Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Harkey	Analyst:	Angela Raygoza	Bill Number:	AB 1735
Related Bills:	See Legislative History	Telephone:	845-7814	Introduced Date:	February 4, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Back To School Tax Credit

SUMMARY

This bill would provide a tax credit for the costs paid or incurred to educate and train employees, as specified.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide an incentive for employers to retain skilled and educated employees.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately and operative for taxable years beginning on or after January 1, 2010.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Existing federal and state 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 and state laws do not provide a comparable credit.

Board Position:			Department Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Selvi Stanislaus	03/17/10
____ N	____ OUA	X PENDING		

Existing federal law provides a tax credit called the Lifetime Learning Credit of up to $2,000 for qualified education expenses. Qualified education expenses include tuition and certain related expenses required for enrollment in a course at an eligible educational institution. The course must either be part of a postsecondary degree program or taken by the student to acquire or improve job skills. For taxable year 2009, the tax credit is phased out if the adjusted gross income (AGI) [1] is between $50,000 and $60,000 ($100,000 and $120,000 for taxpayers filing a joint return). The Lifetime Learning Credit cannot be claimed if the AGI is $60,000 or more ($120,000 or more for joint filers).[2]

THIS BILL

This bill would provide a tax credit in an amount equal to 50 percent of the costs paid or incurred by a taxpayer for education and training.

This bill defines “education and training” as both of the following:

- Education or training provided to the taxpayer’s employees to maintain or improve a skill required for the taxpayer’s trade or business, and
- Education and training provided to the taxpayer in order to comply with the express requirements imposed by the taxpayer’s employer or by laws or regulations as a condition of the taxpayer’s retention of an established employment relationships, status, or rate of compensation.

Under this bill, unused credits can be carried over into future years until exhausted.

This bill would disallow a deduction for the amount of qualified expenses for which this credit is allowed for business related training or education.

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.

This bill uses terms or phrases that are undefined including “employee,” “skills required,” “established employment relationship,” “status,” and “qualified expenses.” The absence of definitions to clarify these terms or phrases could lead to disputes with taxpayers and would complicate the administration of this credit.

This bill would provide a credit for taxpayers who pay or incur costs to educate and train their employees. It is unclear in the bill, who would certify whether the employees have met the education and training requirements. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise.

[1] Adjusted gross income (AGI), as defined by IRC section 62, means gross income, which includes all income from whatever source derived, adjusted for certain allowable amounts, including IRA contributions, alimony paid, moving expenses, and Keogh account contributions.
[2] Internal Revenue Code (IRC) 25A, Lifetime Learning Credit.

The certification language would specify the responsibilities of both the certifying agency and the taxpayer.

It is unclear what types of employees qualify the taxpayer for the credit. Without clarification, it could be broadly interpreted to include all job classifications. In addition, the author should consider whether transportation or child care costs are included in the costs for education and training.

Under the PITL section of this bill, it is unclear if the definition of "qualified taxpayer" is considered the employer, employee, or both. Further, if "qualified taxpayer" is defined as the employer and the employee, this bill would allow both to get the credit even if the employee is reimbursed for the costs. If this is not the author's intentions, this bill should provide a mechanism for reducing the credit by the amount of costs reimbursed by the employer.

TECHNICAL CONSIDERATIONS

The term "net tax" was spelled incorrectly. On page 2, lines 14-15, the term "next tax" should be stricken and inserted with "net tax".

This bill uses the same definition of "education and training" in the CTL as in the PITL. The use of this definition assumes corporations are employees. To ease administration of this bill and prevent confusion with taxpayers, it is recommended on page 2, strikeout line 27, on page 2, line 28 strikeout "(1)" and on page 2, strikeout lines 31-35.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would require a calculation for the credit that would require a new form or worksheet to be developed. As a result, this bill would impact the department's printing, processing, and storage costs for tax returns, instructions, and publications. These changes could be incorporated into the department's annual changes, and as such, the costs would be minor.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1735 For Taxable Years Beginning On or After January 1, 2010 Enactment Assumed After June 30, 2010 ($ in Millions)		
2010-11	2011-12	2012-13
-$260	-$230	-$240

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

ARGUMENTS/POLICY CONCERNS

Generally, credits are capped with a percentage and a dollar amount; without the dollar limitation, the revenue loss associated with this bill could be significant. It is suggested that if the author would like to limit the loss, a limitation be added. This bill would limit the credit to 50 percent of the cost paid or incurred to educate and train an employee. Because the limit is a percentage of the costs and not a cap, it is recommended that the credit be capped at the lesser of 50 percent of the costs, as specified, or a specific dollar amount.

This bill does not restrict the credit to employees who are employed within California (and are thus themselves subject to California tax on their earnings).

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

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

LEGISLATIVE STAFF CONTACT

Legislative Analyst	Revenue Manager	Asst. Legislative Director
Angela Raygoza	Monica Trefz	Patrice Gau-Johnson
(916) 845-7814	(916) 845-4002	(916) 845-5521
angela.raygoza@ftb.ca.gov	monica.trefz@ftb.ca.gov	patrice.gau-johnson@ftb.ca.gov