An act to add Sections 42 and 42.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST


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 repeal all tax expenditures, as defined, on December 31, 2023, not including specified sales and use tax exemptions, any tax expenditures under the Personal Income Tax Law, and the exemption from taxation for specified nonprofit organizations, and would require, if a tax expenditure is amended to remove or extend the repeal date, the act doing so to include specified information related to the efficacy of the tax expenditure. The bill would also require the Legislative Analyst’s Office to conduct an analysis of, and provide a specified report to the Legislature regarding, these tax expenditures.
This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of 2/3 of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

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. The bill would require the board to hold annual open and public meetings for the purposes of considering information provided by the public to determine the schedule for comprehensive assessment of major tax expenditures to be conducted by the Legislative Analyst’s Office. The bill would require, upon completion of that annual meeting, the board to meet and determine the schedule, by January 31, 2021, and each January 31 thereafter, and to consider specified criteria while determining the schedule. The bill would require the board to set a deadline date as part of determining the schedule.

This bill would require the Legislative Analyst’s Office to complete its comprehensive assessment of the major tax expenditures and to provide that assessment to the board by the deadline date. The bill would require state agencies to assist the Legislative Analyst’s Office with completion of the comprehensive assessment. The bill would require the board to determine the scope of each comprehensive assessment, which would be required to include certain specified information, including a brief description of the beneficiaries of the tax expenditure, and 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 made in the previous calendar year, after a vote of the members of the board, by January 1, 2022, and each January 1 thereafter. 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 each 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 K–14 education systems are dependent on state revenues, including personal, corporate, sales, and use taxes.

(b) The Legislature has consistently advanced tax expenditures, including credits and sales tax exemptions to accomplish market and policy goals. While these expenditures have been put in place 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 can be made to make them more effective.

(f) Tax expenditures have been created 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) All tax expenditures shall be repealed on December 31, 2023.

(b) (1) For purposes of this section, “tax expenditure” means a tax expenditure that does not, as of the effective date of the act adding this section, have a repeal or inoperative date, does not include metrics of efficacy reported as a requirement, and for which the annual cost to the state has met or exceed one billion dollars ($1,000,000,000) over the past 10 years.

(2) “Tax expenditure” does not include:

(A) A tax expenditure that is a sales and use tax exemption pursuant to Sections 6353, 6359, 6369, 6369.1.

(B) A tax expenditure pursuant to Part 10 (commencing with Section 17001) of Division 2.

(C) The tax expenditure pursuant to Section 23701.

(e) If a tax expenditure subject to subdivision (a) is amended to remove or extend the repeal date, the act amending the section shall include all of the following:

(1) Specific goals, purposes, and objectives that the tax expenditure will achieve.

(2) Detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets the goals, purposes, and objectives stated in the act.

(3) Data collection requirements to enable the Legislature to determine whether the tax expenditure is meeting, failing to meet, or exceeding those specific goals, purposes, and objectives. The requirements shall include the specific data and baseline measurements to be collected and remitted in each year the tax expenditure is in effect, in order for the Legislature to measure the change in performance indicators, and the specific taxpayers, state agencies, or other entities required to collect and remit data.

SEC. 3. Section 42.5 is added to the Revenue and Taxation Code, to read:

42.5. Prior to December 1, 2022, the Legislative Analyst’s Office shall conduct an analysis of each tax expenditure subject to Section 42 and submit a written report, submitted in compliance
with Section 9795 of the Government Code, to the Legislature which shall include all of the following:

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

(b) A brief description of the beneficiaries of the credit, deduction, exclusion, exemption, or other tax benefit as provided by state law.

(c) The number of returns filed or business entities affected, as applicable, for the most recent tax year for which full year data is available.

(d) A listing of any comparable federal tax benefit, if any.

(e) A description of any recent prior tax expenditure evaluation or compilation of information completed by any state agency.

(f) The economic, social, or any other benefits of the tax expenditure to the State of California.

(g) Total net General Fund dollars lost, including what impact the shift in resources had on other General Fund programs.

(h) Total Proposition 98 dollars lost, including what impact the shift in resources had on educational programs.

(i) Potential environmental impacts, if any.

