Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Knight	Analyst:	William Koch	Bill Number:	AB 2528
Related Bills:	None	Telephone:	845-4372	Introduced Date:	February 19, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Exclusion/Payments Or Vouchers From Federal Consumer Assistance To Recycle & Save Act Of 2009 (aka "Cash For Clunkers")

SUMMARY

This bill would exclude from gross income any voucher or payment issued under the Consumer Assistance to Recycle and Save Act of 2009 (aka "Cash for Clunkers").

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to treat California taxpayers fairly by aligning state law to federal law.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for vouchers and payments issued under the Consumer Assistance to Recycle and Save Act of 2009.

POSITION

Pending.

SUMMARY OF SUGGESTED AMENDMENTS

Amendments 1 and 2 are provided to resolve the concern identified in the "Technical Considerations" section of this analysis.

ANALYSIS

<u>FEDERAL/STATE LAW</u>

<u>Consumer Assistance to Recycle and Save Act of 2009 (aka "Cash for Clunkers")</u>

Under the federal "Cash for Clunkers" program, which ended on August 25, 2009, consumers received either a $3,500 or $4,500 discount from a car dealer when they traded in their vehicle and purchased or leased a new, fuel efficient, qualifying vehicle. In order to be eligible for the program, trade-in passenger vehicles must have:

1. Been manufactured less than 25 years before the date it was traded in,
2. Had a combined city/highway fuel economy of 18 miles per gallon or less,
3. Been in drivable condition, and
4. Been continuously insured and registered to the same owner for the full year before the trade.

Board Position:			Department Director	Date
______ S	______ NA	______ NP		
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______ N	______ OUA	___X___ PENDING		

Any voucher issued under the program or any payment made for such a voucher is not considered as gross income of the purchaser of a vehicle for purposes of the Internal Revenue Code.

California law does not conform to the Consumer Assistance to Recycle and Save Act of 2009. For state income tax purposes, a trade-in of a used vehicle to buy a new vehicle is treated as a normal sale or other disposition of the old vehicle; and, in some cases, the value of the voucher received may result in a taxable gain if it exceeds the taxpayer's basis in the old vehicle. To determine whether a gain or loss is realized on the disposition of a used vehicle, the basis (generally the cost of the used vehicle) of the vehicle traded in is subtracted from the amount realized (the applicable voucher amount, plus any other salvage value the dealer offers as part of the exchange). For example, if a vehicle is originally purchased for $19,500, and later traded in for a $4,500 discount under the program, there is no taxable gain. The $15,000 difference is a personal loss under personal income tax law and may not be deducted for tax purposes. However, if a vehicle was purchased for $3,000, and was later traded in for a $3,500 discount under the program, the $500 difference is taxable gain for state income tax purposes.

Any scrap value received by the consumer for the trade-in vehicle is also used in computing the amount of gain or loss.

Different tax rules apply for vehicles used in a trade or business. For example, when a business trades in an old company truck for a new company truck that is like-kind, under the “Cash for Clunkers” program the gain or loss may be deferred for income tax purposes under the like-kind exchange rules.[1]

THIS BILL

If the technical consideration identified below is resolved, this bill, under the Personal Income Tax Law and Corporation Tax Law, would exclude any voucher or payment issued under the Consumer Assistance to Recycle and Save Act of 2009 from the gross income of the purchaser of a vehicle.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department’s programs or operations.

TECHNICAL CONSIDERATIONS

Uncertainty exists that this bill would apply retroactively, without regard to taxable year, to vouchers or payments issued under the Consumer Assistance to Recycle and Save Act of 2009.

Amendments 1 and 2 are provided to resolve this issue.

[1] IRC section 1031; R&TC sections 18031 and 24941.

LEGISLATIVE HISTORY

None.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide an exclusion from gross income comparable to the exclusion from gross income that would be 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

This bill would result in the following revenue losses:

Estimated Revenue Impact of AB 2528 as Introduced on February 19, 2010 Assumed for Payments Made in 2009 Under the Consumer Assistance to Recycle and Save Act Enactment Assumed September 30, 2010			
Fiscal Year	2009-10	2010-11	2011-12
Revenue Loss	-$100,000	-$150,000	-$150,000

This analysis does not consider the possible changes in investment activity, employment, personal income, or gross state product that could result from this bill.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 2528
AS INTRODUCED FEBRUARY 19, 2010

AMENDMENT 1

On page 1, line 3, strikeout "A" and insert:

Without regard to taxable year, a

AMENDMENT 2

On page 2, line 6, strikeout "A" and insert:

Without regard to taxable year, a