Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Swanson	Analyst:	Angela Raygoza	Bill Number:	AB 1973
Related Bills:	See Prior Analysis	Telephone:	845-7814	Amended Date:	May 12, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Employer Hiring Credit/Ex-Offender/Reentry Employment Business Tax Credit Act

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended __________________.

X 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 __________________.

X FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO __________________.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 17, 2010, STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would provide a tax credit to a business that employs ex-offenders, as specified.

SUMMARY OF AMENDMENTS

The May 12, 2010, amendments would add a repeal date, add carryover language, and make other clarifying changes.

As a result of the amendments, the “Effective/Operative Date,” “This Bill,” and “Economic Impact,” discussions have been revised. The amendments resolved several implementation considerations by defining and clarifying terms. The amendments also resolved all of the technical considerations and some of the policy concerns by adding a sunset date and credit carryover. The remaining implementation considerations and policy concerns are listed below for convenience. The remainder of the department’s analysis of the bill as introduced February 17, 2010, still applies.

Board Position:			Asst. Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Patrice Gau-Johnson	05/26/10
____ N	____ OUA	X PENDING		

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment, specifically operative for qualified employees hired in a taxable year beginning on or after January 1, 2011, and before January 1, 2016, and repealed as of December 1, 2016.

ANALYSIS

THIS BILL

This bill would provide a tax credit to the taxpayer for the wages paid to each qualified employee hired in a taxable year beginning or after January 1, 2011. The credit would be equal to 20 percent of the gross wages, not to exceed $5,000 per qualified employee, for the first and second year of employment.

Under this bill, the credit would be allowed for the first year of employment if the qualified employee is employed by the taxpayer for 12 consecutive months from the date of employment. For the second year of employment, the tax credit would be allowed if employed by the taxpayer for 24 consecutive months from the date of employment.

This bill would define “qualified employee” as an individual who is an ex-offender who was convicted of a felony and is employed by the taxpayer in a part-time or full-time position. Excluded from the definition of “qualified employee” would be an ex-offender who is required to register as a sex offender[1] or the equivalent under the laws of another state or territory, under military law, or under federal law, or was convicted of a serious or violent felony as defined by the Penal Code.[2]

This bill specifies that any other credit or deduction for the same wages paid or incurred by the taxpayer would be reduced by the amount of the credit.

Under this bill, unused credits can be carried over into future years until exhausted, not to exceed a maximum of eight years.

This credit would be repealed as of January 1, 2016.

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.

[1] Penal Code section 290 is known as the “Sex Offender Registration Act.”
[2] Penal Code subdivision (c) of sections 667.5 and subdivision (c) 1192.7 define “violent felony” and “serious felony.”

This bill uses terms or phrases that are undefined including “gross wages,” “part-time position,” and “full-time position.” The absence of definitions to clarify these terms or phrases could lead to disputes with taxpayers and would complicate the administration of this credit.

It is unclear if the $5,000 limitation language refers to the maximum salary paid that would qualify for the credit or the maximum amount of credit for each qualified employee. The lack of clarification could cause disputes between taxpayers and the department.

This bill requires that a qualified employee be employed by the taxpayer for 12 consecutive months. As written, it appears current employees could qualify for this credit. For example, a taxpayer who employs a “qualified employee” for at least 12 consecutive months as of January 1, 2011, could be eligible to claim this credit. If this is not the author’s intent, it is recommended the bill be amended to clarify that the credit would apply to qualified employees hired on or after January 1, 2011. Additionally, it is unclear if a qualified employee hired in 2011 and employed for 12 consecutive months would qualify the taxpayer for a credit in 2011 or 2012. If this is not the author’s intent, it is recommended the bill be amended to specify when the taxpayer would be eligible to claim the credit.

This bill fails to specify a timeframe that an individual would be considered an “ex-offender.” For example, without a timeframe, an employee that was convicted of a felony ten years ago could qualify the taxpayer for this credit. The author may consider further defining “qualified employee” by adding a timeframe for which the criteria would apply.

This bill would provide a credit to employers that employ ex-offenders. It is unclear in the bill, who would certify whether that the employees are ex-offenders. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies, such as the Department of Justice, that possess the relevant expertise.

ECONOMIC IMPACT

<u>Revenue Estimate</u>

This bill would result in the following revenue losses:

Estimated Revenue Impact of AB 1973 Operative For Taxable Years Beginning On or After January 1, 2011 Amended May 12, 2010 Enactment Assumed By September 30, 2010 ($ in Millions)			
2011-12	2012-13	2013-14	2014-15
-$10	-$50	-$80	-$90

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

POLICY CONCERNS

This bill fails to specify if the taxpayer could claim multiple benefits. It appears that a taxpayer could claim the credit proposed by this bill and the newly enacted Job Tax Credit (Calderon, Stats. 2010, Third Extraordinary Session, 2009, Ch. 17). Both credits provide a benefit for different types of expenses. This bill applies to salaries paid to a qualified employee; the Job Tax Credit applies to an increase in hours to achieve a full-time equivalent employee. Generally, a credit is allowed in lieu of any deduction or credit already allowable for the same item of expense in order to eliminate multiple tax benefits.

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).

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