



Bill Analysis

Author: Grove, et al.

Sponsor:

Bill Number: SB 292

Related Bills: See Legislative
History

Introduced February 2, 2023,
Amended March 8, 2023, and
March 30, 2023

SUBJECT

Education Savings Account Gross Income Exclusion

SUMMARY

This bill, under the Education Code (EDC) would create the Education Savings Account Act of 2024. This act would create a state funded trust under which parents can establish an account for their children for tuition and expenses associated with education at an eligible school as defined. Under the Personal Income Tax Law (PITL), this bill would provide a gross income exclusion for distributions from an Education Savings Account.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 8, 2023, amendments removed intent language to establish and maintain schools that operate independently from the existing school district structure and replaced it with the provisions discussed in this analysis.

The March 30, 2023, amendments made several technical changes, added co-authors, and deleted the exclusion from participation in the program for homeschooled students.

This analysis only addresses the provisions of the bill that would impact the department.

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

REASON FOR THE BILL

The reason for this bill is to provide state funding for elementary and secondary education expenses.

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ANALYSIS

This bill, under the EDC and upon voter approval, would create the Education Savings Account Act of 2024. Under this program, funds would be disbursed to a school on behalf of a student that is eligible for an Education Savings Account (ESA).

Under the PITL, for taxable years beginning on or after January 1, 2025, this bill would provide a gross income exclusion for distributions from an ESA pursuant to a participation agreement.

This bill, under the EDC, would define and provide for the following:

- 1) Define an "Education Savings Account" to mean a savings account established under provisions added by this bill.
- 2) Provide that "participation agreement" has the same meaning as the term is defined in the ESA, and would mean the uniform contract created by the ESA Trust Board that must be executed by the ESA Trust Board and the parent or legal guardian of an eligible student that directs the ESA Trust Board to disburse funds to an eligible school on behalf of the account beneficiary.

For purposes of complying with Revenue and Taxation Code (RTC) section 41, this bill would require the Franchise Tax Board (FTB) to issue a report to the Legislature by July 1, 2026, and annually thereafter on the following:

- 1) The number of taxpayers that received distributions from an ESA that but for this section, would have been included in income, and
- 2) The average dollar value of income excluded.

The disclosure provisions of this bill would be treated as an exception to the FTB's disclosure rules under Section 19542.

Effective/Operative Date

This bill would be effective January 1, 2024, and would only become operative if Senate Constitutional Amendment 5 is approved by voters at the statewide general election on November 5, 2024. The Education Savings account Act of 2024 would be operative on January 1, 2025, and the gross income exclusion would be operative for taxable years beginning on or after January 1, 2025.

Federal/State Law

Existing federal and state laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

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Implementation Considerations

This bill would require the FTB to report on the number of taxpayers that received distributions from an ESA. If the FTB provides the report, and if the author's intent is to be able to review a report that contains complete information for the 2025 taxable year, it is recommended that the reporting due date be extended to July of 2027.

The FTB would have difficulty reporting on items that are excluded from income and not reported on the tax return. The author may want to consider whether the ESA Trust Board that makes the allocations would be better equipped to carry out the reporting requirements or require the ESA Trust Board to share information with the FTB for the purpose of making the report.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 628 (Wallis, 2023/2024) would exclude from gross income a distribution from a qualified tuition program (QTP) to a Roth IRA. AB 628 has been referred to the Assembly Revenue and Taxation Committee.

PROGRAM BACKGROUND

Existing state and federal laws provide for qualified tuition programs, also known as Internal Revenue Code (IRC) 529 accounts as well as Achieving a Better Life Experience accounts (ABLE accounts), known as IRC 529A accounts. Both are tax-favored savings programs. An IRC section 529 plan account is a tax-advantaged investment vehicle in the United States designed to encourage saving for the future higher education expenses of a designated beneficiary. An ABLE account is a tax-advantaged investment vehicle in the United States designed to encourage saving for the account beneficiary's qualified disability expenses.

Contributions to a qualified tuition program must be made in cash. IRC section 529 does not impose a specific dollar limit on the amount of contributions, account balances, or prepaid tuition benefits relating to a qualified tuition account; however, the program is required to have adequate safeguards to prevent contributions in excess of amounts necessary to provide for the beneficiary's qualified higher education expenses.

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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 determined.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 292 as Amended March 30, 2023
Assumed Enactment after June 30, 2023

(\$ in Millions)

Fiscal Year	Revenue
2023-2024	\$0
2024-2025	\$0
2025-2026	-\$22

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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