**Franchise Tax Board**

# ANALYSIS OF ORIGINAL BILL

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| Author: | Baker | Analyst: | Diane Deatherage | Bill Number: | AB 1399 |
| Related Bills: | None | Telephone: | 845-4783 | Introduced Date: | February 27, 2015 |
| | | Attorney: | Bruce Langston | Sponsor | |

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| **SUBJECT:** | Contributions to Domestic Violence Shelter Service Provider or Emergency Shelter Credit |

## SUMMARY

This bill would create a credit under the Corporation Tax Law (CTL) for contributions to eligible domestic violence shelter service providers (shelter service providers) or emergency shelters.

## RECOMMENDATION

No position.

## REASON FOR THE BILL

The reason for this bill is to encourage local businesses to donate to domestic violence programs in their community to expand availability of safe havens.

## 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, 2016, and before January 1, 2021.

## 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.

Current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Current state law allows corporations that are members of the same unitary combined reporting group to assign “eligible” credits to other members of the group. An “eligible” credit is any credit earned by the taxpayer in a taxable year beginning on or after July 1, 2008, or any credit earned in any taxable year beginning before July 1, 2008, that was eligible to be carried forward to the first taxable year beginning on or after July 1, 2008. The credit assignment is made by an irrevocable election. The assignor and assignee taxpayers must be members of the same combined reporting for the taxable year in which the credit is earned and the taxable year the credit is assigned.

| Board Position: | | | | | | Executive Officer | Date |
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**THIS BILL**

For taxable years beginning on or after January 1, 2016, and before January 1, 2021, this bill would establish, under the CTL, a credit in an amount equal to 50 percent of a taxpayer's monetary contributions to a shelter service provider or emergency shelter.

This bill would provide the following:

- The tax credit could not exceed $200,000 per taxpayer per taxable year.
- The taxpayer would submit, to the Franchise Tax Board (FTB), an application and the FTB would certify the taxpayer's contribution meets the requirements, as specified.
- 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 the contributions.
- 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 $50 million for each calendar year and the allocation of credits would be on a first-come, first-served basis.

The bill would define the following terms:

- "Domestic violence shelter service provider" has the same meaning as in Penal Code section 13823.15[1] and eligible to receive a grant award pursuant to the program.
- "Emergency shelter" has the same meaning as in Penal Code section 13823.15[2] and eligible for financial or technical assistance pursuant to the program.
- "Program" means the Comprehensive Statewide Domestic Violence Program[3] described in Penal Code section 13823.15.

This bill would authorize the FTB and the Office of Emergency Services to administer this tax credit.

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[1] Penal Code section 13823.15(f)(15)(B) states "domestic violence shelter service provider" or "DVSSP" means a victim services provider that operates an established system of services providing safe and confidential emergency housing on a 24-hour basis for victims of domestic violence and their children, including, but not limited to, hotel or motel arrangements, haven, and safe houses.
[2] Penal Code section 13823.15(f)(15)(C) states "emergency shelter" means a confidential or safe location that provides emergency housing on a 24-hour basis for victims of domestic violence and their children.
[3] The goals of the program are to provide local assistance to existing service providers, to maintain and expand services based on a demonstrated need, and to establish a targeted or directed program for the development and establishment of domestic violence services in currently unserved and underserved areas. The Office of Emergency Services provides financial assistance in the form of grants to local domestic violence centers as part of the program.

The FTB would be required to perform all of the following:

- Adopt rules and regulations as necessary or appropriate in implementing the credit.
- Establish application forms and procedures.
- Track credits claimed.
- Post aggregate totals of the credits claimed on the FTB's Internet Web site.
- Determine when the aggregate total of credits reaches $50 million for a calendar year.
- Certify that a contribution meets the requirements, as specified, based on a list provided by the Office of Emergency Services annually, that includes those shelter service providers and emergency shelters eligible for a grant award or technical and financial assistance pursuant to the Comprehensive Statewide Domestic Violence Program described in Section 13823.15 of the Penal Code.

