

Introduced by Senator De León

February 24, 2012

An act to add and repeal Sections 17053.86 and 23686 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1356, as introduced, De León. Income taxes: credits: contributions to education funds.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill, under both laws, for taxable years beginning on or after January 1, 2013, and before January 1, 2018, would allow a credit equal to 65% of a contribution to the Higher Education Investment Tax Credit Program Special Fund, established by this bill, for specified education purposes, as provided. This bill would specify that the aggregate amount of credit that may be allocated under both laws shall not exceed \$500,000,000 for each calendar year.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17053.86 is added to the Revenue and
2 Taxation Code, to read:
3 17053.86. (a) (1) For each taxable year beginning on or after
4 January 1, 2013, and before January 1, 2018, there shall be allowed
5 a credit against the "net tax," as defined in Section 17039, an

1 amount equal to 65 percent of the amount contributed during the
2 taxable year to the Higher Education Investment Tax Credit
3 Program Special Fund.

4 (2) Contributions shall be made only in cash.

5 (b) (1) The aggregate amount of credit that may be allocated
6 pursuant to this section and Section 23686 shall not exceed five
7 hundred million dollars (\$500,000,000) for the 2013 calendar year
8 and five hundred million dollars (\$500,000,000) for each calendar
9 year thereafter.

10 (2) (A) Credit under this section and Section 23686 shall be
11 allowed only for credits claimed on timely filed original returns
12 received by the Franchise Tax Board on or before the cut-off date
13 established by the Franchise Tax Board and shall be allocated on
14 a first-come-first-served basis. The date a return is received shall
15 be determined by the Franchise Tax Board.

16 (B) For purposes of this subdivision, the cut-off date shall be
17 the last day of the calendar quarter within which the Franchise Tax
18 Board estimates it will have received timely filed original returns
19 claiming credits under this section and Section 23686 totaling five
20 hundred million dollars (\$500,000,000) for the calendar year.

21 (3) (A) The determinations of the Franchise Tax Board with
22 respect to the cut-off date, the date a return is received, and whether
23 a return has been timely filed for purposes of this subdivision shall
24 not be reviewed in any administrative or judicial proceeding.

25 (B) Any disallowance of a credit claimed due to a determination
26 under this subdivision, including the application of the limitation
27 specified in paragraph (1), shall be treated as a mathematical error
28 appearing on the return. Any amount of tax resulting from such
29 disallowance may be assessed by the Franchise Tax Board in the
30 same manner as provided by Section 19051.

31 (4) The Franchise Tax Board shall periodically provide notice
32 on its Internet Web site with respect to the amount of credit under
33 this section and Section 23686 claimed on timely filed original
34 returns received by the Franchise Tax Board.

35 (c) (1) In the case where the credit allowed by this section
36 exceeds the “net tax,” the excess may be carried over to reduce
37 the “net tax” in the following year, and succeeding five years if
38 necessary, until the credit is exhausted.

1 (2) A deduction shall not be allowed under this part for amounts
2 taken into account under this section in calculating the credit
3 allowed by this section.

4 (d) (1) The Higher Education Investment Tax Credit Program
5 Special Fund is hereby created as a special fund in the State
6 Treasury. All revenue in this special fund, upon appropriation by
7 the Legislature, shall be allocated to the Student Aid Commission
8 for the administration of the Cal Grant Program.

9 (2) The tax credit allowed by subdivision (a) of this section and
10 subdivision (a) of Section 23686 for donations to the Higher
11 Education Investment Tax Credit Program Special Fund shall be
12 known as the Higher Education Investment Tax Credit Program.

13 (e) (1) The Franchise Tax Board may prescribe rules, guidelines,
14 or procedures necessary or appropriate to carry out the purposes
15 of this section, including any guidelines regarding the limitation
16 on total credits allowable under this section and Section 23686.

17 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
18 Division 3 of Title 2 of the Government Code does not apply to
19 any standard, criterion, procedure, determination, rule, notice, or
20 guideline established or issued by the Franchise Tax Board
21 pursuant to this section.

22 (f) This section shall remain in effect only until December 1,
23 2018, and as of that date is repealed.

24 SEC. 2. Section 23686 is added to the Revenue and Taxation
25 Code, to read:

26 23686. (a) (1) For each taxable year beginning on or after
27 January 1, 2013, and before January 1, 2018, there shall be allowed
28 a credit against the "tax," as defined in Section 23036, an amount
29 equal to 65 percent of the amount contributed during the taxable
30 year to the Higher Education Investment Tax Credit Program
31 Special Fund, created by subdivision (d) of Section 17053.86.

32 (2) Contributions shall be made only in cash.

33 (b) (1) The aggregate amount of credit that may be allocated
34 pursuant to this section and Section 17053.86 shall not exceed five
35 hundred million dollars (\$500,000,000) for the 2013 calendar year
36 and five hundred million dollars (\$500,000,000) for each calendar
37 year thereafter.

38 (2) (A) Credit under this section and Section 17053.86 shall be
39 allowed only for credits claimed on timely filed original returns
40 received by the Franchise Tax Board on or before the cut-off date

1 established by the Franchise Tax Board and shall be allocated on
2 a first-come-first-served basis. The date a return is received shall
3 be determined by the Franchise Tax Board.

4 (B) For purposes of this subdivision, the cut-off date shall be
5 the last day of the calendar quarter within which the Franchise Tax
6 Board estimates it will have received timely filed original returns
7 claiming credits under this section and Section 17053.86 totaling
8 five hundred million dollars (\$500,000,000) for the calendar year.

9 (3) (A) The determinations of the Franchise Tax Board with
10 respect to the cut-off date, the date a return is received, and whether
11 a return has been timely filed for purposes of this subdivision shall
12 not be reviewed in any administrative or judicial proceeding.

13 (B) Any disallowance of a credit claimed due to a determination
14 under this subdivision, including the application of the limitation
15 specified in paragraph (1), shall be treated as a mathematical error
16 appearing on the return. Any amount of tax resulting from such
17 disallowance may be assessed by the Franchise Tax Board in the
18 same manner as provided by Section 19051.

19 (4) The Franchise Tax Board shall periodically provide notice
20 on its Internet Web site with respect to the amount of credit under
21 this section and Section 17053.86 claimed on timely filed original
22 returns received by the Franchise Tax Board.

23 (c) (1) In the case where the credit allowed by this section
24 exceeds the “tax,” the excess may be carried over to reduce the
25 “tax” in the following year, and succeeding five years if necessary,
26 until the credit is exhausted.

27 (2) A deduction shall not be allowed under this part for amounts
28 taken into account under this section in calculating the credit
29 allowed by this section.

30 (d) (1) The Franchise Tax Board may prescribe rules,
31 guidelines, or procedures necessary or appropriate to carry out the
32 purposes of this section, including any guidelines regarding the
33 limitation on total credits allowable under this section and Section
34 17053.86.

35 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
36 Division 3 of Title 2 of the Government Code does not apply to
37 any standard, criterion, procedure, determination, rule, notice, or
38 guideline established or issued by the Franchise Tax Board
39 pursuant to this section.

- 1 (e) This section shall remain in effect only until December 1,
- 2 2018, and as of that date is repealed.
- 3 SEC. 3. This act provides for a tax levy within the meaning of
- 4 Article IV of the Constitution and shall go into immediate effect.

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