

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: May 1, 2012
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Higher Education Investment Tax Credit Program

SUMMARY

This bill would establish an income tax credit for 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 May 1, 2012, amendments modified the operative and repeal dates of the credit, added a certification and allocation process, and modified the calculation of the credit. The May 1, 2012, amendments resolved all of the implementation concerns identified in the department's analysis of the bill as amended April 9, 2012.

As a result of the amendments, the "Effective/Operative Date," "This Bill," "Fiscal Impact," and "Economic Impact" sections have been revised and several new Implementation Considerations," and "Technical Considerations" have been identified. The "Policy Considerations" section has been repeated for convenience.

Summary of Suggested Amendments

Amendments are provided to correct inconsistent language, remove language that inadvertently eliminated a taxpayer's appeal rights, and remove language that the May 1, 2012, amendments rendered unnecessary.

EFFECTIVE/OPERATIVE DATE

If enacted prior to September 30, 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, 2016. 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.

Board Position:

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Legislative Director

Date

Gail Hall

05/30/12

ANALYSIS

THIS BILL

For taxable years beginning on or after January 1, 2013, and before January 1, 2016, this bill would allow taxpayers, upon receipt of the Treasurer's certification, to receive an income or franchise tax credit for a specified percentage of cash contributions made to the Higher Education Investment Tax Credit Program Special Fund (the fund). Unused credits could be carried forward to the subsequent six years. The maximum aggregate amount of credit that could be allocated and certified by the Treasurer for any calendar year would be \$500 million.

The specified percentage used to calculate the credit would be:

- 60 percent of the amount contributed during the 2013 taxable year
- 55 percent of the amount contributed during the 2014 taxable year
- 50 percent of the amount contributed during the 2015 taxable year

The Treasurer would be required to do all of the following:

- Allocate and certify the income and franchise tax credit to taxpayers during the period that begins on January 1, 2013, and ends on December 31, 2015.
- Establish a procedure for taxpayers to contribute to the fund and obtain certification for the credit.
- Notify the taxpayer within 7 days of receipt of a contribution, the contribution amount that is eligible for the credit and, to the extent that a credit would be limited or denied because the \$500 million annual cap had been reached, offer to return the contribution amount that would be ineligible for the credit, or, in the case of a contribution made during the period January 1, 2013, through December 31, 2014, offer to provide a certification of a credit for the next taxable year.
- Provide to the Franchise Tax Board (FTB) a copy of each credit certificate issued by March 1 of the calendar year immediately following the year of issue.

Determinations made by the FTB with respect to the disallowance of a credit, the date a return is received, and whether a return has been timely filed may not be reviewed in any administrative or judicial proceeding. Any disallowance of the credit would be treated as a math error.

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

The FTB would be authorized to 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, 2016.

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 available to work with the author's office to resolve these and other concerns that may be identified.

It is unclear what percentage would apply to a credit certified by the Treasurer for the taxable year subsequent to the year of the donation: the percentage in effect for the year the donation is made or the year the certification applies to?

It is unclear how or whether the language disallowing a contribution deduction for amounts included in the determination of the credit would apply if a credit is certified for the taxable year subsequent to the year the donation is made.

It is unclear whether and to what extent a contribution deduction would be allowed to a taxpayer that, upon learning that their contribution exceeded the final year's allocation limit in whole or in part, rejected the Treasurer's offer to return the excess amount. If it is the author's intent that a contribution deduction be allowed for any amounts that are ineligible for credit, this bill should be amended.

TECHNICAL CONSIDERATIONS

Subparagraphs (A) through (C) of paragraph (1) of subdivision (a) of the personal and corporate tax provisions need to be amended where the phrase "For taxable years on or after" appears, as it should be "For taxable years beginning on or after" for consistency with existing credit provisions. Amendments 1 through 3 and 6 through 8 are provided.

Amendments 4 and 9 are provided to eliminate unnecessary language and language that would inadvertently eliminate a taxpayer's appeal rights.

Amendments 5 and 10 would eliminate unnecessary language and correct numbering errors resulting from the proposed amendments.

FISCAL IMPACT

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

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
-\$190	-\$380	-\$350

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

Jahna Carlson
Legislative Analyst, FTB
(916) 845-5683
jahna.carlson@ftb.ca.gov

Gail Hall
Legislative Director, FTB
(916) 845-6333
gail.hall@ftb.ca.gov

Analyst	Jahna Carlson
Telephone #	(916) 845-5683
Attorney	Pat Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1356
AS AMENDED MAY 1, 2012

AMENDMENT 1

On page 2, line 9, before "on" insert:

beginning

AMENDMENT 2

On page 2, line 14, before "on" insert:

beginning

AMENDMENT 3

On page 2, line 19, before "on" insert:

beginning

AMENDMENT 4

On page 3, ~~strikeout lines 32 through page 4, line 2, inclusive.~~

AMENDMENT 5

On page 4, ~~strikeout lines 24 through 33, inclusive and insert:~~

(e) This section shall remain in effect only until December 1,

AMENDMENT 6

On page 5, line 4, before "on" insert:

beginning

AMENDMENT 7

On page 5, line 9, before "on" insert:

beginning

AMENDMENT 8

On page 5, line 14, before "on" insert:

beginning

AMENDMENT 9

On page 6, ~~strikeout lines 26 through 36 inclusive.~~

AMENDMENT 10

On page 7, ~~strikeout lines 8 through 18, inclusive,~~ and insert:

(d) This section shall remain in effect only until December 1,