



Bill Analysis

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Attorney: Shane Hofeling	Related Bills: See Legislative History	

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

Not applicable.

REASON FOR THE BILL

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

ANALYSIS

This bill would establish the CTERB and require the CTERB to provide by January 1, 2023, a report and recommendations on major tax expenditures, as defined, to the Legislature, the Senate Committee on Budget and Fiscal Review, the Senate Committee on Governance and Finance, the Assembly Committee on Budget, and the Assembly Committee on 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, through a new or existing research center, perform and present 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 Franchise Tax Board (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, 2021, 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 only under the Personal Income Tax Law (PITL), exclusions for public safety officer death benefits, exclusions for annuities, exclusions for life insurance receipts or payments made by reason of death of the insured, exclusions from taxation of exempt organizations, 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 of the University of California:

- Present by July 1, 2022, 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.

- The scope of the comprehensive assessment would include, but not to be limited to, the following to the extent possible and reasonably related to the major tax expenditure:
 - A description of the legislative intent of each tax expenditure, 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 expenditure.
 - 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 on CTERB's internet website 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.

Effective/Operative Date

This bill would become effective and operative January 1, 2021.

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 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.

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.

This bill requires the FTB and the CDTFA to provide relevant taxpayer data to the University of California. The FTB cannot provide confidential tax information to the University of California without express statutory authority or an exception provided under or in relation to Revenue and Taxation Code (R&TC) section 19542. For clarity and ease of administration, it is recommended that the bill be amended.

The bill is silent on the entity responsible for creating and maintaining CTERB's website. Depending on which agency is responsible for performing this function, there could be associated costs to develop and maintain such website.

Technical Considerations

Regarding Section 42(b)(6)(A), page 4, line 33-35, it states, "(6) Is not excluded as income under the following: (A) Section 17131 by conformity to Section 101 of the Internal Revenue Code, as modified by Section 17132.5." R&TC section 17131 generally conforms to Internal Revenue Code (IRC) sections 101-138. If the author's intent was to make reference to IRC sections 101-138, the bill should be amended.

Within the same Section 42(b)(6), page 4, lines 36-37, it states, "(B) Section 17081 by conformity to Section 72 of the Internal Revenue Code, as modified by Section 17085." R&TC section 17081 generally conforms to IRC sections 71-90. Was the author's intent to make reference to IRC sections 71-90? If so, the bill should be amended.

Policy Concerns

None noted.

LEGISLATIVE HISTORY

SB 468 (Jackson, et al., 2019), substantially similar to this bill, would have established the 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. AB 468 was vetoed by the governor whose veto message stated, "I support greater transparency with respect to tax credits, exemptions, and other expenditures and believe these items should be scrutinized periodically to justify their overall cost to the state's revenue base. However, creating a new board to accomplish that goal is unnecessary. The Department of Finance is currently required to publish tax expenditure reports and existing law requires new income tax expenditures to specify goals, performance indicators, and data collection requirements."

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

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT

Revenue Estimate

This bill does not change the manner in which income or franchise tax is calculated under the 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 the Regents of the University of California to prepare a study on major corporate tax expenditures. Should the Legislature make changes to the R&TC, as it relates to major tax expenditures, there could be an impact on the General Fund, but the amount and timing of the impact is unknown.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

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