

Date of Hearing: March 21, 2022

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Jacqui Irwin, Chair

AB 1709 (Rodriguez) – As Introduced January 26, 2022

FOR TESTIMONY ONLY

Majority vote. Fiscal committee.

SUBJECT: Income taxation: credits: blood donations

SUMMARY: Allows, for taxable years beginning on or after January 1, 2023, a credit under the Personal Income Tax (PIT) Law equal to \$500 if a taxpayer makes at least four blood donations in one year, as stipulated. Specifically, **this bill:**

- 1) Authorizes, for taxable years beginning on or after January 1, 2023, a taxpayer to claim a PIT Law credit equal to \$500 if:
 - a) The taxpayer made at least four donations of human whole blood, or any product produced from human blood, during the taxable year in which the credit is claimed;
 - b) Each donation was made to a licensed blood bank, or other licensed entity conducting transfusion services; and,
 - c) Each donation was made to a 501(c)(3) non-profit organization.
- 2) Permits the Office of Emergency Services to enter into partnerships with private sector entities to provide meaningful incentives for individuals to donate blood four or more times a year to licensed blood banks or other licensed entities conducting transfusion services, if they qualify as exempt 501(c)(3) organizations.
- 3) Makes the following findings and declarations for the purposes of complying with Revenue and Taxation Code (R&TC) Section 41:
 - a) California and the nation face a shortage of whole blood and blood components used for vital medical procedures. Doctors are forced to choose which patients will receive care from available stock and which patients will have to wait until donation levels increase, thus posing a concerning risk to overall care;
 - b) In the event of a disaster or large scale emergency, a shortage of available blood may result in otherwise preventable loss of life;
 - c) The objective of the credit allowed by this bill is to provide an incentive for individuals to make lifesaving donations of whole blood and blood components;

- d) The performance indicators used to determine if the credit is achieving the stated objective shall be the number of taxpayers claiming the credit and the total value of credits allowed; and,
- e) Directs the Franchise Tax Board to submit a report to the Legislature, no later than June 1, 2028, detailing the number of taxpayers claiming the credit authorized by this bill and the aggregate amount of authorized credits. This bill further specifies that any collected taxpayer information included in the report shall be compiled in an aggregated or anonymized matter and submitted in compliance with existing requirements regarding reports to the Legislature.

EXISTING LAW:

- 1) Allows a deduction for amounts of a contribution, up to a certain percentage of federal adjusted gross income, made to qualified charitable organizations, but does not provide for the deduction of the value of contributed services.
- 2) Authorizes various tax credits designed to provide tax relief for taxpayers who incur certain expenses or to influence behavior.
- 3) Lacks a tax credit specific to the donation of blood.
- 4) Provides for the licensure of blood banks and blood transfusion services by the state Department of Public Health.

FISCAL EFFECT: The Franchise Tax Board, in an analysis of this bill, estimates a revenue loss of \$6.6 million in the 2022-23 fiscal year (FY) and \$12 million in the 2023-24 and 2024-25 FYs.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

In early January, the American Red Cross declared its first-ever nationwide blood crisis after it said the organization now faces its worst blood shortage in over a decade. The Red Cross supplies roughly 40% of the nation's blood supply and recently said that they have only been able to meet one-quarter of the need. This is negatively affecting hospitals and patients across the state as doctors are choosing between who receives care immediately and who must wait until more blood is available. In more dire cases, hospitals are unable to treat anyone. For example, the Southern California based Harbor-U.C.L.A. Medical Center had to close their trauma center for two hours in early January because they exhausted their blood inventory. It is alarming that California has reached crisis level in its blood supply, a position no one in an emergency should have to face. In the event of a disaster or large-scale emergency, a shortage of available blood may result in otherwise preventable loss of life.

I have introduced this bill to quickly provide needed relief to the blood bank supply. The solution is simple; those who can donate blood should, and AB 1709 will incentivize donors to do so. The impact of a blood donation right now is immense and helping

increase the number of donations will make a positive difference for our health care workers and those who are sick or injured.

