



## **Bill Analysis**

Author: Committee on Budget  
and Fiscal Review

Bill Number: SB 855

**Subject:** Earned Income Refundable Credit/ Increase Income Thresholds/ Allow to Individuals who are Age 18 and Older & Extend Sunset for New Employment Credit & Modify and Extend Sunset for California Competes Tax Credit & Exclusion/Earned Income from Indian Country in This State & Remove the Repeal Date for the Tax Data Exchange Agreement between the Franchise Tax Board (FTB) and Cities, Counties, or Cities and Counties (eligible entities)

### **Summary**

This bill would do the following:

Provision No. 1: Under the Personal Income Tax Law (PITL), would modify the California Earned Income Tax Credit (California EITC).

Provision No. 2: Under the PITL and the Corporation Tax Law (CTL), extend the sunset date for the New Employment Credit (NEC).

Provision No. 3: Under the PITL and the CTL, among other things, extend the sunset date for the California Competes Tax Credit.

Provision No. 4: Under the PITL, exclude certain earned income from gross income in Indian country of an eligible taxpayer, as defined.

Provision No. 5: Remove the repeal date for the Tax Data Exchange Agreement between the FTB and eligible entities, allowing the agreement to continue in perpetuity.

This analysis only discusses the provisions that impact the department.

**Economic Impact – Summary Revenue Table**

(\$ in Millions)

Fiscal Year	2018-2019	2019-2020	2020-2021
Provision No. 1: California EITC	- \$60	- \$60	- \$60
Provision No. 2: New Employment Credit*	N/A	N/A	- \$0.9
Provision No. 3: California Competes Credit	Unknown	Unknown	Unknown
Provision No. 4: Tribal Income Exclusion	- \$1.7	- \$1.1	- \$1.1
Provision No. 5: Tax Data Exchange Agreement	+ \$1.9	+ \$4.5	+ \$7.6

\*Revenue Impact for Provision No. 2: FY 2021-2022 loss of - \$3.3 M, FY 2022-2023 loss of - \$6.2 M.

**Provision No.1:** Earned Income Refundable Credit/ Increase Income Thresholds/ Allow to Individuals Who are Age 18 and Older

**Reason for the Provision**

The reason for this provision is to reduce California poverty by increasing the number of Californians eligible for the California EITC.

**Effective/Operative Date**

This provision, providing for appropriations related to the Budget Bill, and identified as a bill related to the budget in the Budget Bill, would be effective immediately upon enactment and would be specifically operative for taxable years beginning on or after January 1, 2018.

**Federal Law**

Existing federal law (Internal Revenue Code (IRC) section 32) allows eligible individuals a refundable Earned Income Tax Credit (EITC). A refundable credit allows for the excess of the credit over the taxpayer's tax liability to be refunded to the taxpayer. The EITC is a percentage of the taxpayer's earned income and is phased out as income increases. For 2017, the EITC is available to individuals and families earning up to \$53,930. The federal credit rate varies from 7.65 percent to 45 percent, depending on the number of qualifying children.<sup>1</sup>

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<sup>1</sup> The maximum credit ranges from \$510 for an eligible individual without a qualifying child up to \$6,318 for an eligible individual with three or more qualifying children.

An eligible individual<sup>2</sup> is defined as follows:

- Any individual who has a qualifying child for the taxable year, or
- Any other individual that does not have a qualifying child for the taxable year, if they meet the following requirements:<sup>3</sup>
  - Have attained the age of 25 but not attained the age of 65 before the close of the taxable year.
  - Have a principal place of abode in the United States for more than one-half the taxable year.
  - Not be a dependent of another taxpayer.

An eligible individual (and spouse, if filing a joint return) also must have a Social Security Number (SSN) issued by the Social Security Administration that is valid for employment.<sup>4</sup> Certain individuals are specifically excluded from the definition of an eligible individual.<sup>5</sup>

Generally, a qualifying child must live with the eligible individual for more than one-half the taxable year in the United States, and must be under the age of 19, unless the child is a full-time student under age 24, or the child is permanently and totally disabled. Only one person can claim a qualifying child.

The name, age, and SSN of the qualifying child must be reported on the tax return.

