Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	De Leon	Analyst:	Jahna Carlson	Bill Number:	SB 1356
Related Bills:	See Prior Analysis	Telephone:	845-5683	Amended Date:	April 9, 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

No position.

SUMMARY OF AMENDMENTS

The April 9, 2012, amendments clarified the allowable use of amounts appropriated from the special education fund and added language specifying that this bill would become operative only if SB 1466 (DeLeon, 2011/2012) is enacted and takes effect on or before January 1, 2013.

As a result of the amendments, the "Effective/Operative Date" and "This Bill" discussions from the department's analysis of the bill as introduced February 24, 2012, have been revised. Except for these discussions, the department's analysis of the bill as introduced February 24, 2012, still applies. The "Implementation Considerations," "Fiscal Impact," "Economic Impact," and "Policy Concerns" discussions have been repeated for convenience.

EFFECTIVE/OPERATIVE DATE

If enacted in 2012, this bill would be effective January 1, 2013, and specifically operative for taxable years beginning on or after January 1, 2013, and before January 1, 2018. This bill would become operative only if SB 1466 (DeLeon, 2011/2012) is also enacted and takes effect on or before January 1, 2013.

ANALYSIS

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 (the 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.

Board Position:			Interim Legislative Director	Date
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Taxpayers may only claim this credit on an original, timely filed return received by the Franchise Tax Board (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.

Amounts contributed to the fund would, upon appropriation by the Legislature, be allocated to the Student Aid Commission for purposes of making Cal Grant awards.

This bill would become operative only if SB 1466 (De Leon, 2011/2012) is also enacted and takes effect on or before January 1, 2013.

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.

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.

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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