AMENDED IN SENATE APRIL 18, 2012

SENATE BILL No. 1526

Introduced by Senator La Malfa

February 24, 2012

An act to ~~add to Section 12585.5 to the Government Code, relating to charitable organizations.~~ *amend Section 23772 of the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1526, as amended, La Malfa. ~~Charitable organizations: reporting.~~ *Corporate income taxes: filing requirements: tax exempt organizations.*

Under the Corporation Tax Law, specific tax exempt organizations are exempted from the requirement to file annual information returns, including those organizations the gross receipts of which in each taxable year are normally not more than $25,000.

This bill would, for taxable years beginning on or after January 1, 2012, increase the gross receipts threshold for the application of the exemption from the annual filing requirement to $50,000.

~~Under existing law, the Supervision of Trustees and Fundraisers for Charitable Purposes Act governs charitable corporations, trustees, commercial fundraisers, fundraising counsel, and commercial coventurers who hold or solicit property for charitable purposes over which the Attorney General has enforcement and supervisory powers. Existing law requires entities subject to the act to comply with various filing and reporting requirements.~~

~~Administrative regulations implementing these revisions require that entities subject to the act file a specified form if the gross revenue and assets are under $25,000, as specified.~~

~~This bill would, by statute, modify the reference to an entity's gross revenue and assets to reflect a limitation of $50,000. The bill would require the Attorney general to adopt and conform rules and regulations to ensure compliance with this act.~~

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 23772 of the Revenue and Taxation Code is amended to read:

23772. (a) For the purposes of this part—

(1) Except as provided in paragraph (2), every organization exempt from taxation under Section 23701 and every trust treated as a private foundation because of Section 4947(a)(1) of the Internal Revenue Code shall file an annual return, stating specifically the items of gross income, receipts, and disbursements, and any other information for the purpose of carrying out the laws under this part as the Franchise Tax Board may by rules or regulations prescribe, and shall keep any records, render under oath any statements, make any other returns, and comply with any rules and regulations as the Franchise Tax Board may from time to time prescribe. The return shall be filed on or before the 15th day of the fifth full calendar month following the close of the taxable year.

(2) Exceptions from filing—

(A) Mandatory exceptions—Paragraph (1) does not apply to—

(i) Churches, their integrated auxiliaries, and conventions or association of churches,

(ii) Any organization (other than a private foundation as defined in Section 23709), the gross receipts of which in each taxable year are normally not more than ~~twenty-five thousand dollars ($25,000)~~ *fifty thousand dollars ($50,000)*, or

(iii) The exclusively religious activities of any religious order.

(B) Discretionary exceptions—The Franchise Tax Board may permit the filing of a simplified return for organizations based on either gross receipts or total assets or both gross receipts and total assets, or may permit the filing of an information statement (without fee), or may permit the filing of a group return for incorporated or unincorporated branches of a state or national organization where it determines that an information return is not necessary to the efficient administration of this part.

(3) An organization that is required to file an annual information return shall pay a filing fee of ten dollars ($10) on or before the due date for filing the annual information return (determined with regard to any extension of time for filing the return) required by this section. In case of failure to pay the fee on or before the due date, unless it is shown that the failure is due to reasonable cause, the filing fee shall be twenty-five dollars ($25). All collection remedies provided in Article 5 (commencing with Section 18661) of Chapter 2 of Part 10.2 are applicable to collection of the filing fee. However, the filing fee does not apply to the organization described in paragraph (4).

(4) Paragraph (3) does not apply to: (A) a religious organization exempt under Section 23701d; (B) an educational organization exempt under Section 23701d, if that organization normally maintains a regular faculty and curriculum and normally has a regularly organized body of pupils or students in attendance at the place where its educational activities are regularly carried on; (C) a charitable organization, or an organization for the prevention of cruelty to children or animals, exempt under Section 23701d, if that organization is supported, in whole or in part, by funds contributed by the United States or any state or political subdivision thereof, or is primarily supported by contributions of the general public; (D) an organization exempt under Section 23701d, if that organization is operated, supervised, or controlled by or in connection with a religious organization described in subparagraph (A).

(b) Every organization described in Section 23701d that is subject to the requirements of subdivision (a) is required to furnish annually information, at the time and in the manner as the Franchise Tax Board may by rules or regulations prescribe, setting forth all of the following:

(1) Its gross income for the year.

(2) Its expenses attributable to gross income and incurred within the year.

(3) Its disbursements within the year for the purposes for which it is exempt.

(4) A balance sheet showing its assets, liabilities, and net worth as of the beginning of that year.

(5) The total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors.

(6) The names and addresses of its foundation manager (within the meaning of Section 4946 of the Internal Revenue Code) and highly compensated employees.

(7) The compensation and other payments made during the year to each individual described in paragraph (6).

(8) In the case of an organization with respect to which an election under Section 23704.5 is effective for the taxable year, the following amounts for that organization for that taxable year:

(A) The lobbying expenditures (as defined in Section 4911(c)(1) of the Internal Revenue Code).

