

## BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
<b>Franchise Tax Board</b>	<b>Nazarian</b>	<b>AB 428</b>

### SUBJECT

Seismic Retrofit of At-Risk Property Credit

### SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), allow a credit for costs to seismically retrofit “at-risk” buildings.

### REASON FOR THE BILL

The reason for the bill is to address the state’s need to retrofit buildings for earthquake safety, and to provide additional tax incentive programs to encourage taxpayers to make these upgrades on buildings.

### 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, 2017, and before January 1, 2022.

### FEDERAL/STATE LAW

Current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Existing state and federal laws provide 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.

Current federal and state laws lack a credit comparable to the credit this bill would create.

Current law excludes from gross income grants received from the California Earthquake Authority that are given to assist a residential property owner or occupant with expenses paid for earthquake loss mitigation.

### THIS BILL

For taxable years beginning on or after January 1, 2017, and before January 1, 2022, this bill would allow a qualified taxpayer a credit in an amount equal to 30 percent of the qualified taxpayer’s qualified costs.

RECOMMENDATION		
SIGN	VETO	X NO RECOMMENDATION
Gail Hall, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 09/11/15

The bill would define the following phrases:

- “At-risk property” means a building that is deemed hazardous and in danger of collapse in the event of a catastrophic earthquake, including, but not limited to, soft story buildings, nonductile concrete residential buildings, and pre-1994 concrete residential buildings.
- “Qualified building” means a building that has been certified as an at-risk property. A qualified building includes a mobilehome registered by the Department of Housing and Community Development.
- “Qualified costs” means the costs paid or incurred by the qualified taxpayer for any completed seismic retrofit construction on a qualified building, including any engineering or architectural design work necessary to permit or complete the seismic retrofit construction reduced by the amount of any grant provided by a public entity for the seismic retrofit construction, and does not include any of the following costs paid or incurred by the qualified taxpayer:
  - Maintenance, including abatement of deferred or inadequate maintenance, and correction of violations unrelated to the seismic retrofit construction.
  - Repair, including repair of earthquake damage.
  - Seismic retrofit construction required by local building codes as a result of addition, repair, building relocation, change of use, or occupancy.
  - Other work or improvement required by local building or planning codes as a result of the intended seismic retrofit construction.
  - Rent reductions or other associated compensation, compliance actions, or other related coordination involving the qualified taxpayer and any other party, including a tenant, insurer, or lender.
  - Replacement of existing building components, including equipment, except as needed to complete the seismic retrofit construction.
  - Bracing or securing nonpermanent building contents.
  - The offset of costs, reimbursements, or other costs transferred from the qualified taxpayer to others.
  - Any amount paid by the qualified taxpayer to the jurisdiction with authority for building code enforcement for issuing the certifications required.
- “Qualified taxpayer” means a taxpayer that is an owner of a qualified building located in this state. A taxpayer that owns a proportional share of a qualified building in this state may claim the credit based on the taxpayer’s share of the qualified costs.
- “Seismic retrofit construction” means alteration of a qualified building or its components to substantially mitigate seismic damage. Seismic retrofit construction would be for work performed, and for which qualified costs were paid or incurred, on or after January 1, 2017. Seismic retrofit construction would include, but not be limited to, the following:
  - Anchoring the structure to the foundation.
  - Bracing cripple walls.

- Bracing hot water heaters.
- Installing automatic gas shutoff valves.
- Repairing or reinforcing the foundation to improve the integrity of the foundation against seismic damage.
- Anchoring fuel storage.
- Installing earthquake-resistant bracing system for mobilehomes that are registered with the Department of Housing and Community Development.

Seismic retrofit construction would not include construction performed to bring a building into compliance with local building codes.

To be eligible for the credit, the following must apply:

1. The qualified taxpayer would be required to do all of the following:
  - Prior to the seismic retrofit construction, obtain certification from the appropriate jurisdiction with local building code enforcement authority that the building is an “at-risk property”.
  - Obtain certification from the appropriate jurisdiction with authority for building code enforcement, upon a review of the building, that the completed construction satisfies the definition of seismic retrofit construction. The certification would identify what part of the completed construction, if any, is not seismic retrofit construction and specify a dollar amount of qualified costs.
  - Request and be granted an allocation of the credit from the Franchise Tax Board (FTB). To request an allocation, the taxpayer must sign and submit to the FTB an application to receive credit for the seismic retrofit construction and provide a copy of the certification.
  - Retain for his or her records a copy of the certifications.
2. The jurisdiction with authority for building code enforcement in which a qualified building is located has entered into an agreement with the state to provide certifications and to not seek reimbursement pursuant to Section 6 of Article XIII B of the California Constitution for any costs incurred in providing those certifications.

The qualified taxpayer would be required to claim one-fifth of the credit amount for the taxable year in which the credit is allocated and one-fifth of the credit amount for each of the subsequent four taxable years.

This bill would allow unused credits to be carried over for up to five years, if necessary.

The total amount of credit that may be allocated could not exceed the sum of the following:

- \$12,000,000 for the 2017 calendar year and each calendar year thereafter.
- The amount of previously unallocated credits allowed.

Upon receipt of the application and certification, the FTB would notify the taxpayer of the amount of credit allowed, if any, and allocate the credit to the taxpayer on a first-come-first-served basis.

The taxpayer must claim the credit on a timely filed original return.

The determination of the FTB with respect to the allocation of the credit, and whether a return has been timely filed may not be reviewed in any administrative or judicial proceeding.

