Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Maldonado	Analyst:	Victoria Favorito	Bill Number:	SB 1463
Related Bills:	See Prior Analysis	Telephone:	845-3825	Amended Date:	April 3, 2008
		Attorney:	Patrick Kusiak	Sponsor:	

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

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ___________________.

__X__ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

_____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended ____________________.

_____ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO ____________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED FEBRUARY 21, 2008, STILL APPLIES.

_____ OTHER – See comments below.

SUMMARY

This bill would do the following:

- authorize the creation of a tax-exempt charitable trust to receive donations to use for state parks,
- provide personal income taxpayers and corporate taxpayers a deduction equal to 200% of the amount donated to the state parks trust, starting on or after January 1, 2013,
- provide an aggregate annual cap of $35,000,000 for deductions under both the personal income tax and corporation tax sections of the Revenue and Taxation Code, and
- provide language that specifies state funding may not be reduced based on charitable contribution expectations.

Board Position:			Legislative Director	Date
_______ S	_______ NA	_______ NP		
_______ SA	_______ O	_______ NAR	Brian Putler	4/9/08
_______ N	_______ OUA	___X___ PENDING		

SUMMARY OF AMENDMENTS

The April 3, 2008, amendments made the following changes to the bill:

- added a section to the Revenue and Taxation Code that would provide a deduction to personal income taxpayers,
- added a provision that allows a deduction on or after January 1, 2013,
- added a $35,000,000 annual cap to the aggregate amount of deduction allowed for the two sections of the Revenue and Taxation Code, and
- added a provision that money to the trust shall be used only to supplement, not supplant, funding for California park operations.

As a result of the amendments made on April 3, 2008, the EFFECTIVE/OPERATIVE DATE, FEDERAL/STATE LAW, THIS BILL, IMPLEMENTATION CONCERN, TECHNICAL CONSIDERATION, and ECONOMIC IMPACT sections of the department's analysis have all been revised.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2009, and the deduction provision would apply on or after January 1, 2013.

POSITION

Pending.

<u>FEDERAL/STATE LAW</u>

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) organizations 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

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 a corporate taxpayer.

Deductibility of Charitable Contribution for Personal Income Taxpayers

Under current federal law, an individual's charitable contribution deduction is limited depending on the following factors:

- the taxpayer's income (limited by the contribution base and itemized deduction),
- the organization receiving the contribution (contributions made to public charities and to certain private foundations qualify for the 50% limitation),
- the way the contribution is made, and
- the property or services contributed.

Contributions exceeding the annual limitation can be carried forward and used for five succeeding years. Carryover contributions are subject to the same limitations in the year to which they are carried. Carryover contributions are deducted only after all other allowable contributions in their category are utilized. If carryovers from two or more prior years exist, the earlier year's carryover is used first.

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.

[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.

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.

California conforms to the IRC as of a specified date of January 1, 2005, that permits charitable contributions exceeding the 10% limitation to be carried over to the next succeeding five years. The amount of 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.

Deductibility of Charitable Contribution for Personal Income Taxpayers

California conforms to the IRC as of the specified date of January 1, 2005, that allows taxpayers who itemize their deduction to deduct charitable contributions, subject to percentage limitations with the following modifications:

- the state modifies federal law to the extent that the state does not follow federal rules on contributions made by nonresident aliens, and
- the state does not follow federal rule that the 50% Adjusted Gross Income (AGI) limit is determined without any net operating loss carryback to the year.

Deductions disallowed due to the AGI limit may be carried forward for five years. Carryovers are subject to the same percentage limits applicable in the year they were made.

ANALYSIS

THIS BILL

This bill would authorize 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 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 supplement, not supplant, funding for California park operations.

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 provide personal income taxpayers and corporation taxpayers a 200% charitable deduction for contributions made to the state parks trust.

This bill would provide an aggregate annual cap of $35,000,000 for deductions under both the personal income tax and the corporation tax law sections of the Revenue and Taxation Code.

This bill does not limit the amount of deductions that the taxpayer may make during a taxable year.

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 establishes a $35,000,000 annual cap for the deductions under the PITL and the CTL but establishes no mechanism to implement that limitation. The author might consider revising the bill to place a cap on the contributions, with the trust overseeing the limitations and providing taxpayers with certification of the amount and date of contributions donated to the trust.

The bill specifies that the deduction shall be allowed on or after January 1, 2013, but the bill is silent about whether a taxpayer may claim the deduction for contributions made prior to January 1, 2013.

The bill is unclear about whether the author intends the deduction to be applicable for contributions made on or after January 1, 2013, or for contributions made in taxable years beginning on or after January 1, 2013, which is an issue for calendar versus fiscal year taxpayers.

TECHNICAL CONSIDERATIONS

The bill specifies that the trust shall have the authority to accept corporate donations; however, the bill is silent on whether the trust shall have the authority to accept donations from individual taxpayers. The author may consider the following amendment: On page 2, line 19, strikeout the word "corporate."

Revenue Estimate

While there is some uncertainty regarding how this language would be interpreted, staff assumed that the amendments to this bill would be interpreted to limit the amount of the proposed 200% enhanced deduction to a combined aggregate of $35 million for any given year, and would delay the timing of when the bonus deductions could be claimed by 4 years, or until tax year 2013. Additionally, the amendments would make the deduction available to both personal income taxpayers and corporate taxpayers.

Based on data and assumptions discussed below, this bill would result in the following revenue impact:

Revenue Impact – SB 1463 as Amended 04/03/08 Effective Taxable Years BOA January 1, 2013 Enactment Assumed After June 30, 2008			
Fiscal Year	2008-09	2009-10	2010-11
Revenue Impact*	< -$150,000	< -$150,000	< -$150,000

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

*The significant revenue impact of this bill does not occur until fiscal year 2012-13. See table below revenue discussion.

Revenue Discussion

The revenue impact of this amended bill was determined using the following steps:

- Determined the amount of maximum contributions that would meet the $35 million dollar annual limit on the proposed deduction = $17.5 million
- Split the contributions equally between PIT and Corporation taxpayers = $8.75 million each
- Computed the revenue impact associated with corporate taxpayer liabilities ($8.75 million contributions x 200% enhanced x 9.4% apportionment adjustment x 7.2% blended tax rate = roughly $130,000)
- Computed the revenue impact associated with personal income taxpayer liabilities ($8.75 million contributions x 200% enhanced x 80% taxability adjustment x 6% marginal tax rate = roughly $860,000)
- Combined tax liability impact of $990,000 ($860,000 PIT + $130,000 Corp)
- Added deductions generated in prior years, 2009-2012, to tax year 2013 impact to determine initial revenue loss = roughly $5 million ($990,000 plus 4 accumulation years of $4 million)
- Adjusted liability year estimates to reflect changes in fiscal year cash flows

The revenue impacts shown in the above table, beginning in fiscal year 2008-2009 to 2011-12, are insignificant. This is based on our assumption that no more than 1% of total contributions would be new contributions, as opposed to contributions that were simply shifted from some other charitable organization to this one. The table below contains the estimated revenue impact that occurs when the deductions first take effect starting for taxable years beginning on or after January 1, 2013.

(Millions of Dollars)

Fiscal Year	2012-13	2013-14	2014-15
Revenue Impact	-2	-3.5	-1

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Victoria Favorito
(916) 845-3825
victoria.favorito@ftb.ca.gov

Revenue Manager
Rebecca Schlussler
(916) 845-5986
rebecca.schlussler@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov