



Bill Analysis

Author: Committee on Budget Sponsor:

Bill Number: AB 129

Related Bills: See Legislative
History

Amended: June 25, 2023

SUBJECT

Gross Income Exclusion for Payments to Members of the Interagency Council on Homelessness

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), allow an exclusion from gross income for any payment received by members of the Interagency Council on Homelessness (the Council) or advisory committee or working groups of the Council who are or have been homeless.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The June 25, 2023, amendments removed intent language relating to the Budget Act of 2023, and replaced it with the provisions discussed in this analysis.

This is the Franchise Tax Board's (FTB) first analysis of the bill and only addresses the provisions that would impact the FTB.

REASON FOR THE BILL

The reason for this bill is to exclude from gross income per diem, reimbursement for travel or other expenses incurred in the performance of official duties related to the Council.

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ANALYSIS

This bill would, under the PITL, exclude from gross income any payments received by the members of the Council, the members of the advisory committee of the Council and the members of a working group of the Council who are or have been homeless.

Under the Welfare and Institutions Code (WIC), the members of the Council, advisory committee or working groups who are or have been homeless would receive the following payments, subject to funding availability:

- A per diem of \$100 for each day during which that member is engaged in the performance of official duties.
- Reimbursement for travel and other expenses necessarily incurred in the performance of official duties.

This bill would define the term “the performance of official duties” to include, but not be limited to, attending a meeting of the Council, advisory committee, or working group and reviewing agenda materials for no more than one day in preparation for each Council, advisory, or working group meeting.

This bill would specify that per diem and reimbursement for travel or other expenses would not be deemed to be income under the PITL or used to determine eligibility for any state program or local program financed wholly or in part by state funds.

This bill includes the goals, purposes, and objectives, for purposes of complying with Section 41 and would require the Legislative Analyst’s Office to deliver a written report to the Legislature on or before April 1 of each year and become inoperative on April 1, 2028. The written report should include both of the following:

- The estimated aggregate tax liability incurred by council, advisory committee, or working group members with lived homelessness experience because of their participation on the committee.
- The estimated number of people with lived homelessness experience who serve on the council, advisory committee, or working groups that excluded qualified amounts from gross income.

A written report to Legislature is required to be submitted in compliance with Section 9795 of the Government Code.

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Effective/Operative Date

This bill, providing for an appropriation relating to the Budget Bill, would be effective immediately upon enactment. The gross income exclusion would be operative for taxable years beginning on or after January 1, 2023.

Federal/State Law

Existing federal and state laws provide that gross income includes all income from whatever source derived, including compensation for services, business income, gains from property, interest, dividends, rents, and royalties, unless specifically excluded.

Existing federal and state laws provide that certain types of income are excluded from gross income, such as amounts received as a gift or inheritance, certain compensation for injuries and sickness, qualified scholarships, educational assistance programs, foster care payments, and interest received on certain state or federal obligations.

Federal and state laws allow for the deduction of certain expenses, from gross income, when calculating adjusted gross income for individuals, such as moving expenses and interest on education loans, certain ordinary and necessary trade and business expenses, losses from the sale or exchange of certain property, and contributions for pension, profit-sharing and annuity plans of self-employed individuals, retirement savings. Thus, taxpayers with these types of expenses receive the benefit of the deduction, regardless of whether the taxpayer itemizes deductions or uses the standard deduction. These are known as above-the line deductions.

Under federal law, to deduct expenses for travel away from home, the taxpayer is required to substantiate expenses. (See Internal Revenue Code (IRC) section 274(d).) However, the substantiation requirements do not apply to an expense that does not exceed the federal per diem rate. In addition, per diem payments are not considered wages, and not included in income, if the payment is equal to or less than the federal per diem rate and the employer receives an expense report from the employee. If no expense report including the business purpose of the trip, date and place of trip, and receipts, or the amount paid is in excess of the federal per diem rate, the per diem payments are included in income.

California conforms to IRC section 274 as of January 1, 2015.

Implementation Considerations

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

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This bill uses the undefined term “homeless” that could be broadly interpreted. The absence of a definition could lead to confusion for taxpayers. The author may wish to amend the bill to define the term.

Technical Considerations

For consistency of terminology, the following change is recommended:

In SEC. 22., Section 8257(g)(3)(B)(i)(I) of the WIC, replace “the estimated aggregate tax liability incurred by council, advisory committee, or working group members with lived homelessness experience because of their participation on the committee” with “the total dollar amount of income excluded from gross income for any payment received by council, advisory committee, or working group members with lived homelessness experience.”

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 291 (Seyarto, et al., 2021/2022), under the PITL, would have excluded from gross income survivor benefits and payments received under Survivor Benefit Plans. AB 291 did not pass out of the Assembly by the constitutional deadline.

AB 1629 (Seyarto, et al., 2021/2022), under the PITL, would have excluded from gross income survivor benefits and payments received from Survivor Benefit Plans not to exceed twenty thousand (\$20,000) per calendar year. AB 1629 did not pass out of the Assembly by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The FTB anticipates minimal costs to implement this bill.

ECONOMIC IMPACT

Revenue Estimate

This bill would allow a gross income exclusion for members of the Council, or advisory committee, or working groups of the Council who are or have been homeless and received per diem and reimbursement payments for the performance of official duties.

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To determine the potential impact to the General Fund, both the number of individuals receiving payments and timing of such payments must be known. Because it is difficult to predict the number of individuals working for the council who are or have been homeless and the timing of the payments for the days those individuals would be engaged in official duties, the revenue impact is unknown.

However, it is estimated the revenue loss would be less than \$20,000 per taxable year.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Per the Senate Floor Analysis dated June 28, 2023, no support or opposition for the bill was received.

ARGUMENTS

Per the Assembly Floor Analysis dated June 29, 2023, no arguments were on file.

LEGISLATIVE CONTACT

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