

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2880 (Mia Bonta) – As Amended April 6, 2022

SUBJECT: Taxation: credits: College Access Tax Credit

SUMMARY: Extends the sunset for the College Access Tax Credit (CATC) by five years. Specifically, **this bill:**

- 1) Extends by five years, from January 1, 2023 to January 1, 2028, the sunset date for the CATC allowed under the Insurance Tax (IT) Law, Personal Income Tax (PIT) Law, and Corporation Tax (CT) Law.
- 2) Modifies the allocation of revenue by adding an allocation to the California Education Facilities Authority (CEFA) for outreach and providing information to taxpayers regarding the CATC, before revenue is appropriated for the purposes of awarding Cal Grants.
- 3) Makes an appropriation by extending the operation of the credit, including allocations of revenues from the CATC Fund, as specified.
- 4) Provides that this bill shall remain in effect only until December 1, 2028, and as of that date is repealed.
- 5) Finds and declares that, for the purposes of complying with Revenue and Taxation Code (R&TC) Section 41, the objective of this bill is to encourage increased private sector support of the Cal Grant Program, which may be determined by the number of taxpayers allowed the CATC and the total dollar value of CATC allowed.
- 6) Requires the Franchise Tax Board (FTB) to provide an annual report to the Legislature delineating the number of taxpayers allowed the CATC and the total dollar value of CATC allowed.
- 7) Treats the disclosure requirements of this bill as an exception to the existing misdemeanor charge related to disclosure of specified information on a taxpayer's return, among other documents.

EXISTING LAW:

- 1) Allows, for taxable years beginning on or after January 1, 2017, and before January 1, 2023, a CATC under the IT Law, PIT Law, and CT Law, in an amount equal to 50% of the amount contributed by a taxpayer to the CATC Fund, as allocated and certified by the CEFA. Limits the maximum aggregate amount of credit that may be allocated and certified by CEFA to \$500 million. Provides that any unused credits may be carried forward for up to six years. Limits, under the PIT Law and CT Law, a deduction for amounts included in the calculation of the credit. (R&TC Sections 12207, 17053.87, and 23687)

- 2) Creates the CATC Fund as a special fund in the State Treasury, and allocates revenues as follows:
 - a) First to the General Fund in an amount equal to the aggregate amount of credits allowed, as specified;
 - b) Second, upon appropriation, to the Department of Insurance, FTB, CEFA, State Controller, and California Student Aid Commission (Commission) for reimbursement of all administrative costs incurred in connection with the CATC and CATC Fund; and,
 - c) Third, continuous appropriation of remaining revenue to the Commission for purposes of awarding Cal Grants, as specified. (R&TC Sections 17053.86 and 17053.87)
- 3) Establishes the Cal Grant programs administered by the Commission for eligible students attending qualifying institutions. Cal Grant A awards cover tuition and fees while Cal Grant B awards provide a living allowance in addition to tuition and fee assistance after the first year. (Education Code (EDC) Section 69430 et seq.)

FISCAL EFFECT: Unknown.

COMMENTS: *Double-referral.* AB 2880 was double-referred to the Assembly Committee on Revenue and Taxation, and where it received a vote of 9-0 on April 18th, 2022.

Purpose. According to the author, “AB 2880 will continue to provide direct support to students who receive Cal Grants by extending the [CATC] by five years and allow the California Educational Facilities Authority to perform specific outreach and marketing for the program. By allowing CEFA to market the College Access Tax Credit, increased numbers of tax professionals can be educated about the program, increasing utilization and contributions to the fund, which then are passed on to students through larger Cal Grant awards. The [CATC] funds a supplemental increase in the Cal Grant B, which helps low-income college students receive funds for living expenses, transportation costs, supplies, and books.”

The author also writes that “...annual contributions to the CATC Fund have declined since 2014 from a high of \$13.8 million in 2015 to a low of \$808,000 in 2019. Interviews with accounting firms and professional organizations indicate that this decline is partially due to the federal Tax Cuts and Jobs Act of 2017, which increased the federal standard deduction and eliminated or restricted many itemized deductions. Taxpayers find the federal tax deduction more valuable than the state tax deduction and when there is no benefit for charitable contributions at the federal level, they may be less likely to contribute. Another factor is lack of awareness of the program.”

“Although these contributions have decreased over the years, there is still a benefit to the Cal Grant Program from the Fund. Almost a million dollars was contributed to the Fund in 2020, and it did see an increase in Taxable Year 2021 to slightly over a million dollars in annual contributions. Should there be additional changes in federal tax law to improve the benefit to taxpayers for charitable contributions, this Fund may be well used again. Additionally, CEFA does not have the authority to use an appropriation for outreach/marketing purposes. This is hindering its ability to get the word out about the program, its benefit to taxpayers, and its benefit to college and university students. Amendments have been submitted...that would ensure CEFA

has the ability to perform outreach for the program, which will increase the use of this program and the influx of funding into the Cal Grant Program, enabling additional grants.”

Cal Grant program. The state's Cal Grant program, created in 1955, provides state grants to qualified California high school graduates and community college transfer students who meet both financial need and academic criteria.

To note, AB 2880 would continue to fund a supplemental increase in the Cal Grant B, which, as the author notes, “helps low-income college students receive funds for living expenses, transportation costs, supplies, and books.”

