

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Eng Analyst: Janet Jennings Bill Number: AB 2638

Related Bills: See Legislative History Telephone: 845-3495 Amended Date: March 28, 2012

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Report Of Revenue Loss From Tax Expenditures Exceeding \$5 Million

SUMMARY

This bill would expand the information included in the annual Tax Expenditure Report (TER) prepared by the Department of Finance (DOF) by requiring the Franchise Tax Board (FTB) and the Board of Equalization (BOE) to report on the fiscal and tax effect of the tax expenditures.

This analysis addresses provisions of the bill only as they impact the department.

RECOMMENDATION

No position.

Summary of Amendments

The March 28, 2012, amendments list additional information reporting requirements to be prepared by the FTB and contained in the TER. The "This Bill" and "Fiscal Impact" discussions as provided in the department's analysis of the bill as introduced February 24, 2012, have been revised. As a result of the amendments, the department has identified Implementation Considerations. Except for the "This Bill," "Implementation Considerations," and "Fiscal Impact," the remainder of the department's analysis of the bill as introduced February 24, 2012, still applies.

THIS BILL

This bill would require the FTB to submit by January 10 of each year, a report to the DOF and the Legislature on the revenue loss, to the extent possible for each personal and corporate income tax expenditure, for the prior year, current year, and budget year, in the following categories:

- By the adjusted gross income of the claimants.
- By the tax liability of the taxpayer.
- By region.
- By industry code.

Board Position:

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Interim Legislative Director

Date

Titus Toyama

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Additionally, the report on the prior year expenditures is to include the following information:

- The average, median, highest, and lowest amounts claimed by taxpayer bracket.
- The amounts claimed and rejected.

Where available, the report shall also include the following information about the expenditures:

- Any citations of academic studies pertaining to the tax expenditure or similar tax expenditures.
- The usage for the same or similar tax expenditures adopted by other states or the federal government.
- Any distinguishing tax characteristic, including other tax expenditures claimed.

This bill would also require the FTB to provide sufficient data to support a subsequent analysis of the revenue loss of the tax expenditure.

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 bill requires the department to submit the TER by January 10 each year. Personal income tax returns may be filed, with extension, until October 15. Fiscal year returns may be filed even later, depending on when the taxpayer's fiscal year ends. The department generally processes returns within six months of receipt. For the department to complete the TER by January 10, the bill should be amended to replace requirements for "the prior year, current year, and budget year" with "the most recent tax year for which full year data is available, projected revenue loss for the current state fiscal year and subsequent state fiscal year".

The bill requires the TER to list the usage for the same or similar tax expenditures adopted by other states or the federal government. To provide a significant comparison, the author should amend the bill to limit the usage requirement to other states with similarities to California's economy such as Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York.

The bill uses the undefined term "rejected." The absence of a definition to clarify this term would complicate the administration of this bill. The author should amend the bill to clarify the term "rejected" as a disallowed tax expenditure from an original, amended, or audited tax return. Complex audits can take several years to finalize. If tax expenditures rejected through audit are to be included in the bill, the author should state if the rejection is to be determined on the date the assessment is final or associated with the tax year of the return. The department does not track tax expenditures disallowed in return processing or through audit, this requirement would necessitate the department to redesign current return processing and audit systems to capture this data.

TECHNICAL CONSIDERATIONS

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

- On page 4, line 8, after "personal" add "and corporation"
- On page 4, line 8, after "expenditures" insert "," delete "and corporation"
- On page 4, line 9, delete "tax expenditures,"

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved, but anticipate the costs to be significant.

LEGISLATIVE STAFF CONTACT

Janet Jennings

Legislative Analyst, FTB

(916) 845-3495

janet.jennings@ftb.ca.gov

Titus Toyama

Interim Legislative Director, FTB

(916) 845-6333

titus.toyama@ftb.ca.gov