SCS Agency
Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Hughes | Analyst: Kristina North | Bill Number: SB 246

Related Bills: See Legislative History | Telephone: 845-6978 | Introduced Date: 02-04-97

Attorney: Doug Bramhall | Sponsor:

SUBJECT: Employment of the Blind or Visually Impaired Employee Credit

SUMMARY

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a credit equal to the amount paid or incurred by a taxpayer during the taxable or income year for wages paid to a blind or visually impaired employee and for any work-related expenses paid to provide reasonable accommodation to the employee pursuant to the Americans With Disabilities Act of 1990 (ADA). The credit is limited to $3,000 for the first 12 months of employment and $2,000 for the second 12 months.

EFFECTIVE DATE

This bill would apply to taxable or income years beginning on or after January 1, 1997, and before January 1, 2002.

SPECIFIC FINDINGS

Current federal law, under the ADA, provides individuals with disabilities protection from discrimination, which includes providing "reasonable accommodation" for those individuals. "Reasonable accommodation," as defined by the ADA, may include making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

Current federal law allows a credit to eligible small businesses for expenditures paid or incurred to comply with ADA requirements. "Eligible small business" is defined as a business with gross receipts (less returns and allowances) that do not exceed $1 million or, if the gross receipts test exceeds $1 million, employed no more than 30 full-time employees. The credit is equal to 50% of the eligible access expenditures which exceed $250, but are not in excess of $10,250.

The credit limitation applies to partnerships and each partner as well as S

DEPARTMENTS THAT MAY BE AFFECTED:

____ STATE MANDATE ____ GOVERNOR'S APPOINTMENT

Department Director Position:	Agency Secretary Position:	GOVERNOR'S OFFICE USE
____ S ____ O ____ SA ____ OUA ____ N ____ NP ____ NA ____ NAR ________ PENDING	____ S ____ O ____ SA ____ OUA ____ N ____ NP ____ NA ____ NAR DEFER TO ____________	Position Approved ____ Position Disapproved ____ Position Noted ____
Department Director	Agency Secretary Date	By: Date:

corporations and each shareholder. No deduction or other credit is allowed for the same expenses and the adjusted basis of any property cannot be increased by the expenses used to claim the credit.

"Eligible access expenditures," as defined, include amounts paid or incurred:

- to remove architectural, communication, physical or transportation barriers preventing access to or use of a business by disabled individuals, except for expenditures paid or incurred for new facilities;
- to provide qualified readers, taped text or other effective methods of making visually delivered materials available to visually impaired individuals;
- to acquire or modify equipment or devices for disabled individuals; or
- to provide other similar services, modifications, materials or equipment.

Expenditures must be reasonable and necessary to provide access to or use by disabled individuals and meet standards promulgated by the Secretary of the Treasury and in compliance with the Architectural and Transportation Barriers Compliance Board. **Current federal law** provides that the credit may not reduce regular tax below the tentative minimum tax.

Current state law conforms to the federal credit, except that the credit amount is equal to 50% of the expenses that do not exceed $250. The taxpayer may not claim a deduction, including the existing deduction for removal of barriers (discussed below), for the amount of the credit claimed. The state credit is allowed for taxable and income years beginning on or after January 1, 1996.

Current federal and state law allow a taxpayer to claim a business expense deduction (instead of depreciation or amortization), not to exceed $15,000, for removal of architectural and transportation barriers to the handicapped and elderly. "Handicapped" is defined as an individual with a physical or mental disability, including blindness.

Current federal law provides special tax incentives designed to encourage employers to hire or train specified individuals, usually the unemployed or those in need of additional training. Federal programs include the federal Vocational Education Act of 1963, Job Training Partnership Act and the GAIN Program. California law makes reference to these federal programs in describing individuals qualified to participate in certain state programs. **Current federal and state laws** allow a deduction for business expenses, including employee salaries.

This bill would allow a credit equal to the amount paid or incurred by a taxpayer during the taxable or income year for wages paid to a blind or visually impaired employee and for any work-related expenses paid to provide reasonable accommodation for the employee pursuant to the ADA. The credit would be limited to $3,000 for the first 12 months of employment and $2,000 for the second 12 months of employment for each qualified employee.

This bill would provide definitions for "blind or visually impaired person," "employer," and "reasonable accommodation." Any amount of excess credit could be carried over indefinitely.

Since this bill does not specify otherwise, the general rules in existing state law regarding the division of credits among two or more taxpayers, a husband and wife, and partners, would apply. Also, this credit would not reduce regular tax below the tentative minimum tax for purposes of alternative minimum tax calculation.

Policy Considerations

This bill does not provide an aggregate cap (per taxpayer, per year, etc.) for the credit.

This bill does not preclude a taxpayer from claiming this credit and other wage-based credits authorized by law for the same employee wages.

This credit could be claimed for blind individuals currently employed by the taxpayer.

