



## Summary Analysis of Amended Bill

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Sponsor:

Bill Number: AB 211

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Amended: June 13, 2019

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Related Bills: See Prior Analysis

**Subject:** Qualified Tuition Program Deduction

### Summary

This bill would, under the Personal Income Tax Law (PITL), allow a qualified taxpayer a deduction from gross income for contributions to a qualified tuition program.

**Recommendation – No position.**

### Summary of Amendments

The June 13, 2019, amendments added a coauthor, a defined term, and a recapture provision, modified a defined term and the indexing provision” and made other technical changes.

As a result of the amendments, two of the implementation considerations discussed in the department's analysis of the bill as amended May 16, 2019, were resolved and a new implementation concern was identified. Except for the “This Bill,” “Implementation Considerations,” “Fiscal Impact,” and “Economic Impact” sections, the remainder of the department's analysis of the bill as introduced May 16, 2019, still applies. The “Effective/Operative Date,” “Technical Considerations,” and “Policy Concerns” sections have been restated below for convenience.

### 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, 2020, and before January 1, 2025.

### This Bill

This bill would, under the PITL for taxable years beginning on or after January 1, 2020, and before January 1, 2025, allow an above-the-line deduction in an amount equal to the monetary contribution made by a qualified taxpayer during the taxable year to one or more accounts established pursuant to the California qualified tuition program on behalf of a beneficiary.

The deduction amount would be limited as follows:

- For a qualified taxpayer who is a head of household, a surviving spouse, or a married couple filing a joint return, \$10,000.
- For a qualified taxpayer filing a return other than described above, \$5,000.

“Monetary contribution” would mean cash contributions<sup>1</sup> to the California qualified tuition program, except for the following:

- Any amount transferred to the California qualified tuition program from a qualified tuition program established pursuant to Internal Revenue Code (IRC) section 529.
- Any amount transferred from the credit of one beneficiary under the California qualified tuition program to the credit of another beneficiary under the California qualified tuition program.

“Qualified taxpayer” would mean:

- An individual, or a married couple if filing jointly, who, on behalf of a beneficiary, contributes money to a qualified tuition program for which the individual, or spouse if a married couple filing jointly, is the account owner and whose adjusted gross income does not exceed:
  - For a qualified taxpayer who is a head of household, a surviving spouse, or a married couple filing a joint return, \$150,000.
  - For a qualified taxpayer filing a return other than described above, \$75,000.

For each taxable year beginning on or after January 1, 2021, the Franchise Tax Board (FTB) would annually be required to adjust for inflation the preceding taxable year's gross income limits in the same manner as the recomputation of the state income tax brackets.

“California qualified tuition program” would mean a qualified tuition program as defined in IRC section 529 and as established pursuant to the Golden State Scholarshare Trust Act.<sup>2</sup>

“Qualified higher education expenses” would mean qualified higher education expenses, as defined in Section 529(e)(3) of the IRC.

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<sup>1</sup> Pursuant to IRC section 529(b)(2), relating to cash contributions.

<sup>2</sup> Commencing with Section 69980 of Chapter 2 of Part 42 of Division 5 of the Education Code.

Taxpayers would be required to add back to gross income the amount of the deduction allowed in taxable years on or after January 1, 2020, and before January 1, 2025, when a distribution in the taxable year of the distribution was in excess of qualified higher education expenses.

For the purposes of IRC section 529(c)(3), relating to distributions, amounts allowed as a deduction under this section would not be treated as investment in the contract in applying IRC section 72, relating to annuities.<sup>3</sup>

A qualified taxpayer would be required to maintain records that are adequate to substantiate any deduction allowed under this section, and would be required, upon request, to provide such records to the FTB.

The FTB could adopt regulations to carry out the purposes of this section. This bill would exempt the FTB's standard, criteria, procedures, determinations, rules, notices, or guidelines from the requirements of the Administrative Procedure Act.

In uncodified law, this bill would require the Scholarshare Investment Board to:

- Collect data on the amount of deductions allowed and income information for taxpayers allowed those deductions, for the taxable year, from the FTB when this data is finalized, but no later than April 1 of the second calendar year following the taxable year.
- Collect data on the total amount of contributions made to "Scholarshare"<sup>4</sup> accounts by March 1 of each calendar year that the deduction may be claimed on a tax return.
- Survey new and existing "Scholarshare" account owners to collect information about their motivation to do all of the following:
  - Open a "Scholarshare" account.
  - Contribute to a "Scholarshare" account.
  - Increase the frequency and amount of contributions to a "Scholarshare" account.
  - Refer a "Scholarshare" account to friends and family.

