

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Longville Analyst: Roger Lackey Bill Number: AB 1001

Related Bills: See Prior Analysis Telephone: 845-3627 Amended Date: 4/19/2001

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: California Spaceport Development Zone Act Of 2001

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 23, 2001. STILL APPLIES.
- OTHER - See comments below.

SUMMARY

This bill would:

- Require the Trade and Commerce Agency (TCA) to designate spaceport development zones.
- Allow certain taxpayers in a spaceport development zone to claim multiple income tax incentives.

This analysis will address the TCA provisions of the bill only as they impact the department's programs and operations or state income tax revenue.

SUMMARY OF AMENDMENTS

The April 19, 2001, amendments added language to the Government Code requiring as a condition of the tax incentives available in the spaceport development zone, a business must be primarily engaged in launch-related activities and may only apply the tax incentives to income attributable to those activities.

The April 19, 2001, amendments also created a spaceport governing body and made several technical changes to the bill. These changes would not impact the department's analysis.

Board Position:

S NA NP
 SA O NAR
 N OUA PENDING

Legislative Director

Date

Brian Putler

05/02/01

Except for the discussion above, the department's analysis of the bill as introduced February 23, 2001, still applies. A new implementation consideration and the implementation and policy considerations addressed in the department's prior analysis are included below.

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

For a business to be eligible for the tax incentives, the business must be primarily engaged in launch-related activities and may only use the spaceport development incentives for those portions of the business that are directly engaged in those activities. Generally taxpayers "apply" incentives (deductions and credits) against income or tax liability. It is suggested the term "use" be amended to be "apply." Also, the meaning of the terms "business" and "directly engaged" are unclear. If it is the author's intent to limit the spaceport development incentives to business activities and income directly attributable to launch related activities, the bill should clearly state as such. Without clarification, these limitations will complicate implementation and administration of the bill. As a technical matter, such limitations should also appear in the Revenue and Taxation Code. The author's staff is currently working with the department to resolve the items discussed above.

This bill would become effective January 1, 2002, although the majority of the credit and deduction provisions would be operative for taxable years beginning on or after January 1, 2001. Since TCA is not authorized to designate a spaceport development zone until January 1, 2002, taxpayers would be ineligible for these incentives until the zone has been designated. In addition, wages paid to an employee hired prior to the spaceport zone designation date would never be eligible for the employer hiring credit or the employee wage credit.

The author may want to consider amending the credit and deduction operative dates to match the effective date of the bill.

Also, the corporate sales or use tax credit and the provisions allowing the credits to reduce regular tax below tentative minimum tax would not be operative until taxable years beginning on or after January 1, 2002, which may create confusion.

The hiring credit provision of the bill mirrors portions of the existing hiring credit for other economic development areas (EDA); however, the language of the bill does not include the criteria for "disadvantaged and disabled" employees. It is unclear if this was an oversight, or if it was the author's intent to exclude these criteria.

The hiring credit and the employee wage credit define the term "qualified employee" both for purposes of credit eligibility and for exclusion from eligibility. These definitions impose the additional requirement that the employer obtain certification that the employee meets the elements for a "qualified employee." This certification must be obtained from the Employment Development Department, the local county or city Job Training Partnership Act administrative entity, or the local county GAIN office or social service agency, as appropriate. While the bill does not specifically require that certification be obtained to meet the general eligibility requirements to claim the credit, the department has interpreted this same phrase in other hiring credits to require certification, otherwise the credit is denied.

Moreover, there have been circumstances where taxpayers have been unable to obtain a required certification for similar incentives for reasons related to eligibility (for example, if the certifying agency is not providing certifications). It is unclear in those circumstances whether the taxpayer would be eligible for the credit in the absence of obtaining the certification.

Due to the ambiguity of the certification requirement and the general eligibility requirement discussed above, the FTB has sponsored a legislative proposal to clarify the general eligibility and certification requirements. (SB 1125, 2001/2002.) To avoid the same ambiguity that exists with other hiring credits, the author may wish to clarify his intent with respect to the certification requirement of each credit by adopting amendments comparable to the amendments in SB 1125. The department can provide language to clarify the author's intent in this area.

The 40% business expense deduction for qualified property contains a recapture provision. It specifies that the deduction shall be recaptured if the property ceases to be used within the spaceport development zone "at any time before the close of the second taxable year after the property is placed in service." The department would interpret this recapture provision in a manner consistent with the Legislature's original intent for calculating the recapture period for similar incentives. It was the Legislature's intent then to look to the last day of the taxable year in which the qualified property was placed in service and then add two more taxable years after that date to determine the recapture period.

The recapture period also may be interpreted to begin in the taxable year the property was placed in service and require only two taxable years to thereafter close to satisfy the recapture provisions. Under the second interpretation, the first taxable year would be the taxable year the property was placed in service. The author may wish to clarify his intent on this issue to resolve any confusion that may occur between the FTB and taxpayers in regard to the proper interpretation.

ARGUMENTS/POLICY CONCERNS

Federal law prohibits discriminatory state taxation of interest on federal securities. This bill would allow a deduction related to interest received by lenders that lend money to taxpayers engaged in a trade or business in a spaceport development zone. This incentive, which provides a subsidy to non-federal securities, could be considered to result in a violation of the federal law prohibiting discriminatory state taxation of interest on federal securities.

The bill would allow TCA to designate spaceport development zones. However, the bill does not limit the number of zones TCA may designate or the length of time they would remain designated. Current economic development area provisions contain limits on the number of zones or areas that may be designated and specify a time period for when the zone or area will expire.

LEGISLATIVE STAFF CONTACT

Roger Lackey
Franchise Tax Board
845-3627

Brian Putler
Franchise Tax Board
845-6333