Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Swanson	Analyst:	Angela Raygoza	Bill Number:	AB 1973
Related Bills:	See Legislative History	Telephone:	845-7814	Amended Date:	May 28, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Jobs Tax Credit

SUMMARY

The bill would expand the existing Jobs Tax Credit.

SUMMARY OF AMENDMENTS

The May 28, 2010, amendments removed provisions that would have created a new Employer Hiring Credit for ex-offenders and replaced it with language that would increase the credit amount, revise definitions, and make technical changes to the existing Jobs Tax Credit.

This analysis replaces the department's analysis of the bill as amended May 12, 2010.

PURPOSE OF THE BILL

According to the author's office, this bill is to provide a tax incentive to businesses to stimulate the economy and promote hiring in California.

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. The increase in the credit amount from $3,000 to $5,000 for "ex-offenders" and the modification to the definition of "qualified full-time employee" and "qualified employer" would be specifically operative for taxable years beginning on or after January 1, 2011.

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.

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
_______ SA	_______ O	_______ NAR	Selvi Stanislaus	06/18/10
_______ N	_______ OUA	___X___ PENDING		

Current state law allows a credit for taxable years beginning on or after January 1, 2009, for a qualified employer that employed a total of 20 or fewer employees in the preceding year. The amount of the credit is $3,000 for each qualified full-time employee hired in the taxable year, determined on an annual full-time equivalent basis. The net increase in qualified employees would be determined on an annual full-time equivalent basis by comparing the number of full-time employees employed by the taxpayer in the current taxable year with the number of qualified full-time employees that were employed by the taxpayer in the preceding taxable year.

For taxpayers who first commenced doing business in the state during the taxable year, the number of qualified full-time employees for the immediately preceding taxable year would be zero.

The credit is allocated by the Franchise Tax Board (FTB) and has a maximum cap of $400 million for all taxable years. The credit remains in effect until December 1 of the calendar year after the year in which the cumulative credit limit has been reached and is repealed as of that date. Any credits not used in the taxable year may be carried forward up to eight years.

PROGRAM BACKGROUND

As of June 12, 2010, the total Personal Income Tax and Business Entity returns claiming the new Jobs Tax Credit was 3,385 and the amount of credits generated was $26.4 million. The cut-off date is the last day of the calendar quarter within which FTB estimates it will have received timely filed original returns claiming the credit that cumulatively total $400 million.

<u>THIS BILL</u>

For taxable years beginning on or after January 1, 2011, the credit amount for the existing Jobs Tax Credit would be increased from $3,000 to $5,000, for ex-offender employees. The existing credit of $3,000 would continue for employees who do not qualify as an ex-offender.

This bill would modify the definition of “qualified full-time employee” and “qualified employer” as follows:

- “Qualified full-time employee” would include an ex-offender who was convicted of a felony, but would exclude a sex offender or the equivalent under the laws of another state or territory, under military law, or under federal law, or a person convicted of a serious or violent felony as defined by the Penal Code.[1]
- “Qualified employer” would be a taxpayer that as of the last date of the preceding taxable year employed the following:
    - A total of 20 or fewer employees for taxable years beginning on or after January 1, 2009, and before January 1, 2011, and
    - A total of 30 or fewer employees for taxable years beginning on or after January 1, 2011.

---

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

Additionally, for taxable years beginning on or after January 1, 2010, the calculation of the increase in annual full-time employees would be modified to include the employees of a trade or business acquired in a preceding year with the number employees employed by the taxpayer during the preceding year.

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 would increase the amount of the credit from $3,000 to $5,000 for ex-offenders. The $3,000 credit would continue after 2010. Additionally, the existing credit is not a per employee credit. It is based on a "net increase in full-time employees" determined on a full-time equivalent basis. These two rules are conflicting and could cause computational issues for the credit. It is recommended the author amend the bill to clarify how to apply the $5,000 credit and the computation of the two separate credit pools.

