

Senate Bill No. 468

Passed the Senate September 11, 2019

Secretary of the Senate

Passed the Assembly September 10, 2019

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2019, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Sections 42 and 43 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

SB 468, Jackson. Taxation: tax expenditures: California Tax Expenditure Review Board.

Existing law, including, but not limited to, property tax law, the Sales and Use Tax Law, the Personal Income Tax Law, the Corporation Tax Law, the Motor Vehicle Fuel Tax Law, the law governing the taxation of insurers, the Use Fuel Tax Law, and the Diesel Fuel Tax Law provide for tax expenditures, including exemptions, deductions, exclusions, and credits against the taxes imposed by those laws.

This bill would establish in state government the California Tax Expenditure Review Board as an independent advisory body to comprehensively assess major tax expenditures, as defined, and make recommendations to the Legislature. The bill would require the board to be composed of 5 members, as specified, who would serve without compensation.

This bill would request the University of California, through a new or existing research center, to perform a comprehensive assessment of the major tax expenditures and to present a comprehensive, peer-reviewed assessment to the board by July 1, 2021, at a public hearing of the board. The bill, to the extent that the University of California needs access to taxpayer data and information, would require the Franchise Tax Board or the California Department of Tax and Fee Administration to ensure relevant taxpayer data is made available and ensure appropriate levels of data security and protections are in place for transferred and sensitive data. This bill would set forth the scope of the comprehensive assessment, which would include certain specified information, including a brief description of the beneficiaries of the tax expenditure, and would require the board to post the comprehensive assessment on its internet website after receipt. The bill would require the board to make recommendations to the Legislature regarding the major tax expenditures, and to provide

a report to the Legislature that compiles all of its recommendations regarding those tax expenditures, after a vote of the members of the board, by January 1, 2022, as specified. The bill would also require the board to submit the report to 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 post it on its internet website. The bill would require the Senate Committee on Governance and Finance and the Assembly Committee on Revenue and Taxation, after receipt of the report by the Legislature, to hold a joint public hearing on the report by August 15 of the second year of the legislative session.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) California’s publicly funded services and systems, including the K–14 education system, are dependent on state revenues, including personal, corporate, sales, and use taxes.

(b) The Legislature has historically consistently advanced tax expenditures, including credits and sales and use tax exemptions to accomplish market and policy goals. While these expenditures have been enacted with the goal of achieving certain policy objectives, they have the effect of reducing revenue to the General Fund which, in turn, reduces Proposition 98 funding by approximately 40 cents on each dollar.

(c) Given the fact that Proposition 98 was suspended twice during the past economic downturn and recession, more than 30,000 teachers lost jobs, and millions of California’s students faced significant reductions in services, the closure of programs, and increases in class size, it is imperative for the Legislature to ensure that California’s dollars are spent efficiently, with transparency and oversight to ensure decisions are intentionally created to provide long-term benefits to California.

(d) The California State Auditor released an audit in 2015 on six of the largest tax expenditures in California and found a lack of oversight or evaluation has resulted in insufficient evidence to determine if some tax credits and exemptions are fulfilling their purpose to provide economic benefit to California.

(e) In 2016, the California State Auditor questioned whether some of California's revenue going toward some tax expenditures is being well spent or if these funds could be better allocated to fulfill the same policy objectives or if improvements could be made to make them more effective.

(f) Tax expenditures have been established to provide an economic benefit to California as well as to create incentives to achieve particular goals and outcomes. It is imperative for California to ensure the billions of dollars allocated to these outcomes are being well spent to justify the reductions in critical education and public policy programs.

SEC. 2. Section 42 is added to the Revenue and Taxation Code, to read:

42. (a) There is hereby established in state government the California Tax Expenditure Review Board as an independent advisory body to comprehensively assess major tax expenditures and make recommendations to the Legislature.

(b) The board shall meet and convene meetings as required by this section and Section 43 at locations easily accessible to the public in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(c) The board shall be composed of five members who shall serve in an advisory capacity, as follows:

(1) The Controller, or the Controller's designee.

(2) The Legislative Analyst, or the Legislative Analyst's designee.

(3) The California State Auditor, or the California State Auditor's designee.

(4) The Director of Finance, or the Director of Finance's designee.

(5) An individual designated by the Secretary of Government Operations who possesses expertise regarding tax administration and specifically the tax expenditures administered by the California Department of Tax and Fee Administration and the Franchise Tax Board.

(d) The Controller shall serve as chairperson of the board.

(e) The members of the board shall serve without compensation, but shall be reimbursed for necessary traveling and other expenses incurred in performing their duties and responsibilities.

