

Date of Hearing: April 21, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Mike Gipson, Chair

AB 1435 (Nguyen) – As Introduced February 21, 2025

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Personal Income Tax Law: Corporation Tax Law: credits: cleanup costs

SUMMARY: Authorizes a credit for amounts of "qualified cleanup expenditures." Specifically, **this bill:**

- 1) Authorizes, under the Personal Income Tax (PIT) Law and Corporation Tax (CT) Law, a credit against the net tax, or tax, as applicable, of a "qualified taxpayer," in an amount equal to the "qualified cleanup expenditures" paid or incurred during the taxable year, for taxable years beginning on or after January 1, 2026, and before January 1, 2031.
- 2) Defines "qualified cleanup expenditures" as costs directly related to the removal and disposal of unauthorized encampments, illegal dumping, and abandoned property in the state. Such costs may include, but are not limited to:
 - a) Waste removal and disposal services;
 - b) Sanitization and restoration of the property;
 - c) Security measures necessitated by the cleanup, such as temporary fencing, security gates, or surveillance;
 - d) Repairs to property caused by damage from encampments or illegal dumping; and,
 - e) Installation of measures to prevent reencampments or entry, such as riprap or other material.
- 3) Defines a "qualified taxpayer" as a business entity owning or leasing real property in the state impacted by unauthorized encampments, illegal dumping, or abandoned property.
- 4) Requires a taxpayer to provide, upon request by the Franchise Tax Board (FTB), documentation indicating the condition of the real property prior to cleanup, and detailed invoices or receipts from contractors or service providers performing the cleanup.
- 5) Requires a taxpayer to certify, under penalty of perjury, that the expenses were incurred for qualifying activities under this bill.
- 6) Authorizes the FTB to adopt emergency regulations to carry out the purposes of this bill.
- 7) Finds and declares, for the purposes of complying with Revenue and Taxation Code (R&TC) Section 41, that the specific goal of this credit is to support businesses, encourage timely

action, and ensure properties remain safe and accessible. The performance indicators the Legislature may use to determine this credit's efficacy are the number of taxpayers allowed the credit, and the total dollar amount of credits allowed. Disclosure of this information is treated as an exception to the general prohibition on the sharing of taxpayer information.

- 8) Finds and declares, in the uncoded portion of this bill, the following:
- a) The United States Supreme Court Decision in *City of Grants Pass, Oregon v. Johnson* (2024) 603 U.S. 520 has enabled public entities to enforce no-camping ordinances on public property, resulting the displacement of unhoused individuals;
 - b) As a consequence, many individuals experiencing homelessness have moved from public property to private property, leading to an increase in unauthorized encampments on business premises across California;
 - c) Unauthorized encampments and illegal dumping on private property have significantly increased, placing a financial burden on property owners and businesses statewide;
 - d) Although businesses are currently able to deduct cleanup expenses as a business expense, the persistent costs associated with addressing unauthorized encampments continue to create financial challenges. Additional relief through a targeted tax credit would help mitigate these ongoing expenses and support businesses in maintaining safe and accessible properties; and,
 - e) Providing a tax credit for cleanup expenses will directly support businesses, encourage timely action, and ensure properties remain safe and accessible, offering a more meaningful financial relief compared to standard deductions.
- 9) Repeals the provisions of this bill on December 1, 2031.
- 10) Requires the state to reimburse local agencies or school districts for costs incurred by this bill, if the Commission on State Mandates determines that this bill contains costs mandated by the state.
- 11) Takes immediate effect as a tax levy.

EXISTING LAW authorizes a deduction for amounts paid or incurred as ordinary and necessary business expenses, as specified. (Internal Revenue Code Section 162 and R&TC Sections 17201 and 24343.)

FISCAL EFFECT: The FTB estimates that this bill would reduce General Fund revenues by \$9.5 million in the 2025-26 fiscal year (FY), \$23 million in FY 2026-27, and \$24 million in FY 2027-28.

