AMENDED IN SENATE MARCH 23, 2015

SENATE BILL No. 38

Introduced by Senator Liu

December 1, 2014

An act to add Section *22255.5 to the Business and Professions Code, and to add and repeal Sections* 17052.1 ~~to~~ *and 17052.2 of* the Revenue and Taxation Code, relating to ~~taxation, to take effect immediately, tax levy.~~ *the earned income tax credit.*

LEGISLATIVE COUNSEL'S DIGEST

SB 38, as amended, Liu. Personal income tax: credit: earned ~~income.~~ *income: tax preparer education.*

~~The~~

(1) The Personal Income Tax Law allows various credits against the taxes imposed by that law, including certain credits that are allowed in modified conformity to credits allowed by federal income tax laws.

This ~~bill would,~~ *bill,* for taxable years beginning on or after January 1, 2016, and before January 1, 2027, *would* allow a credit based upon earned income that is equal to ~~15%~~ *30% for eligible individuals with qualifying children and 100% for eligible individuals with no qualifying children, as specified,* of the earned income tax credit allowed by federal law. *If the amount allowable as a credit exceeds tax liability, the bill would require the excess to be credited against other amounts due, if any, and the balance, if any, to be carried forward, or, upon appropriation by the Legislature, be paid from the General Fund and refunded to the eligible individual.* The bill would require the Franchise Tax Board to report to the Legislature regarding the utilization of the tax credit, as provided.

~~This bill would take effect immediately as a tax levy.~~

This bill would also require the Franchise Tax Board to establish a pilot program to allow eligible individuals to secure advance payments of the aforementioned credit. The bill would make the pilot program applicable to taxable years beginning on or after January 1, 2017, and before January 1, 2019, where an employer and an eligible individual have agreed to participate in the pilot program. The bill would require the Franchise Tax Board to study and report on the pilot program by a specified date.

(2) Existing law establishes the California Tax Education Council, a nonprofit organization, and requires the council to register and regulate tax preparers. Existing law requires the council to issue a "certificate of completion" to the tax preparer when the tax preparer demonstrates that he or she has completed basic tax instruction from an approved curriculum provider. Existing law also requires a tax preparer to annually complete continuing education from an approved curriculum provider. Except as provided, a violation of the provisions governing tax preparers is a crime.

This bill, for purposes of basic instruction and continuing education, would require an approved curriculum provider to include instruction for filing taxes for a taxpayer who is an eligible individual and meets the requirements for the state earned income tax credit, as described above. Because a violation of these requirements would constitute a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) In its Supplemental Poverty Measure report for the year 2013, released in October 2014, the United States Census Bureau reported California's rate of poverty to be 23.4 percent. This rate is the highest among all 50 states.

(b) Using census data released in September 2014, the California Budget Project (CBP) reported that the economic recovery from the Great Recession has largely bypassed low- and middle-income Californians, with the bottom three-fifths of the income distribution experiencing stagnating income gains. This is contrasted with the top one-fifth of the income distribution experiencing gains of 52.4 percent.

(c) A briefing on poverty released by the CBP in August 2014 reports that 67 percent of families living in poverty were supported by one or more workers in 2012. Given that the majority of families living in poverty are working families in California, it is evident that poverty largely reflects low-paying jobs, not the absence of employment.

(d) In California, the Public Policy Institute of California (PPIC), in collaboration with the Stanford Center on Poverty and Inequality, has developed the California Poverty Measure (CPM), which underscores the role of California's social safety net amount, which includes the CalFresh Program, CalWORKs, and the federal Earned Income Tax Credit (EITC), in mitigating poverty.

(e) Using data from 2011, a PPIC report on the CPM released in October 2013, reveals that 22 percent of Californians, 8.1 million people, lived in poverty. A comparison of CPM rates by county show that the three most populous counties, Los Angeles County, San Diego County, and Orange County, all had rates above the statewide CPM at 26.9 percent, 22.7 percent, and 24.3 percent, respectively.

(f) The CPM rate for children statewide, those under 18 years of age, was 25.1 percent, the highest rate of any age group. This amounts to 2.3 million of California's children living in poverty.

(g) Without need-based safety net programs and resources, over 30 percent of Californians would be living in poverty. The absence of the safety net would increase the poverty rate among California's children to 39 percent according to the CPM.

(h) Refundable tax credits, including the federal EITC, reduced the poverty rate in California by 3.2 percent overall. Among children, the poverty rate reduction was 6 percent. This means that 560,000 fewer children and 600,000 fewer working-age adults, 1.16 million people fewer in total, are living in poverty when refundable tax credits are accounted for in the CPM.

