Date of Hearing: March 24, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Mike Gipson, Chair

AB 838 (Ta) – As Introduced February 19, 2025

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Taxation: renter's credit

SUMMARY: Expands the renter's credit, upon appropriation by the Legislature. Specifically, **this bill**:

1) Increases the amount a qualified renter may claim as a credit against taxable income to $1,000, or $2,000 for those filing joint returns, as heads of household, or as surviving spouses, increases the maximum eligible adjusted gross income (AGI) to $75,000 or $150,000, respectively, and makes the credit refundable. The increased credit amount, increased AGI thresholds, and refundability of this credit would be operative only for taxable years beginning on or after January 1 of the taxable year that includes the date on which an appropriation is first made in any bill relating to the Budget Act for this bill's increased credit amount, and for the succeeding four taxable years.

2) Requires that the credit amounts and AGI limitations increased by this bill be annually adjusted for inflation for taxable years beginning on or after the date one year after January 1 of the taxable year of an appropriation in the Budget Act for the purposes of this bill's increased credit, and for three taxable years thereafter.

3) Prohibits this bill's expanded credit from operation, unless an appropriation in a related Budget Act is made for the purposes of funding this bill's expanded credit, and requires that the existing credit amounts and AGI thresholds apply if no appropriation is made.

4) Finds and declares, for the purposes of complying with Revenue and Taxation Code (R&TC) Section 41, that the specific goal, purpose, and objective of this bill is to expand the availability of the existing renter's credit to compensate low- and middle-income renters for the increasing rates of rent throughout the State of California. The Legislature may measure this bill's efficacy by examining the number of taxpayers claiming the credit, and the average amount of credit claimed on tax returns claiming the credit. The Franchise Tax Board (FTB) must report this information to a series of Legislative Committees, including the Senate Committee on Governance and Finance, by May 1 of the year following each taxable year the expanded credit is operative, and this information is excepted from the general prohibition on disclosing personally identifying taxpayer information.

5) Takes immediate effect as a tax levy.

EXISTING LAW authorizes a renter's credit under the Personal Income Tax (PIT) Law. The renter's credit is a nonrefundable credit equal to $60 or $120, depending on the filing status of the taxpayer. A taxpayer qualifies for the credit if their AGI does not exceed $25,000 or

$50,000, as appropriate, if they are a resident of the state, and if they rented and occupied a premises that constituted the taxpayer's principal place of resident for at least 50% of the year. The AGI limitations are adjusted for inflation, and the amounts for the 2024 taxable year are $52,541 and $104,482, respectively (R&TC Section 17053.5.)

FISCAL EFFECT: The FTB estimates that this bill would realize a revenue loss of $4.9 billion in the 2025-26 fiscal year (FY), $5.5 billion in FY 2026-27, and $6 billion in FY 2027-28, assuming an appropriation is made pursuant to this bill in the budget in the 2025 taxable year.

COMMENTS:

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

> A significant portion of renters in California are cost-burdened, and the renter's tax credit has not been updated in over 40 years to match the increase in cost-of-living in the state. This rent-burden additionally impacts Black and Hispanic renters hardest. AB 838 would help alleviate the cost-burdens renters in California face by raising the renter's tax credit to $2,000 for joint-filers and $1,000 for single-filers.

2) The California Apartment Association (CAA), writing in support of this bill, states, in part:

> Many renters in California are low- and middle-income earners. Current state law establishes the renter's tax credit of $60 for single filers with an adjusted gross income (AGI) of $52,421 or less, and $120 for joint filers with an AGI of $104,842 or less. These figures have not kept pace with inflation. AB 838 would address this issue by increasing the Renter's Tax Credit for the first time in over 40 years to help our lowest wage earners.

3) The California Federation of Teachers, writing in opposition to this bill, states, in part:

> California voters secured funding for public education via Proposition 98, which provides funding to our TK – 12 schools and Community Colleges from revenues of the General Fund. Specifically, public education is funded mainly by the income tax, corporate income tax, sales and use tax, and property taxes. Tax credits, exemptions, and other expenditures, however, remove funding from public education. For every dollar that is provided in tax expenditures, approximately 40 cents of each dollar comes out of California's classrooms.

