

AMENDED IN SENATE MAY 29, 2012

AMENDED IN SENATE MAY 1, 2012

AMENDED IN SENATE APRIL 9, 2012

**SENATE BILL**

**No. 1356**

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**Introduced by Senator De León**

February 24, 2012

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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, 2016, would allow a credit equal to a certain percentage of a contribution to the Higher Education Investment Tax Credit Program Special Fund, established by this bill, for *the General Fund and* 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~~ \$100,000,000 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, 2016, there shall be allowed  
 5 a credit against the “net tax,” as defined in Section 17039, an  
 6 amount equal to the following:  
 7 (A) For taxable years on and after January 1, 2013, and before  
 8 January 1, 2014, 60 percent of the amount contributed by the  
 9 taxpayer during the 2013 taxable year to the Higher Education  
 10 Investment Tax Credit Program Special Fund, as allocated and  
 11 certified by the Treasurer.  
 12 (B) For taxable years on and after January 1, 2014, and before  
 13 January 1, 2015, 55 percent of the amount contributed by the  
 14 taxpayer during the 2014 taxable year to the Higher Education  
 15 Investment Tax Credit Program Special Fund, as allocated and  
 16 certified by the Treasurer.  
 17 (C) For taxable years on and after January 1, 2015, and before  
 18 January 1, 2016, 50 percent of the amount contributed by the  
 19 taxpayer during the 2015 taxable year to the Higher Education  
 20 Investment Tax Credit Program Special Fund, as allocated and  
 21 certified by the Treasurer.  
 22 (2) Contributions shall be made only in cash.  
 23 (b) (1) The aggregate amount of credit that may be allocated  
 24 and certified pursuant to this section and Section 23686 shall not  
 25 exceed—~~five one~~ hundred million dollars—~~(\$500,000,000)~~  
 26 *(\$100,000,000)* for the 2013 calendar year and ~~five one~~ hundred  
 27 million dollars—~~(\$500,000,000)~~ *(\$100,000,000)* for each calendar  
 28 year thereafter.  
 29 (2) (A) For purposes of this section, the Treasurer shall do all  
 30 of the following:  
 31 (i) On or after January 1, 2013, and before January 1, 2016,  
 32 allocate and certify tax credits to taxpayers under this section.  
 33 (ii) Establish a procedure for taxpayers to contribute to the  
 34 Higher Education Investment Tax Credit Program Special Fund

1 and to obtain from the Treasurer a certification for the credit  
2 allowed by this section.

3 (iii) On or after January 1, 2013, and before January 1, 2015,  
4 notify the taxpayer within seven days of receipt of a contribution  
5 of the contribution amount that is eligible for a credit. If the  
6 allocation and certification would be limited or denied because  
7 the ~~five~~ *one* hundred million dollar ~~(\$500,000,000)~~ *(\$100,000,000)*  
8 cap set forth in paragraph (1) of subdivision (b) has been reached,  
9 the Treasurer shall offer the taxpayer a choice between either the  
10 return of the contribution or the receipt of the certification for the  
11 next taxable year.

12 (iv) On or after January 1, 2015, and before January 1, 2016,  
13 notify the taxpayer within seven days of receipt of a contribution,  
14 the contribution amount that is eligible for a credit. If the allocation  
15 and certification would be limited or denied because the ~~five~~ *one*  
16 hundred million dollar ~~(\$500,000,000)~~ *(\$100,000,000)* cap set  
17 forth in paragraph (1) of subdivision (b) has been reached, the  
18 Treasurer shall offer the taxpayer the option of a return of all of  
19 the contribution or the portion of the contribution that would be  
20 limited, as applicable.

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

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

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

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 purposes of awarding Cal Grants to students pursuant to Section~~  
9 ~~69432.75 of the Education Code. fund shall be allocated as follows:~~

10 (A) *First, to the General Fund in an amount equal to the amount*  
11 *of certified credits allowed pursuant to this section and Section*  
12 *23686 for the taxable year.*

13 (B) *Second, revenues shall be allocated, upon appropriation by*  
14 *the Legislature:*

15 (i) *To the Franchise Tax Board, the Treasurer, the Controller,*  
16 *and the Student Aid Commission for reimbursement of all*  
17 *administrative costs incurred by these agencies in connection with*  
18 *their duties under this section, Section 23686, and Section 69432.75*  
19 *of the Education Code.*

20 (ii) *To the Student Aid Commission for purposes of awarding*  
21 *Cal Grants to students pursuant to Section 69432.75 of the*  
22 *Education Code.*

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

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

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

36 (f) This section shall remain in effect only until December 1,  
37 2016, and as of that date is repealed.