### State Law

State law provides a refundable California EITC that is generally determined in accordance with IRC section 32, as applicable for federal income tax purposes for the taxable year, except as modified.<sup>6</sup>

State law conforms to the federal definitions of an “eligible individual” and a “qualifying child” with the following exceptions:

- An eligible individual without a qualifying child must have a principal place of abode in “this state” (rather than the United States) for more than one-half of the taxable year.

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<sup>2</sup> IRC section 32(c)(1).

<sup>3</sup> IRC section 32(c)(1)(A)(ii).

<sup>4</sup> IRC section 32(m). The SSN must be issued by the Social Security Administration and must be valid for employment. A social security card stating “Not Valid for Employment” or a federal individual taxpayer identification number (ITIN) may not be used for the federal EITC.

<sup>5</sup> IRC section 32(c)(1) excludes from the definition of an eligible individual: an individual who is a qualifying child of another taxpayer; U.S. citizens or residents living abroad and claiming benefits under IRC section 911, and most nonresident aliens, unless they elect to be treated as US residents for federal tax purposes.

<sup>6</sup> Revenue and Taxation Code (R&TC) section 17052. The California EITC is only operative for taxable years the annual Budget Act specifies an adjustment factor and authorizes resources for the Franchise Tax Board (FTB) to oversee and audit returns associated with the California EITC. Refunds for the California EITC are paid from the continuously appropriated Tax Relief and Refund Account. For additional details on the California EITC, refer to the [Franchise Tax Board home page](#).

- A qualifying child also must have a principal place of abode in “this state” (rather than the United States) for more than one-half of the taxable year.

State law conforms to the federal requirement that an eligible individual and any qualifying child must have a valid SSN.

For purposes of the California EITC, the federal definition of “earned income” is modified to include wages, salaries, tips, and other employee compensation, includable in federal Adjusted Gross Income (AGI), but only if such amounts are subject to California withholding.<sup>7</sup> For taxable years beginning on or after January 1, 2015, and before January 1, 2017, earned income specifically excluded net earnings from self-employment.

For taxable years beginning on or after January 1, 2017, the California EITC was modified to include, in the definition of earned income, net earnings from self-employment, consistent with federal law, and to increase the maximum AGI amounts at which the California EITC is completely phased-out.

For 2017, the California EITC is generally available to households with AGI of less than \$22,323.

### **This Provision**

For taxable years beginning on or after January 1, 2018, this provision, under the PITL, would modify the California EITC by:

- Increasing the maximum AGI limits to:
  - \$24,960 for an eligible individual with a qualifying child.
  - \$16,800 for an eligible individual without a qualifying child.
- Revising the age limit for an eligible individual without a qualifying child to 18 years or older, rather than between the ages of 25 and 64 years.<sup>8</sup>

Additionally, this provision would specify that for taxable years beginning on or after January 1, 2018, and before January 1, 2019, the percentage change in the California Consumer Price Index (CCPI) would be deemed to be the greater of 3.1 percent or the percentage change in the CCPI as calculated under R&TC section 17041(h) for that taxable year.

### **Legislative History**

AB 131 (Assembly Committee on Budget, Chapter 252, Statutes of 2017) provided technical clarification to previous budget trailer bills related to the 2017 Annual Budget Act, including SB 106 discussed below.

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<sup>7</sup> Pursuant to Division 6 (commencing with section 13000) of the Unemployment Insurance Code.

<sup>8</sup> The eligible individual must not have attained age 65 before the close of the taxable year.

AB 1942 (Santiago, 2017/2018), would have required the FTB to modify the Form 540 related to the California EITC, and modify *The EITC Information Act*. AB 1942 was held in the Assembly Appropriations Committee.

AB 2066 (Stone, et al., 2017/2018), would have modified the California EITC by reducing to 18 years the minimum age limit for eligible individuals without a qualifying child, and allowing either a federal ITIN or an SSN. AB 2066 was held in the Assembly Appropriations Committee.

AB 2387 (Reyes, 2017/2018), would have modified the California EITC by reducing from 25 years to 18 years the minimum age limit for eligible individuals without a qualifying child. AB 2387 failed to pass out of the Assembly Revenue and Taxation Committee.

