STATE OF CALIFORNIA
Franchise Tax Board

Summary Analysis of Amended Bill

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Sponsor:

Bill Number: AB 535

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Amended: January 15, 2020

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Related Bills: See Prior Analysis

Subject

Professional License Fees Credit

Summary

This bill would, under the Personal Income Tax Law (PITL), allow a tax credit for a portion of certain initial professional licenses in California.

Recommendation – No position.

Summary of Amendments

The January 15, 2020, amendments modified the bill's operative date and repeal date, the credit amount, the initial report's due date, and added an exception from the general prohibition on disclosing confidential franchise and income tax data. As a result of the amendments, one of the implementation considerations and the policy concern were resolved.

Except for the "Effective/Operative Date," "This Bill," "Implementation Considerations," "Economic Impact" and "Policy Concerns" sections, the remainder of the department's analysis of the bill as amended March 21, 2019, and April 8, 2019, still applies. The "Fiscal Impact" section has been restated 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, 2021, and before January 1, 2026.

This Bill

This bill would, under the PITL, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, allow a tax credit equal to 50 percent of costs paid or incurred by a taxpayer for an initial qualified professional license fee.

The bill would define “qualified professional license” as any license issued by:

- The Department of Real Estate,
- The Board of Registered Nursing,
- The Board of Behavioral Sciences,
- The Contractor’s State License Board, or
- The Board of Psychology.

The bill would provide that the term “license” means the same as in section 23.7 of the Business and Professions Code (B&PC). This section states that, unless otherwise expressly provided, “license” means license, certificate, registration, or other means to engage in a business or profession regulated by this code or referred to in B&PC section 1000 or 3600.

This bill specifies that a deduction would be unavailable for the same expenses for which the credit was allowed.

The credit could be carried forward for up to six years from the year in which the credit was allowed, or until exhausted, whichever occurs first.

This credit would be repealed by its own terms on December 1, 2026.

This bill also contains uncodified language to comply with Revenue & Taxation Code (R&TC) section 41. The Legislature would use the following performance indicators to determine whether the credit meets, fails to meet, or exceeds the goals, purposes, and objectives:

- The number of people allowed the credit.
- The number of licenses provided by the Department of Real Estate, the Board of Registered Nursing, the Board of Behavioral Sciences, the Contractor’s State License Board, and the Board of Psychology.

In uncodified law, this bill would require:

- The Legislative Analyst’s Office (LAO) to, on an annual basis beginning January 1, 2022, and each January 1 thereafter until the credit is repealed, collaborate with the Franchise Tax Board (FTB), to review the effectiveness of this credit, based on the objectives and indicators listed in this bill.
- The FTB to provide any data to the LAO, as requested, for purposes of the LAO’s review. Data provided upon LAO request by the FTB would be treated as an exception to the general disclosure requirements applicable to income and franchise tax data.
- The LAO’s review to include an analysis of the demand for the tax credit and the economic impact of the tax credit.

Implementation Considerations

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill uses the undefined term, "initial qualified professional license fee." The absence of a definition to clarify this term 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 require the FTB to provide "any data requested by the LAO" for the purpose of determining whether the credit is meeting, failing to meet, or exceeding the credit's goals, purposes, or objectives. It is unclear that the FTB would have access to all of the data that might be required. For example, data on the change in the number of mental health care professionals in the state may currently be available from the appropriate licensing agency. To ensure consistency with the author's intent and access to relevant data at the least cost to the state, this bill should be amended to specify the tax return data the FTB would be required to provide.

It is unclear that the uncodified language excepting the bill's disclosure provisions from the general prohibition on disclosure under R&TC section 19542 would preclude such disclosures from treatment as an unauthorized inspection or unwarranted disclosure subject to R&TC section 19542.1. To ensure disclosure under this bill is authorized and for internal consistency within the R&TC, the disclosure provisions should be recast and placed in Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the R&TC.

Technical Considerations

The bill's reporting requirement is uncodified. For internal consistency and ease of access, the bill should be amended to place substantive provisions within the bill's credit provision.

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 AB535 as Amended January 15, 2020
Assumed Enactment after June 30, 2020

($ in Millions)

Fiscal Year	Revenue
2020-2021	-$5.7
2021-2022	-$11.0
2022-2023	-$13.0

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 data from the California Department of Consumer Affairs, it is estimated that 110,000 licenses would be issued to qualified professionals for an estimated total amount paid of $55 million in 2021. The credit allowed is equal to 50 percent of the amount of costs paid or incurred during the taxable year, or $28 million.

It is estimated that 60 percent, approximately $17 million, would be earned by taxpayers who have tax liability to offset with the credit. Of those, it is estimated that 65 percent, or $11 million, would be claimed in the year generated and the remaining 35 percent would be claimed in the subsequent years.

To arrive at the offsetting tax effect of the expense deduction that would otherwise be allowed under current law, it is estimated that qualified taxpayers would be unable to deduct approximately $21 million in qualified expenses in the 2021 taxable year. Applying an average tax rate of 6 percent results in an offsetting revenue gain of $1.3 million. The resulting net revenue loss for taxable year 2021 would be $10 million.

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

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