



Bill Analysis

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Bill Number: AB 2712

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Amended: May 7, 2020

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Related Bills: See Legislative
History

SUBJECT

California Universal Basic Income (CalUBI) Program

SUMMARY

This bill, under the Welfare and Institutions Code (WIC), would establish the California Universal Basic Income Act. The Franchise Tax Board (FTB), subject to appropriation by the Legislature, would be required to administer the CalUBI Program providing monthly payments in the amount of \$1,000 to eligible California residents who elect to receive such payments.

The California Department of Tax and Fee Administration (CDTFA) would be required to report to the Legislature by July 1, 2024, on the feasibility of establishing a new state tax to finance the CalUBI Program.

This is the department's first analysis of this bill and only addresses the provisions that impact the department.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

The May 7, 2020, amendments modified the proposed CalUBI Program by requiring the FTB, in lieu of the Department of Social Services, to administer the program, modified eligibility requirements for program participation, and made other changes to the program proposed by this bill.

REASON FOR THE BILL

The reason for this bill is to provide eligible Californians with a level of basic income, thereby improving financial security, health, and quality of life.

ANALYSIS

This bill, under the WIC, would create the California Universal Basic Income Act.

Subject to an appropriation by the Legislature, the FTB would be required to administer the CalUBI Program that would allow a California resident who is 18 years of age or older, and who meets specified requirements, to elect to participate in the CalUBI Program to receive universal basic income payments of \$1,000 per month.

A California resident would be eligible to participate in the CalUBI Program if they meet all of the following requirements:

- The resident currently resides in California.
- The resident has lived in California for at least the last three consecutive years.
- The resident is not currently incarcerated in a county jail or the state prison.
- The resident's income does not exceed 200 percent of the median per capita income for the resident's current county of residence, as determined by the United States Census Bureau.

This bill would define "universal basic income" to mean unconditional cash payments of equal amounts issued monthly to individual residents of California with the intention of ensuring the economic security of recipients.

The FTB would be required to:

- Provide written notification, upon an individual's registration for the CalUBI Program, that participation in the CalUBI Program may affect eligibility for certain federal welfare programs.
- Adopt regulations to implement this program.

This bill also would provide the following:

- Income received from the CalUBI Program shall not be considered taxable income for the purpose of state income taxes, and shall not be considered in calculating any state tax credits.
- Income received from the CalUBI Program shall not affect income eligibility for any programs administered and funded by the state.

This bill would require the CDTFB to report to the Legislature, by July 1, 2024, on the feasibility of establishing a new state tax to finance the CalUBI Program. The report would be required to consider the feasibility of establishing a value-added tax on goods and services in the state, an analysis of the feasibility of taxing the sale of services offered in the state, and an analysis of the feasibility of raising the corporate tax. The report shall also include projections of expected tax revenue.

This bill would provide that the bill's provisions are severable. If any provision or its application is held invalid, that invalidity would not affect other provisions or applications that can be given effect without the invalid provision or application.

Effective/Operative Date

Assuming enactment of this bill by September 30, 2020, this bill would be effective January 1, 2021, and operative as of that date, subject to an appropriation by the Legislature.

Federal/State Law

Federal Law

Gross Income

Existing federal law (Internal Revenue Code (IRC) section 61) provides that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

Existing federal law provides that certain types of income are excluded from gross income, such as amounts received as a gift or inheritance, certain compensation for injuries and sickness, qualified scholarships, educational assistance programs, foster care payments, and interest received on certain state or federal obligations.

Although not codified in federal law, the Internal Revenue Service (IRS) has applied the "general welfare exclusion" under which gross income does not include certain payments made to or on behalf of individuals by governmental units under governmentally provided social benefit programs based on "need." To qualify for exclusion, the payments must:

- Be made pursuant to a governmental program.
- Be for the promotion of the general welfare generally on the basis of "need." Absent the establishment of need, the payments will not qualify for exclusion.
- Not represent compensation for services.

Additionally, the IRS may treat one-time federal government tax rebates, such as the recent direct cash assistance authorized by the *Coronavirus Aid, Relief, and Economic Security (CARES) Act* (discussed below) as nontaxable advance refundable tax credits.

Federal Assistance Program

Federal law provides a number of benefit programs designed to help individuals and families in need become self-sufficient or lower their expenses. The federal government generally provides funding to states to run benefit programs, including, but not limited to:

- SNAP, the federal Supplemental Nutrition Assistance Program.
- Medicaid, free or low-cost health benefits.
- CHIP, Children's Health Insurance Program, free or low cost medical or dental care to uninsured children up to the age of 19.
- Housing subsidies under Section 8 of the United States Housing Act of 1937.
- LIHEAP, Low Income Home Energy Assistance Program, assistance to low-income families to pay for heating and cooling.
- TANF, Temporary Assistance for Needy Families, providing cash for a limited time to low-income families working towards self-sufficiency.

Recent federal law, the CARES Act, provided one-time direct cash assistance to US residents who have a work-eligible social security number (SSN), are not a dependent of another taxpayer, and meet specified income limitations. The rebate amount is:

- A full \$1,200 for individuals with adjusted gross income (AGI) up to \$75,000.
- A full \$2,400 for married taxpayers filing joint with AGI up to \$150,000.
- An additional \$500 for each qualifying child.

The rebate amount is reduced by \$5 for each \$100 that a taxpayer's income exceeds the phase-out threshold. The amount is completely phased-out for single filers with incomes exceeding \$99,000, \$146,500 for head of household filers with one child, and \$198,000 for joint filers with no children.

In general, the assistance payment was automatically issued to individuals who filed a federal personal income tax return for tax year 2018 or 2019.

