

**LEGISLATION PRESENTED FOR BOARD POSITION**  
**March 6, 2002**

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**AB 483 (Shelley) As Amended August 27, 2001**  
**Insurance Dividend Deduction**

This bill would allow certain corporations a 100% deduction for dividends received from an insurance company subsidiary.

This bill is a result of the case of *Ceridian Corp. v. Franchise Tax Board* (2000) 85 Cal. App. 4<sup>th</sup> 875. In *Ceridian*, the taxpayer challenged the limitation on the deduction for dividends received from insurance company subsidiaries set forth in B&CTL Section 24410. *Ceridian* was denied the deduction because the corporation was domiciled outside of California.

The California Court of Appeal ruled that the deduction for dividends received by holding companies from insurance company subsidiaries under B&CTL Section 24410 is unconstitutional for two reasons. First, it violated the commerce clause by allowing a deduction for insurance company dividends only to corporations domiciled in California. Second, it violated the commerce clause because the amount of the deduction is limited according to a formula based on the subsidiary's gross receipts, payroll, and property within California.

There were differing views on whether or how the deduction for dividends received from insurance company subsidiaries should be applied after *Ceridian*. Generally, if provisions of a statute are found to be unconstitutional, the remaining provisions of the statute can be preserved if the unconstitutional portion can be stricken without affecting the other parts. If the remaining provisions cannot be saved, the statute is void as unenforceable (*Kopp v. Fair Political Practices Comm.* (1995) 11 Cal. 4<sup>th</sup> 607, 641).

The Legislative Counsel of California issued an opinion on December 7, 2001, that Section 24410 is inoperative and unenforceable after *Ceridian*. The Legislative Counsel concluded that the provisions of Section 24410 could not be severed to eliminate the unconstitutional provisions and leave a 100% deduction for dividends received from an insurance company subsidiary. Thus, no deduction is allowed.

**Revenue Impact:** The revenue implications of this bill depend on whether the current baseline after the *Ceridian* decision is a 100% deduction for dividends received from an insurance company subsidiary for all corporations or whether no deduction is allowed. Under the latter, revised revenue losses are projected at \$165 million (tax and interest) for open years (1997-2000) and at \$33 million annually for ongoing years based on data discussed below. However, if the current baseline reflects the former (a 100% deduction), this bill would not impact revenue.

**Staff Recommendation:** No Recommendation.

**Status:** Senate Revenue and Taxation Committee

**AB 684 (Kehoe) As Amended June 27, 2001**  
**Authorizes Credit Unions to Engage in Trust Business**

This bill would authorize credit unions to engage in trust business.

This bill would make a number of administrative and technical changes to the Corporations Code and the Financial Code relating to the authorization of trust business for credit unions.

**Revenue Impact:** (In Millions)

2002-03	2003-04	2004-05
negligible loss	negligible loss	-\$0.5

Negligible loss is less than \$250,000.

**Staff Recommendation:** Neutral, if amended

This bill provides that credit unions will be deemed affiliated if they are members of the same "affiliated group" within the meaning of Section 1504 of the Internal Revenue Code. This IRC section requires one corporation to own the stock of another corporation. Credit unions are incorporated under the Mutual Benefit Nonprofit Law, which does not authorize the issuance of stock. Instead, it authorizes the issuance of memberships. Since no stock exists for or between credit unions, it appears the IRC reference may not be appropriate, and could cause confusion.

**Status:** Senate Banking, Commerce and International Trade Committee

**AB 874 (Horton) As Amended July 19, 2001**  
**Extend Operation of Community Development Financial Institution Investment (CDFII) Credit**

This bill would extend the sunset date of the CDFII credit from January 1, 2002, to January 1, 2005. The bill also would amend the credit to use the term "qualified investments" made by the taxpayer rather than "qualified deposits." This bill would define "qualified investments" to mean a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument. The qualified investment would conform to the specifications of the specific instrument as prescribed by the United States Department of Treasury, the Community Development Financial Institutions Fund, or its successor.

