Date of Hearing: May 5, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Mike Gipson, Chair

AB 389 (Wallis) – As Amended April 7, 2025

SUSPENSE

Majority vote. Tax levy. Fiscal committee.

SUBJECT: Personal Income Tax: tax credits: fire-resistant home improvements

SUMMARY: Allows a credit under the Personal Income Tax (PIT) Law for specified home hardening measures. Specifically, **this bill**:

1) Allows a credit to a "qualified taxpayer" equal to 40% of the taxpayer's "qualified expenses", as specified.

2) Defines a "qualified taxpayer" as an individual whose primary residence, for any taxable years in which the taxpayer claims the credit, is located in a high or very high fire hazard severity zone, as identified by the State Fire Marshal pursuant to Government Code Section 51178, and who satisfies either of the following:

   a) For spouses filing joint returns, heads of household, and surviving spouses, as defined, adjusted gross income (AGI) is $250,000 or less; or,

   b) For other individuals, AGI is $125,000 or less.

3) Defines "qualified expenses" as costs paid or incurred by a qualified taxpayer associated with the building or installation of hardening measures to the taxpayer's primary residence, including, but not limited to, the following:

   a) A Class A fire rated roof;

   b) Enclosed eaves;

   c) Fire-resistant vents;

   d) At least six inches of noncombustible vertical clearance at the bottom of the exterior surface of a building on the property, measured from the ground up; and,

   e) Exterior wall covering that is noncombustible.

4) Provides that credits allowed to a qualified taxpayer pursuant to this bill shall not exceed $400 in a taxable year, or a cumulative total of $2,000 without regard to taxable year.

5) Provides that if the credit allowed by this bill exceeds either the annual $400 limit or the taxpayer's tax liability, the excess credit amount may be carried forward for four years until the credit is exhausted.

6) Allows the credit for taxable years beginning on or after January 1, 2025, and before January 1, 2030.

7) Provides that, for purposes of complying with Revenue and Taxation Code (R&TC) Section 41, the Legislature finds and declares all of the following:

   a) The specific goal that the credit will achieve is to compensate homeowners who live in high-risk fire areas for improvements made to mitigate and prevent property damage and loss of life due to wildfires in California; and,

   b) Detailed performance indicators for the Legislature to use in determining whether the credit meets the goal described above is the number of taxpayers who utilized the credit and the average dollar amount of credits claimed.

8) Requires the Franchise Tax Board (FTB) to analyze the performance indicators for each taxable year and to report its findings on or before December 1, 2030, to the Legislature, in compliance with Government Code Section 9795.

9) Specifies that the disclosure provisions of this bill shall be treated as an exception to R&TC Section 19542.

10) Takes immediate effect as a tax levy.

11) Sunsets on December 1, 2030.

EXISTING LAW:

1) 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. (R&TC Section 17001 *et seq.*)

2) Requires any bill that authorizes a 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) Specified 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. (R&TC Section 41.)

FISCAL EFFECT: Pending. However, for the introduced version of this bill, the FTB estimated General Fund revenue losses of $36 million in fiscal year (FY) 2025-26, $31 million in FY 2026-27, and $29 million in FY 2027-28.

COMMENTS:

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

    California is grappling with a relentless wildfire crisis that devastates homes and communities each year. AB 389 confronts this threat head-on by offering a tax credit that empowers homeowners in high-risk areas to afford vital fire-resistant upgrades – ensuring they can protect their homes and families. This, in turn, will ease the burden on our first responders.

2) This bill is supported by the California Association of Realtors, which notes the following:

    California has experienced multiple catastrophic wildfires in recent years, making voluntary prevention measures like home hardening more important than ever. Those living in the wildland urban interface must invest hundreds of dollars to protect against the threat of wildfire and to maintain their current insurance policies. Those with fixed incomes such as seniors, and all homeowners faced with rising insurance premiums and deductibles must decide where to best invest those prevention funds.

3) This bill is opposed by the California Tax Reform Association, which notes the following:

    Homeowners have major incentives to fire-proof their homes, for safety and security reasons and for insurance costs. This bill would reward homeowners with revenue from the general fund and education for doing what any responsible homeowner should and does do - make sure that their home is safe. The criteria for evaluation includes virtually every homeowner who utilizes this tax break, which will be most homeowners, even though those homeowners are providing for fire safety without seeking a tax break. Personal responsibility for one's home does not need state support.

