

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: De Leon Analyst: Jahna Carlson Bill Number: SB 1356

Related Bills: See Legislative History Telephone: 845-5683 Introduced Date: February 24, 2012

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Higher Education Investment Tax Credit Program

SUMMARY

This bill would establish an income tax credit equal to 65 percent of cash contributions made to a new special education fund with an aggregate credit cap of \$500 million per calendar year.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

According to the author's office, the new tax credit program would provide taxpayers with access to \$500 million in tax credits and direct the contributed amounts to under-funded public education systems in an effort to help rebuild the state's investment in education.

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, 2018.

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.

Currently, neither federal nor state law provides a credit for contributions to a special education fund.

Board Position:	Executive Officer	Date
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Existing federal and state laws allow individuals to deduct certain expenses, such as medical expenses, charitable contributions, interest, and taxes, as itemized deductions. Also, itemized deductions may be further limited for high-income taxpayers.

Current federal and state law allows a corporation and S-corporation to deduct charitable contributions limited to 10 percent of the taxpayer's net income. Contributions in excess of 10 percent may be carried over to the following five succeeding taxable years.

THIS BILL

For taxable years beginning on or after January 1, 2013, and before January 1, 2018, this bill would allow taxpayers to receive a tax credit for 65 percent of any cash contributions made to the Higher Education Investment Tax Credit Program Special Fund. Credits in excess of the "tax," as defined, or "net tax," as defined, could be carried forward to the subsequent six years. The maximum aggregate amount of the credit that could be allocated for any calendar year would be \$500 million.

Taxpayers may only claim this credit on an original, timely filed return received by the FTB on or before a cut-off date specified by the FTB, which would be the last day of the calendar quarter within which the FTB estimates it will have received original, timely filed returns claiming the credit that cumulatively total \$500 million for the calendar year. The date received for a return would be determined by the FTB. Determinations made by the FTB with respect to the cut-off date, the date a return is received, and whether a return has been timely filed may not be reviewed in any administrative or judicial proceeding.

Additionally, any disallowance of the credit due to the cumulative total of the credit being reached would be treated as a math error, and would not be subject to review in any administrative or judicial proceeding.

The bill would preclude any deductions for amounts taken into account in the calculation of the credit.

The FTB would provide periodic notice on its Web site of the amount of the credit claimed on original, timely filed returns and may prescribe rules, guidelines, or procedures necessary to carry out these provisions. Any rules, guidelines, or procedures established would be exempt from the Administrative Procedures Act.

The credit would be repealed by its own terms as of December 1, 2018.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is working with the author's office to resolve these and other concerns that may be identified.

The credit would be subject to a maximum calendar year allocation that “shall not exceed \$500 million” and would be allocated on a first-come, first-served basis to original, timely-filed returns received before the specified cut-off date. This could be interpreted as requiring the disallowance of credit amounts, otherwise allowable, that would cause the \$500 million allocation limit to be exceeded. Additionally, there could be a significant span of time between the date a contribution is made and the date the relevant return is filed that could result in the credit being unavailable. Uncertainty could lead to disputes between taxpayers and the department. For ease of administration and taxpayer certainty, the author may wish to consider allowing the credit up to a specified maximum based on the date that a contribution to the specified fund is received. The agency receiving the contributions could provide certification of eligibility for and the amount of the credit to the FTB and the taxpayer.

A taxpayer that had the credit disallowed solely because a specified limitation had been reached could be subject to underpayment penalties. If this is contrary to the author’s intention, this bill should be amended.

LEGISLATIVE HISTORY

AB 1262 (Haynes, 2005/06) would have created a 75 percent credit for donations to a nonprofit organization that provides scholarships to elementary and secondary school students. The bill was held in the Assembly Revenue and Taxation Committee.

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 has a corporate tax credit scholarship program known as Step Up for Students. The tax credit allows corporations to receive a dollar-for-dollar tax credit up to the amount of their state income tax liability, after application of other allowable credits, for donations made to a nonprofit scholarship funding organization. The credit is subject to an annual cap as specified. *Florida* does not have a personal income tax.

Illinois, Massachusetts, Michigan, Minnesota, and New York do not provide a credit comparable to the credit allowed by this bill.

FISCAL IMPACT

This bill would require the department to track the credits, which would impact the department’s printing, processing and storage costs for tax returns. As the bill continues to move through the legislative process and implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SB 1356 Higher Education Investment Tax Credit Program For Taxable Years Beginning On or After January 1, 2013 Assumed Enactment After June 30, 2012 (\$ in Millions)		
2012-13	2013-14	2014-15
-\$230	-\$480	-\$500

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

SUPPORT/OPPOSITION¹

Support: None identified to date.

Opposition: None identified to date.

ARGUMENTS

Pro: Supporters could argue that the credit could provide needed funding for California's Cal-Grant Program with a minimal net economic cost to the contributor.

Con: Opponents could argue that with the state's current fiscal crisis, additional tax expenditures should be avoided.

POLICY CONCERNS

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

This bill would create a credit for certain charitable contributions that are currently deductible. As a result, because the credit's dollar-for-dollar reduction of tax is a more generous tax benefit than a deduction, there could be a redirection of existing, planned charitable giving to obtain the tax credit allowed under this bill.

LEGISLATIVE STAFF CONTACT

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¹ As reported on the Legislative Counsel's website at http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_1356&sess=CUR&house=B&author=de_león [as of April 4, 2012.]