In the case where the aggregate amount of qualified investments (deposits) is less than \$10 million in any calendar year, the difference between the aggregate amount of the qualified investments and \$10 million would be carried over to the next and succeeding years. The difference would be added to the aggregate amount of the following year. The amount could be carried over to years the credit was available.

This bill would require FTB to advise and assist in the administration of this credit upon request from the California Organized Investment Network or the Department of Insurance.

**Revenue Impact:** (In Millions)

2001-02	2002-03	2003-04
Minor loss	-\$2	-\$2

Minor loss is less than \$500,000.

**Staff Recommendation:** Neutral, if amended

This bill would require the department to advise and assist the California Organized Investment Network or the Department of Insurance as requested. The terms “advise and assist” are undefined and could lead to broad interpretation as to what could be requested of the department. Department staff furnished suggested amendments that would allow the department to advise and assist in a manner that is permissive rather than required.

**Status:** Senate Appropriations Committee

**AB 1122 (Corbett) As Amended February 13, 2002  
Conformity to 2001 Economic Growth and Tax Relief  
Reconciliation Act (EGTRRA)**

This bill would conform state law to child and dependent care (CDC) credit, pension plan, Education IRA (Coverdell Education Saving Account or Coverdell Account), and Qualified Tuition Plan changes contained in the federal EGTRRA. In particular, this bill would increase the following limitations:

- Education IRA annual contribution limits would increase from \$500 to \$2,000 and would permit contributions to be used for elementary and secondary school expenses.
- IRA and Roth IRA contribution limits would increase to \$3000 in 2002 through 2004, and eventually to \$5,000 by 2008 and thereafter, with indexing in \$500 increments thereafter. Individuals 50 and older would be

allowed to contribute an addition \$500 to an IRA or Roth IRA in 2002 through 2005 and an additional \$1000 beginning in 2006.

- Contributions to 401(k) plans and other employer-sponsored plans would increase to \$11,000 in 2002, and would increase incrementally to \$15,000 by 2006 and thereafter, with indexing in \$500 increments thereafter. Individuals would be allowed to contribute to both 457 and 401(k) plans.
- This bill also would conform to the increase in the federal CDC credit. Thus, taxpayers could claim the same dollar amount of credit for state and federal purposes. (EGTRRA increased the maximum amount of eligible expenses from \$2,400 to \$3,000 and from \$4,800 to \$6,000, and increased the maximum credit from 30% to 35%. The federal changes also changed the phase out of the credit (but not below 20%) from \$15,000 to \$43,000 of adjusted gross income (AGI).

In addition, this bill would conform state law to the federal changes made to qualified tuition plans that would permit the transfer of credits from one qualified tuition program to another qualified tuition program for the benefit of the same beneficiary.

This bill also would conform to the federal treatment of gifts of appreciated property for alternative minimum tax purposes, estimated tax payments of individuals, and most federal elections.

This bill is a tax levy. Thus, it would be effective immediately, and unless otherwise specified, it would apply to taxable years beginning on or after January 1, 2002 and before January 1, 2011.

**Revenue Impact: (In Millions)**

Provision	2002-03	2003-04	2004-05
Child & Dependent Care Credit	-\$6	-\$39	-\$40
Coverdell Accounts	----- Negligible loss -----		
Qualified Tuition Plans	minor loss	-\$1	-\$1
IRA Provisions	-\$9	-\$9	-\$13
Pension Provisions	-\$35	-\$38	-\$45
AMT on Charitable Contributions of appreciated property	-\$12	-\$10	-\$10
Federal Estimate Payment Requirements	\$210	\$10	\$10
Waive Estimated Tax Penalties	No Impact	No Impact	No Impact
Mandated State Elections	\$30	\$30	\$30
Total	\$178	-\$57	-\$69

**Staff Recommendation:** Support

**Status:** Senate Appropriations Committee

**AB 1743 (Campbell, John) As Amended January 29, 2002**  
**Conformity to federal Economic Growth and Tax Relief**  
**Reconciliation Act of 2001**

This bill would conform state law to the pension plan, Education IRA (Coverdell Education Saving Account or Coverdell Account), and Qualified Tuition Plan changes contained in the federal EGTRRA. In addition, this bill would conform state law to the two new federal retirement related credits:

- A credit up to \$2,000 for specified individuals for qualified retirement savings.
- A credit up to \$500 for the first three years for pension plan start-up costs.

