



## **Analysis of Amended Bill**

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Sponsor:

Bill Number: SB 241

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Amended: April 22, 2019, and  
April 29, 2019

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Related Bills: See Legislative  
History

**Subject:** California Voluntary Contribution Program

### **Summary**

This bill, under the Personal Income Tax Law (PITL), would establish the California Voluntary Contribution Program and authorize the Franchise Tax Board (FTB) to administer the program.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

**Recommendation – No position.**

### **Summary of Amendments**

The April 22, 2019, amendments removed provisions of the bill related to the Government Code and replaced them with the provisions discussed in this analysis.

The April 29, 2019, amendments modified a defined term.

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

### **Reason for the Bill**

The reason for this bill is to promote charitable giving and provide individual taxpayers additional options for making voluntary contributions to qualified applicants.

### **Effective/Operative Date**

This bill would become effective and operative January 1, 2020. Taxpayer contribution designations made with respect to this bill would first appear on tax year 2020 returns filed on or after January 1, 2021.

## **State Law**

Current state tax law allows taxpayers to make monetary contributions to any of the 27 voluntary contribution funds listed on the 2018 personal income tax return.

Taxpayers contributing to any of the funds are specifically allowed to deduct those contributions on their state income tax return as a charitable contribution deduction for the taxable year in which the contribution is made.

Generally, funds remain on the return until they are either repealed or fail to meet a minimum contribution amount.

The FTB is required to make the following determinations for each fund by September 1 of each calendar year, beginning on the second calendar year the fund appears on the tax return:

1. The minimum contribution amount required for the fund to remain on the return for the following calendar year, and
2. Whether estimated contributions to the fund will be less than the minimum contribution amount for that calendar year.

If the FTB estimates that contributions to a fund will fail to meet the minimum contribution amount for a calendar year, that fund is repealed effective January 1 of that calendar year.

The following general requirements apply to new or extended voluntary contribution funds:

- The words “voluntary tax contribution” must be included as part of the name of the fund.
- The administering agency’s Internet Web site shall report specific data related to the usage of the amounts received via voluntary contribution.
- A voluntary contribution fund must receive a minimum contribution of \$250,000 for the second calendar year after it first appears on the tax return, and each calendar year thereafter, to remain on the tax return.
- A voluntary tax contribution would remain in effect only until January 1 of the seventh calendar year following the first appearance of the contribution on the tax return, and be repealed as of December 1 of that year.

## **This Bill**

This bill would, under the PITL, establish the California Voluntary Contribution Program (Contribution Program), designate the FTB as the administering agency, and repeal the sunset date applicable to the CA Firefighters Memorial and CA Peace Officer Memorial funds.

Under the Contribution Program, on and after January 1, 2021, an individual would be allowed to designate on the personal income tax return that a contribution in excess of their tax liability, if any, be made as follows:

- To one or more qualified applicants in contribution amounts specified by the individual.
- The contributions shall be in full dollar amounts and may be made individually by each signatory on a joint return.

A designation may be made for any taxable year on the original return for that taxable year, and once made is irrevocable. If payments and credits reported on the return, together with any other credits associated with the individual's account, do not exceed the individual's liability, the return shall be treated as though no designation has been made.

The FTB will be required to revise the tax form of the return to allow for the designation permitted in this bill. The form shall also include in the instructions information that the contribution may be in the amount of one dollar (\$1) or more and that the contribution shall be used to support a designated qualified applicant, as specified by the taxpayer.

### Definitions

For purposes of the California Voluntary Contribution Program, this bill would define the following terms:

- "Board" means the FTB.
- "Charitable organization" means an organization exempt from income tax as an organization described in Section 23701d.
- "Qualified applicant" means a charitable organization that has average gross receipts of one hundred thousand dollars or more, as calculated from each of the three years prior to the date of application, and has done either of the following:
  - Registered in the state with the Attorney General's Registry of Charitable Trusts for each of the three years prior to the date of application and has met each of the requirements that apply to the applicant, under statute and as established by the Attorney General for the Registry of Charitable Trusts.
  - Submitted annual returns or statements with the FTB, pursuant to Section 23771, 23772, or 23774 for each of the three years prior to the date of application.
- "Program" means the California Voluntary Contribution Program established by this article.

### Qualified Applicants

A qualified applicant that wishes to receive voluntary contributions through the program shall submit an application to the board by a date established by the board. The application will include all of the following:

- The bank account information of the charitable organization, including a copy of the organization's tax identification number required to open the bank account.
- Other evidence satisfactory to the board that the applicant is a qualified applicant.
- An application fee, as established by the board, in an amount not to exceed the reasonable regulatory costs of administering the application process.

