

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Maldonado Analyst: Victoria Favorito Bill Number: SB 1463
 Related Bills: See Legislative History Telephone: 845-3825 Introduced Date: February 21, 2008
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Charitable Contributions Deduction/Allow 200% Deduction Of Any Charitable Contribution Made To State Parks Trust

SUMMARY

This bill would do the following:

- Create a tax-exempt charitable trust to receive corporate donations to use for state parks.
- Provide corporate taxpayers a 200% charitable deduction for contributions made to the state parks trust.

PURPOSE OF THE BILL

According to the author's office, this bill would encourage donations to offset budget cuts in the funds allocated to maintain California state parks.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2009, and would apply to taxable years beginning on or after that date.

POSITION

Pending.

Board Position:	Department Director	Date
_____ S		
_____ SA		
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_____ X PENDING	Selvi Stanislaus	3/26/08

ANALYSIS

FEDERAL/STATE LAW

Federal Law

Organizations described in Internal Revenue Code (IRC) section 501(c)(3) generally are exempt from federal income tax and are eligible to receive tax deductible contributions. IRC section 501(c)(3) organization must operate primarily in pursuance of one or more of the following purposes to qualify for federal tax exemption:

1. Charitable
2. Educational
3. Religious
4. Scientific
5. Literary
6. Testing for public safety
7. Fostering national or international amateur sports competition
8. Preventing cruelty to children or animals

Organized and Operated for Exempt Purpose

To qualify as an IRC section 501(c)(3) charitable organization, the organization must meet the following conditions:

- The organization must adopt the requirements below in their founding documents:
 1. the organization must limit its purposes to one or more exempt purposes (as listed above) and must not be permitted to engage in activities that do not further its exempt purposes (except to an insubstantial extent), and
 2. the organization's assets are dedicated to one or more exempt purposes.
- The organization must operate primarily for purposes described in IRC section 501(c)(3), by satisfying the following requirements:
 1. the net earnings of the organization may not inure to the benefit of any person in a position to influence the activities of the organization;
 2. the organization must operate to provide a public benefit, not a private benefit;
 3. the organization may not be operated primarily to conduct an unrelated trade or business;
 4. the organization may not engage in substantial legislative lobbying; and
 5. the organization may not participate or intervene in any political campaign.

Once an organization qualifies for tax exempt status under IRC section 501(c)(3), an organization is presumed to be a private foundation unless it notifies the Internal Revenue Service that it is a public charity and not a private foundation.¹

Deductibility of Charitable Contribution for Corporations

In general, gifts to or for the use of a corporation, trust, or community chest, fund or foundations are deductible to the corporate taxpayer; however, gifts to a domestic fraternal society, order or association operating under the lodge system do not qualify as a charitable contribution. In addition, one of the requisites for deductibility is that the donee organization be created or organized in the United States.

Because federal law extends deductibility to payments "made within the taxable year," the general rule is that the deduction is available only in the year the contribution was paid, but the IRC provides a limited exception for corporations on the accrual basis. Corporate taxpayers are limited to 10% of their taxable income. Unused charitable deductions may be carried over up to 5 years (10 years for corporate ranchers and farmers). Any net operating loss carrybacks are not taken into factor when applying the 10% limitation. However, the 10% limitation is based on taxable income as reduced by the net operating loss carryovers. In addition, when calculating the 10% limitation, corporations must omit from the computation of taxable income the amount of any net capital loss carrybacks.

State Law

State law mirrors federal law with regard to charitable organizations. A charitable organization that receives a federal determination letter of tax-exemption under IRC section 501(c)(3) and provides a copy of the federal determination letter to the Franchise Tax Board is automatically granted tax-exempt status for California purposes.

California adopts the federal definition of a private foundation. California has not, however, adopted the federal tax on a private foundation's net investment income or the federal excise tax on self-dealing, lobbying, and prohibited investments.

Deductibility of Charitable Contribution for Corporations

State law provides that the limit for deductible charitable contributions by corporate taxpayers is 10% of the taxpayer's net income. For purposes of computing the 10% limitation, the following are excluded from net income:

- (1) the previously taxed built-in gains of an S corporation;
- (2) the charitable contributions donated; and
- (3) the deductions relating to organizational expenses.

¹ IRC sec. 509(a). Private foundations are either private operating foundations or private nonoperating foundations. In general, private operating foundations operate their own charitable programs in contrast to private nonoperating foundations, which generally are grant making organizations.

