



## **Bill Analysis**

Author: Gipson

Sponsor:

Bill Number: AB 1498

Related Bills: See Legislative  
History

Amended: April 26, 2023

## **SUBJECT**

California Earned Income Tax Credit - Minimum Credit

## **SUMMARY**

This bill would, under the Personal Income Tax Law (PITL), establish a minimum California Earned Income Tax Credit (CalEITC), subject to appropriation, would provide for the indexing of the minimum credit amount, and would provide for a phaseout of the minimum credit.

## **RECOMMENDATION**

No position.

## **SUMMARY OF AMENDMENTS**

The April 26, 2023, amendments removed the offset provision of the bill under the Government Code (GOV). Under the PITL, the amendments revised the phaseout computation of the minimum credit, removed the provision that would have required the indexing of the threshold amount, and replaced the one-time appropriation provision with an annual appropriation provision. The amendments resolved several, but not all, of the considerations discussed in the Franchise Tax Board's (FTB) analysis of the bill as introduced on February 17, 2023.

## **REASON FOR THE BILL**

The reason for this bill is to establish a minimum CalEITC.

## **ANALYSIS**

Subject to an appropriation in the annual Budget Act by the Legislature, this bill would make modifications to the CalEITC related to a minimum credit amount. Specifically, this bill would, under the PITL, for taxable years beginning on or after January 1, 2023, modify the CalEITC by establishing a minimum credit amount. To accomplish the minimum credit, this bill would provide that if the amount of the CalEITC for an eligible individual is less than \$355, multiplied by the earned income tax credit adjustment factor for that taxable year, the credit for the eligible individual would be \$355, multiplied by the earned income tax credit adjustment factor for the taxable year.

Amended: April 26, 2023

This bill would, for taxable years beginning on or after January 1, 2024, require the minimum credit amount to be indexed for inflation.

Additionally, this bill would apply a phase out to the minimum credit amount. Specifically, the minimum credit amount would be reduced by an amount as determined by the FTB for each \$100, or fraction thereof, by which the qualified taxpayer's adjusted gross income or, if greater, earned income, exceeds the threshold amount. For purposes of this computation, the threshold amount would be \$28,000. This would mean the minimum EITC would begin to be phased out starting at \$28,000 and would completely phase out at the same earned income amount as the CalEITC.

#### *Effective/Operative Date*

If enacted, this bill would be effective on January 1, 2024. Upon an appropriation in the annual Budget Act by the legislature, the minimum CalEITC provisions would be specifically operative at different times. The minimum credit amount would be specifically operative for taxable years beginning on or after January 1, 2023. The indexing of the minimum credit amount would be specifically operative for taxable years beginning on or after January 1, 2024.

#### *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. 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.

An eligible individual is defined as follows:

- Any individual who has a qualifying child for the taxable year, or
- Any other individual that does not have a qualifying child for the taxable year, if they meet the following requirements:
  - Has attained the age of 25 but not 65 before the close of the taxable year.
  - Has a principal place of abode in the United States (U.S.) for more than one-half the taxable year.
  - Not be a dependent of another taxpayer.

Amended: April 26, 2023

An eligible individual (and spouse, if filing a joint return) also must be a U.S. citizen or resident alien. If the eligible individual or spouse were a nonresident alien for any part of the tax year, the qualified individual can only claim the EITC if their filing status is married filing jointly and the individual or spouse is a:

- U.S. Citizen with a valid Social Security number (SSN), or
- Resident alien who was in the U.S. at least 6 months of the year and has a valid SSN.

Certain individuals are specifically excluded from the definition of an eligible individual. For example, a qualifying child, an individual who claims benefits relating to citizens or residents living abroad, a nonresident alien not treated as a U.S. resident for tax purposes.

Generally, a qualifying child must live with the eligible individual for more than one-half the taxable year in the U.S., and must be under the age of 19, unless the child is a full-time student under age 24, or the child is permanently and totally disabled. Only one person can claim a qualifying child.

The name, age, and SSN of the qualifying child must be reported on the tax return.

#### *State Law*

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.

State law conforms to the federal definitions of an “eligible individual” and a “qualifying child” with the following exceptions:

- An eligible individual without a qualifying child must have a principal place of abode in “this state” (rather than the U.S.) for more than one-half of the taxable year, and for taxable years beginning on or after January 1, 2018, may have reached the age of 18 by the close of the taxable year (rather than have attained the age of 25 but not attained the age of 65 before the close of the taxable year).
- A qualifying child also must have a principal place of abode in “this state” (rather than the U.S.) for more than one-half of the taxable year.

