

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: July 6, 2011

To: The Commission
(Meeting of July 14, 2011)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 509 (Skinner) – Federal earned income tax credit:
notification: state departments and agencies
As amended: June 21, 2011**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: OPPOSE UNLESS AMENDED

SUMMARY OF BILL:

AB 509 would amend Sections 19851-19853 of the Revenue and Taxation Code to require state departments, including the California Public Utilities Commission (CPUC), to provide information to all recipients in public benefit programs who may be eligible for the Earned Income Tax Credit (EITC) about the EITC at least once per year, between the months of January and April. EITC information can be provided during regularly scheduled contacts with program participants, by telephone, mail, or electronic communication. These communications can be done indirectly (through a third party administrator) if the agency does not communicate with program participants directly.

AB 509 would require the CPUC to notify customers enrolled in CARE, Family Electric Rate Assistance (FERA), Energy Savings Assistance Program (ESAP), and the Universal Lifeline Telephone Service Program (ULTS) of their potential EITC eligibility through telephone, mail, or electronic communication, or by an in-person communication. Due to the large size of both CARE and ESAP customer bases, any form of customer outreach would have substantial costs associated with the printing and mailing of the notifications. AB 509 does not provide a funding component to cover the associated costs of these outreach methods. Subsequently, AB 509 notification costs would come from CARE, FERA, or ESAP program funds, limiting existing funds for direct program necessities.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

While information on the EITC could help many of the CARE, ESAP, and ULTS participants, there are a number of concerns with AB 509's new requirements.

- > Current law allows for the allocation and recovery of costs associated with the implementation of CARE, ESAP, and ULTS low income programs, but the cost must be related to the provision of CARE and ESAP. Providing information on EITC may not be a CARE or ESAP related expense, and thus could not be funded by the CARE or ESAP budget without an amendment to the P.U. Code.
- > A notification by the CARE, FERA and ESAP programs as well as by utility companies to program participants in the form of a separate mailing, bill insert, or outbound dialer message would result in additional annual costs to programs.
- > As drafted, the bill is focused on stated agencies that communicate directly with program participants that may be eligible for the EITC. The CPUC does not communicate directly with CARE, ESAP, and ULTS customer, instead the utilities have the direct contact with the program participants. AB 509 should be amended to address situations where the programs are overseen by a state agency but administered by a third party.

CPUC staff recommends an 'Oppose Unless Amended' position on this bill. As identified above, PU Code Sections 739.1(c), 382 (f), and 277(c) must be amended to allow funds from these programs to be used for the requirements proposed by AB 509 and to address situations where a non-governmental entity administers the program.

SUMMARY OF SUGGESTED AMENDMENTS:

Public Utilities Code sections 739.1(c), 382 (f), and 277(c) allows for the allocation and recovery of costs associated with the implementation of CARE, ESAP, and ULTS low-income programs, but the cost must be related to the provision of CARE and ESAP. Providing information on EITC may not be a CARE- or ESAP-related expense, and thus could not be funded by the CARE or ESAP budget without an amendment to the PU Code.

The bill is focused on stated agencies that communicate directly with program participants that may be eligible for the EITC. The CPUC does not communicate directly with CARE, ESAP, and ULTS customers; instead, the utilities have the direct contact with the program participants. AB 509 should be amended to address situations where the programs are overseen by a state agency but administered by a third party.

Specifically, the following amendments should be made to PU Code § 277 (c), PU Code § 382 (f), PU Code § 739.1 (c) and the newly-proposed R&T Code § 19853 (b):

1. PU Code § 277 (c): Strike "Moneys" and add "Except for the purposes of Sections 19851-19853 of the Revenue and Taxation Code, moneys" before "appropriated".

2. PU Code § 382 (f): Clarify that the CPUC shall further allocate funds for the purposes of Sections 19851-19853 of the Revenue and Taxation Code.
3. PU Code § 739.1 (c). Clarify that the CPUC shall further authorize recovery of all costs for the purposes of Sections 19851-19853 of the Revenue and Taxation Code.
4. R&T Code § 19853 (b): On page 4 of the June 21, 2011 version of AB 509, line 1, add “,” after “agencies”. On page 4, line 2, strike “or” before “districts” and add “or regulated entities” after “districts”. On page 4, line 5, add “most” before “effective”.

Reporting Requirements:

The bill is silent as to any requirements that the CPUC report on compliance or provide information to the Legislature.

