



Analysis of Amended Bill

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Sponsor:

Bill Number: AB 2217

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Amended: March 20, 2018, and
April 5, 2018

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Related Bills: See Legislative
History

Subject: Golden State Coin Credit

Summary

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a tax credit for the purchase of Golden State Coins (GSC).

Recommendation – No position.

Summary of Amendments

The March 20, 2018, amendments removed language that would have made a nonsubstantive technical change to the Revenue and Taxation Code (R&TC) and replaced the language with provisions that would modify the due date of the report on the utilization of the Fresh Fruits and Vegetables Credit.

The April 5, 2018, amendments removed provisions that would modify the due date of the report on the utilization of the Fresh Fruits and Vegetables Credit, and replaced the language with the provisions discussed in this analysis.

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

This is the department's first analysis of the bill.

Reason for the Bill

The reason for the bill is to assist certain exempt organizations and educational institutions to supplement their income.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for each taxable year beginning on or after January 1, 2019, and before January 1, 2024.

Federal/State Law

Existing federal and state 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.

Existing federal and state laws provide an exclusion from gross income for states and their political subdivisions, provided such amounts are derived from the exercise of any essential government function. Income derived from non-essential government functions is unrelated business income and taxable under both federal and state law.

Existing federal and state laws allow a deduction from income for charitable contributions. Under certain circumstances, an individual is allowed to deduct the fair market value of the property being contributed. An individual can deduct an amount not to exceed a specified percent of federal adjusted gross income, depending on the type of property given and the type of charitable organization. The charitable contribution deduction for a corporation is limited to the adjusted basis of the property being contributed. In addition, the amount a corporation can deduct for a charitable contribution in a given year is limited to 10 percent of the corporation's net income. A contribution made by either an individual or a business in excess of the percentage limitations may be carried over and deducted in future years.

Under R&TC section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

This Bill

This bill would enact the GSC Program. The bill would allow, beginning on and after January 1, 2019, and before January 1, 2024, a qualified entity to purchase GSCs from the State Treasurer at a cost of ninety cents (\$0.90) per GSC.

The bill would define the following terms:

- "GSC" to mean a Golden State Coin.
- "Qualified entity" to mean:
 - An organization exempt from federal income taxation as an organization described in Section 501(c)(3) of the Internal Revenue Code that is in active status as listed on the Secretary of State's Internet Web site,
 - A postsecondary educational institution that participates in the Cal Grant program,
 - A community college located in the state, or
 - A K–12 public school district located in the state.

The qualified entity may sell GSCs to purchasers at a price of one dollar (\$1.00) per GSC. The qualified entity must provide the purchaser with documentation of the amount of GSCs sold to that purchaser.

The bill provides that revenues derived from the sale of GSCs will supplement, and will not supplant, any revenues received by the qualified entity for any other purpose.

For each taxable year beginning on or after January 1, 2019, and before January 1, 2024, this bill would allow a tax credit in an amount equal to 80 percent of the costs paid or incurred by a PITL or CTL taxpayer that purchased GSCs during the taxable year.

Unused credits could be carried over for seven years or until exhausted.

A taxpayer would be required to provide the documentation received from the qualified entity to the Franchise Tax Board (FTB) upon request.

The credit would be allowed in lieu of any charitable deduction otherwise allowed.

The FTB and the State Treasurer would be authorized to prescribe any regulations necessary or appropriate to implement this bill's provisions.

The bill states the Legislature's intent to comply with R&TC section 41.

The bill's provisions would be repealed by its own terms on December 1, 2024.

Implementation Considerations

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

The bill limits the time a qualified entity may purchase GSCs from the State Treasurer as well as the time a taxpayer may claim a GSC tax credit; however, the bill provides an unlimited time period that a qualified entity may sell GCS. If this is not the author's intent, the bill should be amended.

Legislative History

A review of the past five legislative sessions did not locate a tax credit similar to the credit this bill would allow.

Other States' Information

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a credit comparable to the GSC credit allowed by this bill. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.