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<sup>3</sup> California conforms to IRC section 72, with modifications, as of the "specified date" of January 1, 2015.

<sup>4</sup> This term refers to California's qualified tuition program (as described in IRC section 529). Also known as California's college savings plan and California's 529 plan.

- Deliver a report to the Legislature,<sup>5</sup> submitted in compliance with Government Code section 9795, that would include, but not be limited to, prior year and cumulative baseline data and information described above, and the following performance indicators:
  - Number of deductions allowed by FTB.
  - Total dollar amount of deductions allowed by FTB.
  - Number of new “Scholarshare” accounts opened during the calendar year in which the deduction is in effect.

The bill’s provisions would be repealed on December 1, 2025.

### **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’s reporting requirements include the undefined terms “amount of deductions allowed” and “income information for taxpayers allowed those deductions” making it unclear what information the FTB would be required to provide to the Scholarshare Investment Board. For clarity and ease of administration the bill should be amended to specify the deduction and income data the FTB is to provide. Additionally, absent corresponding amendments to the disclosure provisions allowing the FTB to disclose specified additional information to the Scholarshare Investment Board, such disclosure would remain barred.

It is unclear whether a rollover to a qualified tuition program plan would be considered a “distribution in access of qualified tuition expenses” that would trigger the recapture provision. If the author intends to exclude rollovers from one beneficiary of a California qualified tuition program to another beneficiary of a California qualified tuition program from recapture, it is suggested that subdivision (d) of the bill be amended to read:

(d) In the case of any distribution other than a distribution for qualified higher education expenses or a rollover as defined in Section 529(c)(3)(C) of the Internal Revenue Code, related to change in beneficiaries or programs, to a California qualified tuition program the aggregate amount of the deduction allowed under subdivision (a) that reduced the qualified taxpayer’s gross income in any taxable year shall be added to the gross income of the

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<sup>5</sup> On or before July 31 of each calendar year after the year beginning January 1, 2019.

qualified taxpayer in the taxable year of the distribution to the extent that the distribution is attributable to the aggregate amount of contributions for which a deduction is allowed under this section in taxable years beginning on or after January 1, 2020, and before January 1, 2025.

### Technical Considerations

The bill includes reporting requirements in uncodified law. For ease of reference it is recommended that the bill include these requirements in the relevant section of the Revenue and Taxation Code.

### Fiscal Impact

This bill would not significantly impact the department's costs.

### Economic Impact

#### Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 211 as Amended on June 13, 2019  
Assumed Enactment after June 30, 2019

(\$ in Millions)

Fiscal Year	Revenue
2019-2020	-\$5.6
2020-2021	-\$12.0
2021-2022	-\$13.0

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

Based on IRC section 529 College Savings Plan data from the College Savings Plan Network, there were approximately 300,000 California Scholarshare College Savings Plan accounts in 2017. It is estimated that approximately 90 percent, or 270,000, of accounts are held by California resident taxpayers, and the remaining 30,000 would be held by non-resident taxpayers. The number of accounts is adjusted to reflect changes in the economy over time, resulting in an estimated 380,000 total accounts in

2020. Of those, it is estimated that approximately 60 percent, or 230,000, of account owners would meet the income requirements specified in the bill.

Based on TIAA-CREF Financial Services data, approximately 50 percent of account holders make regular annual contributions. This percentage rises to 58 percent in states with deductions or nonrefundable tax credits for contributions. This estimate assumes 60 percent, or 140,000, of the qualifying account holders would make regular contributions. In addition, it is assumed that 80 percent, or 110,000 taxpayers, would claim the deduction in the first year and 100 percent would claim the deduction each year thereafter. The average contribution is estimated to be \$3,000 per account resulting in an estimated \$330 million in contribution deductions in taxable year 2020. This amount is then multiplied by an average tax rate of 3 percent, for an estimated revenue loss of \$10 million in 2020.

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

### **Policy Concerns**

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

### **Legislative Staff Contact**

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