

ANALYSIS OF AMENDED BILL

Author: Roth Analyst: Diane Deatherage Bill Number: SB 251
 See Legislative
 Related Bills: History Telephone: 845-4783 Amended Date: May 4, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Disabled Access Expenditures Credit
-----------------	-------------------------------------

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would create a tax credit for disabled access expenditures.

This analysis only addresses the provisions of this bill that impact the department’s programs and operations.

RECOMMENDATION

No position.

Summary of Amendments

The May 4, 2015, amendments removed provisions that would have made non-substantive changes to the Civil Code, and added 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 help ensure individuals with disabilities have a full and fair opportunity to access facilities and services in California and further ensure that business owners and operators have the education and training necessary to comply with federal and state disability access laws and regulations.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2016, and would be specifically operative for taxable years beginning on or after January 1, 2016, and before January 1, 2023. The provision would, by its own terms, be repealed as of December 1, 2023.

Board Position:	Executive Officer	Date									
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;"><u> </u> S</td> <td style="width: 33%; border: none;"><u> </u> NA</td> <td style="width: 33%; border: none;"><u> </u> X</td> </tr> <tr> <td style="border: none;"><u> </u> SA</td> <td style="border: none;"><u> </u> O</td> <td style="border: none;"><u> </u> NP</td> </tr> <tr> <td style="border: none;"><u> </u> N</td> <td style="border: none;"><u> </u> OUA</td> <td style="border: none;"><u> </u> NAR</td> </tr> </table>	<u> </u> S	<u> </u> NA	<u> </u> X	<u> </u> SA	<u> </u> O	<u> </u> NP	<u> </u> N	<u> </u> OUA	<u> </u> NAR	Selvi Stanislaus	5/15/15
<u> </u> S	<u> </u> NA	<u> </u> X									
<u> </u> SA	<u> </u> O	<u> </u> NP									
<u> </u> N	<u> </u> OUA	<u> </u> NAR									

FEDERAL/STATE LAW

Existing federal law allows a credit¹ to eligible small businesses related to costs paid or incurred for complying with the Americans with Disabilities Act (ADA).² An eligible small business means an electing taxpayer with either (a) gross receipts for the preceding taxable year of \$1 million or less, or (b) not more than 30 full-time employees during the preceding taxable year. The credit is computed as 50 percent of the eligible access expenditures for the taxable year in excess of \$250 but not more than \$10,250.

Under federal law, eligible access expenditures must be made to enable the eligible small business to comply with ADA requirements, including costs to remove architectural, communication, physical or transportation barriers of persons with disabilities; costs of qualified interpreters or equipment to make materials available to persons with hearing impairments, costs of qualified readers or equipment to make material available to persons with visual impairments; and costs to acquire or modify equipment for persons with disabilities.

The federal tax credit may be used against the net tax of the taxpayer and the excess, while not refundable, is available for carryback to the immediately preceding tax year and may be carried forward to the following 20 taxable years or until exhausted. Taxpayers may not increase the adjusted basis of property or claim any deduction for eligible access expenditures that qualify for the credit.

California conforms to the federal tax credit provisions as modified to limit the credit to 50 percent of the first \$250 of eligible access expenditures for a taxable year. The maximum credit per eligible small business per taxable year is \$125.

THIS BILL

For each taxable year beginning on or after January 1, 2016, and before January 1, 2023, this bill would provide to a taxpayer a credit under the PITL and CTL for the amount paid or incurred for eligible access expenditures in excess of \$250.

For a taxpayer other than a microbusiness, the credit would be in an amount equal to 50 percent of the difference between the total eligible access expenditures incurred by a taxpayer that do not exceed \$10,250 and \$250.

For a taxpayer that is a microbusiness, the credit would be in an amount equal to 50 percent of the difference between the total eligible access expenditures incurred by a taxpayer that do not exceed \$10,250 and \$250, plus an additional \$5,000 credit.

Any unused portion of the credit may be carried over for seven taxable years.

¹ The federal Disabled Access Credit, established under IRC section 44, was created in 1990 specifically to help small businesses cover ADA-related eligible access expenditures.

² [Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 \(2000\)](#).

"Eligible access expenditures" would have the same meaning as defined in Internal Revenue Code (IRC) section 44 except that the amounts may be paid or incurred by a taxpayer other than an eligible small business.

"Microbusiness" would have the same meaning as defined in Government Code section 14837.³

The rules, guidelines, and procedures established would be exempt from the regulatory requirements of the Administrative Procedures Act.⁴

The bill would remain in effect until December 1, 2023 and as of that date would be repealed.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The department lacks expertise on disabled access expenditures and whether the expenditures comply with ADA requirements. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. It is recommended that this bill be amended to include a certifying agency.

