STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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Related Bills: See Legislative History

Bill Number: AB 2136

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SUBJECT

Family Caregiver Tax Credit

SUMMARY

This bill, under the Personal Income Tax Law (PITL), would create a Family Caregiver Tax Credit. The maximum credit amount would be limited to $5,000 regardless of the type of return filed, and any excess credit could be carried over for three years.

The Franchise Tax Board (FTB) would be required to allocate and certify the tax credit on a first-come-first-served basis. The allocation amount would be limited to $150,000,000 for each calendar year plus any unallocated amounts from the preceding calendar year.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to provide financial relief to family caregivers enabling continued care at home and avoiding costs to the state health system.

ANALYSIS

For each taxable year beginning on or after January 1, 2021, and before January 1, 2026, this bill, under the PITL, would allow a credit equal to 50 percent of the amount paid or incurred by a family caregiver during the taxable year for eligible expenses. The credit would be limited to five thousand dollars ($5,000), 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, an individual who is the spouse of the family caregiver or who bears an income tax dependency relationship with the family caregiver,[1] and has been certified, under penalty of perjury, before the due date for filing the tax return for the taxable year, without regard to extensions, by a physician (See Social Security Act section 1861(r)), a registered nurse,[2] an advanced practice registered nurse (as defined in Business and Professional Code (BPC) section 2725.5.), or a physician assistant (as defined in BPC section 3501), as being an individual with long-term care needs, as specified, for a period that meets the following requirements:
  - Is at least 180 consecutive days.
  - A portion of that period occurs within the taxable year.
  - 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 two activities of daily living, as defined in Section 7702(c)(2)(B) of the Internal Revenue Code (IRC), due to a loss of functional capacity. (Activities of daily living may include: eating, toileting, transferring, bathing, dressing, and continence).
    - The individual requires substantial supervision to protect that individual from threats to health and safety due to severe cognitive impairment and meets either of the following additional requirements:
      - Is unable to perform at least one activity of daily living, as defined, in Section 7702B(c)(2)(B) of the IRC.
      - 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.
  - 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.

[1] IRC section 152(d)(2) defines a dependency relationship to include: a child or a descendant of a child, a brother, sister, stepbrother, or stepsister, the father or mother, or an ancestor of either, a stepfather or stepmother, a son or daughter of a brother or sister of the taxpayer, a brother or sister of the father or mother of the taxpayer, a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law, or other individual who, for the taxable year of the taxpayer, has the same principal place of abode as the taxpayer and is a member of the taxpayer's household.
[2] Licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the BPC.

  - 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.
  - An "eligible family member" would specifically exclude an otherwise eligible individual unless, within the $39^{1}/_{2}$-month period ending on the due date for the filing of the tax return, or another period that the FTB prescribes, a physician, registered nurse, advanced practice registered nurse, or physician assistant, as defined, has certified, under penalty of perjury, that the individual meets all of the requirements of an eligible family member.

- "Family caregiver" means an individual who meets all of the following requirements:
  - 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.
  - Has annual federal adjusted gross income (AGI) of $170,000 or less for an individual or $250,000 or less for a joint return for the taxable year in which the credit is claimed.
  - In the case of a joint return, "family caregiver" includes the individual and the individual's spouse.

- "Eligible expenses" would include all of the following that are directly related to assisting a family caregiver in providing care for an eligible family member within the state of California:
  - The total amount expended by the family caregiver to retrofit an existing residence, provided that the retrofitting of the existing residence 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 over for three taxable years, until exhausted.
- The credit would be disallowed unless the family caregiver includes the name and taxpayer identification number of the eligible family member, and the identification number of the physician, registered nurse, advanced practice registered nurse, or physician assistant certifying that eligible family member, on the return for the taxable year.
- The denial of any credit could be made in the same manner as a mathematical adjustment (pursuant to Revenue and Taxation Code (R&TC) section 19051).
- The family caregiver would be required to retain the certification and provide it to the FTB, upon request.
- 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 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:

- One hundred fifty million dollars ($150,000,000) 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, 2021, and before January 1, 2026, 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.

Bill SEC. 4 includes specified goals, purposes, and objectives of the credit as required by R&TC section 41. These would be:

- Relieving part of the significant financial burden that family caregivers face for out-of-pocket expenses they often cannot afford.
- Reducing the number of family caregivers who require loans to cover the costs of caring for an eligible family member.
- Providing flexibility for family caregivers to care for loved ones themselves.

Performance indicators to be used by the Legislature in determining whether the credit meets those specified goals, purposes, and objectives would be:

- The number of people receiving the credit.
- The number of family caregivers who are able to financially manage taking care of their loved one full time as a result of receiving the credit.

The Legislative Analyst, on an annual basis beginning January 1, 2022, would be required to collaborate with the FTB to review the effectiveness of the tax credit. The review would include, but not be limited to, an analysis of the demand for the tax credit and the economic impact of the tax credit.

Under the terms of this bill, the Legislative Analyst would be allowed to request information from the FTB and the FTB would be required to provide any data requested by the Legislative Analyst.

The credit would be repealed by its own terms on December 1, 2026.

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, 2021, and before January 1, 2026, on the effective date of any budget measure specifically appropriating funds to the FTB for its costs to administer the provisions of the bill.

Federal/State Law

Existing federal and state laws allow individuals to deduct as an itemized deduction unreimbursed qualified medical expenses in excess of 10 percent of AGI.[3] Itemized deductions may be further limited for high-income taxpayers.

[3] California law remains at 7.5 percent and has not conformed to the increased federal AGI percentage of 10 percent starting in 2019.

Medical expenses include qualified long-term care services required by a chronically ill individual pursuant to a plan prescribed by a licensed health care practitioner. An individual is considered "chronically ill," if within the previous 12 months, a licensed health care practitioner has certified that the individual meets either of the following:

- Is unable to perform at least two activities of daily living without substantial assistance from another individual for at least 90 days.
- Requires substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.