(j) A longer term analysis outlining the true beneficiaries versus intended beneficiaries of the tax expenditure and its impact on the business climate and market conditions.

(k) Jobs created by the tax expenditure. For the information required by paragraphs (1) and (2), the data must include demographics on gender, race, ethnicity, and age.

(1) Whether the jobs created were short or long-term, as well as the average salary and benefits provided for the jobs created.

(2) Jobs lost or reduced in areas impacted by the tax expenditure or whether jobs were shifted to other sectors.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.

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 on or before July 1, 2020, and convene meetings at least twice per year 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 tax expenditures by the California Department of Tax and Fee Administration and the Franchise Tax Board.

(d) The board shall elect a chairperson on an annual basis.

(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) 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.

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

43. (a) By October 1, 2020, and each October 1 thereafter, the California Tax Expenditure Review Board shall hold an open and public meeting for the purposes of considering information provided by the public to determine the schedule for comprehensive assessment of major tax expenditures to be conducted by the Legislative Analyst’s Office. The board shall determine the schedule upon completion of that meeting.

(b) By January 31, 2021, and each January 31 thereafter, the board shall meet to determine the schedule for comprehensive assessments of major tax expenditures for that calendar year. The board shall consider the following criteria when determining the schedule:

(1) General Fund impact.

(2) The board’s assessment of whether modification to or repeal of the major tax expenditure would provide the most positive impacts for the General Fund with the least negative economic, social, or environmental impacts.

(3) The ability for the Legislative Analyst’s Office to complete each comprehensive assessment of the major tax expenditure in a timely fashion.

(c) The board shall set a deadline date as part of determining the schedule for the Legislative Analyst’s Office to complete its comprehensive assessment of the major tax expenditure or expenditures on a regular schedule. The board can vote to adjust the deadline date for reasonable cause.

(d) The Legislative Analyst’s Office shall complete its comprehensive assessment of the major tax expenditure, and provide it to the board by the deadline date specified in the schedule. Any other state agency shall assist the Legislative Analyst’s Office with completing its comprehensive assessment of the major tax expenditure to the maximum degree practicable.

(e) The board shall determine the scope of each comprehensive assessment, which shall include, but is not limited to, the following, when possible:
(1) A description of the legislative intent for each tax expenditure, if the act adding or amending the expenditure contains legislative findings and declaration 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 as provided by state law.

(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, if any.

(5) A description of any recent prior tax expenditure evaluation or compilation of information completed by any state agency.

(6) The economic, social, or any other benefits of the tax expenditure to the State of California.

(7) Total net General Fund dollars lost due to the tax expenditure, including what impact the shift in resources has on other General Fund programs.

(8) Total reduction in the amount of General Fund proceeds of taxes for purposes of the calculation required by subdivision (b) of Section 8 of Article XVI of the California Constitution, known as Proposition 98, due to the tax expenditure, including what impact the shift in resources has on educational programs.

(9) Potential environmental impacts, if any, of the tax expenditure.

(10) A longer-term analysis outlining the true beneficiaries versus intended beneficiaries of the tax expenditure and its impact on the business climate and market conditions.

(A) Whether the jobs created were short or long term, as well as the average salary and benefits provided for the jobs created.

(B) Jobs lost or reduced in areas impacted by the tax expenditure or whether jobs were shifted to other sectors.

(f) After receiving the comprehensive assessment from the Legislative Analyst’s Office, the board shall post it on its internet website.

(g) (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, but is not limited to, 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) An analysis of the major tax expenditure's effect on the state's General Fund.

(C) An analysis of the major tax expenditure’s effect on employment, wages, and the state’s economy.

(D) Whether opportunities exist to improve the effectiveness of the major tax expenditure in meeting its purpose, intent, or goal; if no such opportunities exist, whether the Legislature should enact legislation to repeal the major tax expenditure.

(h) By January 1, 2022, and each January 1 thereafter, the board shall provide a report to the Legislature that compiles all of its recommendations regarding major tax expenditures made in the previous calendar year, including any recommendation the board failed to make for a major tax expenditure in which the Legislative Analyst's Office 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.

(i) Upon receipt of the report required by subdivision (h), 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 each legislative session.