SB 106 (Senate Committee on Budget and Fiscal Review, Chapter 96, Statutes of 2017), expanded the California EITC by modifying the earned income computation to include net earnings from self-employment, consistent with federal law, and increasing the maximum AGI phase-out amounts.

SB 1073 (Monning, Chapter 722, Statutes of 2016) made permanent the enhanced 45-percent credit rate for three or more qualifying children to be consistent with the federal EITC.

SB 80 (Senate Committee on Budget and Fiscal Review, Chapter 21, Statutes of 2015) enacted the California EITC.

## Program Background

California began offering its own California EITC starting with the 2015 tax returns. This refundable tax credit puts money back in the pockets of California's working families and individuals. For taxpayers who owe taxes, the California EITC reduces the amount of taxes they might owe and may allow them a refund when they file their taxes. If they do not owe taxes, the California EITC will provide them a tax refund when they file their taxes.

To claim the California EITC, eligible taxpayers must file their California personal income tax return<sup>9</sup> and attach Form 3514, *California Earned Income Tax Credit*.<sup>10</sup> Individuals were able to access [CalEITC4me](#) to find free help to file a 2017 personal tax return through Tax Day, Tuesday, April 17, 2018.<sup>11</sup>

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<sup>9</sup> Individual income tax returns include the Form 540 *California Resident Income Tax Return*, Form 540 2EZ *California Resident Income Tax Return*, or Form 540-NR *California Nonresident or Part-Year Resident Return*. These forms are available at the [Franchise Tax Board home page](#).

<sup>10</sup> [2017 Form 3514 California Earned Income Tax Credit](#).

<sup>11</sup> If April 15 falls on a Saturday, Sunday, or holiday, the filing deadline is extended to the next working day. April 16, 2018, Emancipation Day, was a legal holiday in Washington DC. Therefore, the 2018 Tax Day was April 17, 2018.

**Other States' Information**

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Illinois* allows taxpayers to claim a refundable credit equal to 10 percent of their federal EITC.

*Massachusetts* allows taxpayers to claim a refundable credit equal to 23 percent of their federal EITC.

*Michigan* allows taxpayers to claim a refundable credit equal to 6 percent of their federal EITC.

*Minnesota* allows taxpayers to claim a Working Family Credit (WFC) if they also claimed the federal EITC. The WFC is based on the lesser of the federal EITC or federal AGI.

*New York* allows taxpayers to claim a refundable credit equal to 30 percent of the federal EITC.

**Fiscal Impact**

Staff estimates a cost of approximately \$315,000 for fiscal year 2018/2019, and \$499,000 for fiscal years 2019/2020 and thereafter for resources to respond to taxpayer and tax preparer questions, review returns, and prevent improper refunds from being issued.

**Economic Impact**

Revenue Estimate

This provision would result in the following revenue loss:

Estimated Revenue Impact of Provision 1 of SB 855 as Amended June 13, 2018  
 Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue
2018-2019	- \$60
2019-2020	- \$60
2020-2021	- \$60

This analysis does not account for changes in employment, personal income, or gross state product that could result from this provision or for the net final payment method of accrual.

## Revenue Discussion

Based on output from the FTB's EITC micro-simulation model comparing current law and proposed law model results, it is estimated that in taxable year 2018, expanding EITC to taxpayers between the age of 18 and 25 with no qualified dependents, to taxpayers older than 65 years old with no qualified dependents and increasing the maximum income levels would result in a \$60 million revenue loss. The tax-year estimates are converted to fiscal-year estimates, then rounded to arrive at the amounts in the above table.

## Appointments

None.

## Support/Opposition

Support: None provided.

Opposition: None provided.

## Provision No.2: Extend Sunset for New Employment Credit (NEC)

### Reason for the Provision

The reason for this provision is to allow the NEC to continue to encourage the hiring of difficult to hire individuals by extending the sunset date.

### Effective/Operative Date

This provision, providing for appropriations related to the Budget Bill, and identified as a bill related to the budget in the Budget Bill, would be effective and operative immediately upon enactment.

### State Law

For taxable years beginning on or after January 1, 2014, and before January 1, 2021, current state law allows an NEC that is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract.

