STATE OF CALIFORNIA
Franchise Tax Board

Summary Analysis of Amended Bill

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Related Bills: See Prior Analysis
Bill Number: SB 227
Amended: January 25, 2018

Subject: California Excellence Fund Tax Credit

Summary

This bill would, under the Personal Income Tax Law (PITL), allow a credit in an amount equal to 85 percent of the amount contributed by the taxpayer for the taxable year to the California Excellence Fund.

Recommendation – No position.

Summary of Suggested Amendments

The January 25, 2018, amendments added co-authors, revised language to allow the credit to reduce tax below tentative minimum tax, added language to specifically allow a charitable deduction from California tax for the contribution, removed the Corporation Tax Law provisions, and made other technical changes. As a result of the amendments, the department's technical concern, one of the department's implementation considerations, and two policy concerns discussed in the department's analysis of the bill as amended on January 3, 2018, were resolved and one technical consideration was identified.

The "Effective/Operative Date," "This Bill," "Implementation Considerations," "Economic Impact," "Technical Considerations" and "Policy Concerns" sections have been revised as a result of the January 25, 2018, amendments and the "Support/Opposition" section has been updated to reflect newly available information. The remainder of the department's analysis of the bill as amended on January 3, 2018, still applies.

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, but only if Senate Bill 581 of the 2017/2018 regular session is enacted and takes effect on or before January 1, 2019.

This Bill

This bill would, under the PITL, upon enactment of SB 581 (De Leon, et al., 2017/2018) if operative as specified, allow for taxable years beginning on or after January 1, 2018, 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.

The provisions of Revenue and Taxation code section 41 shall not apply to this credit.

For purposes of administering the credit and any resulting reduction of the tentative minimum tax, the Treasurer would be required to:

- Establish a procedure for any taxpayer who makes a monetary contribution to the California Excellence Fund created by Section 16302.5 of the Government Code to obtain from the Treasurer a certification for the credit allowed by this section. The procedure shall require the Treasurer to certify the contribution amount eligible for credit within 45 days following receipt of the contribution.
- Provide the Franchise Tax Board (FTB) a copy of each credit certificate issued for the calendar year by January 31 of the calendar year immediately following the year in which those certificates are issued.

This bill would require the Treasurer to adopt any regulations necessary or appropriate to implement thee above stated requirements, and would exempt those regulations from the Administrative Procedures Act.

Any unused credits may be carried forward for up to six years.

The bill provides that the FTB may prescribe any regulations necessary or appropriate to carry out the purposes of this section. The Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to any rule, guideline, or procedure prescribed by the FTB pursuant to this section.

The bill would provide that this credit may reduce the tax below the tentative minimum tax.

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 bill requires the Treasurer to issue a credit certificate to the taxpayer no later than 45 days after the donation is made. Because taxpayers may choose to make multiple donations during the year that would then get multiple credit certificates, for ease of administration and tracking of the credit, the author may wish to consider requiring credit certificates to be issued to the taxpayer on an annual basis including identifying information for the taxpayer such as a social security number.

This bill uses a phrase "an amount contributed by the taxpayer for the taxable year." For clarity of when the donation must be made in order to receive a credit, the author may wish to amend the bill to state that the credit would be allowed in "an amount contributed by the taxpayer during the taxable year."

Technical Considerations

To correct a cross referencing error, the reference to section 17039 on pages 7 and 8 should be modified to read "17053.88."

Economic Impact

Revenue Estimate

This bill would allow taxpayer to make a charitable contribution to the California Excellence Fund (the Fund). In the analysis of this proposal, the FTB noted three potential revenue impacts that would result from taxpayer behavioral changes.

First, some taxpayers may make contributions to the Fund that are larger than their tax liability before credits. Since the credit is nonrefundable, any excess contribution not used in the year would result in an acceleration of receipts to the state from the time of the contribution 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 making contributions to the Fund, they may receive refunds of their estimated payments and withholdings overpayments after filing their tax return. To the extent that contributions are made in the second half of the calendar year and refunds are issued in the first half of the following calendar year, there is a minimal net impact to the General Fund because they occur in the same fiscal year. If, however, contributions 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 will 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 contribution to the Fund near the end of the calendar year (fiscal year 2), receipts will be shifted from fiscal year 1 to fiscal year 2. (Note, taxpayers will not owe an estimated tax penalty as long as their withholding and estimated payments are sufficient to cover their after credit liability).

This bill would only become operative if SB 581 of the 2017-18 Regular Session is enacted and becomes operative on or before January 1, 2019.

Unfortunately, we have 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. We expect the actual revenue transfer to be significantly less than that by an unknown amount.

Support/Opposition[1]

Support: California Association of Nonprofits.

Opposition: None Provided.

Policy Concerns

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

This bill assumes that the contributions made to the California Excellence Fund would be allowed as a charitable contribution deduction on the federal income tax return. If the Internal Revenue Service or Department of the Treasury disagrees that the contributions qualify as charitable contributions, the author's intent may not be realized.

This bill would allow a credit for charitable donations made that are currently deductible. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense.

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[1] As provided in the Senate Floor Analysis dated January 29, 2018.