

**Franchise Tax Board****ANALYSIS OF ORIGINAL BILL**

Author: Kalra Analyst: Davi Milam Bill Number: AB 806  
Related Bills: See Legislative History Telephone: 845-2551 Introduced Date: February 15, 2017  
Attorney: Bruce Langston Sponsor: \_\_\_\_\_

**SUBJECT:** Family Caregiver Credit

**SUMMARY**

The bill would, under the Personal Income Tax Law (PITL), create a credit for a family caregiver.

**RECOMMENDATION - NO POSITION.**

**REASON FOR THE BILL**

The reason for this bill is to provide tax relief to family caregivers who incur unreimbursed expenses for providing care and support to an eligible family member.

**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, 2018.

**FEDERAL/STATE LAW**

Existing federal and state laws allow individuals to deduct certain expenses, such as medical expenses, charitable contributions, interest, and taxes, as itemized deductions. 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.

Existing state and federal laws allow a tax credit for employment-related costs of care for a qualifying individual. A qualifying individual is defined as a dependent of the taxpayer that is under the age of 13 or a dependent or spouse who is physically or mentally unable to care for themselves. Employment-related expenses are generally defined as those expenses incurred to enable gainful employment.

Current state and federal laws lack a comparable credit to the one that would be created by this bill.

## **THIS BILL**

For each taxable year beginning on or after January 1, 2018, this bill would, under the PITL, allow a credit in an amount equal to 50 percent of the amount paid or incurred by a family caregiver during the taxable year for eligible expenses, not to exceed one thousand dollars (\$1,000).

This bill would define the following terms and phrases:

- “Activities of daily living” means housework, meals, laundry, taking medication, money management, appropriate transportation, correspondence, telephoning, dressing, feeding, toileting, bathing, grooming, mobility, and related tasks.
- “Eligible family member” means an individual who requires assistance with at least one activity of daily living and qualifies as a dependent, spouse, parent, or other relation by blood or marriage, including an in-law, grandparent, grandchild, stepparent, aunt, uncle, niece, nephew, or domestic partner, as defined in Section 297 of the Family Code, of the family caregiver.
- “Family caregiver” means an individual who meets all of the following:
  - Is a resident taxpayer.
  - Has a federal adjusted gross income of less than seventy-five thousand dollars (\$75,000) for an individual and one hundred fifty thousand dollars (\$150,000) for a joint return.
  - Incurs uncompensated expenses directly related to the care of an eligible family member.
  - Provides care to one or more eligible family members during the taxable year.
  - In the case of a joint return, “family caregiver” includes the individual and the individual’s spouse.
- “Eligible expenses” includes the following that are directly related to assisting a family caregiver in providing care for an eligible family member:
  - The portion of the total purchase price paid by a family caregiver for a new residence or the total amount expended by the family caregiver to retrofit an existing residence, provided that the new residence or the retrofitting of the existing residences is designed to improve accessibility, or to provide universal visitability.
  - Purchases or leases of equipment that is necessary to assist an eligible family member in carrying out one or more activities of daily living.
  - Goods, services, or support that assists the family caregiver in providing care to an eligible family member, including, but not limited to, expenditures related to hiring a home care aide or personal care attendant, respite care, adult day care, transportation, legal and financial services, and for assistive technology to care for the eligible family member.

This bill would also provide:

- Only one family caregiver would be allowed this credit in a taxable year for a specific eligible family member. If two or more family caregivers claim this credit, the total amount of credit would be allocated in equal amounts among each eligible family member.
- Any unused credit could be carried over for up to three taxable years, or until exhausted.

The Franchise Tax Board (FTB) would have the authority to issue regulations necessary or appropriate to carry out the provisions of the bill.

The FTB would be exempt from the Administrative Procedure Act when prescribing rules, guidelines, or procedures to administer the credit that would be enacted by this bill.

