Date of Hearing: May 12, 2021

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 71 (Luz Rivas) – As Amended May 4, 2021

Policy Committee:	Revenue and Taxation	Vote:	7 - 4
	Housing and Community Development		5 - 2

Urgency: No	State Mandated Local Program: No	Reimbursable: No

SUMMARY:

This bill conforms state law to federal Global Intangible Low-Taxed Income (GILTI) provisions and taxes repatriated income to finance the Bring California Home Fund (Fund) to address homelessness. Specifically, this bill:

1) Conforms, for taxable years beginning January 1, 2022, the Personal Income Tax (PIT) Law to GILTI, requiring a taxpayer that is a United States (US) shareholder of a controlled foreign corporation to include GILTI in their gross income, as specified.

2) Requires, beginning January 1, 2022, under the Corporation Tax (CT) Law, a water's-edge taxpayer to take into account 50% of GILTI and 40% of repatriation income of the taxpayer's affiliated corporations, as specified, and caps at $5 million the value of certain business credits that a water's-edge taxpayer may use to reduce any additional tax liability resulting from this provision.

3) Requires the Franchise Tax Board (FTB) to provide the State Controller with information regarding increased revenue from GILTI and deemed repatriation income, and requires the State Controller to annually transfer those increased revenues to the Fund.

4) Restructures the Homeless Coordinating and Financing Council (HCFC) and requires HCFC to conduct a statewide gaps and needs analysis on state programs that provide housing or housing-based services and report this information to the Legislature by July 31, 2022. Any state department or agency that receives a data request for this analysis must respond within 180 days.

5) Requires HCFC to convene a funding workgroup, including state entities and philanthropic organizations, to determine best practices for state administration of homeless and housing services.

6) Requires HCFC to administer allocations from the Fund to counties, continuums of care (CoCs) and cities, as specified, with the first round of funding allocated no later than March 31, 2023. Fund recipients must meet performance outcomes, and HCFC can award bonus funding or shift funding away from a recipient depending on whether the recipient achieves stated outcomes. HCFC must submit an annual progress report to the Legislature, with the first report due no later than January 1, 2024.

7) Requires the Department of Health Care Services (DHCS) to seek federal approval for a Medi-Cal benefit to fund prescribed services, including housing navigation and housing acquisition support services for beneficiaries experiencing homelessness, and requires DHCS to convene a stakeholder advisory group to determine an effective process for funding the state's share of the federal medical assistance percentage (FMAP). Up to 20% of a continuum's allocation from the Fund may be used for the state's FMAP.

FISCAL EFFECT:

1) The FTB estimates General Fund (GF) revenue gain of $310 million in fiscal year (FY) 2021-22, $950 million in FY 2022-23 and $950 million in FY 2023-24. GF revenue gain drops to $600 million in FY 2024-25, coinciding with the conclusion of deemed repatriation installment payments. The FTB also estimates implementation costs of an unknown, but potentially significant, amount to reprogram systems, update forms and provide needed taxpayer outreach to ensure compliance.

2) GF costs of approximately $6 million to HCFC in the first year to complete a statewide needs and gaps analysis. Additionally, costs of approximately $4.5 million in the first year and $4.3 million ongoing to HCFC to convene the funding workgroup and administer funding allocations to counties, CoCs and cities.

3) GF costs of approximately $802,000 in the first and second years to the Department of Housing and Community Development to collaborate with HCFC on the needs and gaps analysis and development of a universal application for all programs related to homelessness.

4) Costs of an unknown amount to DHCS to seek a federal Medi-Cal waiver and convene the FMAP stakeholder advisory group.

COMMENTS:

1) **Purpose.** This bill is sponsored by a coalition of 15 organizations. According to the author:

> Our state is facing an unprecedented homelessness crisis that has the potential of becoming a full-blown catastrophe due to the economic impacts of COVID-19 on low wage earners. Despite being the fifth largest economy in the world, one in four Americans experiencing homelessness reside in California. AB 71 delivers a comprehensive plan to address homelessness by investing, for the first time ever, dedicated annual state funding to our local governments; and, implements accountability and transparency measures to ensure every dollar is used effectively.

