Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	De Leon	Analyst:	Brian Werking	Bill Number:	SB 284
Related Bills:	See Legislative History	Telephone:	845-5103	Introduced Date:	February 14, 2013
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: College Access Tax Credit

SUMMARY

This bill would establish an income tax credit under Personal Income Tax Law and Corporation Tax Law for cash contributions made to the College Access Tax Credit Fund (FUND) with an aggregate credit cap of $500 million per calendar year.

RECOMMENDATION

No position.

REASON FOR THE BILL

The reason for the bill is to help rebuild the state's investment in education via a new tax credit for contributions to a special fund that would be used to provide additional Cal Grants to eligible students.

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, and before January 1, 2017.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal 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.

Currently, neither federal nor state law provides a credit for contributions to an education special fund.

Federal and state law provides that a contribution made to a state government fund, like an educational special fund, be considered a charitable contribution.

Board Position:			Executive Officer	Date
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Existing federal and state laws allow individuals to deduct certain expenses, such as medical expenses, charitable contributions, interest, and taxes, as itemized deductions. Also, itemized deductions may be further limited for high-income taxpayers.

Current federal and state law allows a corporation and S-corporation to deduct charitable contributions limited to 10 percent of the taxpayer's net income. Contributions in excess of 10 percent may be carried over to the following five succeeding taxable years.

THIS BILL

For taxable years beginning on or after January 1, 2014, and before January 1, 2017, 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 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 2014 taxable year
- 55 percent of the amount contributed during the 2015 taxable year
- 50 percent of the amount contributed during the 2016 taxable year

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

- Allocate and certify the income tax credit to personal taxpayers during the period that begins on January 1, 2014, and ends on December 31, 2016.
- Allocate and certify the income and franchise tax credit to corporate taxpayers during the period that begins on January 1, 2014, and ends on December 31, 2014.
- 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 amount of the contribution 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, the amount of the credit that would be limited. If a personal income credit would be limited or denied because of the annual cap for contributions made during the period from January 1, 2014, through December 31, 2015, offer to return the entire contribution or provide certification of a credit for the entire contribution for the next taxable year. If a corporate income tax credit would be limited or denied because of the annual cap for contributions made during the period from January 1, 2015, through December 31, 2015, offer to return the entire contribution or provide certification of a credit for the entire contribution for the next taxable year. In the case of a contribution made by an individual or business entity during the period from January 1, 2016, through December 31, 2016, offer to return the entire contribution or the portion of the contribution limited by the annual cap.
- 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.

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

The credit would be repealed by its own terms as of December 1, 2017.

Amounts contributed to the FUND would, upon appropriation by the Legislature, be allocated to the Student Aid Commission for the purpose of awarding Cal Grants.

IMPLEMENTATION CONSIDERATIONS

It is unclear what credit 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 recommended that the author provide additional language specifying which year's credit percentage would apply.

TECHNICAL CONSIDERATIONS

Amendments 1 through 3 are provided to make nonsubstantive corrections.

Subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (a) of Section 23686 need to be amended where the taxable year of contribution, 2013, 2014, and 2015 respectively, appears, as the correct taxable year should be 2014, 2015, and 2016 respectively to correspond to the references in the corresponding personal income tax law subparagraphs. Amendments 4 through 6 are provided to remedy this inconsistency.

The certification and allocation period and contribution notification period in the corporation tax law provision is inconsistent with the periods specified in the corresponding personal income tax law provision. Amendments 7 and 8 remedy this inconsistency.

LEGISLATIVE HISTORY

SB 1356 (De Leon, 2011/2012) similar to this bill, would have created an income tax credit for cash contributions made to an education special fund with an aggregate credit cap of $100 million per calendar year. SB 1356 was held in the Assembly Appropriations Committee.

AB 1262 (Haynes, 2005/2006) would have created a 75 percent credit for donations to a nonprofit organization that provides scholarships to elementary and secondary school students. AB 1262 was held in the Assembly Revenue and Taxation Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida has a corporate tax credit scholarship program known as Step Up for Students. The tax credit allows corporations to receive a dollar-for-dollar tax credit up to the amount of their state income tax liability, after application of other allowable credits, for donations made to a nonprofit scholarship funding organization. The credit is subject to an annual cap as specified. *Florida* does not have a personal income tax.

Illinois, Massachusetts, Michigan, Minnesota, and *New York* do not provide a credit comparable to the credit allowed by this bill.

FISCAL IMPACT

This bill would require changes to our forms and instructions. As a result, this bill would impact the department's printing, processing and storage costs for tax returns. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

<u>Revenue Estimate</u>

Estimated Revenue Impact of SB 284 As Introduced February 14, 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
- $190	- $360	- $330

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: Supporters could argue that this credit could provide needed funding for California's Cal-Grant Program with a minimal net economic cost to the contributor.

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

POLICY CONCERNS

This bill could create differences between federal and California tax law if a taxpayer chooses to utilize this credit, instead of taking the charitable deduction for state purposes, 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.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 284
AS INTRODUCED FEBRUARY 14, 2013

AMENDMENT 1

On page 2, line 7, before "2014" insert:

"for the"

AMENDMENT 2

On page 2, line 11, before "2015" insert:

"for the"

AMENDMENT 3

On page 2, line 15, before "2016" insert:

"for the"

AMENDMENT 4

On page 3, line 37, replace "during the 2013" with "for the 2014"

AMENDMENT 5

On page 4, line 1, replace "during the 2014" with "for the 2015"

AMENDMENT 6

On page 4, line 5, replace "during the 2015" with "for the 2016"

AMENDMENT 7

On page 4, line 15, replace "2015" with "2017"

AMENDMENT 8

On page 4, line 20, replace "2015" with "2014"