### **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 administer the bill's provisions. The amount of the credit and who may claim the credit is unclear. For example, it is unclear whether:

- The \$1,000 cap would apply to the amount of credit per taxable year, the costs eligible for credit per taxable year, or the amount of credit per eligible family member per taxable year. Additionally, it is unclear if the maximum credit for a jointly filed return would be \$2,000.
- Only one family caregiver may claim the credit for a specific family member or whether the credit would be allocated if more than one caregiver provides care for the same family member as the bill includes contradictory language.

This bill uses terms that are undefined, i.e., "other relation by blood or marriage," "requires assistance," "resident taxpayer," "improve accessibility," "universal visibility," and "necessary to assist." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill.

The defined phrase "activities of daily living" could be broadly interpreted. For example, it could be argued that any expense for a family member's personal care, including housekeeping, hair appointments, car services, and any other daily living expenses would qualify for credit. If this is inconsistent with the author's intent, the bill should be amended.

The department lacks the experience to determine whether an individual “requires assistance.” Because the bill lacks a requirement that a physician or other expert certify that a particular family member “requires assistance” with “activities of daily living” and the period of time the assistance is required, it could be argued that any family member “requires assistance” and would qualify as an “eligible family member.” If this is inconsistent with the author’s intent, the bill should be amended.

## **TECHNICAL CONSIDERATIONS**

For consistent use of terminology, on page 4, line 7, the term “member” should be replaced with “caregiver”.

## **LEGISLATIVE HISTORY**

AB 298 (Berg, 2005/2006) would have extended the long-term caregiver credit to taxable years beginning on or before January 1, 2011. AB 298 failed to pass by the constitutional deadline.

## **PROGRAM BACKGROUND**

California law previously allowed a non-refundable long-term care credit for eligible caregivers. The credit was \$500 for each qualifying individual who had been certified as needing long-term care. A qualifying individual may have been the taxpayer, the spouse of the taxpayer, or a qualified dependent, as defined. The credit was allowed to eligible caregivers whose adjusted gross income was \$100,000 or less. Unused credits could not be carried over to future years. The credit was allowed for taxable years beginning on or after January 1, 2000, and before January 1, 2005. The credit was repealed on December 1, 2005.

## **OTHER STATES’ INFORMATION**

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy and tax laws.

*Illinois, Massachusetts, Michigan, and Minnesota* tax laws do not provide a credit comparable to the credit that would be allowed by this bill.

*New York* tax law allows a long-term residential care deduction for a resident in a continuing-care retirement community.

## **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 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 806 As Introduced on February 15, 2017 Assumed Enactment After June 30, 2017 (\$ in Billions)		
2017-18	2018-19	2019-20
- \$3.2	- \$8.5	- \$12.0

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 US Census and FTB data, there would be an estimated 11 million eligible family members in 2018. It is assumed that eligible expenses would exceed \$2,000 per eligible family member. The estimated number of eligible family members is multiplied by the maximum expense amount of \$2,000 resulting in an estimated \$22 billion in expenses. Applying the credit rate of 50 percent results in estimated credits generated of \$11 billion. It is assumed that 50 percent, or \$5.5 billion, of the credit would be used in the year generated and the remainder would be used over the next two years.

The calendar year estimates are converted to fiscal years and then rounded to arrive at the amounts shown in the table above.

## LEGAL IMPACT

This bill would restrict the definition of "family caregiver" to individuals who are resident taxpayers. This may be challenged as discriminating against nonresidents with California source income who are required to file a state tax return but would be ineligible for the credit. To alleviate this concern, the author may wish to remove the requirement that the family caregiver be a resident of the state of California, and instead require that the care be provided in California.

## SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

## **ARGUMENTS**

Proponents: Some may say that in a time when many working families struggle to pay for the rising cost of family care, this credit would make family care more affordable.

Opponents: Some may say that providing tax relief to assist with expenses for family care will result in revenue losses, which have to be paid for with higher taxes on others or reductions in services.

## **POLICY CONCERNS**

The 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 lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the tax benefit by the Legislature.

## **LEGISLATIVE STAFF CONTACT**

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