



Analysis of Amended Bill

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Subject: Charitable Contributions Credit/FTB Post on Website List of Certified Qualified Charitable Organizations

Summary

This bill would, under Personal Income Tax Law (PITL), allow a tax credit equal to the amount donated to a qualified charitable organization.

Recommendation - No position.

Summary of Amendments

The April 2, 2018, amendments removed provisions of the bill related to property tax law and replaced them with the provisions discussed in this analysis.

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

Reason for the Bill

The reason for the bill is to ensure California creates a robust and efficient tax incentive program that helps guarantee all Californians will receive the best and most effective public services possible, coupled with accountability and transparency measures.

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, 2018.

Federal/State Law

Existing federal and state laws allow a deduction from income for charitable contributions made to a qualified organization, including nonprofits organized pursuant to Internal Revenue Code (IRC) section 501(c)(3). 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 60 percent of federal adjusted gross income, depending on the type of property given and the type of charitable organization. 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. If a benefit results from making a contribution to a qualified organization, a deduction may only be claimed for the amount of the contribution that exceeds the value of the benefit received.

Existing federal and state law 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 federal laws lacks a comparable credit for donations to a qualified charitable organization.

Under Revenue and Taxation Code (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

For taxable years beginning on or after January 1, 2018, this bill would allow a tax credit, under the PITL, equal to the amount donated by a taxpayer during the taxable year to a qualified charitable organization.

The credit would be limited to:

- \$500 for individuals filing as either single or as a head of household, or married taxpayers filing separate returns.
- \$1,000 for married taxpayers filing joint returns or an individual filing as a surviving spouse.

“Qualified charitable organization” would mean an organization that is exempt from federal income taxes under IRC section 501(c)(3), incorporated in California, and is not under suspension or revocation.

A taxpayer would be required to designate that donations to a charitable organization that collects donations on behalf of other charitable organizations be directed only to a qualified charitable organization in order to claim the credit for such donations.

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

Credit amounts in excess of the tax liability could be carried over for the succeeding six years, if necessary, until the credit is exhausted.

The Franchise Tax Board (FTB) would be required to post on its Internet Web site the names of the certified qualified charitable organizations.

The bill specifies that the credit would be known as the California Universal Charitable Credit.

Implementation Considerations

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

This bill uses the undefined term, i.e., “certified qualified charitable organization.” The absence of a definition clarifying this term could lead to disputes with taxpayers and would complicate the administration of this bill. For example, absent a definition it is unclear how the department would know what names would need to be posted on the Internet Website. The author may want to amend the bill to clearly define the term.

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:

- A “qualified charitable organization” includes an organization described in IRC section 501(c)(3) that is exempt from federal taxes. However, some organizations described in IRC section 501(c)(3) are tax-exempt, but do not receive a federal determination letter from the Internal Revenue Service (IRS). For example, organizations that have minimal gross receipts are not required to request tax-exempt status from the IRS, but they are exempt from federal tax. It is unclear how a taxpayer or the department would verify that an organization was a “qualified charitable organization.”

The language in the bill states that the credit allowed would be in lieu of any charitable deduction. This has the effect of denying all charitable deductions. If this is not the author's intent, the author may wish to amend the bill to limit the denial of the deduction to amounts contributed to these organizations or amounts that provide the basis for the credit.

Legislative History

SB 227 (De Leon, 2017/2018) would allow a credit in an amount equal to 85 percent of the amount contributed by a taxpayer for the taxable year to the California Excellence Fund. SB 227 is pending before the Assembly Revenue and Taxation Committee.

AB 1745 (Morrell, 2013/2014) would have created a nonrefundable credit for contributions to qualified charitable organizations. AB 1745 failed to pass out of the Assembly by the constitutional deadline.

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. None of these states provide a tax credit similar to the credit this bill would allow.

Fiscal Impact

The department’s costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB1485 as Amended April 2, 2018
For Taxable Years Beginning On or After January 1, 2018
Assumed Enactment after June 30, 2018

(\$ in Billions)

Fiscal Year	Revenue
2018-2019	- \$4.0
2019-2020	- \$2.7
2020-2021	- \$2.8

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Using the FTB tax data from the 2015 taxable year, average contributions per taxpayer were calculated and grown for changes in the economy over time. The tax impact of the California Universal Charitable Credits and the estimate tax impact of the deduction forgone are calculated. It is assumed that the taxpayer would choose the one that produces the greatest tax benefit.

It is estimated that \$3.3 billion in California Universal Charitable Credits would be generated for taxable year 2018. Based on the FTB credit usage data, it is estimated that 98 percent, or \$3.2 billion, of the credit would be used in the year generated and the remaining 2 percent would be used in the subsequent year.

To arrive at the offsetting tax effect of itemized deductions for charitable contributions that would be otherwise allowed under current law, it is estimated taxpayers would deduct \$17 billion for donations to qualified charitable organizations. At an average tax rate of 4 percent, this results in an offsetting gain of \$700 million for charitable contribution deductions forgone in the 2018 taxable year. This results in an estimated net revenue loss of \$2.5 billion in taxable year 2018.

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

Legal Impact

This bill would restrict the tax credit to donations to qualified charitable organizations which are exempt from federal income taxes, incorporated in California, and not under suspension or revocation. This bill could raise constitutional concerns under the Commerce Clause of the United States Constitution because it could appear to improperly favor in-state activity over out-of-state activity. On August 28, 2012, (*Cutler v. Franchise Tax Board*), the Court of Appeal issued a unanimous opinion holding that California's Qualified Small Business Stock (QSBS) statutes were unconstitutional. Specifically, the Court of Appeal held that the QSBS statutes were found to unconstitutionally deny the taxpayer the benefit due to expansion of its activities outside of California.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Supporters could argue that this bill would encourage more taxpayers to contribute to qualified charitable organizations.

Opponents: Some could argue that a tax credit for certain donations is unnecessary because individuals inclined to make charitable contributions already do so.

Policy Concerns

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a tax benefit by the Legislature.

Credits generally are provided as a percentage of actual amounts paid. This bill would allow a 100 percent credit up to the specified credit limit, which is unprecedented.

This bill would allow a credit for contributions that are currently allowed as an itemized deduction, thus increasing the tax benefit for contributions that may have been made absent the credit.

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