



Summary Analysis of Amended Bill

Author: Calderon, et al.

Sponsor:

Bill Number: AB 211

Analyst: Toni Arnold

Phone: (916) 845-4743

Amended: August 30, 2019

Attorney: Shane Hofeling

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 August 30, 2019, amendments added a coauthor, excluded specified rollovers in determining whether a distribution is in excess of higher education expenses, added a requirement for the Franchise Tax Board (FTB) to provide data to the Scholarshare Investment Board, and made a technical change to the regulatory authority provision.

As a result of the amendments, the implementation considerations and the technical consideration discussed in the department's analysis of the bill as amended June 13, 2019, were resolved. Except for the "This Bill," "Implementation Considerations," and "Technical Considerations," sections the remainder of the department's analysis of the bill as amended June 13, 2019, still applies. The "Effective/Operative Date," "Fiscal Impact," "Economic Impact," 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 contributions¹ 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 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.²

¹ Pursuant to IRC section 529(b)(2), relating to cash contributions.

² Commencing with Section 69980 of Chapter 2 of Part 42 of Division 5 of the Education Code.

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

Any previous deductions allowed under this bill would be required to be added back to the taxpayer's gross income for any taxable year in which there are distributions in excess of qualified educational expenses for a taxable year to the extent that the distribution is attributable to amounts that were allowed as a deduction that reduced the taxpayer's gross income for that taxable year during the taxable years beginning on or after January 1, 2020, and before January 1, 2025. However, if any portion of the distribution in excess of qualified education expenses is transferred to another California qualified tuition program within 60 days of the distribution, that portion of the distribution amount would be excluded from this add-back provision.

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

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 would be allowed to adopt necessary or appropriate regulations in order to implement this bill. In addition, this bill would exempt any standard, criteria, procedures, determinations, rules, notices, or guidelines issued by the FTB in relation to this bill from the requirements of the Administrative Procedure Act.

The provisions of this bill related to the allowance of a deduction would be repealed by its own terms on December 1, 2025.

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. The FTB would be required to provide this information to the Scholarshare Investment Board upon request.

³ California conforms to IRC section 72, with modifications, as of the “specified date” of January 1, 2015.

- Collect data on the total amount of contributions made to “Scholarshare”⁴ 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.
- Deliver a report to the Legislature,⁵ 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 the FTB.
 - Total dollar amount of deductions allowed by the FTB.
 - Number of new “Scholarshare” accounts opened during the calendar year in which the deduction is in effect.

The FTB would be required to provide information on the amount of deductions allowed and income information for taxpayers allowed those deductions, for the taxable year, to the Scholarshare Investment Board, upon request.

Implementation Considerations

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

Fiscal Impact

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

⁴ 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.

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

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

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

(\$ in Millions)

Fiscal Year	Revenue
2019-2020	-\$5.7
2020-2021	-\$12.0
2021-2022	-\$14.0

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 \$335 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

Toni Arnold
Legislative Analyst, FTB
(916) 845-4743
toni.arnold@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Jahna Carlson
Asst. Legislative Director, FTB
(916) 845-5683
jahna.carlson@ftb.ca.gov