Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Huffman, et al.	Analyst:	Brian Werking	Bill Number:	AB 1589
Related Bills:	None	Telephone:	845-5103	Introduced Date: Amended Dates:	February 6, 2012 March 1, 2012 & April 9, 2012
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: California State Park Protection Fund

SUMMARY

This bill would allow a taxpayer to make a contribution of an amount equal to or greater than the cost of an annual state park access pass (parks pass) to the California State Parks Protection Fund (Fund) on their personal income tax return (return), in exchange for which the taxpayer would receive a park pass valid for the following calendar year.

This bill would also make changes to the Public Resources Code and the Vehicle Code relating to state parks. These changes do not affect the department and are not discussed in this analysis.

RECOMMENDATION

No position.

Summary of Amendments

This bill, as introduced February 6, 2012, would allow a taxpayer to make a contribution to the Fund on the return and, if the contribution was sufficient to cover the cost of a parks pass, the taxpayer would receive a parks pass valid for the following calendar year as a result of their donation.

The March 1, 2012, amendments specify that a contribution to the Fund is to be made in an amount equal to or greater than the cost of a parks pass. The amendments also change the specific information the Franchise Tax Board (FTB) is to include in the instructions regarding the cost of the parks pass.

The April 9, 2012, amendments eliminate provisions requiring taxpayers making designations to the Fund, to make their designations irrevocable on their initial returns. The amendments eliminate provisions specifying the treatment of a designation where the total amount designated exceeds the amount available from credits and payments made by taxpayers. The amendments also provide that taxpayers may designate contributions to the Fund commencing with the 2013 taxable year, and provides a January 1, 2018 sunset date for the Fund. The amendments also add additional co-authors and make changes to the Public Resources Code and the Vehicle Code.

Board Position:			Executive Officer	Date
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This is the department's first analysis of this bill.

REASON FOR THE BILL

The language of the bill indicates that its purpose is to provide new revenue for the parks system through the offering of parks passes on personal income tax returns as part of the long-term goal of adequately funding and maintaining California's state park system.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective upon enactment. The Fund would first appear on the 2013 personal income tax return filed during the 2014 taxable year. The provision specifying that amounts voluntarily paid as a designation on the return for an annual parks pass would be specifically operative for the 2013 taxable year and would be repealed as of January 1, 2018.

ANALYSIS

FEDERAL/STATE LAW

Current federal tax law provides a check-off to direct $3 of a taxpayer's tax liability to the Presidential Campaign Fund. Designation of the $3 amount does not affect a taxpayer's tax liability or refund amount.

Federal tax law allows for the deductibility of contributions made to qualified organizations. These charitable contributions are deductible in the year they are made, and are deductible for the amount that the contribution exceeds the fair market value of any benefit received not to exceed 50 percent of an individual's adjusted gross income (AGI).

State tax law conforms to federal law with regard to charitable contributions. Under state law, charitable contributions are deductible in the year they are made, and are deductible for the amount that the contribution exceeds the fair market value of any benefit received not to exceed 50 percent of an individual's AGI. In addition, state law authorizing voluntary contributions on a tax return to a specified fund also authorize deductions for those contributions.

Current state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their tax returns to any of the 18 voluntary contribution funds (VCF) listed on the 2011 state personal income tax return.

Contributions for any taxable year must be made on the initial return for the taxable year and, once made, are irrevocable. If payments and credits reported on a taxpayer's return do not exceed the taxpayer's liability, then the taxpayer's return is treated as if no designation has been made. If no designee is specified on a taxpayer's return, the designated contribution amount is transferred to the General Fund. If a taxpayer designates a contribution to more than one fund listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution is allocated among the designees on a pro rata basis.

Each fund provides for the reimbursement of the actual costs incurred by the FTB and the Controller to administer the fund.

With the following exceptions, VCFs remain on the 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 Memorial Foundation Fund, each VCF must meet an initial minimum contribution amount of $250,000.
- Except for the California Fund for Senior Citizens, each of the remaining VCF minimum contribution amounts is adjusted annually for inflation.

If the 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.

Current state law provides that if the number of contingent voluntary contribution designations[1] that are eligible to be added to the personal income tax return is greater than the number of designations removed, then the voluntary contribution designations may be queued and added to the return in order of the date of enactment.

THIS BILL

This bill would establish the California State Parks Protection Fund commencing with the 2013 taxable year, and would allow taxpayers to designate their own funds (not tax liability) for the purchase of parks passes on their tax returns in an amount equal to or greater than the cost of a parks pass. Any amount of the designation that is in excess of the cost of the state park access pass shall be deposited into the California State Parks Protection Fund. All amounts in the Fund, upon appropriation by the Legislature, would be used for purposes of issuing passes and for purposes related to the protection and preservation of state parks. Each signatory on a joint return may make the contributions individually.

