



Summary Analysis of Amended Bill

Author: Patterson, et al.	Sponsor:	Bill Number: AB 251
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Attorney: Shane Hofeling	Related Bills: See Legislative History	

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 6, 2019, amendments added coauthors, modified several defined terms, made a number of clarifying and technical changes, and added a reporting requirement.

As a result of the amendments, three of the department's implementation considerations discussed in the department's analysis of the bill as introduced January 23, 2019, were resolved, and two new implementation considerations were identified. Except for the "This Bill," "Implementation Considerations," and "Economic Impact" sections, the remainder of the department's analysis of the bill as introduced January 23, 2019, still applies. The "Fiscal Impact" section and all new and outstanding "Implementation Considerations" have been restated below 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, 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.

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 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 a relationship with the family caregiver, as defined in Internal Revenue Section (IRC) section 152(d)(2),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,² a registered nurse,³ an advanced practice registered nurse,⁴ or a physician assistant,⁵ 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.
 - An “eligible family member” would specifically exclude an otherwise eligible individual unless, within the 39¹/₂-month period ending on that 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.

¹ A relationship under IRC section 152(d)(2) includes: 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 See Social Security Act section 1861(r).

³ Licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code (BPC).

⁴ As defined in BPC section 2725.5.

⁵ As defined in BPC section 3501.

- “Eligible family member” would mean an individual who 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 two activities of daily living, as defined in Section 7702(c)(2)(B) of the IRC, due to a loss of functional capacity.⁶
 - 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.
- “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 one hundred seventy thousand dollars (\$170,000) or less for an individual or

⁶ The activities of daily living include: eating, toileting, transferring, bathing, dressing, and continence.

- two hundred fifty thousand dollars (\$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 in the state:
 - 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.⁷
- The family caregiver would be required to retain the certification and provide it to the FTB, upon request.

⁷ Revenue and Taxation Code (R&TC) 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 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 specified goals, purposes, and objectives of the credit as required by R&TC section 41, 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, 2021, 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, 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.

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

- 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.
- 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 making the certification. The certification language would specify the responsibilities of both the certifying agency and the taxpayer.

- This bill's specified operative date language (in subdivision (k)) is silent as to the taxable years the bill would affect. 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."
- Personal income tax returns may be filed, with extension, until October 15. The department generally processes returns within six months of receipt. 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 2020, the first year of the credit, by April 2022. Thus, the earliest that data from these returns could be provided to the Legislative Analyst for inclusion in a report would be approximately July 2022.
- 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.

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 251 as Amended March 6, 2019
 Assumed Enactment after June 30, 2019

(\$ in Millions)

Fiscal Year	Credit	Underpayment Penalty	Total
2019-2020	-\$70	+\$110	+\$40
2020-2021	-\$130	+\$240	+\$110
2021-2022	-\$150	+\$290	+\$140

This 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 1.3 million individuals would meet the qualifications to be an eligible family member in 2020 and would have a caregiver that would incur eligible expenses.

It is estimated that 80 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 750,000, 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 \$7.5 billion in expenses in 2020. Applying the credit rate of 50 percent results in estimated credits generated of \$3.7 billion. The estimate is reduced by 20 percent, to \$3 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 billion in credits above the cap would be assessed approximately \$190 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 \$75 million in the 2020 taxable year. The calendar year estimates are converted to fiscal years and then rounded to arrive at the amounts shown in the table above.

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