Date of Hearing: March 17, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Mike Gipson, Chair

AB 547 (Tangipa) – As Introduced February 11, 2025

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Personal Income Tax Law: credits: in vitro fertilization

SUMMARY: Allows, under the Personal Income Tax (PIT) Law, a credit of up to $5,000 per taxable year for the "qualified expenses of in vitro fertilization", as specified. Specifically, **this bill**:

1) Allows a credit of up to $5,000, for taxable years beginning on or after January 1, 2025, and before January 1, 2030, equal to the "qualified expenses of in vitro fertilization" paid by a taxpayer in a taxable year.

2) Defines "qualified expenses of in vitro fertilization" as all costs of in vitro fertilization procedures undergone by the taxpayer that are not covered by insurance, and includes, but is not limited to, the costs of medication, ultrasounds, egg retrieval, and egg implantation.

3) Provides that, if the credit allowed by this bill is claimed by the taxpayer, any deduction otherwise allowed for that amount of the cost paid or incurred by the taxpayer that is eligible for the credit shall be reduced by the amount of the credit.

4) Finds and declares the following for the purposes of satisfying the requirements of Revenue and Taxation Code (R&TC) Section 41:

    a) The specific goals, purposes, and objectives of this bill are to provide relief and assistance to Californians undergoing in vitro fertilization; and,

    b) To measure whether this bill achieves its intended purpose, the Franchise Tax Board (FTB) shall prepare a written report detailing the number of taxpayers claiming the credit and the total credit amount allowed.

5) Requires the FTB to provide the written report required under this bill to the Legislature no later than December 1, 2026, and annually thereafter.

6) Sunsets the credit's statutory provisions on December 1, 2030.

7) Takes immediate effect as a tax levy.

EXISTING FEDERAL LAW: Allows an itemized deduction for the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, their spouse, or a dependent to the extent that such expenses exceed 7.5% of adjusted gross income (AGI). (Internal Revenue Code (IRC) Section 213.)

EXISTING STATE LAW:

1) Conforms to the IRC, with certain modifications, as of January 1, 2015. (R&TC Section 17201.)

2) Allows various tax credits under the PIT Law. These credits are generally designed to encourage socially beneficial behavior or to provide relief to taxpayers who incur specified expenses.

3) Requires any bill authorizing a new tax expenditure to contain all of the following:

   a) Specific goals, purposes, and objectives that the tax expenditure will achieve;

   b) Detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets the goals, purposes, and objectives stated in the bill; and,

   c) Data collection requirements to enable the Legislature to determine whether the tax expenditure is meeting, failing to meet, or exceeding those specific goals, purposes, and objectives. The requirements shall include the specific data and baseline measurements to be collected and remitted in each year the expenditure is in effect, for the Legislature to measure the change in performance indicators, and the specific taxpayers, state agencies, or other entities required to collect and remit data. (R&TC Section 41.)

FISCAL EFFECT: The FTB estimates General Fund revenue losses of $44 million in fiscal year (FY) 2025-26, $30 million in FY 2026-27, and $30 million in FY 2027-28.

COMMENTS:

1) The author has provided the following statement in support of this bill:

   > Infertility affects millions of Californians, yet the high cost of in vitro fertilization (IVF) makes treatment inaccessible for many. With IVF costs ranging from $12,000 to $25,000 per cycle —often not covered by insurance— middle- and lower-income families face significant financial barriers to starting a family. This bill addresses the lack of financial support by providing a tax credit for IVF expenses, easing the burden on aspiring parents. By making IVF more affordable, this bill helps Californians achieve their dream of parenthood without undue financial strain.

2) The California Family Council, writing in opposition, notes, in part:

   > The IVF process raises substantial moral and ethical concerns that cannot be overlooked. As acknowledged by the Alabama Supreme Court's recent ruling regarding the personhood of embryos, every human life begins at conception. Embryos created through IVF are distinct human beings with inherent dignity and worth. Tragically, standard IVF practices often result in the creation of excess embryos — embryos that may be discarded, indefinitely frozen, or even used for experimental purposes. The casual treatment of these embryos as commodities violates the sanctity of life and disregards their humanity.

