

SUMMARY ANALYSIS OF AMENDED BILL

Author: Reyes & Ridley-Thomas Analyst: Davi Milam Bill Number: AB 647
Related Bills: See Prior Analysis Telephone: 845-2551 Amended Date: May 2, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Refundable Community College Full-Time Student Expenses Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), allow a refundable tax credit for certain community college student expenses.

RECOMMENDATION – NO POSITION

SUMMARY OF AMENDMENTS

The May 2, 2017, amendments added an author, modified the operative date, and added a sunset and repeal date. The amendments resolved one policy concern discussed in the department’s analysis of the bill as amended March 21, 2017, and created three new technical considerations and an additional policy concern.

As a result of the amendments, the “Effective/Operative Date,” “This Bill,” “Technical Considerations,” and “Policy Concerns” sections have been revised. The remainder of the department’s analysis of the bill as amended March 21, 2017, still applies. The “Implementation Considerations,” “Fiscal Impact,” and “Economic Impact” sections have been restated for convenience.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2018, and specifically operative for taxable years beginning on or after January 1, 2018, and before January 1, 2023, contingent on a specific appropriation of funds to the Franchise Tax Board (FTB) for its costs to administer the provisions of the bill.

THIS BILL

For each taxable year beginning on or after January 1, 2018, and before January 1, 2023, this bill would, under the PITL, allow a credit against the “net tax,” to a qualified taxpayer in an amount equal to the qualified community college expenses paid or incurred during the taxable year.

- “Qualified community college expenses” means fees and other expenses paid or incurred for the enrollment or attendance of a qualified full-time community college student in a California community college as does not exceed two thousand dollars (\$2,000) per qualified full-time community college student.

- “Qualified full-time community college student” means an individual for whom both of the following apply:
 - The individual completed an academic year of full-time enrollment in a California community college that concluded during the taxable year.
 - The individual has not been considered a qualified full-time community college student for the purposes of the credit allowed by this bill for any prior taxable year.
- “Qualified taxpayer” means a taxpayer who is a qualified full-time community college student or who has a dependent who is a qualified full-time community college student.

A qualified taxpayer would be required to submit with his or her return a copy of the transcript of the qualified full-time community college student evidencing completion of an academic year of full-time enrollment in a California community college.

If the amount allowable as a credit under the terms of this bill exceeds the tax liability for the taxable year, the excess would be credited against other amounts due, if any, and the balance, if any, upon appropriation by the Legislature, would be paid to the qualified taxpayer.

To comply with Revenue and Taxation Code section 41, this bill would require the Legislative Analyst’s Office to collect and remit specified data to the Legislature.

The credit would become operative on the effective date of any budget measure specifically appropriating funds to the FTB for its costs of administering this credit.

The credit would be repealed by its own terms on January 1, 2023.

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.

This bill lacks administrative details necessary to implement the bill and determine its impacts to the department’s systems, forms, and processes. The bill is silent on the following issues:

- It is unclear whether the credit would be \$4,000 per qualified community college student for qualified taxpayers filing married filing jointly. Additionally, it is unclear whether the \$2,000 credit could be claimed by both the student and the student’s parent.
- If the qualified community college student receives financial assistance for the community college expenses must the creditable amount be reduced by the amount of any assistance?

For clarity and ease of administration, it is recommended that the bill be amended.

The bill uses undefined terms and phrases that could be broadly interpreted, i.e. “fees,” “other expenses,” and “dependent”. The use of undefined terms and phrases could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended to define these terms by reference to federal law, forms, and instructions.

Additionally, it is unclear what is meant by “completed an academic year of full-time enrollment.” Since the bill lacks language clarifying what is meant by “full-time,” it is unclear how many classes or units must be taken, or whether the student must be enrolled in a degree or certificate program. It also could be argued that merely attending community college for the academic year without successfully passing courses or making progress towards a degree or certificate would qualify. To ensure consistency with the author’s intent, it is recommended that the bill be amended.

This bill would require regular annual appropriations by the Legislature to pay for the refundable portion of this credit. If there are insufficient funds available to cover all of the refunds due, the department would suspend payment of the refunds until additional funds were appropriated. Interest would have to be paid to refund recipients for the period the refund was delayed. This delay would result in additional contacts to the department by refund recipients, which would likely increase departmental costs. This concern could be alleviated by amending the bill to specify that the balance of any excess credit would be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

TECHNICAL CONSIDERATIONS

For clarity, the phrase “any budget measure” should be replaced with the phrase “the annual Budget Act”.

The bill’s specified operative date language is silent as to the taxable years the bill would affect. For clarity and ease of administration, subdivision (e) should be amended to read, “Notwithstanding subdivision (a), this section shall not apply for tax years where the annual budget act lacks a specific appropriation of funds to reimburse the FTB for its costs of administering this section.”

This bill would specify a repeal date of January 1, 2023. For consistent treatment of calendar-year and fiscal-year filers, the credit should be retained "in law" until the day after the last day of the fiscal year beginning December 1, 2022. The repeal date should be December 1, 2023.

FISCAL IMPACT

The department’s costs to implement this bill have yet to be determined, but are anticipated to be significant. As the bill moves through the legislative process and the implementation considerations are resolved, 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 AB 647* As Amended on May 2, 2017 Assumed Enactment After June 30, 2017 (\$ in Millions)		
2017-18	2018-19	2019-20
- \$550	- \$550	- \$270

*Estimate assumes a specific appropriation of funds to the FTB would be enacted in 2018 for its costs to administer the increased credit.

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 historical data from the California Community Colleges Chancellor's Office, there will be 500,000 full-time students enrolled in California community colleges in the 2018 taxable year. This estimate assumes a full-time student would enroll in 12 or more units each term annually.

Because qualified expenses would exceed \$2,000 per year for each full-time student, qualified taxpayers would claim the maximum credit. It is assumed 90 percent, or 450,000 taxpayers, would take the maximum credit in the first year resulting in an estimated \$900 million in credits generated in the 2018 taxable year. This estimate assumes the Legislature would appropriate funds for a refundable credit resulting in an estimated revenue loss of \$900 million in 2018.

The estimated number of qualified students would decrease to 135,000 in 2019 because students would have claimed the credit in the previous year. This estimate includes an increase for part-time students incentivized to pursue full-time enrollment. Therefore, the revenue loss is estimated to be \$270 million in 2019 and \$275 million in 2020.

The tax year estimates are converted to fiscal years, and then rounded to arrive at the estimates reflected in the above table.

POLICY CONCERNS

The department is concerned with the possibility of fraud. The Internal Revenue Service has historically experienced a high rate of improper payments with refundable credits. The improper payments can stem from honest mistakes; however many are related to fraud and identity theft. These concerns are aggravated if a refund is made that is later determined to be fraudulent. In such cases the refund commonly cannot be recovered.

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

Generally, credits are limited as a percentage of amounts paid or incurred. This bill would potentially allow a taxpayer to obtain combined federal and state credits that exceed 100 percent of expenses.

An individual who claimed even one dollar of qualifying expenses in a prior year would be ineligible to claim a credit in a subsequent year. To avoid this situation, the author may wish to make the credit limit cumulative providing a maximum credit over the life of the credit of \$2,000 per qualified full-time community college student.

A credit whose availability is subject to an annual budget appropriation may lack the certainty taxpayers require to be willing to pay or incur qualified community college expenses.

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