Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Wolk	Analyst:	Michelle Chan	Bill Number:	SB 1207
Related Bills:	See Legislative History	Telephone:	845-6805	Introduced Date:	February 20, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Voluntary Contribution Designation Revision

SUMMARY

Under the Revenue and Taxation Code, this bill would modify the current voluntary contribution designation process by establishing the California Voluntary Contributions Program and authorizing the Office of California Volunteers to administer the program.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

RECOMMENDATION

No position.

Summary of Suggested Amendments

Amendments have been suggested under the "Technical Consideration" discussion to correct typographical errors.

REASON FOR THE BILL

The reason for this bill is to promote civic engagement by establishing a program where taxpayers have the opportunity to give to a wide range of charitable causes on their tax return.

EFFECTIVE/OPERATIVE DATE

The bill would be effective January 1, 2016. The provisions of this bill that establish the California Voluntary Contributions Program and the Office of California Volunteers would be operative on January 1, 2016. The provisions of this bill that impact the Franchise Tax Board's (FTB) operations would be operative January 1, 2017. The provisions establishing a California Voluntary Contribution Fund and establishing transfer of donations and reimbursement of the FTB's administrative costs would be operative January 1, 2017. An additional provision that would limit the FTB's reimbursement for administration of this bill to not more than five percent would be operative as of January 1, 2018.

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PROGRAM BACKGROUND

A voluntary contribution is an election made by a taxpayer on his or her tax return to designate amounts of the taxpayer's own funds for contribution to a specified organization.

Since voluntary contribution fund designations were first placed on the return in 1984, approximately $100,000,000 has been contributed. Designation types have ranged from memorial construction, medical research, social welfare, and animal rights welfare. There are currently 20 voluntary contribution fund designations on the state personal income tax return.

There are three bills that would create new voluntary contribution fund designations that are currently moving through the legislative process. If any or all of these bills are enacted, these new voluntary contribution fund designations would appear on the 2014 personal income tax return[1].

ANALYSIS

STATE LAW

Current state tax law allows taxpayers to make contributions of their own monies (not tax liability) on their tax returns to any of the 20 voluntary contribution funds listed on the 2013 state personal income tax return. Each fund provides for the reimbursement of the FTB's and the Controller's actual costs to administer the fund.

Taxpayers contributing to the funds are specifically allowed to deduct those contributions on their state income tax return for the year in which the contribution is made. These contributions may satisfy the requirements under federal law for a charitable contribution deduction.

With the following exceptions, funds remain on the return until they are either repealed or fail to meet their minimum contribution amount:

- The California Seniors Special Fund has no sunset date.
- The California Seniors Special Fund, the California Firefighters Memorial Fund, and the California Peace Officer Memorial Foundation Fund have no annual minimum contribution amount.
- The California Fund for Senior Citizens' minimum contribution amount is fixed at $250,000.

Additionally, with the exception of the four funds listed above, each fund's minimum contribution amount is adjusted annually for inflation based on the percentage change in the California Consumer Price Index. The California Breast Cancer Research Fund's annual adjustment is suspended for calendar years 2014 and 2015[2].

[1] AB 1765, AB 2326 and SB 782 (2013/2014).
[2] AB 1286 (Skinner, Chaptered 664, Statutes of 2013).

The FTB is required to make the following two determinations for each fund by September 1 of each calendar year:

1. The minimum contribution amount required for the fund to remain on the return for the following calendar year, and
2. Whether estimated contributions to the fund will be less than the minimum contribution amount for that calendar year.

If the FTB estimates that contributions to a fund will fail to meet or exceed the minimum contribution amount for a calendar year, that fund is repealed effective January 1 of that calendar year.

Current state law provides that if the number of contingent voluntary contribution designations[3] that are eligible to be added to the return is greater than the number of designations removed, then the voluntary contribution designations may be queued and added to the return in order of the date of enactment. If the FTB determines that space is available on the return to accommodate additional voluntary contribution designations, the FTB may add one or more voluntary contribution designations to the return, regardless of the number of designations removed.

THIS BILL

This bill would modify the existing voluntary contribution designation process by establishing the California Voluntary Contributions Program and authorizing the Office of California Volunteers to administer the program.

