STATE OF CALIFORNIA
Franchise Tax Board

# Bill Analysis

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| Author: Ochoa Bogh, et al. | Sponsor: | Bill Number: SB 276 |
| | Related Bills: See Legislative History | Introduced: January 29, 2021<br>Amended: March 15 and 17, 2021 |

## SUBJECT

California Earned Income Tax Credit (CalEITC) Election to Calculate Credit Using 2019, 2020, or 2021 Earned Income

## SUMMARY

To allow a taxpayer to elect to use their 2019, 2020, or 2021 earned income to determine their CalEITC for the 2021 taxable year.

## RECOMMENDATION

No position.

## SUMMARY OF AMENDMENTS

The March 15, 2021, amendments added coauthors and allowed the taxpayer the option of computing the CalEITC for tax year 2020 based on "earned income" from one of three years.

The March 17, 2021, amendments removed the urgency clause, and modified the specified operative date to taxable years beginning on or after January 1, 2021, and before January 1, 2022.

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

## REASON FOR THE BILL

The reason for this bill is to support low-to-moderate income working families who qualify for CalEITC by authorizing taxpayers to choose between their 2019, 2020, and 2021 earned income when claiming the credit.

## ANALYSIS

Under current law, there are specific requirements in order to be eligible for the CalEITC, including having "earned income," as defined.

This bill under the Personal Income Tax Law (PITL), for each taxable year beginning on or after January 1, 2021, and before January 1, 2022, would authorize a taxpayer to elect to have the CalEITC calculated based on their 2019, 2020, or 2021 taxable year earned income.

No other changes to the CalEITC are proposed under this bill.

*Effective/Operative Date*

This bill would be effective January 1, 2022, and specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2022.

Federal/State Law

*Federal Law*

Existing federal law (Internal Revenue Code (IRC) section 32) allows eligible individuals a refundable Earned Income Tax Credit (EITC). A refundable credit allows for the excess of the credit over the taxpayer's tax liability to be refunded to the taxpayer. The EITC is a percentage of the taxpayer's earned income and is phased out as income increases.

Earned income generally includes two categories of income:

- Wages, salaries, tips, and other employee compensation, and
- Net earnings from self-employment.

For 2020 the EITC is available to individuals and families earning up to $56,844. The federal credit rate varies from 7.65 percent to 45 percent, depending on the number of qualifying children, up to a maximum of three children.

To claim the federal EITC, an eligible individual (and spouse, if filing a joint return), and any qualifying children must have a SSN issued by the Social Security Administration that is valid for employment.

Recently enacted federal legislation, the Consolidated Appropriations Act, 2021, allows eligible individuals to elect to use their 2019 earned income in lieu of their 2020 earned income for purposes of calculating the EITC for tax year 2020 if their earned income in 2019 was higher than in 2020. Additionally, the American Rescue Plan Act of 2021 allowed a similar election for 2021. If 2021 earned income is less than 2019, an eligible individual may elect to compute the 2021 EITC using 2019 rather than 2021 earned income.

*State Law*

CalEITC

State law provides a refundable CalEITC that is generally determined in accordance with IRC section 32, as applicable for federal income tax purposes for the taxable year, except as modified.

For purposes of the CalEITC, the federal definition of "earned income" is modified to include wages, salaries, tips, and other employee compensation, includable in federal adjusted gross income (AGI), but only if such amounts are subject to California withholding. For taxable years beginning on or after January 1, 2017, the CalEITC was modified to include, in the definition of earned income, net earnings from self-employment, consistent with federal law, and to increase the maximum AGI amounts at which the CalEITC is completely phased-out.

For tax year 2020, California law does not conform to the federal election that allows the taxpayer to use 2019 earned income to figure the EITC if the 2019 earned income was greater than the 2020 earned income. California law also does not conform to a similar election for tax year 2021.

Starting in 2019, a taxpayer who has been allowed the CalEITC and who has a qualifying child younger than six years old as of the last day of the taxable year may qualify for the Young Child Tax Credit. The maximum credit is limited to $1,000 per taxable year.

