STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Amended Bill

Author: Stone	Sponsor:	Bill Number: SB 1352
Analyst: Janet Jennings	Phone: (916) 845-3495	Amended: May 15, 2018
Attorney: Bruce Langston	Related Bills: See Legislative History	

Subject: California Achieving a Better Life Experience (CalABLE) Contributions credit

Summary

This bill, under the Personal Income Tax Law (PITL), would allow a credit for contributions to a CalABLE account.

Recommendation – No position.

Summary of Amendments

The May 15, 2018, amendments removed the three deductions that would have been created by this bill, and replaced them with the provisions discussed in this analysis.

As a result of the amendments, the department's analysis of the bill as amended March 22, 2018, no longer applies.

Reason for the Bill

The reason for the bill is to offer incentives so that both California residents and out-of-state residents will contribute to the well-being of one of our state's most vulnerable populations.

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, 2019 and before January 1, 2024.

Program Background

In 2015, Governor Brown signed the CalABLE Act into law,[1] which allows qualified individuals with disabilities and their families to open tax-free savings accounts without the worry of losing vital government assistance.

Contributions to a CalABLE account, currently limited to $15,000 per year, can be made by family, friends, or the beneficiary themselves. The account's earnings are allowed to accumulate tax-free, and the withdrawals, provided they are applied to qualifying disability expenses, are tax-free.

Federal Law

Existing federal and state laws allow for the deduction of certain expenses when calculating adjusted gross income, such as moving expenses and interest on education loans (also known as student loans). Thus, all taxpayers with this type of expense receive the benefit of the deduction. These are known as "above-the-line" deductions.[2]

Qualified ABLE Programs

The ABLE Act of 2014[3] created a new type of tax-favored savings program for taxable years beginning on or after January 1, 2015, known a qualified ABLE program. Qualified ABLE programs are established and maintained by a state or agency or instrumentality and must meet the following conditions: (1) under the provisions of the program, contributions may be made by any person to an account (an "ABLE account"), established for the purpose of meeting the qualified disability expenses of the designated beneficiary that is an eligible individual, as defined, of the ABLE account; (2) the program must limit a designated beneficiary to one ABLE account; (3) the program must allow for the establishment of ABLE accounts only for a designated beneficiary who is a United States resident; and (4) the program must meet certain other requirements discussed below. A qualified ABLE program is generally exempt from income tax, but is otherwise subject to the taxes imposed on the unrelated business income of tax-exempt organizations.

Contributions to an ABLE account must be made in cash, are subject to specified limitations and are not deductible for federal income tax purposes.

---

[1] AB 449 (Irwin, Chapter 774, Statutes of 2015).
[2] Other "above-the-line" deductions include certain ordinary and necessary trade and business expenses, losses from the sale or exchange of certain property, contributions for pension, profit-sharing and annuity plans of self-employed individuals, retirement savings, and alimony.
[3] Section 102 of Division B of Public Law 113-295, codified at Internal Revenue Code section 529A.

State Law

For both personal and corporate income taxpayers, California generally conforms to the federal tax treatment of ABLE accounts,[4] except that any distribution that is includible in state income is subject to an additional state tax penalty of 2.5 percent and reports required to be sent to the Secretary of the Treasurer must also be sent to the Franchise Tax Board.

This Bill

For each taxable year beginning on or after January 1, 2019, and before January 1, 2024, this bill, under the PITL, would allow a credit for a "qualified contribution" made by the taxpayer during the taxable year.

This bill would provide that "qualified contribution" means a contribution, excluding tax-free rollovers, made to a CalABLE account.[5] The credit would be equal to the lesser of 20 percent of the qualified contribution contributed during the taxable year or seven hundred and fifty dollars ($750).

Any unused credit could be carried over for five years.

Any deduction or credit otherwise allowed for any amount contributed by the taxpayer upon which the credit is based would be required to be reduced by the amount of the allowed credit.

The FTB would be required to annually report the number of tax returns claiming the credit and the average credit amount on tax returns claiming the credit.[6]

This credit would remain in effect until December 1, 2024, and be repealed as of that date.

Implementation Considerations

Implementing this bill would require some changes to existing tax forms and instructions and information systems.

Legislative History

AB 2039 (Fong, 2017/2018), would allow a deduction for contributions to a CalABLE account. AB 2039 is pending before the Assembly Appropriations Committee.

SB 324 (Pavely, Chapter 15, Statutes of 2015) generally conformed state tax law to the federal tax treatment of ABLE accounts.

---

[4] Revenue &Taxation Code (R&TC) sections 17140.4 and 23711.4.
[5] Pursuant to Chapter 15 (commencing with Section 4875) of Division 4.5 of the Welfare and Institutions Code.
[6] Under R&TC 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.

AB 449 (Irwin, Chapter 774, Statutes of 2015) established the CalABLE program.

Other States' Information

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws. A review of these states' laws found that all have established ABLE programs in their state; none allow a credit for contributions as proposed by this bill.

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 SB 1352 as Amended May 15, 2018
Assumed Enactment after June 30, 2018

($ in Millions)

Fiscal Year	Revenue
2018-2019	- $5
2019-2020	- $11
2020-2021	- $14

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

CalABLE accounts are not currently available, however the California Treasurer has prepared projections using assumed contributions and income growth. Based on the California Treasurer's CalABLE projections, it is assumed that $43 million will be contributed to CalABLE accounts in 2019. Applying a 20 percent credit percentage results in $8.6 million in credits generated in 2019. By 2023, the amount of contributions will grow to approximately $75 million resulting in $15 million of credits generated. According to the Government Accountability Office, individuals who set up 529 accounts are significantly wealthier than other individuals.

It is assumed that the taxpayer's tax liability would exceed the amount of the credit and the entire credit amount would be used in the year generated. The bill specifies that any deduction or credit otherwise allowed would be reduced by the credit allowed. Because there are no deductions or credits currently available for taxpayers who make contributions to CalABLE accounts, no other adjustments were made to the estimate for deductions or credits otherwise allowed.

The tax-year estimates are converted to fiscal-year estimates and rounded to arrive at the amounts reflected in the above table.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue that allowing a depositor to claim a credit for a percentage of their contributions to a CalABLE account would encourage more contributions and increase the beneficiary's financial situation, thereby reducing the need for governmental services provided by the general fund.

Opponents: Some may argue that allowing a credit for contributions to CalABLE accounts would reduce the general fund revenues needed to provide services to the very people the CalABLE accounts are intended to benefit.

Policy Concerns

This bill would potentially provide a double tax benefit for the funds contributed by allowing a credit for contributions to CalABLE accounts made by an individual, in addition to the current law exclusion from gross income for distributions for qualified disability expenses for a designated beneficiary.

Legislative Staff Contact

Janet Jennings	Jame Eiserman	Diane Deatherage
Legislative Analyst, FTB	Revenue Manager, FTB	Legislative Director, FTB
(916) 845-3495	(916) 845-7484	(916) 845-6333
janet.jennings@ftb.ca.gov	jame.eiserman@ftb.ca.gov	diane.deatherage@ftb.ca.gov