### This Provision

This provision would modify the NEC by extending for five years the sunset date, to taxable years beginning before January 1, 2026, and the repeal date, to December 1, 2029.

### Legislative History

SB 661 (Fuller, 2017/2018) would have expanded the NEC by adding a new type of qualified employee. SB 661 failed to pass out of the house of origin by the constitutional deadline.

SB 90 (Galgiani and Canella, Chapter 70, Statutes of 2013), modified AB 93 as chaptered on July 11, 2013. Specifically, SB 90, for purposes of the NEC, modified the definition of qualified employee, excluded sexually oriented businesses from the definition of qualified taxpayer and small business, and modified the defined geographical area that the hiring credit may be generated in.

AB 93 (Assembly Committee on Budget, Chapter 69, Statutes of 2013), among other things, created the NEC.

**Other States' Information**

Review of *Illinois, Florida, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

**Fiscal Impact**

Staff estimates a cost of approximately \$166,000 in fiscal year 2019/2020 and ongoing costs of \$162,000 per year thereafter to continue to administer the provisions of the NEC.

**Economic Impact**

Revenue Estimate

This provision would result in the following revenue loss:

Estimated Revenue Impact of Provision 2 of SB 855 as Amended June 13, 2018  
 Assumed Enactment after June 30, 2018

Some of the revenue loss is outside the normal revenue window (2018/2019 - 2020/2021).

(\$ in Millions)

Fiscal Year	Revenue
2020-2021	- \$0.9
2021-2022	- \$3.3
2022-2023	- \$6.2

This analysis does not account for changes in employment, personal income, or gross state product that could result from this provision or for the net final payment method of accrual.

Revenue Discussion:

This provision would extend the NEC through January 1, 2026. The timing and use of the credit is based on current NEC activity reported to the FTB. This estimate assumes the credit would continue to grow at 3 percent per year through taxable year 2025 and then begin to decline as new hires complete their 60 month credit generation period and carryover credits are exhausted. The estimated revenue loss from the credit extension would be \$1.6 million in taxable year 2021, \$4.6 million in 2022, peaking at \$15 million in taxable year 2025.



The tax-year estimates are converted to fiscal-year estimates, then rounded to arrive at the amounts in the above table.

**Appointments**

None.

**Support/Opposition**

Support: None provided.

Opposition: None provided.

**Provision No.3: Modify and Extend Sunset for California Competes Tax Credit****Reason for the Provision**

The reason for the provision is to allow the California Competes Tax Credit to continue to encourage businesses to invest in California by extending the sunset date.

**Effective/Operative Date**

This provision, providing for appropriations related to the Budget Bill, and identified as a bill related to the budget in the Budget Bill, would be effective and operative immediately upon enactment.

**State Law**

For each taxable year beginning on or after January 1, 2014, and before January 1, 2025, current state law allows the California Competes Tax Credit. This credit is administered by the Governor's Office of Business and Economic Development (GO-Biz). The amount of the credit available to a taxpayer for a taxable year is negotiated and set forth in a written agreement between GO-Biz and a taxpayer, and approved by the "California Competes Tax Credit Committee," consisting of the State Treasurer, the Director of the Department of Finance (DOF), the Director of GO-Biz, and one appointee each by the Speaker of the Assembly and Senate Committee on Rules.

GO-Biz considers a variety of factors when determining which businesses will receive the credit, but must reserve 25 percent of the aggregate amount of the credit that may be allocated for small businesses.

Small business is defined as an entity that during the previous taxable year had an amount of aggregate gross receipts, less returns and allowances reportable to this state, of \$2,000,000 or less.<sup>12</sup>

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<sup>12</sup> As defined in R&TC sections 17053.73 and 23626.

Upon approval of the written agreement by the Committee, GO-Biz informs the FTB of the terms and conditions of the written agreement. The FTB reviews the books and records of taxpayers allocated a California Competes Tax Credit to ensure that the taxpayer complied with the terms and conditions of the written agreement. The FTB shall provide information to GO-Biz with respect to whether a taxpayer is a “small business.”

