

Date of Hearing: May 5, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Mike Gipson, Chair

AB 1435 (Nguyen) – As Amended April 28, 2025

SUSPENSE

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 expenses." 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 expenses" paid or incurred during the taxable year, for taxable years beginning on or after January 1, 2026, and before January 1, 2031.
- 2) Limits the maximum amount of credit to \$20,000.
- 3) Defines "qualified cleanup expenses" as costs directly related to the removal and disposal of unauthorized encampments, illegal dumping, and abandoned property in the state, only if these costs are paid or incurred within 60 days of discovery. Such costs are limited to:
 - a) Waste removal and disposal services;
 - b) Sanitization and restoration of the property, as necessary to restore the property to its pre-encampment condition;
 - c) Security measures installed as a temporary and nonpermanent measure directly related to the immediate cleanup, such as temporary fencing or temporary security gates. Ongoing monitoring, surveillance equipment, or security service contracts do not qualify;
 - d) Repairs to property caused by damage from encampments or illegal dumping, excluding property improvements or upgrades; and,
 - e) Installation of passive deterrent measures to prevent reencampments or entry, such as riprap material, excluding permanent construction or new structures.
- 4) Excludes from the definitions of "qualified cleanup expenses":
 - a) Ongoing or unrelated maintenance, permanent security systems, construction of new structures, and other capital improvements; and,

- b) Compensation paid to the taxpayer's employees, independent contractors, or other personnel for services performed in the normal course of employment or lease obligations.
- 5) Defines a "qualified taxpayer" as a business entity, including an individual operating as a sole proprietorship, owning or leasing real property used for commercial purposes in the state impacted by unauthorized encampments, illegal dumping, or abandoned property.
- 6) 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.
- 7) Requires a taxpayer to certify, under penalty of perjury, that the expenses were paid or incurred as a direct result of unauthorized encampments, illegal dumping, or abandoned property not caused or contributed to by the taxpayer or related parties, the real property address associated with the claimed expenses, whether the taxpayer is the property owner or lessee, and that such expenses meet all the requirements of this bill.
- 8) Reduces by the amount of credit awarded under this bill any deduction otherwise allowed for qualified cleanup expenses.
- 9) Prohibits a taxpayer from claiming a credit pursuant to this bill for which a separate taxpayer has also claimed a credit. Only the taxpayer directly incurring or paying the expenses and retaining documentary evidence demonstrating the payment is allowed the credit, if two or more taxpayers are eligible to claim a credit for the same qualified cleanup expenses.
- 10) Authorizes the FTB to adopt emergency regulations to carry out the purposes of this bill.
- 11) 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. The FTB must annually report this information to the Legislature by July 1, 2029. Disclosure of this information is treated as an exception to the general prohibition on the sharing of taxpayer information.
- 12) Finds and declares, in the uncodified 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 in 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.

13) Repeals the provisions of this bill on December 1, 2031.

14) 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.

15) 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: Pending.

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) 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) *What is a "tax expenditure"?* Existing law provides various credits, deductions, exclusions, and exemptions for particular taxpayer groups. In the late 1960s, U.S.

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.

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.

- d) *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

None on file

Opposition

None on file

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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.