



## Bill Analysis

Author: Senate Committee on Budget and Fiscal Review

Sponsor:  
Related Bills: See Legislative History

Bill Number: SB 131  
Amended: June 26, 2023

### SUBJECT

Taxation Budget Trailer Bill

### SUMMARY

This bill would do the following:

*Provision No. 1 – Credit Offsets – Foster Youth Tax Credit (FYTC):*

Section 1 of the bill, under the Government Code (GOV), would specify that the California State Controller (Controller) cannot offset delinquent accounts against personal income tax (PIT) refunds of an individual who received the FYTC for taxable years beginning on or after January 1, 2024.

*Provision No. 2 – New Employment Credit (NEC) Expansion:*

Sections 3 and 12 of the bill, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), would expand the existing NEC (NEC Expansion) to allow taxpayers in specified industries, who self-certify and provide verification, as specified, to be exempt from the designated census tract or economic development area requirement.

Section 18 of the bill, for the 2023–2024 fiscal year, would appropriate \$10,000 from the General Fund to the Franchise Tax Board (FTB) for purposes of administering the NEC Expansion.

*Provision No. 3 – Incomplete Gift Nongrantor (ING) Trusts:*

Section 4 of the bill, under the PITL, would require inclusion of ING trust income in the income of the grantor, as if the trust were a grantor trust, except as provided, for taxable years beginning on or after January 1, 2023.

*Provision No. 4 – Kincade Fire – Income Exclusion:*

Sections 5, 13, and 16 of the bill, under the PITL and CTL, would provide to qualified taxpayers, an exclusion from gross income for amounts received in settlement in connection with the 2019 Kincade Fire.

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*Provision No. 5 – Zogg Fire – Income Exclusion:*

Sections 6, 14, and 16 of the bill, under the PITL and CTL, would provide to qualified taxpayers, an exclusion from gross income for amounts received in settlement in connection with the 2020 Zogg Fire.

*Provision No. 6 – Data Sharing:*

Section 7 of the bill, under the Administration of Franchise and Income Tax Law (AFITL), would allow the FTB to share data with the State Department of Social Services (DSS) and the State Department of Health Care Services (DHCS) for purposes of informing individuals of the availability of the Volunteer Income Tax Assistance (VITA) and CalFile programs. This provision would also expand the data that DSS and DHCS could exchange with the FTB.

*Provision No. 7 – Earned Income Tax Credit (EITC) Outreach:*

Section 8 of the bill, under the AFITL, provides intent language related to antipoverty tax credits. Section 9 of the bill would modify and add additional definitions related to specified tax credits.

*Provision No. 8 - Antipoverty Tax Credits and Program Notices*

Sections 10 and 11 of the bill, under the AFITL, would require employers, including the FTB, to notify employees who may be eligible for VITA, CalFile, and antipoverty tax credits of their possible eligibility. In addition, the notice language was updated to provide additional information.

*Provision No. 9 – Middle Class Tax Refund- Clean Up:*

Section 15 of the bill, under the Welfare and Institutions Code (WIC), would require the FTB to make Middle Class Tax Refund (MCTR) payments to qualified recipients no later than September 30, 2023.

**RECOMMENDATION**

No position.

**SUMMARY OF AMENDMENTS**

The June 26, 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 FTB’s first analysis of the bill and only addresses the provisions that impact the department’s programs and operations.

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**REASON FOR THE BILL**

The reason for Provisions No. 1 -14, and 16-19, is to make various statutory changes related to implementing the Budget Act of 2023.

The reason for Provision No. 15 is to ensure qualified recipients receive their MCTR payments no later than September 30, 2023.

*Economic Impact – Summary Revenue Table (\$ in Millions)*

<b>Fiscal Year</b>	<b>2023-2023</b>	<b>2023-2024</b>	<b>2024-2025</b>
Provision No. 1 - Credit Offsets FYTC	N/A	N/A	N/A
Provision No. 2 – NEC Expansion	-\$0.4	-\$0.35	-\$0.35
Provision No. 3 – ING Trusts	\$24	\$12	\$12
Provision No. 4 – Kincade Fire - Income Exclusion	-\$17	-\$1.4	-\$0.05
Provision No. 5 – Zogg Fire – Income Exclusion	*	*	*
Provision No. 6 - Data Sharing	N/A	N/A	N/A
Provision No. 7 – EITC Outreach	N/A	N/A	N/A
Provision No. 8 – Antipoverty Tax Credits and Program Notices	N/A	N/A	N/A
Provision No. 9 - Middle Class Tax Refund - Clean Up	N/A	N/A	N/A

\*See provision analysis for the revenue discussion.

**ANALYSIS**

***Analysis Provision No. 1: Credit Offsets – FYTC (Section 1)***

This provision of the bill would, under the GOV, for taxable years beginning on or after January 1, 2024, specify that the Controller cannot offset delinquent accounts against the PIT refunds of an individual who received the FYTC for the taxable year. This provision would not apply to delinquent accounts for the nonpayment of child or family support.

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### *Effective/Operative Date*

This provision, included within a bill providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2024.

### *Federal/State Law*

#### *Offsets*

Under federal law, the Treasury Offset Program offsets federal tax refunds for delinquent non-tax debts owed to federal agencies, to child support authorities, and tax debts owed to state taxing agencies.

Under state law, the Controller is authorized to offset delinquent accounts against PIT refunds that have been certified by the FTB. Income tax refunds are available for offset only after all existing income tax debts have been satisfied. Starting in 2024 state law prohibits the Controller from offsetting delinquent accounts against PIT refunds of an individual who receives a California Earned Income Tax Credit (CalEITC) or a Young Child Tax Credit (YCTC).

#### *CalEITC and FYTC Programs*

Existing federal law 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.

