

AMENDED IN SENATE MAY 1, 2012
AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1356

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.

LEGISLATIVE COUNSEL'S DIGEST

SB 1356, as amended, 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~~ 2016, would allow a credit equal to ~~65%~~ *a certain percentage* 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, *and would require the Treasurer to perform certain duties with regard to allocating and certifying the tax credits allowed under these provisions.*

This bill would become operative only if SB 1466 of the 2011–12 Regular Session is enacted and takes effect on or before January 1, 2013.

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~~ 2016, there shall be
5 allowed a credit against the “net tax,” as defined in Section 17039,
6 an amount equal to ~~65 percent of the amount contributed during~~
7 ~~the taxable year to the Higher Education Investment Tax Credit~~
8 ~~Program Special Fund.~~ *the following:*

9 (A) *For taxable years on and after January 1, 2013, and before*
10 *January 1, 2014, 60 percent of the amount contributed by the*
11 *taxpayer during the 2013 taxable year to the Higher Education*
12 *Investment Tax Credit Program Special Fund, as allocated and*
13 *certified by the Treasurer.*

14 (B) *For taxable years on and after January 1, 2014, and before*
15 *January 1, 2015, 55 percent of the amount contributed by the*
16 *taxpayer during the 2014 taxable year to the Higher Education*
17 *Investment Tax Credit Program Special Fund, as allocated and*
18 *certified by the Treasurer.*

19 (C) *For taxable years on and after January 1, 2015, and before*
20 *January 1, 2016, 50 percent of the amount contributed by the*
21 *taxpayer during the 2015 taxable year to the Higher Education*
22 *Investment Tax Credit Program Special Fund, as allocated and*
23 *certified by the Treasurer.*

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

25 (b) (1) The aggregate amount of credit that may be allocated
26 *and certified* pursuant to this section and Section 23686 shall not
27 exceed five hundred million dollars (\$500,000,000) for the 2013
28 calendar year and five hundred million dollars (\$500,000,000) for
29 each calendar year thereafter.

30 ~~(2) (A) Credit under this section and Section 23686 shall be~~
31 ~~allowed only for credits claimed on timely filed original returns~~
32 ~~received by the Franchise Tax Board on or before the cut-off date~~
33 ~~established by the Franchise Tax Board and shall be allocated on~~
34 ~~a first-come-first-served basis. The date a return is received shall~~
35 ~~be determined by the Franchise Tax Board.~~

36 (B) ~~For purposes of this subdivision, the cut-off date shall be~~
37 ~~the last day of the calendar quarter within which the Franchise Tax~~
38 ~~Board estimates it will have received timely filed original returns~~

1 ~~claiming credits under this section and Section 23686 totaling five~~
2 ~~hundred million dollars (\$500,000,000) for the calendar year.~~

3 (2) (A) *For purposes of this section, the Treasurer shall do all*
4 *of the following:*

5 (i) *On or after January 1, 2013, and before January 1, 2016,*
6 *allocate and certify tax credits to taxpayers under this section.*

7 (ii) *Establish a procedure for taxpayers to contribute to the*
8 *Higher Education Investment Tax Credit Program Special Fund*
9 *and to obtain from the Treasurer a certification for the credit*
10 *allowed by this section.*

11 (iii) *On or after January 1, 2013, and before January 1, 2015,*
12 *notify the taxpayer within seven days of receipt of a contribution*
13 *of the contribution amount that is eligible for a credit. If the*
14 *allocation and certification would be limited or denied because*
15 *the five hundred million dollar (\$500,000,000) cap set forth in*
16 *paragraph (1) of subdivision (b) has been reached, the Treasurer*
17 *shall offer the taxpayer a choice between either the return of the*
18 *contribution or the receipt of the certification for the next taxable*
19 *year.*

20 (iv) *On or after January 1, 2015, and before January 1, 2016,*
21 *notify the taxpayer within seven days of receipt of a contribution,*
22 *the contribution amount that is eligible for a credit. If the allocation*
23 *and certification would be limited or denied because the five*
24 *hundred million dollar (\$500,000,000) cap set forth in paragraph*
25 *(1) of subdivision (b) has been reached, the Treasurer shall offer*
26 *the taxpayer the option of a return of all of the contribution or the*
27 *portion of the contribution that would be limited, as applicable.*

28 (v) *Provide to the Franchise Tax Board a copy of each credit*
29 *certificate issued for the calendar year by March 1 of the calendar*
30 *year immediately following the year in which those certificates*
31 *are issued.*

32 (3) (A) *The determinations of the Franchise Tax Board with*
33 *respect to the ~~cut-off date~~ disallowance of a credit, the date a return*
34 *is received, and whether a return has been timely filed for purposes*
35 *of this subdivision shall not be reviewed in any administrative or*
36 *judicial proceeding.*

37 (B) *Any disallowance of a credit claimed due to a determination*
38 *under this subdivision, including the application of the limitation*
39 *specified in paragraph (1), shall be treated as a mathematical error*
40 *appearing on the return. Any amount of tax resulting from such*

1 disallowance may be assessed by the Franchise Tax Board in the
2 same manner as provided by Section 19051.

