Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Beall	Analyst:	Jane Raboy	Bill Number:	SB 355
Related Bills:	See Legislative History	Telephone:	845-5718	Introduced Date:	February 20, 2013
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Natural Heritage Preservation Tax Credit/Transfer of Credits to Unrelated Party

SUMMARY

This bill would allow a taxpayer to transfer their Natural Heritage Preservation Tax Credit (Conservation Tax Credit) to an unrelated taxpayer upon approval and certification by the Wildlife Conservation Board (Wildlife Board).

This analysis will not address the bill's changes to the Public Resources Code, as they do not impact the department or state income tax revenue.

RECOMMENDATION

No position.

REASON FOR THE BILL

The reason for this bill is to maximize the use of the Conservation Tax Credit by allowing the credit to be transferred among unrelated taxpayers.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2013.

ANALYSIS

PROGRAM BACKGROUND

Under the Public Resources Code, the Natural Heritage Preservation Tax Credit Act of 2000 was enacted to encourage donations of land to the state, local governments, and designated nonprofit organizations. The donated property must be approved for acceptance by the Wildlife Board, which notifies the Franchise Tax Board (FTB) of the amount of tax credit awarded for each donation.

Board Position:			Executive Officer	Date
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Responding to increased fiscal demands and pressure upon the General Fund, the Legislature suspended the Conservation Tax Credit Program in 2002. However, in recognition of the effectiveness of the program as a tool to leverage limited fiscal resources and protect critical land and water resources, the Conservation Tax Credit Program was reinstated effective January 1, 2005, and allows Conservation Tax Credits to be awarded until June 30, 2008, provided there is no net loss of revenue to the General Fund for tax credits awarded between July 1, 2002, and June 30, 2008. Reimbursement to the General Fund for approved tax credits is made using eligible bond funds. Effective January 1, 2010, the program was once again authorized to approve donations and eligible tax credits until June 30, 2015.

The FTB is required to report the amount of Conservation Tax Credit claimed by tax year to the Wildlife Board. Within 60 days of notification from the FTB, the Wildlife Board is required to reimburse the Natural Heritage Preservation Tax Credit Reimbursement Account within the state's General Fund for the amount of the land Conservation Tax Credits claimed on income tax returns. The Wildlife Board is authorized to use bond funds to reimburse the General Fund.

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.

Federal law does not provide a credit comparable to the Conservation Tax Credit.

Under state law, the California Personal Income Tax Law (PITL) and Corporation Tax Law (CTL) allow a nonrefundable Conservation Tax Credit in the amount of 55 percent of the fair market value of qualified contributions that have been certified by the Wildlife Board. "Qualified contributions" means a contribution of property that has been approved for acceptance by the Wildlife Board. Any unused Conservation Tax Credit may be carried over for eight years and the credit is in lieu of any other credit or deduction that may be claimed for the property or any interest contributed.

For taxable years beginning on or after June 30, 2008, the Corporation Tax Law allows the assignment of certain eligible credits to taxpayers that are members of a combined reporting group. "Assignment" refers to the ability of a taxpayer that is a member of a combined reporting group to elect to transfer certain unused credits to a related corporation, as specified. The election to transfer any credit is irrevocable once made and is required to be made on the taxpayer's original return for the taxable year in which the assignment is made.

THIS BILL

For taxable years beginning on or after January 1, 2013, under the PITL and the CTL, this bill would allow a taxpayer to transfer any Conservation Tax Credit to an unrelated party upon the Wildlife Board's approval and certification.

In order to obtain approval of the credit's transfer, a taxpayer would be required to provide to the Wildlife Board all required information regarding the transfer of the credit in a form and manner prescribed by the Wildlife Board, including the social security or other taxpayer identification number of the unrelated party receiving the transfer and the face amount of the Conservation Tax Credit to be transferred.

The Wildlife Board would be required to provide certification to the taxpayer, in a form and manner specified by the FTB, of the approved transfer.

<u>IMPLEMENTATION CONSIDERATIONS</u>

Implementing this bill would not significantly impact the department's programs and operations.

<u>TECHNICAL CONSIDERATIONS</u>

Subdivision (f) of sections 17053.30 and 23630 need to be amended where the term "any credit under this section" appears, as it should be "any credits from prior years whose carryover period has not expired."

LEGISLATIVE HISTORY

AB 94 (Evans, Chapter 220, Statutes of 2009) reauthorized the awarding of Conservation Tax Credits under the Natural Heritage Preservation Tax Credit Act of 2000.

AB 2930 (Laird, 2007/2008) would have eliminated the sunset date of the land Conservation Tax Credit, removed the $100 million limit on the total credit the Natural Heritage Preservation could award, and required local governments to transfer funds to the Wildlife Board prior to receiving final approval for acceptance of a qualified donation. AB 2930 was held in the Senate Appropriations 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.

Effective January 1, 2011, *Massachusetts* law allows a tax credit of 50 percent of the fair market value of a donated property interest up to a maximum of $50,000. These credits are refundable but not transferable, and any remaining value may be carried forward for up to 10 years. The tax credits cannot exceed $2 million per year. A taxpayer claiming a land or easement tax credit may not claim any other credit or deduction otherwise allowable under state law.

New York's credit for conservation easement donations is limited to 25 percent of the property taxes associated with the land. The credit for any year may not exceed $5,000 and may not reduce the fixed dollar minimum tax or the tax on the minimum taxable income base. Any unused credit may be refunded or applied as a payment against the following year's tax due. The conservation easement must be filed with the New York State Department of Environmental Conservation to claim the credit.

Review of *Florida*, *Illinois*, *Michigan, and Minnesota* laws found no comparable tax credits.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

REVENUE ESTIMATE

Estimated Revenue Impact of SB355 As Introduced February 20, 2013 For Taxable Years Beginning On or After January 1, 2013 Assumed Enactment After June 30, 2013 ($ in Millions)		
2013-14	2014-15	2015-16
-$2.2	-$5.2	-$3.6

This estimate does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION[1]

Support: California Council of Land Trusts (Sponsor).

Opposition: None provided.

ARGUMENTS

Proponents: Some may argue that the ability to transfer unused Conservation Tax Credits would encourage additional land conservation activities in this state by taxpayers that were formerly unable to realize a tax benefit from the credit.

Opponents: Some may argue that the ability to transfer unused Conservation Tax Credits would have an insignificant impact on land conservation efforts in the state.

LEGISLATIVE STAFF CONTACT

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[1] As provided in the Senate Bill 355 Fact Sheet as of February 26, 2013.