



## **Summary Analysis of Amended Bill**

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Sponsor:

Bill Number: SB 1485

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Amended: April 30, 2018

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Related Bills: See Prior Analysis

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

### **Summary**

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

**Recommendation – No position.**

### **Summary of Suggested Amendments**

The April 30, 2018, amendments modified the definition of “qualified charitable organization,” requirements for a taxpayer to claim the credit, and the department’s reporting requirements and added severability language.

As a result of the amendments, one implementation consideration has been resolved. Except for the “This Bill,” “Implementation Considerations,” and “Economic Impact” sections the remainder of the department’s analysis of the bill as amended on April 2, 2018, still applies. The outstanding implementation considerations, “Fiscal Impact,” “Legal Impacts,” and “Policy Concerns” sections have been restated for convenience.

### **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 Internal Revenue Code (IRC) section 501(c)(3), located in California, and is not under suspension by the Franchise Tax Board (FTB) or Secretary of State at the time of the donation.

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.

Additionally, a taxpayer would be required to provide the FTB with the name of the qualified charitable organization, the date of the donation, and the amount of the donation on forms provided by the FTB.

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 FTB would be required to post on a new page on its Internet Website, the names of each qualified charitable organizations as found on its Exempt Organizations List.

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

The provisions of this bill would be severable, so that if any provision or its application is held invalid, that invalidity would not affect other provisions that can still be given effect without the invalidated provision.

### **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.

The defined term “qualified charitable organization” uses the undefined term “located in California” which may be overly broadly interpreted. For example, would an organization that has nothing other than a donation box in California be considered “located in California? For clarity and ease of administration, the author may wish to amend this bill.

It appears that the bill’s reporting requirement would duplicate the existing Exempt Organization List.<sup>1</sup> If the author intends that creditable contributions be reported on the FTB’s website, this bill should be amended.

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<sup>1</sup> The Exempt Organizations List is published on the department’s website at <https://www.ftb.ca.gov/businesses/Exempt-organizations/Entity-List.shtml>.

- 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", and therefore what organizations should be included on the FTB's list.

The language in the bill states that the credit would be in lieu of any charitable deduction otherwise allowed. This has the effect of denying all charitable deductions. If this is contrary to 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.

### **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 30, 2018  
For Taxable Years Beginning On or After January 1, 2018  
Assumed Enactment after June 30, 2018

(\$ in Billions)

Fiscal Year	Revenue
2018-2019	- \$4.5
2019-2020	- \$3.0
2020-2021	- \$3.1

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 estimated tax impact of the deduction forgone were calculated. It is assumed that the taxpayer would choose the one that produces the greatest tax benefit.

It is estimated that \$3.6 billion in California Universal Charitable Credits for donations to qualified charitable organizations would be generated for taxable year 2018. Based on the FTB credit usage data, it is estimated that 98 percent, or \$3.5 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 \$800 million for charitable contribution deductions forgone in the 2018 taxable year. This results in an estimated net revenue loss of \$2.8 billion in taxable year 2018.

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

### **Legal Impacts**

This bill would restrict the tax credit to donations to qualified charitable organizations which are exempt from federal income taxes, located in California, and not under suspension at the time of the donation. 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.

### **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 for contributions 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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