



Analysis of Amended Bill

Author: Brough

Sponsor:

Bill Number: AB 535

Analyst: Toni Arnold

Phone: (916) 845-4743

Amended March 21, 2019 and
April 8, 2019

Attorney: Shane Hofeling

Related Bills: See Legislative
History

Subject: Professional License Fees Credit

Summary

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

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

Recommendation – No position.

Summary of Amendments

The March 21, 2019, amendments removed provisions of the bill relating to a nonsubstantive change to the Revenue and Taxation Code (R&TC), and replaced them with the provisions discussed in this analysis.

The April 8, 2019, amendments added sunset provisions; modified a reference; and added uncodified reporting requirement language to comply with the provisions of R&TC section 41.

This is the department's first analysis of the bill.

Reason for the Bill

The reason for the bill is to increase the number of licensed mental healthcare professionals, realtors, nurses, and construction contractors in California by reducing the burden of entering certain licensed occupations by offering a tax credit.

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.

Federal/State Law

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Under R&TC section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the credit.

Current state and federal law lacks a credit comparable to the credit this bill would create.

This Bill

This bill would, under the PITL for taxable years beginning on or after January 1, 2020, and before January 1, 2025, allow a tax credit for amounts 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 incurred, or until exhausted, whichever occurs first.

This credit would be repealed by its own terms on December 1, 2025.

This bill also contains uncodified language to comply with 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.

As uncodified law, this bill would require:

- The Legislative Analyst's Office (LAO) to, on an annual basis beginning January 1, 2021, and each January 1 thereafter, 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 data to the LAO, as requested, for purposes of the LAO's review.
- The LAO's review to include, but would not be limited to, an analysis of the demand for the tax credit and the economic impact of the tax credit.

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.

The term "initial qualified professional license fee" is undefined in the bill. Absent a definition, the term could be broadly interpreted and may lead to disputes between the department and taxpayers.

Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. 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 certification by the appropriate agency responsible for each license.

This bill would require FTB to provide data to the LAO for use in the review of the credit effectiveness, upon request, which could contain confidential taxpayer information. However, the bill fails to allow the disclosure of such information or prohibit the LAO from further disclosure of confidential taxpayer information. An exception from the general disclosure provisions should be added to specifically allow the FTB to comply with the bill's provision on disclosure of tax information and apply the appropriate disclosure restrictions to the LAO.

Technical Considerations

The bill includes a reporting requirement for the FTB in uncodified law. For ease of administration, it is recommended the bill be amended to include these provisions in law.

Legislative History

A review of prior legislation found no legislation similar to this bill.

Other States' Information

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a comparable tax credit that this bill would allow.

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 April 8, 2019
Assumed Enactment after June 30, 2019

(\$ in Millions)

Fiscal Year	Revenue
2019-2020	-\$12
2020-2021	-\$23
2021-2022	-\$26

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 \$54 million in 2020. The credit allowed is equal to the amount of costs paid or incurred during the taxable year, or \$54 million.

It is estimated that 60 percent, \$32 million, would be earned by taxpayers who have tax liability to offset with the credit. Of those, it is estimated that 65 percent, or \$21 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 2020 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 2020 would be \$20 million.

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

Policy Concerns

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited either on a per-project or per-taxpayer basis. This bill would provide a 100 percent credit which would be unprecedented.

Legislative Staff Contact

Toni Arnold
Legislative Analyst, FTB
(916) 845-4743
toni.arnold@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Jahna Carlson
Acting Legislative Director, FTB
(916) 845-5683
jahna.carlson@ftb.ca.gov