This bill would require the FTB to provide to the Department of Parks and Recreation (DPR), necessary information, including names and addresses, so that the DPR may contact the individuals who purchased a parks pass and distribute a parks pass accordingly. The FTB shall not release any confidential information relating to an individual's financial status or tax liability.

This bill would require the FTB to revise the personal income tax return to include a designation space for the Fund beginning with the 2013 taxable year's return.

This bill would require the FTB to include in the tax booklet instructions, information that the contribution may be in the amount, as determined by the DPR, to cover the cost of a parks pass and that the contribution shall be used for that purpose.

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[1] A contingent voluntary contribution designation is a voluntary contribution designation that contains specific language stating that it may not be added to the return until another voluntary contribution designation is removed from the return.

This bill provides for the reimbursement of the actual costs incurred by the FTB and the Controller to administer the Fund.

This bill would exclude from gross income any amount contributed by a taxpayer on the tax return for the purchase of a parks pass, in the year the contribution is made. This bill also specifically provides that the contribution to the Fund on the tax return be deductible for state personal income tax purposes.

This bill would not require the Fund to meet a minimum contribution test to remain on the return.

This bill would be repealed by its own terms on January 1, 2018.

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 fails to provide queuing language for the inclusion of the Fund on the tax return. Recently enacted VCFs have included queuing language so that when there is not enough room on the tax return a queue is used to establish the order for inclusion of voluntary contributions on the return. The author may wish to include queuing language to allow the Fund to be placed in queue until there is adequate space to include the Fund on the return.

This bill would allow taxpayers to exclude from gross income any amounts voluntarily paid by an individual as a designation on the tax return. The payment for a parks pass has no relationship to gross income. If it is the intent of the author to make the fair market value of a parks excluded from gross income, the author should specify that the fair market value of the parks pass received by a taxpayer is excluded from gross income, and not the cost of the parks pass.

This bill does not require that any contributions to this Fund for any taxable year must be made on a taxpayer's initial return for the taxable year and, once made, are irrevocable. This would allow taxpayers to designate and pay for a parks pass on their tax return and once the parks pass is received, the taxpayer could amend their return to request a refund of the original designation. It is recommended that the author amend the bill to provide that contributions for any taxable year must be made on a taxpayer's initial return for the taxable year and, once made, are irrevocable.

This bill does not provide that if payments and credits reported on a taxpayer's return do not exceed the taxpayer's liability, then the taxpayer's return is treated as if no designation has been made. Where the amount available to a taxpayer is insufficient to cover the designation, it could be interpreted that the FTB would be required to take proactive steps to collect on the delinquency. If this is not the intent of the author, it is recommended that the author amend the bill to treat these designations as though no designation was made.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not allow a taxpayer to purchase items on his or her tax return. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact of AB 1589 Creating a California State Park Protection Fund For Contributions Made On or After January 1, 2013 Enactment Assumed After June 30, 2012		
2012-13	2013-14	2014-15
-$0	-$40,000	-$40,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some taxpayers may argue that this bill would provide additional funding for state parks during a time in which DPR has been required to close, partially close, or reduce services at selected parks to achieve required budget reductions.

Opponents: Some taxpayers may argue that the addition of a new VCF to the tax return that allows for the purchase of a parks pass makes the return a cumbersome document, and confuse taxpayers by adding an additional purpose of selling parks passes to the tax return.

POLICY CONCERNS

This bill lacks queuing language, a minimum contribution amount, and a sunset date, which provides inequity between this fund and other recently-enacted funds.

This bill would provide inequitable tax treatment between individuals who purchase a parks pass through their tax return and those who purchase a parks pass through other means, by only allowing the amount purchased through the return to be excludable from gross income.

This bill would also create differences between federal and California tax law by allowing a taxpayer to exclude the cost of a parks pass that is purchased on his or her tax return, thereby increasing the complexity of California tax return preparation.

The bill provides a double tax benefit for a single expenditure because it establishes an exclusion from gross income and a deduction for amounts contributed to the Fund for the purchase of an annual pass and for the preservation and protection of state parks. This is unprecedented.

LEGISLATIVE STAFF CONTACT

Brian Werking	Titus Toyama
Legislative Analyst, FTB	Interim. Legislative Director, FTB
(916) 845-5103	(916) 845-6333
brian.werking@ftb.ca.gov	titus toyama@ftb.ca.gov