Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Speier | Analyst: Jeff Garnier | Bill Number: SB 49

Related Bills: See Legislative History | Telephone: 845-5322 | Introduced Date: December 14, 2000

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: Conformity/ Contributions of Publicly Traded Stock to Private Foundations

SUMMARY

For the 2001 through the 2003 taxable year, this bill would allow a taxpayer that contributes publicly traded stock to certain private foundations to deduct the fair market value (FMV) of the stock instead of the taxpayer's basis in the stock. This bill would conform California law to federal law on this issue.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon signature and would be operative for taxable years beginning on or after January 1, 2001. The provisions in this bill would sunset January 1, 2004.

LEGISLATIVE HISTORY

SB 1300 (1997-98) and SB 1760 (1999-2000) would have conformed the Personal Income Tax Law (PITL) to the federal treatment of publicly traded stock to private foundations. The income tax provisions in SB 1300 were amended out and SB 1760 failed passage from the Senate Appropriation Committee.

SPECIFIC FINDINGS

Existing state and federal laws allow deductions from income for charitable contributions. Individuals generally can deduct amounts up to 30% of their adjusted gross income for contributions to qualified charities. Corporations can deduct amounts up to 10% of their taxable income.

Under federal law, taxpayers generally are allowed to deduct the FMV of property, including certain appreciated property contributed to a charitable organization, other than private foundations. However, in the case of a charitable contribution of inventory, other ordinary income property, or short-term capital gain property, the amount of the deduction is limited to the taxpayer’s basis in the property.

The California PITL conforms to federal law for gifts of all types of property. **Under the Bank and Corporation Tax Law** (B&CTL), a taxpayer’s charitable contribution deduction is limited to the taxpayer's adjusted basis in the property, regardless of the type of property donated.

Board Position:			Department Director	Date
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Under **federal and state laws,** the amount of the charitable contribution deduction for gifts of appreciated property to private foundations is generally limited to the taxpayer's basis in the property. Under **federal law** since 1984**,** a gift of qualified appreciated stock to a private foundation is not limited to the taxpayer's basis in the stock, but instead the entire FMV of the stock is deductible as a contribution. Qualified appreciated stock is defined as stock for which market quotations are readily available on an established securities market (the stock must be publicly traded). When the federal provision for contributions of publicly traded stock to private foundations was enacted in 1984; it contained a sunset date of December 31, 1994. The federal provision was thereafter extended in increments of 12 to 18 months. In 1998, the special provision for the donation of publicly traded stock to private foundations became permanent under federal law.

California law, under the PITL, conformed to the federal rule regarding the deduction for a contribution of publicly traded stock to private foundations until its federal sunset on December 31, 1994. California has not conformed to any of the subsequent federal law extensions of that sunset date or the 1998 federal change making the special rule permanent. Therefore, under current **California law**, the amount of any charitable contribution to private foundations is generally limited to the taxpayer's basis in the property being donated.

For the 2001 through the 2003 taxable years, **this bill** would conform the PITL and B&CTL to existing federal law by temporarily allowing the amount of a charitable contribution of publicly traded stock to a private foundation to be the FMV of the stock. Under current B&CTL, the deduction for gifts of publicly traded stock or any other piece of appreciated property to a charity, other than a private foundation, would still be limited to the taxpayer’s adjusted basis in the property (see technical considerations below). Additionally, current law would still provide that any amount of the contribution deduction in excess of the taxpayer's basis in the property is subject to the alternative minimum tax.

Policy Considerations

Conforming California law to federal law simplifies the preparation of California tax returns. This bill conforms to a federal provision, thus making the preparation of California tax returns easier for some taxpayers.

Technical Considerations

Statutes are generally written to sunset with a repeal date at the end of a specific taxable year to allow fiscal year filers to utilize the provision for the same number of years as calendar year filers. However, this bill would sunset the provision at the end of calendar year 2003, thus precluding fiscal year filers from being able to utilize the provisions of this bill in the 2003 taxable year.

Under the B&CTL, the bill would adopt federal law by conforming to Internal Revenue Code (IRC) §170(e)(5) by reference. IRC §170(e)(5) provides that IRC 170(e)(1) (which provides that the deduction for gifts of appreciated property to private foundations is limited to the taxpayer's adjusted basis in the property) in the case of gifts of publicly traded stock does not apply. The B&CTL does not conform to IRC §170(e)(1) by reference. IRC §170(e)(1) has been adopted, with modifications, by stand-alone language. Adopting IRC 170(e)(5) by reference does not modify or otherwise override the B&CTL stand-alone language conforming to IRC §170(e)(1). Therefore, this bill would not permit the FMV of the publicly traded stock as a deduction under the B&CTL.

The author's office has indicated that amendments will be made to the bill addressing the technical concerns.

FISCAL IMPACT

Departmental Costs

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

Tax Revenue Estimate

Net revenue losses are estimated as follows:

Fiscal Year Cash Flow Impact Effective 1/1/01 Enacted after June 30, 2001 (In Millions)				
	2001-02	2002-03	2003-04	2004-05
Deduction of Publicly Traded Stock	-$7	-$7	-$6	-$2

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

This estimate reflects the current trend of increased fair market values associated with publicly traded stock. The interaction of the AMT preference item for charitable contributions of appreciated property is included in this estimate. Also included is the estimated effect of the timing of potential audit adjustments for this issue. The estimate for 2004-05 includes the impact of fiscal year filers and potential contribution carryovers. The impact of contribution carryovers in succeeding years is expected to be minor.

BOARD POSITION

Pending.