1) Cal Grant A Entitlement Awards. Students that meet income, asset and other eligibility requirements, have at least a 3.0 grade point average, and apply either the year they graduate from high school or the following year are entitled to an award that provides coverage for tuition and fees.

2) Cal Grant B Entitlement Awards. Students that meet income and asset thresholds (lower than Cal Grant A) and other eligibility requirements, have at least a 2.0 GPA and apply either the year they graduate from high school or the following year are entitled to a living allowance and tuition and fee assistance. Awards for first-year students are limited to an allowance for books and living expenses (\$1,678). To note, in the second and subsequent years, the award also provides tuition and fee support.

3) California Community College Transfer Entitlement Awards. Cal Grant A and B awards are guaranteed to every student who graduated from a California high school after June 30, 2000, was a California resident at the time of high school graduation, transferred to a qualifying baccalaureate-degree granting institution from a CCC during the award year, was under the age of 28 at the time of the transfer, and had a minimum CCC GPA of 2.4.

4) Competitive Cal Grant A and B Awards. Students who are not eligible for entitlement awards may compete for a Cal Grant A or B Competitive award. The award benefits and eligibility requirements are the same as the entitlement program, but awards are not guaranteed. Annually, 25,750 Cal Grant Competitive awards are available. Of these, 12,875 (one-half) are for students who do not qualify for a Cal Grant Entitlement award, but who otherwise meet the Cal Grant requirements. The remaining awards are set aside for eligible CCC students.

The College Access Tax Credit: Established by SB 798 (De León), Chapter 367, Statutes of 2014, the CATC is designed to encourage taxpayers to make charitable contributions to the Cal Grant program, which provides financial aid to low-income California students pursuing post-secondary education.

The structure of the credit is based on a 2013 publication by Phillip Blackman, then Associate Director of Development at the Penn State Dickinson School of Law, and Kirk Stark, Professor and then Vice Dean at the UCLA School of Law, which detailed a means for states to leverage federal funds at minimal cost by creating a state tax credit for cash contributions to a state entity. Titled Capturing Federal Dollars with State Charitable Tax Credits, this concept was based on the Internal Revenue Service (IRS) position that charitable contributions to non-profits, state governments, or local governments are eligible to be federally deducted as a charitable contribution. While a contribution would not be made with charitable intent if the contributor

expects a direct or indirect benefit, a federal or charitable contribution deduction is not regarded as a return benefit that negates charitable intent.

The original CATC provided a 60% credit, 55% credit, and 50% credit in the 2014, 2015, and 2016 taxable years, respectively, to offset state tax obligations under the PIT Law and CT Law. For instance, a taxpayer making a \$100 contribution in 2014 would receive a \$60 credit from the state to reduce state tax liability. The taxpayer could then deduct the full \$100 amount as a charitable contribution on their federal return, which could be worth as much as \$28 depending on the taxpayer's federal tax rate. Thus, the \$100 contribution would only cost the taxpayer \$12, while the remaining \$40 from the contribution could then, upon appropriation, reimburse relevant state agencies for their costs resulting from administration of CATC and CATC Fund, with the remaining revenue allocated to the Commission for awarding Cal Grants.

SB 81 (Committee on Budget and Fiscal Review), Chapter 22, Statutes 2015, recast certain provisions of the CATC and extended its operation to taxable years beginning on or after January 1, 2017, and before January 1, 2018. Changes to the CATC included expansion to the IT Law so insurers could apply the credit to their annual tax on gross premiums and continuous appropriation of funds from the CATC Fund to the Commission for purposes of awarding Cal Grants, rather than upon appropriation. Additionally, for taxable year 2017, SB 81 fixed the CATC at 50% of the amount contributed by a taxpayer and limited the annual maximum aggregate amount of credit that could be allocated and certified by CEFA to \$500 million, rather than rolling over amounts of unallocated and uncertified credits from the previous year.

The latest extension of the credit was enacted by AB 490 (Quirk-Silva), Chapter 527, Statutes of 2017, which amended the sunset date of the CATC from taxable years beginning before January 1, 2018, to taxable years beginning before January 1, 2023.

Amount of contributions to the CATC Fund: According to a report by CEFA to the Treasurer, the amount of contributions to the CATC Fund has dropped precipitously: the Treasurer notes that just below \$1.2 million was contributed to the CATC Fund in the 2021 taxable year. These statistics largely confirm that Treasury Decision 9864 has significantly limited the overall incentive of the CATC.

Treasury Decision 9864 finalized a 2018 proposed regulation that generally required a taxpayer to reduce the amount of federal charitable contribution deduction by the amount of state tax credit provided for the same contribution. Therefore, a \$100 contribution made to the CATC Fund in 2019 would entitle the taxpayer to a \$50 state tax credit and the taxpayer would be allowed to claim \$50 as a deduction on their federal return, rather than the whole \$100. Ultimately, this ruling likely reduces the overall incentive to contribute to the CATC Fund.

Arguments in support. The State Treasurer, the Honorable Fiona Ma, wrote that, "...one such program to help offset the ever-increasing college tuition that CEFA administers is the CATC Fund. Under this program, taxpayers may submit applications for tax credits to CEFA while contributing to the Commission's Cal Grant B Access Award program. These awards provide low-income students with an allowance for living expenses, transportation, supplies, and books. This is why I am sponsoring AB 2880 (Bonta), which would extend the sunset date by five years."

REGISTERED SUPPORT / OPPOSITION:

Support

California State Treasurer

Opposition

None on file

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