Child and Dependent Expenses Credit

Existing federal and state 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 this bill would create.

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.

This bill lacks administrative details necessary to administer the bill's provisions. For example:

- The lack of a specified 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. Additionally, similar to other allocated credits, the author may wish to clarify that FTB's determination with respect to the allocation is final.
- This bill uses terms that are undefined, i.e., "improve accessibility," "universal visitability," "necessary to assist," "assistive technology," "specific durable equipment," and "uncompensated expenses." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill.
- The certification must include the "identification number of the physician, registered nurse, advanced practice registered nurse, or physician assistant." For clarity, the author may wish to specify if the identification number is the license number or taxpayer identification number.

- The department lacks expertise to determine “age-appropriate activities” in consultation with the Secretary of California Health and Human Services, or “certify” the tax credit. It is recommended that the phrase “age-appropriate activities” be defined by reference to an existing statutory definition. Absent an existing statutory definition, it is recommended that another agency that possesses the relevant expertise, or the licensed health care provider make the certification. The certification language should specify the responsibilities of both the certifying agency and the taxpayer.
- Personal income tax returns may be filed, with extension, until October 15. If the author’s intent is to have each report prepared by the Legislative Analyst contain complete information for the taxable year, the due date of the report should be changed. For instance, the FTB would complete processing of returns for tax year 2021, the first year of the credit, by December of 2022. Thus, the earliest that data from these returns could be provided to the Legislative Analyst for inclusion in a report would be approximately April through July 2023.
- This credit would only become operative on the effective date of any budget measure specifically appropriating funds to the FTB for its costs of administering this credit. The lack of clarity on the actual date by which the budget measure would be enacted could impact the department’s ability to effectively implement this credit.

Data related to the number of family caregivers who are able to financially manage taking care of their loved one full time as a result of receiving the credit would be unavailable to the department, thus could not be provided to the Legislative Analyst.

This bill would require the FTB to “provide any data requested by the Legislative Analyst” related to this credit, which would be inconsistent with the department’s general disclosure provisions. For clarity and ease of administration, it is recommended that the bill be amended to specifically allow the FTB to comply with the bill's provision on disclosure of tax information to the Legislative Analyst.

Technical Considerations

None noted.

Policy Concerns

None noted.

LEGISLATIVE HISTORY

AB 251 (Patterson, 2019/2020), substantially similar to this bill, would have provided a long-term family caregiver credit. AB 251 failed to pass by the constitutional deadline.

AB 1682 (Wicks, 2019/2020), would have provided a refundable caregiver credit. AB 1682 failed to pass by the constitutional deadline.

AB 806 (Kalra, 2017/2018), substantially similar to this bill, would have provided a long-term family caregiver credit. AB 806 failed to pass by the constitutional deadline.

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 taxpayer's spouse, or a qualified dependent, as defined. The credit was allowed to eligible caregivers whose AGI 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.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue gain:

Estimated Revenue Impact of AB 2136 as Introduced on February 10, 2020
Assumed Enactment after June 30, 2020

($ in Millions)

Fiscal Year	Credit	Underpayment Penalty	Revenue*
2020-2021	-$30	+$85	+$55
2021-2022	-$60	+$180	+$120
2022-2023	-$70	+$200	+$130

Estimate assumes a specific appropriation of funds to the FTB would be enacted in 2021 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 or for the net final payment method of accrual.

** Due to the availability of new data, the methodology used to estimate the revenue impact in the table above has been updated from substantially similar bills from prior sessions. The current methodology now includes an adjustment to account for how much tax the qualified taxpayers will be able to offset with the credit.*

Revenue Discussion

Based on 2014 US Census data, an estimated 2.5 million individuals would meet the qualifications to be an eligible family member in 2021 and would have a caregiver that would incur eligible expenses.

It is estimated that 90 percent of caregivers would meet the income limitations specified in the bill. Due to the timing and requirements of this bill, it is assumed that 70 percent, or 1.6 million, of the eligible family member's family caregivers would claim the credit in the first year and 100 percent would claim the credit each year thereafter.

It is estimated that eligible expenses would exceed $10,000 annually per eligible family member. The estimated number of eligible family members is multiplied by the maximum expense amount of $10,000 resulting in an estimated $15.8 billion in expenses in 2021. Applying the credit rate of 50 percent results in estimated credits generated of $7.9 billion. The estimate is reduced by 20 percent, to $6.3 billion, to account for family caregivers that provide care for multiple eligible family members. An adjustment for non-resident taxpayers that provide care for an eligible family member in California was made, increasing the credits generated to $6.4 billion.

This estimate assumes the cap, of $150 million, would be met each year and would limit the credit to the first $150 million claimed. Based on FTB data, it is estimated that 60 percent, or $90 million of credits, would be generated by taxpayers with sufficient tax liability to offset with the credit. Of that amount, approximately 55 percent, or $50 million, would claim the credit in the year generated and the remaining credit would be used over the subsequent three years. An adjustment was made to account for the offsetting tax effects of the deduction that would have been otherwise allowed under current law, resulting in revenue loss of $46 million.

The credit is allowed on a first-come-first-serve basis. Once the cap of $150 million is met, any additional claim would be denied. It is estimated that taxpayers who claim the remainder of the $6.3 billion in credits above the cap would be assessed approximately $140 million in underpayment and monthly penalties.

The net impact of the credit usage, the decrease in deductions, and the revenue from penalties issued due to the understatement of tax results in an estimated revenue gain of $94 million in the 2021 taxable year.

The tax year estimates are converted to fiscal year revenue estimates, rounded and reflected in the above table.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

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