price Index. The Franchise Tax Board (FTB) is required to make the following two determinations for each VCF by September 1 of each calendar year:

1. The minimum contribution amount for the next calendar year for the VCF to remain on the PIT return for that calendar year, and
2. Whether estimated contributions to the VCF during the current calendar year will be less than the minimum contribution amount for that calendar year.

FTB is also required to notify certain specified funds in writing of the minimum contribution amount required for the next calendar year.

If FTB estimates that a VCF will fail to meet or exceed the minimum contribution amount for a calendar year, that VCF is repealed effective January 1 of that calendar year.

General voluntary contribution provisions specify the following for all VCFs:

- Any contribution amounts designated prior to a fund's repeal must continue to be transferred and disbursed to that voluntary contribution fund.
- If the designee is unspecified, the contribution amount is transferred to the General Fund after reimbursing costs incurred by the FTB.
- If an individual designates contributions to more than one fund, and the actual amount available is less than the total amount contributed, the contribution would be allocated on a pro rata basis to the designated funds.

The general provisions also provide a formal queuing process for adding new contingent voluntary contribution funds to the tax return. New contingent funds are defined as funds that include language specifying that the fund may not be added to the return until another fund is removed. Upon enactment, new contingent funds are only added to the tax return when an existing fund is removed or when FTB determines space exists on the income tax return.

THIS BILL

This bill would establish and add the Low Cost /Free Spay-Neuter Fund (Fund) to the PIT return as a voluntary contribution. Taxpayers would be able to designate their own funds, not tax liability, for contribution to the Fund on their PIT returns in full dollar amounts of \$1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the initial return for the taxable year and, once made, are irrevocable. A deduction, subject to the itemized deduction rules applicable to individuals, would be allowed for a contribution made pursuant to this bill.

Contributions to the Fund, which are allocated to municipal shelters, would be used to provide low cost or free spay-neuter services. This bill would define "municipal shelter" as a city or county animal control agency or shelter.

This bill would specify that if the taxpayer's payments and credits reported on the PIT return fail to exceed the tax liability, the designation on the return would be treated as if no designation has been made.

This bill contains language that would require FTB to revise the tax return to include a designation space for the Fund beginning with the first taxable year another voluntary contribution fund is removed, thereby making this fund a contingent voluntary contribution fund. As discussed below in Implementation Consideration, it is assumed the fund would be first placed on the PIT return for the 2008 taxable year. The remainder of the This Bill discussion reflects this assumption.

If the Fund first appeared on the PIT return for the 2008 taxable year, it would remain on the PIT return until January 1, 2013, in this case, the PIT return for the 2012 taxable year, unless a later enacted statute deletes or extends that date.

In the second calendar year after the first taxable year that the Fund appears on the PIT return, this bill would specify that if the contributions, as estimated by FTB, will be less than \$250,000 or less than the adjusted amount for subsequent taxable years, the law authorizing designations to this fund would be repealed as of January 1 of that calendar year.

This bill would require FTB to do the following by September 1, 2010, and by September 1 of each year:

- Estimate the annual contribution amount,
- Adjust the minimum estimated contribution amount as indexed for inflation, for each calendar year,
- Determine if the amount of contributions estimated to be received during that calendar year will be less than the \$250,000 or the adjusted amount for subsequent calendar years.

FTB would be required to notify the State Controller of both the amount of money paid by taxpayers in excess of their tax liability and amount of refund money they have contributed to the Fund.

This bill would require the State Controller to transfer money designated for this fund by taxpayers from the Personal Income Tax Fund to the Low Cost/Free Spay-Neuter Fund. Upon appropriation by the Legislature, the monies from this fund would be allocated as follows:

1. FTB and the Controller for reimbursement of costs incurred in administering the fund.
2. The Department of Food and Agriculture for allocation to municipal shelters.

IMPLEMENTATION CONSIDERATION

There are four other bills currently in the legislative process that would add new voluntary contributions to the tax forms. Department staff has indicated that there is enough space on the existing tax forms to accommodate all of them, if necessary. As a result, while implementing this bill would require some changes to existing tax forms and instructions and information systems, these changes could be accomplished during the normal annual update.

TECHNICAL CONSIDERATION

The language of this bill that would require FTB to estimate the minimum contribution amount required for this Fund to remain on the PIT return is unclear. Amendments 1 and 2 would clarify the language and resolve this concern.

