



## **Summary Analysis of Amended Bill**

Author: Jackson, et al.

Sponsor:

Bill Number: SB 468

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Amended: September 3, 2019

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Related Bills: See Prior Analysis

**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 to make recommendations to the Legislature regarding those expenditures.

This analysis is limited to the provisions that affect the department.

**Recommendation – No position.**

### **Summary of Amendments**

The September 3, 2019, amendments added several coauthors, modified the CTERB's public meeting requirements, replaced the CTERB's ability to annually elect a chairperson with a designated chairperson, modified the defined term "major tax expenditure," modified the parameters of the study requested of the Regents of the University of California (Regents) and the state agencies that would be required to provide the Regents taxpayer data and information, made a number of technical changes, and added a repeal date. As a result of the September 3, 2019, amendments the implementation considerations identified in the department's analysis of the bill as amended July 11, 2019, were resolved and a new implementation consideration was identified.

Except for the "This Bill," "Effective/Operative Date," "Federal/State Law," and "Implementation Considerations" sections, the remainder of the department's analysis as amended July 11, 2019, still applies. The "Fiscal Impact," and "Economic Impact" sections have been restated for convenience.

### **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.

Current state tax law provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, must be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose taxpayer information only in limited circumstances and only to specific agencies as authorized by law. Improper disclosure of federal tax information is punishable as a felony, and improper disclosure of state tax information is punishable as a misdemeanor.

## **This Bill**

This bill would establish the CTERB and require the CTERB to provide by January 1, 2022, a report and recommendations on major tax expenditures, as defined, to the Legislature, the Senate Committees on Budget and Fiscal Review and Governance and Finance, the Assembly Committees on Budget and Revenue and Taxation, and to post the report on its internet website. Upon receipt of the report the Senate Committee on Governance and Finance and the Assembly Committee on Revenue and Taxation would be required to hold a joint public hearing on the report by August 15 of the second year of the legislative session.

This bill would also request that the Regents, through a new or existing research center, prepare and provide to the CTERB a comprehensive assessment of major tax expenditures, as specified.

The CTERB would be composed of five members as follows:

- The Controller, or the Controller's designee.
- The Legislative Analyst, or the Legislative Analyst's designee.
- The California State Auditor, or the California State Auditor's designee.
- The Director of Finance, or the Director of Finance's designee.
- An individual designated by the Secretary of Government Operations who possesses expertise regarding tax administration and specifically the tax expenditures administered by the FTB and the California Department of Tax and Fee Administration (CDTFA).

This bill would designate the Controller as the CTERB chair, specify requirements applicable to CTERB's members and public meetings, and allow the CTERB to create advisory committees that include members of the public.

For purposes of the required report and requested comprehensive assessment, major tax expenditures would mean, a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state that has resulted in forgone revenue equal to or greater than one billion dollars (\$1,000,000,000) in total over the previous 10 fiscal years, and as of January 1, 2020, lacks either or both a repeal or inoperative date or a requirement to report on the effectiveness of the tax expenditure.

The definition of major tax expenditures would specifically exclude deductions allowed under the Personal Income Tax Law (PITL), and deductions for charitable donations allowed under the PITL or Corporate Tax Law.

The following would apply to the bill's Legislative request for a comprehensive assessment of major tax expenditures to be done at a new or existing research center to the extent that they are adopted by resolution of the Regents:

- Present by July 1, 2021, a comprehensive, peer-reviewed assessment of major tax expenditures to the CTERB at a CTERB public meeting.
- Allow, to the extent needed by the University of California, access to taxpayer data and information, and require such data to be provided by the FTB or CDTFA. The providing agency would be required to ensure the appropriate levels of data security and privacy for transferred and sensitive data.
- Include, but not to be limited to the following, in the scope of the comprehensive assessment, to the extent possible and reasonably related to the major tax expenditure:
  - A description of the legislative intent, as specified.
  - A brief description of the beneficiaries of the tax expenditure.
  - The number of returns filed or business entities affected, as applicable, for the most recent tax year for which full year data is available.
  - A listing of any comparable federal tax benefit.
  - A description of any recent prior tax expenditure evaluation or compilation of information completed by any state agency.
  - Total General Fund dollars lost due to the tax benefit.
  - The economic, social, environmental, or any other impact of the tax expenditure to the State of California using metrics that the University of California deems appropriate for the tax expenditure.
  - Options for modifying the tax expenditure to improve its effectiveness or to reduce its costs to the General Fund.
- Require the CTERB to post the comprehensive assessment on its internet website, within five business days of receipt.
- Require the CTERB to meet in public at least 14 days, and no later than

two months from the date the comprehensive assessment is posted for the purpose of voting to make recommendations to the Legislature regarding the major tax expenditures. The votes of three members would be required to make a recommendation to the Legislature. Recommendations would be subject to enactment by the Legislature.

The CTERB would also be required to do the following:

- Consider information provided by the public in response to the comprehensive assessment before making the recommendation.
- Include in the recommendations preferred options for modifying the tax expenditure to improve its effectiveness or to reduce its cost to the General Fund, if these options are identified.

None of the above requirements may be construed to preclude the Legislature from taking independent action on existing tax expenditures.

The provisions of this bill would become inoperative on the date that is six months after the required joint public hearing by the Senate Committee on Governance and Finance and the Assembly Committee on Revenue and Taxation and be repealed on the following January 1.

### **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.

Although the bill is silent on the entity responsible for creating and maintaining the CTERB's website, if the FTB is selected to perform this function, the department would be required to develop and maintain the CTERB website.

### **Fiscal Impact**

Although the bill is silent on the entity responsible for creating and maintaining the CTERB's website, if the FTB is selected to perform this function, the department's 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.

## **Economic Impact**

### Revenue Estimate

This bill does not change the manner in which income or franchise tax is calculated under the Revenue and Taxation Code (R&TC). However, should the tax expenditure review authorized by this bill spur changes to the R&TC, there could be an impact on the general fund, but the amount and timing of the impact is unknown.

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

### Revenue Discussion

This bill authorizes a study by the Regents on major corporate tax expenditures. Should the Legislature make changes to the R&TC, as it related to major tax expenditures, there could be an impact on the general fund, but the amount and timing of the impact is unknown.

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