STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Quirk-Silva Bill Number: AB 136

Subject: Charitable Contribution Deductions

Summary

This bill would disallow a charitable contribution deduction made to a postsecondary institution or to the Key Worldwide Foundation (KWF), 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.

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 KWF.

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.

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 Internal Revenue Service (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 Franchise Tax Board (FTB) to assess tax.

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 KWF 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.

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.

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

No departmental costs are associated with this bill.

Economic Impact

Revenue Estimate

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

[1] Department of justice, www.justice.gov/usao-ma/pr/arrests-made-nationwide-college-admissions-scam-alleged-exam-cheating-athletic.

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.

Appointments

None.

Votes

Location	**Date**	**Yes Votes**	**No Votes**
Concurrence	September 5, 2019	77	0
Senate Floor	September 3, 2019	40	0
Assembly Floor	May 29, 2019	76	0

Legislative Staff Contact

Contact	**Work**
Julie Lee Acting Agency Secretary	(916) 651-9011
Christina Spagnoli Deputy Secretary, Legislation	(916) 651-9373
Selvi Stanislaus Executive Officer, FTB	(916) 845-4543
Jahna Carlson Asst. Legislative Director, FTB	(916) 845-5386