The rules, guidelines, and procedures established would be exempt from the regulatory requirements of the Administrative Procedures Act.[4]

The provisions of this bill would be repealed by its own terms on December 1, 2021.

## 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.

This bill lacks administrative details necessary to implement the bill and determine its impacts to the department's systems, forms, and processes. The bill is silent on the following issues:

- When and what information would the Office of Emergency Services report to the FTB?
- Would the first-come, first-served basis of allocating the credit be based on contribution date? Date the application was filed with the FTB?
- 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?
- A funding mechanism for the FTB's start-up and on-going costs to administer the certification and reporting process provisions of this bill. Absence of a funding mechanism could delay implementation or require diversion of resources from existing revenue generating workloads.

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

This bill would require the FTB to establish application forms and procedures. Depending on the enactment date, the implementation period may be very short. Therefore, there may be a delay in certifying contributions as the processes may not be in place.

Lack of clarity could result in disputes between the Office of Emergency Services, the FTB, and taxpayers. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. Certification language would specify the responsibilities of both the certifying agency and the taxpayer. 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.

Because the bill fails to state otherwise, the FTB's disallowance of a claimed credit in excess of the $200,000 per taxpayer annual limit as well as the disallowance of credits claimed once the $50 million annual cumulative limit is reached would be subject to protest and appeal. Generally, credits in excess of specified limits ("caps") are treated as math errors. A math error results in an assessment that is due and payable on notice and demand, instead of by a notice of proposed assessment with prepayment protest rights that generally is issued after an audit. The author may to wish amend this bill to treat the disallowance of credits in excess of the specified limits as math errors.

**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 program known as the Community Contribution Tax Credit Program that allows corporations to receive a tax credit of up to 50 percent of the value of donations to approved community development projects that may include housing options for domestic violence victims. The taxpayer may utilize this credit as a corporation income tax credit, insurance premium tax credit, or as a refund against sales tax.

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

**FISCAL IMPACT**

The FTB does not currently administer a certification and allocation process for a tax credit program under the CTL. Establishing this program would have a significant impact on the department's programs and operations and require extensive changes to forms and systems. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

## ECONOMIC IMPACT

### Revenue Estimate

This bill would result in the following revenue loss:

| Estimated Revenue Impact of AB 1399<br>As Introduced February 27, 2015<br>Assumed Enactment After June 30, 2015<br>($ in Millions) | | |
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| 2015-16 | 2016-17 | 2017-18 |
| - $11 | - $38 | - $46 |

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

### Revenue Discussion

This estimate is based on data from corporate returns claiming a charitable contribution deduction and reported donation data tracked by private industry groups. Based on this data, it is estimated that this bill would generate credits that meet the maximum allowable cap of $50 million for each tax year. It is expected that 85 percent of the credit would be used in the year generated, 10 percent would be carried over to be used in the following two years, and 5 percent would remain unclaimed.

An estimated revenue gain of $5 million was applied to account for taxpayers claiming this credit and that would no longer be allowed to take a charitable contribution deduction for qualifying donation amounts.

The tax year estimates are converted to fiscal years, rounded and reflected in the table above.

## SUPPORT/OPPOSITION

Support: Alliance for Community Transformation, California Partnership to End Domestic Violence, Safe Alternatives to Violent Environments (SAVE), Wild Iris Family Counseling and Crisis Center, YWCA of Glendale.

Opposition: None provided.

## ARGUMENTS

Proponents: Supporters could argue that this bill would encourage more corporations to contribute to domestic violence-related organizations.

Opponents: Some could argue that the bill’s limitation to corporations is overly narrow and should be available to all taxpayers to maximize funding to support families in crisis.

## 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.

Tax credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake. This bill would create a credit for certain donations that may be currently deductible as charitable contributions. As a result, because the credit's 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.

## LEGISLATIVE STAFF CONTACT

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