2) **Profit Shifting.** Some multinational corporations utilize inconsistencies in international tax rules to artificially shift profits to low- or no-tax jurisdictions, thus lowering the amount of tax remitted. According to the Organisation for Economic Co-operation and Development, governments, citizens and businesses all lose when this profit shifting occurs – governments miss much needed revenue, citizens pay more for services or go without services and purely domestic businesses have a hard time competing with sophisticated multinational enterprises.

Before the 2017 federal Tax Cuts and Jobs Act (TCJA), the US generally taxed entities on their worldwide income, but firms could defer tax on foreign subsidiaries' active business earnings until repatriated, or brought back to the US, and taxed at a rate of 35%. The TCJA exempted these earnings from tax, but enacted a new 10.5% minimum tax on GILTI, income from intangible assets such as patents, trademarks and copyrights, to discourage further profit shifting and keep these highly mobile assets within reach. The TCJA also imposed a lower tax rate (15.5% for foreign earnings held in cash and cash equivalents; 8% otherwise) for foreign earnings now returning to the US, to avoid a potential windfall for corporations that accumulated previously unrepatriated earnings, and allowed this tax payment to be made in installments over eight years. Deemed repatriation is estimated to raise $340 billion over 10 years at the federal level, illustrating the significant earnings corporations had accumulated abroad.

AB 71 provides modified state tax conformity to federal efforts to more accurately account for, and thus, appropriately tax, in-state income. As noted in the Assembly Committee on Revenue and Taxation's analysis of this bill, states with tax systems like California are exposed to substantial risk from the federal switch to a territorial tax system, making state action like including GILTI in the state's tax base a necessary measure to address a further narrowing of the state's corporate tax base. Similarly, including 40% of deemed repatriation in state taxable income finally taxes earnings that are, at least partially, domestic, and should be recaptured for the state's General Fund.

3) **Addressing Homelessness.** In response to the growing population of people experiencing homelessness, the state has allocated funds directly to CoCs, cities and counties to address the issue. From 2018 to 2020, the state invested $1.45 billion in flexible funding through two programs administered by HCFC, the Homeless Emergency Assistance Program (HEAP) and the Homelessness Housing and Assistance Program (HHAP). Funding can be used for shelters, navigation centers, rental assistance, permanent supportive housing and services. Overall, however, the state lacks a comprehensive strategy for addressing homelessness, only in part due to piecemeal funding. Although HCFC is responsible for working with all state agencies and departments that operate programs providing housing or housing-related services, HCFC does not have clear authority to make changes to state policy or programs impacting homelessness. Additionally, the desire to give local governments flexibility in how to best reduce homelessness has made accountability challenging. AB 71 seeks to commit the state to ongoing, sustainable funding, almost $1 billion annually for the first few years, to make a real impact on the problem. AB 71 also requires concrete measures to drive funding investments, including a gaps and needs analysis, outcome and performance goals, audit and reporting functions and rewards for good outcomes.

4) **Related Legislation.** AB 1220 (Luz Rivas) makes similar changes to the composition of the HCFC. AB 1220 is pending hearing in this committee.

   AB 1575 (Committee on Housing and Community Development) requires the HCFC, upon appropriation by the Legislature or receiving technical assistance from the U.S. Department of Housing and Urban Development, to perform a homelessness statewide gaps and needs analysis and submit it to the Legislature by July 31, 2022. AB 1575 is pending on this committee's Suspense File.

AB 816 (Chiu) creates the Office of the Housing and Homelessness Inspector General to create greater accountability for state and local actions to address homelessness, imposes new requirements on local governments to develop actionable plans address homelessness and creates a public right of action for the Inspector General to compel compliance with those new plans. AB 816 is pending hearing in this committee.

5) **Prior Legislation.** AB 3269 (Chiu), of the 2019-20 Legislative Session, would have required the HCFC to conduct a gaps and needs analysis similar to the one in this bill, amongst other provisions. AB 3269 was held on the Suspense File in the Senate Appropriations Committee.

Analysis Prepared by: Irene Ho / APPR. / (916) 319-2081