ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Dababneh	Analyst:	Jane Raboy	Bill Number:	AB 2606
Related Bills:	See Legislative History	Telephone:	845-5718	Amended Date:	March 20, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Long-Term Caregiver Credit

SUMMARY

This bill would create a credit for taxpayers that are eligible caregivers under the Personal Income Tax Law.

RECOMMENDATION

No position.

Summary of Amendments

The March 20, 2014, amendments removed provisions of the bill related to interest on state and local bonds, and replaced them with the provisions discussed in this analysis.

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

REASON FOR THE BILL

The reason for this bill is to reduce financial pressures on an eligible caregiver for an individual needing long-term care via an income tax credit.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2015, and before January 1, 2020.

ANALYSIS

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

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FEDERAL/STATE LAW

Generally, under current federal law all medical expenses, including direct out of pocket medical expenses, health insurance, long-term care expenses, and long-term care insurance, are added together, and only the amount in excess of 10[1] percent of Adjusted Gross Income (AGI) is deductible as an itemized deduction for an individual.

California conforms to the federal itemized deduction for unreimbursed medical expenses, modified to provide the adjusted gross income threshold of 7.5 percent for individuals, as of the specified date of January 1, 2009.

There are currently no federal or state credits comparable to the credit this bill would create.

THIS BILL

For each taxable year beginning on or after January 1, 2015, and before January 1, 2020, this bill would allow a taxpayer a credit in an amount equal to $500 multiplied by the number of applicable individuals for whom the taxpayer is an eligible caregiver during the taxable year.

This bill would define the following phrases:

- "Applicable individual" means an individual who has been certified by a physician as being an individual with long-term care needs for a period of time that is at least 180 consecutive days and a portion of that time occurs within the taxable year for filing the tax return, without extensions.
- "Applicable individual" would specifically exclude an individual otherwise meeting the requirements, unless a physician has certified that the individual meets those requirements within the preceding $39^1/_2$ month period ending by the due date for filing the tax return, without regard to an extension.
- "An individual with long-term care needs" means an individual who meets any of the following:
  - At least six years of age and meets either of the following:
    - ✓ The individual is unable to perform at least three activities of daily living, as defined in IRC Section 7702B(c)(2)(B),[2] without substantial assistance from another individual due to a loss of functional capacity.
    - ✓ The individual requires substantial supervision to protect that individual from threats to health and safety due to the following:
      - Severe cognitive impairment and is unable to perform at least one activity of daily living, as defined in IRC Section 7702B(c)(2)(B),[3] or
      - The individual is unable to engage in age appropriate activities, to the extent provided by the Franchise Tax Board (FTB) in consultation with the Secretary of the California Health and Human Services Agency.

[1] For the years 2013 through 2016 inclusive, if either the taxpayer or the taxpayer's spouse turns 65 before the end of the taxable year, the increased threshold does not apply and the threshold remains at 7.5 percent of AGI.
[2] Each of the following is an activity of daily living: eating, toileting, transferring, bathing, dressing, and continence.
[3] Ibid.

- At least two years of age but less than six years of age and is unable to perform without substantial assistance from another individual due to a loss of functional capacity for at least two of the following activities: eating, transferring, or mobility.
- Under two years of age and requires specific durable medical equipment by reason of a severe health condition or requires a skilled health care practitioner trained to address the individual's condition to be available if the individual's parents or guardians are absent.

- "Physician" would have the same meaning as the term defined in IRC Section 1935x(r)(1).

A taxpayer would be treated as an "eligible caregiver" for each taxable year for any of the following applicable individuals:

- The taxpayer.
- The taxpayer's spouse.

An individual for whom the taxpayer would be allowed a dependent exemption credit under Revenue and Taxation Code (RTC) Section 17054(d) for the taxable year.

Additionally, an applicable individual's principal place of abode must be the taxpayer's home and is either:

- A member of the taxpayer's household for over half the taxable year in the case of an applicable individual that is an ancestor, descendant, or spouse of the taxpayer.
- A member of the taxpayer's household for the entire taxable year in the case of an applicable individual.

This bill would require that only one taxpayer is allowed to be treated as an eligible caregiver for an applicable individual. If more than one taxpayer qualifies as an eligible caregiver for an applicable individual, only the taxpayer who would not claim the applicable individual is required to file a written declaration, in a form and manner prescribed by the FTB, stating that he or she would not claim the credit for the applicable individual for the taxable years ending with or within the same calendar year.

If a declaration is not filed, the taxpayer with the highest federal modified adjusted gross income (MAGI), as defined in IRC Section 32(c)(2),[4] would be treated as the eligible caregiver.

