AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE MAY 6, 2015

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 and 17052.2 of the Revenue and Taxation Code, relating to the earned income tax credit.~~ *amend Sections 19136 and 19167 of, and to add Section 17052 to, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

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

~~(1) The~~

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. *Federal income tax laws allow a refundable earned income tax credit for certain low-income individuals who have earned income and who meet certain other requirements.*

This 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 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.~~ *2015, in modified conformity with federal income tax laws, would allow a refundable earned income credit to an eligible individual that is equal to the earned income tax credit allowed by federal law in an amount determined by the earned income tax credit adjustment factor as determined in the annual Budget Act.*

~~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 preparing 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.~~

Existing law establishes the continuously appropriated Tax Relief and Refund Account, and provides that payments required to be made to taxpayers or other persons from the Personal Income Tax Fund are to be paid from that account.

By authorizing a new, refundable income tax credit to be paid from that account, this bill would make an appropriation.

The Personal Income Tax Law imposes taxes based upon taxable income and also imposes interest and penalties with regard to those taxes under specified circumstances, including a penalty for the underpayment of estimated tax. Existing law provides no addition to tax shall be imposed to the extent that the underpayment was created or increased by any law that is chaptered during and operative for the taxable year of the underpayment.

This bill would provide that addition to tax shall not be imposed if the applicable percentage for the earned income tax credit for the taxable year was less than the applicable percentage for that credit for the preceding taxable year and would impose a penalty, in conformity with federal law, for failure to be diligent in determining eligibility for the earned income tax credit, as specified.

Vote: ~~majority~~ *2⁄3*. Appropriation: ~~no~~ *yes*. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

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

SECTION 1. Section 17052 is added to the Revenue and Taxation Code, to read:

17052. (a) (1) For each taxable year beginning on or after January 1, 2015, there shall be allowed against the "net tax," as defined by Section 17039, an earned income tax credit in an amount equal to an amount determined in accordance with Section 32 of the Internal Revenue Code, relating to earned income, as applicable for federal income tax purposes for the taxable year, except as otherwise provided in this section.

(2) (A) The amount of the credit determined under Section 32 of the Internal Revenue Code, relating to earned income, as modified by this section, shall be multiplied by the earned income tax credit adjustment factor for the taxable year.

(B) Unless otherwise specified in the annual Budget Act, the earned income tax credit adjustment factor for a taxable year beginning on or after January 1, 2015, shall be zero percent.

(C) The earned income tax credit authorized by this section shall only be operative for taxable years for which resources are authorized in the annual Budget Act for the Franchise Tax Board to oversee and audit returns associated with the credit.

(b) (1) In lieu of the table prescribed in Section 32(b)(1) of the Internal Revenue Code, relating to percentages, the credit percentage and the phaseout percentage shall be determined as follows:

In the case of an eligible individual with:	*The credit percentage is:*	*The phaseout percentage is:*
No qualifying children	*7.65%*	*7.65%*
1 qualifying child	*34%*	*34%*
2 or more qualifying children	*40%*	*40%*

(2) (A) In lieu of the table prescribed in Section 32(b)(2)(A) of the Internal Revenue Code, the earned income amount and the phaseout amount shall be determined as follows:

In the case of an eligible individual with:	*The earned income amount is:*	*The phaseout amount is:*
No qualifying children	*$3,290*	*$3,290*
1 qualifying child	*$4,940*	*$4,940*
2 or more qualifying children	*$6,935*	*$6,935*

(B) Section 32(b)(2)(B) of the Internal Revenue Code, relating to joint returns, shall not apply.

(3) Section 32(b)(3)(A) of the Internal Revenue Code, relating to increased percentage for 3 or more qualifying children, is modified by substituting "the credit percentage and phaseout percentage is 45 percent" for "the credit percentage is 45 percent".

(c) (1) Section 32(c)(1)(A)(ii)(I) of the Internal Revenue Code is modified by substituting "this state" for "the United States".

(2) Section 32(c)(2)(A) of the Internal Revenue Code is modified as follows:

(A) Section 32(c)(2)(A)(i) is modified by deleting ", plus" and inserting in lieu thereof the following: "and only if such amounts are subject to withholding pursuant to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code".

(B) Section 32(c)(2)(A)(ii) shall not apply.

(3) Section 32(c)(3)(C) of the Internal Revenue Code, relating to place of abode, is modified by substituting "this state" for "the United States".

(d) Section 32(i)(1) of the Internal Revenue Code is modified by substituting "$3,400" for "$2,200".

(e) In lieu of Section 32(j) of the Internal Revenue Code, relating to inflation adjustments, for taxable years beginning on or after January 1, 2016, the amounts specified in paragraph (2) of subdivision (b) and in subdivision (d) shall be recomputed annually in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

(f) 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 be paid from the Tax Relief and Refund Account and refunded to the taxpayer.

(g) The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the Franchise Tax Board pursuant to this section.

(h) Notwithstanding any other law, amounts refunded pursuant to this section shall be treated in the same manner as the federal earned income refund for the purpose of determining eligibility to receive benefits under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or amounts of those benefits.

(i) (1) For the purpose of implementing the credit allowed by this section for the 2015 taxable year, the Franchise Tax Board shall be exempt from the following:

(A) Special Project Report requirements under State Administrative Manual Sections 4819.36, 4945, and 4945.2.

(B) Special Project Report requirements under Statewide Information Management Manual Section 30.

(C) Section 11.00 of the 2015 Budget Act.

(D) Sections 12101, 12101.5, and 12102, and 12102.1 of the Public Contract Code.

(2) The Franchise Tax Board shall formally incorporate the scope, costs, and schedule changes associated with the

implementation of the credit allowed by this section in its next anticipated Special Project Report for its Enterprise Data to Revenue project.

