STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Amended Bill

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Subject: California Tax Expenditure Review Board

Summary

This bill would establish the California Tax Expenditure Review Board (CTERB) as an independent advisory body to comprehensively assess major tax expenditures meeting specified criteria and make recommendations to the Legislature regarding those expenditures.

Recommendation – No position.

Summary of Amendments

The March 25, 2019, amendments removed the intent language and added sections to the Revenue and Taxation Code to repeal tax expenditures on December 1, 2023, that have forgone revenue resulting from the tax expenditure meeting or exceeding one billion dollars ($1,000,000,000) over the previous 10 fiscal years, and meets other requirements as specified.

The April 22, 2019, amendments added language to clarify what a tax expenditure does not include.

The April 25, 2019, amendments added language to clarify that a tax expenditure does not include an expenditure that is a sales and use tax exemption.

The May 7, 2019, amendments removed provisions related to the repeal of tax expenditures and replaced them with provisions to establish the California Tax Expenditure Review Board.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

This is the department's first analysis of the bill.

Reason for the Bill

The reason for the bill is to bring transparency and accountability to California's tax incentive process by creating a mechanism for review of some of California's highest tax expenditures.

Effective/Operative Date

This bill would become effective and operative January 1, 2020.

Federal/State Law

There are currently no federal or state laws that establish a tax expenditure review board comparable to this bill.

This Bill

This bill would establish the CTERB to assess major tax expenditures meeting criteria as specified, and make recommendations to the Legislature. The Board will convene at least twice per year and shall be composed of five members who shall serve in an advisory capacity. It also requires the Legislative Analyst's Office to evaluate tax expenditures to determine whether the tax expenditures are fulfilling policy objectives or if improvements can be made to make them more effective.

Major tax expenditures would mean, a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state as defined in subdivision (b) of Section 13305 of the Government Code that meets all of the following criteria:

- Forgone revenue resulting from the tax expenditure met or exceeded one billion dollars ($1,000,000,000) over the previous 10 fiscal years, and does not contain either of the following as of January 1, 2020:
    - A repeal or inoperative date; and
    - A requirement to report metrics of efficacy.

- The bill specifically excludes tax expenditures:
    - Under the Personal Income Tax Laws;
    - For Sales and use tax exemptions for utilities, food products, and medicines, pursuant to R&TC sections 6353, 6359, 6369, and 6369.1; and
    - That apply to exempt corporations.

The CTERB shall hold public meetings for the purposes of considering information provided by the public to determine the schedule for comprehensive assessments of major tax expenditures to be conducted by the Legislative Analyst Office by October 1, 2020, and each October thereafter.

The board shall meet to determine the schedule for comprehensive assessment of major tax expenditures to be conducted by the Legislative Analyst Office based on specific criteria by January 31, 2021, and each January 31 thereafter.

In addition to other information, the comprehensive assessment of major tax expenditures is required to include the number of returns filed or business entities affected for the most recent tax year in which full year data is available.

After receiving the comprehensive assessment from the Legislative Analyst Office, the CTERB shall post it on the internet.

This bill also requires the CTERB to consider information provided by the public, make recommendations and provide a report to the Legislature by January 1, 2022, and each January thereafter.

The Legislative Analyst's Office shall conduct an analysis of each tax expenditure under this act and submit a written report with specific information to the Legislature prior to December 1, 2022.

Implementation Considerations

Department staff has identified the following implementation consideration for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

Although this bill would require state agencies to assist the Legislative Analyst Office with completion of the comprehensive assessment, the bill is silent on what the Franchise Tax Board's duties are in regards to providing the specified data. For clarity and ease of administration, it is recommended that the bill be amended.

Legislative History

SB 1335 (Leno, Chapter 845, Statutes of 2014) required new tax credit legislation to include specific goals, purposes, objectives, and performance measures.

SB 508 (Wolk, Vetoed 2011) included the same provisions as SB 1335 and required a sunset date for newly enacted credits.

SB 1272 (Wolk, Vetoed 2010) included the same provisions SB 1335 and required a sunset date for newly enacted credits.

ACA 6 (Calderon 2009/2010) would have amended the State's constitution to, among other things, limit the operative period to seven years from the date of the enactment of a new or amended tax credit. ACA 6 failed to pass the Assembly by the constitutional deadline.

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.

Review of these states' laws found no comparable limitation to the one proposed by this bill.

Fiscal Impact

If FTB is required to create and maintain the website, the costs would be approximately $58,000 in fiscal year 2019-2020; $182,000 in fiscal year 2020-2021; $85,000 in fiscal year 2021-2022; and $84,000 ongoing to support the California Tax Expenditures Review Board's website.

Economic Impact

Revenue Estimate

This bill as amended May 7, 2019, may have an impact on the general fund, but the amount and timing of the impact is unknown.

Revenue Discussion

Using corporate tax expenditure data for taxable years 2006 through 2015, the Franchise Tax Board identified five expenditures that meet the definition of a major tax expenditure in accordance with the provisions of this bill. Those expenditures are: the credit for research expenses, the water's-edge election, the like-kind exchange capital gain exclusion, the acceleration of depreciation for research expenses deduction, and the S Corporation filing election.

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