(f) The board may establish advisory committees that include members of the public.

(g) The board and any advisory committee shall keep official records of all of their proceedings.

(h) For purposes of this section and Section 43, “major tax expenditure” means a tax expenditure as defined in subdivision (b) of Section 13305 of the Government Code, that meets all of the following criteria:

(1) The amount of foregone revenue resulting from the tax expenditure is equal to or greater than one billion dollars (\$1,000,000,000) in total over the previous 10 fiscal years, and does not contain any of the following, as of January 1, 2020.

(A) A repeal or inoperative date.

(B) A requirement to report any metrics of efficacy.

(2) Is not a sales and use tax exemption pursuant to Section 6353, 6359, 6369, or 6369.1.

(3) Is not allowed only against personal income tax imposed under Part 10 (commencing with Section 17001) of Division 2.

(4) Is not authorized by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2.

(5) Is not allowed as a deduction under Section 17201 by conformity to Section 170 of the Internal Revenue Code or Section 24357.

(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.

(B) Section 17081 by conformity to Section 72 of the Internal Revenue Code, as modified by Section 17085.

(C) Section 24302.

(D) Section 24305.

(i) This section shall become inoperative on the date six months after the hearing in subdivision (h) of Section 43, and shall be repealed the following January 1.

SEC. 3. Section 43 is added to the Revenue and Taxation Code, to read:

43. (a) (1) The Legislature requests that the Regents of the University of California, through a new or existing research center, perform a comprehensive assessment of major tax expenditures consistent with the terms of this section.

(2) This section shall apply to the University of California only to the extent that the Regents of the University of California, by resolution, make any of these provisions applicable to the university.

(b) By July 1, 2021, the center identified pursuant to subdivision (a) shall present a comprehensive, peer-reviewed assessment of major tax expenditures to the California Tax Expenditure Review Board at a public meeting of the board.

(c) To the extent that the University of California needs access to taxpayer data and information, the Franchise Tax Board or the California Department of Tax and Fee Administration shall ensure relevant taxpayer data is made available and shall ensure appropriate levels of data security and privacy protections are in place for transferred and sensitive data.

(d) The scope of the comprehensive assessment shall include, but is not limited to, the following, to the extent possible and reasonably related to the major tax expenditure:

(1) A description of the legislative intent for each tax expenditure, if the act adding or amending the expenditure contains legislative findings and declarations of that intent or that legislative intent is otherwise expressed or specified by that act.

(2) A brief description of the beneficiaries of the tax expenditure.

(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) Total General Fund dollars lost due to the tax expenditure.

(7) 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.

(8) Options for modifying the tax expenditure to improve its effectiveness or to reduce its costs to the General Fund.

(e) After receiving the comprehensive assessment from the center, the board shall, within five business days, post it on its internet website.

(f) (1) After the comprehensive assessment of the major tax expenditure has been posted on the board's internet website for at

least 14 days, and no later than two months from the date the board posts the comprehensive assessment on its internet website, the board shall meet in public for the purposes of voting to make a recommendation to the Legislature regarding the major tax expenditure. The votes of three members are necessary to make a recommendation to the Legislature. Any recommendation shall be subject to enactment by the Legislature. Nothing in this section shall be construed to preclude the Legislature from taking action independently to amend, sunset, or repeal existing tax expenditures.

(2) The board shall consider information provided by the public in response to the comprehensive assessment at the meeting before making the recommendation.

(3) The recommendation from the board to the Legislature shall include preferred options for modifying the tax expenditure to improve its effectiveness or to reduce its costs to the General Fund, if these options are identified. In making its recommendation, the board shall consider the comprehensive assessment by the University of California and the following:

(A) The extent to which the major tax expenditure is a cost-effective use of resources compared to other options to address the same purpose, intent, or goal.

(B) The major tax expenditure's effect on the state's General Fund.

(C) The major tax expenditure's economic, social, environmental, or any other impact.

(g) By January 1, 2022, the board shall provide a report to the Legislature that compiles all of its recommendations regarding major tax expenditures, including any recommendation the board failed to make for a major tax expenditure for which the University of California has completed a comprehensive assessment, and the reasons for the failure. The board shall also submit the report to 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 post it on its internet website. The report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

(h) Upon receipt of the report required by subdivision (g), the Senate Committee on Governance and Finance and the Assembly Committee on Revenue and Taxation shall hold a joint public

hearing on the report by August 15 of the second year of the legislative session.

(i) This section shall become inoperative on the date six months after the hearing in subdivision (h), and shall be repealed on the following January 1.

Approved _____, 2019

Governor