Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Jackson	Analyst:	Davi Milam	Bill Number:	SB 670
Related Bills:	See Legislative History	Telephone:	845-2551	Amended Date:	June 01, 2015
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	Employer Child Care Program Startup Expenses Credit & Contributions to Qualified Care Plan Credit/FTB Report to Legislature

SUMMARY

This bill would do the following:

Provision 1: Allow a credit for employer child care facility start-up expenses (Employer Child Care Credit).

Provision 2: Allow a credit for contributions to a qualified child care plan (Contributions Credit).

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The June 1, 2015, amendments removed provisions that would have increased the Child and Dependent Expense Care Credit. This analysis replaces the department's analysis of the bill as amended April 23, 2015, and May 13, 2015.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment. Both provisions would be operative for taxable years beginning on or after January 1, 2016, and before January 1, 2021.

ECONOMIC IMPACT – SUMMARY REVENUE TABLE

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 670 As Amended June 1, 2015 Enactment Assumed After June 30, 2015 ($ in Millions)			
	2015-16	2016-17	2017-18
Provision 1: Employer Child Care Credit	- $0.1	- $0.6	- $0.7
Provision 2: Contributions Credit	- $0.4	- $3.7	- $4.1
Total	**- $0.5**	**- $4.3**	**- $4.8**

Board Position:			Executive Officer	Date
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PROGRAM BACKGROUND

Until December 1, 2011, prior law allowed both the Employer Child Care Credit and the Contributions Credit (discussed in Provisions 1 and 2 below).

The Franchise Tax Board (FTB) was required to report to the Legislature by January 1, 2011, the following information:

The amount of the Employer Child Care Credit claimed each year was approximately $400,000 and the estimated average number of children served each year was 1,400:

Tax Year	Credit Claimed	Children Served
2007	$410,000	1,200
2008	$490,000	1,900
2009	$410,000	1,100
2010	$370,000 (partial year)	600 (partial year)

The amount of Contributions Credit claimed each year was approximately $2,700,000 and the estimated average number of children served each year was just over 8,700:

Tax Year	Credit Claimed	Children Served
2007	$2,500,000	8,000
2008	$2,800,000	9,000
2009	$2,900,000	9,300
2010	$2,400,000 (partial year)	7,900 (partial year)

THIS BILL

***PROVISION1**: Employer Child Care Facility Startup Expenses Credit (Employer Child Care Credit)*

Federal Law

Federal law allows tax credits equal to 25 percent of qualified expenses for employee child care and 10 percent of qualified expenses for child care resource and referral services. The maximum total credit that may be claimed by a taxpayer cannot exceed $150,000 per taxable year.

Qualified child care expenses include costs paid or incurred (1) to acquire, construct, rehabilitate, or expand property that is to be used as part of the taxpayer's qualified child care facility, (2) for the operation of the taxpayer's qualified child care facility, including the costs of training and certain compensation for employees of the child care facility, and scholarship programs; or (3) under a contract with a qualified child care facility to provide child care services to employees of the taxpayer.

Qualified child care resource and referral expenses are amounts paid or incurred under a contract to provide child care resource and referral services to the employees of the taxpayer.

State Law

Existing state law provides 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.

There are currently no state credits comparable to the credit that would be allowed by this provision.

THIS PROVISION

Under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), for each taxable year beginning on or after January 1, 2016, and before January 1, 2021, this provision would allow a credit equal to 30 percent of any of the following:

- The cost paid or incurred by the taxpayer on or after January 1, 2016, for the startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of the taxpayer’s employees.
- The cost paid or incurred on or after January 1, 2016, for startup expenses of establishing a child care program or constructing a child care facility in California, to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.
- The cost paid or incurred by the taxpayer on or after January 1, 2016, for contributions to California child care information and referral services, including but not limited to those that identify local child care services, offer information describing these resources to the taxpayer’s employees, and make referrals of the taxpayer’s employees to child care services where there are vacancies. In the case of a child care facility established by two or more taxpayers, the credit would be allowed to each taxpayer if the facility is to be used primarily by the children of the employees of each of the taxpayers or the children of the employees of the tenants of each of the taxpayers.

This provision would provide that:

- The amount of the credit could not exceed $50,000 for the taxable year.
- If two or more taxpayers share in the costs eligible for the credit, each taxpayer would be eligible to receive a tax credit with respect to his, her, or its respective share of the costs paid or incurred.
- Any excess credit could be carried over until exhausted.
- Any credit carryover amount could be added to any credit for the succeeding taxable year; however, the aggregate amount allowable in any taxable year would still be limited to fifty thousand dollars ($50,000).