(B) The lobbying nontaxable amount (as defined in Section 4911(c)(2) of the Internal Revenue Code).

(C) The grassroots expenditures (as defined in Section 4911(c)(3) of the Internal Revenue Code).

(D) The grassroots nontaxable amount (as defined in Section 4911(c)(4) of the Internal Revenue Code). For purposes of this paragraph, if Section 23740 applies to the organization for the taxable year, the organization shall furnish the amounts with respect to the affiliated group as well as with respect to the organization.

(9) Other information with respect to direct or indirect transfers to, and other direct or indirect transactions and relationships with, other organizations described in Sections 23701a to 23701w, inclusive (other than Sections 23701d, 23701k, and 23701t), as the Franchise Tax Board may require to prevent either of the following:

(A) Diversion of funds from the organization's exempt purpose.

(B) Misallocation of revenue or expense.

(10) Information with respect to qualified disaster relief activities.

(11) Any other relevant information as the Franchise Tax Board may prescribe.

(12) Each controlling organization, within the meaning of Section 512(b)(13) of the Internal Revenue Code, which is subject to the requirements of subdivision (a), shall include on the return required under subdivision (a) all of the following information:

(A) Any interest, annuities, royalties, or rents received from each controlled entity, within the meaning of Section 512(b)(13) of the Internal Revenue Code.

(B) Any loans made to each controlled entity.

(C) Any transfers of funds between such controlling organization and each such controlled entity.

(13) (A) Any organization, the gross receipts of which in any taxable year result in the organization being referred to in clause (ii) of subparagraph (A) of paragraph (2) of subdivision (a), or subparagraph (B) of paragraph (2) of subdivision (a), shall do both of the following:

(i) Furnish annually, in electronic form, and at the time and in the manner as may be prescribed by the Franchise Tax Board, the legal name of the organization, any name under which the organization operates or does business, the organization's mailing address and the Internet Web site address, if any, the organization's taxpayer identification number, the name and address of a principal officer, and evidence of the continuing basis for the organization's exemption from the filing requirements under paragraph (1) of subdivision (a).

(ii) Upon termination of the existence of the organization, shall furnish notice of the termination.

(B) This paragraph shall apply to notices and returns with respect to annual periods beginning on or after January 1, 2010.

(14) (A) If an organization described in paragraph (1) of subdivision (a) or paragraph (13) of this subdivision fails to file an annual return or notice required under either paragraph (1) of subdivision (a) or paragraph (13) of this subdivision for three consecutive years, that organization's status as an organization exempt from tax under Section 23701 shall be considered revoked on and after the date set by the Franchise Tax Board for the filing of the third annual return or notice. The Franchise Tax Board shall publish and maintain a list of any organization for which the tax-exempt status is revoked.

(B) Any organization for which the tax-exempt status is revoked under subparagraph (A) must apply for reinstatement of that status regardless of whether that organization was originally required to make an application for tax-exempt status.

(C) If, upon application for reinstatement of status as an organization exempt from tax under Section 23701, an organization described in subparagraph (A) can show to the satisfaction of the Franchise Tax Board evidence of reasonable cause for the failure described in that subparagraph, the organization's exempt status may, in the discretion of the Franchise Tax Board, be reinstated effective from the date of the revocation under that subparagraph.

(D) This paragraph shall apply to notices and returns with respect to annual periods beginning on or after January 1, 2010.

(c) For the purposes of this part—

(1) In the case of a failure to file a return required under this section on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that the failure is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the exempt organization or trust failing so to file, five dollars ($5) for each month or part thereof during which the failure continues, but the total amount imposed hereunder on any organization for failure to file any return may not exceed forty dollars ($40).

(2) The Franchise Tax Board may make written demand upon a private foundation failing to file under paragraph (1) of this subdivision specifying therein a reasonable future date by which the filing shall be made, and if the filing is not made on or before that date, and unless it is shown that failure so to file is due to reasonable cause, there shall be paid (on notice and demand by the Franchise Tax Board and in the same manner as tax) by the person failing so to file, in addition to the penalty prescribed in paragraph (1), a penalty of five dollars ($5) each month or part thereof after the expiration of the time specified in the written demand during which the failure continues, but the total amount imposed hereunder on all persons for the failure to file shall not exceed twenty-five dollars ($25). If more than one person is liable under this paragraph for a failure to file, all of those persons shall be jointly and severally liable with respect to the failure. The term "person" as used herein means any officer, director, trustee, employee, member, or other individual who is under a duty to perform the act in respect of which the violation occurs.

(3) This subdivision shall not apply with respect to any notice required under paragraph (13) of subdivision (b).

(d) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2012.

~~SECTION 1. Section 12585.5 is added to the Government Code, to read:~~

~~12585.5. (a) For purposes of Section 307 of Title 10 of the California Administrative Code, any reference to the total gross revenue or assets of a charitable corporation, unincorporated association, or trust being under or over twenty-five thousand dollars ($25,000), shall instead refer to the amount of fifty thousand dollars ($50,000).~~

~~(b) The Attorney General shall adopt and conform rules and regulations to ensure compliance with this section.~~

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