4) Committee Staff Comments:

    a) *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.

    b) *What would this bill do*? This bill would establish a new tax expenditure program in the form of a credit available to a qualified taxpayer who incurs qualified expenses for the building or installation of hardening measures to the taxpayer's primary residence in a high or very high fire hazard severity zone. The credit amount would equal 40% of the taxpayer's "qualified expenses", but the credit itself would be capped at $400 in any given year up to a cumulative total of $2,000.

c) *An incentive or a reward*? Typically, tax credits are provided as a matter of legislative grace to encourage taxpayers to behave in ways they might not absent a financial incentive. This credit, in turn, appears designed to encourage homeowners to make various improvements to protect against the risks of wildfires. While this is an admirable goal, Committee staff questions the degree to which this credit would actually serve as an incentive, versus a reward, for taxpayer behavior. More specifically, if the risk of losing one's home to a wildfire is insufficient for a homeowner to take preventative measures, it is not clear whether a $400 tax credit would prove sufficient.

   Finally, in its current form, this bill provides a tax credit for taxable years beginning on or after January 1, 2025. Assuming enactment in the fall of 2025, this bill would provide a benefit to several taxpayers who were unaware of the credit's existence. The Committee may wish to consider making this bill's provisions applicable to taxable years beginning on or after January 1, 2026, to ensure this bill serves as an incentive and not a reward for actions that would have taken place absent the credit's availability.

   Conversely, if this credit is primary designed, not as an incentive, but to defray the costs association with home hardening expenses, it is not clear that a $400 credit will provide meaningful relief in the context of a significant improvement like replacing the roof of one's home.

d) *Implementation considerations*:

   i) *Home hardening includes many kinds of possible expenses*: This bill defines "qualified expenses" very broadly as costs "associated with" the building or installation of hardening measures to the taxpayer's primary residence. Hardening measures, in turn, include without limitation the installation of a "Class A fire rated roof", "enclosed eaves", "fire-resistant vents", an "exterior wall covering that is noncombustible", and "at least six inches of noncombustible vertical clearance at the bottom of the exterior surface of a building on the property". The Committee may wish to consider whether the lack of specific definitions could create opportunities for confusion or other cases where credits are provided for expenses that do not actually improve fire resiliency.

   ii) *Fire severity areas are not static*: Determining which parts of the state should be designated as high or very high fire hazard severity zones is an iterative, ongoing process that relies on numerous sources of data and scientific analysis. State law requires fire severity zones to be updated periodically as conditions change, new data are presented, and new lands are developed for residential or commercial use. As currently drafted, this bill does not specify at what point in time a taxpayer's residence must be considered to be within a high or very high fire severity zone to qualify for the credit.

f) *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 compensate homeowners who live in high-risk fire areas for improvements made to mitigate and prevent property damage and loss of life due to wildfires. In addition, this bill provides that the credit's effectiveness shall be measured by the number of taxpayers claiming the credit. 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.

g) *Prior legislation*:

i) AB 582 (Connolly), of the 2023-24 Legislative Session, would have allowed a credit to a qualified taxpayer equal to 40% of the taxpayer's qualified home hardening expenses, not to exceed $400 per taxable year, or $2,000 cumulatively. AB 582 was held on the Assembly Appropriations Committee's Suspense File.

ii) AB 324 (Choi), of the 2021-22 Legislative Session, would have allowed a tax credit for qualified taxpayers that install an attic vent closure in a residential property, as specified. AB 324 was held on the Assembly Appropriations Committee's Suspense File.

iii) AB 266 (Choi), of the 2019-20 Legislative Session, was substantially similar to AB 324 and was also held on the Assembly Appropriations Committee's Suspense File.

REGISTERED SUPPORT / OPPOSITION:

Support

California Apartment Association
California Association of Realtors
California Building Industry Association
California Building Officials
California Fire Chiefs Association
Fire Districts Association of California
Greater Coachella Valley Chamber of Commerce
Independent Insurance Agents & Brokers of California

Opposition

California Federation of Teachers

California Tax Reform Association
California Teachers Association

Analysis Prepared by: M. David Ruff / REV. & TAX. / (916) 319-2098