



Bill Analysis

Author: Limon

Sponsor:

Bill Number: SB 533

Related Bills: See Legislative
History

Introduced: February 14, and
Amended March 20, April 25,
and May 4, 2023

SUBJECT

Employer Childcare Tax Credit

SUMMARY

This bill would do the following:

Provision No. 1 – Employer Childcare Tax Credit:

Sections 1 and 3 of the bill, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), would provide a tax credit for startup expenses to establish a childcare program or construct a childcare facility in California, and for contributions to California childcare information and referral services.

Provision No. 2 - Employer Contributions to a Qualified Care Plan Tax Credit:

Sections 2 and 4 of the bill, under the PITL and CTL, would provide a tax credit for employer contributions to a qualified care plan on behalf of any qualified dependent of the taxpayer's qualified employee.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 20, 2023, amendments removed childcare tax credit intent language and replaced it with the provisions discussed in this analysis.

The April 25, 2023, amendments revised the operative date, tax credit requirements, and defined terms.

The May 4, 2023, amendments reduced the maximum tax credit amounts for the employer childcare tax credit and made a technical change.

This is the Franchise Tax Board's (FTB) first analysis of the bill.

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REASON FOR THE BILL

The reason for this bill is to encourage employers to provide childcare and contributions to care plans for their employees’ dependents.

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

| Fiscal Year | 2023-2024 | 2024-2025 | 2025-2026 |
|--|------------------|------------------|------------------|
| Provision No. 1 – Employer Childcare Tax Credit | -\$0.15 | -\$0.35 | -\$0.45 |
| Provision No. 2 – Employer Contributions to a Qualified Care Plan Tax Credit | -\$3.5 | -\$8.9 | -\$11 |

Effective/Operative Date (Both Provisions)

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

ANALYSIS

Analysis Provision No. 1:

Employer Childcare Tax Credit (Sections 1 and 3)

The provision, under the PITL and the CTL, would for each taxable year beginning on or after January 1, 2024, and before January 1, 2029, provide a tax credit equal to 30% of any of the following:

- The costs paid or incurred by the taxpayer on or after January 1, 2024, for the startup expenses of establishing a childcare program or constructing a childcare facility in California, to be used primarily by the children of the taxpayer’s employees.
- The cost paid or incurred on or after January 1, 2024, for startup expenses of establishing a childcare program or constructing a childcare facility in California, to be used primarily by the children of employees of tenants leasing commercial or office space in a building owned by the taxpayer.
- The cost paid or incurred by the taxpayer on or after January 1, 2024, for contributions to California childcare information and referral services, including but not limited to those that identify local childcare services, offer information describing these resources to the taxpayer’s employees, and make referrals of the taxpayer’s employees to childcare services where there are vacancies.

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This provision would provide that:

- The amount of the credit could not exceed \$30,000 for the taxable year.
- If two or more taxpayers share in the costs eligible for the credit, each taxpayer would be eligible to receive a tax credit with respect to his, her, or its respective share of the costs paid or incurred.
- Any excess credit could be carried over, for eight years, until exhausted.
- A deduction would not be allowed for any amount taken into account in the computation of this credit.

This provision would define the following:

- "Dependent" would have the same meaning as Internal Revenue Code (IRC) section 152.
- "Primarily" would mean enrollment of more than 50% on average during the taxable year.
- "Startup expenses" would include, but not be limited to, feasibility studies, site preparation and construction, renovation, or acquisition of facilities for purposes of establishing or expanding onsite or nearsite centers by one or more employers or one or more building owners leasing space to employers.

To be allowed the credit, this provision would require the taxpayer to indicate, in the form and manner prescribed by the FTB, the number of children that the childcare program or facility will be able to legally accommodate.

This provision would require the FTB to submit on or before January 1, 2026, and annually thereafter, to the Legislature the following information:

- The dollar amount of credits claimed annually.
- The number of childcare facilities established or constructed by taxpayers claiming the credit.
- The number of children served by these facilities.

The report would be required to be submitted in compliance with Government Code section 9795.

This provision provides that any excess credit could be carried over, for eight years, until exhausted.

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

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Federal/State Law

Federal Law

Federal Law allows tax credits equal to 25% of qualified expenses for employee childcare and 10% of qualified expenses for childcare resource and referral services. The maximum total credit that may be claimed by a taxpayer cannot exceed \$150,000 per taxable year.