- In lieu of claiming the tax credit, the taxpayer may elect to take depreciation.[1] In addition, the taxpayer may take depreciation for the cost of a facility in excess of the amount of the tax credit claimed.

The basis of any child care facility for which a credit is allowed would be reduced by the amount of the credit attributable to the facility. The basis adjustment would be made for the taxable year for which the credit is allowed. A taxpayer required by any local ordinance or regulation to provide a child care facility would be ineligible for the credit.

Upon request of the FTB, the taxpayer would be required to submit a statement certifying that the costs for which the credit is claimed were incurred for startup expenses of establishing a child care program or constructing a child care facility in California to be used primarily by the children of the taxpayer's employees or the children of the employees of tenants leasing commercial or office space in a building owned by the taxpayer and which will be in operation for at least 60 consecutive months after completion.

If the taxpayer disposes of or ceases to operate the child care center within 60 months after completion, that portion of the credit claimed which represents the remaining portion of the 60-month period would be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

This provision would require the taxpayer to indicate, in the form and manner prescribed by the FTB, the number of children that the child care program or facility will be able to legally accommodate.

For purposes of this credit, "startup expenses" would include, but would not be limited to, feasibility studies, site preparation and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

On or before January 1, 2018, the FTB would be required to submit to the Legislature the following information:

- The dollar amount of credits claimed annually.
- The number of child care facilities established or constructed by taxpayers claiming the credit.
- The number of children served by these facilities.

The report would be required to be submitted in compliance with Section 9795 of the Government Code.[2]

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[1] Under the PITL provision of this credit (Revenue & Taxation Code (R&TC) section 17052.17(g)), this bill would allow an election under R&TC section 17250. Under the bill's CTL provision (R&TC section 23617), a comparable election is unavailable.
[2] Generally, reports to the Legislature must be submitted as a printed copy to the Secretary of the Senate, as an electronic copy to the Chief Clerk of the Assembly, and as an electronic or printed copy to the Legislative Counsel.

R&TC section 41 would not apply to this credit.[3]

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

ECONOMIC IMPACT

Revenue Estimate

This provision would result in the following revenue loss:

Estimated Revenue Impact of SB 670 – Employer Child Care Credit As Amended June 1, 2015 Enactment Assumed After June 30, 2015 ($ in Millions)			
	2015-16	2016-17	2017-18
Provision 1: Employer Child Care Credit	- $0.1	- $0.6	- $0.7

Revenue Discussion

The Employer Child Care Credit amounts were estimated using data collected by the department from the prior Employer Child Care Credit that sunset January 1, 2012. On average, taxpayers claimed $500,000 overall each tax year for the Employer Child Care Credit.

The tax year estimates were grown,[4] converted to fiscal year estimates, and then rounded to arrive at the estimates shown in the table above.

PROVISION 2: Contributions to Qualified Care Plan Credit (Contributions Credit)

FEDERAL/STATE LAW

There are currently no federal or state credits comparable to the credit that would be allowed by this provision.

THIS PROVISION

Under the PITL and the CTL, for each taxable year beginning on or after January 1, 2016, and before January 1, 2021, this provision would allow a credit equal to 30 percent of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee, not to exceed $360 for each qualified dependent.

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[3] R&TC section 41 requires a bill introduced to authorize a new tax credit to include specific goals, purposes, objectives, and performance measures.

[4] Indexed using Department of Finance (DOF) forecasts.

This provision would define the following terms and phrases:

- "Qualified care plan" means a plan providing qualified care.
- "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by IRC section 21(b)(2)(D) that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.
- "Specialized Centers" means a facility that provides care to mildly ill children and that may do all of the following:

  (A) Be staffed by pediatric nurses and day care workers.

  (B) Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).

  (C) Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.

  (D) Separate children according to their illness and symptoms in order to protect them from cross-infection.
- "Contributions" include direct payments to child care programs or providers, but would not include amounts contributed to a qualified care plan pursuant to a salary reduction agreement to provide benefits under a dependent care assistance program.[5]
- "Qualified employee" means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.
- "Employee" includes an individual who is an employee within the meaning of IRC section 401(c)(1), relating to self-employed individual treated as an employee.
- "Qualified dependent" means any dependent of a qualified employee who is under 12 years of age.

This provision also would provide the following:

- If an employer makes contributions to a qualified care plan and also collects fees from parents to support a child care facility owned and operated by the employer, a credit would not be allowed for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The FTB could require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this provision.

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[5] Within the meaning of IRC section 129, as applicable, for purposes of Part 11 (commencing with Section 23001) and this part.

