Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Skinner	Analyst:	Janet Jennings	Bill Number:	AB 2666
Related Bills:	See Prior Analysis	Telephone:	845-3495	Amended Date:	April 27, 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

_X_ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended April 8, 2010.

____ 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 AMENDED April 8, 2010, STILL APPLIES.

_X_ OTHER – See comments below.

SUMMARY

This bill would do the following:

- Require taxpayers doing business in the state and claiming any tax expenditure, as defined, to provide information, as specified, with their annual tax return.
- Require this information to be submitted by the Franchise Tax Board (FTB) to the State Chief Information Officer (CIO).

SUMMARY OF AMENDMENTS

The April 27, 2010, amendments changed all references in the bill from tax “credits” to tax “expenditures.” The amendments require reporting of average wages rather than expected wages, removed exceptions from the reporting requirement, defined tax expenditure; full-time employee, part-time employee, and temporary employee; and removed the requirement to list jobs created by tax credits.

Board Position:			Asst. Legislative Director	Date
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____ N	____ OUA	_X_ PENDING		

The amendments also made clarifying changes to the reporting and penalty provisions of the bill. As a result of the amendments, the implementation considerations in the previous analysis of the bill as amended April 8, 2010, were resolved by removing the requirement to list jobs created by tax credits and to clarify that the penalty is on the aggregate amount reported on the return.

Except for the “Effective/Operative Date,” “This Bill,” new “Implementation Considerations,” and “Policy Concerns” discussions, the remainder of the department’s analysis of the bill as amended April 8, 2010, still applies. The “Fiscal Impact” discussion is restated below for convenience.

EFFECTIVE/OPERATIVE DATE

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

POSITION

Pending.

ANALYSIS

THIS BILL

This bill would require a taxpayer doing business in this state and claiming any tax expenditure, as defined, to submit the following information with their 2010 taxable year tax return, and each year thereafter, under the Personal Income Tax Law and the Corporate Tax Law:

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

The bill would provide for a penalty equal to1 percent of the aggregate amount of the tax expenditures claimed on the return for failure to file the above required information.

This bill would define the following terms:

- “Tax expenditure” means a tax expenditure listed in the California Income Tax Expenditures Report published by the Franchise Tax Board each year[1], and any credit deduction, exclusion, exemption, or any other benefit provided by the state that is enacted after the report is published and that is not included in the report.
- ”Full-Time employee” means an employee who works an average of 35 hours in a week, or more, calculated monthly.
- “Part-Time employee” means an employee who works less than an average of 35 hours in a week, or less, calculated monthly.
- ”Temporary employee” means an employee who works fewer than 120 days each year.

This bill would require the FTB to capture the information from returns with taxable years beginning on or after January 1, 2010, and submit that information to the CIO. The CIO would be required to develop on the Reporting Transparency in Government Internet Web site a database searchable by company name, amount of tax expenditure, or other criteria necessary to increase public awareness of the amount and scope of tax expenditures for businesses in this state.

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.

Personal income tax returns may be filed, with extension, until October 15. Corporate returns may be filed even later, dependent on when the taxpayer’s fiscal year ends. The department generally processes returns within six months of receipt. If the author’s intent is to have each report contain complete information for the taxable year, the due date of the report should be changed. For instance, the return due date for corporate taxpayers with fiscal years beginning December 1, 2010, and ending November 30, 2011, is February 15, 2012, and with extension, September 15, 2012. The department would complete processing of these returns by March 2013. Thus, the earliest that data from these corporate returns could be included in a report would be approximately June 2013.

This bill uses the terms “doing business” and “average wage” that are undefined; the absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clarify “doing business” as defined in Revenue and Taxation Code section 23101 and explain how average wages are to be calculated.

[1] http://www.ftb.ca.gov/aboutftb/Tax_Expenditure_Report_2009.pdf

The bill is unclear as to what date the number of full-time, part-time, and temporary employees is to be calculated, the author may want to amend the bill to state on what date the number of employees are to be reported, such as the end of the taxable year.

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.

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.

This bill would require every self-employed individual, regardless of whether they have employees, to submit, for public disclosure, the amount of each tax expenditure claimed, such as a personal exemption credit. Additionally, the taxpayers' office mailing address and office telephone number, which may also be their personal residence, would be disclosed on the Reporting Transparency in Government Internet Web site.

This bill would require taxpayers to know the contents of the FTB's Tax Expenditure Report and be knowledgeable of any other benefit provided by the state that is enacted after the report is published. This would increase the complexity of California tax return preparation, which could cause taxpayers to incur the penalty inadvertently.

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