The board will approve an application if the requirements listed above and other reasonable requirements consistent with this article are met, thereby making a qualified applicant eligible to receive voluntary contributions.

A qualified applicant whose application is approved by the board may continue to receive voluntary contributions if both of the following requirements are met:

- The qualified applicant continues to meet the requirements established by the board for qualified applicants.
- The qualified applicant submits an application for renewal and pays a renewal fee, as determined by the board.

If a qualified applicant is no longer eligible to receive voluntary charitable contributions pursuant to this article, the board shall revoke the eligibility of the qualified applicant.

A qualified applicant whose eligibility is revoked from participation in the program may reapply to the program for subsequent years after one year has passed from the date upon which the qualified applicant's eligibility has been revoked.

### Contributions

This bill would establish within the State Treasury the California Voluntary Contribution Fund to receive contributions designated to qualified applicants pursuant to this bill. The board will notify the Controller of the amount of money paid by individuals in excess of their tax liability and the amount of refund money that individuals have designated to be transferred to the California Voluntary Contribution Fund. The Controller shall transfer from the Personal Income Tax Fund to the California Voluntary Contribution Fund an amount not in excess of the sum of the amounts designated by individuals to qualified applicants pursuant to this article for payment into that fund.

All money transferred to the California Voluntary Contribution Fund shall be continuously appropriated and allocated as follows:

- To the board and the Controller for reimbursement of all reasonable costs incurred in connection with their duties under this article.
- From the board for distribution to each qualified applicant designated by a taxpayer.

All money may be carried over from the year in which it was received and encumbered in any following year effective January 1, 2021.

In the event that no designee is specified or the specified designee is not a qualified applicant, the contribution shall, after reimbursement of the direct actual costs of the board for the collection and administration of funds under this article, be transferred to the board to further the purposes of this article.

In the event an individual designates a contribution to a qualified applicant whose eligibility for receiving voluntary contributions has been revoked, but that was eligible to receive a voluntary contribution for the taxable year in which the designation was made, the contribution shall be distributed to the qualified applicant. In the event an individual designates a contribution to more than one qualified applicant listed on the tax return, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

#### Administrative Requirements

The board will be required to do all of the following:

- Develop the application and related materials to be completed by applicants to participate in the program, including the types of proof necessary to comply with the program.
- Create an individual identification number for each qualified applicant for purposes of the program.
- Create a searchable internet website, accessible to the public that includes the individual identification numbers of each qualified applicant.
- Regularly maintain and update the internet website so that taxpayers wishing to donate a portion or all of their income tax refund may easily search for and locate a qualified applicant's information.
- By regulation, establish reasonable and necessary application and renewal fees in an amount not to exceed the reasonable costs of administering the application and renewal process.

- Revise the personal income tax return form to create a new field to allow taxpayers receiving a tax refund to enter in one or more qualified applicant's identification number and a new field for the donation amount. The new field shall not displace the current voluntary contribution funds on the tax return form, and instead shall supplement the existing funds in order to provide taxpayers with more contribution choices.

On or before September 1, 2026, and on and before September 1 of each year thereafter, determine the top seven grossing voluntary contribution designees based on the amount of voluntary contributions designated on the personal income tax return during the previous calendar year.

Revise the personal income tax form on or before January 1, 2027, and on and before January 1 of each year thereafter to allow for a designation by a taxpayer to any of the top seven grossing voluntary contribution funds, in addition to any voluntary contribution funds established by this part and any designation made by a taxpayer allowed by the establishment of the Contribution Program. These top seven grossing voluntary contribution designees shall be listed on the personal income tax form below any voluntary contribution funds established by this part.

The board may do the following:

- Form an advisory body or related bodies as deemed necessary.
- Contract with other agencies, public or private, as deemed necessary in pursuit of the duties described in this article.
- Adopt regulations necessary for the administration of this article.
- In order to develop the program and sustain the integrity of its operations, the board may adopt policies and guidelines.

On an annual basis, until January 1, 2025, the board would be required to provide to the Legislature, and make publicly available, a report on the program, including goals, a baseline, metrics and targets to track, over time, the effectiveness of efforts to encourage charitable giving. The annual report would be required to include information on total contributions received, administrative and related costs, and total contribution distributed to qualified applicants, and submitted in compliance with Section 9795 of the Government Code.

The board would be required to revise any necessary materials related to the tax return form, including online materials, in order to allow an individual to designate a contribution to one or more qualified applicants. These forms and materials may include, but are not limited to, a separate schedule, booklet, or any other material necessary to inform an individual about qualified applicants and how to make a designation on the personal income tax return.