State law provides a refundable CalEITC that is generally determined in accordance with the Internal Revenue Code (IRC) section 32, as applicable for federal income tax purposes for the taxable year, except as modified.

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

Starting in in taxable year 2022, state law allows qualified taxpayers a refundable FYTC up to \$1,083 per eligible individual or up to \$2,166 if both primary taxpayer and spouse/registered domestic partner qualify. A qualified taxpayer is an individual allowed a CalEITC who is 18 to 25 years of age and was in foster care while 13 years of age or older in an Aid to Families with Dependent Children-Foster Care (AFDC-FC) placement, including a tribally approved home, or Approved Relative Caregiver Funding Program eligible placement, by a Title IV-E agency, pursuant to a voluntary placement agreement or a juvenile court order.

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The credit amount is equal to \$1,176 multiplied by the earned income tax credit adjustment factor for the taxable year. The FYTC is indexed for inflation and the credit amount is reduced by \$20 for every \$100 by which the qualified taxpayer's earned income exceeds the threshold amount of \$25,000. The threshold amount and the \$20 phaseout amount are also indexed for inflation.

*Implementation Considerations*

None noted.

*Technical Considerations*

None noted.

*Policy Considerations*

None noted.

**LEGISLATIVE HISTORY**

AB 194 (Assembly Committee on Budget and Fiscal Review, Chapter 55, Statutes of 2022) specified that the Controller cannot offset delinquent accounts against PIT refunds of an individual who receives a CalEITC or a YCTC for taxable years beginning on or after January 1, 2024.

SB 201 (Senate Committee on Budget and Fiscal Review, Chapter 72, Statutes of 2022) established the refundable FYTC for taxable years beginning on or after January 1, 2022.

AB 1424 (Perea, Chapter 455, Statutes of 2011) allowed among other things, the FTB to offset tax returns for delinquent tax debts owed to the IRS or other states, but only upon a reciprocal agreement in which the IRS or other state's tax refunds are offset for delinquent tax debts owed to California.

**PROGRAM BACKGROUND**

None noted.

**FISCAL IMPACT**

Implementing Provision No. 1 would not significantly impact the FTB's costs.

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## **ECONOMIC IMPACT**

### *Revenue Estimate*

Provision No. 1 of the bill as amended on June 26, 2023, does not change the way income or franchise tax is calculated under the RTC.

## **LEGAL IMPACT**

None noted.

### ***Analysis Provision No. 2: NEC Expansion (Sections 3, 12, and 18)***

This provision of the bill, under the PITL and CTL, for each taxable year beginning on or after January 1, 2023, and before January 1, 2026, would expand the NEC by providing that the designated census tract or economic development area requirements would not apply to certain "qualified taxpayers" that are engaged in the following industries:

- Semiconductor manufacturing or semiconductor research and development
- Electric airplane manufacturing
- Lithium production
- Manufacturing of lithium batteries

In addition, to meet the definition of "qualified taxpayer," taxpayers engaged in these industries must pay or incur qualified wages during the taxable year and, upon requesting a tentative credit reservation, self-certify and provide the verification, in a form and manner as prescribed by the FTB, as follows:

- For those engaged in semiconductor manufacturing or semiconductor research and development, self-certify and provide verification that they intend to apply or applied for federal funding or has claimed or intends to claim the federal advanced manufacturing investment credit under the Creating Helpful Incentives to Produce Semiconductors Act of 2022 (Public Law 117-167).
- For those engaged in electric airplane manufacturing, self-certify and provide verification that they have received a sales and use tax exclusion under Revenue and Taxation Code (RTC) section 6010.8 for an electrical vertical takeoff and landing manufacturer.
- For those engaged in lithium production, self-certify and provide verification that they are a producer, as defined under RTC section 47002, that pays the lithium extraction excise tax for the taxable year.
- For those engaged in manufacturing of lithium batteries, self-certify and provide verification that their primary business is lithium battery manufacturing. For this industry, "primary business" means 50% or more of their gross income is derived from lithium battery manufacturing.

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These qualified taxpayers would be required to, upon request, provide the FTB with the applicable verification, in the form and manner prescribed by the FTB. Any disallowance of a credit claimed due to a failure to provide verification would be treated as a mathematical error appearing on the return and could be assessed by the FTB in the same manner as provided by Section 19051.

In addition, for a qualified taxpayer engaged in the above industries, this provision would modify the definition of a "qualified full-time employee" by eliminating the requirement that a new employee perform at least 50% of their services within designated census tract or economic development area and would reduce the starting wage requirement from 150% to 100% of minimum wage.

For all qualified taxpayers, this provision would modify the definition of "qualified wages" to mean wages that are subject to withholding pursuant to the Unemployment Insurance Code. Furthermore, for qualified full-time employees of a qualified taxpayer engaged in the industries described above, qualified wages would mean the portion of wages paid or incurred by the qualified taxpayer during the taxable year to each qualified full-time employee that exceeds 100% of the minimum wage but does not exceed 350% of the minimum wage.

This provision also would add the following definitions:

- "Electric airplane manufacturing" means manufacturing of electric airplanes that would be classified under Code 3364 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget, 2022 edition.
- "Lithium production" means lithium mining and manufacturing described in Codes 212390 or 325180 of the NAICS published by the United States Office of Management and Budget, 2022 edition.
- "Manufacturing of lithium batteries" means the manufacturing described in Code 335910 of the NAICS published by the United States Office of Management and Budget, 2022 edition.
- "Semiconductor manufacturing or semiconductor research and development" means manufacturing described in Code 3344 of the NAICS published by the United States Office of Management and Budget, 2022 edition.

For taxable years beginning on or after January 1, 2023, and before January 1, 2024, to be eligible for the credit, a qualified taxpayer engaged in the above specified industries would be required to, upon hiring a qualified full-time employee, request a tentative credit reservation from the FTB on or before the last day of the month following the close of the taxable year for which the credit is claimed.