3) Committee Staff Comments:

a) *What does this bill do*? This bill would provide a credit equal to the cost of qualified expenses relating to IVF, not to exceed $5,000 in one year. These expenses consist of all costs of IVF procedures undergone by the taxpayer that are not covered by insurance, including, but not limited to, the costs of medication, ultrasounds, egg retrieval, and egg implantation. A taxpayer who claims this credit must reduce any deduction for the same expenses by the amount of the credit claimed.

b) *What is IVF*? IVF involves a complex series of procedures that can lead to a pregnancy and is often used as a treatment for infertility, which is typically defined as being unable to get pregnant after at least one year of trying for most couples. Approximately one in eight couples experience fertility problems and just over 2% of all births in the country were a result of fertility treatments in 2019.[1]

IVF can be done using a couple's own eggs and sperm or may involve eggs, sperm or embryos from a known or unknown donor. In some cases, a gestational carrier — someone who has an embryo implanted in the uterus — might be used. Patients with female reproductive organs who opt to try IVF will typically inject synthetic hormones to stimulate the ovaries so that multiple eggs are produced. Then, a physician will perform an outpatient surgery to retrieve the eggs, and an embryologist will inseminate the eggs with the patient's partner’s sperm or donated sperm to create embryos. Finally, after embryos have developed in the lab for several days, one or more are selected for transfer into a uterus where they will develop into a pregnancy.

c) *Costs of IVF*: The average cost of a single IVF cycle in the U.S. is between $12,000 and $30,000, and is dependent upon insurance coverage, patient characteristics and the treatment center. Medications can account for up to 35% of these costs.[2] A clinic’s base fee for IVF will typically cover monitoring appointments, bloodwork, egg retrieval and follow-up care. Quoted prices do not necessarily cover the price of the injectable hormones, which can cost from $3,000 to more than $6,000. Additional clinic fees may include intracytoplasmic sperm injection (a specialized way to create embryos), genetic testing of embryos, a trial transfer (also called mock embryo transfer) and/or cryostorage fees for embryos that are being preserved.

d) *Insurance coverage of IVF*: Federal law does not require any health plans to cover infertility treatment. The Affordable Care Act requires individual and small-group health plans to cover 10 essential health benefits (EHBs); however, assisted reproductive technology is not considered an EHB unless a state specifically chooses to require this coverage. Numerous states have laws that require insurance companies to cover infertility treatments, including California.

SB 729 (Menjivar), Chapter 930, Statutes of 2024, requires a health plan contract or policy of disability insurance sold in the large group market (employers with more than 100 covered individuals) to provide coverage for the diagnosis and treatment of infertility

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[1] *Infertility Frequently Asked Questions*", Stanford Medicine Children's Health. https://www.stanfordchildrens.org/en/services/fertility-and-reproductive-health/faq.
[2] Conrad, *How Much Does IVF Cost?*, Forbes (August 14, 2023). https://www.forbes.com/health/womens-health/how-much-does-ivf-cost/.

and fertility services, including services of a maximum of three completed oocyte retrievals with unlimited embryo transfers in accordance with the guidelines of the American Society for Reproductive Medicine (ASRM) using single embryo transfer when recommended and medically appropriate. This requirement became effective July 1, 2025 for large health plans and becomes effective July 1, 2027 for health plans offered by CalPERS.

SB 729 requires insurers to offer coverage for the diagnosis and treatment of infertility as riders to small group policies (but does not mandate that the coverage be included in the policies). Additionally, SB 729 does not require religious organizations to offer coverage and that employers who self-insure are exempt from its requirements. Finally, the requirement relating to fertility preservation coverage does not apply to Medi-Cal managed care health care service plan contracts.

Governor Newsom signed SB 729 on September 29, 2024, and issued the following statement:

> There is a better way to strengthen IVF coverage across California's health care delivery system, and the state has already begun this work. In January of this year, we started the process of updating the state's "benchmark" plan, which will set a new standard for commercial insurance health coverage. The services under evaluation specifically include infertility treatment and IVF. The state's proposed benefit design will be released later this year and adopted by the Legislature by May 2025.
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> I expect IVF coverage will be included in the benchmark plan proposal adopted next spring, but may differ from the one in this bill. As a part of that process, I request that the Legislature change the effective date of this measure from July 1, 2025 to January 1, 2026 upon their return in January to allow an evaluation of the costs and benefit design in this bill within that broader context.

e) *What is a "tax expenditure"*? Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, U.S. Treasury officials began arguing that these features of the tax law should be referred to as "expenditures" since they are generally enacted to accomplish some governmental purpose and there is a determinable cost associated with each (in the form of foregone revenues).