The California State Auditor may conduct independent financial audits of the program to ensure that the proper charitable organizations are receiving the appropriate amounts designated for allocation to these organizations pursuant to the program. Based on an independent audit conducted, the California State Auditor will prepare a report detailing the review and include any recommendations for improvements. The report will be made available to the public.

Any regulation adopted pursuant to this article would be required to be adopted pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

### **Implementation Considerations**

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill uses terms that are undefined, i.e., "other reasonable requirements" and "other evidence." 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.

An otherwise qualified applicant that was out of compliance with either the Attorney General's Office (AG) or FTB requirements, as specified, would be eligible to participate in the Contribution Program. Additionally, any otherwise qualified applicant that is excluded from both the AG and FTB requirements, as specified, would be ineligible to participate in the Contribution Program (for example, churches). If this is contrary to the author's intent, this bill should be amended.

This bill lacks administrative details necessary to implement the program specified in the bill and determine its impacts to the department's systems, forms, and processes. The bill is silent on the following issues:

- When and how often would a qualified applicant be required to verify with the FTB that the organization continues to meet the requirements of a qualified applicant?
- When and how often would a qualified organization be required to submit a renewal application and the associated fee?
- How would contributions made to a qualified organization during a period when eligibility is revoked be treated? For example, would revocation for purposes of accepting donations made via the Contribution Program begin immediately upon revocation? Begin on January 1, following the revocation?
- Would eligibility revocation be appealed? How, when, and by whom would an appeal be handled?

- To what state fund would the application and renewal fees be transferred and for what purposes could they be used? For example, offset against the costs to administer the Contribution Program?
- The costs to administer the Contribution Program would be offset against contributions made prior to amounts being distributed to the qualified applicants. Because the start-up and on-going costs are expected to be significant, it is unclear whether and how distributions to the qualified applicants could be affected. For example, if the cost to implement the program exceeded contributions, would distributions be held pending an additional appropriation? Would interest accrue during the hold period?
- A funding mechanism for the FTB's start-up and on-going costs to administer the provisions of this bill. Absence of a funding mechanism could delay implementation or require diversion of resources from existing revenue generating workloads.

Depending upon the number of qualified applicants, this bill could cause the department to incur significant costs for programming, printing, and processing costs. The author may wish to consider limiting the maximum number of qualified applicants that may be allowed.

The FTB would be subject to the rulemaking procedures required under the Administrative Procedures Act (APA). Following these procedures may delay the immediate implementation of this bill. To prevent any delay, it is recommended that the author add a provision exempting the FTB from the APA when the FTB is prescribing rules, guidelines, or procedures to carry out the bill's purpose.

### **Legislative History**

SB 1207 (Wolk, et al., 2013/2014) would have modified the current voluntary contribution designation process by establishing the California Voluntary Contributions Program and authorizing the Office of the California Volunteers to administer the program. SB 1207 failed to pass out of the Assembly Appropriations Committee.

### **Other States' Information**

*Illinois, Massachusetts, Michigan, Minnesota, and New York* allow for taxpayer contribution designations on the personal income tax return.

*Florida* does not have a personal income tax but allows contribution designations on the state's motor vehicle registration and renewal forms.



Oregon has a commission, the Oregon Charitable Checkoff Commission, which determines the qualification of entities wishing to receive contribution designations via the tax process by listing on them on a schedule. There were a total of 29 charities listed on the 2018 schedule. An organization may “pre-qualify” by sending application materials as early as possible prior to July 1 in the year of application. In each even-numbered calendar year after an entity is listed the Commission examines the entities’ information from the previous year to ensure they continue to meet the qualifications to be listed for contributions in ensuing biennial years. If the Commission determines that an entity no longer meets the requirements, a notice will be sent to the entity. The entity has 20 days from the notice to request a contested hearing. A contested hearing would be scheduled before an Administrative Law Judge. Every qualified entity must recertify with the Commission every six years.

### **Fiscal Impact**

This bill would impact the department's programming, printing, and processing costs which have yet to be determined, however costs are expected to be significant. As the bill moves through the legislative process, costs will be identified.

### **Economic Impact**

#### Revenue Estimate

To determine the magnitude of the potential impact to the General Fund, both the number of funds added to the return and the amount contributed would need to be known. Since it is difficult to predict the number of funds and the value of future contribution, the revenue loss is unknown. However, it is estimated that for every \$250,000 in donations made each year there would be a revenue loss of \$8,000.

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**

Longstanding concerns have been expressed that an increase in the number of charities listed for donations, could reduce the amount contributed to each listed charity. A limitation on the number of “qualifying applicants” could alleviate this concern.

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