2) The California Tax Reform Association, writing in opposition to this bill, states, "

While meritorious in its goals, the measure's current construction...would not benefit individuals with lower income, or those who do not have taxable income. As a result, those most in need of financial support would receive no benefit from this measure.

Tax policy, when well-crafted, should encourage a behavior that otherwise may not have occurred without the policy. If [the] author desires to increase the volume of blood donors in the state, we respectfully request that he considers amending his bill to establish a cash incentive program, with a capped budget, that can provide individual awards for participation as a blood donor. Doing so would meet the state's needs for increased blood donation, while establishing a predictable budget allocation that is equitable in its distribution.

3) Committee Staff Comments:

- a) *Blood supply*: In January of this year, the Red Cross announced the first national blood crisis. During the past two years, the COVID-19 pandemic has caused a 34% decline in blood donors. Blood centers throughout the nation declared having less than a one-day supply of some blood types. The low supply of blood needed for surgeries, transplants, cancer treatments, and chronic illnesses has forced some doctors to choose which patients get blood and those who must wait until supply increases. This bill would authorize a tax credit to encourage donation of blood.
- b) *Deduction of charitable contributions*: Federal law allows a taxpayer to deduct amounts of charitable contributions to qualifying organizations, up to a certain percentage of federal adjusted gross income. Generally, state law conforms to the treatment of charitable contributions, with certain modifications. However, no deduction is authorized for the value of time or services contributed by the taxpayer, and the Code of Federal Regulations Section 1.170A-1 specifies that a deduction for the contribution of services is disallowed.
- c) *Treatment of blood donation as a service*: The donation of blood is considered a service and has been held to be ineligible for deduction as a charitable contribution. The court for the Northern District of Alabama upheld this interpretation in *Lary v. United States* (1985) N.D.Ala. 608 F.Supp. 258. The court maintained that a deduction for the fair market value of one unit of blood was disallowed as an eligible charitable contribution, citing a 1953 Internal Revenue Bulletin which advised that "furnishing blood for a transfusion or to a blood bank is analogous to the rendering of a personal service by the donor."
- d) *What is a "tax expenditure"?* Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, United States Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each of them (in

the form of forgone revenues). This bill would provide a \$500 tax credit to taxpayers who donated blood 4 or more times in a year.

- e) *Committee's tax expenditure policy*: SB 1335 (Leno), Chapter 845, Statutes of 2014, added R&TC Section 41, which recognized that the Legislature should apply the same level of review used for government spending programs to tax credits introduced on or after January 1, 2015. AB 263 (Burke), Chapter 743, Statutes of 2019, extended the requirements in R&TC Section 41 to all tax expenditure measures under the PIT Law, the Corporation Tax (CT) Law, and the Sales and Use Tax Law introduced on or after January 1, 2020. A tax expenditure proposal must outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote¹. Sunsets are required because eliminating a tax expenditure generally requires a two-thirds vote. These requirements must be satisfied before a bill can receive a vote in this Committee. This bill complies with Section 41 requirements, but does not include a five-year sunset.
- f) *Committee amendments*: The author has agreed to take the following amendments in Committee:
- i) Include a five-year sunset;
 - ii) Specify that a \$1,000 credit shall be allowed for jointly filing taxpayers;
 - iii) Allow a carryover period of five years for any unused credit; and,
 - iv) Make the following technical amendments:
 - 1) On Page 2, Line 15, after "allowed," insert "to a qualified taxpayer";
 - 2) On Page 2, Line 18, after "The," insert "qualified"; and
 - 3) Include a new subparagraph that defines a "qualified taxpayer" as an individual.
- g) *Pending legislation*: SB 1025 (Bates), pending referral to the Senate Rules Committee, would provide, under the PIT Law and the CT Law, a tax credit to specified business entities that hold blood drives in coordination with a nonprofit blood bank equal to the number of verified blood donations during an eligible blood drive multiplied by an unspecified number of dollars, not to exceed \$10,000 per taxable year.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

¹ An "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean 10 years.

Opposition

California Tax Reform Association

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