



## Bill Analysis

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Sponsor:

Bill Number: AB 2934

Related Bills: See Legislative  
History

Amended: March 24, 2022

### SUBJECT

Charitable Contribution Deduction for Pro Bono Services

### SUMMARY

This bill, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CLT), would allow a charitable contribution deduction for pro bono services offered by a licensed physician and dentist.

### RECOMMENDATION

No position.

### SUMMARY OF AMENDMENTS

The March 24, 2022, amendments removed provisions related to the definition of a "fiduciary" under the PITL, and added provisions discussed in this analysis.

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

### REASON FOR THE BILL

The reason for this bill is to encourage the provision of pro bono services by dentists and physicians.

### ANALYSIS

This bill, under the PITL and CTL, for taxable years beginning on or after January 1, 2022, and before January 1, 2027, would allow a charitable contribution deduction for pro bono services offered by licensed physicians and dentists. The deduction would be calculated as the amount the taxpayer would ordinarily charge for the time and services contributed at no charge for pro bono patients.

This bill would limit the charitable contribution deduction for pro bono services to the federal percentage established by the Internal Revenue Code (IRC).

This deduction would be repealed by its own terms on December 1, 2027.

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For purposes of complying with Revenue and Taxation Code (RTC) section 41, this bill would require the Franchise Tax Board (FTB) to issue a report to the Legislature by January 10, 2024. The report would detail the number of taxpayers claiming a deduction for the cost of pro bono medical and dental services provided, and the total dollar value of those deductions claimed.

#### *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, 2022, and before January 1, 2027.

#### *Federal/State Law*

Existing state and federal laws allow a deduction from income for charitable contributions. Under certain circumstances an individual is allowed to deduct the fair market value of the property being contributed. Generally, an individual can deduct an amount not to exceed 50 percent of federal adjusted gross income (AGI), depending on the type of property given and the type of charitable organization. For taxable years 2018, through 2025, the federal deduction percentage is increased to 60 percent of federal AGI for specified organizations. State law retains the 50 percent limitation.

The charitable contribution deduction for a corporation is limited to the adjusted basis of the property being contributed. In addition, the amount a corporation can deduct for a charitable contribution in a given year is generally limited to 10 percent of the corporation's net income. A contribution made by either an individual or a business in excess of the percentage limitations may be carried over and deducted in future years.

Current federal and state law allows an individual to claim an itemized deduction for cash and other property 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.

Out-of-pocket unreimbursed expenses made on behalf of a charitable organization that are incidental to rendering services are generally deductible.

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The following are currently not deductible:

- No deduction is allowed for contributions made to individuals or nonqualified organizations or for contributions made for a reason other than for charitable purposes.
- No deduction is allowed for the value of services rendered to a charitable organization.

### *Implementation Considerations*

The department has identified the following implementation considerations, and is available to work with the author's office to resolve these and other considerations that may be identified.

Existing state law incorporates federal IRC charitable contribution provisions, including percentage limitations. As written, it is not clear if the intent is to create a new charitable deduction or to modify state conformity to federal IRC 170 deduction. For clarity and to avoid confusion amongst taxpayers, it is recommended that the bill be amended.

The bill is silent on whether the charitable contribution deduction would be allowed for the physician/dentist or their employers. It is recommended the bill be amended to indicate who would qualify for the deduction.

The amount of the deduction should be clarified as it may result in taxpayer confusion or disputes, for example:

- This bill would allow a charitable deduction for pro bono services provided, equal to the amount the taxpayer would ordinarily charge for the time and services provided. The amount charged for services may vary from taxpayer to taxpayer and may also be subject to service provider agreements. Thus, the amount charged for the same service may be subjective and vary from taxpayer to taxpayer, which could result in different deduction amounts for similarly-situated taxpayers. If this is not the author's intent, the bill should be amended.
- Would the amount include services performed by employees of the physician or dentist? Must the pro bono services be performed during normal work hours, or would any pro bono work qualify?

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This bill requires the FTB to prepare a report on the performance of the deduction allowed by this bills no later than January 10, 2024. If the author's intent is to be able to review a report that contains complete information for the 2022 taxable year, it is recommended that the due date of the report be moved to later in the year, no earlier than May 2024. For instance, the due date for the 2022 Personal income tax return is April 15, 2023, with extension that becomes, October 15, 2023. The department generally needs about six months to complete return processing and compile the data needed to prepare a report. As a result, it is recommended that the due date for the report be no earlier than May of 2024, and continue annually thereafter until two years after the repeal date. If the due date of the report remains unchanged, the report will be based on partial return information available as of the date when the report is prepared.

#### *Technical Considerations*

For consistency of terminology, the following changes are recommended:

Sections 17275.6(a) and 24356.5(a) the term "offered" should be replaced with "contributed."

SEC. 3 (c)(2), relating to the reporting requirements, the first "and" should be removed and replaced with "an".

#### *Policy Considerations*

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense. This bill would allow a personal and business charitable deduction for expenses that may currently be deductible as business expenses. If that is not the author's intent, this deduction should specify that it would be allowed in lieu of any other deduction in order to eliminate multiple tax benefits for the same item of expense.

The bill would allow taxpayers a deduction, regardless of the location where the pro bono services are provided. If this is not the intent, the author may wish to amend the bill to clarify intent.

Charitable donation deductions generally are allowed to taxpayers for property donated, not services. This bill would allow taxpayers a deduction for "time" that is spent providing services, which would be an unprecedented change in tax policy.

#### **LEGISLATIVE HISTORY**

None noted.

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## **PROGRAM BACKGROUND**

None noted.

## **FISCAL IMPACT**

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

## **ECONOMIC IMPACT**

### *Revenue Estimate*

The amount of charitable contribution deductions related to the pro bono services provided by licensed physicians and dentists and the amount of time and medical fees provided for the services cannot be predicted. To determine the magnitude of the potential impact to the General Fund, both the frequency and the dollar amounts of the physician and dentist fees must be known. Because it is difficult to predict the frequency of claims and the value of the physician and dentist fees related to the pro bono medical and dental services provided, the revenue impact is unknown.

## **LEGAL IMPACT**

None noted.

## **APPOINTMENTS**

None noted.

## **SUPPORT/OPPOSITION**

*To be determined.*

## **ARGUMENTS**

To be determined.

## **LEGISLATIVE CONTACT**

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