ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author:	Levine	Analyst:	Nicole Kwon	Bill Number:	AB 1439
Related Bills:	See Legislative History	Telephone:	845-7800	Introduced Date:	February 23, 2007
		Attorney:	Douglas Powers	Sponsor:	

SUBJECT: Employer Qualified Fitness Expenditures Credit

SUMMARY

This bill would create a tax credit for qualified taxpayers for costs of providing employees certain physical fitness benefits.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to provide an incentive for employers to provide fitness programs for their employees.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment, but expressly operative for taxable years beginning on or after January 1, 2008.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Current federal law provides general business credits such as the investment credit, the work opportunity credit, and the empowerment zone employment credit.

Board Position:			Department Director	Date
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THIS BILL

This bill would provide, for taxable years beginning on or after January 1, 2008, a credit for a qualified taxpayer, as defined, for amounts paid or incurred for qualified fitness expenditures.

This bill would define "qualified taxpayer" as any employer that has employees in this state.

This bill would define "qualified fitness expenditures" as any of the following:

1. The costs of equipping, operating, and maintaining a facility owned and located on the taxpayer's premises in this state, and used exclusively to promote the physical fitness of the employees,
2. The cost of equipping of, or providing any financial support to, an amateur athletic team,
3. The cost of subsidizing an employee's membership with a health studio or a health club that is located in this state,
4. 50% of the cost of employing a qualified person or an organization to provide the specified services on the taxpayer's business premises, or
5. Costs incurred in connection with hiring an organization to operate or provide specified services.

This bill would specify that the credit may not exceed either of the following:

- 50% of the qualified taxpayer's "net tax" for that taxable year;
- An amount that is equal to $50 multiplied by the average number of taxpayer's full-time employees in the specified months for the taxable year.

This bill would define "amateur athletic team" as a team of persons who engage in competitive athletic events for which no monetary remuneration is provided.

This bill would define "vigorous athletic activity" as exertion that makes a person sweat and breathe hard.

This bill would define "qualified person" as a person certified by a recognized national organization to provide the instruction and information.

This bill would specify that a qualified taxpayer is only allowed the credit under this bill in lieu of any deduction that the taxpayer may be entitled to.

This bill would specify that when two or more qualified taxpayers jointly establish and operate an employee fitness facility that meets the defined qualified fitness expenditures, the participating taxpayers will apportion the total amount of the credit.

This bill would specify that a qualified taxpayer filing an amended return may not receive any amount of credit, or credit carryover, in excess of the amount claimed on the original return for the taxable year.

This bill would allow a carryforward of any unused credits for up to seven years.

This bill would specify that verification of payments to not-for-profit or for-profit corporations, or to a person who provides health or fitness instruction to a taxpayer's employees, must be in writing and must be retained by the taxpayer to support the credit claimed on the tax return.

This bill would specify that the application for credit for payments made to construct or rehabilitate a facility used for the purpose of promoting the physical fitness of the taxpayer's employees in this state must be submitted to the Franchise Tax Board (FTB) within six months after the local building inspector deems the construction or rehabilitation of the facility is substantially completed. In addition, the application for credit provided in this bill must be submitted to FTB with the tax return on which the credit is claimed.

This bill would require FTB to prescribe rules and regulations to administer the credit provided under this bill.

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 suggested that the term "average" on page 3, line 23, and page 6, line 9, be clarified. For example, "average" can be interpreted to mean per day for the three-month period, or over the entire year measured on the last day of each three-month period. The clarification of this term could prevent disputes between the department and taxpayers.

The bill would define "vigorous athletic activity" to mean an exertion that makes a person sweat and breathe hard which can be very subjective and open to differing interpretations. The author's office may want to clarify this definition in order for the department to effectively administer the provisions of the bill.

Department staff currently has no expertise related to construction sufficient to examine the applications submitted by the taxpayers. The author's office may consider having another state agency with expertise in construction to review the application for payments made to construct or rehabilitate a facility as specified in the bill.

Even though the bill specifies what a taxpayer is required to do with the application for credit in subdivision (h), the bill is silent about what happens if upon audit FTB finds the application for credit filed by the taxpayer is deficient. The author's office may want to expressly state what is intended in such a circumstance.

On page 4, line 1, and page 6, line 27, the phrase "original return for the taxable year" is unclear. The author's office may want to specify that "original return for the taxable year" has to be timely filed to avoid possible disputes between the department and taxpayers.

It is recommended that the 50% credit limit for the qualified taxpayer's "net tax" or "tax" be clarified in its application. For example, the 50% credit limitation can be interpreted to mean before application of the credit in this bill or before application of any credits especially in the case of other credits that may be claimed before or after this credit on the tax return.

On page 3, line 23 and page 6, line 9, the phrase "taxpayer's full-time employees in this state" should be clarified to indicate if taxpayer means "qualified" taxpayer for the department to administer the provisions of the bill effectively.

OTHER STATES' INFORMATION

Review of laws for *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* found no comparable tax credit. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved but are anticipated to be minor. As the bill continues to move through the legislative process, costs will be identified and, if necessary, an appropriation will be requested.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1439 Effective for Tax Years BOA 1/1/2008 Assumed Enactment Date After 6/30/07 ($ In Millions)		
2007/08	2008/09	2009/10
-$3	-$15	-$30

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

This bill would allow employers a maximum credit of $50 per average number of full-time employees in the specified months in the taxable year for qualified fitness related expenses. The $50 credit would be based on maximum annual expenses of $500 per employee. Assuming an average tax rate of 8% for all taxpayers, the value of the deduction is 8% of $500, or $40. The incremental value of the credit is $10 per employee ($50 credit - $40 tax deduction benefit).

The additional benefit ($10 per employee) is assumed to be the same for employers that currently pay fitness related expenses and employers that would establish new qualified programs specified in this bill. This relationship is assumed for employers that establish new programs because funding is anticipated to be redirected from other employee related expenses to fitness related employee expenses.

Data is not available to estimate expenses that currently qualify as specified in this bill primarily because qualified fitness expenses include an array of items, such as on-site fitness equipment (pool, track, and weight room), instructors, subsidized health club memberships, and wellness programs. Because the bill caps the maximum credit amount to $50 per average number of full-time employees in the specified months in taxable year and, based on the assumptions outlined below, this bill could result in revenue losses in the tens of millions of dollars.

Based on statistics published by the Employment Development Department and the Bureau of Labor Statistics, there are approximately 13 million private, full-time employees within the state. Assuming that 40% of these employees have employers that offer qualified fitness programs and that 70% of the employers are taxable, the potential number of impacted employees would total 3.6 million (13 million employees x 40% x 70% = 3.6 million). Applying the additional benefit of $10 per employee for the credit, the revenue loss would total $36 million (3.6 million employees x $10). To account for employers that setup new employee fitness programs, the loss of $36 million is increased by 5% to $38 million ($36 million x 105%).

The estimate in the table reflects taxpayers that, on average, use the credit over a 3-year period and alter their estimated payments.

POLICY CONCERN

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the credit by the Legislature.

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