



## **Bill Analysis**

Author: Valladares

Sponsor:

Bill Number: AB 2620

Related Bills: See Legislative  
History

Introduced: February 18, 2022

### **SUBJECT**

Telecommuting Tax Credit

### **SUMMARY**

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), establish a tax credit of \$1,000 to certain employers for each telecommuting employee. Additionally, this bill would, under the Government Code (GC), allow the Controller to transfer money that is not continuously appropriated from the Greenhouse Gas Reduction Fund to the General Fund.

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

### **RECOMMENDATION**

No position.

### **SUMMARY OF AMENDMENTS**

Not applicable.

### **REASON FOR THE BILL**

The reason for this bill is to incentivize the reduction of commuter vehicle emissions by providing businesses a tax credit for offering their employees the option to telecommute.

### **ANALYSIS**

This bill would, under the PITL and the CTL, for taxable years beginning on or after January 1, 2023, and before January 1, 2028, allow to a qualified taxpayer a credit of \$1,000 per qualified employee.

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The bill would define a “qualified taxpayer” as an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of \$10,000,000 or less over the previous three years, or is a manufacturer with 100 or fewer employees.

This bill would define the term “manufacturer” as a business that meets the following requirements:

- A business that is primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products; and
- Is classified between Codes 31 to 33, inclusive, of the North American Industry Classification System.

The bill would additionally define a “qualified employee” as an individual who is employed by the qualified taxpayer on a full-time basis, who performs work for the qualified taxpayer at a minimum of 30 hours per week for compensation, and who is permitted by the qualified taxpayer to telecommute. The bill additionally specifies that hours taken by the qualified employee for sick leave and vacation would count toward the minimum hours per week.

The bill would define “telecommute” as when the employee conducts their duties from the employee’s personal residence by telephone, email, the internet, or other means.

Unused credits could be carried over for five years until exhausted.

Additionally, this bill would require the Franchise Tax Board (FTB) to annually determine the amount of revenue lost as a result of the operation of this section and report the amount to the Controller. The bill would provide that FTB may prescribe rules and regulations that are necessary or appropriate to implement this section.

A taxpayer who claims this credit would be required to retain documentation, including, but not limited to, a telecommuting agreement signed by the taxpayer and employee, demonstrating that the employee telecommuted at least 25 hours per week in the taxable year the credit is claimed. Upon request by the FTB, the taxpayer would be required to provide documentation to the FTB to confirm the taxpayer’s eligibility for the credit.

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The bill, in order to comply with Revenue and Taxation Code (RTC) section 41, would provide specific goals, purposes, and objectives of the credit. The specific goal, purpose, and objective of this bill would be to incentivize the reduction of commuter vehicle emissions by providing businesses a tax deduction for offering their employees the option to telecommute. The effectiveness of the credit would be measured by the number of taxpayers claiming the credits and the average credit amount on tax returns claiming the credit. Additionally, the bill would state that the data collection requirements would be that:

- The FTB would prepare a written report on the number of taxpayers claiming the credit and the average credit amount on tax returns claiming the credit; and
- The FTB would provide the written report to the Assembly Committee on Revenue and Taxation and the Senate Committee on Governance and Finance.

This credit would remain in effect until December 1, 2028, and then would be repealed as of that date.

The bill additionally makes an amendment to the Greenhouse Gas Reduction Fund (Fund) under the GC. The amendment would require the FTB to annually determine the amount of revenue lost as a result of the operation of this credit and shall report the amount to the Controller for transfer from the Fund to the General Fund.

#### *Effective/Operative Date*

This bill would be effective January 1, 2023, and the credit provisions would be specifically operative for taxable years beginning on or after January 1, 2023, and before January 1, 2028.

#### *Federal/State Law*

##### *Federal Law*

*No comparable provision in federal law.*

##### *State Law*

Existing federal and state 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.

### *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 phrase "The Franchise Tax Board shall annually determine the amount of revenue lost as a result of the operation of this section" needs clarification. If the author intends for the FTB to provide an estimate to the Controller on the amount of revenue lost as a result of the implementation of this credit, the time period for the estimate and the date that estimate is to be shared with the Controller should be defined. However, if it is the intent of the author for the FTB to share the loss from the amount of actual credits allowed on tax returns, the earliest the first tax year of data could be shared with the Controller would be March of 2026. It is recommended that this phrase be amended to clarify if the FTB would be required to provide an estimate or the revenue loss from the amount of credit allowed, the time period of the revenue loss to be shared, and when that information should be sent to the Controller.

In defining "qualified taxpayer" the bill uses the phrase "independently owned and operated business that is not dominant in its field of operation". This phrase is vague and undefined and the absence of definitions to clarify this phrase could lead to disputes with taxpayers. For clarity, it is recommended that the bill be amended.

The bill is silent on whether or not employees who take disability or maternity leave would factor into the calculation of this tax credit. For clarity purposes, the author may want to specify whether the hours of employees on disability or maternity leave may or may not factor into the calculation of whether an employee works 30 hours per week for the employer.

### *Technical Considerations*

In SEC. 3. Section 23652.11 subdivision (b)(4) of the Revenue and Taxation Code, it is recommended that the word "tphone" be replaced with "telephone".

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In SEC. 2. Section 17052.11 subdivision (d)(1) and SEC. 3. Section 23652.11 subdivision (d)(1), it is recommended that the second sentence of each of these paragraphs be made into their own paragraphs to clarify that the grant of regulatory authority is for implementation of the entire section.

For clarity purposes, it is suggested that the phrase "who performs work for the qualified taxpayer at a minimum of 30 hours per week for compensation " be changed to "is paid wages subject to withholding pursuant to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code by the qualified taxpayer for a minimum of 30 hours per week."

### *Policy Considerations*

The bill calls for a \$1,000 credit to be given to a "qualified taxpayer" for each "qualified employee" who meets the requirements of the credit. However, this bill does not 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. If this is contrary to the author's intent, this bill should be amended.

As it is written, if an employee is hired the last week of December and works 30 hours for the employer, the employer would be eligible for the full \$1,000 credit because the credit amount is a flat amount. If that's contrary to the author's intent, the bill should be amended.

The bill does not require a qualified employee to be a full-time teleworker, or telework at all to qualify for this credit. The only requirement is that the employer allows teleworking. If the author's intent is to have a minimal level of teleworking required, the bill should be amended to clarify the level of teleworking required.

### **LEGISLATIVE HISTORY**

SB 1018 (Committee on Budget and Fiscal Review, Chapter 39, Statutes of 2012) established the fund as a special fund in the State Treasury and would require any money collected by the state board from the auction or sale of allowances pursuant to a market-based compliance mechanism to be deposited into the fund and available for appropriation by the Legislature.

AB 1492 (Boerner Horvath, 2019/2020) would have created the telecommuting act, which would have established pay, break, and reimbursement requirements for nonexempt telecommuting workers. AB 1492 did not pass out of the Senate Labor, Public Employment and Retirement Committee.

### **PROGRAM BACKGROUND**

None noted.

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**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 2620 as introduced on February 18, 2022  
Assumed Enactment after June 30, 2022

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2022-2023	-\$9.3
2023-2024	-\$27
2024-2025	-\$35

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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