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

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

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

14 (d) (1) The Higher Education Investment Tax Credit Program
15 Special Fund is hereby created as a special fund in the State
16 Treasury. All revenue in this special fund, upon appropriation by
17 the Legislature, shall be allocated to the Student Aid Commission
18 for purposes of awarding Cal Grants to students ~~eligible~~ pursuant
19 to Section 69432.75 of the Education Code.

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

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

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

33 (f) This section shall remain in effect only until December 1,
34 2018 2016, and as of that date is repealed.

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

37 23686. (a) (1) For each taxable year beginning on or after
38 January 1, 2013, and before January 1, 2018 2016, there shall be
39 allowed a credit against the “tax,” as defined in Section 23036, an
40 amount equal to ~~65 percent of the amount contributed during the~~

1 taxable year to the Higher Education Investment Tax Credit
2 Program Special Fund, created by subdivision (d) of Section
3 17053.86: the following:

4 (A) For taxable years on and after January 1, 2013, and before
5 January 1, 2014, 60 percent of the amount contributed by the
6 taxpayer during the 2013 taxable year to the Higher Education
7 Investment Tax Credit Program Special Fund, as allocated and
8 certified by the Treasurer.

9 (B) For taxable years on and after January 1, 2014, and before
10 January 1, 2015, 55 percent of the amount contributed by the
11 taxpayer during the 2014 taxable year to the Higher Education
12 Investment Tax Credit Program Special Fund, as allocated and
13 certified by the Treasurer.

14 (C) For taxable years on and after January 1, 2015, and before
15 January 1, 2016, 50 percent of the amount contributed by the
16 taxpayer during the 2015 taxable year to the Higher Education
17 Investment Tax Credit Program Special Fund, as allocated and
18 certified by the Treasurer.

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

20 (b) (1) The aggregate amount of credit that may be allocated
21 and certified pursuant to this section and Section 17053.86 shall
22 not exceed five hundred million dollars (\$500,000,000) for the
23 2013 calendar year and five hundred million dollars (\$500,000,000)
24 for each calendar year thereafter.

25 ~~(2) (A) Credit under this section and Section 17053.86 shall be~~
26 ~~allowed only for credits claimed on timely filed original returns~~
27 ~~received by the Franchise Tax Board on or before the cut-off date~~
28 ~~established by the Franchise Tax Board and shall be allocated on~~
29 ~~a first-come-first-served basis. The date a return is received shall~~
30 ~~be determined by the Franchise Tax Board.~~

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

36 (2) (A) For purposes of this section, the Treasurer shall do all
37 of the following:

38 (i) On or after January 1, 2013, and before January 1, 2016,
39 allocate and certify tax credits to taxpayers under this section.

1 (ii) Establish a procedure for taxpayers to contribute to the
2 Higher Education Investment Tax Credit Program Special Fund
3 and to obtain from the Treasurer a certification for the credit
4 allowed by this section.

5 (iii) On or after January 1, 2013, and before January 1, 2015,
6 notify the taxpayer within seven days of receipt of a contribution
7 of the contribution amount that is eligible for a credit. If the
8 allocation and certification would be limited or denied because
9 the five hundred million dollar (\$500,000,000) cap set forth in
10 paragraph (1) of subdivision (b) has been reached, the Treasurer
11 shall offer the taxpayer a choice between either the return of the
12 contribution or the receipt of the certification for the next taxable
13 year.

14 (iv) On or after January 1, 2015, and before January 1, 2016,
15 notify the taxpayer within seven days of receipt of a contribution,
16 the contribution amount that is eligible for a credit. If the allocation
17 and certification would be limited or denied because the five
18 hundred million dollar (\$500,000,000) cap set forth in paragraph
19 (1) of subdivision (b) has been reached, the Treasurer shall offer
20 the taxpayer the option of a return of all of the contribution or the
21 portion of the contribution that would be limited, as applicable.

22 (v) Provide to the Franchise Tax Board a copy of each credit
23 certificate issued for the calendar year by March 1 of the calendar
24 year immediately following the year in which those certificates
25 are issued.

26 (3) (A) The determinations of the Franchise Tax Board with
27 respect to the ~~cut-off date~~ disallowance of a credit, the date a return
28 is received, and whether a return has been timely filed for purposes
29 of this subdivision shall not be reviewed in any administrative or
30 judicial proceeding.

31 (B) Any disallowance of a credit claimed due to a determination
32 under this subdivision, ~~including the application of the limitation~~
33 ~~specified in paragraph (1)~~, shall be treated as a mathematical error
34 appearing on the return. Any amount of tax resulting from such
35 disallowance may be assessed by the Franchise Tax Board in the
36 same manner as provided by Section 19051.

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

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

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

8 (d) (1) The Franchise Tax Board may prescribe rules,
9 guidelines, or procedures necessary or appropriate to carry out the
10 purposes of this section, including any guidelines regarding the
11 limitation on total credits allowable under this section and Section
12 17053.86.

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

18 (e) This section shall remain in effect only until December 1,
19 ~~2018~~ 2016, and as of that date is repealed.

20 SEC. 3. This act shall become operative only if Senate Bill
21 1466 of the 2011–12 Regular Session is enacted and takes effect
22 on or before January 1, 2013.