Any disallowance of a credit claimed due to a determination, including the application of the limitation of \$12,000,000 per calendar year, would be treated as a mathematical error appearing on the return. Any amount of tax resulting from that disallowance may be assessed by the FTB in the same manner as provided by Section 19051.

This credit would be in lieu of any other credit or deduction that the qualified taxpayer may otherwise claim under the PITL and CTL with respect to qualified costs.

The FTB may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this bill, including any guidelines regarding the allocation of the credit allowed. The rules, guidelines or procedures would be exempt from the Administrative Procedure Act.

This credit would remain in effect only until December 1, 2022, and as of that date is repealed.

To assist with their review of the effectiveness of the tax credit, the Legislative Analyst may request information from the FTB and any state governmental entity with authority relating to the seismic retrofit construction of at-risk properties. The FTB would be required to provide to the Legislative Analyst any data requested.

## **LEGISLATIVE HISTORY**

SB 84 (Committee on the Budget, Chapter 25, Statutes of 2015) among other things, added language allowing an exclusion from gross income for amounts received as a loan, loan forgiveness, grant, credit, rebate, voucher, or other financial incentive issued by the California Residential Mitigation Program or the California Earthquake Authority to assist a residential property owner or occupant with expenses paid or obligations incurred for earthquake loss mitigation.

AB 1510 (Nazarian, 2013/2014) would have allowed a credit substantially similar to the credit this bill would allow. AB 1510 would have allowed a credit equal to 30 percent of the qualified taxpayer's qualified costs for retrofitting at-risk property, but did not contain a \$12 million annual cap. AB 1510 failed to pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

SB 677 (McPherson, 2001/2002) would have allowed a credit equal to an unspecified percentage of the final cost of seismic retrofitting to comply with the seismic retrofit building standards for hospitals. SB 677 failed to pass out of the Senate Revenue and Taxation Committee by the constitutional deadline.

**OTHER STATES' INFORMATION**

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws lack 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**

Staff estimates a cost of approximately \$254,727 in fiscal year 2016/2017 and ongoing costs of \$128,000 to develop and administer an allocation process, program systems, and test revisions to existing systems for this bill. The department will pursue a budget change proposal if necessary.

**ECONOMIC IMPACT****Revenue Estimate**

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 428 Assumed Enactment After June 30, 2015 (\$ in Millions)		
2016-17	2017-18	2018-19
- \$0.7	- \$2.7	- \$4.6

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

**Revenue Discussion**

This bill would establish a credit for qualified costs incurred for seismic retrofit construction on an at-risk building. The maximum credit allocation would be capped at \$12 million per calendar year. Based on discussions with industry experts and 2013 U.S. Census data on buildings in earthquake areas, it is estimated that approximately 2,150 buildings would undergo retrofitting each year. Data provided by the California Seismic Safety Commission indicated the retrofitting cost is approximately \$20,000 for residential housing, \$10,000 for mobile homes, and \$100,000 for commercial buildings. This data results in an estimated \$83 million in retrofitting costs for 2013. The estimate was grown for inflation to \$89 million in retrofitting costs for 2017 and reduced by the estimated amount of retrofitting grants issued annually (estimated at \$10 million annually) for an estimate of approximately \$79 million in retrofitting costs incurred for 2017.

The credit is equal to 30 percent of qualified costs, therefore, it is estimated that approximately \$24 million in credit would be generated in 2017. This credit amount exceeds the \$12 million maximum credit allocation for 2017 and, therefore, the total qualifying credit for 2017 would be \$12 million. The same is true for subsequent years resulting in \$12 million of credits for those years. The credit must be taken evenly over 5 years, resulting in \$2.4 million available in tax year 2017. The credit available will peak, when there is a five combined year period, in 2021 at

\$12 million. Experience shows that 70 percent of the available credit would be used in the year the credit is generated and the remaining 30 percent of the credit would be used over the subsequent four years. This results in an estimated credit usage beginning at approximately \$1.7 million in taxable year 2017 and peaking in 2021 to approximately \$10.6 million. An adjustment was made to reflect the decreased depreciation deduction allowed when the credit is claimed.

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

**APPOINTMENTS**

None.

**SUPPORT/OPPOSITION<sup>1</sup>**

Support: Apartment Association of Greater Los Angeles; Apartment Association of Orange County; Berkeley Mayor, Tom Bates; Building Owners and Management Association of Los Angeles; California Apartment Association; California League of Cities; California Southern Cities Apartment Association; City of Berkeley; City of Burbank; City of Los Angeles; City of Martinez; City of West Hollywood; Coalition for Economic Survival; East Bay Rental Housing Association; League of California Cities; Los Angeles Business Council Institute; Los Angeles Mayor, Eric Garcetti; Nor Cal Rental Property Association; North Valley Property Owners Association; Oakland Mayor, Libby Schaaf; Rent Stabilization Board of the City of Berkeley; San Francisco Mayor, Ed Lee; San Diego County Apartment Association; Santa Barbara Rental Property Association; Santa Monica Mayor, Kevin McKeown; State Farm Mutual Automobile Insurance Company; Structural Engineers Association of California; Western Center on Law & Poverty; Western Manufactured Housing Communities Association.

Opposition: Unknown.

**VOTES**

	<b>Date</b>	<b>Yes</b>	<b>No</b>
Concurrence	09/09/15	77	0
Senate Floor	09/08/15	38	1
Assembly Floor	06/01/15	78	0

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<sup>1</sup> As noted in the Senate Governance & Finance Committee analysis dated June 30, 2015.

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