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Beginning March 1, 2025, this provision would require the FTB to include in the annual report to the Joint Legislative Budget Committee on the NEC the total dollar amount of the credits claimed by the qualified taxpayers engaged in the above specified industries.

In addition, this provision states that for purposes of complying with Section 41, the Legislature finds and declares that the specific goal, purpose, and objective of the expansion of the credit is to incentivize semiconductor, lithium production and manufacturing, and electric airplane companies to invest in California-based operations. The performance indicator would be the total dollar amount of credits claimed by taxpayers engaged in semiconductor manufacturing, semiconductor research and development, lithium production and manufacturing, and electric airplane manufacturing.

#### *Effective/Operative Date*

This provision, included within a bill providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2023, and before January 1, 2026.

#### *Federal/State Law*

##### *Federal Law*

Existing federal law provides special tax incentives for empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

##### *State Law*

For taxable years beginning on or after January 1, 2014, and before January 1, 2026, current state law allows a NEC that is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract or former Enterprise Zone. The qualified taxpayer must receive a tentative credit reservation from the FTB for that qualified full-time employee. Additionally, the FTB must provide a searchable database on its website reporting the name of the person or entity claiming the credit, the total amount of credit claimed, and the number of new jobs created.



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### *Implementation Considerations*

This bill requires the FTB to prepare a report on the performance of the credit allowed by this provision beginning on March 1, 2025. If the author's intent is to review a report that contains complete information for the 2023 taxable year, it is recommended that the reporting due date be extended to March of 2026. This date allows time for the FTB to complete processing of both personal income tax return and corporation returns that file on a fiscal year basis. Corporate fiscal filers that file on extension, may file as late as October 15, 2025. The FTB needs approximately 6 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 March of 2026 to provide information for the 2023 taxable year. If the reporting due date remains unchanged, the report would include the information available as of 6 months prior to the date the report is due.

### *Technical Considerations*

None noted.

### *Policy Considerations*

None noted.

## **LEGISLATIVE HISTORY**

AB 2035 (Villapudua, 2021/2022) would have, under the PITL and CTL, amended the existing NEC to expand eligibility to additional industries similar to SB 1349 and extended the pilot area designation period. AB 2035 did not pass out of the house of origin by the constitutional deadline.

SB 1349 (Caballero, 2021/2022) would have, under the PITL and CTL, modify the existing NEC to remove the requirement that work be performed in a designated census tract or economic development area, remove all requirements relating to those designated areas, expand the definition of a qualified full-time employee, modify the definition of a qualified taxpayer, add Section 41 intent language, add a tax levy provision, and make other technical nonsubstantive changes. SB 1349 did not pass out of the Assembly by the constitutional deadline.

AB 93 (Assembly Committee on Budget, Chapter 69, Statutes of 2013), among other changes, created the NEC.

SB 90 (Galgiani and Canella, Chapter 70, Statutes of 2013), modified AB 93 as chaptered on July 11, 2013. Specifically, SB 90, for purposes of the NEC, modified the definition of qualified employee, excluded sexually oriented businesses from the definition of qualified taxpayer and small business, and modified the defined geographical area that the hiring credit may be generated in.

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**PROGRAM BACKGROUND**

The NEC Program was created in 2014 to promote employment for businesses that operate in areas with historically high unemployment and high poverty rates. The NEC is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract.

The NEC will be repealed on January 1, 2026.

**FISCAL IMPACT**

The FTB anticipates minimal costs to implement Provision No. 2 of this bill. However, this provision of the bill would require some changes to the existing tax forms and instructions, the reservation system, and the online searchable database.

**ECONOMIC IMPACT**

*Revenue Estimate*

Provision 2 of this bill would result in the following revenue loss:

Estimated Revenue Impact of SB 131, Provision 2, as Amended June 26, 2023  
Assumed Enactment after June 30, 2023.

(\$ in Millions)

Fiscal Year	Revenue
2023-2024	-\$0.4
2024-2025	-\$0.35
2025-2026	-\$0.35

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 FTB NEC data, industry employment data, and wage data from the U.S. Bureau of Labor Statistics, it is estimated that an additional 65,000 employees would be eligible for the expanded NEC. Based on FTB NEC data trends, it is estimated that approximately 3,900, or 6 percent of eligible employers would participate in this expansion and would generate and use credits for these additional employees. Based on this information, it is estimated that this credit expansion would result in a revenue loss of approximately \$230,000 in the 2023 taxable year.

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

## LEGAL IMPACT

None noted.

### ***Analysis Provision No. 3: Taxation of ING Trust Income (Section 4)***

For taxable years beginning on or after January 1, 2023, the income from an ING trust would be included in a qualified taxpayer's gross income to the extent the income would have been taken into account in computing the qualified taxpayer's taxable income as if the trust, in its entirety, were treated as a grantor trust.

The existing rules under RTC section 17745, regarding distributions to beneficiaries, would apply to distributions from an ING trust.

The ING trust income would not be included in the qualified taxpayer's gross income for a taxable year if all of the following apply:

- The ING trust's fiduciary timely files an original California Fiduciary Income Tax Return and makes an irrevocable election, in the form and manner prescribed by the FTB, on that return to be taxed as a resident nongrantor trust.
- The ING trust is a nongrantor trust.
- 90% or more of the ING trust's distributable net income is distributed, or treated as being distributed, to a charitable organization as defined in IRC section 501(c)(3).

