Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Margett	Analyst:	Kristina E. North	Bill Number:	SB 375
Related Bills:	See Prior Analysis	Telephone:	845-6978	Amended Date:	January 5, 2004
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Employer Workers' Compensation Credit.

____	DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ________________________.
____	AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
X	AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced April 21, 2003.
X	FURTHER AMENDMENTS NECESSARY.
____	DEPARTMENT POSITION CHANGED TO ________________________.
X	REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED APRIL 21, 2003, STILL APPLIES.
X	OTHER - See comments below.

SUMMARY

This bill would provide a credit to employers that pay for workers' compensation benefits.

SUMMARY OF AMENDMENT

The January 5, 2003, amendment changed the operative date to January 1, 2004. This amendment also changed the section number to more accurately place the credit language within the Revenue and Taxation Code.

This amendment did not resolve the implementation considerations or policy concerns identified in the department's analysis of the bill as introduced April 21, 2003. These concerns still apply and are included below for convenience. The revenue estimate remains the same and also is restated for convenience.

Department staff is available to assist with amendments to resolve the concerns identified in the analysis.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately and would apply to taxable years beginning on or after January 1, 2004, and before January 1, 2008.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Brian Putler	1/9/04
____ N	____ OUA	X PENDING		

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- It is unclear what the author intends to include in the "amount paid by a taxpayer during the taxable year for workers' compensation." For example, it is unclear if the "amount paid" would include amounts paid for insurance premiums or benefits for employees working outside of California. Additionally, it is unclear if amounts paid in excess of insurance premiums or self-insurance deposits would be included in the credit amount. Clarification of what amounts would be properly includible in the credit base would be helpful to avoid disputes between taxpayers and the department.

- Clarification is needed on what the author means by an "increase in the number of workers' compensation claims." This phrase could be interpreted to mean an increase in the claim ratio for a particular class of workers, the total number of claims filed with the employer, the total number of disputed claims, or a monetary increase in claims. Clarification could simplify the requirement for the agency certifying the credit.

- The department lacks expertise related to worker's compensation claims. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. Certification language typically specifies the responsibilities of both the certifying agency and the taxpayer.

- It is unclear how the department would verify a taxpayer's eligibility. Department of Industrial Relations does not maintain complete workers' compensation claim information by employer. Further, any information that is maintained is confidential and could not be released to this department without statutory change. Finally, any information from the taxpayer's insurer or State Compensation Insurance Fund (SCIF) would likely be proprietary and not be released.

- This bill does not limit the number of years for the carryover period. The department would be required to retain the carryover on the tax forms indefinitely because an unlimited credit carryover period is allowed. Recent credits have been enacted with a carryover period limit since experience shows credits typically are exhausted within eight years of being earned.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following Franchise and Income Tax revenue losses.

Revenue Impact of SB 375 (As amended January 5, 2004) Tax Years Beginning On or After January 1, 2004 Enactment Assumed After June 30, 2004 $Billion			
	2004/05	2005/06	2006/07
Revenue Impact	–$3.5	-$3.5	-$3.5

Revenue Discussion

The revenue impact of this bill would result in a revenue loss in excess of $3.5 billion annually. This revenue analysis does not take into consideration premium payments paid to individual insurance companies (premiums paid to insurers other than SCIF) or benefit payments made by self-insured employers as this information was not available.

SCIF receives almost $7 billion dollars annually in workers' compensation premium payments from employers. SCIF represents approximately one-half of the workers' compensation insurance market with the other half covered by over 300 independent insurance companies. With a total of over $14 billion in workers' compensation premium payments annually, a tax credit of 50% would cost $7 billion if every business qualified. It is assumed that at least half of businesses would qualify for the tax credit for a total cost of $3.5 billion. This tax credit would be in addition to the deduction from income that businesses currently receive for the workers' compensation payments. This revenue analysis does not take into account amounts paid for employees working outside of California.

POLICY CONCERNS

Conflicting tax policies come into play whenever a credit is provided for an item that is already deductible as a business expense for tax purposes. Providing both a credit and allowing the full amount to be deducted would have the effect of providing a double benefit for that item or cost. On the other hand, making a change in California law that eliminates the deduction for workers compensation premiums to eliminate the double benefit creates a difference between state and federal taxable income, which is contrary to the state's general federal conformity policy.

The credit would be allowed for business expenses paid for workers' compensation for employees located outside of California. Generally, credits are intended to encourage or discourage certain activities within this state. The author may wish to consider limiting "payments" to those made for wages that are subject to California withholding.

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