- If the duration of the child care received is less than 42 weeks, the employer would claim a prorated portion of the allowable credit using the ratio of the number of weeks of care received divided by 42 weeks.
- An employer would be ineligible for the credit if the care provided on behalf of an employee is provided by an individual who:
  - Qualifies as a dependent of that employee or that employee's spouse.[6]
  - Is a son, stepson, daughter, or stepdaughter of that employee[7], and is under 19 years of age at the close of that taxable year.

This provision also would provide that:

- Contributions to a qualified care plan could not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.
- The portion of expenses paid or incurred for the taxable year that is equal to the amount of the credit allowed under this provision would be ineligible for deduction.
- The basis of the facility would be reduced by the amount of the credit in the taxable year the credit is allowed.
- The taxpayer would be required to provide, in the form and manner requested by the FTB, the number of children of employers served by the qualified child care plan.

The FTB would be required, on or before January 1, 2018, to report to the Legislature the following information:

- The dollar amount of credits claimed annually.
- The number of children of employees served by the qualified care plan for which the taxpayer claimed a credit.

The report would be required to be submitted in compliance with Section 9795 of the Government Code.[8]

Any excess credit could be carried over until exhausted.

Section 41 would not apply to the credit.[9]

This provision would remain in effect only until December 1, 2021, and would be repealed as of that date.

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[6] Under R&TC section 17054(d).
[7] Within the meaning of R&TC section 17056.
[8] Generally, reports to the Legislature must be submitted as a printed copy to the Secretary of the Senate, as an electronic copy to the Chief Clerk of the Assembly, and as an electronic copy to the Legislative Counsel.
[9] R&TC section 41 requires a bill introduced to authorize a new tax credit to include specific goals, purposes, objectives, and performance measures.

ECONOMIC IMPACT

Revenue Estimate

This provision would result in the following revenue loss:

Estimated Revenue Impact of SB 670 – Contributions Credit As Amended June 1, 2015 Enactment Assumed After June 30, 2015 ($ in Millions)			
	2015-16	2016-17	2017-18
Provision 2: Contributions Credit	- $0.4	- $3.7	- $4.1

Revenue Discussion

The Contributions Credit amounts were estimated using data collected by the department on the prior Contributions Credit that sunset on January 1, 2012. On average, taxpayers claimed $2.8 million overall each taxable year for the Contributions Credit.

The tax year estimates were grown,[10] converted to fiscal year estimates, and then rounded to arrive at the estimates shown in the table above.

IMPLEMENTATION CONSIDERATIONS

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

Provision one would:

- allow multiple taxpayers to claim the full amount of the credit for the same child care facility. If this is inconsistent with the author's intent, the bill should be amended.
- allow taxpayers, eligible for the credit under the PITL, to elect to take depreciation in lieu of the credit. This election would be unavailable to those taxpayers eligible for the credit under the CTL. If this is inconsistent with the author's intent, the bill should be amended.

FISCAL IMPACT

The department's costs to implement these provisions 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.

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[10] Indexed using DOF forecasts.

LEGISLATIVE HISTORY

AB 1282 (Mullin, Chapter 712, Statutes of 2006), extended the sunset date of the Employer Child Care Credit and the Contributions Credit to January 1, 2012.

SB 549 (Ortiz, 1999/2000) would have increased the rate of the Employer Child Care Credit from 30 percent to 70 percent for a facility registering low-income children. SB 549 failed to pass out of the Senate Appropriations Committee.

AB 866 (Diaz, Chapter 650, Statutes of 2010), extended the sunset date of the Employer Child Care Credit and the Contributions Credit to January 1, 2007.

SB 722 (Chapter 1239, Statutes of 1988) enacted the Employer Child Care Credit and the Contributions Credit.

OTHER STATES' INFORMATION

A review of *Florida*, *Massachusetts, Michigan, Minnesota*, and *New Yo*rk tax laws found no comparable tax credits or deductions. These states were reviewed because of the similarities between California income tax laws and their tax laws.

Illinois allows corporations to take either a Dependent Care Assistance Program Credit for employers that provide an on-site facility for dependent care assistance or an Employee Child Care Credit for employers that provide an on-site child care facility for employees. Employers may only take one of these credits, which are limited to 5 percent of the expenses incurred from providing these services to employees.

SUPPORT/OPPOSITION[11]

Support: Bay Area Council.

Opposition: None provided.

ARGUMENTS

Proponents: Some may say that in a time when families struggle to pay for the rising cost of childcare, this credit would improve the availability of affordable, quality childcare for these families.

Opponents: Some may argue that providing an employer tax credit may be an inefficient way to improve the availability of affordable childcare.

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[11] As noted in SB 670 Fact Sheet.

POLICY CONCERNS

Both provisions would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

LEGISLATIVE STAFF CONTACT

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