SEC. 2. Section 19136 of the Revenue and Taxation Code is amended to read:

19136. (a) Section 6654 of the Internal Revenue Code, relating to failure by an individual to pay estimated income tax, shall apply, except as otherwise provided.

(b) Section 6654(a)(1) of the Internal Revenue Code is modified to refer to the rate determined under Section 19521 in lieu of Section 6621 of the Internal Revenue Code.

(c) (1) Section 6654(e)(1) of the Internal Revenue Code, relating to exceptions where the tax is a small amount, does not apply.

(2) No addition to the tax shall be imposed under this section if the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 for the preceding taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, or the tax computed under Section 17041 or 17048 upon the estimated income for the taxable year, minus the sum of any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, is less than five hundred dollars ($500), except in the case of a separate return filed by a married person the amount shall be less than two hundred fifty dollars ($250).

(d) Section 6654(f) of the Internal Revenue Code does not apply and for purposes of this section the term "tax" means the tax imposed under Section 17041 or 17048 and the tax imposed under Section 17062 less any credits against the tax provided by Part 10 (commencing with Section 17001) or this part, other than the credit provided by subdivision (a) of Section 19002.

(e) (1) The credit for tax withheld on wages, as specified in Section 6654(g) of the Internal Revenue Code, is the credit allowed under subdivision (a) of Section 19002.

(2) (A) Section 6654(g)(1) of the Internal Revenue Code is modified by substituting the phrase "the applicable percentage" for the phrase "an equal part."

(B) For purposes of this paragraph, "applicable percentage" means the percentage amount prescribed under Section 6654(d)(1)(A) of the Internal Revenue Code, as modified by subdivision (a) of Section 19136.1.

(f) This section applies to a nonresident individual.

(g) (1) No addition to tax shall be imposed under this section to the extent that the underpayment was created or increased by ~~any law that is chaptered during and operative for the taxable year of the underpayment.~~ *either of the following:*

(A) Any law that is chaptered during and operative for the taxable year of the underpayment.

(B) If, for a taxable year prior to its repeal, the adjustment factor for the credit authorized by Section 17052 for the taxable year was less than the adjustment factor for that credit for the preceding taxable year.

(2) *(A)* Notwithstanding Section 18415, ~~this section~~ *subparagraph (A) of paragraph (1)* applies to penalties imposed under this section on and after January 1, 2005.

(B) Notwithstanding Section 18415, subparagraph (B) of paragraph (1) applies to penalties imposed under this section on or after January 1, 2016.

(h) The amendments made to this section by Section 5 of Chapter 305 of the Statutes of 2008 apply to taxable years beginning on or after January 1, 2009.

(i) The amendments made to this section by ~~the act adding this subdivision~~ *Section 3 of Chapter 15 of the 4th Extraordinary Session of the Statutes of 2009* apply to amounts withheld on wages beginning on or after January 1, 2009.

SEC. 3. Section 19167 of the Revenue and Taxation Code is amended to read:

19167. A penalty shall be imposed under this section for any of the following:

(a) In accordance with Section 6695(a) of the Internal Revenue Code, for failure to furnish a copy of the return to the taxpayer, as required by Section 18625.

(b) In accordance with Section 6695(c) of the Internal Revenue Code, for failure to furnish an identifying number, as required by Section 18624.

(c) In accordance with Section 6695(d) of the Internal Revenue Code, for failure to retain a copy or list, as required by Section 18625 or for failure to retain an electronic filing declaration, as required by Section 18621.5.

(d) Failure to register as a tax preparer with the California Tax Education Council, as required by Section 22253 of the Business and Professions Code, unless it is shown that the failure was due to reasonable cause and not due to willful neglect.

(1) The amount of the penalty under this subdivision for the first failure to register is two thousand five hundred dollars ($2,500). This penalty shall be waived if proof of registration is provided to the Franchise Tax Board within 90 days from the date notice of the penalty is mailed to the tax preparer.

(2) The amount of the penalty under this subdivision for a failure to register, other than the first failure to register, is five thousand dollars ($5,000).

(e) The Franchise Tax Board shall not impose the penalties authorized by subdivision (d) until either one of the following has occurred:

(1) Commencing January 1, 2006, and continuing each year thereafter, there is an appropriation in the Franchise Tax Board's annual budget to fund the costs associated with the penalty authorized by subdivision (d).

(2) (A) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that an amount equal to all first year costs associated with the penalty authorized by subdivision (d) shall be received by the Franchise Tax Board. For purposes of this subparagraph, first year costs include, but are not limited to, costs associated with the development of processes or systems changes, if necessary, and labor.

(B) An agreement has been executed between the California Tax Education Council and the Franchise Tax Board that provides that the annual costs incurred by the Franchise Tax Board associated with the penalty authorized by subdivision (d) shall be reimbursed by the California Tax Education Council to the Franchise Tax Board.

(C) Pursuant to the agreement described in subparagraph (A), the Franchise Tax Board has received an amount equal to the first year costs described in that subparagraph.

(f) In accordance with Section 6695(g) of the Internal Revenue Code, for failure to be diligent in determining eligibility for earned income credit for returns required to be filed on or after the effective date of the act adding this subdivision.

SEC. 4. It is the intent of the Legislature to enact legislation, as required by Section 41 of the Revenue and Taxation Code, to *specify the goals, purposes, and objectives that the tax credit allowed by Section 17052 of the Revenue and Taxation Code will achieve along with indicators and data collected to measure whether the tax credit implemented by this act achieves the intended purpose.*

~~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.~~

~~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 in Section 17039, in an amount computed by multiplying the “federal earned income credit amount,” as defined in subdivision (b), by 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.~~

~~(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. 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 for 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.~~

~~(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.~~

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