In the case of married individuals filing separate returns, the eligible caregiver would be the taxpayer with the highest federal MAGI, regardless of whether or not one of them would have filed a written declaration.

This bill would require a credit to be disallowed unless the taxpayer includes the name and taxpayer identification number of the eligible individual and the identification number or national provider identifier of the physician certifying the applicable individual on the return of tax for the taxable year.

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[4] Former IRC Section 32(c)(5) defined MAGI to mean adjusted gross income determined without regard to certain losses and increased by certain amounts not includible in gross income. Section 303(d)(2)(A) of Pub. Law 107-16, Economic Growth & Tax Relief Act of 2001 deleted IRC Section 32(c)(5).

A denial of any credit would be made pursuant to RTC Section 19051.[5]

A taxpayer would be required to retain the physician certification for three years and make the certification available to the FTB upon request during that period.

A credit would not be allowed for any eligible caregiver whose adjusted gross income for the taxable year is equal to or greater than $100,000 (married couple filing a joint return), and $50,000 for all other individuals.

This bill would remain in effect until December 1, 2020, and as of that date would be repealed.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

Because "highest federal MAGI" is defined by reference to IRC Section 32(c)(2) that no longer exists, it is an undefined phrase. The absence of a definition could lead to disputes with taxpayers and would complicate the administration of this credit.

Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The bill would require the FTB, in consultation with the Secretary of California Health and Human Services Agency, to prescribe certain health related matters such as, age appropriate activities and substantial supervision to protect an individual from threats to health and safety. Because the FTB lacks the expertise, knowledge, or experience to make these determinations, it is recommended that this bill be amended to exclude the FTB from this requirement.

Because the bill fails to specify otherwise, an individual that provides no care for the applicable individual could be eligible for the credit. If this is contrary to the author's intent this bill should be amended.

TECHNICAL CONSIDERATIONS

"Section 1935x(r)(1) of the Internal Revenue Code" on page 3, line 10, needs to be amended, as it should be "Section 213(d)(4) of the Internal Revenue Code" to correspond to the correct section of the law.

The phrase on page 3, line 12, "for any the following", is not clearly worded. The correct phrase should read, "for any of the following".

The phrase on page 3, line 19, "either of the following:", is not clearly worded. The correct phrase should read, "either of the following applies:".

[5] RTC section 19051 allows the FTB to correct for mathematical or clerical errors on a tax return. If the additional tax is due to a mathematical error, only a request for payment is required. The taxpayer has no right of protest or appeal in such a case.

The phrase on page 3, line 23 "over half the taxable year", is not clearly worded. The correct phrase should read, "more than one-half the taxable year".

The phrase "eligible individual" needs to be amended on page 4, line 6, as it should be "applicable individual" to correspond to the definition in subdivision (b)(1)(A).

The phrase "three years" needs to be amended on page 4, line 12. The correct wording should read, "four years from the date the return claiming the credit was filed and shall make that certification available to the FTB upon request during that period."

LEGISLATIVE HISTORY

AB 298 (Berg, 2005/2006), would have extended the long-term caregiver credit by six years, to taxable years beginning on or before January 1, 2011. AB 298 was held in the Assembly Revenue and Taxation Committee.

AB 2871 (Correa, Chapter 105, Statutes of 2000) allowed a nonrefundable long-term care credit for taxable years beginning on or after January 1, 2000 and before January 1, 2005, that was substantially similar to this credit. The credit was limited to eligible caregivers whose adjusted gross income for the taxable year was less than or equal to $100,000.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit allowed by this bill. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

The costs to implement this bill, although unknown at this time, could be significant. As discussed in the Policy Concerns section, the FTB may be required to establish new procedures and safeguards to prevent a violation of the protection of privacy of individually identifiable health information of applicable individuals as required under the Health Insurance Portability and Accountability Act. As the bill moves through the legislative process and the FTB develops an implementation plan, costs to implement this bill will be identified.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2606 As Amended March 20, 2014 Assumed Enactment After June 30, 2014 ($ in Millions)		
2014-15	2015-16	2016-2017
- $1.4	- $2.7	- $3.1

This estimate does not account for changes in employment, personal income, or gross state product that could result from this bill.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Supporters may argue that this bill would ease the financial burden on eligible caregivers.

Opponents: Some may argue that this bill fails to provide sufficient financial resource to ease the financial burden for eligible caregivers.

POLICY CONCERNS

The Health Insurance Portability and Accountability Act (HIPPA) of 1996, establishes certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information. Under HIPAA, the FTB may be required to establish new procedures and safeguards to prevent a violation of the protection of privacy of individually identifiable health information of applicable individuals that the FTB receives in verifying a taxpayer's eligibility for this credit.

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