



Bill Analysis

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Bill Number: AB 1355

SUBJECT

Refundable Earned Income Tax Credit (EITC) and Unemployment Insurance (UI) Benefits: Notification Requirements

SUMMARY

Under the Administration of Franchise and Income Tax Laws (AFITL), this bill would amend *The Earned Income Tax Credit Information Act* to allow for providing notifications by email.

Under the Unemployment Insurance Code (UIC), this bill would allow specified documents to be provided by email.

REASON FOR THE BILL

The reason for the bill is to provide eligible Californians with the option of electronic notification of both the employer notification of potential eligibility for Volunteer Income Tax Assistance (VITA), CalFile, federal EITC, and California EITC (CalEITC) and information on unemployment and other benefits.

ANALYSIS

CalEITC Notification Requirements

This bill would, under the AFITL, amend *The EITC Information Act* to authorize California employers, state departments, and certain agencies to use email to provide their employees the notification of possible eligibility for VITA, CalFile, the federal EITC, and CalEITC, if the employee opts to receive the notification electronically. This notification is provided within one week before or after, or at the same time, that the employer provides an annual wage summary.

The bill would specify that an employer may provide the notification via email to an email account of the employee's choosing in PDF, JPEG, or other digital image file type format, if an employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials.

Furthermore, the bill would provide that an employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee who does not affirmatively, in writing or by electronic acknowledgment, opt into receipt of electronic statements or materials.

Notification Requirements Under the UIC

This bill would, under the UIC, authorize employers to provide individuals with electronic statements or materials relating to benefit rights, other matters, and claims for benefits if the individual opts into receipt of electronic statements or materials.

The bill would specify that an employer may provide the notification via email to an email account of the employee's choosing in PDF, JPEG, or other digital image file type format, if an employee affirmatively, and in writing or by electronic acknowledgment, opts into receipt of electronic statements or materials.

With respect to the electronic acknowledgment, the acknowledgment form must do all the following:

- Explain that the employee is agreeing to electronic delivery of the notification as required by the provisions of the bill.
- Provide the employee with information about how they can revoke consent to electronic receipt.
- Create a record of the employee's agreement to electronic delivery of the notification.

In addition, the employee may revoke the agreement at any time in writing, by email, or by some form of electronic acknowledgment.

Furthermore, the bill would provide that an employer may not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against an employee who does not affirmatively, in writing or by electronic acknowledgment, opt into receipt of electronic statements or materials.

The above amendments to existing law under the AFITL and the UIC would remain in effect only until January 1, 2029, and as of that date would be repealed. Then, on January 1, 2029, with the exception of minor changes, the AFITL and UIC sections would revert to the laws as they existed before this bill's amendments were enacted.

Effective/Operative Date

This bill would be effective on January 1, 2024. The changes to the AFITL would apply to notices furnished on or after January 1, 2024, and would remain in effect until January 1, 2029. The changes to the UIC would be operative from January 1, 2024, until January 1, 2029.

*Federal/State Law**Federal Law*

Existing federal law (Internal Revenue Code (IRC) section 32) allows eligible individuals a refundable 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. For 2022, the EITC is available to individuals and families earning up to \$59,187. The federal credit rate varies from 7.65% to 45%, depending on the number of qualifying children.

*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 (Revenue and Tax Code (RTC) section 17052). The CalEITC is only operative for taxable years the annual Budget Act specifies an adjustment factor and authorizes resources for the Franchise Tax Board (FTB) to oversee and audit returns associated with the CalEITC.

For 2022, the CalEITC is generally available to taxpayers with earned income of \$30,000 or less.

The EITC Information Act

State law, known as The EITC Information Act, requires California employers, state departments, and certain agencies to provide formal notification to their employees of possible eligibility for VITA, CalFile, the federal EITC, and the CalEITC via mail or handing the notification directly to the employee within one week before or after, or at the same time as the employer provides an annual wage summary to the employee (RTC sections 19850 through 19854). The employer is required to send a second notification to all employees during the month of March. This second notification may be sent electronically.

Notification Requirements Under the UIC

State law requires employers to supply individuals when they become unemployed with copies of information related to claims for benefits. In addition, state law requires employers to post and maintain printed statements regarding benefit rights and other matters, such as unemployment, disability insurance, and paid family leave.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 131 (Senate Committee on Budget and Fiscal Review, Chapter 55, Statutes of 2023), under the AFITL, among other things, provided intent language related to antipoverty tax credits, including the CalEITC, and modified and added additional definitions related to available antipoverty tax credits.

AB 1847 (Stone, et al., Chapter 294, Statutes of 2016) amended *The EITC Information Act* to require that California employers, state departments, and certain agencies also provide formal notification to their employees of possible eligibility for the new CalEITC.

SB 80 (Committee on Budget and Fiscal Review, Chapter 21, Statutes of 2015) created the refundable CalEITC for taxable years beginning on or after January 1, 2015.

AB 509 (Skinner, Chapter 452, Statutes of 2011) amended *The EITC Information Act* by requiring specified state departments and agencies to notify benefit recipients that they may be eligible for the federal EITC.

AB 650 (Lieu and Jones, Chapter 606, Statutes of 2007) enacted *The EITC Information Act* that requires employers to notify their employees that they may be eligible for the federal EITC.

PROGRAM BACKGROUND

The EITC Information Act

California employers, state departments and agencies that serve those who may qualify for the federal EITC and the CalEITC are required to provide annual notification to their employees of possible eligibility for the federal EITC and the CalEITC.

State departments and agencies may provide the annual notification to program participants during a regularly scheduled contact with a recipient by telephone, mail, or electronic communication, or by an in-person communication.

Employers are required to either hand the formal notification directly to each employee or mail it to the employee's last known address. Furthermore, employers are encouraged to post a statement about the EITC in the workplace or send it through office mail.

FISCAL IMPACT

This bill would not significantly impact FTB's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the way income or franchise tax is calculated under the RTC.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Per the September 8, 2023, Senate Floor analysis of AB 1355, the following organizations support this bill:

Support

- Fidelity Investments (Source)
- Acclamation Insurance Management Services
- Allied Managed Care
- Anaheim Chamber of Commerce
- California Apartment Association
- California Association for Health Services at Home
- California Attractions and Parks Association
- California Beer and Beverage Distributors
- California Chamber of Commerce
- California Hispanic Chamber of Commerce
- California League of Food Producers
- California New Car Dealers Association
- California Restaurant Association
- California Trucking Association
- Coalition of Small and Disabled Veteran Businesses
- Family Business Association of California
- Flasher Barricade Association
- Los Angeles Area Chamber of Commerce

National Federation of Independent Business
National Payroll Reporting Consortium
Orange County Business Council
Orange County Hispanic Chamber of Commerce

Opposition

None on file.

VOTES

Location	Date	Yes Votes	No Votes
Concurrence	September 12, 2023	80	0
Senate Floor	September 11, 2023	39	0
Assembly Floor	May 18, 2023	74	0

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