Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Levine | Analyst: Nicole Kwon | Bill Number: AB 1439

Related Bills: See Prior Analysis | Telephone: 845-7800 | Amended Date: January 7, 2008

Attorney: Douglas Powers | Sponsor:

SUBJECT: Employer Qualified Fitness Expenditures Credit

X DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced February 23, 2007.

____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended ____________________.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO ____________________.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 23, 2007, STILL APPLIES.

____ OTHER – See comments below.

SUMMARY

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

SUMMARY OF AMENDMENTS

The January 7, 2008 amendments would make the following changes:

- Change the initial taxable year for which the proposed fitness expenditures credit for a qualified taxpayer could be claimed from January 1, 2008 to January 1, 2009.
- Eliminate the term “vigorous athletic activity” and the requirement that it be satisfied in order to claim the credit.
- Eliminate the limitation on the amount of the credit that can be claimed to 50% of the qualified taxpayer’s “net tax” for that taxable year.
- Clarify that the original return for the taxable year must be timely filed by a qualified taxpayer to claim the fitness expenditures credit.

Board Position:			Legislative Director	Date
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____ N	____ OUA	X PENDING		

- Delete the requirement for the Franchise Tax Board to oversee 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.

As a result of the amendments, the "This Bill" discussion has been revised and is provided below. The remaining Implementation Consideration identified in the department's previous analysis of the bill, a new Technical Consideration, and the revised Policy Concern are included below. In addition, the Economic Impact is revised to include additional explanations that specify how the department calculated the revenue estimate for the provisions due to the amendments. Except for the revisions referenced above, the department's previous analysis of the bill as introduced on February 23, 2007, continues to apply.

POSITION

Pending.

ANALYSIS

<u>THIS BILL</u>

This bill would provide, for taxable years beginning on or after January 1, 2009, a credit for a qualified taxpayer, as defined, equal to 10% of 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 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 “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 timely filed 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.

IMPLEMENTATION CONSIDERATION

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.

TECHNICAL CONSIDERATION

On page 4 line 4 and page 6, line 30, insert “timely filed” after “the taxable year on the.”

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1439 Effective for Tax Years BOA 1/1/2009 Assumed Enactment Date After 6/30/07 ($ in Millions)		
2008/09	2009/10	2010/11
-$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 credit would equal 10% of qualified fitness related expenses, up to $50 per employee (this results in per employee expenses of $500 ($50 ÷ 10%)). It is assumed that total employees would reflect an annual average.

Absent the proposed credit and assuming an average tax rate of 8% for all taxpayers, the value of deducting these expenses 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 approximately $38 million ($36 million x 105%).

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

POLICY CONCERN

The purpose of the bill is to provide an incentive for employers to provide fitness programs for specific employees. The author's office may want to specify that the credit offered in this bill may be used only for those employees who actually participate in the activities, rather than to every employee.

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