This bill would be effective immediately, and unless otherwise specified, it would apply to the same periods as the federal provisions, generally for taxable years beginning on or after January 1, 2002, and before January 1, 2011.

**Revenue Impact:** (In Millions)

Provision	2002-03	2003-04	2004-05
Credit to certain individuals for elective deferrals and IRA contributions	-\$85	-\$55	-\$52
Small business tax credit for new retirement plan expenses	-\$1.5	-\$2	-\$3
Coverdell Accounts	----- negligible loss -----		
Qualified tuition plans	minor loss	-\$1	-\$1
IRA provisions	-\$9	-\$9	-\$13
Pension provisions	-\$35	-\$38	-\$45
<b>Total</b>	<b>-\$130.5</b>	<b>-\$105</b>	<b>-\$114</b>

**Staff Recommendation:** Support, if amended.

This bill would conform to 100% of the amount of the two new federal credits relating to retirement created in EGTRRA. Generally, when California conforms to a federal credit only a percentage of the federal amount is allowed as a state credit due to the inherent differences in the federal and state income tax rates.

Additionally, both federal credits are for 50% of the amount of the expense. Therefore, coupled with the credit proposed in this bill, the

taxpayer would receive 100% credit. The department has found that 100% or more credits of incurred costs have the potential to lead to abuse. The abuse is due to the fact that the taxpayer does not have any money at risk in the activity that generates the credit.

**Status:** Assembly Revenue and Taxation Committee

**AB 1744 (Corbett) As Amended January 31, 2002**  
**Conformity to federal Economic Growth and Tax Relief**  
**Reconciliation Act of 2001**

This bill would conform to the Economic Growth & Tax Relief Reconciliation Act of 2001 (EGTRRA) relating to IRC Section 457 rollovers and purchase of service credits by public employees.

**Revenue Impact:**

Provision	2002-03	2003-04	2004-05
Rollovers allowed among S. 457 plans, S. 403(b) plans, and qualified plans	minor loss	negl. loss	negl. loss
Purchase of service credit in governmental defined benefit plans	negl. effect	negl. effect	negl. effect

Minor and negligible losses are less than \$500,000 and \$250,000.

**Staff Recommendation:** Support

**Status:** Assembly Appropriations Committee

**AB 1752 (Migden) As Introduced January 7, 2002**  
**Public Records Distribution of Public Writings**

This bill would require the Board of Equalization (BOE) to make additional disclosures of public records before taking final action on any item at its public meetings. In particular, a disclosable public record distributed by individual members of the BOE or BOE staff to the BOE, or members thereof, would be required to be disseminated in three ways before BOE takes any final action on the item to which the writing pertains. The public records must be: (1) made available for public inspection at the meeting, (2) distributed to all persons requesting notice of its meeting, and (3) made available on the Internet.

This bill would be effective and operative on January 1, 2003.

**Revenue Impact:** No identifiable revenue impact would be attributable to this bill.

**Staff Recommendation:** Neutral, if amended

It is unclear how BOE's implementation of this bill would impact the processing of FTB's tax appeals before the BOE. If this bill was interpreted to require BOE to disseminate documents relating to tax appeals (briefs with supporting documents) before its acts on an income tax appeal, resolutions of these appeals could be delayed. Such delays would cause interest to accrue during that period the decision is delayed.

