

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: La Malfa, et al. Analyst: Brian Werking Bill Number: SBX1 3
 Related Bills: See Legislative History Telephone: 845-5103 Introduced Date: April 12, 2011
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: "Help Our State: Voluntary Contribution To The State Budget" Act/Allow Taxpayers To Voluntarily Pay Additional Taxes To Fund State Government

SUMMARY

This bill would allow taxpayers to voluntarily self-assess and pay additional taxes in excess of the taxes owed for the taxable year.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

It appears the purpose of this bill is to allow taxpayers to voluntarily self-assess and pay additional taxes on their tax return in order to reduce the budget deficit.

EFFECTIVE/OPERATIVE DATE

This bill would be effective 91 days after adjournment of the 2011 Special Session 1. In the absence of language in the bill specifying otherwise, the provisions of this bill would be operative for taxable years beginning on or after January 1 of the year in which the bill would be effective.¹

ANALYSIS

FEDERAL/STATE LAW

Current state tax law imposes tax on income earned by individuals, estates, trusts, and certain business entities. Tax is imposed upon the entire taxable income of California residents and upon the taxable income of nonresidents derived from sources within California. Every corporation and limited liability company taxable as a corporation that is either organized, qualified to do business, or doing business in California is subject to the corporate franchise tax. The corporate franchise tax is not imposed on a corporation's income, but instead is measured by a corporation's California source net income.

¹ The 2011 Special Session 1 was convened December 6, 2010, and has not been adjourned.

Board Position:	Executive Officer	Date
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Current state tax laws use a self-assessment system for the collection of taxes. However, if a taxpayer does not self-assess or fails to pay the appropriate amount of tax, the income tax law authorizes the department to impose or exact those taxes, as well as any penalties and interest, from individuals or corporations residing or doing business in or receiving income from California.

Current federal and state tax laws allow an individual taxpayer an itemized deduction and allow a corporate taxpayer a business expense deduction for charitable contributions, including monetary contributions or gifts of property to federal, state, or local governments. Deductions for charitable contributions may be limited in certain circumstances. Federal tax laws allow an individual taxpayer an itemized deduction and allow a corporate taxpayer a business expense deduction for state and local tax expenses.

Current state tax law allows taxpayers to make contributions of their own funds (not tax liability) on their tax returns to any of the 15 voluntary contribution funds² listed on the 2010 state personal income tax return (return).

THIS BILL

This bill would allow taxpayers to voluntarily self-assess and pay an additional tax on their tax return in order to fund state government.

This bill would require the Franchise Tax Board to revise the personal income tax and corporation income tax forms and instructions to include an additional step for taxpayers to include the payment of additional taxes.

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.

The language in the bill is ambiguous in regards to the characterization of the additional voluntary amount assessed and paid by taxpayers. While appearing to allow a taxpayer to make a voluntary contribution to fund the state government, this bill refers to the contribution as an "additional tax" and includes the additional amount in the total amount of "new tax owed." Because of this ambiguity, it is unclear if:

- (1) Penalties or interest could be assessed on the "additional tax" in the instance where taxpayers fail to pay their "new tax owed" in full. If penalties or interest can be assessed, it is unclear on what date the penalties or interest could be assessed;
- (2) Taxpayers undergoing an audit, filing a claim for refund, or filing an amended return could revoke their "additional tax" designation. If so, it is unclear if the refund would bear interest. The interest rate paid by the department is higher than industry standards, which could encourage a taxpayer to use the "additional tax" as a savings account;

² These 15 Funds are used to support public benefit and charitable programs and organizations. More information regarding the 15 voluntary contribution funds listed on the 2010 income tax return may be found online at: <http://www.ftb.ca.gov/individuals/vcfsr/indvolcon.shtml>.

- (3) The department could apply the “additional tax” to any unpaid taxes due from taxpayers, such as understated tax, prior year liabilities, prior discharged amounts, underestimates of current tax due, or non-tax debts. The department is currently authorized to offset an overpayment of tax against such items as previously listed.
- (4) The “additional tax” could be considered a state income tax or a charitable contribution for federal and state income tax deductibility purposes.

The language in this bill fails to authorize the department to transmit the “additional tax” proceeds to the General Fund. The department is currently authorized to transmit income tax proceeds to the General Fund. It is recommended that the author amend the bill to expressly authorize the department to treat the “additional tax” proceeds in the same manner as income tax proceeds.

LEGISLATIVE HISTORY

SB 1288 (McClintock, et al., 2001/2002), identical to this bill, would have allowed taxpayers to voluntarily pay additional taxes in excess of the taxes owed for the taxable year. This bill failed passage out of the, then named, Senate Committee on Revenue and Taxation.

OTHER STATES' INFORMATION

The laws of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* were reviewed because their tax laws are similar to California's income tax laws.

Massachusetts allows personal income taxpayers to voluntarily assess themselves at a higher 5.85 percent tax rate instead of 5.3 percent on their tax return.

Minnesota taxpayers are unable to pay an additional tax on their tax returns, but the commissioner of finance is allowed to accept any gift, bequest, devise, or endowment for the benefit of the state.

Review of *Florida, Illinois, Michigan, and New York* income tax laws found no specified voluntary opportunities for taxpayers to contribute to state budgets.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved, but expect the costs could be significant if substantive system changes are required.

ECONOMIC IMPACT

This bill would result in the following revenue gains:

Estimated Revenue Impact of SBX1 3 For Taxable Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2011		
2011-12	2012-13	2013-14
\$5,000	\$6,000	\$6,000

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

Revenue Discussion

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: It could be argued that this bill would provide much needed additional revenue to the state government.

Con: It could be argued that this bill would provide little or no additional revenue to the state government.

POLICY CONCERNS

This bill would limit the ability to voluntarily pay additional tax to individuals and corporations. As a result, limited liability companies and partnerships would be unable to voluntarily pay additional taxes. To allow all individuals and entities the ability to voluntarily pay the additional tax, the author may wish to amend the language of the bill to include limited liability companies and partnerships.

LEGISLATIVE STAFF CONTACT

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