

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Ting

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Bill Number: AB 232

Related Bills: See Legislative History

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Introduced Date: February 5, 2013
Amended Dates: March 19, 2013 & April 2, 2013

Attorney: Patrick Kusiak

Sponsor: _____

SUBJECT: Gun Buyback Program Credit

SUMMARY

This bill would create the following income and franchise tax credits:

- A credit under the Personal Income Tax Law (PITL) for a gun or assault weapon that is either surrendered or sold to local law enforcement in a gun buyback program.
- A credit under the Corporation Tax Law (CTL) for monetary contributions to a gun buyback program administered by local law enforcement.

RECOMMENDATION

No position.

Summary of Amendments

As introduced on February 5, 2013, this was a spot bill. The March 19, 2013, and April 2, 2013, amendments added and modified respectively, the provisions discussed in this analysis. This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to remove a wide variety of guns from circulation by incentivizing more gun buyback programs and participants; and therefore lowering the chances of a misplaced, unwanted weapon causing damage, injury, or death.

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, 2014.

Board Position:

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_____ N _____ OUA

Executive Officer

Date

Selvi Stanislaus

5/8/13

ANALYSIS

FEDERAL/STATE LAW

Existing federal and state 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.

Neither federal nor state laws allow a credit similar to those proposed by this bill.

Under current federal and state laws, a taxpayer may claim a deduction for charitable contributions made to qualified organizations. A charitable contribution is a gift given to or for the use of a qualified organization. It may be in the form of money or property, or unreimbursed out-of-pocket expenses incurred by the taxpayer for services rendered to the organization. For corporations, in general, the deduction is limited to 10 percent of net income. Contributions that exceed these limits may be carried over for five years.

Generally, property held for personal use, such as a gun, is a capital asset. Individuals will generally have a capital gain or loss if they sell or exchange a gun held for personal use. The amount of the capital gain or loss is generally the difference between the cost of the gun (i.e., its basis) and the amount received in the sale or exchange. A gain from such a sale or exchange is taxable as a capital gain, but a loss from such a sale or exchange is not deductible. Under federal law there are special tax rates that apply to certain long-term capital gains. Because California fails to conform to the federal special rates capital gains under state law are taxed at the same rates as ordinary income.

THIS BILL

Under the PITL, this bill would allow a credit in an amount equal to \$500 for a handgun, shotgun and rifle, and \$1,000 for an assault weapon in working condition that is either surrendered without consideration or sold to local law enforcement in a gun buyback program during the taxable year, not to exceed \$5,000 per taxable year.

The taxpayer would be required to keep a record of the type of handgun, shotgun, rifle, or assault weapon surrendered or sold to local law enforcement, the number surrendered or sold, the name, address, and date of the buyback program or any other information the Franchise Tax Board (FTB) may prescribe by regulation. This record would be furnished to the FTB upon request.

Under the CTL, this bill would allow a credit in an amount equal to the monetary amount contributed during the taxable year by a taxpayer to a gun buyback program administered by local law enforcement, not to exceed \$10,000 per taxable year.

The taxpayer would be required to keep a record of the monetary amount contributed, the date of contribution, and the name, address, and date of the buyback program, or any other information the FTB may prescribe by regulation. This record would be furnished to the FTB upon request.

Under both the PITL and CTL, this bill would specify the following:

- The FTB would be allowed to promulgate rules and regulations as necessary or appropriate to implement the provisions of the bill while exempting these rules and regulations from the normal rulemaking requirements of the Administrative Procedures Act.
- This credit would be in lieu of any other credit or deduction that would have been allowed for the surrender of a specified firearm or for any monetary contribution made to a gun buyback program.
- Any unused credit may be carried over to reduce tax for the following two years if necessary, until the credit is exhausted.

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.

This bill would allow a credit for handguns or assault rifles that are in working order and are surrendered to law enforcement. While the bill does require the taxpayer to keep records of the transaction, the bill fails to require that the information be certified by the law enforcement agency that received the firearms. Without certification, it would be difficult for the department to determine whether the criteria specified in this bill was met by the taxpayer, which could lead to disputes between taxpayers and the department.

This bill uses terms and phrases that are undefined, i.e., "handgun," "shotgun," "rifle," "assault weapon," "working condition." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit.

LEGISLATIVE HISTORY

SB 1275 (Haynes, 2001/2002) would have created a tax credit for the purchase of a gun safe or other firearm safety equipment. SB 1275 failed to pass out of the first house.

AB 2487 (Pacheco, 1999/2000) would have established a gun buyback program. AB 2487 was held in the Assembly Appropriations Committee suspense file.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states do not offer a credit similar to the credit proposed in this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

This bill would require a calculation for the credit that could require new forms or worksheets to be developed. As a result, this bill could impact the department's printing, processing, and storage costs for tax returns. The additional costs will be developed as the bill moves through the legislative process.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 232 As Amended April 2, 2013 For Taxable Years Beginning On or After January 1, 2014 Assumed Enactment After June 30, 2013 (\$ in Millions)		
2013-14	2014-15	2015-16
-\$16	-\$41	-\$50

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

SUPPORT/OPPOSITION

Support: California Attorneys for Criminal Justice
California Chapters of the Brady Campaign to Prevent Gun Violence
California Police Chiefs Association
Coalition Against Gun Violence
Law Center to Prevent Gun Violence

Opposition: California Association of Federal Firearms Licensees
California Rifle and Pistol Association, Inc.
California Right to Carry
Gun Owners of California
National Rifle Association of America
Three private individuals

ARGUMENTS

Proponents: Supporters could argue that this bill could help take guns off the streets.

Opponents: Some could argue that with the state's fragile fiscal situation, additional tax expenditures should be avoided.

POLICY CONCERNS

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a credit by the Legislature.

Anonymity and the “no questions asked” policies of many gun buy-back programs may be a critical factor to success. This bill’s record keeping requirements could inadvertently reduce participation in these programs.

There could be a variety of used guns that can be purchased for less than \$500 or assault weapons for less than \$1,000. This bill could inadvertently incentivize purchases of inexpensive firearms for the purpose of generating a tax credit that exceeds the purchase price of the firearm.

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