The Office of California Volunteers would be required to establish an application process for qualified applicants to receive contributions through the tax return. Specifically, the bill defines a "charitable organization" as an organization exempt from income tax as an organization described in Revenue and Taxation Code section 23701d and defines a "qualified applicant" as a charitable organization or a state or local agency that meets the following requirements:

- Was incorporated in California at least five years prior to the date of application.
- Has registered in this state with the Attorney General's Registry of Charitable Trusts for each of three years prior to the date of application and has met each of the requirements that apply to the applicant, under statute and as established by the Attorney General under the terms of the Attorney General's Registry of Charitable Trusts.
- Has submitted annual tax-exempt filings with the Internal Revenue Service for each of the three years prior to the date of application.
- Has average annual total revenues in excess of the minimum contribution level described in Section 18705[4] added by this bill, as calculated from each of the three years prior to the date of application.

[3] A contingent voluntary contribution designation is a voluntary contribution designation that contains specific language stating that it may not be added to the return until another voluntary contribution designation is removed from the return.
[4] The minimum contribution amount for each approved qualified applicant is $100,000.

The FTB would be required to revise the tax return to include a space labeled "California Voluntary Contributions Program" for taxpayers to designate contributions to qualified applicants. The FTB would further be required to revise other related materials, including, but not limited to online materials, separate schedules, booklets or instructions in a manner necessary to inform individuals about the qualified applicants and how to make a designation on the personal income tax return.

Taxpayers would be allowed to designate their own funds (not tax liability) for contribution to a qualified applicant on their tax returns in full dollar amounts of $1 or more. Each signatory on a joint return may make the contributions individually. The designations for any taxable year must be made on the initial return for the taxable year and, once made, are irrevocable. An itemized deduction would be allowed for any contribution made to a qualified applicant.

The bill specifies that if payments and credits reported on the return do not exceed the taxpayer's liability, then the taxpayer's return would be treated as if no designation has been made. If no designee were specified, a designated contribution amount would be transferred to the General Fund. If a taxpayer designates a contribution to a qualified applicant whose eligibility for receiving voluntary contributions has been revoked, the monies would be held for up to five years and may be distributed to the designee only if and when the designee becomes a qualified applicant once again. If the designee fails to become a qualified applicant within five years after their eligibility is revoked, the funds would be transferred to the General Fund.

If a taxpayer designates a contribution to more than one qualified applicant and the amount available for designation is not sufficient to satisfy the total amount designated, the contribution amount would be allocated among the designees on a pro rata basis.

This bill would also establish the California Voluntary Contribution Fund within the State Treasury to receive all contributions made by taxpayers to the California Voluntary Contributions Program.

The FTB would be required to notify the Controller of both the amount of money paid by individuals in excess of their tax liability and the amount of refund money which individuals have designated to be transferred to the California Voluntary Contribution Fund. The Controller would transfer from the Personal Income Tax Fund to the California Voluntary Contribution Fund an amount not in excess of the sum of the amounts designated by individuals.

Upon appropriation by the Legislature, all money transferred to the California Voluntary Contributions Program would be allocated to the FTB and the Controller for reimbursement of administrative costs and the balance to the Office of California Volunteers for distribution to each qualified applicant designated by a taxpayer. On or after January 1, 2018, no more than five percent of money from the fund, exclusive of fee revenues, could be used for administrative purposes.

This bill expresses intent to retain all existing funds currently on the personal income tax return until their repeal dates, and in legislation to be enacted at a later date, transition the remaining funds to the California Voluntary Contributions Program by 2020. In addition, it is the intent of the Legislature that the California Fund for Senior Citizens, California Firefighters' Memorial Fund, and the California Peace Officers' Memorial Foundation Fund extend their repeal dates in legislation to be enacted at a later date.

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 contains conflicting subdivisions. Section 18707(d), would require the FTB to revise the tax form to include a space labeled "California Voluntary Contributions Program," while section 18710(d) would require the FTB to revise the tax form to allow an individual to designate a contribution to any one of the qualified applicants. The bill should be amended to eliminate the internal inconsistency in accordance with the author's intent.

