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~~, to take effect immediately, tax levy~~.

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, 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.~~

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:

SECTION 1. Section 17053.86 is added to the Revenue and Taxation Code, to read:

17053.86. (a) (1) For each taxable year beginning on or after January 1, 2013, and before January 1, 2018, there shall be allowed a credit against the "net tax," as defined in Section 17039, an amount equal to 65 percent of the amount contributed during the taxable year to the Higher Education Investment Tax Credit Program Special Fund.

(2) Contributions shall be made only in cash.

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

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

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

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

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

(4) The Franchise Tax Board shall periodically provide notice on its Internet Web site with respect to the amount of credit under

this section and Section 23686 claimed on timely filed original returns received by the Franchise Tax Board.

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

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

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

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

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

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

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

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

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

(2) Contributions shall be made only in cash.

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

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

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

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

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

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

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

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

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

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

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

~~SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.~~

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

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