### **This Provision**

This provision would modify the California Competes Tax Credit by extending for five years the sunset date, to taxable years beginning before January 1, 2030, and the repeal date to December 1, 2030.

This provision would also modify the conditions for GO-Biz to consider when allocating this credit and provide for additional allocations of \$180,000,000 for each fiscal year from 2018-2019 to 2022-2023, inclusive.

The provision would require the FTB, among other state agencies, as specified, to provide additional information as specified by the Legislative Analyst’s Office (LAO), as needed. Any information received by the LAO that has not otherwise been made public would be considered confidential taxpayer information.<sup>13</sup>

Additionally, the provision would remove the requirement that the FTB notify GO-Biz as to whether a business is considered a small business.

### **Legislative History**

AB 961 (Gallagher, 2015/2016), would have modified the amount of funding for the California Competes Tax Credit. AB 961 failed to pass by the constitutional deadline.

AB 2055 (Gipson, 2015/2016), would have modified the items for GO-Biz to consider when allocating the credit to give special consideration to those installing zero or near-zero emissions equipment. AB 2055 failed to pass by the constitutional deadline.

AB 1560 (Quirk-Silva, et al., Chapter 378, Statutes of 2014), modified the funding for the California Competes Tax Credit.

AB 93 (Assembly Committee on Budget, Chapter 69, Statutes of 2013), repealed the geographically targeted economic development area tax incentives and the New Jobs Tax Credit under the PITL and CTL, created a New Hiring Tax Credit, established the California Competes Tax Credit Committee, and created the California Competes Tax Credit under the PITL and CTL.

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<sup>13</sup> Subject to R&TC section 19542.

**Other States' Information**

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws lack a credit comparable to the credit allowed by this provision. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.

**Fiscal Impact**

Currently, the FTB has been allocated resources to administer this credit until June 30, 2020. When that allocation expires, we anticipate the cost to be approximately \$1,776,000 per year beginning on July 1, 2020.

**Economic Impact**

## Revenue Estimate

This provision would result in a revenue loss. In accordance with this provision, staff defers to the DOF to determine the revenue impact of this provision.

## Revenue Discussion

The amount and timing of the California Competes Credit is subject to the written agreements between GO-Biz and the taxpayer. Staff defers to the DOF for the estimated revenue loss for this credit.

**Appointments**

None.

**Support/Opposition**

Support: None provided.

Opposition: None provided.

**Provision No.4: Exclusion/Earned Income from Indian Country in This State****Reason for the Provision**

The reason for the provision is to allow Native American Indian tribal members flexibility in the location of their residence without compromising their income exclusion.

**Effective/Operative Date**

This provision, providing for appropriations related to the Budget Bill, and identified as a bill related to the budget in the Budget Bill, would be effective immediately upon enactment and specifically operative for taxable years beginning on and after January 1, 2018.

## State Law

Generally, the income of California residents is subject to California taxation, regardless of source.<sup>14</sup> However, current state law provides an exclusion from gross income for a tribal member's earned income meeting any of the following conditions:

- The tribal member is an enrolled member of a federally recognized California Indian Tribe and lives in their tribe's Indian country,<sup>15</sup> and earns or receives reservation source income from the same Indian country in which he or she lives and is an enrolled tribal member.
- The tribal member is an active duty U.S. military service member who receives military pay and is stationed in California with orders to live outside Indian country.
- The tribal member is a retired military service member who receives a military pension and is residing on their tribe's reservation.
- The tribal member lives outside California and receives per capita income from his or her federally recognized California tribe.

## This Provision

For taxable years beginning on or after January 1, 2018, this provision would exclude from gross income the earned income of an eligible taxpayer.

The provision would define the following terms:

- "Earned Income" has the same meaning as provided in the Earned Income Credit provision (Section 32(c)(2) of the IRC), as modified to substitute the phrase "but only if such amounts would have been otherwise properly includable in gross income for the taxable year without regard to subdivision (a) and only to the extent that the earned income is derived from sources within Indian country in this state" for the phrase "but only if such amounts are includable in gross income for the taxable year."
- "Eligible taxpayer" means an individual who is a member of a federally recognized Indian tribe in this state who resides within Indian country in this state.
- "Indian country" has the same meaning as provided in R&TC section 30101.7.<sup>16</sup>

This provision would exclude earned income as defined above. However, any per capita distributions received by an individual not residing on their tribe's reservation would remain includable in gross income.

