

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Spitzer Analyst: Angela Raygoza Bill Number: AB 858
Related Bills: None Telephone: 845-7814 Introduced Date: February 22, 2007
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Exemption/Income From Crime Victim Trust

SUMMARY

This bill would exempt income of a qualified crime victim trust from taxation.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide tax relief on the trust income for a crime victim or crime victim's family.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill will become effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2007.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Under existing federal and state laws trust income is taxable to the grantor, if the grantor, the person who creates the trust, benefits from the trust property. If the grantor does not directly control or benefit from the trust property, then the income of a trust is ordinarily taxed to the beneficiaries if distributed to them, or to the trust itself.

Under current state law, the Victim Compensation Program (VCP) can help victims of violent crime and their families deal with the emotional, physical, and financial aftermath of crime. Victims can apply for compensation by filing an application with the California Victim Compensation and Government Claims Board, which administers the VCP.

The VCP may reimburse a victim of a violent crime and their family for certain expenses, including medical and medical-related costs, wage or income loss, and funeral expenses, if they are necessary due to a crime and if there are no other sources of reimbursement available such as health insurance, worker's compensation, or other benefits.

Board Position:

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Department Director

Date

Lynette Iwafuchi

5/2/07

For Selvi Stanislaus

THIS BILL

This bill would provide a tax exemption for the income of a crime victim trust.

This bill would define the following terms:

- “Crime victim trust” means a trust established solely for the benefit of a crime victim or a crime victim’s family member.
- “Crime victim” means an individual who sustains physical injury or death as a direct result of a crime.
- “Crime victim’s family member” means a crime victim’s parent, grandparent, sibling, spouse, child, or grandchild at the time the crime is committed.

This bill would disallow the exemption of income from the trust fund if the crime victim was not a resident of California at the time the crime was committed.

This bill would also disallow the exemption of the income earned by the trust if it is distributed to any of the following:

- A crime victim’s family member who was not a resident of this state at the time the crime was committed.
- A crime victim or a crime victim’s family member who knowingly or willfully participated in the crime or failed to reasonably cooperate with a law enforcement agency in the apprehension or conviction of the person that committed the crime.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill would allow an exemption on a trust for crime victims who live in California at the time the crime was committed or a crime victim’s family member who was a resident of this state at the time the crime was committed. This bill would also disallow an exemption on income earned by a trust if it is distributed to someone who knowingly or willfully participated in the crime or failed to reasonably cooperate with a law enforcement agency. It would be difficult to audit this provision without the expertise of the Department of Justice. The author may wish to amend the language to specify that the Department of Justice would be responsible for verifying the taxpayer meets the provisions in this bill and provide the information to the Franchise Tax Board

It is unclear if the exemption would be retroactive where the trust makes non-qualifying distributions. Accordingly, it is recommended that the author clarify whether the bill would require the trust to pay tax on income earned in prior years or apply only to the amount of trust income actually distributed to a non-qualified family member.

TECHNICAL CONSIDERATION

In one subdivision, this bill would provide an exemption for “income of a trust” and in another subdivision the exemption would be disallowed for “income from the trust.” Also in another subdivision, any “Income earned by the trust” shall not qualify for the exemption. The inconsistency of these terms could lead to disputes between the taxpayers and the department. A technical amendment is provided to help with the consistency in this bill.

OTHER STATES’ INFORMATION

The states surveyed include *Florida, 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. Research found that all of the states provide a Crime Victim Compensation program or foundation, but do not provide an exemption comparable to the exemption that this bill would allow.

FISCAL IMPACT

The department's costs to administer this bill will be determined once the implementation considerations discussed above have been resolved, but are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact Of AB 858 Effective On Or After January 1, 2007 Enactment Assumed After June 30, 2007 (\$ in Millions)			
Crime Victim Trust Fund	2007-08	2008-09	2009-10
	-\$1	-\$1	-\$1

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 was calculated using data from the Victim Compensation and Government Claims Board. The data showed compensation payments made to crime victims or their families was \$15 million in 2005-06 and \$19 million in fiscal year 2006-07. These fiscal years were converted to a calendar year for 2006. The compensation payment for taxable year 2006 is approximately \$17 million. The \$17 million was calculated by adding half of the \$19 million in compensation payments from 2006-07 to half of the \$15 million in compensation payments from 2005-06.

To estimate compensation payments for future years, a growth rate of 3% was applied to compensation payments of \$17 million ($\$17 \text{ million} \times 3\% = \$510,000$). The estimated compensation payments for fiscal year 2007-08 is \$17.5 million ($\$17 \text{ million} + \$510,000 \text{ growth rate} = \17.5 million). A marginal tax rate of 6% was applied to these payments for a revenue loss of approximately \$1.03 million ($\$17.3 \text{ million} \times 6\% = \1.03 million).

The calendar years were converted back to fiscal years for a rounded revenue loss of \$1 million annually.

LEGAL IMPACT

This bill would require victims to be residents of this state at the time the crime was committed in this state in order for the trust income to qualify for the exemption from California tax. In addition, the bill would require that if amounts in the trust are distributed to a crime victim's family member, the crime victim's family member must have been a resident of this state at the time the crime was committed in order for the trust income to qualify for the exemption from tax. Tax incentives conditioned on residency in California may be subject to constitutional challenge.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 858
As Introduced February 22, 2007

AMENDMENT 1

On page 2, line 4, ~~strikeout "from the,"~~ and insert:
of a crime victim

AMENDMENT 2

On page 2, line 7, ~~strikeout "earned by the,"~~ and insert:
of a crime victim