For purposes of this provision, the following definitions would apply:

- "Incomplete gift nongrantor trust" means a trust that meets both of the following conditions:
  - The trust does not qualify as a grantor trust under Subpart E of Part I of Subchapter J of Chapter 1 of Subtitle A of the IRC, relating to grantors and others treated as substantial owners.
  - The qualified taxpayer's transfer of assets to the trust is treated as an incomplete gift under IRC section 2511, relating to transfers in general.
- "Qualified taxpayer" means a grantor of an ING trust.
- "Resident nongrantor trust" means a trust that is not a grantor trust and where the tax applies to the entire taxable income of the trust based on the residency of the fiduciary or beneficiary in accordance with Section 17742.

The income from Charitable Remainder Trusts (CRTs) is subject to existing rules under RTC section 17731, which conforms to IRC section 664, and is not considered for purposes of this bill.

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The FTB would be authorized to prescribe any regulations, rules, guidelines, procedures, or other guidance necessary or appropriate to carry out the purposes of this provision. The FTB would be exempt from the Administrative Procedure Act (Government Code section 11340 et seq.) for any rule, guideline, procedure, or other guidance prescribed by the FTB pursuant to this provision.

#### *Effective/Operative Date*

This provision, included within a bill providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2023.

#### *Federal/State Law*

##### *Federal Law*

Under federal law, there are two general types of trusts – grantor trusts and nongrantor trusts. Grantor trusts are revocable, and the grantor retains control over the trust. These trusts are not taxed as separate entities. All the items of income, deduction, and credit flow through to the personal return of the grantor. In addition, distributions from grantor trusts to its beneficiaries are not subject to tax because the trust is essentially disregarded as a taxable entity.

Nongrantor trusts are irrevocable, which generally means that the grantor does not retain control over the trust. They are taxed on their accumulated income as if the trust and the grantor were separate entities. When the trust makes a distribution to a beneficiary, the trust is allowed a distribution deduction, and the trust passes the income along to a beneficiary. The distribution from the nongrantor trust to its beneficiaries is subject to tax. The beneficiary reports the income and pays the tax.

CRTs are a type of nongrantor trust defined under Subpart C of Part I of Subchapter J of Chapter 1 of Subtitle A of the IRC, relating to estates and trusts which may accumulate income or distribute corpus. While distributions made by CRTs to its beneficiaries are subject to tax, the CRT is not subject to federal income tax.

An ING trust is also a type of nongrantor trust where the grantor establishes the trust for the benefit of the grantor and other discretionary beneficiaries. The grantor's transfer of assets to the ING trust is treated as an incomplete gift under IRC section 2511, and the regulations thereunder. Because the grantor's gift to the trust is incomplete, the grantor may fund the trust without using the lifetime estate tax exemption or incurring a federal gift tax liability. The trust is considered irrevocable. Within the ING trust structure, the trust maintains control over the assets and any distributions are controlled by the trust distribution committee. This distribution committee approves the distributions that the grantor receives. The result is that the grantor retains sufficient control over the assets to be treated as not having made a completed gift of the

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assets, while at the same time, being treated as having retained insufficient control over the assets to be considered the owner of the assets for income tax purposes.

There are many federal private letter rulings that conclude that ING trusts are not grantor trusts for federal income tax purposes. As a result, ING trusts are generally treated as taxable trusts rather than disregarded taxable entities.

### *State Law*

California conforms, with modifications, to the federal treatment of trusts, including the treatment of an ING trust as a separate legal entity and taxpayer. Since ING trusts are generally treated as taxable trust for federal and state purposes, the net taxable income of the ING trust is taxable to the trust. For state tax purposes, the determination of where the trust's net taxable income is sourced is made, regardless of the grantor's state of residency. In California, grantors of an ING trust are not taxed on the trust income. Instead, the income is sourced to the state of the commercial domicile of the trustee rather than the state of the grantor. As a result, a grantor that establishes an ING trust with an out of state trustee does not pay California state income tax on the trust income.

### *Implementation Considerations*

None noted.

### *Technical Considerations*

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

To correct the reference to the definition of distributable net income and to add clarity, the following changes are recommended to Section 17082(c)(3): Ninety percent or more of the distributable net income, pursuant to Chapter 9 (commencing with Section 17731), of the incomplete gift nongrantor trust is distributed, or treated as being distributed pursuant to Section 17752 or 17731, to a charitable organization, as defined in Section 501(c)(3) of the IRC.

### *Policy Considerations*

None noted.

## **LEGISLATIVE HISTORY**

No legislation similar to this provision has been identified.

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**PROGRAM BACKGROUND**

None noted.

**FISCAL IMPACT**

Implementing Provision No. 3 would not significantly impact the FTB’s costs.

**ECONOMIC IMPACT**

*Revenue Estimate*

Provision 3 of this bill would result in the following revenue gain:

Estimated Revenue Impact of SB 131, Provision 3, as Amended June 26, 2023  
Assumed Enactment after June 30, 2023.

*(\$ in Millions)*

<b>Fiscal Year</b>	<b>Revenue</b>
2023-2024	\$24
2024-2025	\$12
2025-2026	\$12

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*

This provision of the bill would make the income of an ING trust, created by a grantor, subject to California state income tax. To calculate the revenue, the number and amount of income for ING trusts must be known. Because it is difficult to predict these amounts, the revenue impact is unknown. However, New York enacted a similar law. Assuming California taxpayers behave in a manner similar to New York taxpayers, it is estimated that ING trusts would report an additional \$165 million in income to California in the 2023 taxable year. It is assumed that affluent taxpayers would create ING trusts, and as a result, an average tax rate of 10% is applied. This results in a \$17 million revenue gain for the 2023 taxable year and an estimated \$12 million revenue gain for each year thereafter.

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

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## LEGAL IMPACT

None noted.

### ***Analysis Provision No. 4: Gross Income Exclusion for Kincade Fire (Sections 5, 13 and 16)***

This provision of the bill, under PITL and CTL, would exclude from gross income qualified amounts received by a qualified taxpayer.

