

SUMMARY ANALYSIS OF AMENDED BILL

Authors: Nestande, et al. Analyst: Diane Deatherage Bill Number: AB 2421
 See Prior
 Related Bills: Analysis Telephone: 845-4783 Amended Date: June 17, 2014
 Attorney: Bruce Langston Sponsor _____

SUBJECT: Contributions to K-College Education Scholarship Organization Credit

SUMMARY

This bill would create the K-College Education Scholarship Organization tax credit under the Corporation Tax Law (CTL).

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The June 17, 2014, amendments made various changes that would:

- Change the name of the organizations to "K-College Education Scholarship Organization;"
- Limit the aggregate cap of the credit to \$10 million;
- Provide a definition of "qualified education-related expenses;"
- Modify the types of tuition and financial assistance that may be considered as qualified K-College education scholarships;
- Expand the definition of "specified pupil" to include an individual that has been placed with a relative caretaker through child protective services; and
- Make various nonsubstantive technical changes.

Except for the "This Bill," "Implementation Considerations," "Economic Impact," and "Support/Opposition" sections, the remainder of the department's analysis of the bill as amended April 1, and April 22, 2012, still applies. The "Fiscal Impact" and "Policy Concerns" sections are restated below for convenience.

THIS BILL

For taxable years beginning on or after January 1, 2015, and before January 1, 2020, this bill would establish, under the CTL, the K-College Education Scholarship Organization credit, with a sunset date of December 1, 2020.

This bill would create a tax credit for monetary contributions made by a corporate taxpayer to a qualified K-College education scholarship organization (ESO) to fund qualified kindergarten through college (K-College) education scholarships for a specified pupil attending a public, charter, or private school in California.

Board Position:	Asst. Legislative Director	Date
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The following requirements would apply to the credit:

- The credit would be equal to 50 percent of the monetary contribution made by a taxpayer during the taxable year, not to exceed \$200,000.
- The ESO would submit to the Franchise Tax Board (FTB) financial and compliance audit reports performed by a certified public accountant.
- The ESO would be required to apply for and receive certification from the State Department of Education.
- Any unused tax credit could be carried forward up to six years, until the credit is exhausted.
- The tax credit would be in lieu of any other credit or deduction claimed by a taxpayer for contributions made to a nonprofit ESO.
- The tax credit would be required to be filed on a timely filed original return.

The aggregate amount of credits allowed would be limited to a maximum of \$10 million for each calendar year and the allocation of credits would be on a first-come, first-served basis. The Legislature would be authorized to increase the aggregate amount of the credits allowed.

This bill would authorize the FTB and the State Department of Education to administer this tax credit.

The FTB would be required to do the following:

- Adopt rules and regulations as necessary or appropriate in implementing the credit.
- Track credits claimed.
- Post aggregate totals of the credits claimed on the department's Web site.
- Determine when the aggregate total of credits reaches \$10 million for a calendar year.

The rules, guidelines, and procedures established would be exempt from the regulatory requirements of the Administrative Procedures Act.¹

The State Department of Education would be required to do the following:

- Adopt rules and regulations necessary to determine whether ESO and contribution requirements are met.
- Submit a list of eligible ESOs annually to the FTB, by March 15.
- Establish application forms and procedures.
- Certify that the contributions meet the requirements.

¹ Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

The bill would define various phrases including “qualified K-College education scholarship organization,” “qualified K-College education scholarship,” “qualified education-related expenses,” “specified pupil,” and “private school.”

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

It is unclear whether the \$200,000 annual maximum would apply to the allowable credit or to the amount contributed. Lack of clarity can result in disputes between taxpayers and the department. It is recommended that this bill be amended to clearly express the author’s intent.

The roles of the FTB and State Department of Education appear to be incomplete. For example, it is unclear why the FTB would remain as the agency receiving financial and compliance audit reports from the ESOs, and the agency responsible for administering the allocation of the annual aggregate credit amount. It is recommended that this bill be amended to clearly express the author’s intent.

Although the bill would require the State Department of Education to certify the credit, the bill fails to limit credit eligibility to taxpayers that receive certification from the State Department of Education. If this is contrary to the author’s intent, this bill should be amended.

Additionally, the bill lacks administrative details necessary to implement the bill and determine its impacts on the department's systems, forms, and processes. For example, this bill is silent on the following:

- When, how often, and what information from the certificate would the State Department of Education report to the FTB?
- Would the first-come, first-served basis of allocating the credit be based on contribution date? Date the return claiming the credit was filed?
- How and when would a taxpayer request, and receive notification of an allocation?
- Would a reallocation of any unallocated amount or unused allocated amount for a fiscal year be allowed?
- Would the department be required to provide information on the cumulative annual calendar year allocation on its Web site?

Lack of clarity on the administration of the credit could result in disputes between the State Department of Education, the FTB, and taxpayers. If it is the author’s intent that the FTB’s responsibility would be limited to confirming that reported tax credits “matched” to a tax credit certificate as to taxpayer, tax credit amount, and taxable year, this bill should be amended.

FISCAL IMPACT

The department's costs to administer this bill have yet to be determined. 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

Estimated Revenue Impact of AB 2421 As Amended on June 17, 2014 Assumed Enactment After June 30, 2014 (\$ in Millions)		
2014-15	2015-16	2016-17
- \$1.6	- \$6.1	- \$8.3

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

SUPPORT/OPPOSITION²

Support: California Association of Private School Organizations, California Catholic Conference, and National Association for the Education of Homeless Children and Youth.

Opposition: American Civil Liberties Union, Americans United for the Separation of Church and State, Sacramento Chapter, and California Teachers Association.

POLICY CONCERNS

This bill would provide a tax benefit for corporations that would not be provided to other business entities. Thus, this bill would provide differing treatment based solely on business organization.

LEGISLATIVE STAFF CONTACT

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² From Assembly Revenue and Taxation Committee analyses, dated May 12, 2014, and June 24, 2014.