State law conformed to the federal requirement that an eligible individual and any qualifying child must have a valid SSN. Starting in taxable years beginning on or after January 1, 2020, CalEITC eligibility is extended to individual with a taxpayer identification number (ITIN).

Amended: April 26, 2023

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 gross income, but only if such amounts are subject to California withholding.

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

### *Implementation Considerations*

The department has identified the following implementation consideration and is available to work with the author’s office to resolve this and other considerations that may be identified.

This bill would require an appropriation in the annual Budget Act to pay for the minimum CalEITC amount. An annual appropriation would add complexity and uncertainty to the administration of this provision as the department would not know if the appropriation will be made, when it will be made, or the amount of the appropriation. As a result, there will be uncertainty for software providers, tax preparers, and taxpayers.

Additional complexity will result if the bill requires regular annual appropriations by the Legislature to allow for this incentive to be in effect. Because the filing of a tax return spans fiscal years, it is unclear of the impacts to taxpayers who file their return, or their return is processed, after July 1 of any year.

If the appropriation is specific as to an amount, if there are insufficient funds available to cover all of the refunds due in any one fiscal year, the department would either deny payment of further refunds for returns processed during that fiscal year; or, if funds are appropriated for the following fiscal year, FTB could hold returns with refunds due until July 1 when funds are appropriated and pay accrued interest due to the delay. Holding returns with refunds is quite impactful to taxpayers who are relying on their refunds to pay key expenses.

If the appropriation is \$1 or more, taxpayers could be treated differently based on the date they file or the date their return completes processing. If either of these dates are July 1 or later, and an appropriation is not provided in the next year, some taxpayers will get the minimum credit and others would not.

Disparate treatment or undesired treatment of taxpayers occurs in either situation. This delay would result in additional contacts to the department by refund recipients, which would also increase departmental costs.

### *Technical Considerations*

None noted.

Amended: April 26, 2023

### *Policy Considerations*

If the author would like to index the threshold amount of \$28,000, the bill should be amended.

### **LEGISLATIVE HISTORY**

AB 441 (Haney, 2023/2024) would, under the PITL, require the FTB to establish a program for making advance periodic payments to qualified taxpayers allowed the CalEITC, the Young Child Tax Credit (YCTC), and the Foster Youth Tax Credit (FYTC). AB 441 is currently in the legislative process.

AB 1002 (Irwin and Caballero, 2023/2024) would, under the Administration of Franchise and Income Tax Law (AFITL), provide that qualified individuals may claim the CalEITC, YCTC, and the FYTC on a form that does not require the qualified individual to file an individual income tax return. This bill would also include a data sharing provision to accomplish this purpose. AB 1002 is currently in the legislative process.

AB 1128 (Santiago, et al., 2023/2024) would, under the PITL, expand the eligibility of the YCTC by changing the definition of a qualifying child to have the same meaning as under the CalEITC. AB 1128 was held in the Assembly appropriations committee.

SB 565 (Caballero, 2023/2024) would, under the AFITL, require the FTB to provide a free tax return preparation program to individuals eligible for the CalEITC, the YCTC, and the FYTC. The program would utilize prepopulated data and would allow taxpayers to edit or correct information before filing their California personal income tax return. This bill would also include a data sharing provision to accomplish this purpose. SB 565 is currently in the legislative process.

AB 194 (Committee on Budget, Chapter 55, Statutes of 2022), under the GOV, for taxable years beginning on or after January 1, 2024, provides that the Controller cannot offset delinquent accounts against personal income tax refunds of an individual who received the CalEITC or the YCTC.

SB 201 (Committee on Budget, Chapter 72, Statutes of 2022), under the PITL, for taxable years beginning on or after January 1, 2022, modified the YCTC to expand the definition of a qualified taxpayer, provide for indexing of the YCTC, enacted the FYTC, and made other technical nonsubstantive changes.

AB 2589 (Santiago, et al, 2021/2022) would have, under the PITL, established a minimum CalEITC, subject to appropriation; specified the CalEITC phaseout percentages as recalculated for taxable year 2022 would apply to taxable year 2023 and later; modified the YCTC to allow an alternative computation, including expanded definitions of qualified taxpayer and qualifying child. AB 2589 did not pass out of the Senate by the constitutional deadline.

Amended: April 26, 2023

SB 860 (Rubio and Hueso, 2021/2022) would have, under the PITL, expanded the eligibility of the YCTC to individuals with zero earned income or less but, required the indexing of the credit starting with taxable year 2022, required the indexing of the \$20 phaseout amount for taxable year 2022 only, and would have added additional reporting requirements for the FTB. SB 860 did not pass out of the Assembly by the constitutional deadline.

