STATE OF CALIFORNIA
Franchise Tax Board

# Bill Analysis

Author: Gallagher, et al.

Sponsor:

Bill Number: AB 59

Related Bills: See Legislative History

Introduced: December 6, 2022
Amended: February 13, 2023

## SUBJECT

Renter's Credit Restructure

## SUMMARY

This bill would, under the Personal Income Tax Law (PITL), expand eligibility for the Renter's Credit by increasing the amount of the credit and the adjusted gross income (AGI) threshold amounts, require the Franchise Tax Board (FTB) to make annual inflation adjustments, and make other nonsubstantive changes.

## RECOMMENDATION

No position.

## SUMMARY OF AMENDMENTS

The February 13, 2023, amendments added coauthors, modified the operative date for the credit to add language requiring an appropriation, increased the credit amount if an appropriation is made, and added operative dates for provisions related to refundability and credit indexing.

## REASON FOR THE BILL

The reason for this bill is to expand the availability of the existing renter's credit to compensate low- and middle-income renters due to increasing California rent.

## ANALYSIS

This bill would, for taxable years beginning on or after January 1 of the taxable year that includes the date on which an appropriation is first made, and for the four succeeding taxable years, for a total of five taxable years, only if specified in any bill providing for appropriations related to the Budget Act, increase the Renter's Credit to:

- $2,000 for taxpayers with filing status of married filing jointly, head of household, or surviving spouse, with Adjusted Gross Income (AGI) of $150,000 or less, as adjusted for inflation, and

- $1,000 for taxpayers with filing status of single or married filing separately, with AGI of $75,000 or less, as adjusted for inflation.

This bill would require the current Renter's Credit amounts to remain unchanged if the appropriations were not specified in a bill providing for appropriations related to each year's Budget Act.

This bill would provide that the increased credit amount and the increased AGI amounts would be subject to indexing for inflation based on the change in the California Consumer Price Index, beginning the taxable year after the increase is operative, and the succeeding three taxable years.

This bill would allow the expanded credit amounts in excess of the sum of the tax liability and any other balance due to be refunded to the qualified renter in the years in which the increased credit amount is operative.

This bill would, for purposes of complying with Section 41 of the Revenue and Taxation Code (RTC), require the FTB to prepare and provide a written report. The report would be submitted no later than May 1 of the year following the year relevant to the report and include the following:

- The number of taxpayers claiming the credit.
- The average credit amount on tax returns claiming the credit.

The Section 41 reporting requirements would be treated as an exception to the disclosure provisions under the RTC.

*Effective/Operative Date*

As a tax levy, this bill would be effective immediately upon enactment. Subject to an annual appropriation in the Budget Act, the credit increase and refundability of the credit would be specifically operative for taxable years beginning on or after January 1 of the year a specific appropriation of funds is made for the increased credit in a bill related to the annual budget bill, and for the succeeding four years. The indexing of increased credit amounts would be operative for each taxable year beginning on or after the date one year after an appropriation is first made in the Budget Act, and for the following three years.

*Federal/State Law*

*Federal Law*

No comparable provision in federal law.

*State Law*

Current state law allows qualifying renters that meet certain AGI limitations a nonrefundable credit of $60 or $120, based on filing status. The amount of the credit is unrelated to the amount of rent paid.

A "qualified renter" is defined as an individual who:

- Is a California resident for all or part of the tax year, and
- Rented and occupied California premises constituting his or her principal place of residence for at least 50% of the taxable year.

The definition of "qualified renter" does not include individuals:

- Who, for more than 50% of the taxable year, rented and occupied premises that, with certain exceptions, were exempt from property taxes.
- Whose principal place of residence, for more than 50% of the taxable year, is with any other person who claimed that individual as a dependent for income tax purposes.
- Who have been granted or whose spouse has granted the homeowner's property tax exemption during the taxable year, as specified.

Any qualified renter who is a nonresident for a portion of the taxable year is allowed 1/12th of the Renter's Credit for each full month that the individual resided in the state for the taxable year, once the requirement of renting in California for more than 50% of the taxable year has been met.

A "resident" is defined as every individual:

- Who is in this state for other than temporary or transitory purpose, or
- Is domiciled in this state but is outside the state for a temporary or transitory purpose.

Current state law allows qualified renters a nonrefundable Renter's Credit as follows for tax year 2022:

- $120 for married filing jointly, head of household, or qualified widow or widower with an AGI of $98,440 or less, and
- $60 for single or married filing separately with an AGI of $49,220 or less.

The credit amounts are not adjusted for inflation, while the AGI limits are annually adjusted.

*Implementation Considerations*

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

This bill would require regular annual appropriations by the Legislature to pay for the refundable portion of this credit. If there are insufficient funds available to cover all of the refunds due and payable, the department would suspend payment until additional funds were appropriated, unless directed otherwise. Interest may have to be paid to refund recipients for the period the refund was delayed. This delay would result in additional contacts to the department by refund recipients, which would likely increase departmental costs.

The credit increase would not be operative absent a bill providing for appropriations in the annual Budget Act. This could cause uncertainty for taxpayers and the department regarding the amount of the credit allowed and result in additional contacts to the department.