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<sup>14</sup> R&TC section 17041.

<sup>15</sup> [Indian country Definition.](#)

<sup>16</sup> "Indian country" shall have the same meaning as provided in Section 1151 of Title 18 of the United States Code, and includes any other land held by the United States in trust or restricted status for one or more Indian tribes.

**Legislative History**

SB 289 (McGuire, 2017/2018) was substantially similar to this provision. SB 289 was vetoed for failure to go through the budget process.

**Other States' Information**

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

*Illinois* does not have any federally recognized Indian tribes within the state and therefore has no exclusions available.

*Massachusetts* law states that American Indian tribal members living within Indian country are not considered residents of any state and, hence, could not be subject to tax as a *Massachusetts* resident.

*Michigan* law allows those American Indian tribal members who reside on their tribe's land and whose tribe has an implemented state-tribal tax agreement, to exclude income derived from or associated to their tribe based on their individual tribe's state-tribal tax agreement.

*Minnesota* law states that American Indian tribal members are excluded from paying state income taxes on income earned on the reservation of the tribe in which the individual is enrolled.

*New York* law provides an income exclusion for American Indian tribal members who are an enrolled member of a tribe or nation recognized by the United States or by *New York* State. This exemption is provided only to those who work and live on that tribe's reservation in which the individual is a member.

**Fiscal Impact**

This provision would not significantly impact the department's costs.

**Economic Impact**

Revenue Estimate

This provision would result in the following revenue loss:

Estimated Revenue Impact of Provision 4 of SB 855 as Amended on June 13, 2018  
 Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue
2018-2019	- \$1.7
2019-2020	- \$1.1
2020-2021	- \$1.1

This analysis does not account for changes in employment, personal income, or gross state product that could result from this provision or for the net final payment method of accrual.

## Revenue Discussion

This provision would allow American Indian tribal members living in Indian country, whether their own or another tribe's reservation, to exclude from gross income their earned income that is derived from sources within any Indian country in California.

Based on 2016 U.S. Census data for Native Americans in California, there are approximately 330,000 individuals in the labor force. Of those individuals, it is assumed 10,000 would reside in Indian country. Of those, it is assumed that 10 percent, or 1,000, would reside in another tribe's Indian country and would earn income sourced from Indian country that would be excluded from income under this provision.

Using U.S. Census data, it is estimated that the average earned income derived from sources within Indian country in California for the California Native American population is approximately \$20,000. This results in an estimated \$20 million that would be eligible for the income exclusion in 2016. The estimate is then adjusted to reflect changes in the economy over time, resulting in an estimated \$25 million in 2018. An average tax rate of 4.4 percent is then applied resulting in an estimated revenue loss of \$1.1 million in 2018.

The tax-year estimates are converted to fiscal-year estimates, then rounded to arrive at the amounts in the above table.

## Appointments

None.

## Support/Opposition

Support: None provided.

Opposition: None provided.

**Provision No.5:** Remove the Repeal Date for the Tax Data Exchange Agreement between the FTB and Cities, Counties, or Cities and Counties (eligible entities)

## Reason for the Provision

The reason for the provision is to preserve a successful tool for identifying and obtaining payment from non-compliant taxpayers.

## Effective/Operative Date

This provision, providing for appropriations related to the Budget Bill, and identified as a bill related to the budget in the Budget Bill, would be effective and operative immediately upon enactment.

## State Law

Existing state law prohibits the disclosure of taxpayer and return information, except as specifically authorized by statute. Generally, disclosure is authorized to other state tax agencies and federal tax agencies for tax administration purposes only.

