



Summary Analysis of Amended Bill

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Subject: Charitable Contribution Deductions

Summary

This bill would disallow a charitable contribution deduction made to a postsecondary institution or to the Key Worldwide Foundation, and a deduction for a business expense related to a payment made to the Edge College and Career Network, Limited Liability Company (LLC), by taxpayers who meet specified conditions, including that they are named in a specified criminal complaint.

Recommendation – No position.

Summary of Amendments

The May 23, 2019, amendments defined new terms, added criminal complaint numbers and intent language, and expanded the deductions to be disallowed. They also resolved the technical consideration and one of the implementation concerns discussed in the department's analysis of the bill as amended on April 1, 2019.

Except for the "Reason for the Bill," "This Bill," "Implementation Considerations," "Fiscal Impact," and "Economic Impact," sections the remainder of the department's analysis of the bill as amended April 1, 2019, still applies. The "Program Background," "Effective/Operative Date," and "Policy Concerns" sections have been restated for convenience.

Reason for the Bill

The reason for the bill is to alert the Franchise Tax Board (FTB) to, and disallow, deductions that were taken in connection with contributions and payments made to postsecondary institutions, the Key Worldwide Foundation (KWF) and the Edge College and Career Network, LLC by specific taxpayers who meet specified conditions.

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, 2014.

This Bill

This bill would, for taxable years beginning on or after January 1, 2014, disallow a deduction for a charitable contribution and a business expense deduction made to an educational organization that is a postsecondary institution, the Key Worldwide Foundation or Edge College and Career Network, LLC, by a taxpayer that meets all of the following conditions:

1. They are charged as a defendant in any of the following criminal complaints filed in the United States District Court for the District of Massachusetts:
 - Criminal Complaint #19-CR-10081-IT
 - Criminal Complaint #19-CR-10078-RWZ
 - Criminal Complaint #19-CR-10075-MLW
 - Criminal Complaint #19-CR-10074-NMG
 - Criminal Complaint #19-cr-10079-RWZ
 - Criminal Complaint #1:19-cr-10117
 - Criminal Complaint #1:19-cr-10115
 - Criminal Complaint #19-cr-10131
 - Criminal Complaint #1:19-cr-10116
 - Criminal Complaint #1-19-cr-10080
2. There is 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.
3. There is a finding that they took the deduction unlawfully pursuant to the final determination of guilt or pursuant to a determination by the FTB.

The bill defines “final determination of guilt” to mean that the defendant has been convicted by verdict of a jury, accepted and recorded by the court; by a finding of the court in a case where a jury has been waived; or by a plea of guilty; and that the defendant has exhausted all appellate remedies involving these criminal matters.

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), whichever is later. Returns for tax year 2014 were due to be filed by April 15, 2015. Generally, the statute of limitations for the FTB to issue assessments for tax year 2014 for returns filed on or before the original due date expired April 15, 2019. However, there are extended statutes of limitations for tax assessments following federal determinations that could apply to allow assessments to be made in these cases. Therefore, the author may want to amend the bill to change the operative date.

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.

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 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.¹

The FBI's investigation is on-going.

Fiscal Impact

No departmental costs are associated with this bill.

¹ [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.

Economic Impact

Revenue Estimate

There would be a revenue gain to the general fund, but the amount is unknown.

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 the criminal complaints as specified in the bill, 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 \$7,000 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.

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 taxpayers involved in these criminal matters on a prior year tax return may be considered a taking under the United States Constitution.

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