

# BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number/Version Date
<b>Franchise Tax Board</b>	<b>Wolk &amp; Cedillo</b>	<b>SB 1341 (E-08/21/12)</b>

## SUBJECT

Relief from Imposition of the Minimum Franchise Tax on Charitable Corporations

## SUMMARY

This bill would no longer require the Franchise Tax Board (FTB) to impose the corporation minimum franchise tax on charitable corporations that fall out of compliance with the registration and reporting requirements of the California Attorney General (AG).

## REASON FOR BILL

The reason for this bill is to help better meet the intent of the law and increase compliance with the AG's registration and reporting requirements.

## EFFECTIVE/OPERATIVE DATE

If enacted in the 2012 legislative session, this bill would be effective on January 1, 2013, and would apply to notices of noncompliance received from the AG before, on, or after January 1, 2013.

## ANALYSIS

### STATE/FEDERAL LAW

#### **California Law**

Corporation Tax and the Minimum Franchise Tax

Unless specifically exempted by statute, every corporation organized, qualified to do business, or doing business in this state is subject to the corporation franchise or income tax. Corporate taxpayers subject to the franchise tax must pay a minimum franchise tax of \$800 if it is more than their measured franchise tax. In general, only corporations with net income less than approximately \$9,040 pay the minimum franchise tax because the amount of "measured" tax owed would be less than \$800 ( $\$9,039 \times 8.84\% = \$799$ ).

Charitable Corporations

Gail Hall, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 08/22/12
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Charitable corporations are exempt from tax, including the corporation minimum franchise tax, if they have been granted tax-exempt status by the FTB and meet certain requirements.<sup>1</sup> One such requirement is that charitable corporations be in compliance with the registration and periodic reporting requirements of the AG's office.<sup>2</sup> If a charitable corporation fails to meet such requirements, the AG provides the FTB with written notification of that corporation's period of noncompliance. The FTB is then required to disallow the corporation's tax exemption for the period of noncompliance, and the charitable corporation becomes subject to tax, including the annual \$800 minimum franchise tax, on all tax years within that period. If the charitable corporation subsequently comes into compliance with the AG, the FTB may reinstate the charitable corporation's tax-exempt status, but the FTB is prohibited from abating the minimum franchise tax on any previous periods of noncompliance with the AG.<sup>3</sup>

### **Federal Law**

Federal law does not impose a corporation minimum franchise tax that's comparable to California's.

### **THIS BILL**

This bill would no longer require the FTB to assess franchise tax on charitable corporations solely because they've failed to comply with their AG registration or reporting requirements. Instead, when the AG notifies the FTB that a charitable corporation is out of compliance with AG registration or reporting requirements, the FTB would be required to notify the charitable corporation that it has 120 days to come back into compliance with the AG.

If a charitable corporation satisfies its AG requirements within the 120-day period, the AG would be required to provide prompt notification to the FTB that the charitable corporation has complied, and no further FTB action would be taken.

If a charitable corporation fails to satisfy its AG requirements within the 120-day period, then the FTB would be required to revoke the charitable corporation's tax-exempt status on the first day following that period. To obtain exempt status after such a revocation, a charitable corporation would be required to reapply for tax-exempt status by filing FTB Form 3500, Exemption Application, meet all of the requisite qualifications, and pay a \$25 application fee. A revoked charitable corporation would become subject to franchise tax, but that tax could be abated if the corporation re-obtains its exempt status.

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<sup>1</sup> For additional information, see [FTB Publication 927, Exempt Organizations](#), and the [California 2011 Exemption Application Booklet](#).

<sup>2</sup> The California AG regulates charities and the professional fundraisers who solicit on their behalf. The purpose of this oversight is to protect charitable assets for their intended use and ensure that the charitable donations contributed by Californians are not misapplied and squandered through fraud or other means. The [AG's Office Registry of Charitable Trusts](#) requires all charitable trustees and fundraising professionals to register and file annual financial disclosure reports with the Registry.

<sup>3</sup> R&TC section 23703(c).

**LEGISLATIVE HISTORY**

None.

**OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* rely on the federal exempt status for purposes of determining whether or not a charitable corporation is required to file a return, including an initial information return. No state was found to have rules comparable to California's treatment of charitable corporations that fall out of compliance with the AG.

**FISCAL IMPACT**

This bill would not significantly impact the department's costs.

**ECONOMIC IMPACT**

Estimated Revenue Impact of SB 1341 For Taxable Years Beginning On or After January 1, 2013 Enactment Assumed After June 30, 2012		
2012-13	2013-14	2014-15
-\$20,000	-\$20,000	-\$20,000

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

**SUPPORT/OPPOSITION**

Support: The Franchise Tax Board  
 Girl Scouts Heart of Central California  
 CA Association of the Nonprofits  
 Historical Society of Morro Bay  
 Council of California Goodwill

Opposition: None on file.

**APPOINTMENTS**

None.

**VOTES**

Concurrence	08/21/12	Y: 38	N: 0
Assembly Floor	08/16/12	Y: 79	N: 0
Senate Floor	05/07/12	Y: 38	N: 0

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