

**Franchise Tax Board**

**ANALYSIS OF ORIGINAL BILL**

Author: Florez Analyst: Janet Jennings Bill Number: SB 1086  
 Related Bills: See Legislative History Telephone: 845-3495 Introduced Date: February 17, 2010  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Tax Expenditure Reporting

**SUMMARY**

This bill would require specific information to be included in the California Income Tax Expenditure Report produced by the Department of Finance (DOF).

**PURPOSE OF THE BILL**

It appears the intent of this bill is to increase the transparency of government spending.

**EFFECTIVE/OPERATIVE DATE**

This bill would be effective on January 1, 2011, and specifies that the information would be compiled based on the 2010 taxable year.

**POSITION**

Pending.

**ANALYSIS**

STATE LAW

Existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Generally, disclosure is authorized to other state tax agencies, federal tax agencies, and the Multistate Tax Commission solely for tax administration purposes. Additionally, the Franchise Tax Board (FTB) is authorized to publish statistical data related to taxpayer information so long as no individually identifiable information is revealed. Unauthorized disclosure of state tax information is a misdemeanor and unauthorized disclosure of federal tax information is a felony.

As specifically authorized, the FTB is required to compile and make publicly available an annual list that identifies the largest 250 tax delinquencies that exceed \$100,000 selected from both the personal income tax and corporation tax records.

Board Position:	Department Director	Date
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State law requires the DOF to provide an annual report to the Legislature on tax expenditures providing details on individual categories of the expenditures and historical information on the enactment and repeal of the expenditures. State law requires all state agencies to submit to the Governor a complete plan and itemized statement of all proposed expenditures and estimated revenues for the ensuing fiscal year.

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake. State law also provides various exemption credits, including a personal exemption credit and exemption credits for dependents, blind persons, and individuals 65 or older. These exemptions are not deductions from adjusted gross income but are credits against tax.

### THIS BILL

This bill would require the FTB to compile the following information to be provided to the DOF:

1. The name, mailing address, and California corporation number of any taxpayer receiving credits of \$1,000 allowed from corporate tax expenditures.
2. The amount claimed by each taxpayer for the corporate tax expenditure.

Additionally, this bill requires the FTB to report the above information along with a description of the initial justification for the expenditure to the Reporting Transparency in Government Internet Web site. The report must be searchable by corporation name, corporation number, expenditure type, and key word. This bill requires all data from the report to be available for download by the public in Excel or comparable format.

### IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The language of the bill requires the FTB to provide the DOF information regarding corporate tax expenditures and credits. This information is to be posted to the Reporting Transparency in Government Internet Web site. The information is to be listed by corporation name, mailing address, corporate number, and amount of expenditure, which would violate existing disclosure laws within the Revenue and Taxation Code (R&TC). If it is the author's intent that confidential taxpayer information be disclosed, it is recommended that the bill be amended to add an express exception to the R&TC with respect to permissible disclosure.

This bill leaves unclear whether tax expenditures should be reported from pass-through entities (for example, limited liability companies and S corporations) at the shareholder or entity level.

The language of the bill should specify whether the FTB or the DOF is responsible for posting to the Reporting Transparency in Government Internet Web site.

The language of the bill should define if the tax expenditures are to be reported from the original, amended or audited corporate tax returns.

### TECHNICAL CONSIDERATIONS

To clarify the reporting threshold is a minimum of \$1,000 the following amendment is suggested:

On page 2, line 10, after "(\$1,000)", insert "or more".

### **LEGISLATIVE HISTORY**

AB 1843 (Garrick, 2007/2008) would have required a state agency, as defined, to provide the State Controller's Office with information concerning state expenditures on programs administered by those agencies. This bill was held on the Senate floor.

AB 168 (Ridley-Thomas, 2005/2006) would have required the DOF to submit a report on tax expenditures to the Legislature. This bill was vetoed by Governor Schwarzenegger, whose veto message can be found in Appendix A.

AB 990 (Ridley-Thomas, 2003/2004) would have required the DOF to submit a report on tax expenditures to the Legislature. This bill failed to pass out of the Legislature by the constitutional deadline.

AB 2106 (Ridley-Thomas, 2003/2004) would have required the DOF to submit a report on tax expenditures to the Legislature. AB 2106 was vetoed by Governor Schwarzenegger, whose veto message can be found in Appendix A.

### **FISCAL IMPACT**

As discussed above under Implementation Considerations, it is unclear if the FTB would be required to gather and post the required information to the Transparency in Government Web site. If so, this would require an effort to collect and assemble the required information from various sources throughout the department. A fiscal estimate will be developed as the bill moves through the legislative process.

### **ECONOMIC IMPACT**

This bill would not impact state income tax revenues.

### **LEGISLATIVE STAFF CONTACT**

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## Appendix A

BILL NUMBER: AB 168  
VETOED DATE: 09/22/2005

To the Members of the California State Assembly:

I am returning Assembly Bill 168 without my signature.

The Department of Finance and the Legislative Analyst's Office currently have broad authority to review and report tax expenditures to the Legislature. This bill's restatement of the existing tax reporting requirements is redundant and unnecessary.

Sincerely,

Arnold Schwarzenegger

BILL NUMBER: AB 2106  
VETOED DATE: 09/24/2004

To the Members of the California State Assembly:

I am returning Assembly Bill 2106 without my signature.

Under existing law, the Department of Finance already is required to provide an annual tax expenditure report to the Legislature containing specific information. This bill changes the type of information that is provided in the annual report. However, some of the information that Department of Finance would be required to report is not available. For example, the original intent of a given tax expenditure is often not clearly defined in the enabling statute. In addition, the number and income distribution of taxpayers benefiting from sales tax exemptions would not be known because this information is not required to be reported by retailers when filing their tax returns. Furthermore, some of the information might not be available for reporting to the Legislature because of existing confidentiality requirements.

Therefore, I cannot sign this bill.

Sincerely,

Arnold Schwarzenegger