

BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	Roth, et al.	SB 251

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.

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, 2021. The provision would, by its own terms, be repealed as of December 1, 2021.

FEDERAL 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.

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 \(2000\)](#).

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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.³ Taxpayers may not increase the adjusted basis of property or claim any deduction for eligible access expenditures that qualify for the credit.

STATE LAW

Under existing state law, the Disabled Access Expenditure Credit 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.⁴ The maximum credit per eligible small business per taxable year is \$125. (This bill would create a second tax credit in accordance with federal law as discussed in the This Bill section of the analysis).

³ Internal Revenue Code section 39.

⁴ Revenue and Taxation Code sections [17053.42](#) and [23642](#).

BACKGROUND

The following tables detail information compiled based on tax returns filed by personal income tax (PIT) and corporation taxpayers as reported in the latest Tax Expenditure Report:

Disabled Access Expenditure Credit (PIT): 2012		
Adjusted Gross Income Class	Returns Allowing Credit	Amount of Credit Allowed (Thousands)
Less than \$10,000	3	\$0.2
\$10,000 to \$19,999	5	\$0.1
\$20,000 to \$49,999	26	\$1.6
\$50,000 to \$99,999	90	\$6.3
\$100,000 to \$199,999	130	\$9.8
\$200,000 to \$499,999	145	\$10.2
\$500,000 to \$999,999	33	\$2.6
More than \$999,999	38	\$2.5
Total	470	\$33.2

Source: 2012 Personal Income Tax Population File
Detail may not add to total due to rounding.

Disabled Access Expenditure Credit Allowed by Industry (Corporation): 2012				
Industry	Returns with Credit		Percent of Total	
	Returns Allowing Credit	Amount of Credit Allowed (Thousands)	Returns	Credit Allowed
Food Services	13	\$0.6	9.9%	6.8%
Health Care	76	\$4.6	57.6%	49.4%
Real Estate	11	\$0.6	8.3%	6.0%
Other	32	\$3.5	24.2%	37.8%
Total	132	\$9.2	100.0%	100.0%

Source: 2012 Business Entity Tax System Extract
Detail may not add to total due to rounding.

THIS BILL

For each taxable year beginning on or after January 1, 2016, and before January 1, 2021, 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.

The credit would be allowed in accordance with Section 44 of the Internal Revenue Code modified as to the amount of the credit to be an amount equal to 10 percent of the difference between the total eligible access expenditures paid or incurred by a taxpayer in excess of \$250 that do not exceed \$10,250.

- Under CTL, this limitation would not apply with respect to a S corporation and each shareholder. Under Revenue and Taxation Code section 23803, S corporations may claim only one-third of the credit against the 1.5 percent entity-level tax (3.5 percent for financial S corporations). The remaining two-thirds must be disregarded and may not be used as a carryover. In addition, S corporations may pass through 100 percent of the credit to their shareholders.

The credit could be claimed only on a timely filed original return.

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

The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this credit. The rules, guidelines, and procedures established would be exempt from the regulatory requirements of the Administrative Procedures Act.⁵

The bill would remain in effect until December 1, 2021, and as of that date would be repealed.

LEGISLATIVE HISTORY

AB 54 (Olsen, et al., 2015/2016) would have modified the Disabled Access Credit to include the amount paid or incurred for a site to be inspected by a certified access specialist. AB 54 failed to pass out of the Assembly by the constitutional deadline.

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.

⁵ Government Code section 11340 et seq.

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

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

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 251 Assumed Enactment after June 30, 2015		
2015-16	2016-17	2017-18
- \$250,000	- \$450,000	- \$500,000

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

Revenue Discussion

This revenue estimate is based on a proration of the Joint Committee on Taxation (JCT) federal tax expenditure estimate for Disabled Access Credit for Eligible Small Businesses. In August 2014, the JCT estimated the federal revenue impact of the credit to be \$300 million for federal fiscal years 2014 through 2018. The equivalent loss to California is estimated to be \$12 million.

To determine California's share of the \$300 million federal loss, federally reported data was utilized to calculate that 12 percent of this amount was from California. A 32 percent adjustment was then applied to account for the difference between the federal and state tax rates. These values were combined. Lastly, a 20 percent adjustment was applied to the combined value to account for the difference between the 50 percent federal credit and the 10 percent state credit.

The tax year estimates were converted to fiscal year estimates, and then rounded to arrive at the estimates shown in the table above.

APPOINTMENTS

None.

SUPPORT/OPPOSITION⁶

Support: Consumer Attorneys of California (Co-Sponsor); Apartment Association, California Southern Cities; Apartment Association of Orange County; Associated Builders and Contractors of California; CalAsian Chamber of Commerce; California Chamber of Commerce; California Ambulance Association; California Association of Bed and Breakfast Inns; California Business Properties Association; California Citizens Against Lawsuit Abuse; California Grocers Association; California Hotel and Lodging Association; California Manufacturers and Technology Association; California Retailers Association; Camarillo Chamber of Commerce; Chamber of Commerce Alliance of Ventura and Santa Barbara Counties; Chamber of Commerce Mountain View; Civil Justice Association of California; Culver City Chamber of Commerce; East Bay Rental Housing Association; Fairfield-Suisun Chamber of Commerce; Family Business Association; Fullerton Chamber of Commerce; Greater Bakersfield Chamber of Commerce; Greater Fresno Area Chamber of Commerce; Greater Riverside Chamber of Commerce; Greater San Francisco Valley Chamber of Commerce; National Association of Theater Owners of California/Nevada; National Federation of Independent Business; NorCal Rental Housing Association; North Lake Tahoe Chamber of Commerce; North Valley Property Owners Association; Orange County Business Council; Oxnard Chamber of Commerce; Rancho Cordova Chamber of Commerce; Redondo Beach Chamber of Commerce and Visitors Bureau; San Jose Silicon Valley Chamber of Commerce; Santa Ana Chamber of Commerce; Santa Maria Valley Chamber of Commerce Visitor and Convention Bureau; Simi Valley Chamber of Commerce and Visitors Bureau; South Bay Association of Chamber of Commerce; South Lake Tahoe Chamber of Commerce; Southwest California Legislative Council; State of California Auto Dismantlers Association; and Torrance Area Chamber of Commerce.

Opposition: None on file.

VOTES

	Date	Yes	No
Concurrence	09/11/15	40	0
Assembly Floor	09/10/15	70	6
Senate Floor	06/03/15	40	0

⁶ From Assembly Revenue and Taxation Committee analysis, dated July 15, 2015.

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