Qualified childcare expenses include costs paid or incurred (1) to acquire, construct, rehabilitate, or expand property that is to be used as part of the taxpayer's qualified child care facility, (2) for the operation of the taxpayer's qualified child care facility, including the costs of training and certain compensation for employees of the child care facility, and scholarship programs; or (3) under a contract with a qualified child care facility to provide childcare services to employees of the taxpayer.

Qualified childcare resource and referral expenses are amounts paid or incurred under a contract to provide childcare resource and referral services to the employees of the taxpayer.

State Law

Existing state law provides various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

There are currently no state credits comparable to the credit that would be allowed by this provision.

Implementation Considerations

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

This bill requires the FTB to prepare a report on the performance of the credit allowed by this bill on or before January 1, 2026. If the author's intent is to review a report that contains complete information for the 2024 taxable year, it is recommended that the reporting due date be extended to June of 2027. 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, 2026. The FTB needs approximately six months to complete return

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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 June of 2027 to provide information for the 2024 taxable year.

Technical Considerations

For consistency of terminology, the following changes are recommended:

- In Sections 17052.17(b)(1)(A) and 23617(b)(1)(A), replace “The costs paid or incurred by the taxpayer on or after January 1, 2024...” with “The costs paid or incurred during the taxable year...”
- In Sections 17052.17(b)(1)(B) and 23617(b)(1)(B), replace “The cost paid or incurred by the taxpayer on or after January 1, 2024...” with “The costs paid or incurred during the taxable year...”
- In Sections 17052.17(b)(1)(C)(i) and 23617(b)(1)(C)(i), replace “The cost paid or incurred by the taxpayer on or after January 1, 2024...” with “The costs paid or incurred during the taxable year...”
- In Sections 17052.17(c)(1) and 23617(c)(1), replace “has the same meaning as in Section 152 of the Internal Revenue Code.” with “...as defined in Section 17056.”

To provide clarity, for Sections 17052.17(b)(1)(C)(ii) and 23617(b)(C)(ii), if the author would like the requirement to apply to the costs in (b)(1)(A) and (B), then, the author may want to move that language to a new paragraph (3) under subdivision (b).

To ensure the carryover is implemented as a typical carryover, the author may want to strike out “...and limited under subdivision (b) for the taxable year...” in Sections 17052.17(e) and 23617(e) and insert “...by this section...”

For clarity, the following change is also recommended in Sections 17052.17(f) and 23617(f), replace “...credit allowed under this section.” with “...expenses used in computing the credit allowed under this section.”

Policy Considerations

None noted.

LEGISLATIVE HISTORY (BOTH PROVISIONS)

SB 670 (Jackson, 2015/2016), substantially similar to this bill, would have allowed an employer childcare tax credit program. SB 670 did not pass out of the Assembly Appropriations Committee.

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PROGRAM BACKGROUND

Prior state law allowed, under both the PITL and the CTL, the Employer Child Care Program Credit for taxable years beginning on or after January 1, 1995, and before January 1, 2012. The credit equaled 30% of the costs for (1) establishing a childcare program or constructing a childcare facility in California that was to be used by employees' children and (2) contributing to childcare information and referral services. Building owners were allowed a credit equal to 30% of their costs to establish a childcare program or facility to be used by their tenants' employees' children. The amount of the credit was limited to \$50,000.

FISCAL IMPACT (BOTH PROVISIONS)

FTB'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 provision would result in the following revenue loss:

Estimated Revenue Impact of SB 533, for Provision No. 1, as Amended May 4, 2023
Assumed Enactment after June 30, 2023

(\$ in Millions)

| Fiscal Year | Revenue |
|--------------------|----------------|
| 2023-2024 | -\$0.15 |
| 2024-2025 | -\$0.35 |
| 2025-2026 | -\$0.45 |

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.

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Analysis Provision No. 2:

Employer Contributions to a Qualified Care Plan Tax Credit (Sections 2 and 4)

The provision, under the PITL and the CTL, would for each taxable year beginning on or after January 1, 2024, and before January 1, 2029, provide a tax credit equal to 30% of the cost paid or incurred by the taxpayer for contributions to a qualified care plan made on behalf of any qualified dependent of the taxpayer's qualified employee, not to exceed \$360 for each qualified dependent, per taxable year.