PROGRAM BACKGROUND:

CARE and the Energy Savings Assistance Program (formerly known as Low Income Energy Efficiency or LIEE) provide financial assistance to low-income electric customers in California. The CARE program provides a 20% discount on electric and natural gas bills to all eligible participants. The Energy Savings Assistance Program provides low income customers with installation of weatherization and energy efficiency measures, minor home repairs, and energy education at no cost to the participants. Participants include single family, multi-family, and non-profit group living customers. Income eligibility for both CARE and ESAP is 200% or less of federal poverty guidelines.

ULTS is often referred to as the California LifeLine Telephone Program; it provides discounted basic landline telephone service to qualified California residents. Participants can qualify based on their total household income (if it is below approximately 150% of the federal poverty guideline) or by participation in one of twelve means-tested public assistance programs.

LEGISLATIVE HISTORY:

In 2007 the Legislature passed the Earned Income Tax Credit Information Act, Assembly Bill 650, Chapter 606 (Lieu and Jones). This bill requires any employer who is subject to, and is required to provide unemployment insurance to employees, to notify all employees that they may be eligible for the federal Earned Income Tax Credit. Some employers in the state are not required to provide unemployment insurance to their employees, and therefore are not required to comply with the Earned Income Tax Credit Information Act.

SB 1154 (Cedillo) of 2010 would have required the CPUC to provide information on the EITC to applicants for either the California Alternate Rates for Energy or the Universal Lifeline Telephone Service. Governor Schwarzenegger vetoed the bill because it is not the "CPUC's responsibility to provide outreach materials." He was also concerned that the CPUC's advertisement of the EITC "would set a bad precedent that would impose costs on other ratepayers who may receive little or no benefit."

FISCAL IMPACT:

The CPUC contracts with a third party administrator to mail and process application and renewal forms (and provide "robo-calls" for reminders) for consumers attempting to qualify to receive the California ULTS discounts. Based on the activity for the program for the past twelve months, the California ULTS Administrator (Administrator) mailed 3,263,000 total application and renewal forms. There are about 1.7 million current California ULTS participants as of May 2011.

Based on these numbers the Communications division was able to develop cost estimates for including bill notifications to ULTS customers. Similar numbers would apply to CARE and EASP customers:

- Scenario 1 - Administrator prints and mails EITC insert:
 - A double-sided insert included in all forms would cost \$0.099 per form, or about \$323,037 per year.
 - A single-sided insert included in all forms would cost \$0.067 per form, or about \$218,621 per year.
- Scenario 2 - Administrator mails pre-printed EITC insert provided by the CPUC:
 - The cost to include a pre-printed insert would be \$0.028 per form or about \$91,634 per year plus Commission cost to print and ship EITC inserts to the California LifeLine Administrator.
- Scenario 3 - Administrator prints and mails insert (in a separate envelope) on an annual basis (once a year) to all current participants (currently about 1,700,000):
 - A double-sided insert would cost \$0.557 per participant, or about \$952,470 each year.
 - A single-sided insert would cost \$0.524 per participant, or about \$896,040 each year.
- Scenario 4 – Use of the Administrator's outbound dialer
 - Sending (English only) outbound dialer call to each participant at a given date (from January – April), assuming the call is less than one minute.
 - Given from one to three attempts per participant at a rate of \$0.05445, cost would be from \$94,000 to \$280,000 annually, plus \$6,500 for setup.
- Scenario 5 – Phone Companies send the insert

These scenarios assume the EITC notices are sent in English only. Currently, California LifeLine supports forms and other information in English, Spanish, Chinese (Mandarin and Cantonese), Korean, Vietnamese, Tagalog, and Japanese. Translations costs for the additional EITC notice would be less than \$2,000 in total for all languages.

STATUS:

AB 509 is pending hearing in the Senate Appropriations Committee.

SUPPORT/OPPOSITION:

Support: California Catholic Conference, Inc.
Coalition of California Welfare Rights Organization
Community Housing Development Corporation
Congress of California Seniors
Contra Costa's Family Economic Security Partnership
Controller John Chiang

Opposition: None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 509 AMENDED
BILL TEXT

AMENDED IN SENATE JUNE 21, 2011
AMENDED IN ASSEMBLY MAY 27, 2011
AMENDED IN ASSEMBLY MARCH 25, 2011

INTRODUCED BY Assembly Member Skinner

FEBRUARY 15, 2011

An act to amend Sections 19851, 19852, and 19853 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 509, as amended, Skinner. Federal earned income tax credit: notification: state departments and agencies.

The federal income tax law authorizes a refundable earned income tax credit for certain low-income individuals who have earned income and who meet certain other requirements. Existing California law requires an employer, as defined, to notify all employees that they may be eligible for the federal earned income tax credit (EITC), as specified.

