STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Santiago, et al.	Sponsor:	Bill Number: AB 1253
	Related Bills: See Legislative History	Amended: March 25, 2021

SUBJECT

Additional Tax on High Income

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) impose an additional tax on taxable income in excess of an adjusted one-million-dollar amount.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 25, 2021, removed the provisions relating to credits for estates and trusts and added the provisions for the additional tax based on specified taxable income thresholds as discussed in this analysis.

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

REASON FOR THE BILL

The reason for the bill is to address the income inequality and growing wealth tax gap by reforming the tax system with a progressive tax rate that will help rebuild California in a fair and equitable way.

ANALYSIS

This bill would, under the PITL, for tax years beginning on or after January 1, 2021, impose an additional tax on individuals, estates, trusts, or common trust funds calculated as follows:

- One percent on the amount of the taxpayer's taxable income that is greater than the adjusted one-million-dollar ($1,000,000) amount, as defined below, and less than or equal to the adjusted two-million-dollar ($2,000,000) amount.
- Three percent on the amount of the taxpayer's taxable income that is greater than the adjusted two-million-dollar ($2,000,000) amount and less than or equal to the adjusted five-million-dollar ($5,000,000) amount.
- 3.5 percent on the amount of the taxpayer's taxable income that is greater than the adjusted five-million-dollar ($5,000,000) amount.

The additional tax would be treated as if imposed under Section 17041, specifically including, but not limited to, the taxation of part year and non-residents and estates, trusts, or common trust funds with the following exceptions:

- The calculation of the additional tax for a joint or surviving spouse return would be the same as for a single filer because the imposition of tax for a joint filer would not apply.
- The additional tax would apply without adjustments to the income thresholds, as specified in Section 17041 for each filing status.

As a result of these exceptions, the calculation of the additional tax would be the same for all taxpayers without regard to filing status.

The adjusted amounts would be indexed by the Franchise Tax Board (FTB) for inflation using the California Consumer Price Index for each taxable year beginning on or after January 1, 2022.

The following definitions would apply for purposes of the additional tax:

- "Adjusted one-million-dollar ($1,000,000) amount" means the amount equal to one million one hundred eighty-one thousand four hundred eighty-four dollars ($1,181,484) that is recomputed by the FTB for inflation for taxable years beginning on or after January 1, 2021, and before January 1, 2022.
- "Adjusted two-million-dollar ($2,000,000) amount" means the amount equal to two times the adjusted one-million-dollar ($1,000,000) amount.
- "Adjusted five-million-dollar ($5,000,000) amount" means the amount equal to five million nine hundred seven thousand four hundred twenty dollars ($5,907,420) that is recomputed by the FTB for inflation for taxable years beginning on or after January 1, 2021, and before January 1, 2022.

The additional tax would be imposed in addition to any other taxes imposed under PITL or the California Constitution, including the existing Mental Health Services Tax.

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.

Federal/State Law

Federal law imposes different income tax rates on individuals ranging from 10 percent to 37 percent.

State tax law imposes nine different rates under the PITL:

- Six permanent rates ranging from one percent to 9.3 percent, and
- Three temporary rates – 10.3 percent, 11.3 percent, and 12.3 percent. These rates will be repealed on December 1, 2031 and would no longer apply to taxable years on or after January 2031.

Each tax rate applies to different ranges of income, known as "tax brackets." Current state law requires the FTB to adjust the tax brackets each year based on the change in the California Consumer Price Index.

Current state law also imposes an additional one percent Mental Health Services Tax (MHST) on the portion of a PITL taxpayer's taxable income that exceeds $1 million. The MHST tax may not be reduced by any credits and the taxable income threshold of $1 million is not subject to indexing. The MHST is subject to estimated tax payment requirements, interest, penalty, and other tax administration rules applicable to taxes imposed under the PITL.

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.

If this bill is enacted in late September 2021, the department would have developed the forms and instructions, and programming and system changes for the 2021 taxable year. The programming and system changes required to implement this bill would be extensive. To allow the department time needed to implement this bill it is suggested that the operative date be extended by a year to tax years beginning on or after January 1, 2022, or later. Staff notes that implementing a single additional rate is less complex than implementing the bill's three-tier structure.

Technical Considerations

None noted.

Policy Considerations

The author may wish to remove, the reference to the California Constitution under subdivision (a) because it may cause confusion since the proposed additional tax is not in lieu of another tax. Additionally, the reference appears to imply that this additional tax would apply regardless of taxes provided in California Constitution.

The author may also wish to add a repeal date to allow periodic review of the effectiveness of income tax law changes by the Legislature.

LEGISLATIVE HISTORY

ACA 8 and AB 310 (Lee, et al, 2021/2022) would impose an annual excise tax at a rate of one percent on extreme wealth in excess of $50 million and at a rate of 1.5 percent on extreme wealth in excess of $1 billion. These bills are currently in the committee process.

AB 65 (Low & Weiner, 2021/2022), under the PITL, would establish the California Universal Basic Income (CalUBI) Act that would require the FTB to administer the CalUBI Program providing monthly payments in the amount of one thousand dollars ($1,000) to eligible California residents. In addition, for tax years beginning on or after January 1, 2022, would impose an additional tax at the rate of one percent on taxable income in excess of two million dollars ($2,000,000). AB 65 is in the committee process.

AB 1253 (Santiago, et al, 2019/2020) was identical to this bill. This bill did not pass out of the Senate Governance & Finance Committee by the constitutional deadline.

AB 2088 (Chu, et al., 2019/2020), would have created a wealth tax, under the PITL, that would have imposed an annual tax at a rate of 0.4 percent of a California resident's worldwide net worth in excess of $30,000,000, or in excess of $15,000,000 in the case of a married taxpayer filing separately. The bill would have described worldwide net worth with reference to specific federal provisions, and that worldwide net worth would not include specific assets, including directly held real property or liabilities related to directly held real property. AB 2088 did not pass out of the Assembly Rules Committee by the constitutional deadline.

AB 1356 (Eggman, et al., 2017/2018), similar to this bill, under the Education Code, would have created the Higher Education Assistance Fund, and under the PITL, would have created an additional one percent tax on taxable income in excess of $1,000,000 million. AB 1356 did not pass out of the Assembly Higher Education Committee by the constitutional deadline.

AB 2351 (Burke, 2017/2018), substantially similar to AB 1356, did not pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

Proposition 55 (November 2016) extended the operative period of the three higher personal income tax rates established by Proposition 30 to include taxable years beginning on or after January 1, 2019, and before January 1, 2031.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This bill would require the development of new forms and instructions or worksheets to calculate and report the additional tax and programming and systems changes to process the additional tax. Although the exact costs are unknown, they could potentially be significant. As the bill moves through the legislative process, the exact costs will be determined.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue gain:

Estimated Revenue Impact of AB 1253 as Amended March 25, 2021
Assumed Enactment after June 30, 2021

($ in Millions)

Fiscal Year	Revenue
2021-2022	+$10,000.0
2022-2023	+$6,000.0
2023-2024	+$5,500.0

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

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