Fiscal Impact

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

Economic Impact

Revenue Estimate

This bill would allow taxpayers who purchase GSCs at one dollar per GSC from a qualified charitable entity to receive a credit of 80 percent of the amount paid or incurred. In the revenue analysis of this bill, the FTB noted five potential revenue impacts that would result from taxpayer behavioral changes and potential tax consequences. This analysis assumes that all monies received by the State Treasurer for the purchase of GSCs would be deemed receipts to the general fund.

Although the overall impact to the general fund is unknown, it is estimated that this bill would result in a net increase in the general fund. For example, for every \$1 million that a taxpayer spends purchasing GSCs from a qualified entity, the entity would pay \$900,000 to the State Treasurer and the taxpayer would be eligible for \$800,000 of tax credits. Assuming that participating taxpayers have sufficient tax liability to fully utilize the credit in the year purchased, there would be a decrease in tax revenue of \$800,000. The net effect to the state would be a gain of \$100,000 (\$900,000 payment from the qualified entity minus \$800,000 reduction in taxes).

First, some taxpayers may generate credits that are larger than their tax liability before credits. Since the credit is nonrefundable, any excess credits not used in the year would result in an acceleration of receipts to the state from the time of the purchase until the taxpayer is ultimately able to apply the credit. We anticipate this effect to be small.

Second, if some taxpayers continue to make regular estimated payments and withholding, in addition to receiving a credit from the purchase of GSCs from qualifying entities, they may receive refunds of their estimated payments and withholding overpayments after filing their tax return. To the extent that purchases are made in the second half of the calendar year and refunds are issued in the first half of the following calendar year, there would be a minimal net impact to the general fund because they occur in the same fiscal year. If, however, purchases are made in the first half of the calendar year or if refunds are not issued until the second half of the subsequent year (likely for extension filers), there would be an acceleration of receipts to the general fund.

Third, if taxpayers reduce withholding and estimated payments in the first half of the calendar year (fiscal year 1) then subsequently the taxpayer makes a large purchase of GSCs near the end of the calendar year (fiscal year 2), receipts would be shifted from fiscal year 1 to fiscal year 2. (Note, taxpayers would not owe an estimated tax penalty as long as their withholding and estimated payments are sufficient to cover their after-credit liability).

Fourth, for S corporations, there would be a revenue loss as a result of GSC purchases. S corporations may take 1/3 of their credits at the entity level and pass 100 percent of their credits through to their shareholders. Thus, a \$3,000 purchase of GSCs from a qualified entity by an S corporation would result in 80 percent of that amount, or \$2,400, in credit available to an S corporation. The S corporation may claim 1/3 of this amount, or \$800, on the S corporation's return and \$2,400 in GSC credit would be passed through to the shareholders for use on their personal income tax returns for a total credit available of \$3,200.

Fifth, the IRS may rule that the purchase of coins by qualified entities would be considered “non-essential governmental function” or unrelated business income. If so, the difference between the cost and sales price of GSCs may be taxable to the entity. As a result, there could be a revenue gain in an unknown amount.

Unfortunately, FTB has no way to predict the magnitude of any of these behavioral responses. If the majority of itemizing taxpayers shift the majority of their payments from the first half of the year to the end of the year, the revenue transfer across fiscal years would be in the low tens of billions of dollars. FTB expects the actual revenue transfer to be significantly less than that by an unknown amount.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue allowing a tax credit would provide a greater incentive to taxpayers to contribute funds to tax-exempt organizations or educational institutions than a tax deduction.

Opponents: Some may argue the tax laws already provide incentive to contribute funds to tax-exempt organizations or educational institutions by allowing a charitable tax deduction.

Policy Concern

It is unclear that the Internal Revenue Service or Department of the Treasury would deem the sale of GSCs as an exercise of “any essential government function” and therefore exempted from federal taxable income, or the purchase of GSCs as a charitable contribution that may be deducted on the federal income tax return. Therefore, the author's intent may not be realized.

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