Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Fuller	Analyst:	Brian Werking	Bill Number:	SB 1269
Related Bills:	None	Telephone:	845-5103	Introduced Date:	February 23, 2012
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Maintenance & Roadside Enhancement Credit/FTB Report To Legislature Regarding Utilization Of Credit

SUMMARY

This bill would provide a tax credit for amounts paid or incurred, or the value of donated materials, equipment, or services for maintenance or roadside enhancement of a section of a state highway.

RECOMMENDATION

No position.

REASON FOR THE BILL

According to the author, the purpose of this bill is to provide an incentive for businesses and individuals to maintain their own roadside frontage, in order to take pressure off of Caltrans, ensure the safety of our roadsides, and prevent possible lawsuits against the State.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2013, and before January 1, 2017.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Except as specified, existing state law does not allow any tax credit to reduce regular tax below the tentative minimum tax (TMT) computed for purposes of the alternative minimum tax calculation.

Board Position:			Executive Officer	Date
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Existing state law provides general rules that apply to the division of credits among two or more taxpayers, a husband and wife, and partners. State law also provides that any credit limitation applies at both the entity and individual taxpayer level, unless otherwise specified.

The Corporation Tax Law (CTL) allows the assignment of certain eligible credits to taxpayers that are members of a combined reporting group. "Assignment" refers to the ability of a taxpayer that is a member of a combined reporting group to elect to transfer certain unused credits to a related corporation, as specified. The election to transfer any credit is irrevocable once made and is required to be made on the taxpayer's original return for the taxable year in which the assignment is made.

THIS BILL

This bill would provide, for each taxable year beginning on or after January 1, 2013, and before January 1, 2017, a tax credit equal to 50 percent of the "qualified amount" donated by a taxpayer during the taxable year for the maintenance or roadside enhancement of a section of state highway.[1]

This bill defines the term "qualified amount" to mean the amount paid or incurred by the taxpayer during the taxable year for maintenance or roadside enhancement and the value of materials and equipment donated by the taxpayer during the taxable year for maintenance or enhancement of a section of a state highway. For Personal Income Tax taxpayers, the definition of "qualified amount" includes the value of services donated by the taxpayer during the taxable year for maintenance or enhancement of a section of a state highway.

The value of materials and equipment is equal to the amount that would otherwise be deductible as a charitable contribution.[2]

The value of services donated by an individual taxpayer may not be greater than the amount determined using the hourly rate for labor, as determined by the Department of Transportation, and excludes services performed by the taxpayer for which the taxpayer received compensation.

This bill would specify that no credit is allowed for a donation of $250 or more of materials, equipment, or services unless it is substantiated by a contemporaneous written acknowledgement[3] by the Department of Transportation (Caltrans), unless the donation is reported by the donor organization. In addition, no credit is allowed for the donation of $500 or more of services, unless a more detailed contemporaneous written acknowledgement[4] from Caltrans is included with the donor's tax return.

Any unused portion of the credit may be carried forward to the succeeding seven years, until the credit is exhausted.

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[1] Pursuant to Section 91.5 of the Streets and Highway Code.
[2] Under Section 170 of the Internal Revenue Code.
[3] Contemporaneous written acknowledgement as specified under paragraph (8) of subsection (f) of section 170 of the Internal Revenue Code.
[4] Contemporaneous written acknowledgement as specified under paragraph (12) of subsection (f) of section 170 of the Internal Revenue Code.

This bill would require the Franchise Tax Board to report to the Legislature on the utilization of this credit on or before January 1, 2016.

The provisions of this bill would be repealed by its own terms on January 1, 2017.

IMPLEMENTATION CONSIDERATIONS

Within Sections 17060 and 2605 of the Revenue and Taxation Code and Section 91.5 of the Streets and Highway Code, “maintenance” and “roadside enhancement” are not specifically defined. The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit. It is recommended that the author provide definitions for these terms.

This bill provides that the amount paid or incurred, and the value of materials, equipment, and services donated during the taxable year for maintenance or roadside enhancement be used to calculate the amount of the credit. This could be interpreted to allow a taxpayer to include the cost of materials and also the value of the same materials donated when calculating the credit. It is recommended the author amend the bill to prevent this double counting for the calculation of the credit.

TECHNICAL CONSIDERATIONS

This bill provides that the maintenance and roadside enhancement credit for services donated is not available to taxpayers under CTL, but is available to all taxpayers under the Personal Income Tax Law (PITL). Because partnerships, estates, and trusts are provided under the PITL, they would be able to receive the credit by paying someone else to provide maintenance and enhancement services. If it is not the author’s intent to make the credit available to such entities, it is suggested that the author specify that the credit for services donated be available only to individual taxpayers.

OTHER STATES’ INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit 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 require a calculation for the credit that would require a new form or worksheet to be developed and coded. As a result, this bill would impact the department’s coding, printing, processing, and storage costs for tax returns. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact of SB 1269 Establishing a Maintenance & Roadside Enhancement Credit For Taxable Years Beginning On or After January 1, 2013 Enactment Assumed After July 1, 2012 ($ in Millions)			
2012-13	2013-14	2014-15	2015-16
-$2.3	-$19	-$22	-$23

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 say that this bill would provide a cost savings to the state, by reducing Caltrans costs and reducing the potential for future lawsuits related to improper roadside vegetation maintenance.

Opponents: Some taxpayers may say that with the state's current fiscal crisis, additional tax expenditures should be avoided.

LEGISLATIVE STAFF CONTACT

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