

Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author: Bocanegra Analyst: Diane Deatherage Bill Number: AB 43

Related Bills: See Legislative History Telephone: 845-4783 Amended Date: April 29, 2013

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Child Adoption Costs Credit/Increase to \$3,000

**SUMMARY**

Under the Personal Income Tax Law, this bill would increase the maximum amount of the child adoption credit from \$2,500 to \$3,000.

**RECOMMENDATION**

No position.

**Summary of Amendments**

The April 29, 2013, amendments removed provisions of the bill related to property taxation, and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill. This analysis only addresses the provisions of this bill that impact the department's programs and operations.

**Summary of Suggested Amendments**

Amendments 1 and 2 would provide for consistent use of terminology with regard to the credit carryforward.

**REASON FOR THE BILL**

The reason for this bill is to recognize the importance of adopting children and mitigate the rising costs (e.g., traveling expenses, medication expenses, and fees for services rendered) of adoption by increasing the maximum adoption credit per minor child from \$2,500 to \$3,000.

**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, 2014.

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## **ANALYSIS**

### **FEDERAL LAW**

Federal law allows taxpayers to claim a nonrefundable credit equal to 100 percent of the expenses incurred in adopting a child, up to a maximum of \$12,650 (as adjusted for inflation for the 2012 taxable year) per adoption. A taxpayer that adopts a child with special needs qualifies for the maximum amount of the credit without regard to expenses incurred. In addition, taxpayers may exclude from gross income employer contributions toward adoption expenses, up to a maximum of \$12,650 (as adjusted for inflation for the 2012 taxable year) per adoption. The credit and exclusion are phased out for taxpayers with adjusted gross income exceeding \$189,710 (as adjusted for inflation for the 2012 taxable year). Any credit unused in the year earned may be carried forward for five years.

### **STATE LAW**

California does not conform to the federal adoption credit; instead, California provides its own credit for adoption costs.

Current state law allows a credit equal to 50 percent (not to exceed \$2,500) of the cost of adopting a minor child who is an American citizen and is in the custody of a California public agency or a political subdivision of California. The credit is claimed in the taxable year in which the decree or order of adoption is entered, although qualifying costs paid or incurred in prior years can qualify for the credit.

Costs eligible for the credit include: (1) fees for required services of either the Department of Social Services or a licensed adoption agency; (2) travel and related expenses for the adoptive family that are directly related to the adoption process; and (3) medical fees and expenses that are not reimbursed by insurance and are directly related to the adoption process.

This credit may be claimed for the taxable year in which the decree or order of adoption is entered (although qualifying costs paid or incurred in prior years can qualify for the credit) and can be carried over to succeeding taxable years until exhausted.

Any deduction for expenses on which the adoption credit is based is reduced by the amount of the credit allowed.

### **THIS BILL**

This bill would increase the current maximum Child Adoption Credit amount to \$3,000 for taxable years beginning on or after January 1, 2014.

### **IMPLEMENTATION CONSIDERATIONS**

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

**TECHNICAL CONSIDERATIONS**

Subdivision (d) of Revenue and Taxation section 17052.25 relating to the credit carryover to subsequent years should be amended to correspond to the terminology used in subdivision (a). Amendments 1 and 2 are provided.

**LEGISLATIVE HISTORY**

AB 1284 (Patterson, 2013/2014) would make a nonsubstantive grammatical change to the existing child adoption credit provision. AB 1284 is pending referral to the Assembly Revenue and Taxation Committee.

AB 47 (Ma, 2009/2010) would have allowed a nonrefundable credit for adoptions of certain California foster children. AB 47 failed to pass out of the Assembly Appropriations Committee by the constitutional deadline.

**OTHER STATES' INFORMATION**

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. Except for *Michigan* and *Massachusetts*, no provisions providing comparable adoption credits or deductions could be found.

*Massachusetts* allows taxpayers an exemption for fees paid to a licensed adoption agency for the adoption of a minor child.

Prior to taxable years beginning on or after January 1, 2012, *Michigan* allowed a refundable adoption credit for expenses that exceed the amount of the federal adoption credit, or \$1,200 per child, whichever is less. *Michigan's* Adoption Income Tax Credit was eliminated under the income tax changes made by the Governor and the previous Legislature in 2011. Currently, there is proposed legislation that would restore this credit.

**FISCAL IMPACT**

This bill would not significantly impact the department's costs.

**ECONOMIC IMPACT**

Revenue Estimate

Estimated Revenue Impact of AB 43 As Amended April 29, 2013 For Taxable Years Beginning On or After January 1, 2014 Assumed Enactment After June 30, 2013		
2013-14	2014-15	2015-16
- \$30,000	- \$60,000	- \$60,000

This analysis 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 adoption provides a stable home environment for displaced children and should be encouraged by reducing the financial burden on adoptive families.

Opponents: Some may argue that the state's economic recovery lacks the stability to support additional tax expenditures.

## **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 43  
As Amended April 29, 2013

AMENDMENT 1

On page 2, line 33 strikeout ", or"

AMENDMENT 2

On page 3, strikeout lines 1 and 2, inclusive, and insert:

for taxable years beginning on or after January 1, 1994, and before January 1, 2012, or three thousand dollars (\$3,000) for taxable years beginning on or after January 1, 2014, per minor child is exhausted.