STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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Sponsor:

Bill Number: AB 2979

Related Bills: See Legislative History

Amended: March 18, 2024

SUBJECT

California Victim Compensation Income Exclusion

SUMMARY

Under the Personal Income Tax Law (PITL), this bill would exclude certain payments by the California Victim Compensation Board (CVCB) from gross income.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March18, 2024, amendments removed intent language and replaced it with the provisions discussed in this analysis.

REASON FOR THE BILL

The reason for the bill is to exclude specified CVCB payments from gross income.

ANALYSIS

This bill would, under the PITL, deem payments made by CVCB pursuant to Government Code (GC) sections 13955, relating to eligibility for compensation, and 13970, relating to indemnification of citizens benefiting the public, to be for the promotion of the general welfare and exclude the payment from the recipients' gross income.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2024.

Federal/State Law

Existing federal and state laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

Existing federal and state laws provide that certain types of income are excluded from gross income, such as amounts received as a gift or inheritance, certain compensation for injuries and sickness, qualified scholarships, educational assistance programs, foster care payments, and interest received on certain state or federal obligations.

Generally, federal and state laws do not specifically exclude from gross income amounts received from CVCB. However, some payments made by the CVCB, such compensation for forced sterilization, are specifically excluded from taxation under the Health and Safety Code (HSC).

Federal Law

Internal Revenue Code (IRC) section 104 excludes from certain amounts received as compensation for injuries or sickness from gross income. This exclusion applies to the following amounts:

1. Amounts received under workmen's compensation acts.
2. Amounts of any damages received (whether by suit or agreement) on account of personal physical injuries or physical sickness.
3. Amount received through accident or health insurance for personal injuries or sickness.
4. Amount received as a pension, annuity, or similar allow for personal injuries or illness resulting from active service in the armed forces, or in the Coast and Geodetic Survey or Public Health Service, or as a disability annuity payment under Section 808 of the Foreign Service act of 1980.
5. Amounts received by an individual as disability income from injuries caused by terroristic or military action.
6. Amount received under federal or state laws for compensation surviving dependents of public safety officers.

Damages under the second exclusion are defined as "an amount received (other than workers' compensation) through prosecution of a legal suit or action, or through a settlement agreement entered into in lieu of prosecution." (Treas. Reg. 1.104-1(c)(1).)

Although not codified in federal law, the Internal Revenue Service (IRS) has applied the "general welfare doctrine" under which gross income under IRC section 61 does not include certain payments made to or on behalf of individuals by governmental units under governmentally provided social benefit programs based on "need." To qualify for exclusion, the payments must:

- Be made pursuant to a governmental program.
- Be for the promotion of the general welfare generally on the basis of "need." Absent the establishment of need, the payments will not qualify for exclusion.
- Not represent compensation for services.

In Revenue Ruling 74-74, the IRS applied the general welfare doctrine to exclude from gross income under IRC section 61 payments made by the New York Crime Victims Compensation Board to victims who suffered personal physical injury as a direct result of a crime or to their surviving spouses or dependents.

State Law

California generally conforms, under the PITL, to IRC section 61 as to the definition of gross income and to the application of the general welfare doctrine. In general, if a payment is excluded from gross income under IRC section 61, it is excluded from gross income for California purposes as well, unless otherwise provided.

California also conforms, in part, to some of the federal statutory exclusions from income. For example, California conforms to IRC section 104, as of January 1, 2015. In addition, there are several examples of current California law specifically excluding victim payments from California gross income. These include the exclusion of restitution payments to victims and survivors of World War II, settlement payments to victims and survivors of the Armenian Genocide, and settlement payments for victims and survivors of the 2015 Butte Fire. (RTC §§ 17131.1, 17131.2, 17138.5.)

Implementation Considerations

None noted.

Technical Considerations

For consistency within the Revenue and Taxation Code, it is recommended that the gross income exclusion language read:

> Gross income does not include any payment received from the California Victim Compensation Board pursuant to Sections 13955 and 13970 of the Government Code.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 1246 (Stern & Valladares, Chapter 841, Statutes of 2022) provided to qualified taxpayers an exclusion from gross income for amounts received from Southern California Edison in settlement for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire and allow refunds of tax previously paid on those amounts.

AB 1249 (Gallagher, Chapter 749, Statutes of 2022) provided an exclusion from gross income for amounts received in settlement under the order of the United States Bankruptcy Court for the Northern District of California dated June 20, 2020, case number 19-30088, docket number 8053 and allowed refunds of tax previously paid on those amounts.

SB 370 (McGuire, et al., 2023/2024) would provide, to qualified taxpayers, an exclusion from gross income for amounts received in settlement in connection with the 2019 Kincade Fire. SB 370 is currently in the Assembly Revenue and Taxation Committee.

SB 542 (Dahle & Dahle, 2023/2024) under the PITL and the CTL, would provide a qualified taxpayer an exclusion from gross income for amounts received from a settlement entity in connection with the 2021 Dixie Fire or the 2022 Mill Fire. SB 542 is currently in the Assembly Appropriations Committee.

SB 927 (Dahle, et al., 2023/2024) under the PITL and the CTL, would provide a taxpayer an exclusion from gross income for qualified amounts received in settlement to replace property damaged or destroyed in a natural disaster declared a state of emergency by the Governor and the President of the United States. SB 927 is currently in the Senate Appropriations Committee.

PROGRAM BACKGROUND

The CVCB administers programs that provide compensation to victims of violent crime for the losses they suffer as a direct result of criminal acts. The CVCB also makes payments to private citizen claimants who took a direct action that benefited the public by preventing a crime or rescuing a person in immediate danger. The CVCB awards payments to victims and derivative victims who suffer injuries or death as a direct result of certain crimes. To be eligible, victims must meet specific criteria and file a timely application with the CVCB. Victims can receive up to $70,000 for medical bills, mental health treatment, and other expenses. CVCB only pays for expenses that are not reimbursed by other sources.

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

If it is determined that the California Victim Compensation Board payments would be exempt under federal law, given our conformity with the IRC section 61, those payments would also be exempt under state law. With the assumption that these payments are exempt under current state law, there would be no revenue impact.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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