This bill does not require the employer to employ a blind or visually impaired employee for a specified period of time before claiming the credit. As a result, a single employee could generate multiple credits for related taxpayer employers.

This credit is not limited to employees working in California, allowing multistate companies to claim the credit for employees working outside the state.

Conflicting tax policies come into play whenever a credit is provided for an expense for which preferential treatment is already allowed in the form of an expense deduction or dependent deduction. This bill would allow the employer to claim this credit, the regular business expense deduction for the same wages and increase the basis of any capital improvements, thus providing a double benefit. On the other hand, eliminating the double benefit by making an adjustment to basis would create an ongoing state and federal difference. In the case of a one-time expense deduction, the reduction of that expense would not create an ongoing difference.

This bill would allow the credit to be carried over indefinitely.

Generally, credits are provided as an incentive. This bill would allow a credit for costs paid or incurred for conduct required under the ADA (i.e., providing reasonable accommodation for blind employees), which is already required by federal law.

Although many disabilities are covered under the ADA, this bill allows a credit for only blind or visually impaired persons. It may be difficult to know which expenses (or what portion) relate to visually impaired employees as opposed to general ADA compliance.

Implementation Considerations

The following implementation considerations have been identified. The department would be unable to effectively implement this bill until these concerns are resolved. Department staff is working with the author’s office to assist in resolving these and any other issues that may be identified.

This bill provides a $3,000 credit and a $2,000 credit for the first and second, respectively, 12 months of employment for each of the taxpayer's blind or visually impaired employees. However, it could be argued that it does not disallow an unlimited credit for every succeeding year of employment of a blind or visually impaired employee.

This bill does not specify a vision percentage in the definition of a "blind or visually impaired person." The definition needs to be completed.

Technical Considerations

The language in this bill allowing the credit to be carried over after it has been repealed is unnecessary since existing state law provides this general rule.

FISCAL IMPACT

Departmental Costs

Without resolution of the implementation concerns, the department's administrative costs are difficult to determine. However, if the bill is amended to resolve the implementation concerns, the department's administrative costs should be minimal.

Tax Revenue Estimate

The net impact of this bill is estimated to be revenue losses as follows:

Estimated Revenue Impact of SB 246 Beginning 1/1/97 Assumed Enactment After 6/30/97 **(In Millions)**			
Fiscal Year Impact			
1997-8	1998-9	1999-00	2000-01
($2)	($1)	($1)	($1.5)

NOTE: The above revenue estimate considers only individuals who are considered legally blind (visual acuity 20/200 or less with corrections). The bill mentions visual field reduction without specifying the qualifying percentage.

This estimate does not account for changes in employment, personal income, or gross state product that might result from this bill.

Tax Revenue Discussion

The revenue impact of this bill would depend upon the number of employers who employ qualified individuals (blind and visually impaired) and incur qualified expenses (wages and other work-related expenses), the average cost for qualifying expenses for each employee, and average tax liabilities for credit purposes.

This bill does not specify who would qualify as a visually impaired individual or what work-related expenses would qualify. This bill does not require a deduction offset for the same expense. For this revenue estimate, the following assumptions were made:

- the definition of a blind and visually impaired individual would be individuals who are legally blind and would qualify for supplemental security income (SSI) or state supplemental program (SSP) if income limitations were not an issue.
- work-related expenses are limited to the first 24 months of employment
- the employer would qualify for this credit if an existing employee becomes blind while employed by the taxpayer.

The estimated losses were determined in several steps. First, the number of blind and visually impaired individuals who could qualify an employer for the credit was based on information from the California Department of Social Services (DSS). According to DSS, there were approximately 22,000 legally blind recipients of SSI/SSP benefits in 1996. The total number of potentially qualifying individuals were approximated based on California's population characteristics. According to the County and City Data book for 1994 (a supplement of the U.S. Statistical Abstract), approximately 86% of California's population 18 years and older are between the age of 18 and 64 (assumed employable age). This yields an estimate of approximately 19,000 employable individuals who are visually impaired (legally blind). Of those individuals, it is estimated that approximately 5% (800 individuals) are currently employed statewide.

The next step was to determine the number of visually impaired individuals which would qualify the employer for this credit. This was based on the assumption that the number of visually impaired individuals employed would double over the next five years, with an annual turnover rate of approximately 5%. Growth rates for estimating purposes were based on projected population growth.

Finally, an assumption was made that each employee hired would qualify their employer for the maximum credit amount ($3,000 for the first 12 months of employment and $2,000 for the second 12 months of employment) and the employer would be entitled to the credit any time during the first 24 months of employment so long as the employer has reasonable expenses and does not exceed the maximum credit allowable. Since the number of visually impaired individuals represents a small percentage of the population, assumptions were made that virtually all of the credits generated would be applied in any given year.

POSITION

Neutral, if amended.

The staff's position would be neutral if the bill were amended to resolve the implementation concerns.

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