COMMENTS:

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

As someone who grew up in South Sacramento and now represents Sacramento and Elk Grove, I've seen firsthand how vital our small businesses and local property owners are to the health of our communities. Many of these businesses and small property owners —

particularly those who own and operate neighborhood shopping centers — are family-run, immigrant-owned, and minority-owned. They are the backbone of our local economy, working hard every day to serve their customers and provide for their families.

Lately, I've been hearing directly from small business owners and property owners in Little Saigon, along Stockton Boulevard, and across my district who are struggling to keep up with the growing costs of cleaning up unauthorized encampments, vandalism, and illegal dumping on their properties. Many of these shopping centers are neighborhood anchors, but they're now spending thousands of dollars — not once, but repeatedly — on cleanups, repairs, and security just to stay open and safe.

These are costs that small businesses and small property owners shouldn't have to shoulder alone. I introduced AB 1435 to provide real relief — a tax credit that helps them recover these expenses and continue contributing to the vibrancy and economic stability of our communities. This bill is about supporting the small businesses and property owners who are too often overlooked, making sure they have the resources they need to keep their doors open, keep people safe, and keep our neighborhoods strong.

2) Writing in support of this bill, the California Business Properties Association states, in part:

The Supreme Court's decision in *City of Grants Pass v. Johnson* has allowed cities to enforce no-camping ordinances, displacing unhoused individuals onto private commercial properties. As a result, business owners — particularly small businesses operating on tight margins — are forced to absorb the costs of waste removal, property repairs, and security, which is financially unsustainable.

AB 1435 establishes a five-year tax credit (2026–2030) covering 100% of qualifying cleanup expenses. By reducing this financial burden, the bill will help revitalize key commercial areas, reduce blight, and support businesses that are essential to California's local economies. By alleviating the financial pressures placed on property and business owners, AB 1435 promotes investment, economic stability, and community well-being.

3) Writing in opposition to this bill, and a series of other tax expenditures, the California Teachers Association states, in part:

While we understand these bills are well intended, CTA does not support this approach, as it would reduce overall funding for education. CTA believes Proposition 98 should be protected from reductions through the creation of new or expanding existing tax expenditures or cuts to tax rates.

For these reasons, CTA opposes these bills and respectfully requests your 'NO' vote when these bills are heard in Committee.

4) Committee Staff Comments:

- a) *Constitutionality of restrictions on the unhoused*: Opining in *Martin v. City of Boise*, 902 F.3d 1031 (9th Cir. 2018), the United States Court of Appeals for the Ninth Circuit held that the City of Boise had violated the Eighth Amendment's prohibition on cruel and unusual punishment by imposing criminal sanctions against homeless individuals for

sleeping outdoors on public property when no alternative shelter was available. The suit was brought after the city had cited the plaintiffs with violating the city's Camping Ordinance, Disorderly Conduct Ordinance, or both. While the city did have three shelters available to unhoused individuals, these shelters were either over-subscribed or were owned by faith-based organizations requiring observance of certain religious practices and customs by those utilizing the shelter. Thus, the Ninth Circuit reasoned that "'so long as there is a greater number of homeless individuals in [a jurisdiction] than the number of available beds [in shelters],' the jurisdiction cannot prosecute homeless individuals for 'involuntarily sitting, lying, and sleeping in public.'"

Subsequently, unhoused individuals in violation of laws that restrict encampments on public property brought a suit against the City of Grant Pass in Oregon, relying on the precedent set in *Martin v. City of Boise* (2018). There, the district court held, and Ninth Circuit Court of Appeals affirmed, that the laws restricting these encampments was a violation of the precedent established in *Martin*. The Ninth Circuit's ruling was appealed to the United States Supreme Court (Court), and was granted *certiorari*. The Court overturned the Ninth Circuit's holding and, thereby, the precedent in *Martin*. The Court opined in *City of Grants Pass v. Johnson*, 603 U.S. 520, 144 S. Ct. 2202 (2024) that the *Martin* precedent deprived local jurisdictions and states of the capability to implement policies designed to address homelessness, noting that jurisdictions may not be able to determine who is "involuntarily" homeless. Additionally, the Court noted that the precedent in *Martin* was overly broad, citing that determining what camping materials are considered "necessary to protect...from the elements" could vary based on the climate of the city, or the time of year, and may not be limited to a blanket and pillow, creating an unbound prohibition on local jurisdictions and states.

