

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Correa Analyst: Michelle Chan Bill Number: SB 693  
Related Bills: See Legislative History Telephone: 845-6805 Amended Date: January 8, 2014  
Attorney: Bruce Langston Sponsor: \_\_\_\_\_

**SUBJECT:** Teacher's Unreimbursed Instructional Materials & Classroom Supplies Expenses Credit

### SUMMARY

This bill would, under the Personal Income Tax Law, create a tax credit for certain education-related expenses.

### RECOMMENDATION

No position.

### Summary of Amendments

The January 8, 2014, amendments modified the legislative intent language, made technical changes, and removed provisions that would have allowed a qualified parent or guardian a tax credit or an exclusion from gross income for certain education-related expenses. As a result of the amendments, this analysis replaces the department's prior analysis of the bill as amended January 6, 2014.

### REASON FOR THE BILL

The reason for this bill is to ease the financial burden for teachers beginning their career that strives to provide a high-quality K-12 education for their pupils.

### EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2014, and before January 1, 2019.

### ANALYSIS

#### FEDERAL/STATE LAW

Existing federal and state 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.

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Current federal law allows eligible educators to deduct up to \$250 of the cost to purchase books, supplies (other than nonathletic supplies for courses of instruction in health or physical education), computer equipment (including related software and services) and other equipment, and supplementary materials used by the eligible educator in the classroom as an adjustment to gross income. This 'above-the-line' deduction applies to taxable years beginning on or after January 1, 2002, and before January 1, 2014. California does not conform to this deduction.

There are currently no federal or state credits comparable to the credit this bill would create.

### THIS BILL

This bill would, for taxable years beginning on or after January 1, 2014, and before January 1, 2019, create a tax credit in an amount equal to the amount paid or incurred by a qualified teacher during the taxable year for instructional materials and classroom supplies, not to exceed \$250 per qualified teacher or \$500 for two qualified teachers who are married to each other and filing a joint return.

For the purpose of determining this credit, the following definitions would apply:

- "Instructional materials and classroom supplies" means any unreimbursed expenses, otherwise deductible as a trade or business expense, for books, supplies, computer equipment, including related software and services and other equipment, and supplementary materials used in the classroom, including, but not limited to, supplies for courses in health and physical education.
- "Qualified teacher" means a teacher who meets all of the following requirements:
  - A. The individual has worked at least 900 hours in the school year as a teacher, in a school offering instruction in kindergarten or any of grades 1 to 12, inclusive, in California at a public, charter, or private school that has a current private school affidavit on file with the State Department of Education in the taxable year.
  - B. The teacher is primarily engaged in the duty of imparting knowledge to pupils by teaching, instructing, or lecturing.
  - C. The teacher customarily and regularly exercises discretion and independent judgment in performing the duties of a teacher.
  - D. The teacher is not employed as a tutor, teaching assistant, instructional aide, student teacher, day care provider, vocational instructor, or similar position.

The credit would be available for qualified teachers based upon the years of employment as a qualified teacher. The credit allowed would be available as follows:

Taxable Years	Years of Employment
January 1, 2014 – January 1, 2015	No more than one year
January 1, 2015 – January 1, 2016	No more than two consecutive years
January 1, 2016 – January 1, 2019	No more than three consecutive years

Any unused credit may be carried over to reduce tax for the following five years if necessary, until the credit is exhausted.

The Franchise Tax Board (FTB) would be authorized to prescribe rules, guidelines or procedures necessary or appropriate to carry out the purpose of the credit. These rules, guidelines, or procedures would be exempt from the normal rulemaking requirements of the Administrative Procedures Act.

This tax credit would be repealed by its own terms as of December 1, 2019, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date.

### 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.

It is unclear how the department would verify whether a teacher meets the requirements of this bill and therefore be eligible for the credit. The author may wish to consider requiring the proper local agency to certify that the teacher met the requirements of this bill and requiring the taxpayer to obtain, retain and provide to the FTB, upon request, evidence of that certification.