(i) According to the National Conference of State Legislatures, 25 states in the country and the District of Columbia, provide an EITC in addition to the federal EITC. California does not currently have a state EITC.

(j) A Brookings Institution report issued in January 2003, shows that in addition to boosting the family incomes of families in poverty, state EITC refunds served as an important economic stimulus for the communities and regions of the families by magnifying the impact of the federal EITC overall.

SEC. 2. Section 22255.5 is added to the Business and Professions Code, to read:

22255.5. For purposes of basic instruction and continuing education as described in subdivisions (a) and (b) of Section 22255, an approved curriculum provider shall include instruction for preparing taxes for a taxpayer who is an eligible individual and meets the requirements for the state earned income tax credit described in Section 17052.1 of the Revenue and Taxation Code.

~~SECTION 1.~~

SEC. 3. Section 17052.1 is added to the Revenue and Taxation Code, to read:

17052.1. (a) For each taxable year beginning on or after January 1, 2016, and before January 1, 2027, there shall be allowed a credit against the "net tax," as defined ~~by~~ *in* Section 17039, *in* an amount computed by multiplying the "federal earned income credit amount," as defined in subdivision (b), by ~~15 percent.~~ *30 percent for eligible individuals with qualifying children and 100 percent for eligible individuals with no qualifying children.*

(b) For *the* purposes of this section, "federal earned income credit amount" means the amount determined under Section 32 of the Internal Revenue Code, *relating to earned income* as amended by Section 1002(a) of Public Law 111-5, as amended by Section 219(a)(2) of Public Law 111-226, as amended by Section 103(c) of Public Law 111-312, and as amended by Section 103(c) of Public Law 112-240.

(c) For the purposes of this section, an "eligible individual" shall have the same meaning as in Section 32(c)(1) of the Internal Revenue Code, except that Section 32(c)(1)(A)(ii)(II) of the Internal Revenue Code is modified to substitute "age 21" for "age 25."

(d) (1) Except as provided in paragraph (2), in the case where the credit allowed under this section exceeds "net tax," the excess

credit may be carried over to reduce the "net tax" in the following taxable year, and succeeding taxable years, if necessary, until the credit is exhausted.

(2) If the amount allowable as a credit under this section exceeds the tax liability computed under this part for the taxable year, the excess shall be credited against other amounts due, if any, and the balance, if any, shall, upon appropriation by the Legislature, be paid from the General Fund and refunded to the qualified taxpayer.

(e) Any amounts refunded to a taxpayer pursuant to this section shall not be included in income subject to tax under this part.

(f) For an individual who is a nonresident or is a part-year resident of this state, the amount of the credit or refund allowed under this section shall be determined based on the part of the earned income credit allowable for the taxable year that is attributable to California, determined by multiplying the federal earned income credit by a fraction as follows:

(1) The numerator of which is the California adjusted gross income of the individual.

(2) The denominator of which is the federal adjusted gross income of the individual.

(g) Notwithstanding any other provision, for the purpose of determining eligibility to receive benefits under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or the amounts of those benefits, any refund made to an individual (or the spouse or registered domestic partner of an individual) pursuant to this section, and any payment made to the individual (or the spouse or registered domestic partner) by an employer pursuant to Section 17052.2, shall not be treated as income and shall not be taken into account in determining resources for the month of its receipt and the following month.

~~(c)~~

(h) (1) Notwithstanding Section 10231.5 of the Government Code, on or before January 1, 2026, the Franchise Tax Board shall submit a report on the utilization of the credit described in subdivision (a) to the Legislature. The report shall include information regarding the effectiveness of the credit, including the amount of the credit claimed, the number of claims made, and an estimate of the amount overclaimed and underclaimed.

(2) The report submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(i) Section 41 does not apply to the credit allowed by this section.

(j) This section is repealed on December 1, 2027.

~~SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.~~

SEC. 4. Section 17052.2 is added to the Revenue and Taxation Code, to read:

17052.2. (a) The Franchise Tax Board shall establish a pilot program to allow eligible individuals to secure advance payments of a credit amount for which they are qualified pursuant to Section 17052.1. The purpose of the pilot program is to study the feasibility and effectiveness of preventing debt and financial hardship among low-income working individuals and families.

(b) The pilot program shall apply to any credits for which a taxpayer is an eligible individual in accordance with Section 17052.1 on or after taxable years January 1, 2017, and before January 1, 2019, where an employer and an eligible individual have agreed to participate in the pilot program.

(c) (1) Not later than January 1, 2020, the Franchise Tax Board shall study the pilot program and report the findings of the pilot program to the Legislature.

(2) The report submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(d) This section is repealed on December 1, 2020.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O