ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Skinner	Analyst:	Janet Jennings	Bill Number:	AB 2666
Related Bills:	See Legislative History	Telephone:	845-3495	Amended Date:	April 8, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Employer Tax Credits/Information Reporting/Failure To File Information Penalty/FTB Compile Information Received & Submit To State Chief Information Officer For Publication On The Reporting Transparency In Government Internet Web site

SUMMARY

This bill would do the following:

- Require taxpayers doing business in this state and claiming an income tax credit, as defined, to provide information, as specified, on their tax return.
- Require this information to be published on the Reporting Transparency in Government Internet Web site.

SUMMARY OF AMENDMENTS

The April 8, 2010, amendments removed technical, non-substantive changes and inserted the requirement that Franchise Tax Board (FTB) modify tax forms for reporting information as specified, to capture the reported data and transmit the data to the State Chief Information Officer (CIO). Additionally, the amendment provides for a penalty if the taxpayer fails to file the required information. This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the author's staff, the purpose of this bill is to bring needed transparency and accountability of tax credits and the jobs they create and retain by providing information on the Reporting Transparency in Government Internet Web site.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2011, and would be specifically operative for credits claimed on tax returns beginning with the 2010 taxable year, with the report due to the CIO beginning March 30, 2012, and each March 30th thereafter.

POSITION

Pending.

Board Position:			Department Director	Date
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ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws provide various tax credits designed to give 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.

THIS BILL

This bill would require a taxpayer doing business in this state and claiming any tax expenditure in the form of a business credit, as defined, to submit the following information with their 2010 taxable year tax return, and thereafter, under the Personal Income Tax Law and the Corporate Tax Law (CTL), unless specifically excluded by this bill:

1. The number of full-time employees, part-time employees, and temporary employees employed by the taxpayer in this state.
2. The amount of credits claimed by the taxpayer on the return for each credit against tax.
3. The number of full-time jobs, part-time jobs, and temporary jobs created by the tax credit.
4. A list of occupations, job classifications, and expected average wages for the full-time jobs, part-time jobs, and temporary jobs created by the tax credit.
5. A certification by the taxpayer, signed under penalty of perjury, that the information is true and correct and contains no knowing misrepresentation.
6. The taxpayer's office mailing address and office telephone number.

The bill would require the FTB to capture this information and, by March 30, 2012, and each March 30th thereafter, transmit this information to the CIO for posting on the Reporting Transparency in Government Internet Web site.

This bill would provide for a penalty of one percent of the credit claimed for each failure to file the required information, as specified.

IMPLEMENTATION CONSIDERATIONS

In many cases, it is not possible for FTB or the taxpayer to verify what jobs are created by a tax credit, nor are all credits designed to increase jobs. For example;

- A taxpayer claims a new home buyer credit; they cannot determine if the credit created a job in the housing industry.
- The legislative intent of the research and development credit was to increase the overall research and development activity conducted in California, not to add to payroll.
- Employers in an economically depressed area can receive an income tax credit for the amount of sales and use taxes paid on certain purchases of machinery or parts. It is not possible to determine if the employer utilized the savings from the credit to create a specific job, or if the manufacturer of the equipment was able to hire more employees due to the sale.

Any future credits allowed through legislation that are not tied to specific job creation may need to be excluded from that aspect of the reporting requirements established by this bill.

The language is unclear if the penalty computation is based on the gross amount of the credit claimed, or the actual amount utilized to reduce the tax.

Under CTL, credits can be sold or assigned to another taxpayer that then offsets their tax with the assigned or purchased tax credit. It is unclear which taxpayer in such a scenario would have the reporting requirement and be subject to the penalty.

LEGISLATIVE HISTORY

SB 1086 (Florez, 2009/2010) would require corporate tax credits of $1,000 or more to be reported on the Reporting Transparency in Government Internet Web site. This bill was re-referred to the Senate Committee on Revenue and Taxation on April 7, 2010.

SB 1391 (Yee, 2009/2010) would disallow certain credits that reduce tax if specific employment requirements are not achieved. This bill was re-referred to the Senate Committee on Revenue and Taxation on April 8, 2010.

FISCAL IMPACT

This bill would require revising tax forms and the department to compile additional data. As a result, this bill would impact the department's printing, processing, and storage costs for tax returns. The additional costs have not been determined at this time. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

This proposal would not affect any taxpayer's tax liability. It could, however, generate penalty revenues for failure to report the information required by this proposal.

The penalty revenue estimate was derived from data in the December 2009 update of FTB's California Income Tax Expenditures. About $1.6 billion in tax credits would be subject to these reporting requirements. If 1percent of the total tax credits claimed did not include the information required by this bill, the potential revenue from the 1 percent penalty would be about $160,000. These penalties would not begin to be collected until 2012/13 at the earliest.

ARGUMENTS/POLICY CONCERNS*

California has a self-assessed tax system that relies on the responsiveness of the individual and corporate taxpayer to report the proper amount of tax. A self-assessed tax system works in part because the taxpayer has confidence that the information reported to the government will be confidential and used only for the specified purpose. If tax information is used or disclosed for other than the specified purpose, the effectiveness of the state's self-assessed tax system may be impacted.

LEGISLATIVE STAFF CONTACT

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