TECHNICAL CONSIDERATIONS

Under existing law, the taxpayer would calculate the increase in full-time employees for a taxable year by comparing the number of employees employed during the current taxable year with the number of employees employed by the taxpayer during the preceding year. In order to prevent distortions in this credit formula that could result from the acquisition of an existing business with employees, existing law requires the taxpayer to count the acquired business' employees in the credit base for both the prior and current year. As a result, when a taxpayer acquires another business during the current year, a taxpayer would not have an increase in full-time employees during the current year by merely acquiring another business with existing employees. This bill changes that rule by eliminating the requirement that the acquired business' employees be included in the prior year base computation, so that a taxpayer could have an increase in full-time employees simply by acquiring a business, even though there were no new jobs created as a result of that acquisition (and, in fact, even if some of the existing employees of the acquired business are laid off, there could still be an increase in full-time employees under this change to the formula). It is recommended that this bill be amended to refer to acquisitions in the current taxable year.

LEGISLATIVE HISTORY

AB 340 (Knight, 2009/2010) would have provided a tax credit for a qualified employer in an amount equal to 5 percent of the wages of all qualified employees employed by the qualified employer during the taxable year. This bill failed passage out of the Assembly Revenue and Taxation Committee.

AB 1139 (Perez, 2009/2010) would have modified the definition of ex-offender for purposes of the existing Enterprise Zone (EZ) hiring credit. This bill failed passage out of the Assembly Revenue and Taxation Committee.

AB 2617 (Tran, 2009/2010) would have provided a tax credit to a qualified taxpayer for qualified wages in an amount equal to 15 percent of the wages paid or incurred during the taxable year. This bill failed passage out of the Assembly Revenue and Taxation Committee.

AB 2630 (Emmerson, et al., 2009/2010) would have provided a tax credit of $3,000 for each net increase in full-time employees hired during the taxable year by a qualified employer until the state employment rate was 5.5 percent or lower. This bill failed passage out of the Assembly Revenue and Taxation Committee.

SB 508 (Dutton, 2009/2010), SBX6 11 (Dutton, 2009/2010), and SBX8 59 (Dutton, 2009/2010) are identical. These bills would have provided a tax credit for the first $6,000 of wages paid or incurred to an individual documented by the Employee Development Department. SB 508 failed passage out of the Senate Revenue and Taxation Committee by the constitutional deadline; SBX6 11 (Dutton, 2009/2010) is located in the Senate Rules Committee; and SBX8 59 failed passage out of the Senate Revenue and Taxation Committee without further action.

SB 612 (Runner, 2009/2010) would have provided a tax credit of $500 per month for each qualified employee employed by a taxpayer. This bill failed passage out of the Senate Revenue and Taxation Committee

SB 974 (Steinberg, et al., 2009/2010) would establish the career pathways investment credit, modify the enterprise zone (EZ) hiring credit for taxpayers subject to the personal income tax law, and modify the targeted tax area (TTA) hiring credit. This bill is currently held at the Assembly Desk.

ABX3 15 (Krekorian, Stats. 2010, 3rd Ex. Sess. 2009, Ch. 10) and
SBX3 15 (Calderon, Stats. 2010, 3rd Ex. Sess. 2009, Ch. 17) created the Jobs Tax Credit, which provides a tax credit of $3,000 for each net job increase.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Illinois, New York, Michigan, and *Minnesota* do not offer a credit similar to the one proposed by this bill.

Massachusetts allows a Full Employment credit to employers who participate in the Full Employment Program and continue to employ a participant for at least one full month. The taxpayer may claim a credit of $100 per month of eligible employment per participant, up to $1,200 per participant.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Because this bill does not increase the $400 million limit on tax credits in current law, it is estimated that there would be no remaining amounts to be allocated for tax credits in the 2011 tax year. Therefore, there would be no revenue impact from the bill as amended May 28, 2010.

LEGISLATIVE STAFF CONTACT

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