This bill would ~~also~~ require state departments and agencies that serve those who may qualify for the EITC, as defined, to notify their program recipients that they may be eligible for the EITC, at least once a year during the months of January through April, or alternatively, to provide this annual notification during a regularly scheduled contact with a recipient by telephone, mail, or electronic communication, or by an in-person communication, as specified. This bill would ~~also~~ require state departments and agencies that do not directly communicate with persons who may qualify for the EITC to communicate indirectly through agencies or districts serving those persons.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 19851 of the Revenue and Taxation Code is amended to read:

19851. The Legislature finds and declares as follows:

(a) Congress created the federal earned income tax credit (EITC) in 1975 to offset the adverse effects of the Medicare and social security payroll taxes on working poor families and to encourage low-income workers to seek employment rather than welfare.

(b) Due to a relatively low percentage of federal earned income tax credit eligible persons who participate in the federal Earned Income Tax Credit program, hundreds of millions of federal dollars go unclaimed by the working poor in California.

(c) In order to alleviate the tax burden on working poor persons and families, to enhance the wages and income of working poor persons and families, to ensure that California receives its share of the federal money available in the federal Earned Income Tax Credit program, and to inject additional federal money into the California economy, the state shall facilitate the furnishing of information to working poor persons and families regarding the availability of the federal earned income tax credit so that they may claim that credit on their federal income tax returns.

(d) It is the intent of this act to offer the most cost-effective assistance to eligible taxpayers through the following:

(1) Notices provided by their employers.

(2) Notices provided by state departments and agencies that serve those who may qualify for the EITC.

SEC. 2. Section 19852 of the Revenue and Taxation Code is amended to read:

19852. For purposes of this part, the following terms have the following meanings:

(a) "Employer" means any California employer who is subject to, and is required to provide, unemployment insurance to his or her employees, under the Unemployment Insurance Code.

(b) "Employee" means any person who is covered by unemployment insurance by his or her employer, pursuant to the Unemployment Insurance Code.

(c) "EITC" means the federal earned income tax credit, as defined in Section 32 of the Internal Revenue Code.

(d) "State departments and agencies that serve those who may qualify for the EITC" means those departments and agencies that operate state or federally funded programs primarily engaged in providing services to low-income individuals and families. Departments, agencies, and programs under this subdivision may include, but are not limited to, the following:

(1) The State Department of Education: free or reduced-price meal program and National School Lunch Program.

(2) The State Department of Social Services: the CalWORKs program, CalFresh, and foster families.

(3) The Public Utilities Commission: California Alternate Rates for Energy, the Energy Savings Assistance Program, Payment Plans, and Emergency Payment Assistance Programs, including Family Electric Rate Assistance, the California Weatherization Assistance Program, the Low Income Home Energy Assistance Program, the California LifeLine Telephone Program, and Link-Up.

(4) Employment Development Department: California Unemployment Insurance.

(5) State Department of Health Care Services: the Medi-Cal program.

(6) Managed Risk Medical Insurance Board (MRMIB): the Healthy Families Program.

SEC. 3. Section 19853 of the Revenue and Taxation Code is amended to read:

19853. (a) An employer shall notify all employees that they may be eligible for the EITC within one week before or after, or at the same time, that the employer provides an annual wage summary, including, but not limited to, a Form W-2 or a Form 1099, to any employee.

(b) The state departments and agencies that serve those who may qualify for the EITC, as defined in subdivision (d) of Section 19852,

shall notify their program recipients that they may be eligible for the EITC, at least once a year during the months of January through April, or alternatively, shall provide this annual notification during a regularly scheduled contact with a recipient by telephone, mail, or electronic communication, or by an in-person communication. State departments or agencies that do not directly communicate with persons or households with persons who may qualify for the EITC may communicate indirectly through agencies or districts that serve eligible persons or households with eligible persons. Departments, agencies, and programs are encouraged to develop the least costly, effective method to provide notice to recipients of EITC eligibility, ~~which method shall meet the requirements of~~ as long as the notice contains substantially the same language as the notice described in Section 19854.

(c) The employer shall provide the notification required by subdivision (a) by handing directly to the employee or mailing to the employee's last known address either of the following:

(1) Instructions on how to obtain any notices available from the Internal Revenue Service for this purpose, including, but not limited to, the IRS Notice 797 and Form W-5, or any successor notice or form.

(2) Any notice created by the employer, as long as it contains substantially the same language as the notice described in paragraph (1) or in Section 19854.

(d) The employer shall not satisfy the notification required by subdivision (a) by posting a notice on an employee bulletin board or sending it through office mail. However, these methods of notification are encouraged to help inform all employees of the EITC.

(e) Every employer shall process, in accordance with federal law, Form W-5 for advance payments of the EITC, upon the request of the employee.