AB 1876 (Committee on Budget, 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.

AB 91 (Burke, et al., Chapter 39, Statutes of 2019) enacted the YCTC and made several changes conforming to federal law.

SB 855 (Committee on Budget and Fiscal Review, Chapter 52, Statutes of 2018) expanded the CalEITC qualifying income range and revised the age range for eligible individuals.

AB 131 (Assembly Committee on Budget, Chapter 252, Statutes of 2017) provided technical clarification to previous budget trailer bills related to the 2017 Annual Budget Act, including the SB 106 discussed below.

SB 106 (Senate Committee on Budget and Fiscal Review, Chapter 96, Statutes of 2017), expanded the CalEITC by modifying the earned income computation to include net earnings from self-employment, consistent with federal law, and increasing the maximum Annual Gross Income phase-out amounts.

SB 1073 (Monning, Chapter 722, Statutes of 2016) made permanent the enhanced 45% credit rate for three or more qualifying children to be consistent with the federal EITC.

SB 80 (Senate Committee on Budget and Fiscal Review, Chapter 21, Statutes of 2015) enacted the CalEITC.

## **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 and resources will be requested, if necessary.

Amended: April 26, 2023

## ECONOMIC IMPACT

### *Revenue Estimate*

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1498 as Amended April 26, 2023  
Assumed Enactment after June 30, 2023

(\$ in Millions)

Fiscal Year	Revenue
2023-2024	-\$550
2024-2025	-\$550
2025-2026	-\$550

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*

Based on output from the FTB's EITC micro-simulation model, it is estimated that changing the CalEITC credit calculation would result in an additional revenue loss of approximately \$550 million in the 2023 taxable year.

The tax year estimates are then converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

## LEGAL IMPACT

None noted.

## APPOINTMENTS

None noted.

Amended: April 26, 2023

## **SUPPORT/OPPOSITION**

As per the April 28, 2023, Assembly Committee on Revenue and Taxation analysis of AB 1498, the following organizations support this bill:

### *Support*

All Home  
California Association of Food Banks  
California Catholic Conference  
California Immigrant Policy Center  
California Pan – Ethnic Health Network  
Economic Security Project Action  
Etta  
Friends Committee on Legislation of California  
Glide  
Grace Institute - End Child Poverty in CA  
Hadassah  
Jewish Community Relations Council of Sacramento  
Jewish Family & Children's Service of Long Beach and Orange County  
Jewish Family Service San Diego  
Jewish Family Services of Silicon Valley  
Jewish Federation of The Greater San Gabriel and Pomona Valleys  
Jewish Federation of The Sacramento Region  
Jewish Long Beach  
Jewish Public Affairs Committee of California  
John Burton Advocates for Youth  
Lincoln Families  
National Association of Social Workers, California Chapter  
NextGen California  
Orange County United Way  
San Francisco-Marin Food Bank  
The Children's Partnership  
United Way Bay Area  
United Way Fresno Madera Counties, United Way of Stanislaus County  
United Way of Ventura County  
United Ways of California (UWCA)  
Universal Income Project  
Worksafe  
Young Invincibles

### *Opposition*

None on file.



Amended: April 26, 2023

## **ARGUMENTS**

As per the same analysis, the following arguments in support of this bill were provided.

GRACE – End Child Poverty in California, sponsor of this measure, writes, in part:

The CalEITC is one of California's best tools to prevent poverty, redistribute wealth, and close the state's racial wealth gap. The CalEITC is a refundable tax credit that goes towards families earning \$30,000 or less in a given tax year and, unlike the Federal EITC, allows Individual Taxpayer Identification Number (ITIN) holders to qualify... The CalEITC is in direct alignment with statewide goals of alleviating poverty and supporting communities that have historically been excluded from state-sanctioned wealth building opportunities. The CalEITC is a cost-effective way to deliver direct, targeted support to Californians who struggle to afford soaring living expenses, such as housing, childcare, healthcare, etc... Increasing the CalEITC minimum to \$300 will provide all filers with a meaningful credit and address the state's racial and economic equity problems by targeting low-income, majority non-white filers.

The California Association of Food Banks, in support of this measure, noted, in part:

Californians are facing an unprecedented hunger cliff with the ending of the CalFresh Emergency Allotments, as individuals on CalFresh are losing on average \$82 a month. Food Banks alone cannot make up the difference. We need to invest in anti-poverty initiatives like the CalEITC to ensure families and children can meet their basic needs.

## **LEGISLATIVE CONTACT**

[FTBLegislativeServices@ftb.ca.gov](mailto:FTBLegislativeServices@ftb.ca.gov)