For purposes of the PITL and CTL, the following definitions would apply:

- “Qualified amount” means any amount received in settlement by a qualified taxpayer from a settlement entity in connection with the 2019 Kincade Fire.
- “Qualified taxpayer” means any of the following:
  - Any taxpayer that owned real property located in the County of Sonoma during the 2019 Kincade Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2019 Kincade Fire.
  - Any taxpayer that had a place of business within the County of Sonoma during the 2019 Kincade Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the Kincade Fire.
- “Settlement entity” means Pacific Gas and Electric Company or its subsidiary that is making the settlement payment to a qualified taxpayer.

The provision provides additional criteria for a taxpayer to be considered a “qualified taxpayer” that is different under the PITL and CTL. Under the PITL, a “qualified taxpayer” would also include any taxpayer that resided within the County of Sonoma during the 2019 Kincade Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2019 Kincade Fire.

This provision would require the settlement entity to provide to the FTB, upon request, documentation of the settlement payments in the form and manner requested by the FTB.

This provision, for purposes of complying with RTC section 41, would require the Legislative Analyst’s Office to deliver a report to the Legislature that complies with Section 9795 of the Government Code on December 1, 2028, that includes the following:

- To the extent feasible, the estimated number of qualified taxpayers that excluded qualified amounts from gross income, and
- The estimated aggregate amount of those settlement payments arising out of the 2019 Kincade Fire.

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This exclusion would be repealed on December 1, 2028.

This provision specifies that this act is necessary for the public purpose of preventing undue hardship to taxpayers who reside, or used to reside, in a part of California devastated by wildfires which constitutes a public purpose and is not a prohibited gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

#### *Effective/Operative Date*

This provision, included within a bill providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2020, and before January 1, 2028.

#### *Federal/State Law*

##### *Federal Law*

Existing federal law, IRC section 139, provides a general exclusion that gross income does not include any amount an individual receives as a qualified disaster payment. A qualified disaster payment means amounts paid to, or for the benefit of, an individual for several purposes, including to:

- Reimburse or pay reasonable and necessary personal, family, living, or funeral expenses the individual incurred because of a qualified disaster; or
- Reimburse or pay reasonable and necessary expenses the individual incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents, to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

For any federally declared disaster, an individual may exclude from income a valid disaster relief payment, which includes any amount the individual receives from the settlement award for a purpose listed above.

A qualified disaster includes any federally declared disaster, as defined in IRC section 165(i). A federally declared disaster is any disaster the President of the United States determines assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act is warranted. (The Federal Emergency Management Agency's website, [www.fema.gov](http://www.fema.gov), provides the listing of federally declared disasters.)



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### *State Law*

California generally conforms to IRC section 139, as described above. California also specifically allows an exclusion from gross income for:

- Settlement payments received from the Fire Victims Trust, and
- Settlement payments received from Southern California Edison for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire.

### *Implementation Considerations*

None noted.

### *Technical Considerations*

None noted.

### *Policy Considerations*

None noted.

## **LEGISLATIVE HISTORY**

AB 294 (Petrie-Norris, 2023/2024) would have provided a qualified taxpayer an exclusion from gross income for amounts received in settlement for a wildfire or natural disaster. This bill did not pass out of the Assembly Appropriations Committee.

SB 370 (McGuire, et al., 2023/2024), similar to this bill, would have provided qualified taxpayers an exclusion from gross income for amounts received in settlement of claims relating to the 2019 Kincade Fire and allow refunds of tax previously paid on those amounts. This bill did not pass out of the Assembly Revenue and Taxation Committee.

SB 542 (Dahle, et al., 2023/2024) would have provided a qualified taxpayer an exclusion from gross income for amounts received in settlement to replace property damaged or destroyed by the 2020 Zogg Fire. This bill did not pass out of the Assembly Appropriations Committee.

AB 1249 (Gallagher, et al., Chapter 749, Statutes of 2022) provided an exclusion from gross income for amounts received in settlement under the order of the United States Bankruptcy Court for the Northern District of California dated June 20, 2020, case number 19-30088, docket number 8053.

SB 1246 (Stern and Valladares, Chapter 841, Statutes of 2022) provided to qualified taxpayers an exclusion from gross income for amounts received from Southern California Edison in settlement for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire and allow refunds of tax previously paid on those amounts.

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**PROGRAM BACKGROUND**

None noted.

**FISCAL IMPACT**

Implementing Provision No. 4 would not significantly impact the FTB’s costs.

**ECONOMIC IMPACT**

*Revenue Estimate*

Provision 4 of this bill would result in the following revenue loss:

Estimated Revenue Impact of SB 131, Provision 4, as Amended June 26, 2023  
Assumed Enactment after June 30, 2023.

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue*</b>
2023-2024	-\$17
2024-2025	-\$1.4
2025-2026	-\$0.05

\* Payments are based on estimated settlement payments published to date, as a result, the revenue impact could increase if additional payments are provided.

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 available 2019 Kincade Fire settlement data, personal damage claims are projected to be approximately \$800 million. It is estimated that \$400 million would be paid directly to qualified taxpayers. It is anticipated that 90%, or \$360 million, would be paid to qualified taxpayers in the 2023 taxable year and the remaining amount in 2024. Applying an average tax rate of 5% for both personal income and corporate taxpayers would result in an estimated revenue loss of \$17 million in 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.

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The revenue impact could increase if additional payments are provided or shift to later years if payments are not awarded timely.

## LEGAL IMPACT

None noted.

### ***Analysis Provision No. 5: Gross Income Exclusion for Zogg Fire Victims (Sections 6, 14, and 16)***

This provision, under the PITL and CTL, for taxable years beginning on or after January 1, 2020, and before January 1, 2028, would provide an exclusion from gross income for any qualified amount received by a qualified taxpayer.