This provision would define the following:

- "Qualified care plan" means a plan providing qualified care.
- "Qualified care" includes, but is not limited to, onsite service, center-based service, in-home care or home-provider care, and a dependent care center as defined by IRC section 21(b)(2)(D) that is a specialized center with respect to short-term illnesses of an employee's dependents. "Qualified care" must be provided in this state under the authority of a license when required by California law.
- "Specialized Center" means a facility that provides care to mildly ill children and that may do all of the following:
 - Be staffed by pediatric nurses and daycare workers.
 - Admit children suffering from common childhood ailments (including colds, flu, and chickenpox).
 - Make special arrangements for well children with minor problems associated with diabetes, asthma, breaks or sprains, and recuperation from surgery.
 - Separate children according to their illness and symptoms in order to protect them from cross-infection.
- "Contributions" include direct payments to childcare programs or providers but would not include amounts contributed to a qualified care plan pursuant to a salary reduction agreement to provide benefits under a dependent care assistance program.
- "Qualified employee" means any employee of the taxpayer who is performing services for the taxpayer in this state, within the meaning of Section 25133, during the period in which the qualified care is performed.
- "Employee" includes an individual who is an employee within the meaning of IRC section 401(c)(1), relating to self-employed individual treated as an employee.
- "Qualified dependent" means any dependent, as defined in IRC section 152, of a qualified employee who is under 12 years of age at the end of the taxable year.

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This provision would provide the following:

- If an employer makes contributions to a qualified care plan and also collects fees from parents to support a childcare facility owned and operated by the employer, a credit would not be allowed for contributions in the amount, if any, by which the sum of the contributions and fees exceed the total cost of providing care. The FTB could require information about fees collected from parents of children served in the facility from taxpayers claiming credits under this provision.
- If the duration of the childcare received is less than 42 weeks, the employer would claim a prorated portion of the allowable credit using the ratio of the number of weeks of care received divided by 42 weeks.
- Contributions to a qualified care plan could not discriminate in favor of employees who are officers, owners, or highly compensated, or their dependents.
- A deduction would not be allowed for any amount taken into account in the computation of this credit.

This provision would require the taxpayer to provide, in the form and manner requested by the FTB, the number of children of employees served by the qualified childcare plan.

The FTB would be required, on or before January 1, 2026, to report to the Legislature the following information:

- The dollar amount of credits claimed annually.
- The number of children of employees served by the qualified care plan for which the taxpayer claimed a credit.

The report would be required to be submitted in compliance with Government Code section 9795.

This provision provides that any excess credit could be carried over, for eight years, until exhausted.

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

Federal/State Law

There are currently no federal or state credits comparable to the credit that would be allowed by this provision.

Introduced February 14, and Amended March 20, April 25, and May 4, 2023

Implementation Considerations

This bill requires the FTB to prepare a report on the performance of the credit allowed by this bill on or before January 1, 2026. If the author's intent is to review a report that contains complete information for the 2024 taxable year, it is recommended that the reporting due date be extended to June of 2027. 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, 2026. The FTB 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 June of 2027 to provide information for the 2024 taxable year.

Technical Considerations

This provision uses the following undefined terms, such as "onsite service," "center-based service," "in-home care," and "home-provider care." The absence of definitions to clarify terms could lead to disputes with taxpayers. For clarity, it is recommended that the provision be amended to define these terms.

For consistency of terminology, the following change is recommended in Sections 17052.18(c)(7) and 23618(c)(7) replace "...as defined in Section 152 of the Internal Revenue Code..." with "...as defined in Section 17056."

For clarity, the following change is recommended: in subdivision (h) of Section 17052.18 and Section 23618, replace "...credit allowed under this section." with "...expenses used in computing the credit allowed under this section."

Policy Considerations

None noted.

PROGRAM BACKGROUND

Prior state law allowed the Employer Child Care Contribution Credit. The credit equaled 30% of the costs for contributing to a childcare program for the employees' dependents for taxable years beginning on or after January 1, 1995, and before January 1, 2012. The credit was limited to \$360 for each dependent under the age of 12.

Introduced February 14, and Amended March 20, April 25, and May 4, 2023

ECONOMIC IMPACT

Revenue Estimate

This provision would result in the following revenue loss:

Estimated Revenue Impact of SB 533, for Provision No. 2, as Amended May 4, 2023
Assumed Enactment after June 30, 2023

(\$ in Millions)

| Fiscal Year | Revenue |
|--------------------|----------------|
| 2023-2024 | -\$3.5 |
| 2024-2025 | -\$8.9 |
| 2025-2026 | -\$11 |

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 (Both Provisions)

None noted.

SUPPORT/OPPOSITION (Both Provisions)

As per the Senate Governance and Finance Committee analysis of SB 533 dated April 28, 2023, the California Chamber of Commerce and City of Goleta support this bill, while no opposition was received.

ARGUMENTS (Both Provisions)

As per the same analysis, no arguments were noted.

LEGISLATIVE CONTACT

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