LEGISLATIVE HISTORY

AB 1812 (Arambula, 2008) would establish the Fire Safety Fund for taxpayers to designate a contribution on the PIT return. AB 1812 is currently scheduled for hearing with the Assembly Revenue and Taxation Committee.

AB 1935 (Fuller, 2008) would add the California Ovarian Cancer Research Fund for taxpayers to designate a contribution on the PIT return. AB 1935 is currently scheduled for hearing with the Assembly Revenue and Taxation Committee.

AB 2518 (Torrice, 2008) would create the Northern California Cancer Research Fund for taxpayers to designate a contribution on the PIT return. AB 2518 is currently scheduled for hearing with the Assembly Revenue and Taxation Committee.

SB 1502 (Steinberg, 2008) would add the Amyotrophic Lateral Sclerosis (ALS) Fund for taxpayers to designate a contribution on the PIT return. AB 1502 is currently with the Assembly Revenue and Taxation Committee.

SB 1249 (Alquist, Stats. 2006, Ch. 645) added general provisions for all existing VCF's by changing the application of the minimum contribution amounts for specified funds and the related requirements for FTB to calculate the required minimum contribution amounts and notify funds of such amounts.

PROGRAM BACKGROUND

Eleven voluntary contribution funds appeared on the 2007 California personal income tax returns. Total contributions to these funds have varied from approximately \$3.4 million for the 1989 taxable year to approximately \$4.2 million¹ for the 2006 taxable year.

OTHER STATES' INFORMATION

Illinois, Massachusetts, Michigan, Minnesota, and New York allow for taxpayers to designate charitable contributions on the PIT return. None of these states allow for a Low Cost Spay/Neuter Fund voluntary contribution designation.

Illinois, Massachusetts, and New York provide license plates that can be purchased with the proceeds going to spay and neuter programs and humane society organizations.

The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

Based on data and assumptions discussed below, the PIT revenue loss from this bill would be as follows:

Estimated Revenue Impact of AB 2291 Effective On or After January 1, 2009 Enactment Assumed After June 30, 2008			
Fiscal Year	2008-2009	2009-2010	2010-2011
Revenue Loss	N/A	-\$150,000	-\$150,000

Estimates assume the fund is officially designated for returns starting with the 2008 tax year and the minimum level of contributions (\$250,000) is achieved each year. This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

The revenue impact of this bill would be determined by the amount of contributions to the Low Cost/Free Spay-Neuter Fund and the subsequent itemized deduction of such charitable contribution.

¹ Amount contributed through December 27, 2007.

For this estimate, the following assumptions are made:

1. The Fund would be added to the 2008 return,
2. The minimum contribution amount (\$250,000) would be achieved each year, and
3. An itemized deduction would be allowed and claimed for each contribution.

By applying an average marginal tax rate of 6%, the estimated revenue loss of this bill would be \$15,000 annually ($\$250,000 \times 6\% = \$15,000$). Because contributions reported on the 2008 tax return are actually made during the 2009 calendar year, the revenue impact would not occur until fiscal year 2009-2010.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2291
As Introduced February 21, 2008

AMENDMENT 1

On page 3, strike out lines 35 - 40, and insert:

(b)(1) By September 1 of each subsequent calendar year that the Low Cost/Free Spay-Neuter Fund appears on a tax return, the Franchise Tax Board shall do all of the following:

(A) Determine the minimum contribution amount required to be received during the next calendar year for the fund to appear on the tax return for the taxable year that includes that next calendar year.

(B) Provide written notification to the Department of Food and Agriculture of the amount determined in subparagraph (A).

(C) Determine whether the amount of contributions estimated to be received during the calendar year will equal or exceed the minimum contribution amount determined by the Franchise Tax Board for the calendar year pursuant to subparagraph (A). The Franchise Tax Board shall estimate the amount of contributions to be received by using the actual amounts received and an estimate of the contributions that will be received by the end of that calendar year.

(2) If the Franchise Tax Board determines that the amount of contributions estimated to be received during a calendar year will not at least equal the minimum contribution amount for the calendar year, this article is repealed with respect to taxable years beginning on or after January 1 of that calendar year.

(3) For purposes of this section, the minimum contribution amount for a calendar year means two hundred and fifty thousand dollars (\$250,000) the second calendar year after the first appearance of the Low Cost/Free Spay-Neuter Fund on the personal income tax return or the adjusted minimum contribution amount adjusted pursuant to subdivision (c).

AMENDMENT 2

On page 4, line 8, after 'year', add:

after the first appearance of the