This bill would allow a credit for qualified teachers based upon the years of employment as a qualified teacher. However, this bill fails to specify as to when or how recently that employment as a qualified teacher must have occurred. For example, would the years of employment begin one year after the effective date of the statute or one year for the teacher's entire life as a qualified teacher? To avoid conflicts between taxpayers and the department, the bill should be amended.

### **LEGISLATIVE HISTORY**

SB 413 (Knight, 2013/2014) would have created a personal income tax credit for qualifying science, technology, engineering, or mathematics (STEM) teachers. SB 413 failed passage out of the Senate Governance and Finance Committee.

AB 1071 (Fuentes, 2011/2012) would have created an income tax credit for the purchase of qualified school supplies by a credentialed teacher. AB 1071 failed passage out of the Assembly Revenue and Taxation Committee.

AB 2088 (Bonilla, 2011/2012) would have created a personal income tax credit for qualifying science, technology, engineering, or mathematics (STEM) teachers. AB 2088 failed passage out of the Assembly Revenue and Taxation Committee.

SB 87 (Senate Budget Committee, Chapter 180, Statutes of 2007) repealed the provision authorizing the Teacher Retention Credit that was allowed to credentialed teachers in specified amounts depending on the number of service years as a credentialed teacher in a qualifying educational institution.

SB 1438 (Railey, 1999/2000) would have established a credit of 100 percent of the costs, to a maximum of \$200, for qualified educational expenses paid or incurred by a parent or teacher. SB 1438 failed to pass out of the Senate Revenue and Taxation Committee by the constitutional deadline.

## OTHER STATES' INFORMATION

Review of *Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits. These states were reviewed because of the similarities between California income tax laws and their tax laws.

*Florida* only has a corporation income tax therefore this personal income tax credit is not applicable.

## FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved. As the bill continues to move through the legislative process and the implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

## ECONOMIC IMPACT

### Revenue Estimate

Estimated Revenue Impact of SB 693 As Amended January 8, 2014 Assumed Enactment After June 30, 2014 (\$ in Millions)		
2014-15	2015-16	2016-17
-\$2.5	-\$4.9	-\$7.1

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

## LEGAL IMPACT

This credit defines "qualified teacher" as an individual who has worked at least 900 hours in the school year as a teacher, in a school offering instruction in kindergarten or any of grades 1 to 12, inclusive, in California. This could raise constitutional concerns under the Commerce Clause of the United States Constitution because it could appear to improperly favor in-state activity over out-of-state activity. On August 28, 2012, (*Cutler v. Franchise Tax Board*), the Court of Appeal issued a unanimous opinion holding that California's Qualified Small Business Stock statutes were unconstitutional. Specifically, the Court of Appeal held that the statutory scheme's requirement of a large California presence in order to qualify for an investment incentive discriminated against interstate commerce, and therefore violated the federal dormant commerce clause. While no court decision has yet invalidated, as a general matter, state income tax credits that provide an incentive for in-state activity, i.e., property placed in service in the state, employees employed in the state, or employers located in the state, etc., targeted tax credits such as the ones proposed by this bill may be subject to constitutional challenge.

## **SUPPORT/OPPOSITION**

Support: California Catholic Conference, California Association of Private School Organizations, California State Firefighters Association, Concerned Women for America of California, Orange Chamber of Commerce.

Opposition: California Teachers Association

## **ARGUMENTS**

Proponents: Supporters could argue that this bill would provide some needed financial assistance to new teachers who reach into their own pockets to fund vital education resources and services.

Opponents: Some could argue that while providing a tax credit to assist teachers with expenses associated with educating the state's children, this bill would result in revenue losses, which have to be paid for with higher taxes on others or reductions in services.

## **POLICY CONCERNS**

This bill would allow a credit under the Teacher Credit for specified classroom purchases that may currently be deductible as employee business expenses. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense.

The bill lacks a recapture period. A teacher could spend \$250 on school supplies and claim a \$250 credit, then in a later year return the \$250 in supplies, and still claim the entire credit. The author may wish to add language to require that those supplies be provided to, or used by, the pupils or used by teacher in the classroom.

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