



## **Analysis of Amended Bill**

Author: Quirk-Silva

Sponsor:

Bill Number: AB 136

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Amended: April 1, 2019

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Related Bills: See Legislative  
History

**Subject:** Charitable Contribution Deductions

### **Summary**

This bill would disallow a charitable contribution deduction made to a postsecondary institution or to the Key Worldwide Foundation by taxpayers who meet specified conditions, including that they are named in a specified criminal complaint.

**Recommendation – No position.**

### **Summary of Amendments**

The April 1, 2019, amendments removed provisions of the Health and Safety Code relating to alcohol and drug programs and replaced them with the provisions discussed in this analysis.

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

### **Summary of Suggested Amendments**

Amendments have been suggested under the "Technical Considerations" discussion to correct referencing and typographical errors. See the amendment page attached.

### **Reason for the Bill**

The reason for the bill is to disallow a charitable contribution deduction made, on or after January 1, 2014, to a postsecondary institution or to the Key Worldwide Foundation.

### **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 2, 2014.

## **Federal/State Law**

Current federal and state law allows an individual to claim an itemized deduction for contributions to a qualified charitable organization.

A contribution is not deductible unless it is made to, or for the use of, a qualified organization. The donee organization must be qualified at the time of the contribution. It is the organization's responsibility to ensure that its character, purposes, activities, and methods of operations satisfy the qualification requirements, so that donors have assurance their contributions are deductible at the time made.

Organizations that qualify to receive deductible donations can be disqualified for activities that violate public policy.

No deduction is allowed for contributions made to individuals or nonqualified organizations or for contributions made for a reason other than for charitable purposes. A charitable purpose is a contribution from which you do not receive or expect to receive a benefit.

Generally the statute of limitations (SOL) for the IRS to assess additional tax is three years from the date a return was timely filed and for California state purposes the SOL is generally four years from the date of filing. If the taxpayer did not file a tax return, or files a false or fraudulent tax return, there is no time limit for the FTB to assess tax.

## **This Bill**

This bill would, for taxable years beginning on or after January 1, 2014, disallow a deduction for charitable contributions made to an educational organization that is a postsecondary institution or to the Key Worldwide Foundation by a taxpayer that is both:

- Named in Criminal Complaint #19-1CR-10081 in the United States District Court of Massachusetts, and
- Has received a final determination of their guilt with regard to a violation of Title 18 of the United States Code, related to crimes and criminal procedures, as a result of that complaint.

## **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 would be retroactively operative for taxable years beginning on or after January 1, 2014. The normal statute of limitations for tax assessments is four years from the date the return was filed or four years after the due date (including extensions), whichever is later. Tax year 2014 returns were due to be filed by April 15, 2014 if an extension was not filed. The statute of limitations expired April 15, 2019. Therefore, the author may want to amend the bill to change the operative date.

This bill uses terms that are undefined, i.e., "final determination of their guilt". The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

It is unclear that the change this bill would make is necessary because under current law a charitable contribution deduction may be disallowed based on the donee's lack of donative intent.

### **Technical Considerations**

The language in subdivision (a) is technically incorrect. Amendment 1 would resolve this concern.

### **Legislative History**

None.

### **Program Background**

A federal investigation, nicknamed Operation Varsity Blues, investigated an alleged conspiracy to influence undergraduate admissions decisions at several prominent American universities. The investigation alleges that the conspiracy included bribing exam administrators to facilitate cheating on college and university entrance exams and bribing coaches and administrators of elite universities to nominate unqualified applicants as elite recruited athletes, thus facilitating the applicants' admission. It is alleged that a charitable organization was used to conceal the source and nature of laundered bribery payments.

Court documents unsealed in March 2019 detail a scheme led by William Rick Singer, in which wealthy parents paid Singer to bribe admissions testing officials, athletics staff, and coaches at universities in order to have their children admitted to elite schools. Parents made payments to Key Worldwide Foundation (KWF), a nonprofit organization owned by Singer and previously granted 501(c)(3) status. Many of Singer's clients then

filed personal tax returns that falsely reported the payment to the KWF as charitable donations.<sup>1</sup>

The FBI's investigation is on-going.

### **Other States' Information**

The states surveyed include *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.

Illinois does not allow itemized deduction.

*Massachusetts, Michigan, Minnesota, and New York* allow charitable contribution deductions based on federal and authorize disallowance for lack of donative intent.

None of the states surveyed deny a charitable contribution deduction comparable to the one discussed in this bill.

### **Fiscal Impact**

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved.

### **Economic Impact**

Revenue Discussion:

Because it is difficult to predict the final determination of guilt with regard to a violation of any offense of Title 18 of the United States Code arising out of criminal complaint #19-Cr-10081 and the amounts associated thereof, the FTB is unable to determine the revenue gain at this time. However, for every \$100,000 in charitable contribution deductions disallowed, there would be an estimated \$6,000 of revenue gain.

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.

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<sup>1</sup> [Department of justice](http://www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic), www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic.

## **Policy Concerns**

This bill would deny a deduction for which federal law has no counterpart, thus increasing nonconformity.

Since this bill is retroactive back to 2014, denying a deduction for specific individuals on a prior year tax return may be considered a taking under the United States Constitution.

## **Legislative Staff Contact**

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STATE OF CALIFORNIA  
**Franchise Tax Board**

## **Proposed Amendments**

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**Subject: AB 136 as Amended April 30, 2019**

### **Amendment 1**

**Section 1. Section 17254.4 is amended to read:**

**They are ~~named~~ *charged as a defendant* in Criminal Complaint Number #19-CR-10081-IT filed in the United States District Court of for District of Massachusetts**