4) Committee Staff Comments:

   a) *Affordable housing crisis*: There is little doubt that California is in the midst of a housing crisis. According to a publication by the Public Policy Institute of California (PPIC), "Californians and the Housing Crisis," California experiences higher rates of cost-burdened households, where a household spends more than 30% of their income on housing costs, than the country as a whole, with 55% of renters in the state being cost-burdened, compared to 38% of mortgaged homeowners. Nationally, these rates are reported as 50% and 28%, respectively.

   b) *History of the renter's credit*: California first enacted a renter's credit in 1972, with the credit becoming operative for the 1973 taxable year. There is no corresponding federal credit analogous to the renter's credit. In the credit's first two decades of operation, the value of the credit and the income eligibility thresholds varied, but a renter's credit was always available to those who qualified. In 1993, the Legislature suspended the credit, and reinstated the credit four years later, effective January 1, 1998, by authorizing AB 2797 (Cardoza), Chapter 322, Statutes of 1998. While the credit had historically been refundable, upon its reinstatement the Legislature made the credit non-refundable, imposed income threshold limitations, and indexed the income threshold limitations for inflation for taxable years beginning on or after January 1, 1999.

c) *Proposition 98*: In 1988, California voters approved Proposition 98 (Prop. 98), which guarantees a certain level of educational funding for schools and community colleges based on certain calculations that vary with General Fund revenues and changes in per capita personal income. Three types of calculations, or tests, are stipulated in the law, and these tests impact the overall amount of revenue reserved for schools in any given year. In Test 1 years, the amount guaranteed under Prop. 98 is approximately 40% of General Fund revenues. Thus, any one dollar of General Fund revenue lost corresponds to a $0.40 decrease in the Prop. 98 guarantee[1]. According to the Legislative Analyst's Office (LAO) in its presentation to the Senate Budget and Fiscal Review Subcommittee on Education on February 27, 2025, Test 1 remains operative for the 2025-26 FY.

d) *This bill*: As currently drafted, this bill expands the renter's credit on January 1 of the taxable year following the taxable year in which an appropriation is made in the budget for this bill's purpose and for the following four taxable years. Specifically, this bill increases the value of the credit, increases the maximum income limitation, makes the credit refundable, and adjusts the value of the increased credit amount for inflation. This bill stipulates that existing law remains operative for taxable years in which there is no appropriation made for this bill's purpose. The FTB must report certain information to specified Legislative Committees, including the Senate Committee on Governance and Finance.

   Given this bill reverts to existing law in any taxable year for which there is not an appropriation in any bill related to the Budget Act, it is unclear whether the author intends for an annual appropriation to be made in the budget in the four years following the year of the first appropriation, or if the initial appropriation is the only qualification for this bill's expanded credit to be operative. The author may wish to clarify their intent regarding the provisions that would revert the credit to treatment under existing law.

   The increased credit and income limitation amounts must be indexed for taxable years beginning on or after the date one year after the date specified in the previous clause, but there are two dates referenced in that clause, the taxable year beginning on January 1 of the taxable year that includes the date on which an appropriation is first made in any bill relating to the budget act, and the date of the appropriation itself. Subsequent references to the appropriation date in this bill are likewise unclear. Committee staff is available to

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[1] *Proposition 98 and K-12 Education, The 2024-25 Budget*, LAO (February 15, 2024). https://lao.ca.gov/Publications/Report/4839#:~:text=Proposition%2098%20(1988)%20sets%20aside,23%20through%202024%E2%80%9125%20period, accessed March 2025.

provide technical assistance to clarify the operation of the inflation adjustments to this bill's expanded credit.