Current state law authorizes the FTB to enter into agreements with eligible entities to exchange tax data. The agreements can either require the eligible entities to reimburse the FTB's costs for providing the data, or allow for waiver of the FTB's costs if the eligible entities agree to provide their tax data at no cost to the FTB. If the eligible entities provide tax data to the FTB without agreeing to receive tax data from the FTB free of charge, the FTB is required to reimburse the eligible entities' costs of providing the tax data at a maximum rate of \$1 per usable record. Employees of the eligible entities may only use tax data received from the FTB for eligible entities business tax administration purposes—any other use or disclosure of the information is a misdemeanor.<sup>17</sup>

Absent an affidavit, the FTB may only provide an eligible entity with the following tax data for taxpayers with an address within that eligible entity's jurisdiction:

- Taxpayer name,
- Taxpayer address,
- Taxpayer social security number or taxpayer identification number, and
- Principal business activity code.

In addition, tax officials of eligible entities may request from the FTB any other taxpayer information but must do so by affidavit. At the time the tax official requests the tax information, he or she must provide a copy of the affidavit to the taxpayer whose information is sought, and upon request, make the obtained information available to that person.

The information the FTB can request from eligible entities is limited to the following:

- The name of the business if it is a corporation, partnership, or limited liability company, or the owner's name if it is a sole proprietorship,
- Business mailing address,
- Federal employer identification number, if applicable, or the business owner's social security number,
- Standard Industry Classification (commonly referred to as "SIC") Code or North American Industry Classification System (commonly referred to as "NAICS") Code,
- Business start date,
- Business termination date,
- City number, and
- Ownership type.

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<sup>17</sup> R&TC sections 19542 and 19552.

The current tax-data-sharing program is scheduled to sunset on December 31, 2018.

### **This Provision**

This provision would repeal the sunset provision to allow tax data sharing between the FTB and eligible entities in perpetuity.

### **Legislative History**

AB 279 (Dodd, Chapter 27, Statutes of 2015) expanded the reciprocal sharing of specified data for tax administration purposes to a county or city and county.<sup>18</sup>

SB 211 (Hernandez, Chapter 513, Statutes of 2013) extended the authority of the FTB to disclose limited confidential tax information to eligible entities until 2019.

SB 1146 (Cedillo, Chapter 345, Statutes of 2008), among other things, extended the authority of the FTB to disclose limited confidential tax information to city tax officials until 2013.

SB 1374 (Cedillo, Chapter 513, Statutes of 2006) extended the FTB's authority to disclose limited confidential tax information to city tax officials until 2011.

AB 63 (Cedillo, Chapter 915, Statutes of 2001) authorized the FTB to disclose limited confidential tax information to city tax officials in order to enhance the enforcement of an existing city business tax law. This authority was originally set to expire in 2002.

### **Other States' Information**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

A review of *Florida, Illinois, Massachusetts, Michigan, and Minnesota* laws found no comparable statutes. *New York* law provides for reciprocal sharing of tax information between the New York Tax Commission and city tax officials.

### **Fiscal Impact**

The department costs to continue the tax data sharing program would be approximately \$462,000 per year.

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<sup>18</sup>Currently San Francisco is the solely designated "city and county" in the state.



**Economic Impact**

## Revenue Estimate

This provision would result in the following revenue gain:

Estimated Revenue Impact of Provision 5 of SB 855 as Amended June 13, 2018  
Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue
2018-2019	+ \$1.9
2019-2020	+ \$4.5
2020-2021	+ \$7.6

This analysis does not account for changes in employment, personal income, or gross state product that could result from this provision or for the net final payment method of accrual.

## Revenue Discussion

This proposal would repeal the sunset provision of current law that allows tax-data sharing between the FTB and eligible entities, thereby making the program permanent.

In fiscal year 2015-2016, the FTB received approximately \$10.6 million from city business license tax assessments. Under current law, the FTB would stop issuing assessments based upon city and county business licenses at the end of 2018. The revenue received from these previously issued assessments would decline over the next several years. Under proposed law, the estimated revenue gain would be approximately \$1.9 million in fiscal year 2018-2019 increasing to approximately \$11 million in fiscal year 2023-2024.

**Appointments**

None.

**Support/Opposition**

Support: Franchise Tax Board 3-Member Board.

Opposition: None provided.

**Votes**

<b>Location</b>	<b>Date</b>	<b>Yes Votes</b>	<b>No Votes</b>
Concurrence	June 18, 2018	36	0
Assembly Floor	June 18, 2018	69	9
Senate Floor	May 3, 2018	24	11

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