For purposes of the PITL and CTL, the following definitions would apply:

- “Qualified amount” means any amount received in settlement by a qualified taxpayer from a settlement entity in connection with the 2020 Zogg Fire.
- “Qualified taxpayer” means any of the following:
- Any taxpayer that owned real property located in the County of Shasta or the County of Tehama during the 2020 Zogg Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2020 Zogg Fire.
- Any taxpayer that had a place of business within the County of Shasta or County of Tehama during the 2020 Zogg Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2020 Zogg Fire.
- “Settlement entity” means Pacific Gas and Electric Company or its subsidiary making the settlement payment to a qualified taxpayer.

The provision provides additional criteria for a taxpayer to be considered a “qualified taxpayer” that is different under the PITL and CTL.

Under the PITL, a “qualified taxpayer” would also include any taxpayer that resided within the County of Shasta or County of Tehama during the 2020 Zogg Fire who paid or incurred expenses and received amounts from a settlement arising out of or pursuant to the 2020 Zogg Fire.

This provision would require the settlement entity to provide, upon request by the FTB, documentation of the settlement payments in the form and manner requested by the FTB.

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This provision would require the Legislative Analyst's Office to deliver a report to the Legislature that complies with Section 9795 of the Government Code on December 1, 2028, that includes the following:

- To the extent feasible, the estimated number of qualified taxpayers that excluded qualified amounts from gross income, and
- The estimated aggregate amount of those settlement payments arising out of the 2020 Zogg Fire.

This exclusion would be repealed on December 1, 2028.

This provision specifies that the exclusion is necessary for the public purpose of preventing undue hardship to taxpayers who reside, or used to reside, in a part of California devastated by wildfires and do not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

#### *Effective/Operative Date*

This provision, included within a bill providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2020, and before January 1, 2028.

#### *Federal/State Law*

##### *Federal Law*

Existing federal law, IRC section 139, provides a general exclusion that gross income does not include any amount an individual receives as a qualified disaster payment. A qualified disaster payment means amounts paid to, or for the benefit of, an individual for several purposes, including to:

- Reimburse or pay reasonable and necessary personal, family, living, or funeral expenses the individual incurred because of a qualified disaster; or
- Reimburse or pay reasonable and necessary expenses the individual incurred for the repair or rehabilitation of a personal residence or repair or replacement of its contents, to the extent that the need for such repair, rehabilitation, or replacement is attributable to a qualified disaster.

For any federally declared disaster, an individual may exclude from income a valid disaster relief payment, which includes any amount the individual receives from the settlement award for a purpose listed above.

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A qualified disaster includes any federally declared disaster, as defined in IRC section 165(i). A federally declared disaster is any disaster the President of the United States determines assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act is warranted. (The Federal Emergency Management Agency's website, [www.fema.gov](http://www.fema.gov), provides the listing of federally declared disasters.)

#### *State Law*

California generally conforms to IRC section 139, as described above. California also specifically allows an exclusion from gross income for:

- Settlement payments received from the Fire Victims Trust, and
- Settlement payments received from Southern California Edison for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire.

#### *Implementation Considerations*

None noted.

#### *Technical Considerations*

None noted.

#### *Policy Considerations*

None noted.

### **LEGISLATIVE HISTORY**

AB 294 (Petrie-Norris, 2023/2024) would have provided a qualified taxpayer an exclusion from gross income for amounts received in settlement for a wildfire or natural disaster. This bill did not pass out of the Assembly Appropriations Committee.

SB 370 (McGuire, et al., 2023/2024) would have provided qualified taxpayers an exclusion from gross income for amounts received in settlement of claims relating to the 2019 Kincade Fire and allow refunds of tax previously paid on those amounts. This bill did not pass out of the Assembly Revenue and Taxation Committee.

SB 542 (Dahle, et al., 2023/2024), similar to this bill, would have provided a qualified taxpayer an exclusion from gross income for amounts received in settlement to replace property damaged or destroyed by the 2020 Zogg Fire. This bill did not pass out of the Assembly Appropriations Committee.

AB 1249 (Gallagher, et al., Chapter 749, Statutes of 2022) provides an exclusion from gross income for amounts received in settlement under the order of the United States Bankruptcy Court for the Northern District of California dated June 20, 2020, case number 19-30088, docket number 8053.

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SB 1246 (Stern and Valladares, Chapter 841, Statutes of 2022) provides, to qualified taxpayers, an exclusion from gross income for amounts received from Southern California Edison in settlement for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire and allows refunds of tax previously paid on those amounts.

## **PROGRAM BACKGROUND**

None noted.

## **FISCAL IMPACT**

Implementing Provision No. 5 would not significantly impact the FTB's costs.

## **ECONOMIC IMPACT**

*Revenue discussion for Provision 5.*

To calculate the revenue impact of the gross income exclusion for amounts received from a settlement entity in connection with the 2020 Zogg fire, both the dollar amounts arising from settlement payouts and the timing of those payments must be known. Because settlement information for personal lawsuits for the Zogg Fire is unknown, it is difficult to predict the settlement amount. As a result, the revenue impact is unknown.

However, it is assumed that for every \$100 million in qualified payments received by individuals, the estimated revenue loss would be approximately \$5 million.

## **LEGAL IMPACT**

None noted.

### ***Analysis Provision No. 6: Data Sharing (Section 7)***

This provision of the bill, under the AFITL, would allow the DSS and DHCS to share additional data with the FTB, upon request, for purposes of informing individuals of the availability of the VITA and CalFile programs. The data shared would include the following for a program participant:

- Name
- Date of birth
- Address
- Household or case identification number
- Individual taxpayer identification number or social security number

This provision defined a "program participant" as any individual who receives benefits from a social services program administered by the DSS or DHCS.