In the case where the bill would require the FTB to revise the form to add one designation space labeled "California Voluntary Contributions Program," the bill further states that if a taxpayer designates a contribution to more than one qualified applicant and the amount available for designation is not sufficient to satisfy the total amount designated, the contribution amount would be allocated among the designees on a pro rata basis. It is unclear how the taxpayer could designate to more than one qualified applicant or how the pro-ration among all designees would occur.

This bill states that if the Office of California Volunteers determines that a qualified applicant has failed to meet the minimum requirements to remain a qualified applicant, eligibility to receive designations through the tax return would be immediately revoked. The bill fails to require any notification of a revocation of status to the FTB. Further, the FTB would be unable to make continuous revisions to the qualified applicant list in instructions and other printed materials to accommodate this provision.

Depending upon the number of qualified applicants, this bill could significantly increase the size of the tax booklet and would cause the department to incur significant costs for programming, printing, handling, and processing. The author may wish to consider limiting the maximum number of qualified applicants that may be allowed.

The bill would "establish" the Office of California Volunteers; however, the office already exists. The California Volunteers is a state office that manages programs and initiatives aimed at increasing the number of Californians engaged in service and volunteering. It is unclear whether current law grants adequate authority to the Office of California Volunteers to administer the provisions of this bill or such authority would be granted by this bill. Further, it is unclear what authority the FTB would have to share taxpayer designations and contribution amounts with the Office. Absent specific authority to do so, the department would be prohibited from disclosing taxpayer information.

<u>TECHNICAL CONSIDERATIONS</u>

On page 3, line 16, the reference “Section 13701d”, should be corrected to read “Section 23701d”.

On page 3, line 33, strikeout “data” and insert “date.”

LEGISLATIVE HISTORY

SB 1736 (Bowen, 2003/2004) was similar to this bill and would have created a new process to allow taxpayers to make voluntary contribution designations on the personal income tax return. SB 1736 failed to pass out of the Senate Revenue and Taxation Committee by the constitutional deadline.

OTHER STATES’ INFORMATION

Illinois, Massachusetts, Michigan, Minnesota, and *New York* allow for taxpayer contribution designations on the personal income tax return. *Florida* does not have a personal income tax but allows contribution designations on the state’s motor vehicle registration and renewal forms.

Oregon has a seven-member commission, the Oregon Charitable Checkoff Commission, which determines the qualification of entities wishing to receive contribution designations via the tax process either by listing on the tax return, or listing in the Oregon Department of Revenue tax instruction booklet. The Oregon Department of Revenue notifies the commission of the number of lines available for the inclusion of eligible entities, *without* adding a page to the various personal income tax forms. The commission limits the number of entries to be listed on the form to the space available. To remain listed in the instructions, the entity must meet the minimum contribution amount in at least one of the two preceding biennial tax years, and generally continue to meet the original qualifying criteria. The designations also have a six-year repeal date.

FISCAL IMPACT

Until the implementation concerns are resolved, the department is unable to determine the costs to administer this bill, but anticipate the costs to be significant.

ECONOMIC IMPACT

<u>Revenue Estimate</u>

This bill does not specify the additional number of charitable organizations that would be added to the return, but research has shown there could be over 100,000 active 23701d organizations.

Staff estimates a revenue loss of $60,000 for every $1 million of increased charitable contributions.

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

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may argue that this bill would promote charitable giving and civic engagement by establishing a program where taxpayers have the opportunity to give to a wide range of charitable causes on their tax return.

Opponents: Some may argue that taxpayers who are inclined to contribute to these causes can do so through other voluntary methods and including designations on the tax return makes the return a more cumbersome document.

POLICY CONCERNS

Because the California Fund for Senior Citizens, California Firefighters' Memorial Fund, and the California Peace Officers' Memorial Foundation Fund would remain on the tax return, it is possible that these funds may get the majority of the contributions. It may appear that there is unequal treatment of the individual funds or qualified organizations.

Taxpayers that file electronically and currently make voluntary contribution designations could consider reviewing a schedule, website or booklet of qualified applicants too burdensome and may discontinue making contributions via the tax return.

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