- b) *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 guarantee¹. According to the Legislative Analyst's Office 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.
- c) *This bill*: As currently drafted, this bill would provide an unlimited credit to any taxpayer incurring costs directly related to the removal and disposal of unauthorized encampments, illegal dumping, and abandoned property. This bill does not restrict the type of activities that incur eligible costs, nor does it condition eligibility on the type of taxpayer, *e.g.* small business, microenterprises, *etc.* A taxpayer is required to certify, under penalty of perjury, that the expenses were incurred for qualifying activities under this bill.

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](https://lao.ca.gov/Publications/Report/4839#:~:text=Proposition%2098%20(1988)%20sets%20aside,23%20through%202024%E2%80%9125%20period), accessed March 2025.

- d) *Unlimited credit amount*: Generally, tax law restricts the amount of credit that an eligible taxpayer may claim in any given taxable year. This is to ensure the credit does not create unforeseen liabilities to the public fisc, and limits the ability for sophisticated taxpayers to realize a benefit far exceeding the intent of the credit. This bill does not limit the amount of credit a taxpayer may claim in any given taxable year. The Committee may wish to consider imposing a maximum amount of expenses qualifying for the credit, or limit the amount of credit allowed.
- e) *Broad category of qualifying expenses*: While this bill does provide a list of activities for which the costs are eligible, this bill does not limit the credit to only those costs. In other words, this bill would authorize a credit for costs related to any activity associated with cleaning up an encampment. One might reasonably question the extent of this authorization. Certainly, the author intends to relieve taxpayers who ameliorate their properties after an encampment is cleared, but how might taxpayers apply this authorization? Fencing and surveillance are permissible activities. Would the ongoing cost of security personnel be eligible? Would this bill subsidize the purchase of further security measures, such as automated defensive systems? This bill is unclear, and the Committee may wish to consider the scope of activities that this bill seeks to subsidize.
- f) *Double benefit*: Existing federal and state law generally permit a business to deduct necessary and ordinary expenses related to their enterprise. As noted in the IRS's Publication 535, taxpayers must generally capitalize the costs of making improvements to a business asset. In other words, the overall value provided by that improvement must be considered for tax purposes. If, however, a taxpayer is engaged in repair or maintenance of a property, those related expenses are generally deductible. Thus, businesses engaged in post-encampment clean up likely can deduct costs associated with certain activities, such as removing debris and repairing broken fixtures. Improvements to the property, however, would not be deductible. Such activities may include installing additional fencing or adding permanent security systems. Thus, this bill may provide a credit on certain costs that are eligible for deduction, conferring a double tax benefit. The author and Committee may wish to consider excluding from this bill's qualifying expenditures amounts for which a deduction is taken.
- g) *L'état c'est moi*: Generally, tax credits are self-certifying. This bill goes a step further and requires that a taxpayer certify, under penalty of perjury, that expenses claimed for this bill's credit were incurred for qualifying activities. This, however, appears to provide little constraint on the taxpayer. For instance, could a taxpayer illegally dump their own waste on their property, remediate said waste, and claim a credit under this bill? It appears this bill may authorize such gamesmanship, and the Committee may wish to consider restricting the types of qualifying activities or clarify the manner in which a taxpayer verifies those costs.
- h) *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. This bill authorizes a new tax credit, thereby qualifying as a tax expenditure.

- i) *Committee's tax expenditure policy*: SB 1335 (Leno), Chapter 845, Statutes of 2014, added R&TC Section 41, which recognized that the Legislature should apply the same level of review used for government spending 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 CT 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 vote². Sunsets are required because eliminating a tax expenditure generally requires a 2/3 vote. These requirements must be satisfied before a bill can receive a vote in this Committee. This bill contains an appropriate five-year sunset, and complies with the requirements of R&TC Section 41.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Business Properties Association

Opposition

None on file

Analysis Prepared by: Harrison Bowlby / REV. & TAX. / (916) 319-2098

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.