As the Department of Finance notes in its annual Tax Expenditure Report, there are several key differences between tax expenditures and direct expenditures. First, tax expenditures are typically reviewed less frequently than direct expenditures. Second, there is generally no control over the amount of revenue losses associated with any given tax expenditure. Finally, it should also be noted that, once enacted, it takes a two-thirds vote to rescind an existing tax expenditure absent a sunset date. This effectively results in a "one-way ratchet" whereby tax expenditures can be conferred by majority vote, but cannot be rescinded, irrespective of their efficacy or cost, without a supermajority vote.

f) *Current tax treatment of IVF expenses*: The Internal Revenue Service (IRS) states in Taxpayer Publication 502, relating to medical and dental expenses, that fertility enhancement procedures, including IVF, can be included under medical expenses if they are performed on the taxpayer themselves, their spouse, or their dependent to overcome an inability to have children.[3] These deductions must be itemized and will only apply to the portion of medical and dental expenses that are more than 7.5% of the taxpayer's adjusted gross income. For example, if a taxpayer's adjusted gross income is $100,000, the first $7,500 they pay for medical expenses would not be eligible for itemized medical deductions. Taxpayers who take the standard deduction would not be able to claim this deduction at all. The IRS publication also makes clear that expenses for gestational surrogates are not considered medical expenses because they are considered an "unrelated party" who is not the taxpayer, their spouse, or their dependent.

g) *Single and LGBTQ+ people face additional barriers*: Even with the guidance described above, some taxpayers may not be able to utilize the existing medical expense deduction depending on their specific circumstances. For example, a 2021 letter ruling from the IRS held that a same-sex married couple was not allowed to deduct certain expenses relating to IVF because the procedure was performed on an unrelated third party gestational surrogate.[4] As currently drafted, this bill may impose similar barriers for individuals and couples using gestational surrogates, especially same-sex couples.

h) *Committee's tax expenditure policy*: Both R&TC Section 41 and Committee policy require any tax expenditure bill to outline specific goals, purposes, and objectives that the tax expenditure will achieve, along with detailed performance indicators for the Legislature to use when measuring whether the tax expenditure meets those stated goals, purposes, and objectives. A tax expenditure bill will not be eligible for a Committee vote unless it has complied with these requirements.

In its current form, this bill states that the credit is designed to provide relief and assistance to Californians undergoing in vitro fertilization. In addition, this bill provides that the credit's effectiveness shall be measured by the number of taxpayers claiming the credit and the total amount of credits allowed. The Committee may wish to consider whether credit utilization, in and of itself, is a sufficient rubric by which to measure this credit's effectiveness.

In addition to the R&TC Section 41 requirements, this Committee's policy also requires that all tax expenditure proposals contain an appropriate sunset provision to be eligible for a vote. According to this policy, an "appropriate sunset provision" means five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" means ten years. This bill, as currently drafted, complies with the Committee's policy on sunset dates.

i) *Appropriately targeted*? As currently drafted, this bill creates a credit that is available to taxpayers of any income. In many cases, tax expenditures incorporate income limitations to target benefits toward specific groups and to ensure that a credit is not being provided for activity that otherwise would have occurred without a tax benefit. If the intent is to

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[3] *Publication 502: Medical and Dental Expenses*, Internal Revenue Service. https://www.irs.gov/pub/irs-pdf/p502.pdf.
[4] Letter Ruling 202114001, Internal Revenue Service (January 12, 2021). https://www.irs.gov/pub/irs-wd/202114001.pdf.

make IVF more affordable for Californians who cannot afford it currently, the author may consider amending the bill to specify an income cap.

j) *Technical considerations*:

i) *Who qualifies*? As currently drafted, the term "taxpayer" is undefined, which may lead to conflicting interpretations and confusion for taxpayers, tax professionals, and the FTB. Without clarification, entities such as trusts or fiduciaries could be considered eligible for the credit if they were deemed capable of undergoing IVF-procedures. To avoid ambiguity, the author may wish to specify that credit applies to a "taxpayer who is an individual" or replace references to "a taxpayer" with "an individual".

ii) *What expenses qualify*? As currently drafted, the bill does not specify how "qualified expenses of in vitro fertilization" are determined, which may create challenges in administration and compliance. As written, a taxpayer could claim the credit for IVF related costs regardless of when they are paid, if they are paid by a third party, or if they are paid at all. Additionally, it is unclear whether the credit applies in the year expenses are incurred, the year payments are made, or in multiple years if procedures or installment payments span multiple tax years. Without clarification, these ambiguities may lead to inconsistent treatment among taxpayers and administrative challenges for the FTB. The author may wish to specify when and under what conditions expenses qualify to ensure uniform application of the credit.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Family Council

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