



STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Addis

Sponsor:

Bill Number: AB 877

Related Bills: See Legislative
History

Introduced: February 14, 2023,
Amended: March 20, 2023,
and April 20, 2023

SUBJECT

Qualified Taxpayer Lodging Credit

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and Corporate Tax Law (CTL), would allow a tax credit to a taxpayer providing free of charge lodging to displaced persons during a state of emergency declared by the Governor or President.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 20, 2023, amendments revised the definitions of "qualified expenses", "qualified lodging", "rate," and added requirements for qualified taxpayer to provide specified information upon request to the Franchise Tax Board (FTB).

The April 20, 2023, amendments revised the definition of "qualified expenses," "rate," and "qualified lodging", added the definition of "unit", changed the operative dates, extended the Section 41 reporting due date to January 1, 2028, and revised the sunset date.

REASON FOR THE BILL

The reason for the bill is to provide economic relief to certain establishments to offset the expenses for housing displaced persons during a declared state of emergency.

ANALYSIS

For taxable years beginning on or after January 1, 2024, and before January 1, 2029, this bill would allow a credit in an amount equal to 50 percent of qualified expenses incurred by the qualified taxpayer during the taxable year.

This bill would define the following terms:

- “Qualified taxpayer” means a taxpayer operating qualified lodging in the state.
- “Qualified lodging” means a hotel, motel, inn, bed and breakfast, or other similar transient lodging that satisfies both of the following:
 - Is located in a county for which a state of emergency has been declared by the Governor or President.
 - Has 50 or fewer units.
- Qualified lodging would specifically exclude:
 - Property, lodging, emergency shelters, or other businesses owned or operated by a public agency.
 - Property, lodging, emergency shelters, or other businesses that are funded by the Project Roomkey and Rehousing Program, the HomeKey grant program, Federal Emergency Management Agency housing vouchers or temporary rental assistance, or other similar federal, state, or local public programs.
- “Qualified expenses” means the rate of each unit provided to displaced persons free of charge during a state of emergency declared by the Governor or President, multiplied by the number of nights displaced persons occupied the unit. This amount could not exceed \$2,000 per unit and not to exceed \$10,000 total per state of emergency declaration.
- “Rate” means the rate of the unit that would have been charged to other persons at the time the unit in the qualified lodging was provided free of charge to the displaced person.
- “Unit” means each rentable or bookable space within qualified lodging.

The bill provides that a deduction would not be allowed for any amount taken into account in the computation of this credit.

The unused credit could be carried over for up to 8 years, until exhausted.

This bill would require a qualified taxpayer claiming the credit to provide statements from all displaced persons who occupied a unit in the qualified lodging free of charge, upon request, to the FTB. In the statement, a displaced person would include both of the following:

- The statement that the displaced person occupied a unit in the qualified lodging free of charge.
- The number of nights the displaced person occupied the unit.

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The FTB would be allowed to adopt necessary or appropriate regulations in order to implement this bill. In addition, the Administrative Procedure Act of the Government Code would not apply to any standard, criteria, procedures, determinations, rules, notices, or guidelines issued by the FTB in relation to this bill.

The bill includes, for purposes of complying with Section 41, the Legislature's findings and declarations that:

- The goal, purpose and objective of this credit is to increase access to shelter for displaced persons during declared emergencies, including for natural disasters.
- Detailed performance indicators for Legislature to use in determining whether the credit meets that goal, purpose, and objective are as follows:
- The cumulative number of displaced persons given shelter during a declaration of emergency.
- The number of qualified taxpayers that are allowed a credit.

This bill would require the FTB to review the effectiveness of the credit and post the review on internet website on or before January 1, 2028, on both of the following:

- The analysis of the demand for the credit, and
- The economic impact of the credit.

Because this bill does not specify otherwise, this credit would not reduce regular tax below tentative minimum tax (TMT).

This credit would be in effect only until December 1, 2029, and as of that date would be repealed.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2024, and before January 1, 2029.

Federal/State Law

Existing federal and state laws provide various tax credits that are used to reduce the taxpayer's tax liability dollar-for-dollar. Generally, for California, the credit is taken instead of any deduction otherwise allowable for the same costs. Any deduction allowed for the same costs may be reduced by the amount of the credit claimed for the current tax year. One benefit of allowing tax credits rather than deductions is that tax credits are claimed after taxable income has been calculated and, therefore, do not create differences between the taxable income amounts shown on the federal and state income tax returns.

Federal Law

No comparable provision in federal law.

State Law

There are currently no state income tax credits comparable to the credit this bill would create.

Implementation Considerations

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

This bill uses terms and phrases that are undefined, such as, "emergency shelter", "other similar transient lodging", and "displaced person." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to define the terms.

The reporting requirements in this bill require FTB to provide an analysis of the demand for the credit and the economic impact of the credit. These measures may not be readily accessible from information reported on the tax return. The FTB generally provides information, when authorized, on the number and dollar amounts of credits claimed. FTB also would not have information with respect to the number of displaced persons given shelter.

This bill defines "rate" as the rate of the unit that would have been charged to other persons at the time the unit in the qualified lodging was provided free of charge to the displaced person. The phrase "would have been charged to other persons at the time the unit in the qualified lodging was provided free of charge to the displaced person" could be subjective and may lead to confusion or disputes with the taxpayer in the absence of a definition to clarify this phrase.

Technical Considerations

The qualified taxpayer's requirement to provide a statement was placed in the subdivision regarding regulatory authority for FTB. For consistency with other provisions of the Revenue and Taxation Code (RTC), the author may consider moving the language in subdivision (e)(2) to a new subdivision.

Because the amount giving rise to the credit is not an otherwise deductible expense, Sections 17025.9(c) and 23605(c) should be deleted.

The term “qualified expenses” should be changed to “qualified amounts” throughout the bill because the rate of a room or unit provided free of charge is not an “expense” that is paid by the taxpayer.

Policy Considerations

This bill would require a qualified taxpayer claiming the credit to obtain statements from all displaced persons who occupied a unit in the qualified lodging free of charge, upon request, to the FTB. A qualified taxpayer that provides lodging to displaced persons but does not obtain the necessary documentation from the displaced persons would not be allowed the credit.

Under RTC section 17007, “ “Person” includes individuals, fiduciaries, partnerships, limited liability companies, and corporations.” Hotels may charge corporate rates that differ from rates charged to individuals. If this is not what the author intends, the term “persons” within the definition of “rate” could be changed to “individuals.”

This bill would not require the taxpayer to own the qualified lodging, but only operate it. If this is not the authors intent, this bill should be amended.

LEGISLATIVE HISTORY

SB 408 (Min, 2021/2022) would have, under the PITL and the CTL, allowed a \$10,000 tax credit to qualified taxpayers that own and operate certain bars, hotels, or restaurants impacted by the COVID-19 pandemic, but not short-term rentals on residential property. SB 408 did not pass out of the house of origin by the constitutional deadline.

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 determined.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 887 as Amended April 20, 2023
Assumed Enactment after June 30, 2023

(\$ in Millions)

Fiscal Year	Revenue
2023-2024	-\$4.4
2024-2025	-\$9
2025-2026	-\$10

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None noted.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

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