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

1 23686. (a) (1) For each taxable year beginning on or after  
2 January 1, 2013, and before January 1, 2016, there shall be allowed  
3 a credit against the “tax,” as defined in Section 23036, an amount  
4 equal to the following:

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

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

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

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

21 (b) (1) The aggregate amount of credit that may be allocated  
22 and certified pursuant to this section and Section 17053.86 shall  
23 not exceed ~~five~~ *one* hundred million dollars ~~(\$500,000,000)~~  
24 *(\$100,000,000)* for the 2013 calendar year and ~~five~~ *one* hundred  
25 million dollars ~~(\$500,000,000)~~ *(\$100,000,000)* for each calendar  
26 year thereafter.

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

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

31 (ii) Establish a procedure for taxpayers to contribute to the  
32 Higher Education Investment Tax Credit Program Special Fund  
33 and to obtain from the Treasurer a certification for the credit  
34 allowed by this section.

35 (iii) On or after January 1, 2013, and before January 1, 2015,  
36 notify the taxpayer within seven days of receipt of a contribution  
37 of the contribution amount that is eligible for a credit. If the  
38 allocation and certification would be limited or denied because  
39 the ~~five~~ *one* hundred million dollar ~~(\$500,000,000)~~ *(\$100,000,000)*  
40 cap set forth in paragraph (1) of subdivision (b) has been reached,

1 the Treasurer shall offer the taxpayer a choice between either the  
2 return of the contribution or the receipt of the certification for the  
3 next taxable year.

4 (iv) On or after January 1, 2015, and before January 1, 2016,  
5 notify the taxpayer within seven days of receipt of a contribution,  
6 the contribution amount that is eligible for a credit. If the allocation  
7 and certification would be limited or denied because the ~~five one~~  
8 hundred million dollar ~~(\$500,000,000)~~ (\$100,000,000) cap set  
9 forth in paragraph (1) of subdivision (b) has been reached, the  
10 Treasurer shall offer the taxpayer the option of a return of all of  
11 the contribution or the portion of the contribution that would be  
12 limited, as applicable.

13 (v) Provide to the Franchise Tax Board a copy of each credit  
14 certificate issued for the calendar year by March 1 of the calendar  
15 year immediately following the year in which those certificates  
16 are issued.

17 (3) (A) The determinations of the Franchise Tax Board with  
18 respect to the disallowance of a credit, the date a return is received,  
19 and whether a return has been timely filed for purposes of this  
20 subdivision shall not be reviewed in any administrative or judicial  
21 proceeding.

22 (B) Any disallowance of a credit claimed due to a determination  
23 under this subdivision shall be treated as a mathematical error  
24 appearing on the return. Any amount of tax resulting from such  
25 disallowance may be assessed by the Franchise Tax Board in the  
26 same manner as provided by Section 19051.

27 (c) (1) In the case where the credit allowed by this section  
28 exceeds the "tax," the excess may be carried over to reduce the  
29 "tax" in the following year, and succeeding five years if necessary,  
30 until the credit is exhausted.

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

34 (d) (1) The Franchise Tax Board may prescribe rules,  
35 guidelines, or procedures necessary or appropriate to carry out the  
36 purposes of this section, including any guidelines regarding the  
37 limitation on total credits allowable under this section and Section  
38 17053.86.

39 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of  
40 Division 3 of Title 2 of the Government Code does not apply to

1 any standard, criterion, procedure, determination, rule, notice, or  
2 guideline established or issued by the Franchise Tax Board  
3 pursuant to this section.

4 (e) This section shall remain in effect only until December 1,  
5 2016, and as of that date is repealed.

6 SEC. 3. This act shall become operative only if Senate Bill  
7 1466 of the 2011–12 Regular Session is enacted and takes effect  
8 on or before January 1, 2013.

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