STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Original Bill

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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.

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, 2020, and before January 1, 2025, on the effective date of any budget measure specifically appropriating funds to the Franchise Tax Board (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 adjusted gross income (AGI).[1] Itemized deductions may be further limited for high-income taxpayers.

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[1] 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.[2]
- Requires substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.

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.

This Bill

For each taxable year beginning on or after January 1, 2020, and before January 1, 2025, this bill, under the PITL, would 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 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 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, as defined,[3] 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.

[2] Activities of daily living are eating, toileting, transferring, bathing, dressing, and continence.
[3] See Social Security Act section 1861(r).

- An "eligible family member" would specifically exclude:
    - An individual who has a monthly federal AGI of more than two thousand dollars ($2,000) for an individual or three thousand dollars ($3,000) for a joint return.
    - An otherwise eligible individual unless, within the 39 1/2-month period ending on that due date for the filing of the tax return, or another period that the FTB prescribes, a physician, as defined, has certified, under penalty of perjury, that the individual meets all of the requirements of an eligible family member.
- "Eligible family member" would mean an individual that 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 7702(c)(2)(B) of the Internal Revenue Code (IRC), due to a loss of functional capacity.[4]
        - 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.
    - 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.

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

- "Family caregiver" means an individual who meets both of the following requirements:
    - o Incurs uncompensated expenses directly related to the care of an eligible family member.
    - o Provides care to one or more eligible family members during the taxable year.
    - o 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 in the state:
    - o 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.
    - o Purchases or leases of equipment that is necessary to assist an eligible family member in carrying out one or more activities of daily living.
    - o 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 up to three taxable years, until exhausted.
- The credit would be disallowed unless the family caregiver includes on the return for the taxable year, the name and taxpayer identification number of the eligible family member, and the identification number of the physician certifying that eligible family member. The denial of any credit could be made in the same manner as a mathematical adjustment.[5]

[5] Revenue and Taxation Code section 19051. This generally allows the department to issue a Notice of Tax Return Change at the time of return processing.

- The family caregiver would be required to retain the physician certification and provide it to the FTB, upon request.
- The amount of any otherwise allowable deduction for the same "eligible expenses" would be reduced by the amount of the credit allowed.
- The credit would be repealed by its own terms on December 1, 2025.

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, 2020, and before January 1, 2025, 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.

The credit would be repealed by its own terms on December 1, 2025.

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. For example:

- It is unclear whether the $5,000 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 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.
- This bill would allow an otherwise qualified individual who 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.
- 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 another agency that possesses the relevant expertise, or the licensed physician make the certification. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. It is recommended that this bill be amended to include a certifying agency.
- "Monthly federal AGI" is an undefined term that could result in disputes between taxpayers and the department. For clarity and to ensure consistency with the author's intent, it is recommended that the bill be amended.
- It is unclear whether the specified operative date requirement must be met only once, or annually. For clarity and ease of administration, it is recommended that subdivision (k), 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."

Legislative History

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 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.

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

Minnesota tax law allows a credit for long-term care insurance premiums.

New York tax law allows a long-term residential care deduction for a resident in a continuing-care retirement community and a credit for long-term care insurance premiums.

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 AB251 as Introduced January 23, 2019
Assumed Enactment after June 30, 2019

($ in Millions)

Fiscal Year	Credit	Underpayment Penalty	Total
2019-2020	-$70	+$130	+$60
2020-2021	-$130	+$290	+$160
2021-2022	-$150	+$330	+$180

Estimate assumes a specific appropriation of funds to the FTB would be enacted in 2020 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.

Revenue Discussion

Based on US Census data, an estimated 1.4million individuals would meet the qualifications to be an eligible family member in 2020. It is assumed that 90 percent, or 1.3 million, family caregivers would incur eligible expenses and have an eligible family member that meets the AGI requirement.

Due to the timing requirement of this bill, it is assumed that 70 percent, or 850,000, 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 assumed 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 $8.5 billion in expenses in 2020. Applying the credit rate of 50 percent results in estimated credits generated of $4.3 billion. The estimate is reduced by 20 percent, to $3.5 billion, to account for family caregivers that provide care for multiple eligible family members. This amount includes an adjustment for non-resident taxpayers that provide care for an eligible family member in California.

The credit is capped at $150 million and would be allowed on a first-come-first-serve basis. This estimate assumes the cap would be met each year and would limit the credit to the first $150 million claimed. Once the cap is met, any additional claim would be denied. It is estimated that taxpayers who claim the remainder of the $3.5 billion in credits above the cap would be assessed approximately $220 million in underpayment and monthly penalties.

For taxpayers who earn the credit, it is assumed that 80 percent, or $120 million, of the credit would be used in the year generated and the remainder would be used in the next year. This results in an estimated revenue loss of $120 million in taxable year 2020. An adjustment was made to account for offsetting tax effects of the deduction that would be otherwise allowed under current law.

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 $110 million in the 2020 taxable year.

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

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