Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Dababneh	Analyst:	Jane Raboy	Bill Number:	AB 2606
Related Bills:	See Prior Analysis	Telephone:	845-5718	Amended Date:	May 15, 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 May 15, 2014, amendments resolved all of the technical considerations and one of the implementation concerns discussed in the department's analysis of the bill as amended on March 20, 2014. The "Support/Opposition" section has been updated. Except for the "This Bill" section, the remainder of the department's analysis of the bill as introduced on March 20, 2014, still applies. The "Implementation Considerations," "Fiscal Impact," "Economic Impact," and "Policy Concern" sections have been restated for convenience.

ANALYSIS

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.

Board Position:			Asst. Legislative Director	Date
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- "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 Internal Revenue Code (IRC) Section 7702B(c)(2)(B),[1] 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),[2] 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.
  - 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 that term is defined in IRC Section 213(d)(4).

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 either of the following applies:

- The applicable individual is a member of the taxpayer's household for more than one-half the taxable year in the case of an applicable individual that is an ancestor, descendant, or spouse of the taxpayer.
- The applicable individual is a member of the taxpayer's household for the entire taxable year in the case of an applicable individual.

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[1] Each of the following is an activity of daily living: eating, toileting, transferring, bathing, dressing, and continence.
[2] Ibid.

Only one taxpayer may be treated as an eligible caregiver for an applicable individual for a taxable year. If more than one taxpayer could qualify as an eligible caregiver for the same applicable individual, the taxpayer that foregoes the credit would be required to file a written declaration of that fact, in a form and manner prescribed by the FTB. Absent the required declaration, or for married individuals filing separate returns, the taxpayer with the highest adjusted gross income (AGI) would be treated as the eligible caregiver.

If a declaration is not filed, the taxpayer with the highest adjusted gross income (AGI) 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 AGI, regardless of whether or not one of them would have filed a written declaration.

This credit would be disallowed unless the taxpayer includes the name and taxpayer identification number of the applicable 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.

A denial of any credit would be made pursuant to RTC Section 19051.[3]

A taxpayer would be required to retain the physician certification for four years from the date the return that claimed the credit was filed and make the certification available to the FTB upon request during that period.

A credit shall not be allowed for any eligible caregiver whose AGI 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.

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.

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[3] RTC section 19051 allows the FTB to correct for mathematical or clerical errors on a tax return. If additional tax is due from a mathematical error, only a request for payment is required. The taxpayer has no prepayment right of protest or appeal in such a case. If a refund is reduced, or after any additional tax due s paid, the taxpayer may file a refund claim and upon denial, appeal the denial or file suit in court.

Because the bill fails to specify otherwise, an individual who 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.

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 of 1996 (HIPAA). 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 May 15, 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[4]

Support: AARP Association of California Caregiver Resource Centers
California Advocates for Nursing Home Reform
City and County of San Francisco Advisory Council to Aging and Adult Services Commission
Variable Annuity Life Insurance Company

Opposition: None provided.

[4] As noted in the Assembly Revenue and Taxation Committee AB 2606 bill analysis dated May 13, 2014.

POLICY CONCERNS

HIPAA established certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information. In compliance with 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 could receive in verifying a taxpayer's eligibility for this credit.

LEGISLATIVE STAFF CONTACT

Jane Raboy	Mandy Hayes	Jahna Carlson
Legislative Analyst, FTB	Revenue Manager, FTB	Asst. Legislative Director, FTB
(916) 845-5718	(916) 845-5125	(916) 845-5683
jane.raboy@ftb.ca.gov	mandy.hayes@ftb.ca.gov	jahna.carlson@ftb.ca.gov