The author and Committee should consider replacing the reference to the "Senate Committee on Governance and Finance," with the "Senate Committee on Revenue and Taxation," as the former has been renamed to the latter.

e) *Unclear commentary*: The CAA, in its letter indicating its support for this bill, notes that renter's credit amounts and corresponding AGI limitations have not kept pace with inflation. Committee staff notes that while the credit amounts are not indexed for inflation, the AGI limitations are so indexed.

f) *Refundable credits*: Historically, at the national level, refundable tax credits have serious exposure to bad actors, and invalid or fraudulent claims. Credits are self-attesting; barring an audit by the FTB, improper refunds may go unnoticed. Furthermore, erroneously made refunds that are later determined to be likely fraudulent can often not be recovered by the FTB. The Committee may wish to consider whether making this credit refundable is an appropriate use of public dollars.

g) *FTB Considerations*: In its analysis of this bill, the FTB notes the following considerations:

   i) *Implementation considerations*: The FTB states that this bill would require refundability for the expanded credit, upon appropriation. If insufficient funds were appropriated, then the FTB would suspend payment until additional funds were appropriated, unless the FTB received other direction. Interest may need to be paid on delayed payments of refund, and result in additional costs to the FTB due to increased taxpayer inquiries. Additionally, confusion may arise as to which provisions are operative in a given taxable year.

   Additionally, this bill requires the FTB to report certain information to specified Legislative Committees by May 1 of the year following the year relevant to the report. The due date for the 2025 PIT return is April 15, 2026, and October 15, 2026 with extension. Thus, the FTB will not have complete data for the 2025 taxable year until May 2027, at the earliest. If the author and Committee wish to review information about the utilization of this credit for the 2025 taxable year holistically, then they may wish to consider amending this bill to delay the required reporting date.

   ii) *Technical consideration*: This bill states that an appropriation be made "for this purpose" throughout. The FTB notes that the author may wish to clarify what this purpose is, *i.e.* for the purposes of this bill's expanded credit.

h) *What is a "tax expenditure"*? Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, United States 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 their enactment, in the form of forgone revenues. This bill would expand and make refundable the renter's credit, thereby constituting a tax expenditure.

i) *Committee policy on tax expenditures*: SB 1335 (Leno), Chapter 845, Statutes of 2014, added R&TC Section 41, recognizing that the Legislature should apply the same level of review used for government expenditure programs to tax credits introduced on or after January 1, 2015. AB 263 (Burke), Chapter 743, Statutes of 2019, extended the requirements in R&TC Section 41 to all tax expenditure measures under the PIT Law, the Corporation Tax Law, and the Sales and Use Tax Law introduced on or after January 1, 2020. A tax expenditure proposal must 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. 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.[2] Sunsets are required because eliminating a tax expenditure generally requires a two-thirds vote. These requirements must be satisfied before a bill can receive a vote in this Committee. This bill complies with this Committee's policy on tax expenditures.

j) *Related legislation*: SB 566 (Grove) would modify various provisions of tax law, including increasing the renter's credit amount for certain qualified renters aged 62 years and older to $550 and $275, depending on filing status. SB 566 is pending a hearing by the Senate Committee on Revenue and Taxation.

k) *Previous* legislation:

   i) AB 59 (Gallagher), of the 2023-24 Legislative Session, would have increased the amount of the renter's credit, made annual inflation adjustments to the credit amount, and made the credit refundable. AB 59 was held on the Assembly Appropriations Committee's Suspense File.

   ii) SB 843 (Glazer), of the 2021-22 Legislative Session, would have increased the amount of the renter's credit, made the credit refundable, and conditioned these changes on a budgetary appropriation. SB 843 was held on the Assembly Floor's Inactive File.

   iii) AB 399 (Brough), of the 2019-20 Legislative Session, would have increased the amount of the renter's credit upon appropriation. AB 399 was never heard by this Committee.

   iv) SB 248 (Glazer), of the 2019-20 Legislative Session, would have increased the amount of renter's credit, provided for different credit amounts based on number of dependents, and made the credit refundable. SB 248 was held on the Assembly Appropriations Committee's Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

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[2] An "appropriate sunset provision" shall mean five years, except in the case of a tax expenditure measure providing relief to California veterans, in which case "appropriate sunset provision" shall mean 10 years.

California Apartment Association

Opposition

California Federation of Teachers

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