CONCURRENCE IN SENATE AMENDMENTS
AB 276 (Friedman)
As Amended July 2, 2020
Majority vote. Tax Levy

SUMMARY:

Conforms state law to changes made to federal law by the Coronavirus Aid, Relief, and Economic Security (CARES) Act for qualified loans from retirement accounts.

The Senate Amendments:
Delete the previous contents of this bill related to education, and instead conforms state law to changes made to federal law by the CARES Act for qualified loans from retirement accounts.

COMMENTS:

CARES Act. The CARES Act was passed by Congress and signed into law by President Trump on March 27, 2020. The economic relief package includes many provisions to help Americans with the economic impacts of the COVID-19 pandemic. Included in this package are special exemptions for retirement accounts. Among other provisions, the CARES Act allows individuals impacted by the COVID-19 pandemic to make a penalty-free withdrawal from their retirement account, or take out loans from their retirement account of up to $100,000 per individual (current rules limit this amount to $50,000). To qualify for this exemption, the individual must certify that one of the following is true:

1) The individual or their spouse has been diagnosed with COVID-19;

2) The individual experienced a layoff, furlough, reduction in hours, or inability to work due to COVID-19 or lack of childcare because of COVID-19;

3) The individual is experiencing adverse financial consequences due to their (or their spouse's) finances being affected by COVID-19; or,

4) The individual (or their spouse) is a business owner who experienced closing or a reduction in hours due to COVID-19.

If the individual chooses to take a distribution for COVID-19 related reasons, a penalty does not apply to the distribution. The distribution is taxed as regular income, but the individual may opt to either pay the taxes equally over a three-year period, or pay the entire amount due in the year the funds are distributed. Additionally, if the individual pays the distributed funds back, in full or in part, to their retirement account, they need not pay tax on the repaid amount. Because California automatically conforms to changes to retirement provisions in the Internal Revenue Code, California automatically conforms to this provision of the CARES Act.

If a CARES Act retirement account loan is chosen, the amount of loan that may be taken is increased from $50,000 to $100,000. This loan is still subject to all normal provisions relating to loans from retirement accounts and must be paid back in full to avoid a penalty and income taxes on the distribution. Unlike the distribution, California does not conform to the increased loan amount because it is not part of the automatic conformity provisions. As a result, if an individual were to take a $100,000 loan from a retirement account under the CARES Act, state tax law would treat the first $50,000 as a loan, but the other $50,000 would be treated as a distribution for California tax purposes potentially subject to the early withdrawal penalty. This bill would increase the amount of a loan that may be taken from a retirement account under the CARES act for COVID-19 related reasons, from $50,000 to $100,000, thereby eliminating the potential of having a portion of the loan be treated as a distribution for state purposes.

According to the Author:
AB 276 will protect California citizens who, faced with economic hardship due to the Covid-19 pandemic, take a loan from their employer-sponsored qualified retirement plan to support themselves and their families. This bill conforms state tax law to the provision of the federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act) that removes penalties for those taking a loan from their employer-sponsored defined contribution program. The California Personal Income Tax Code does conform to the CARES Act with respect to the automatic suspension of the 10% penalty for an early distribution from a retirement plan, but does not automatically conform to the parallel penalty relief for loans from qualified plans. During the current Covid-19 pandemic, many Californians, faced with unemployment and economic hardship, are taking such loans from the qualified employer retirement accounts. We should encourage pay back of these loans so these individuals continue to plan for their financial stability when they reach retirement. AB 276 will minimize the chances of an individual inadvertently being subject to a California tax penalty because they were under the mistaken assumption that California law and Federal law were the same regarding loans from a qualified plan.

Arguments in Support:
Supporters state that "[w]hile California automatically conforms to the federal changes related to the removal of the early disbursement penalty, California does not automatically conform to the increased amount of the allowable loan. Currently, under California rules, the limit an individual can borrow from their retirement is still $50,000. Anything above that amount would be treated as taxable income. Thus, a taxpayer that borrows from their retirement according to the new federal rules with the higher thresholds may be faced with an unexpected California tax liability. AB 276 would address this issue, by brining California's rules into alignment with the current federal rules under the CARES Act."

Arguments in Opposition:
None on file

FISCAL COMMENTS:

According to the Franchise Tax Board, this bill will result in a General Fund revenue loss of $2.4 million in fiscal year (FY) 2020-21, $1.4 million in FY 2021-22, and $0.2 million in FY 2022-23.

VOTES:

ASM RULES: 12-0-0
YES: Cooley, Cunningham, Carrillo, Flora, Grayson, Kamlager, Maienschein, Mathis, Quirk-Silva, Ramos, Robert Rivas, Wicks

ASM EDUCATION: 6-0-1
YES: O'Donnell, Kiley, Megan Dahle, McCarty, Smith, Weber
ABS, ABST OR NV: Kalra

ASM APPROPRIATIONS: 18-0-0
YES: Gonzalez, Bigelow, Bloom, Bonta, Brough, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Maienschein, Petrie-Norris, Quirk, Robert Rivas

ASSEMBLY FLOOR: 74-0-6
YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood
ABS, ABST OR NV: Bigelow, Brough, Cervantes, Gallagher, Obernolte, Rendon

SENATE FLOOR: 39-0-1
YES: Allen, Archuleta, Atkins, Bates, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Melendez, Mitchell, Monning, Moorlach, Morrell, Nielsen, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
ABS, ABST OR NV: Jones

ASM REVENUE AND TAXATION: 11-0-0
YES: Burke, Chu, Gray, Levine, Mayes, Mullin, Petrie-Norris, Quirk, Luz Rivas, Mathis, Kiley

UPDATED:

VERSION: July 2, 2020

CONSULTANT: Sue Highland / REV. & TAX. / (916) 319-2098 FN: 0003658