The credit increase would be operative as of January 1 of the taxable year that includes an appropriation and the next four years, except as provided in subdivision (l). However, subdivision (l) resets the credit amount to its original level absent a bill providing for appropriations related to the Budget Act. It is unclear whether an appropriation would be required every year of the five-year operative period or only the first year. If it is contrary to the author's intent to require an annual appropriation during the five years that the increased credit is operative under (a)(1)(A)(ii) and (a)(1)(B)(ii), the bill should be amended to clarify the purpose of subdivision (l).

This bill requires the FTB to prepare a report on the performance of the credit allowed by this bill no later than May 1 of the year following the year relevant to the report. If the author's intent is to be able to review a report that contains complete information for the first taxable year the increased amounts are in effect, it is recommended that the report due date be extended to May of the year following the year that returns for that first year are filed. For instance, the due date for the 2023 personal income tax return is April 15, 2024, with extension that becomes October 15, 2024. The department needs approximately six months to complete return processing and to compile the needed data to prepare a report. As a result, it is recommended that the reporting due date be no earlier than May of 2025 to provide information for the 2023 taxable year. If the reporting due date remains unchanged, the report would include the information available as of the date the report is prepared.

Implementing this bill would require robust changes to existing information, processing systems, tax forms and instructions, as well as providing taxpayer outreach.

*Technical Considerations*

To make the changes operative for taxable years beginning on or after January 1 of the year of the appropriation instead of taxable years beginning on or after the date the appropriation is made:

- For 17053.5(a)(1)(A)(iii), replace "the date one year after the date specified in clause (ii)" with "the January 1 following the January 1 described in clause (ii)""
- For 17053.5(j)(2)(A), replace "the date one year after an appropriation is first made" with "January 1 following the January 1 described in clause (ii) of subparagraph (A) of paragraph (1) of subdivision (a)."
- For 17053.5(k)(1), replace "the date one year after an appropriation is first made in a bill relating to the Budget Act for the purpose of the expanded credit provided in" with "the January 1 following the January 1 described in (a)(1)(A)(iii).

When the bill refers to an appropriation "for this purpose," the purpose should be specified.

*Policy Considerations*

Historically, refundable credits, such as the former state renter's credit and the federal Earned Income Tax Credit, have had significant problems with attempts to file invalid or fraudulent claims. These problems are aggravated if a refund is made and is later determined to be fraudulent. In such cases, the refunds commonly cannot be recovered. However, fraud concerns are reduced if the credit has narrow criteria for claiming the credit.

## LEGISLATIVE HISTORY

SB 843 (Glazer, et al., 2021/2022) would have, under the PITL, added a reporting requirement for the FTB. SB 843 did not pass by the constitutional deadline.

AB 399 (Brough, 2019/2020) would have, contingent upon an appropriation, increased the amounts of the Renter's Credit. AB 399 did not pass by the constitutional deadline.

SB 248 (Glazer, et al., 2019/2020) would have increased the Renter's Credit amounts to $220 for certain taxpayers with no dependents and $434 for certain taxpayers with one or more dependents and make the credit refundable. SB 248 did not pass by the constitutional deadline.

AB 181 (Lackey, et al., 2017/2018) would have increased the amounts of the Renter's Credit. AB 181 did not pass out of the Assembly by the constitutional deadline.

## PROGRAM BACKGROUND

Since 1973 California has provided some form of the renter's credit. The credit started as a refundable credit allowed to qualified individuals except for a suspension period between 1993 through 1997. Qualified taxpayers could claim the credit on their California income tax return while qualified renters, who were not required to file an income tax return, could file a Form 540A to claim a renter's credit refund.

The credit is $60 for single and married filing separate/Registered Domestic Partner (RDP) renters; and $120 for renters that are married filing joint/RDPs, head of household, or a qualifying widow(er) with a dependent. Since 1992, the AGI limitation amounts have been adjusted annually for inflation.

In 1998, the renter's credit was reinstated as a nonrefundable credit with certain AGI limits, and the AGI amounts continue to be adjusted for inflation annually. For the 2022 taxable year, the AGI limits were increased to $49,220 for single and married filing separate/RDP renters; and to $98,440 for renters that are married filing joint/RDPs, head of household, or a qualifying widow(er) with a dependent. Information about the renter's credit is also available on the FTB website, Nonrefundable renter's credit.

## FISCAL IMPACT

The department's costs to implement this bill have not been determined, but staff anticipates costs could be significant.

## ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 59 as Amended February 13, 2023
Assumed Enactment after June 30, 2023

($ in Millions)

| Fiscal Year | Revenue* |
|---|---:|
| 2023-2024 | -$4,400 |
| 2024-2025 | -$4,700 |
| 2025-2026 | -$5,000 |

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.

This estimate assumes a bill providing appropriations related to the Budget Act would fully allocate funds to this credit.

## LEGAL IMPACT

None noted.

## APPOINTMENTS

None noted.

## SUPPORT/OPPOSITION

To be determined.

## ARGUMENTS

To be determined.

## LEGISLATIVE CONTACT

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