Young Child Tax Credit (YCTC)

For taxable years beginning on or after January 1, 2019, state law allows the refundable YCTC for a qualified taxpayer, as defined below. The maximum credit is limited to $1,000 per taxable year. The credit amount is reduced by $20 for every $100 by which the qualified taxpayer's earned income, as defined under the CalEITC, exceeds the threshold amount, initially set at $25,000.

For purposes of the YCTC, the following terms and phrases are defined:

- "Qualified taxpayer" means an eligible individual who has been allowed the CalEITC under Section 17052, and has at least one qualifying child.
- "Qualifying child" has the same meaning as under the CalEITC (Section 17052), except that the child must be younger than six years old as of the last day of the taxable year.

Any change that increases the CalEITC recipients may also increase the YCTC for those who have a qualifying child.

*Implementation Considerations*

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional considerations 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 considerations that may be identified.

Implementing this bill would require changes to existing tax forms and instructions, education and outreach, and potentially substantial changes to information systems to limit improper payments.

The department's data processing systems are unable to easily accommodate automated access to previous years' earned income information. Since this access currently is not included as part of processing, a manual process will need to be used to avoid improper payments. Manual processing could add additional time for processing each return and overall fiscal impact.

*Technical Considerations*

For clarity, the author may want to amend the YCTC to clarify that the same earned income amount used to calculate the CalEITC should also be used for the YCTC.

*Policy Considerations*

This bill's provisions may add complexity to calculation of the CalEITC if taxpayers are using different earned income amounts for state and federal purposes.

**LEGISLATIVE HISTORY**

AB 93 (Assembly Committee on Budgets, Chapter 19, Statutes of 2020) modified the CalEITC by removing restrictions on the use of certain SSNs and allowing the limited use of federal ITINs by eligible individuals who have a qualifying child under six years old as of the last day of the taxable year and other specified individuals.

AB 1876 (Committee on Budgets, Chapter 87, Statutes of 2020) modified the CalEITC by allowing the use of federal ITINs for all eligible individuals, eligible individuals' spouses, and qualifying children.

SB 1409 (Caballero, Chapter 114, Statutes of 2020) requires the Franchise Tax Board (FTB) to analyze and develop a plan to increase the number of CalEITC claims and the federal Earned Income Tax Credit.

AB 1593 (Reyes, 2019/2020), would have expanded the CalEITC by allowing eligible individuals, their spouses, and qualifying children to have either a federal ITIN or a SSN without regard to being valid for employment. AB 1593 did not pass out of the Senate.

## PROGRAM BACKGROUND

California began offering its own CalEITC starting with calendar year 2015 tax returns. This refundable tax credit puts money back in the pockets of California's working families and individuals. For taxpayers who owe taxes, the CalEITC reduces the amount of taxes they might owe and may allow them a refund when they file their taxes. If they do not owe taxes, the CalEITC will provide them a tax refund when they file their taxes.

To claim the CalEITC, eligible taxpayers must file their California personal income tax return and attach Form 3514 *California Earned Income Tax Credit*. Individuals may access CalEITC to find free help to file a 2020 personal tax return through Tax Day, May 17, 2021.

## FISCAL IMPACT

The department's costs to implement this bill have yet to be determined, but are anticipated to be significant. 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 SB 276 as Amended March 17, 2021
Assumed Enactment after June 30, 2021

($ in Millions)

| Fiscal Year | Revenue |
|---|---:|
| 2021-2022 | -$21 |
| 2022-2023 | N/A |
| 2023-2024 | N/A |

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*

Using FTB return data, approximately 90 percent of taxpayers who would qualify for the CalEITC and approximately 10 percent for the YCTC in taxable year 2021 would be able to benefit from the provisions in this bill. According to the Joint Committee on Taxation estimate for a similar federal provision, the federal EITC and child tax credit would increase by approximately 2.2 percent. Applying this same percentage, it is estimated California taxpayers would receive additional credit of approximately $21 million in the 2021 taxable year.

This estimate assumes taxpayers would receive the credit at the time their return is filed.

**LEGAL IMPACT**

None noted.

**APPOINTMENTS**

None noted.

**SUPPORT/OPPOSITION**

To be determined.

**ARGUMENTS**

To be determined

**LEGISLATIVE CONTACT**

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