Federal law does not provide universal basic income payments similar to those proposed by this bill.

State Law

Gross Income

California conforms, under the Personal Income Tax Law (PITL), to IRC section 61 and the general tax concepts of what constitutes gross income.

State law, similar to federal law, excludes from gross income welfare benefits based on need and advance refundable tax credits, such as the CARES direct assistance payments.

Under Revenue and Taxation Code (R&TC) section 41, legislation that would create a new tax expenditure, which includes a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state, is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax benefit.

Cash Assistance Programs

State law does not offer a rebate program similar to the federal CARES Act cash rebate, but provides a number of cash assistance programs, including, but not limited to:

- The California Work Opportunity and Responsibility to Kids (CalWORKs) program, providing cash assistance to low-income families based on household size, income level, and region.
- State Supplementary Payment (SSP) program providing cash assistance to low-income aged, blind, and disabled individuals.

State law does not provide universal basic income payments similar to those proposed by this bill.

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 does not include administrative details necessary to implement the CalUBI Program specified in the bill and determine its impacts to the department's systems and processes. The bill is silent on the following issues:

- The operation of the CalUBI Program would be subject to an appropriation by the Legislature. It is unclear when the appropriation would be made and whether the author intends the program to only become operational after a new funding source is identified by the CDTFE in its report to the Legislature due by July 1, 2024. Although the specific structure of the program is yet to be determined, the department would need at least twenty-four months to implement the program and make necessary system and process changes before the program could be operational and cash payments issued.

- An eligible individual could elect to participate in the CalUBI Program; however, the bill does not specify the timing and methodology for the election. Would the election be made annually, or could an election be made or terminated at any time during the year? Would the election be made online through myFTB or by another method? Additionally, if it is an annual election, the bill is silent as to the recapture mechanism if the individual no longer meets the requirements during that year.
- An eligible individual must be a California resident; however, it is unclear when the determination of residency would be made. Would residency be determined at the time the election is made or a requirement for each monthly payment? Additionally, an eligible individual must have lived in California for at least the last three consecutive years. However, it is unclear when the three year period would begin. Would it be three years prior to the date of the election? Additionally, it is unclear whether the individual must be a resident at all times during those three years.
- The resident's income must not exceed 200 percent of the median per capita income for the resident's county of residence to be eligible. It is unclear when this determination would be made.
- The bill provides for "cash" payments. However, it is unclear the allowable payment methods. Could payments be made by check, direct deposit, or debit card?
- Would the CalUBI payments be subject to offset for any outstanding tax or nontax debt liabilities?
- Would the CalUBI payments be subject to reconciliation and recapture should an electing individual's income exceed the bill's specified income limit?

This bill uses terms and phrases that are undefined, i.e., "lived in California," "not currently incarcerated," "resident's income," and "current county of residence." The absence of definitions to clarify these terms and phrases could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

This bill would provide, under the WIC, that the CalUBI payments would not be considered taxable income for state income tax purposes nor considered in calculating "any state tax credits." It is recommended that the bill be amended to specify within the PITL that any payments from the CalUBI Program are excludable from gross income and may not be used in the calculation of income tax credits allowed under the PITL.

This bill would provide that the CalUBI payments would not impact income eligibility for “any programs administered and funded by the state.” For clarity and consistency with the author’s intent, the author may wish to amend the bill to reference specific benefit programs. For example, determining eligibility to receive benefits under Division 9 (commencing with Section 10000) of the WIC or amounts of those benefits.

For ease of administering the CalUBI Program, it is recommended that the bill be amended to waive the Administrative Procedure Act for any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the FTB pursuant to the section that would be added by this bill.

This bill should be amended to satisfy the R&TC section 41 requirements.

Technical Considerations

An eligible individual must be “18 years of age or older”. For clarity, it is recommended that the phrase “at the close of the taxable year” be inserted after the term “older”.

In WIC section 18992.2 (on page 3, line 29), strike out “unconditional”. This payment is conditioned on the resident being eligible to receive it.

In WIC section 18992.3 (on page 3, line 32), replace the term “shall” with “may” to permit rather than require the FTB to adopt regulations.

Policy Considerations

Although the payments from the CalUBI Program would be excludable under state law and would not impact state benefits, these payments may be taxable under federal income tax law and impact eligibility for federal benefits.

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

Individuals eligible for payments under the CalUBI Program may receive multiple benefits.

This bill does not have a sunset date, so this program could go on indefinitely.

LEGISLATIVE HISTORY

Research of California legislation history found no legislation similar to the provisions of this bill.

PROGRAM BACKGROUND

The Legislative Analyst's office in the April 3, 2020, report titled *Broad-Based Cash Assistance in COVID 19 Recovery Actions*, provides an overview of the federal CARES Act and other long-standing federal and state assistance programs.

FISCAL IMPACT

The department's costs to implement this bill were not determined, but staff anticipates costs could be significant.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended on May 7, 2020, would have a revenue loss, but the amount is unknown.

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

The CalUBI Program would provide an opportunity for eligible California residents to elect to receive a universal basic income of \$1,000 per month, which would be excluded from taxable income. To determine the magnitude of the impact to the General Fund, the population of California residents who would participate must be known. Since it is difficult to track the number of California residents who meet the eligibility requirements, as well as to identify the percentage who would elect to participate in the program, the revenue loss to the General Fund is unknown.

According to the 2019 U.S. Census Bureau there are approximately 30 million California residents ages 18 years or older. It is anticipated that for every \$100 million of CalUBI received, there would be a revenue loss of approximately \$2.1 million.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

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