In addition, writings pertaining to income tax appeals, namely briefs with supporting documents, would be subject to the dissemination requirements under this bill. Routinely disseminating these tax appeal documents on the Internet or mailing them to people requesting notice of an upcoming BOE meeting may be of concern to income taxpayers for the following reasons:

1. Posting tax documents on the Internet would subject these documents (which may include a taxpayer's personal or financial information) to the browsing of the general public. Given the amount of personal or financial information that may be present on supporting documents, posting this information on the Internet could aid in identity theft.
2. An income tax appeal case heard by the BOE is analogous to a civil or criminal matter in Superior Court. Documents filed with the court are not posted on the Internet or mailed to interested parties before the court makes a decision on a case. It is unclear why income tax appeal matters should bear a greater level of general public disclosure than a civil or criminal court case.
3. Posting of tax appeal documents on the Internet may discourage taxpayers from pursuing their tax protest and appeal rights.

**Status:** Assembly Governmental Organization Committee

<b>AB 1834</b>	<b>(Wyland)</b>	<b>As Introduced January 23, 2002</b>
<b>SB 1286</b>	<b>(Haynes)</b>	<b>As Introduced January 16, 2002</b>

**Conformity – Net Operating Loss Deduction**

Both bills would allow taxpayers to carry forward 100% of the NOL incurred in taxable years beginning on or after January 1, 2003. This is accomplished by limiting the 60% NOL carryover modification of federal law to apply only to taxable years beginning on or after January 1, 2002, and before January 1, 2003.

Both bills also would limit the 10-year NOL carryover modification of federal law to apply only to taxable years beginning on or before January 1, 2003, and thus conform to the federal 20-year carryover period for NOL incurred in taxable years beginning on or after January 1, 2003.

**Revenue Impact:** (In Millions)

2003-04	2004-05	2005-06
-\$6.5	-\$70	-\$159

Rounded to the nearest half million dollars.

**Staff Recommendation:** Neutral, if amended

It appears limiting the 10-year carryover to taxable years beginning on or before January 1, 2003, and the silence regarding the length of the carryover for NOLs incurred on or after January 1, 2003, is intended to suggest conformity to the 20-year carryover provided under federal law. However, the lack of clarification may lead to confusion for both the taxpayer and the department. The carryover period for NOLs incurred on or after January 1, 2003, should be clarified.

Since all taxpayers would receive a 100% NOL carryover and a 20-year carryover for losses incurred on or after January 1, 2003, the special NOL treatment for "new businesses," "eligible small businesses," and businesses in tax incentive zones would no longer be an incentive. These special NOL provisions should be amended to clearly apply only to taxable years beginning on or before January 1, 2003.

**Status:** AB 1834 - Assembly Revenue and Taxation Committee  
SB 1286 - Senate Revenue and Taxation Committee

**ACA 13      (Leonard)      As Amended January 7, 2002**  
**Constitutional Amendment**

This bill would propose a state constitutional amendment that would:

- Change the name of the five-member Board of Equalization (BOE) to the California Tax Commission (CTC), and
- Require the CTC to collect and administer "taxes on or measured by income," herein referred to as "income taxes."

The next general election in which this constitutional amendment could be included would be November 5, 2002, and would be effective the day after the election upon approval of a majority of those who vote on the ballot measure.

**Revenue Impact:** This constitutional amendment alone should not affect departmental costs and tax revenue. However, any fiscal and economic impact would result from the enabling legislation.

**Staff Recommendation:** No Recommendation

The Revenue and Taxation Code requires the FTB to administer and enforce the income tax laws. This constitutional amendment generally would give the same responsibility to the CTC, which could result in administrative conflicts between FTB and CTC. FTB may have to continue its statutory responsibility to administer the income tax laws until such time as directed otherwise through legislation (enabling legislation) or order of a state appellate court. According to the author's staff, the author anticipates that enabling legislation to transfer the responsibilities would be introduced once the voters pass the constitutional amendment.