Because the bill language would expand "eligible access expenditures" to amounts that may be paid or incurred by a taxpayer other than an eligible small business for the purpose of complying with ADA requirements, every taxpayer that has paid or incurred these types of expenditures would be entitled to claim the credit. For example, an individual could claim a credit for personal-related costs to acquire text telephones (commonly referred to as TTY), walk-in showers, medical equipment, automobile conversions, etc. If this is contrary to the author's intent, this bill should be amended.

³ [Government Code section 14837](#) defines microbusiness as a small business which, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less over the previous three years, or is a manufacturer, as defined in Government Code section 14837(c), with 25 or fewer employees. A small business is defined at Government Code section 14837(d)(1) to mean an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

⁴ Government Code section 11340 et seq.

One of the bill's defined terms ("microbusiness") refers to definitions found in the Government Code relating to government procurement that include terms that are undefined or whose definitions are conflicting with definitions found in the Revenue and Taxation Code or IRC, i.e., "small business", "affiliates," "average gross receipts," "year," and "manufacturer." Also, it is unclear how the amount of credit would be determined or limited for entities in controlled groups, as well as how the number of employees should be computed when determining if a business would be considered a microbusiness. The absence of specific definitions to clarify these terms could lead to disputes between the department and taxpayers and would complicate the administration of this credit.

TECHNICAL CONSIDERATIONS

To avoid confusion, the language should be revised to clarify that a microbusiness would be allowed an additional \$5,000 credit only when the microbusiness is entitled to a credit computed on its eligible access expenditures (i.e. if the microbusiness had zero eligible expenditures, the microbusiness would be ineligible for the additional \$5,000 credit).

For clarity and internal consistency, it is recommended that line 5 on page 16 and line 3 on page 17 be amended to read "paid or incurred," as well as line 15 on page 16 and line 13 on page 17 be amended to refer to "subsection (c) of Section 44."

LEGISLATIVE HISTORY

AB 54 (Olsen, et al., 2015/2016) would modify the Disabled Access Credit to include the amount paid or incurred for a site to be inspected by a certified access specialist. AB 54 is currently scheduled for hearing in the Assembly Judiciary Committee on May 13, 2015.

AB 1847 (Leslie, 2005/2006) would have fully conformed California tax law to federal tax law relating to the Disabled Access Credit by allowing a maximum credit of \$5,000 in accordance with Section 44 of the IRC. AB 1847 failed to pass out of the Assembly by the constitutional deadline.

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 department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 251 As Amended May 4, 2015 Assumed Enactment After June 30, 2015 (\$ in Millions)		
2015-16	2016-17	2017-18
- \$42	- \$100	- \$120

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

Revenue Discussion

Based on department data, there were approximately 780,000 active corporate filers in 2012. This number was grown⁵ and the estimate assumes 1 percent of all corporations, or approximately 8,200 corporations would generate \$20 million in credits in 2016. Using the department's corporate micro-simulation model, approximately 2,000 of these corporations would be considered microbusinesses that would generate an additional \$9 million in credits. Corporations would use 50 percent of the credit in the year generated and the remaining carryover would be used over the next five years.

Based on the department data, there were approximately 3.2 million Schedule C filers and pass-through income tax filers. This number was grown and the estimate assumes 1 percent of personal income taxpayers or 35,000 taxpayers would generate approximately \$20 million in credits in 2016. Using data from the US Small Business Administration, it was estimated that 27,000 of these personal income taxpayers would be considered microbusinesses that would generate an additional \$135 million in credits. Personal income taxpayers would use 40 percent of the credit in the year generated and the remaining carryover would be used over the next five years.

This results in a total loss of \$77 million in the 2016 taxable year. The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the estimates shown in the table above.

⁵ Indexed using Department of Finance forecasts.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may say that this bill would facilitate greater accessibility for disabled individuals by expanding the businesses eligible for the credit.

Opponents: Some may argue that the burden of calculating the credit is disproportionate to the maximum credit allowable.

POLICY CONCERNS

Generally, credits are limited as a percentage of amounts paid or incurred. This bill would allow a tax benefit for microbusinesses of an additional \$5,000 credit without those microbusinesses being required to pay or incur additional expenses related to the increased tax benefit, which is unprecedented. Also, this additional tax benefit would not be provided to other business entities. Thus, this bill would provide differing treatment based solely on business classification.

The credit would be allowed for eligible access expenditures paid or incurred either inside or outside California.

This bill provides a state credit in an amount equal to a federal credit for eligible access expenditures. In general, a taxpayer's federal income tax liability is significantly higher than his or her state income tax liability. As a result, a state tax credit equal in amount to a federal credit could be considered to provide a greater proportionate benefit for state tax purposes than for federal tax purposes.

LEGISLATIVE STAFF CONTACT

Diane Deatherage
Legislative Analyst, FTB
(916) 845-4783
diane.deatherage@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Gail Hall
Legislative Director, FTB
(916) 845-6333
gail.hall@ftb.ca.gov