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SB-1374 Personal income taxes: deduction: California qualified tuition program. (2021-2022)

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ENROLLED AUGUST 29, 2022

PASSED IN SENATE AUGUST 25, 2022

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AMENDED IN ASSEMBLY AUGUST 15, 2022

AMENDED IN SENATE MAY 19, 2022

AMENDED IN SENATE APRIL 18, 2022

CALIFORNIA LEGISLATURE— 2021–2022 REGULAR SESSION

SENATE BILL

NO. 1374

Introduced by Senator Borgeas

February 18, 2022

An act to amend Section 17072 of, and to add and repeal Section 17206.2 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1374, Borgeas. Personal income taxes: deduction: California qualified tuition program.

The Personal Income Tax Law, in modified conformity with federal income tax law, excludes from the gross income of a beneficiary of, or contributor to, a qualified tuition program, which includes a Golden State Scholarshare College Savings Trust, distributions or earnings under that program, as specified.

This bill, for taxable years beginning before January 1, 2027, would allow under that law a deduction against gross income in the amount equal to the monetary contribution made by a qualified taxpayer, as defined, to the California qualified tuition program established pursuant to the Golden State Scholarshare Trust Act not to exceed either \$1,000 or \$2,000, per beneficiary, as provided. The bill would require, with exceptions, in the case of any distribution in excess of qualified higher education expenses, as defined, the aggregate amount of the deduction allowed that reduced the qualified taxpayer's gross income in any taxable year to be added to the gross income of the qualified taxpayer in the taxable year of the distribution, as provided. The bill would provide that the deduction is only operative for taxable years for which an appropriation is made for its purposes in the annual Budget Act or other statute.

Existing law requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives the tax expenditure will achieve, detailed performance indicators, and data collection requirements.

This bill would also include additional information required for any bill authorizing a new tax expenditure.

This bill would take effect immediately as a tax levy.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) Section 62(a)(2)(D) of the Internal Revenue Code, relating to certain expenses of elementary and secondary school teachers, shall not apply.

(c) Section 62(a)(21) of the Internal Revenue Code, relating to attorney's fees relating to awards to whistleblowers, shall not apply.

(d) Section 62(a) of the Internal Revenue Code, relating to the general rule, is modified to provide that the deduction under Section 17206.2 shall be allowed in determining adjusted gross income.

SEC. 2. Section 17206.2 is added to the Revenue and Taxation Code, to read:

17206.2. (a) Except as provided in subdivision (i), for taxable years beginning before January 1, 2027, there shall be allowed a deduction in the amount equal to the monetary contribution made by a qualified taxpayer during the taxable year to one or more accounts established pursuant to the California qualified tuition program on behalf of a beneficiary, but in no event shall the deduction amount exceed the following:

(1) In the case of a qualified taxpayer who is a head of household, a surviving spouse, as defined in Section 17046, or a married couple filing a joint return, two thousand dollars (\$2,000) per beneficiary.

(2) In the case of a qualified taxpayer filing a return other than as described in paragraph (1), one thousand dollars (\$1,000) per beneficiary.

(b) For the purposes of this section, the following definitions shall apply:

(1) "Monetary contribution" means cash contributions, pursuant to Section 529(b)(2) of the Internal Revenue Code, relating to cash contributions, to the California qualified tuition program, but shall not include cash contributions to the California qualified tuition program with respect to either of the following:

(A) Any amount transferred to the California qualified tuition program from a qualified tuition program established pursuant to Section 529 of the Internal Revenue Code, relating to qualified tuition programs, that is not the California qualified tuition program.

(B) Any amount transferred from the credit of one beneficiary under the California qualified tuition program to the credit of another beneficiary under the California qualified tuition program.

(2) "Qualified taxpayer" means an individual, or a married couple if filing a joint return, who, on behalf of a beneficiary, contributes money to a qualified tuition program for which the individual, or a spouse in the case of a married couple filing a joint return, is the account owner and whose adjusted gross income does not exceed the following:

(A) In the case of a qualified taxpayer who is a head of household, a surviving spouse, as defined in Section 17046, or a married couple filing a joint return, two hundred thousand dollars (\$200,000).

(B) In the case of a qualified taxpayer filing a return other than as described in subparagraph (A), one hundred thousand dollars (\$100,000).

