STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Muratsuchi

Sponsor:

Bill Number: AB 858

Related Bills: See Legislative History

Introduced: February 14, 2023

SUBJECT

California Climate Cashback Program

SUMMARY

Subject to appropriation by the Legislature, this bill would establish the California Climate Cashback Program (Program), under the Health and Safety Code, and would require the Franchise Tax Board (FTB) to develop and administer the Program.

This is the FTB's first analysis of the bill and only addresses the provisions that would impact the FTB.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to provide all residents of the state a payment to mitigate the costs of transitioning to a low-carbon economy.

ANALYSIS

This bill would establish the Program for the purpose of allocating payments to enrolled residents to mitigate the costs of transitioning to a low-carbon economy, and would also create the California Climate Cashback Fund (Fund). Moneys in the Fund would be allocated upon appropriation by the Legislature.

The bill would require the FTB to develop, implement, and administer the Program by December 31, 2024. This includes the delivery of quarterly per capita cashback payments to enrolled residents and to maximize the ease with which residents may enroll in the Program. This bill would also allow the automatic enrollment of residents who have filed a state tax return in the prior year.

This bill would further require the FTB to reasonably estimate the per capital cashback payment amount based on expected revenue collection to be deposited in the Fund and the projected number of residents.

Effective/Operative Date

This bill would be effective and operative January 1, 2024.

Federal/State Law

No comparable provision in federal or state law.

Implementation Considerations

FTB staff has identified the following implementation considerations for purposes of a high-level discussion; additional considerations may be identified as the bill moves through the legislative process. FTB staff is available to work with the author's office to resolve these and other considerations that may be identified.

The FTB currently does not administer any programs related to climate mitigation or dispersing regular payments on a quarterly basis. Although the specific structure of the Program has yet to be developed, the FTB would require significant lead time to "stand up" the Program. With the large, estimated volumes, work would be substantial. It is likely the FTB does not have the capacity to take on this program and stand up this program as intended in the timeframe desired. Such a program would possibly require the establishment of an entirely new business program to process the cashback payments and system modifications or the building of a new standalone system to manage the required quarterly payments. All aspects of implementation, administration including systems implementation, education, the hiring, and training of staff, would require significant lead time and would likely not be done by December 31, 2024.

In addition, there are numerous items needing clarity within the bill to ensure the program can be administered as intended and the bill produces the desired outcome. FTB staff is available to work with the author's office and can provide language to resolve these and other considerations that may be identified.

Some of these considerations include, but are not limited to:

> This bill contains terms and phrases that are broad and undefined, e.g., "all residents," "quarterly per capita cashback payments," "maximize the ease," "reasonably estimates," "reasonable reserve margins," "period to period," and "revenue collection." Absent definitions, the terms could be broadly interpreted and may lead to confusion for the public and the FTB. For clarity, it is recommended that the bill be amended to define these terms.

An eligible individual must be a California resident; however, it is unclear when the determination of residency would be made. Would residency be determined at the time of enrollment, taxable year or at the time of each quarterly payment? It is unclear if there would be other requirements or restrictions for enrollment. For example, would a dependent claimed by another taxpayer be eligible to enroll? Additionally, it is unclear whether the individual must be a resident during the entire year. The author may wish to amend this bill to clarify.

This bill does not include language that would allow the FTB to recapture payments if issued erroneously. If this is contrary to the author's intent, this bill should be amended to specify recapture provisions.

It is unclear whether the cashback payments would be considered overpayments of tax or subject to offset against other tax liabilities.

The FTB would have difficulty identifying and making payments to individuals who do not have an income tax return filing requirement.

Further, as noted above, this bill would require annual appropriations by the Legislature to pay for the cashback payments. The uncertainty of the amount and timing of appropriations would further complicate FTB's ability to estimate available funds and determine a per capita quarterly cashback payment amount.

Technical Considerations

None noted.

Policy Considerations

This bill does not provide a sunset date, which would generally allow periodic review of the effectiveness of the Program.

Depending on the amount allocated, the quarterly payment to each individual may be minimal while FTB's costs to make payments may exceed Program payments.

Absent an explicit exclusion from gross income, these payments may be included in California and federal taxable income.

The FTB does not have experience related to carbon mitigation. The author may want to amend the bill to have this Program administered by a state agency that has experience in administering programs related to carbon mitigation.

LEGISLATIVE HISTORY

AB 1279 (Muratsuchi, et al., Chapter 337, Statutes of 2022), known as the California Climate Crisis Act, declared it the policy of the state to achieve net-zero greenhouse gas (GHG) emissions and reduce anthropogenic GHG emissions by 85% below 1990 levels no later than 2045, and to achieve and maintain net negative GHG emissions thereafter. California Air Resources Board (CARB) administers this program.

AB 32 (Nunez, et al., Chapter 488, Statutes of 2006) established the California Global Warming Solutions Act of 2006, which created a comprehensive, multi-year program to reduce GHG emissions in California by 25% by 2020. This program is also administered by CARB.

AB 1395 (Muratsuchi, et al., 2021/2022), would have declared that it is the policy of the state to achieve net zero GHG emissions and reduce anthropogenic GHG emissions by at least 90% below the 1990 level no later than 2045. This program would have also been administered by CARB. AB 1395 did not pass out of the Senate by the constitutional deadline.

PROGRAM BACKGROUND

The FTB is a tax administration agency. The primary responsibility of the FTB is to administer the Personal Income Tax Law, Corporate Tax Law, and nontax programs to ensure taxpayers file tax returns timely, accurately, and pay the correct amount of tax due.

California Global Warming Solutions Act of 2006

CARB is the lead agency appointed to implement the California Global Warming Solutions Act of 2006. The Climate Action Team, made up of relevant state agencies, is charged with helping direct state efforts on the reduction of GHG emissions and engaging state agencies.

State law requires the reduction in GHG emissions to 1990 levels by 2020 — a reduction of approximately 15% below emissions expected under a "business as usual" scenario.

California Climate Crisis Act

In 2022, the state declared its policy to achieve targets for carbon neutrality and reduce anthropogenic GHG emissions by 85% below 1990 levels no later than 2045, and to achieve and maintain net negative GHG emissions thereafter.

AB 32 Cost of Implementation Fee Regulation

State law authorizes the collection of a fee from sources of GHG emissions. In 2010, CARB adopted a regulation to collect a fee to administer the "AB 32 Cost of Implementation Fee Regulation." This fee is collected annually from large sources of GHG emissions, including oil refineries, electricity power plants (including imported electricity), cement plants and other industrial sources. Funds collected are used to cover annual expenses for CARB and other state agencies.

FISCAL IMPACT

FTB staff is unable to determine the costs to administer this bill until the implementation considerations are resolved but anticipates the costs to be significant. As the bill moves through the legislative process, costs to implement this bill will be determined.

ECONOMIC IMPACT

This bill as introduced February 14, 2023, does not change the way income or franchise tax is calculated under the Revenue and Taxation Code and would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None on file.

ARGUMENTS

None on file.

LEGISLATIVE CONTACT

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