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For taxable years beginning on or after January 1, 2020, and before January 1, 2026, The FTB, may, upon request, disclose the return information listed above to the DSS and DHCS.

The FTB may also disclose the following information to the DSS or DHCS:

- Whether the program participant did not file a tax return.
- Whether the program participant was claimed as a dependent on a tax return.

*Effective/Operative Date*

This provision, included within a bill providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2020, and before January 1, 2026.

*Federal/State Law*

Current federal and state law provides that income tax returns and tax information are confidential and may not be disclosed, unless specifically authorized by statute. Improper disclosure of federal tax information is punishable as a felony, and improper disclosure of state tax information is punishable as a misdemeanor.

Current state law provides that for taxable years beginning January 1, 2020, and before January 1, 2022, the FTB may disclose individual income tax information to the DSS and DHCS for purposes of informing state residents of the availability of the VITA, CalFile, federal EITC, CalEITC and other federal and state antipoverty tax credits. The DSS and DHCS may also exchange data with the FTB, which includes name, addresses, and contact information of individuals who may qualify for the CalEITC.

*Implementation Considerations*

None noted.

*Technical Considerations*

None noted.

*Policy Considerations*

None noted.

**LEGISLATIVE HISTORY**

AB 158 (Assembly Committee on Budget, Chapter 737, Statutes of 2022), allowed the DSS and DHCS to exchange data with the FTB for purposes connected with the federal EITC, CalEITC, and other antipoverty tax credits, and allowed the FTB to exchange

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data from tax years 2020 and 2021 with the DSS and the DHCS for purposes of identifying taxpayers who may qualify for federal EITC, CalEITC, other antipoverty tax credits, VITA, and CalFile.

## **PROGRAM BACKGROUND**

None noted.

## **FISCAL IMPACT**

Implementing Provision No. 6 would not significantly impact the FTB's costs.

## **ECONOMIC IMPACT**

### *Revenue Estimate*

Provision No. 6 of the bill as amended on June 26, 2023, makes changes to the data sharing language between the FTB, CDSS and DHCS and would not change the calculation of income or franchise tax.

## **LEGAL IMPACT**

None noted.

### ***Analysis Provision No. 7: EITC Outreach (Sections 8 and 9)***

For the purposes of the EITC Information Act, this provision of the bill would define the following:

"State departments and agencies that serve those who may qualify for Voluntary Income Tax Assistance or state and federal antipoverty tax credits, including the federal EITC and the California EITC" means the following departments and agencies:

- The State Department of Education with respect to information from the free or reduced-price meal program and National School Lunch Program.
- The Employment Development Department (EDD) with respect to information from the California Unemployment Insurance program.
- The State DHCS with respect to information from the Medi-Cal program.
- The State DSS with respect to information from the CalFresh and CalWORKS programs.

"State and federal antipoverty tax credits" means state and federal tax credits that are designed to alleviate poverty and tax burdens for low-income households.



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“Voluntary Income Tax Assistance” or “(VITA)” means the free basic income tax return preparation program, for federal and state personal income tax returns, managed by the Internal Revenue Service and operated by Internal Revenue Service partners and trained volunteers.

“CalFile” means the FTB’s free, direct, online program for taxpayers to complete and e-file their state personal income tax returns.

The amendments made by this section would apply to notices furnished on or after January 1, 2024.

#### *Effective/Operative Date*

This provision, included within a bill providing for appropriations relating to the Budget Bill, would be effective immediately upon enactment, specifically operative for notices furnished after January 1, 2024.

#### *Federal/State Law*

Existing federal law allows eligible individuals a refundable Earned Income Tax Credit (EITC) under IRC section 32. The 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.

State law provides a refundable CalEITC that is generally patterned after IRC section 32, as applicable for state income tax purposes for the taxable year, except as modified. State law, known as the EITC Information Act, requires California employers, state departments, and certain agencies to provide formal notification to their program recipients of possible eligibility for the federal EITC and CalEITC.

For the purposes of the EITC Information Act, state law defines several terms, including “state departments and agencies that service those who may qualify for the federal EITC and the CalEITC,” which means the State Department of Education, the EDD, and DHCS.

#### *Implementation Considerations*

None noted.

#### *Technical Considerations*

None noted.

#### *Policy Considerations*

None noted.

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## **LEGISLATIVE HISTORY**

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

## **PROGRAM BACKGROUND**

Free tax help is available through VITA and Tax Counseling for the Elderly (TCE). Taxpayers living in California can get free tax help from these programs to file their federal and California personal income tax returns:

VITA is available to taxpayers that:

- Make \$60,000 or less,
- Have disabilities,
- Speak limited English, or
- Are active duty or retired military personnel, or a dependent.
- TCE is available to taxpayers over 60 years old.

Additionally, CalFile is a free, direct online program that allows taxpayers to e-file their personal income tax returns with FTB. A MyFTB account provides individuals online access to tax account information and online services. The CalFile program greatly expanded taxpayers eligible for this service and also allowed taxpayers to file prior year returns. FTB began utilizing CalFile exclusively as a simplified filing portal for the California return in 2015. This portal also allowed for pre-population of data if taxpayers registered and obtained a MyFTB account.

## **FISCAL IMPACT**

Implementing Provision No. 7 would not significantly impact the FTB's costs.

## **ECONOMIC IMPACT**

### *Revenue Estimate*

Provision No. 7 of the bill as amended on June 26, 2023, related to the EITC Information Act would not change the calculation of income or franchise tax.

## **LEGAL IMPACT**

None noted.