California conforms to the federal provision that permits charitable contributions exceeding the 10% limitation to be carried over to the next succeeding five years. The deduction allowed for property contributions is usually the property's fair market value, but the deduction is reduced for gifts of certain types of property. In the case of a charitable contribution of inventory or other ordinary-income or short-term capital gain property, the amount of the charitable deduction generally is limited to the taxpayer's basis in the property.

THIS BILL

This bill authorizes the Governor and Legislature to create a state parks trust and provides that the governing board of the state parks trust will consist of the following seven members:

- one member appointed by the Governor,
- three members appointed by the Senate, and
- three members appointed by the Assembly.

This bill provides that each member of the governing board shall serve no more than two four-year terms.

This bill would provide that the state parks trust shall not be considered as a state or governmental agency under the California Constitution or any other law.

Under this bill, the state parks trust would be organized to be exempt from state and federal income taxation and all corporate donations would be deposited into a trust fund for use to fund California park operations, maintenance, and expenditures typically paid with state funds.

Under this bill, all money in the state parks trust fund would be used to offset budget cuts to funds allocated for California state parks.

This bill would provide a deduction equal to 200% of any charitable contribution donated to the state parks trust for operations of state parks.

This bill would prohibit use of the donated funds until the state reduces funding by 2% or more for either the overall funding for all state parks or the funding of one state park.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a credit/deduction comparable to the deduction allowed by this bill. 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, this bill would result in the following revenue impact:

Revenue Impact – SB 1463 as Introduced February 21, 2008			
Effective Taxable Years Beginning On or After January 1, 2009			
Enactment Assumed After June 30, 2008			
(\$ In Millions)			
Fiscal Year	2008/2009	2009/2010	2010/2011
Revenue Loss	-\$2	-\$5	-\$6

Any possible changes in employment, personal income, or gross state product that might result from this bill are not taken into account.

Revenue Discussion

The revenue impact of this bill would be dependent upon the amount of corporate contributions made to the tax-exempt state parks charitable trust, directed to be created by the bill, and the extent to which taxpayers can benefit from the enhanced deduction. Given the added incentive of what would be a triple tax benefit per dollar donated to the specified trust, this bill is likely to generate a tax revenue loss of \$5 million by fiscal year 2009-2010.

For the 2005 tax year, the total charitable contribution deduction claimed before apportionment was \$10 billion. The total charitable deduction claimed after apportionment was \$1.3 billion. The total tax benefit obtained after apportionment is \$100 million. In calculating the total tax benefit amount, a blended tax rate of 7.2% was applied. The blended rate factors in the different tax rates applied to the different types of corporate taxpayers.

It is assumed that 5% of the amount that both apportioning and non-apportioning corporate taxpayers presently donate to charitable causes will be redirected to the new state parks trust created in this bill. This amounts to around \$500 million in pre-apportionment charitable donations annually (\$10 billion total California contributions x 5% redirect = \$500 million). It is also assumed that a small percentage of corporations that have not previously donated will make annual contributions of approximately \$500,000 to the state parks trust, but the amounts contributed would not materially affect the revenue losses.

Based on the total amount of projected donations qualifying for the enhanced deduction, around \$1 billion of additional deductions could be claimed on a pre-apportionment basis. An estimated 9.4% of the \$1 billion is projected to be applied after apportionment. This yields \$95 million of new deductions being applied against corporate net income (\$1 billion x 9.4%). The \$95 million of enhanced deductions is multiplied by the blended corporate rate of 7.2%, resulting in a revenue loss of roughly \$7 million starting with the 2009 taxable year (\$95 million x 7.2%).

Because taxpayers may not fully shift their charitable giving patterns in the first few years of the enhanced deduction, the estimated revenue loss is lowered by 25% for 2009 (\$7 million x 75% response = \$5 million). Projected losses are increased in successive years to reflect growing use of the deduction. Finally, the amounts shown in the fiscal impact table have been adjusted to reflect changes in estimated tax payment cash flows that occur due to anticipated behavior under proposed law.

ARGUMENTS/POLICY CONCERNS

Taxpayers may generally deduct up to 100% of actual contributions donated to a charitable organization. This bill would allow taxpayers to deduct an amount equal to 200% of the amount donated to the state parks trust, which is unprecedented.

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