



Analysis of Amended Bill

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Sponsor:

Bill Number: AB 2703

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Amended: March 22, 2018 and
April 3, 2018

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Related Bills: See Legislative
History

Subject: Home Care Services Credit/ FTB Collect Data Annually

Summary

This bill would, under the Personal Income Tax Law, allow a tax credit for certain home care services paid or incurred by a taxpayer.

Recommendation – No position.

Summary of Amendments

The March 22, 2018, amendments removed provisions of the bill related to the sales and use tax law and replaced them with the provisions discussed in this analysis. The April 3, 2018, amendments modified the definition of “home care services.”

This is the department’s first analysis of the bill.

Reason for the Bill

The reason for this bill is to reduce health care costs by encouraging cost-effective home care services and to avoid costly nursing home and assisted living facilities.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for each taxable year beginning on or after January 1, 2018, and before January 1, 2023.

Program Background

Long term care includes a wide range of services such as help with everyday tasks and support for managing an illness that is provided for an extended period when someone is unable to do everyday tasks independently. Long term care services may be paid through the U.S. Department of Veterans’ Affairs, federal and state programs (Medicare and Medicaid), through insurance or out-of-pocket.

Long-term care insurance policies reimburse policyholders a daily amount (up to a pre-selected limit) for services to assist them with activities of daily living such as bathing, dressing, or eating.

California's In-Home Supportive Services (IHSS) provides personal care and domestic services to persons who are aged, blind or disabled and who live in their own homes. IHSS is provided to those who otherwise might be placed in an out-of-home care facility but who can safely remain in their own home if IHSS services are received.

Services covered by the IHSS program include domestic and related services (e.g. housework, meal preparation and clean-up, laundry, shopping for food/running errands); non-medical personal care services (such as bathing, ambulation, and bowel/bladder care); transportation services (such as accompaniment to medical appointments); paramedical services (necessary health care activities that recipients would normally perform for themselves were it not for their functional limitations); and protective supervision. Services are provided by an IHSS care provider and may include, but is not limited to family members, friends, neighbors, or registered providers through the public authority. Payments to IHSS care providers are made by the IHSS program that authorized the services.

The IHSS program is administered by each county with oversight by the California Department of Social Services (CDSS).

Federal/State Law

Existing federal and state 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.

Existing federal and state laws allow individuals to deduct certain expenses, such as medical expenses, charitable contributions, interest, and taxes, as itemized deductions. For taxable years beginning after December 31, 2017, and before January 1, 2026, the federal Tax Cuts and Jobs Act (Act) repealed miscellaneous itemized deductions subject to the 2 percent floor, and the overall itemized deduction limitation for high-income taxpayers.¹ Prior to the Act, certain other expenses for the production of income and certain employee business expenses are considered miscellaneous itemized deductions and only the portion that exceeds 2 percent of adjusted gross income may be deducted. Also, itemized deductions may be further limited for high-income taxpayers.

¹ An Act to Provide for Reconciliation Pursuant to Titles II and V of the Concurrent Resolution on the Budget for Fiscal Year 2018, Public Law 115-97, enacted December 22, 2017.

Under Revenue and Taxation Code section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

This Bill

This bill would, for each taxable year beginning on or after January 1, 2018, and before January 1, 2023, allow a tax credit in an amount equal to the amount paid or incurred during the taxable year by a qualified taxpayer for home care services, not to exceed \$10,000.

This bill would define the following terms:

- “Home care services” means nonmedical services and assistance provided by a registered home care aide, a home health agency licensed under Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code, or a hospice licensed under Chapter 8.5 (commencing with Section 1745) of Division 2 of the Health and Safety Code to a qualified taxpayer who, because of advanced age or physical or mental disability, cannot perform these services. These services enable the qualified taxpayer to remain in his or her residence and include, but are not limited to, assistance with the following: bathing, dressing, feeding, exercising, personal hygiene and grooming, transferring, ambulating, positioning, toileting and incontinence care, assisting with medication that the client self-administers, housekeeping, meal planning and preparation, laundry, transportation, correspondence, making telephone calls, shopping for personal care items or groceries, and companionship. This bill would not authorize a registered home care aide to assist with medication that the qualified taxpayer self-administers that would otherwise require administration or oversight by a licensed health care professional.
- “Qualified taxpayer” means a single individual, or a spouse filing a separate return, whose gross income is \$250,000 or less, or a married couple filing a joint return whose gross income is \$500,000 or less.
- “Registered home care aide” would be defined by reference to subdivision (o) of Section 1796.12 of the Health and Safety Code to mean an affiliated home care aide or independent home care aide, 18 years of age or older, who is listed on the home care aide registry.

