Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Emmerson, Cook, et al.	Analyst:	Angela Raygoza	Bill Number:	AB 2630
Related Bills:	See Legislative History	Telephone:	845-7814	Introduced Date:	February 19, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Employer Hiring Credit

SUMMARY

This bill would provide a tax credit under the Personal Income Tax Law (PITL) to an employer for a net increase in full-time employees, as specified.

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 specifically operative for taxable years beginning on or after January 1, 2010, and would continue to be operative until the state unemployment rate is 5.5 percent or lower for four consecutive calendar quarters.

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.

Current law allows a credit for taxable years beginning on or after January 1, 2009, for a qualified employer in the amount of $3,000 for each qualified full-time employee hired in the taxable year, determined on an annual full-time equivalent basis. The credit is allocated by the Franchise Tax Board 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until December 1 of the calendar year after the year in which the cumulative credit limit has been reached and is repealed as of that date.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.

Board Position:			Department Director	Date
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THIS BILL

Beginning on or after January 1, 2010, under the PITL, this bill would provide a $3,000 tax credit for each net increase in qualified full-time employees that are hired by a qualified employer. The credit would be allowed until the state employment rate is 5.5 percent or lower for four consecutive calendar quarters.

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 the following terms that are undefined: "state unemployment rate," "qualified full-time employee," and "qualified employer." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit.

The bill would allow a credit of $3,000 for each net increase in qualified full-time employees. It is unclear how a "net increase" in full-time employees would be determined. The absence of a calculation or clarification of this phrase could lead to disputes with taxpayers and would complicate the administration of this credit.

The bill provides that the credit would be available until the state unemployment rate is 5.5 percent or lower for four consecutive calendar years. The department lacks the expertise to determine the state unemployment rate. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. It is recommended that the bill be amended to require another agency, such as the Employee Development Department, to certify if and when this requirement is met.

The bill is unclear when the credit would cease to be operative. For example, the 5.5 percent could be at the end of the 4th calendar quarter; however, the employment rates are generally announced after the period for which the rate is applicable. For clarification, it is recommended that the author amend the bill to sunset the credit at the end of the taxable year that includes the date the 4th consecutive quarter's unemployment rate is announced.

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 1973 (Swanson, 2009/2010) would provide a tax credit to a taxpayer in an amount equal to 20 percent of the gross salary, not to exceed $5,000 per employee for the first and second year of employment. This bill is currently on suspense in the Assembly Revenue and Taxation Committee.

AB 2617 (Tran, 2009/2010) would provide 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 is currently in 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; 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.

ABX3 15 (Stats. 2009, Ch. 10) and SBX3 15 (Stats. 2009, Ch. 17) provide for 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 under 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

Until the implementation considerations discussed in this analysis are resolved, the department's costs cannot be determined.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in revenue losses as follows:

Estimated Revenue Impact of AB 2630 As Introduced on February 19, 2010 For Taxable Years Beginning On or After January 1, 2010 Enactment Assumed September 30, 2010 ($ in Millions)			
Fiscal Year	2010-11	2011-12	2012-13
Revenue Loss	-$600	-$600	-$600

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

POLICY CONCERNS

Because this bill fails to specify otherwise, a taxpayer could claim the credit proposed by this bill, a deduction for qualified wages and one of the following: the EZ Hiring Credit, the Local Agency Military Base Recovery (LAMBRA) Credit, or the newly enacted Job Tax Credit (Calderon, Stats. 2009 Third Extraordinary Session, Ch. 17). The EZ hiring credit and LAMBRA apply to salaries paid to a qualified employee, while the Job Tax Credit and this bill apply 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 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.

This bill would provide differing treatment based solely on classification. As written, this bill would provide a tax benefit for sole proprietorships, non-corporate partners of partnerships, limited partnerships, limited liability companies owned by non-corporate entities not electing to be taxed as corporations, limited liability partnerships, and real estate mortgage investment conduits under the PITL. This bill would not allow a credit to other business entities such as corporations.

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

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