When providing for the enabling legislation, clarification should expressly be provided in the following matters:

- Certain programs administered by FTB are not income taxes: homeowners and renters assistance, non-tax debt collection, political reform audit, and nonadmitted insurance tax programs. Therefore, it is unclear whether the author intends to shift administration of these provisions to CTC or to continue administration by FTB.
- Certain laws administered by FTB are located within the income tax laws and administered in conjunction with the income tax laws, but are not income taxes, e.g., voluntary contributions and treatment of tax-exempt organizations. Therefore, it is unclear whether the author intends to shift administration of these provisions to CTC or to continue administration by FTB.
- Unless the author intends for FTB's California Child Support Automated System (CCSAS) responsibilities to remain with FTB, the enabling legislation should address CCSAS responsibilities.

**Status:** Assembly Revenue and Taxation Committee

**SB 219 (Scott) As Amended January 7, 2002**  
**Conformity to federal disaster relief provisions**

For taxpayers affected by a presidentially declared disaster, this bill would:

- Increase from 90 days to 120 days the filing extension period, and
- Extend the waiver of interest provision to 120 days.

This bill would apply to any disaster that occurs on or after September 11, 2001.

**Revenue Impact:** The impact on delayed filing and taxes paid in any given year is unknown due to inherent uncertainties regarding future disasters and the income profiles of victims. However, based on impacts projected by the federal law, conforming to this change would have a negligible impact (less than \$250,000) to state tax revenues.

With regard to the September 11, 2001, terrorist attacks, FTB has already notified the public of its intent to provide administrative relief to California taxpayers (individuals and businesses) directly affected.

**Staff Recommendation:** Support

**Status:** Assembly Revenue and Taxation Committee

**SB 657 (Scott) As Amended January 29, 2002**  
**Conformity to federal Economic Growth and Tax Relief**  
**Reconciliation Act of 2001**

This bill would conform state law to the pension plan, Education IRA (Coverdell Education Savings Account), and Qualified State Tuition Plan changes contained in the federal EGTRRA.

This bill contains provisions that would prevent disqualification of pension or retirement savings plans due to future federal changes.

This bill is a tax levy. Thus, it would be effective immediately, and unless otherwise specified, it would apply to the same periods as the federal provisions, generally for taxable years beginning on or after January 1, 2002 and before January 1, 2011.

**Revenue Impact:** (In Millions)

Provision	2002-03	2003-04	2004-05
Coverdell Accounts	----- baseline loss -----		
Qualified tuition plans	minor loss	-\$1	-\$1
IRA provisions	-\$9	-\$9	-\$13
Pension provisions	-\$35	-\$38	-\$45
Total	-\$44	-\$48	-\$59

**Staff Recommendation:** Support

**Status:** Assembly Revenue and Taxation Committee

**SB 1255 (Burton) As Introduced January 9, 2002**  
**10% and 11% tax rates for higher income taxpayers**

Under the PITL, this bill would add a 10% and an 11% marginal tax rate for individuals with taxable income over specified amounts. The income tax brackets would be adjusted for inflation for taxable years beginning on or after January 1, 2003. The AMT rate for individuals also would be increased to 8.5%.

The increased rates would be effective for taxable years beginning on or after January 1, 2002, and would be repealed if the Director of Finance certifies that a prudent reserve threshold (for the General Fund) has been met.

**Revenue Impact: (In Billions)**

2002-3	2003-4	2004-5
\$3.1	\$3.2	\$3.5

**Staff Recommendation:** Neutral

**Status:** Senate Revenue and Taxation Committee

**SB 1256 (Brulte) As Introduced January 9, 2002**  
**Conformity to federal Economic Growth and Tax Relief**  
**Reconciliation Act of 2001**

This bill would conform state law to the pension plans, Education IRA (Coverdell Education Saving Account or Coverdell Account), and Qualified Tuition Plan changes contained in the federal EGTRRA.

This bill would also allow the same CDC credit as allowed under federal law as modified by EGTRRA. Thus, taxpayers could claim the same dollar amount of credit for state and federal purposes.

This bill is a tax levy. Thus, it would be effective immediately, and unless otherwise specified, it would apply to the same periods as the federal provisions, generally apply for taxable years beginning on or after January 1, 2002 and before January 1, 2011.

