



Bill Analysis

Author: Quirk

Sponsor:

Bill Number: AB 545

Related Bills: See Legislative
History

Introduced February 10, 2021,
Amended April 19, 2021, and
May 4, 2021

SUBJECT

Major Tax Expenditures Research Center

SUMMARY

This bill would require the Regents of the University of California (RUC), through a new or existing research center, to perform a comprehensive assessment of major tax expenditures, meeting specified criteria, and provide a report with recommendations to the Legislature regarding those expenditures.

This bill would require the Franchise Tax Board (FTB) and the California Department of Tax and Fee Administration (CDTFA) to provide aggregated and anonymized taxpayer information to the RUC to perform the research.

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

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 19, 2021, amendments added a definition, clarified the scope of the comprehensive assessment, added a repeal date, and made several nonsubstantive technical changes.

The May 4, 2021, amendments added another criteria to the definition of major tax expenditure, corrected a conflicting reporting requirement, and made other technical nonsubstantive changes.

This is the department's first analysis of the bill and only addresses the provisions that impact the department.

REASON FOR THE BILL

The reason for this bill is to ensure that the most costly tax expenditures in California are achieving their intended public policy objectives, and that they are making the best use of limited public dollars.

ANALYSIS

This bill would task the RUC, through a new or existing research center, to perform a comprehensive peer review assessment of major tax expenditures and provide a report to the Legislature by January 1, 2024.

This bill defines a "major tax expenditure" as a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state that:

- Has resulted in a total foregone revenue of one billion dollars or more over the previous ten fiscal years, and does not contain a sunset, repeal, or inoperative date, or efficacy metrics reporting requirement as of January 1, 2021.
- Is not an exemption under certain sales and use taxes, as indicated.
- Is not allowed only against taxes imposed by the Personal Income Tax Law (PITL).
- Is not authorized by the provisions of the law relating to exempt corporations.
- Is not allowed as a deduction under the provisions of PITL and Corporation tax Law (CTL) relating to charitable contributions.
- Is not excluded from income under the provisions of PITL and CTL relating to certain death benefits, annuities, and proceeds of endowment and life insurance contracts.
- Is not authorized under laws pertaining to the treatment of S corporations and their shareholders.

The scope of the assessment shall include, but is not limited to:

1. A description of the legislative intent for each tax expenditure, if the act adding or amending the expenditure includes intent in legislative findings and declarations or is otherwise expressed or specified by that act.
2. A brief description of the beneficiaries of the tax expenditure, without disclosing taxpayers' personal identifying information.
3. The number of returns filed or business entities affected as applicable, for the most recent tax year for which full year data is available.
4. A listing of any comparable federal tax benefit.
5. A description of any recent prior tax expenditure evaluation or compilation of information completed by any state agency.
6. A total loss to the General Fund dollars as a result of tax expenditures allowed to taxpayers.

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7. The economic, social, environmental, or any other impact of the tax expenditure to the State of California using metrics that the research center deems appropriate for the tax expenditure.
8. Options for modifying the tax expenditure to improve its effectiveness or to reduce its costs to the General Fund.
9. A comparison of other states' related tax incentives, and the estimated change in state and local revenue and employment if the tax incentive is reduced or removed.
10. Estimated revenue increase in General Fund resulting from the tax expenditure.

This bill would require the FTB and the CDTPA to provide necessary taxpayer information in an aggregate or anonymized manner to the research center to perform this research. The disclosure required under this bill would be treated as an exception to the disclosures rules under Revenue and Taxation Code (RTC) section 19542.

This bill would require the research center to provide a report of its recommendations regarding major tax expenditures to the Legislature, as well as 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 by January 1, 2024.

Upon receipt of the report, this bill would also require the Senate Committee on Governance and Finance and the Assembly Committee on Revenue and Taxation to hold a joint public hearing on the report by August 15, 2024.

This bill would be repealed by its own terms on February 15, 2025.

Effective/Operative Date

This bill would become effective and operative on January 1, 2022.

Federal/State Law

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

Current federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal and state agencies, such as the FTB. A federal return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the Internal Revenue Code. Any FTB employee or member responsible for the improper disclosure of federal tax information is subject to felony criminal prosecution.

Current state law prohibits the disclosure of any taxpayer information except as specifically authorized by statute. California law permits the FTB to release individual tax return information to specific state agencies. Agencies must have a specific reason for requesting the information, including investigating items of income disclosed on any return or report, verifying eligibility for public assistance, locating absent parents to collect child support, or locating abducted children. For some agencies, only limited information may be released, such as the taxpayer's social security number and address.

Under RTC section 41, legislation that would create a new tax expenditure is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the credit.

Implementation Considerations

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

The FTB is unable to provide or disclose federal tax information. For clarity, it is recommended that the bill be amended to preclude the disclosure of federal tax information.

This bill requires the FTB and CDTFAs to provide taxpayer information to the RUC to the extent it "needs" access to such information. In addition, this bill requires that FTB disclose data regardless of the number of requests for information or volume of information requested. The author may wish to amend the bill to clarify the information that is needed and specify the frequency of the information requests.

This bill would propose that FTB provide anonymized and aggregated taxpayer information. However, it is unclear if data from different sources could be matched to reveal individual taxpayer identities. Due to the confidential nature of the information that would be shared under the provisions of this bill, the author may want to amend the bill to prohibit the RUC and the research center from matching any shared data with other data in their possession for the purpose of identifying individual taxpayers, and to include a specific prohibition against disclosure of information by any officer, employee, or agent, or former officer, employee, or agent of the RUC.

To allow the FTB to recover some costs incurred in furnishing the information requested under these provisions, it is recommended that the bill be amended to allow reimbursement of reasonable costs in connection with the FTB's duties under this bill.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 1538 (Quirk, 2021/2022) would authorize the FTB to disclose, upon request, returns or return information to a bona fide research body for conducting research related to poverty. This bill is currently in committee process.

SB 956 (Jackson, 2019/2020), would have established 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. AB 956 was held at the Assembly Committee on Revenue and Taxation without further action.

SB 468 (Jackson, et al., 2019/2020), substantially similar to SB 956, 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."*

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT [REVISED]

After additional evaluation of this bill we have determined that the scope of requests associated with this legislation could be significant and resources of \$1 million would be required to complete the work and that this work cannot be absorbed. To that end, work would not be able to begin until July 1 2022, when we could get the resources.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended May 4, 2021, does not change the manner in which income or franchise tax is calculated under the RTC. However, should the tax expenditure review authorized by this bill spur changes to the RTC, 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

Support

Per the Assembly Committee on Revenue and Taxation bill analysis dated April 26, 2021, the following organizations are in support of the bill:

Association of California School Administrators

California Community Colleges Chancellor's Office

California Professional Firefighters

California School Boards Association

California School Employees Association

California State PTA

California Tax Reform Association

California Teachers Association

CFT: A Union of Educators and Classified Professionals

Service Employees Union International

Opposition

Per the Assembly Committee on Revenue and Taxation bill analysis dated April 26, 2021, there is no opposition to this bill on file.

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ARGUMENTS

None noted.

LEGISLATIVE CONTACT

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