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***Analysis Provision No. 8: Antipoverty Tax Credits and Program Notices (Sections 10 and 11)***

This provision, under the AFITL, would require an employer to notify their employees of their possible eligibility of the following programs:

- VITA
- CalFile
- State and federal antipoverty tax credits, including the federal and CalEITC

An employer would be required to send a second notification to all the employees during the month of March of the same year in which the employer sent the first notification.

This provision modifies the notice that is required under this provision, by making it more user friendly. In addition, the notices would be updated to include information on the following:

- VITA
- CalFile
- Antipoverty tax credits
- YCTC
- FYTC

*Effective/Operative Date*

This provision, included within a bill providing for an appropriation related to the Budget Bill, would be effective immediately upon enactment, specifically operative for notices furnished after January 1, 2024.

*Federal/State Law*

Existing federal law allows eligible individuals a refundable EITC under IRC section 32. The 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.

Existing state law requires an employer to notify all employees of the availability of the Federal EITC and the CalEITC within one week before, or after, or at the same time the employer provides the annual wage summary. The notification may be provided in person or by mail. State departments and agencies who serve individuals who may qualify for the federal EITC and CalEITC to notify them of the availability of these programs at least once a year during the months of January through April. The notification may be provided by telephone, mail, email, in person or indirectly through other agencies.

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The notification required for employees provides information on the availability of the Federal EITC and CalEITC. The notice specifies that those claiming these credits will typically not impact other benefits the recipient may be receiving. In addition, the notice includes contact information for questions.

State law provides a refundable CalEITC that is generally patterned after IRC section 32, as applicable for state income tax purposes for the taxable year, except as modified. 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 the federal EITC.

#### *Implementation Considerations*

None noted.

#### *Technical Considerations*

None noted.

#### *Policy Considerations*

None noted.

### **LEGISLATIVE HISTORY**

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

### **PROGRAM BACKGROUND**

None noted.

### **FISCAL IMPACT**

Implementing Provision No. 8 would not significantly impact the FTB's costs.

### **ECONOMIC IMPACT**

#### *Revenue Estimate*

Provision No. 8 of the bill as amended on June 26, 2023, related to employer notifying their employees of available programs, would not change the calculation of income or franchise tax.

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## LEGAL IMPACT

None noted.

### ***Analysis Provision No. 9: MCTR Payment Issuance (Section 15)***

Under the WIC, FTB would be required to make the one-time MCTR payment to qualified recipients no later than September 30, 2023. In addition, the FTB would be allowed to reissue stale, dated, or replacement warrants after September 30, 2023, in the form and manner prescribed by the FTB. FTB would also be allowed, through the third-party vendor, to reissue replacement debit cards after September 30, 2023, in the form and manner prescribed by the FTB.

#### *Effective/Operative Date*

This provision, included within a bill providing for appropriations relating to the Budget Bill, would be effective and operative immediately upon enactment.

#### *Federal/State Law*

##### *Federal Law*

Under the Coronavirus Aid, Relief, and Economic Security Act (Public Law (P.L.) 116-136), Consolidated Appropriations Act, (P.L. 116-206), and American Rescue Plan Act, (P.L. 117-2), economic impact payments were provided in varying amounts based on an individual's filing status and adjusted gross income in 2019, 2020, and 2021. The last of the three economic impact payments were issued by December 2021.

##### *State Law*

Under the WIC, the Golden State Stimulus I (GSS I), Golden State Stimulus II (GSS II), and Better for Families Act (also known as MCTR) payments were issued as separate, one-time payments to qualified recipients. Qualified recipients had to meet specified eligibility requirements to receive a payment. The payments were excluded from gross income, exempt from offsets and levies, and garnishment orders.

GSS I and GSS II payments were issued by the Controller by July 15, 2022. However, the Controller could reissue stale, dated, or replacement checks after July 15, 2022. All returned payments are redeposited into the Golden State Stimulus Emergency Fund. Any unused money remaining in the Golden State Stimulus Emergency Fund will be transferred to the General Fund by June 1, 2024.

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For the MCTR payments, FTB was allowed to contract with a third-party vendor for services related to the distribution of payments. All returned payments are redeposited into the Better for Families Tax Refund Fund. Any unused money remaining in the Better for Families Tax Refund Fund must be transferred to the General Fund by June 1, 2024.

#### *Implementation Considerations*

None noted.

#### *Technical Considerations*

None noted.

#### *Policy Considerations*

None noted.

### **LEGISLATIVE HISTORY**

AB 192 (Assembly Committee on Budget, Chapter 737, Statutes of 2022) established the Better for Families Act under the WIC that authorized the Controller to make a one-time MCTR payment to qualified recipients in an applicable amount, which is excluded from gross income for California purposes.

AB 88 (Assembly Committee on Budget, Chapter 12, Statutes of 2021) made clarifying changes to the GSS I program, including clarifying the qualified recipient definition, excluded the GSS I payment and Golden State Grant (GSG) payment from gross income, and exempted those payments from garnishment orders.

SB 88 (Senate Committee on Budget and Fiscal Review, Chapter 8, Statutes of 2021) created the one-time GSS I and GSG payment programs.

SB 139 (Senate Committee on Budget and Fiscal Review, Chapter 71, Statutes of 2021) created the one-time GSS II payment and modified the filing time requirement and federal Individual Tax Identification Number requirements under the one-time GSS I payment provisions.

### **PROGRAM BACKGROUND**

None noted.

### **FISCAL IMPACT**

Implementing Provision No. 9 would not significantly impact the FTB's costs.

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**ECONOMIC IMPACT**

Provision 9 of the bill, as amended June 26, 2023, would not impact state income or franchise tax revenue.

**LEGAL IMPACT**

None noted.

**APPOINTMENTS (All Provisions)**

None noted.

**SUPPORT/OPPOSITION (All Provisions)**

None on file.

**ARGUMENTS (All Provisions)**

None on file.

**LEGISLATIVE CONTACT**

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