



## **Bill Analysis**

Author: Jackson, et al.      Bill Number: SB 468

**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.

### **Reason for the Bill**

The reason for the bill is to create a mechanism for review of some of California's largest 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.

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 of the University of California (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.

### **Legislative History**

AB 263 (Burke, 2019/2020) would, under the R&TC, repeal and replace existing law requiring legislation authorizing a new tax credit to include specific goals, purposes, objectives, and performance measures to instead apply to legislation authorizing a new tax expenditure. AB 263 was enrolled on September 3, 2019.

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 would have required a sunset date for newly enacted credits. Former Governor Edmund G. Brown Jr. agreed that the Legislature should consider sunset clauses for personal income and corporate tax credits, however "one size does not fit all." He stated that the legislature should examine all of its bills to determine how long they should exist or, indeed, whether they should exist at all.

SB 1272 (Wolk, Vetoed 2010) included the same provisions as SB 1335 and would have required a sunset date for newly enacted credits. However, former Governor Arnold Schwarzenegger stated that while the bill sponsors seem intent on eliminating measures that would generate jobs and stimulate the economy, the average California taxpayer would probably be better served if the Legislature were willing to automatically sunset every new spending entitlement, program expansion and business mandate after 7 years.

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**

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.

**Appointments**

None.

**Votes**

Location	Date	Yes Votes	No Votes
Concurrence	September 11, 2019	28	10
Assembly Floor	September 10, 2019	53	21
Senate Floor	May 28, 2019	27	9

**Legislative Staff Contact**

<b>Contact</b>	<b>Work</b>
Julie Lee Acting Agency Secretary	(916) 651-9011
Christina Spagnoli Deputy Secretary, Legislation	(916) 651-9373
Selvi Stanislaus Executive Officer, FTB	(916) 845-4543
Jahna Carlson Asst. Legislative Director, FTB	(916) 845-5386