Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Kalra	Analyst:	Davi Milam	Bill Number:	AB 806
Related Bills:	See Prior Analysis	Telephone:	845-2551	Amended Date:	March 20, 2017
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Family Caregiver Credit

SUMMARY

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

RECOMMENDATION – NO POSITION

SUMMARY OF AMENDMENTS

The March 20, 2017, amendments modified definitions, added a certification requirement, and made other changes to the credit requirements.

The amendments resolved some, but not all, of the implementation considerations discussed in the department's analysis of the bill as introduced February 15, 2017, and created two additional implementation considerations. As a result of the amendments, the "This Bill," "Implementation Considerations," "Technical Considerations," and "Economic Impact" sections have been revised. The remainder of the department's analysis of the bill as introduced February 15, 2017, still applies. The "Program Background," "Fiscal Impact," "Legal Impact," and "Policy Concerns" sections have been restated for convenience.

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:

- "Eligible family member" means, with respect to any taxable year, any individual who has been certified, before the original due date for filing the return for the taxable year, by a physician,[1] as being an individual with long-term care needs, as specified, for a period that meets both of the following requirements:
  - Is at least 180 consecutive days.
  - A portion of that period occurs within the taxable year.

[1] As defined in Section 1861(r) of the Social Security Act.

"Eligible family member" would specifically exclude any otherwise eligible individual unless within the 39 $^{1}/_{2}$-month period ending on that due date (or another period the Franchise Tax Board (FTB) prescribes) a physician has certified that that individual meets any of the following requirements:

- The individual is at least six years of age and meets either of the following requirements:
  - The individual is unable to perform (without substantial assistance from another individual) at least three activities of daily living, as defined in Section 7702B(c)(2)(B) of the Internal Revenue Code (IRC),[2] relating to activities of daily living, due to a loss of functional capacity.
  - The individual requires substantial supervision to protect that individual from threats to health and safety due to severe cognitive impairment and is unable to perform at least one activity of daily living, as defined in Section 7702B(c)(2)(B) of the IRC, relating to activities of daily living, or to the extent provided by the FTB (in consultation with the Secretary of California Health and Human Services) is unable to engage in age-appropriate activities.
- The individual is at least two years of age but less than six years of age and is unable due to a loss of functional capacity to perform (without substantial assistance from another individual) at least two of the following activities: eating, transferring, or mobility.
- The individual is under two years of age and requires specific durable medical equipment by reason of a severe health condition or requires a skilled practitioner trained to address the individual's condition to be available if the individual's parents or guardians are absent.

- "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.

[2] The activities of daily living include: eating, toileting, transferring, bathing, dressing, and continence.

- "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 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.
- No credit would be allowed to a taxpayer with respect to any eligible family member unless the taxpayer includes the name and taxpayer identification number of that individual, and the identification number of the physician certifying that individual, on the return for the taxable year.
- The taxpayer would be required to retain the physician certification and provide it to the FTB upon request.
- The denial of any credit could be made in the same manner as a mathematical adjustment.[3]

The 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.

[3] Revenue and Taxation Code section 19051.

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., "resident taxpayer," "improve accessibility," "universal visitability," "new residence," 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.

This bill would allow an otherwise qualified individual that provides care to any individual that is certified by a physician as requiring long-term care to claim this credit without regard to that individual's relationship to the caregiver. If this is inconsistent with the author's intent, the author may wish to amend the bill to specify that the eligible family member may be the taxpayer, the taxpayer's spouse, the taxpayer's dependent for which the dependent exemption credit may be claimed, or other defined relationships.

The certification must include the "identification number of the physician." For clarity, the author may wish to specify if the identification number is the physician's license number or taxpayer identification number.

TECHNICAL CONSIDERATIONS

For consistent use of terminology, on page 5, line15, the term "member" should be replaced with "caregiver."

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 taxpayer's spouse, or a qualified dependent, as defined. The credit was allowed to eligible caregivers whose adjusted gross income was $100,000 or less. Unused credits were ineligible to 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 by its own terms on December 1, 2005.

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 Amended on March 20, 2017 Assumed Enactment After June 30, 2017 ($ in Millions)		
2017-18	2018-19	2019-20
- $310	- $750	- $950

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 data, an estimated 1.3 million individuals would meet the qualifications to be an eligible family member in 2018. It is assumed that 70 percent, or 900,000, of these individuals would have family caregivers meeting the adjusted gross income requirement and would incur eligible expenses related to providing care to the individuals.

Due to the timing requirement of this bill, it is assumed that 70 percent, or 630,000, family caregivers would claim the credit in the first year and 100 percent would claim the credit each year thereafter. 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 $1.3 billion in expenses in 2018. Applying the credit rate of 50 percent results in estimated credits generated of $650 million. It is assumed that 80 percent, or $520 million, of the credit will be used in the year generated and the remainder will be used in the next year.

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

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.

POLICY CONCERNS

The credit would be allowed for expenses paid or incurred either inside or outside of 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.

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