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	May 15, 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 May 15, 2017, amendments required the credit to be certified and allocated by the Franchise Tax Board (FTB) and made several technical changes.

The amendments resolved one technical consideration discussed in the department's analysis of the bill as amended May 1, 2017, and created three new technical considerations and one new implementation consideration. As a result of the amendments, the "Effective/Operative Date," "This Bill," "Implementation Considerations," "Technical Considerations," and "Economic Impact" sections have been revised. The remainder of the department's analysis of the bill as amended May 1, 2017, still applies. The "Program Background" section has been restated for convenience.

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, and before January 1, 2023, contingent on a specific appropriation of funds to the 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 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), regardless of the type of return filed.

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.

  "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 FTB prescribes) a physician has certified that that individual has long-term care needs and 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.

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[1] As defined in Section 1861(r) of the Social Security Act.
[2] The activities of daily living include: eating, toileting, transferring, bathing, dressing, and continence.

- "Family caregiver" means an individual who meets all of the following:
  - Has a federal adjusted gross income (AGI) of less than seventy-five thousand dollars ($75,000) for an individual or 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 in the state:
  - The total amount expended by the family caregiver to retrofit an existing residence, provided that 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.
- Any unused credit could be carried forward for three taxable years, 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]

[3] Revenue and Taxation Code section 19051.

- The taxpayer would be required to reduce the amount of any otherwise allowable deduction for the same “eligible expenses” by the amount of the credit allowed.
- The credit would be repealed by its own terms on December 1, 2023.

The FTB would have the authority to adopt 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.

The aggregate amount of allocated credits would be equal to the sum of the following:

- Fifty million dollars ($50,000,000) for each calendar year, plus
- The unused allocation credit amount, if any, for the preceding calendar year.

The FTB would be required to do both of the following:

- On or after January 1, 2018, and before January 1, 2023, allocate and certify tax credits on a first-come-first-served basis by determining and designating applicants who meet the credit requirements.
- Once the credits allocated exceed the credit allocation limit, the FTB would cease to allocate and certify tax credits to taxpayers.

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.

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 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.
- The allocation process lacks administrative details that would complicate the administration of this credit and could result in disputes between taxpayers and the department. For example, the lack of an application or reservation process coupled with the low credit allocation amount could result in the FTB disallowing claimed tax credits resulting in the possible imposition of underpayment penalties.

This bill uses terms that are undefined, i.e., “improve accessibility,” “universal visitability,” 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

On page 4, line 32, to clarify that “the state” means California, replace “the” with “this”.

On page 4 line 35, for consistent use of terminology, replace “residences” with “residence”.

For clarity, the phrase “any budget measure” on page 6, line 11, should be replaced with the phrase “the annual Budget Act”.

For consistent terminology, on page 6, line 7, replace the term “exceed” with “reach”.

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 (k), on page 6, lines 10 -12, 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.”

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, but are anticipated to be significant if the FTB is required to certify and allocate the credit. 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 May 15, 2017 Assumed Enactment After June 30, 2017 ($ in Millions)		
	2017-18	2018-19	2019-20
Caregiver Credit	- $23.0	- $46.0	- $50.0
Underpayment Penalty	+ $14.5	+ $33.0	+ $38.0
Net Revenue	- $8.5	- $13.0	- $12.0

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

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

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 AGI 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. Because the credit is limited to $1,000 regardless of the type of return filed, the credit amount was reduced by 30 percent, or to $440 million, to account for married family caregivers that may provide care for multiple eligible family members. This amount includes an adjustment for non-resident taxpayers that provide care for eligible family members in California.

The credit is capped at $50 million and would be allowed on a first-come-first-serve basis. This estimate assumes the cap would be met each year.

It is assumed that 80 percent, or $40 million, of the credit would be used in the year generated and the remainder would be used in the next year. Resulting in an estimated revenue loss of $40 million in taxable year 2018. An adjustment was made to account for offsetting tax effects of the deduction that would be otherwise allowed under current law.

Taxpayers who claim the additional $390 million in credits would be assessed approximately $25 million in underpayment and monthly penalties in taxable year 2018.

The net impact of the credit usage, the decrease in deductions, and the penalties issued due to the understatement of tax results in an estimated revenue loss of $15 million in the 2018 taxable year.

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

LEGISLATIVE STAFF CONTACT

Davi Milam
Legislative Analyst, FTB
(916) 845-2551
davi.milam@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Diane Deatherage
Legislative Director, FTB
(916) 845-6333
diane.deatherage@ftb.ca.gov