STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Original Bill

Author: Brough	Sponsor:	Bill Number: AB 856
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Subject: Home Care Services Credit/FTB Collect Data Annually

Summary

This bill would, under the Personal Income Tax Law (PITL), allow a tax credit for certain home care services paid or incurred by a qualified taxpayer.

Recommendation – No position.

Reason for the Bill

The reason for this bill is to reduce health care costs by encouraging cost-effective home care services and to avoid costly nursing homes and assisted living facilities.

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, 2024.

Program Background

Long term care includes a wide range of services such as help with everyday tasks and support for managing an illness that is provided for an extended period when someone is unable to do everyday tasks independently. Long term care services may be paid through the U.S. Department of Veterans' Affairs, federal and state programs (Medicare and Medicaid), through insurance or out-of-pocket.

Long-term care insurance policies reimburse policyholders a daily amount (up to a pre-selected limit) for services to assist them with activities of daily living such as bathing, dressing, or eating.

California's In-Home Supportive Services (IHSS) provides personal care and domestic services to persons who are aged, blind or disabled and who live in their own homes. IHSS is provided to those who otherwise might be placed in an out-of-home care facility but who can safely remain in their own home if IHSS services are received.

Services covered by the IHSS program include domestic and related services (e.g. housework, meal preparation and clean-up, laundry, shopping for food/running errands); non-medical personal care services (such as bathing, ambulation, and bowel/bladder care); transportation services (such as accompaniment to medical appointments); paramedical services (necessary health care activities that recipients would normally perform for themselves were it not for their functional limitations); and protective supervision. Services are provided by an IHSS care provider and may include, but is not limited to family members, friends, neighbors, or registered providers through the public authority. Payments to IHSS care providers are made by the IHSS program that authorized the services.

The IHSS program is administered by each county with oversight by the California Department of Social Services (CDSS).

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 economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Existing federal and state laws allow individuals to deduct certain expenses, such as medical expenses, charitable contributions, interest, and taxes, as itemized deductions. For taxable years beginning after December 31, 2017, and before January 1, 2026, the federal Tax Cuts and Jobs Act suspended miscellaneous itemized deductions subject to the 2 percent floor, and the overall itemized deduction limitation for high-income taxpayers.

Under Revenue and Taxation Code 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.

This Bill

This bill would, for each taxable year beginning on or after January 1, 2020, and before January 1, 2024, allow a tax credit in an amount equal to 25 percent of the unreimbursed amount paid or incurred during the taxable year by a qualified taxpayer for home care services, not to exceed $5000.

This bill would define the following terms:

"Home care services" means nonmedical services and assistance provided by a registered home care aide, a licensed home health agency,[1] or a licensed hospice[2] to a qualified taxpayer who, because of advanced age, or physical or mental disability, cannot perform these services. These services enable the qualified taxpayer to remain in the qualified taxpayer's residence and include, but are not limited to, assistance with the following: bathing, dressing, feeding, exercising, personal hygiene and grooming, transferring, ambulating, positioning, toileting and incontinence care, assisting with medication that the client self-administers, housekeeping, meal planning and preparation, laundry, transportation, correspondence, making telephone calls, shopping for personal care items or groceries, and companionship. The definition states that no authorization is provided for a registered home care aide to assist with medication that the qualified taxpayer self-administers that would otherwise require administration or oversight by a licensed health care professional.

"Qualified taxpayer" means a single individual, or a spouse filing a separate return, whose gross income is $80,000 or less or a married couple filing a joint return, whose gross income is $160,000 or less.

"Registered home care aid" means the same as defined in subdivision (o) of Section 1796.12 of the Health and Safety Code.[3]

Credits in excess of the tax liability may be carried over to the following taxable year.

This bill would require the Franchise Tax Board (FTB) to collect data relating to the number of Californians using home care services and the number of Californians in nursing homes and assisted living facilities annually.

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[1] Chapter 8 (commencing with Section 1745) of Division 2 of the Health and Safety Code
[2] *Ibid.*
[3] Section 1796.12 of the Health and Safety Code, defines a "Registered home care aide" as an affiliated home care aide or independent home care aide, 18 years of age or older, who is listed on the home care aide registry.

Taxpayers utilizing the credit would be required to submit a receipt or other proof of costs paid or incurred in connection with home care services to the FTB.

This bill would remain in effect until December 1, 2024, and be repealed as of that date.

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 terms that are undefined, i.e., "advanced age," and "physical or mental disability." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the terms.

The department lacks the expertise to determine whether provided services enable a qualified taxpayer to remain in their residence. 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 the bill be amended to include a certifying agency.

The department would be required to collect annual data on the number of Californians (1) using home care services and (2) in nursing homes and assisted living facilities, and is silent on how and to whom the data would be reported. Collecting this data would require the department to change its systems, forms, and processes which could be costly. The author may wish to amend the bill to specify that the data be collected by a state agency with expertise in the relevant health care fields as well as the reporting requirements that would apply to the collected data.

Legislative History

AB 2703 (Mayes, 2017/2018) similar to this bill, would have created a credit for home care services. AB 2703 failed to pass out of the Assembly Appropriations committee.

Other States' Information

Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit that would be allowed by this bill. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws.

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 AB 856 as Introduced February 20, 2019
Assumed Enactment after June 30, 2019

($ in Millions)

Fiscal Year	Revenue
2019-2020	-$600
2020-2021	-$1,300
2021-2022	-$1,600

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 Bureau and IHSS Program data, approximately 1.4 million Californians would receive home health care services in 2020. This number is increased by 10 percent, to 1.5 million taxpayers, to account for individuals that would be incentivized to receive home care services. It is estimated that 43 percent of these taxpayers would meet the income and filing status limitations specified in the bill, resulting in an estimated 650,000 qualified taxpayers in taxable year 2020. Based on industry statistics, the average annual cost of a home health aide is $60,000. Applying the credit rate of 25 percent of the amount paid or incurred, but not to exceed $5,000 results in approximately $3 billion in home care service expense credits generated in 2020. Because of the broad definition of "qualified taxpayer" this amount is increased by an additional 20 percent to account for other taxpayers that would pay home care service expenses. This results in an estimated total credit generated of $3.5 billion in taxable year 2020. It is estimated that 28 percent of California taxpayers would have sufficient tax liability to claim the credit in the year generated, resulting in an estimated revenue loss of $1 billion in taxable year 2020.

Using the same methodology as above, it is estimated there would be 100,000 qualified taxpayers who would receive hospice services in 2020 who meet the income and filing status limitations specified in the bill. Based on data from Medicare, the average cost for six months of hospice care per taxpayer would be $100,000. Applying the credit rate of 25 percent of the amount paid or incurred, but not to exceed $5,000 results in approximately $70 million in qualified hospice care expense credit generated in 2020. Because of the broad definition of "qualified taxpayer" this amount is increased by an additional 20 percent to account for other taxpayers that would pay for qualified hospice care expenses. This results in an estimated total credit generated of $85 million in taxable year 2020. It is estimated that 28 percent of California taxpayers would have sufficient tax liability to claim the credit in the year generated, resulting in an estimated revenue loss of $24 million in taxable year 2020.

Combining the credits used for home health aide and hospice care results in a total estimated revenue loss of $1 billion in taxable year 2020.

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

Policy Concerns

The proposed tax credit would be allowed for expenses paid or incurred either inside or outside California.

This bill would provide a tax benefit for single individuals, spouses that file separate returns, and married couples filing a joint return that would not be provided to other individual taxpayers.

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