Taxpayers would be required to submit a receipt or other proof of costs paid or incurred in connection with home care services to the Franchise Tax Board (FTB).

Credits in excess of the tax liability may be carried over to the following taxable year, if necessary.

This bill would require the FTB to collect data relating to the number of Californians using home care services and the number of Californians in nursing homes and assisted living facilities annually.

This bill would be repealed on January 1, 2023.

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.

This bill uses terms that are undefined, i.e., "advanced age," and "physical or mental disability." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the terms.

It is unclear how the department would determine that a qualified taxpayer was unable to perform the nonmedical services and assistance because of advanced age or physical or mental disability or that such services or assistance enabled the qualified taxpayer to remain in their residence. For clarity and to ensure consistency with the author's intent this bill should be amended.

Because the bill fails to specify otherwise, otherwise eligible expenses that are reimbursed by insurance or another source would be included in the calculation of the credit.

Legislative History

AB 230 (Chavez, 2017/2018) would have increased the amount of the applicable household and dependent care expenses necessary for gainful employment state credit for taxpayers with adjusted gross income amounts of \$70,000 or less, as provided. AB 230 failed to pass out of the Assembly Appropriations committee.

AB 149 (Leach, et al., 1999/2000) would have authorized a credit for each taxable year for certain expenses for household and dependent care services necessary for gainful employment, as provided. AB 149 failed to pass out of the Assembly Appropriations Committee.

Other States' Information

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a credit comparable to the credit that would be 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.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2703 as Amended April 3, 2018
For Taxable Years Beginning On or After January 1, 2018, and Before January 1, 2023
Assumed Enactment after June 30, 2018

(\$ in Billions)

| Fiscal Year | Revenue |
|-------------|---------|
| 2018-2019 | - \$8.5 |
| 2019-2020 | - \$6.5 |
| 2020-2021 | - \$6.5 |

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Based on US Census Bureau and IHSS Program data, approximately 1.4 million Californians would receive home health aide services in 2018. This number is increased by 10 percent, to 1.5 million taxpayers, to account for individuals that would be incentivized to receive qualified home care services. It is estimated that 65 percent of these taxpayers would meet the income limitations specified in the bill, resulting in an estimated 1 million qualified taxpayers in taxable year 2018. Based on industry statistics, the average annual cost of a home health aide is \$58,000. Applying the credit limit of \$10,000 and allowing for reimbursed expenses in the calculation of the credit results in an approximately \$10 billion in qualified home care service expense credits generated in 2018. Because of the broad definition of “qualified taxpayer” this amount is increased by an additional 20 percent to account for other taxpayers that would pay for qualified home care service expenses. This results in an estimated total credit generated of \$12 billion in taxable year 2018. It is estimated that 35 percent of California taxpayers would have sufficient tax liability to claim the credit in the year generated, resulting in estimated credits used of \$4.2 billion in taxable year 2018.

Using the same methodology as above, it is estimated there would be 150,000 qualified taxpayers who would receive hospice services in 2018. Based on data from Medicare, the average cost for six months of hospice care per taxpayer would be \$100,000. Applying the credit limit of \$10,000 and allowing for reimbursed expenses in the calculation of the credit results in approximately \$1.5 billion in qualified hospice care expense credit generated in 2018. Because of the broad definition of “qualified taxpayer” this amount is increased by an additional 20 percent to account for other taxpayers that would pay for qualified hospice care expenses. This results in an estimated total credit generated of \$1.8 billion in taxable year

2018. It is estimated that 35 percent of California taxpayers would have sufficient tax liability to claim the credit in the year generated, resulting in estimated credits used of \$600 million in taxable year 2018.

Combining the credits used for home health aide and hospice care results in an estimated revenue loss of \$4.8 billion in taxable year 2018.

The tax-year estimates are converted to fiscal-year revenue estimates, rounded and reflected in the above table.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue that providing a tax credit for home care services expenses would reduce health care costs by encouraging the use of cost-effective home care services.

Opponents: Some may argue that the cost to the General Fund of the home care services credit would outweigh the benefit of any reduction in health care costs.

Policy Concerns

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited either on a per-project or per-taxpayer basis. This bill would provide a 100 percent credit which would be unprecedented.

The proposed tax credit would be allowed for expenses paid or incurred either inside or outside California.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense.

This bill would provide a tax benefit for single individuals, spouses that file separate returns or married couples that would not be provided to other individual taxpayers.

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