**Revenue Impact:** (In Millions)

Provision	2002-03	2003-04	2004-05
Refundable Child and Dependent Care Expenses Credit	-\$270	-\$300	-\$320
Coverdell Accounts	----- negligible loss -----		
Qualified tuition plans	minor loss	-\$1	-\$1
IRA provisions	-\$9	-\$9	-\$13
Pension provisions	-\$35	-\$38	-\$45
Total	-\$314	-\$348	-\$379

**Staff Recommendation:** Support, if amended

This bill would conform to 100% of the amount of the federal CDC credit. Generally, when California conforms to a federal credit only a percentage of the federal amount is allowed as a state credit due to the inherent differences in the federal and state income tax rates.

**Status:** Senate Revenue and Taxation Committee

**SB 1274 (Haynes) As Introduced January 15, 2002**  
**Credit for services rendered without charge**

This bill would allow a credit equal to the fair market value (FMV) of the services rendered without charge by an attorney, physician, or surgeon licensed to practice in this state for any nonprofit charitable organization located in this state that provides services to the poor. The credit would be in lieu of any otherwise allowable deduction for any services for which this credit is allowed.

The bill would be effective immediately upon enactment, and the credit would be operative for taxable years beginning on or after January 1, 2002. Any excess credit could be carried over until exhausted.

**Revenue Impact:** (In Millions)

2002-03	2003-04	2004-05
-\$155	-\$220	-\$225

Estimates above have been rounded to the nearest \$5 million. Since fair market values can represent subjective judgments, this bill could lead to significant abuse and even larger revenue losses.

**Staff Recommendation:** Neutral, if amended

Definitions are need for the terms “physician,” “surgeon,” “poor,” “fair market value of services,” and “nonprofit charitable organization.” The

absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of the credit.

The bill needs to specify a credit verification process, such as requiring the nonprofit charitable organization to provide a receipt to the taxpayer specifying the number of donated hours. The taxpayer should be required to provide the receipt to the department upon request.

**Status:** Senate Revenue and Taxation Committee

**SB 1292 (Haynes) As Introduced January 17, 2002**  
**State Agencies Report Financial Activities to Legislature**

By January 15, 2003, this bill would require each state agency, board, commission, department or office to submit to specific Legislative committees specified budget information (appropriations, expenditures, etc.) for the fiscal years 1997-98, 1998-99, 1999-2000, 2000-01, and 2001-02.

This bill would be effective upon enactment.

**Fiscal Impact:** Assembling the information for the report required in this bill would have a minor impact on the department. For current year 2002/2003, the one-time cost is estimated at approximately \$60,000, which is equivalent to 1 PY in overtime dollars.

**Revenue Impact:** This bill would not impact state income tax revenue.

**Staff Recommendation:** Neutral

Implementation of this bill is expected to have a minor impact on the department assuming the report would be similar in nature to the various financial reports used internally and externally by the department.

**Status:** Senate Governmental Organization Committee

**SCA 7 (Burton) As Introduced January 10, 2002**  
**Constitutional Amendment**

This bill would propose a state constitutional amendment that would:

- Make it a constitutional right to attend, observe, and be heard in the meetings of elected and appointed public bodies;

- Make it a constitutional right to inspect and copy records made or received in connection with the official business of any public body, agency, officer, or employee;
- Specify that the Legislature could continue to provide for the protection of government information about a private person; and
- Permit the Legislature to limit the right of public access to government information to protect public safety or private property, to ensure the fair and effective administration of justice, or to provide for the preservation of public funds and resources.

The next general election in which this constitutional amendment could be included would be November 5, 2002, and would be effective the day after the election upon approval of a majority of those who vote on the ballot measure.

**Revenue Impact:** This measure would not impact the state's income tax revenue or the Franchise Tax Board's administration of state income tax.

**Staff Recommendation:** Neutral

**Status:** Senate Governmental Organization Committee