

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Dutton Analyst: Rachel Coco Bill Number: AB 2859

Related Bills: See Prior Analysis Telephone: 845-4328 Amended Date: May 11, 2004

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer Contributions To Unemployment Fund Credit/Employment Of Veteran Or Individual Separated With Honorable Discharge From Armed Forces or National Guard/FTB Report To Legislature Regarding Credits

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 amended March 30, 2004.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED March 30, 2004, STILL APPLIES.

OTHER - See comments below.

SUMMARY

This bill would provide employers a tax credit equal to the amount paid into the Unemployment Fund.

SUMMARY OF AMENDMENTS

The May 11, 2004, amendments added language that would require an eligible employee to have been honorably discharged from the Armed Forces of the United States or the California National Guard. In addition, the amendments would require the taxpayer to maintain records documenting an employee's eligibility under the credit and provide those records to the Franchise Tax Board (FTB) upon request. Further, the amendments would require FTB to prepare and submit to the Legislature a report on the use of the credit.

As a result of the amendments, the "This Bill" portion as discussed in the analysis of the bill as amended March 30, 2004, has been revised. The May 11, 2004, amendments resolved several of the concerns as discussed in the analysis of the bill as amended March 30, 2004. The remaining concerns are included below.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective and operative for taxable years beginning on or after January 1, 2004, and before January 1, 2007.

Board Position:

_____ S _____ NA _____ NP
_____ SA _____ O _____ NAR
_____ N _____ OUA PENDING

Legislative Director

Date

Brian Putler

5/25/04

POSITION

Pending.

THIS BILL

This bill would provide a tax credit in an amount equal to the amount paid into the Unemployment Fund by a qualified taxpayer. The bill states that the credit would be allowed based on the amount paid into the fund during the first year of employment of any qualified employee.

The bill would require the taxpayer to maintain records documenting the eligibility of qualified employees and would require the taxpayer to provide that information to FTB upon request.

The bill defines "qualified employee" as either or both 1) an individual who is separated with an honorable discharge from the Armed Forces of the United States or the California National Guard and is hired by a qualified taxpayer within six months of separation, or 2) a veteran who has either completed within six months of being hired or who, within six months prior to being hired, is a participant in an employment training or development program.

The bill defines "qualified taxpayer" as a taxpayer that makes employer contributions to the Unemployment Fund and employs one or more qualified employees.

This bill also would require FTB to prepare and submit to the Legislature on or before January 1, 2006, a report describing the use of the tax credits. The report shall include the number and value of the credits claimed and the size and nature of the business making the claim.

This bill would allow any unused credit to be used in the following year, and succeeding six years, until the credit is exhausted.

This bill specifies that the credit would remain in effect until January 1, 2008, and as of that date is repealed.

IMPLEMENTATION CONSIDERATIONS

The bill specifies that a qualified taxpayer is one that makes "employer" contributions to the Unemployment Fund. However, in some instances employers deduct the amount of the contribution to the fund from employee wages. It is unclear whether a taxpayer that uses employee wages as contribution to the fund would qualify for this credit.

This bill would require FTB to provide a report on the credit including the "size and nature of the business claiming the credit." The term "size" could be determined using varying criteria. For instance, size could mean total number of employees, total income, or even gross receipts. The author may wish to amend the bill to clarify how business "size" would be determined for purposes of providing the report.

The bill defines an eligible employee as a veteran who has completed within six months of being hired, or who, within six months prior to being hired, has participated in an employment training or development program operated by federal, state, or local agencies or by nonprofit organizations that provide transitional housing, counseling, job training, and case management services to veterans and their families. This definition is broad and could lead to disputes between taxpayers and the department. The author may wish to amend the bill to designate specific training programs that an employee would be eligible under or designate an agency or agencies that would be authorized to provide documentation proving an employee's eligibility.

TECHNICAL CONSIDERATIONS

The provision defining "qualified employee" contains unnecessary language. If the author intends only one of the conditions to be satisfied, then "or both" should be removed. If the intent is to require that both conditions be satisfied, then "either or" should be removed.

ARGUMENTS/POLICY CONCERNS

This bill would have the effect of providing a double benefit for deductible benefits by virtue of this credit and the ordinary deduction of these payments from the income of the trade or business.

Currently, employers are required by federal law to re-hire service members once they have completed their tour of duty. Thus, this bill could be seen as providing an incentive for complying with existing law.

This bill lacks language requiring that qualified employees be employed and performing services within California. Without such language, the bill could be interpreted to provide the credit for employees working outside of California.

Credits generally are provided as a percentage of amounts paid or incurred. This bill would allow a 100% credit, which is unprecedented.

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