



## **Bill Analysis**

Author: Patterson and  
Gallagher

Sponsor:

Bill Number: AB 1697

Related Bills: See Legislative  
History

Introduced January 25, 2022,  
and Amended March 10, 2022

### **SUBJECT**

Still Birth Tax Credit

### **SUMMARY**

This bill, under the Personal Income Tax Law (PITL), would establish a tax credit for certain qualified expenses not to exceed \$2,000 for taxpayers who hold a Certificate of Still Birth.

### **RECOMMENDATION**

No position.

### **SUMMARY OF AMENDMENTS**

The March 10, 2022, amendments added language to comply with Revenue and Taxation Code (RTC) Section 41 reporting requirements and made other nonsubstantive changes.

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

### **REASON FOR THE BILL**

The reason for this bill is to provide financial relief to assist families with medical and burial costs relating to a still birth.

### **ANALYSIS**

This bill would, under the PITL, for taxable years beginning on or after January 1, 2022, and before January 1, 2027, allow a credit against the net tax not to exceed \$2,000 to a taxpayer who holds a Certificate of Still Birth for qualified expenses paid or incurred during the taxable year the still birth occurred or within the first six months of the next taxable year.

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The bill would define “qualified expenses” as medical costs or burial or cremation costs that are paid or incurred by the taxpayer during the taxable year the still birth occurred or within the first six months of the next taxable year. In addition, the costs must be directly related to the still birth and not have been or will not be reimbursed by any other source.

The bill provides that the specific goal, purpose, and objective that the credit will achieve is to provide financial relief to families to assist with health care, burial, and autopsy costs associated with a stillbirth. The performance indicators of the credit would be the number of taxpayers claiming the credit along with the total dollar amount of the credit claimed.

The bill would require the Franchise Tax Board (FTB) to analyze the performance indicators every year and report the findings on or before January 1, 2026, to the Legislature. Additionally, this bill provides an exception to the disclosure rules for the FTB to report any needed information to the Legislature.

Unused credits could be carried over until exhausted.

Because this bill did not specify otherwise, this credit would not reduce regular tax below the tentative minimum tax.

These provisions would be repealed by their own terms on December 1, 2027.

#### *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, 2022, and before January 1, 2027.

#### *Federal/State Law*

##### *Federal Law*

No comparable provision in federal law.

##### *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.

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Under RTC 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.

Current state tax law requires the FTB to report certain information to the California Legislature and other state agencies, as directed. For both federal and state purposes, the disclosure of any confidential taxpayer information is prohibited, except as specifically authorized by statute.

There are currently no state income tax credits comparable to the credit this bill would create.

#### *Implementation Considerations*

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

The bill provides that costs incurred in the taxable year of the still birth or and during the six months after that taxable year are qualified expenses. However, it is unclear whether the author intends for a tax credit to be claimed in both of those taxable years, up to an amount of \$2,000 in each taxable year; or whether the aggregate tax credit would be limited to \$2,000. For clarity, the author may wish to amend the bill.

This bill would require the department to provide a report on the credit utilization by January 1, 2026. However, the FTB would only be able to provide an incomplete picture of the credit utilization by this date. Generally, the FTB would have information on the credit utilization for the 2022 through 2024 tax years by January 1, 2026. Because many taxpayers file on extension, the FTB would not have data of all tax years until after the extension due date of October 15, 2026. The author may wish to amend the bill to change the due date of the report to March 2027 to allow the department time to collect the necessary data and provide the report.

#### *Technical Considerations*

None noted.

#### *Policy Considerations*

Because the bill does not specify otherwise, two taxpayers filing a married filing joint return or a married filing separate return that each hold a Certificate of Still Birth could each be eligible for the credit, which may be contrary to the author's intent.

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This bill would allow a tax credit for costs that may currently be deductible as itemized deductions. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense. If this is not the author’s intent, the bill should be amended.

This bill would also allow for an unlimited carryover period. Credits are generally enacted with a limited carryover period because experience shows credits typically are exhausted within eight years of being earned. The author may wish to amend the bill.

**LEGISLATIVE HISTORY**

AB 2259 (Patterson, 2017/2018) would have created a Still Birth Tax Credit, which would have allowed a credit to a taxpayer who holds a Certificate of Still Birth. AB 2259 did not pass out of the Assembly Appropriations Committee by the legislative deadline.

**PROGRAM BACKGROUND**

None noted.

**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 1697 as Amended March 10, 2022.  
Assumed Enactment after June 30, 2022

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2022-2023	-\$2.8
2023-2024	-\$2.2
2024-2025	-\$2.4

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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**

To be determined.

**LEGISLATIVE CONTACT**

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