

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Villaraigosa, et al. Analyst: Jeani Brent Bill Number: AB 1728

Related Bills: See Legislative History Telephone: 845-3410 Introduced Date: 01/05/2000

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Exclusion/Reparation Payments Received From German Foundation

SUMMARY

Under the Personal Income Tax Law, this bill would exclude from gross income any amounts received as reparation payments paid by a German foundation, yet to be named, to redress the injustice done to persons who were required to perform slave or forced labor or required to sell property at below-market prices during World War II.

EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would apply to taxable years beginning on or after January 1, 2000.

LEGISLATIVE HISTORY

SB 714 (Stats. 1996, Ch. 29) excluded from gross income any amounts received, including interest and the value of property, pursuant to the German Act Regulating Unresolved Property Claims as restitution for property that was confiscated or subject to forced sale prior to or during World War II.

SB 1397 (Stats. 1998, Ch. 18) excluded from the gross income of a victim (or heir or beneficiary thereof) of the Holocaust any amounts, including interest or property, received as a result of a settlement of claims against any entity or individual for any recovered asset.

PROGRAM HISTORY/BACKGROUND

In 1990, following the reunification of the German Democratic Republic and the Federal Republic of Germany, the German government passed the German Act Regulating Unresolved Property Claims (the Act). Pursuant to the Act, the German government awards compensation for property located in the former East Germany that the National Socialist Regime confiscated or subjected to forced sale prior to or during World War II. Under the Act, former property owners (or their heirs) receive compensation in the form of money or substitute property, if the original property cannot be returned. Pursuant to the United States-Federal Republic of Germany Income Tax Convention, Aug. 29, 1989, S. Treaty Doc. No. 10, 101st Cong., Sess. (1990), these amounts are exempt from federal income taxation. The exemption extends to the entire award amount, regardless of whether a portion represents interest. This Treaty is not applicable at the state level.

Board Position:

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_____ SA	_____ O	_____ NAR
_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald H. Goldberg

2/8/00

In 1997, the Swiss Bankers Association published three lists of accounts that had been dormant since World War II. Two of these lists contained the account names of non-Swiss individuals. The publication of these lists and the creation of a special claims resolution process are efforts to simplify the process of searching for unclaimed assets that may be held in Swiss banks in dormant bank accounts opened by foreign citizens prior to the end of World War II. The Swiss Banking Ombudsman has established a central contact office to assist Holocaust survivors and heirs of Holocaust victims in matching their claims for assets that may be held in Swiss banks.

SPECIFIC FINDINGS

Existing federal and state laws provide that gross income includes all income from whatever source derived, including compensation, business income, gains from property, dividends, rents, interest, and royalties, unless it is specifically exempt.

Existing federal and state laws provide that certain types of income expressly are excluded from gross income, such as amounts received from certain death benefits, gifts and inheritances, compensation for injuries and sickness, qualified scholarships, educational assistance programs, and foster care payments.

An **existing federal Treaty** provides that awards received pursuant to the German Act Regulating Unresolved Property Claims are exempt from U.S. taxation.

Existing state law excludes from an individual's gross income any amounts received, including interest and the value of property, pursuant to the German Act Regulating Unresolved Property Claims. The basis of any property received as compensation is the fair market value determined at the time of receipt by the taxpayer. Further, any amounts, including interest or property, received by a victim (or heir or beneficiary thereof) of the Holocaust as a result of a settlement of claims against any entity or individual for any recovered asset is excluded from gross income. "Holocaust victim" is defined as any person persecuted by Nazi Germany or any Axis regime from 1933 to 1945 and "recovered asset" is defined as any asset including bank deposits, insurance proceeds, or artwork (and including interest earned on the assets) owned by a Holocaust victim between 1920 and 1945 and not recovered or compensated for until 1995 or after.

This bill would exclude from gross income any amounts received as reparation payments paid by a German foundation, yet to be named, to redress the injustice done to persons who were required to perform slave or forced labor or required to sell property at or below-market prices during World War II.

Although the provisions of this bill are similar to the existing exclusions enacted by SB 714 and SB 1397, this bill differs as follows:

1. The existing exclusions are for either:
 - a. SB 714: Money received by any taxpayer pursuant to the German Act Regulating Unresolved Property Claims (which compensated for property located in East Germany that was confiscated or subject to forced sale); or

- b. SB 1397: Money or property received by a Holocaust victim, or his or her heir, from any entity for a recovered asset (which is any asset, including bank deposits, insurance proceeds, or artwork, and the interest thereon).

Neither of these existing provisions provides an exemption for any reparation payments for slave or forced labor, which would be allowed by this bill.

- 2. The reparation payments under this bill for property required to be sold at below-market prices is similar to the two existing provisions, but this bill appears to be more inclusive.
 - a. The payments under this bill could be made by a German foundation that may not be a part of the German Act Regulating Unresolved Property Claims. Thus, the payments under this bill may not fulfill the existing requirements established by SB 714.
 - b. Payments under SB 714 are characterized as "compensation," which generally is defined as giving an equivalent or substitute of equal value. Payments under this bill are characterized as "reparation," which generally is defined as redressing a wrong. Thus, under this bill, no "substitution" or "equivalent" issues would be involved. It could be that the German foundation will determine a set amount for a person subjected to slave or forced labor and a set amount for anyone who was forced to sell property, regardless of the amount of actual loss, since the payments are meant as reparation, not compensation.
 - c. This bill is not limited to Holocaust victims (or their heirs) and is not limited to "recovered assets," as are the provisions established by SB 1397.

Implementation Considerations

Implementing this bill would occur during the department's normal annual update.

FISCAL IMPACT

Departmental Costs

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

Tax Revenue Estimate

Neither the number of ultimate qualified claims nor the amount of reparations received by California residents from the German Foundation is known at this time. If the number of qualified taxable California claimants were 10,000 receiving \$5,000 on average in reparation payments, the revenue loss would be on the order of \$3 million. As new information becomes available, estimates will be revised.

Tax Revenue Discussion

It is not possible to make reliable revenue estimates at this time because of uncertainties such as:

- The number of qualified taxable California recipients and the amount of reparations received.
- The total amount designated for the reparation payments. The German government agreed to contribute \$5.2 billion to this Foundation, thereby matching a similar amount from German industry. However, it is not known when all the contributions would be transferred to the Foundation and what would be the administration costs and lawyers fees;
- The criteria for reparation claim qualifications have not been specified.

BOARD POSITION

Pending.