(3) "California qualified tuition program" means a qualified tuition program, as defined in Section 529 of the Internal Revenue Code, relating to qualified tuition programs, and as established pursuant to the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of Division 5 of Title 3 of the Education Code).

(4) "Qualified higher education expenses" means qualified higher education expenses, as defined in Section 529(e)(3) of the Internal Revenue Code.

(c) For each taxable year beginning on or after January 1, 2023, the Franchise Tax Board shall recompute the adjusted gross income limits specified in paragraph (2) of subdivision (b) by multiplying the adjusted gross income limit for the preceding taxable year by the inflation adjustment factor computed pursuant to subparagraph (A) of paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(d) (1) In the case of any distribution in excess of qualified higher education expenses, the aggregate amount of the deduction allowed under subdivision (a) that reduced the qualified taxpayer's gross income in any taxable year shall be added to the gross income of the qualified taxpayer in the taxable year of the distribution to the extent that the distribution is attributable to the aggregate amount of contributions for which a deduction is allowed under this section in taxable years beginning on or after January 1, 2022, and before January 1, 2027.

(2) Paragraph (1) shall not apply to that portion of a distribution that, within 60 days of the distribution, is transferred to another California qualified tuition program.

(e) For the purposes of Section 529(c)(3) of the Internal Revenue Code, relating to distributions, amounts allowed as a deduction under this section shall not be treated as investment in the contract in applying Section 72 of the Internal Revenue Code, relating to annuities; certain proceeds of endowment and life insurance contracts.

(f) A qualified taxpayer shall maintain records that are adequate to substantiate any deduction allowed under this section, and shall, upon request, provide such records to the Franchise Tax Board.

(g) (1) The Franchise Tax Board may adopt regulations necessary or appropriate to carry out the purposes of this section.

(2) The Administrative Procedure Act (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.

(h) This section shall be repealed on December 1, 2027.

(i) This section shall only be operative for taxable years beginning on or after January 1 of a year subsequent to an appropriation being made in the annual Budget Act or other statute for the purposes of administering this section.

SEC. 3. The Legislature finds and declares all of the following:

(a) Objectives of this act are as follows:

(1) To provide a tax incentive to motivate California families to open and contribute to a Scholarshare account, California's 529 college savings plan account, for the purposes of saving for future college expenses, thereby encouraging more Californians to pursue a postsecondary education and reducing the amount of student loan debt they may accumulate upon graduation.

(2) To reduce the amount of student loan debt on a dollar-for-dollar basis, thereby increasing a person's ability to purchase a home, car, and other products that help stimulate economic activity.

(b) The performance indicators related to this act are as follows:

(1) The number of deductions allowed by the Franchise Tax Board pursuant to Section 17206.2 of the Revenue and Taxation Code, as added by Section 2 of this act.

(2) The total dollar amount of deductions allowed by the Franchise Tax Board pursuant to Section 17206.2 of the Revenue and Taxation Code, as added by Section 2 of this act.

(3) The number of new Scholarshare accounts opened during the calendar year in which the deduction allowed by Section 17206.2 of the Revenue and Taxation Code, as added by Section 2 of this act, is in effect.

(c) The Scholarshare Investment Board shall have the following data collection and reporting requirements:

(1) Collect data on the amount of deductions allowed, and income information for taxpayers allowed those deductions, for the taxable year, from the Franchise Tax Board when this data is finalized, but no later than April 1 of the second calendar year following the taxable year. Upon the request of the Scholarshare Investment Board, the Franchise Tax Board shall provide this information to the Scholarshare Investment Board. The disclosure provisions of this paragraph shall be treated as an exception to Section 19542 under Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2.

(2) Collect data on the total amount of contributions made to Scholarshare accounts by March 1 of each calendar year that the deduction may be claimed on a tax return.

(3) Survey new and existing Scholarshare account owners to collect information about their motivation to do all of the following:

(A) Open a Scholarshare account.

(B) Contribute to a Scholarshare account.

(C) Increase the frequency and amount of contributions to a Scholarshare account.

(D) Refer a Scholarshare account to friends and family.

(4) (A) On or before July 31 of each calendar year in which the deduction is allowed by Section 17026.2 of the Revenue and Taxation Code, as added by Section 2 of this act, the Scholarshare Investment Board shall deliver a report to the Legislature that shall include, but not be limited to, prior year and cumulative baseline data and information described in subdivision (b) and this subdivision.

(B) The report required pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.