Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author: Bradford
Analyst: Gail Hall
Bill Number: AB 2687

Related Bills: See Prior Analysis
Telephone: 845-6111
Amended Date: April 27, 2010

Attorney: Patrick Kusiak
Sponsor:

SUBJECT: Trade Infrastructure Investments & Import Export Cargo Tax Credits

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

____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

X AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 19, 2010.

X FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO __________.

X REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 19, 2010, STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would create two different tax credits under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL) for taxpayers that invest in, and use, public port facilities in California:

1. Trade infrastructure investment tax credit.
2. Import-export cargo tax credit.

SUMMARY OF AMENDMENTS

The April 27, 2010, amendments made the following changes to the bill:

- Added that this bill would apply to personal income taxpayers as well as corporate taxpayers.
- Added a definition for "qualified taxpayer."
- Removed the requirement that the Franchise Tax Board (FTB) develop a "dynamic revenue anticipation model" and replaced it with a requirement to develop a methodology designed to estimate economic impacts.
- Clarified various provisions of the bill.

Board Position:			Asst.Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Patrice Gau-Johnson	05/19/10
____ N	____ OUA	X PENDING		

Except for the “Effective/Operative Date,” “This Bill,” “Implementation Considerations,” “Technical Considerations,” and “Fiscal Impact” discussions, the remainder of the department’s analysis of the bill as introduced on February 19, 2010, still applies.

PURPOSE OF THE BILL

The legislative intent section of this bill states its purpose is to encourage private investments in financing improvements to California's public ports and ports infrastructure facilities during the economic downturn.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2011, and would be specifically operative for taxable years beginning on or after January 1, 2011, and before January 1, 2021. In addition, this bill would be repealed on December 1, 2022, unless a statute is enacted before January 1, 2022, that deletes or extends the repeal date.

ANALYSIS

<u>THIS BILL</u>

For taxable years beginning on or after January 1, 2011, and before January 1, 2021, this bill would allow the following tax credits under the PITL and CTL:

- A tax credit for trade infrastructure investment constructed in this state would be allowed in an amount not to exceed 5 percent of the total capital costs of each qualifying project constructed in the state and the project receives certification from the FTB.
- A tax credit for the import/export of cargo would be allowed in an amount not to exceed the product of $5 and the number of tons of "additional qualified cargo”, as provided.

Trade Infrastructure Investment Tax Credit

Under this bill, “capital costs” would mean all costs and expenses incurred by one or more qualified taxpayers in connection with the acquisition, construction, installation, and equipping of a qualifying project. “Qualified taxpayer” would mean a taxpayer who is qualified by the FTB for the receipt of a credit.

The costs and expenses for a qualifying project would be incurred by qualified taxpayers during the period commencing with the date on which acquisition, construction, installation, and equipping commences, and ending on the date on which the qualifying project is placed in service. However, no costs expended prior to January 1, 2011, would be included as "capital costs" eligible for the tax credit.

This bill would define "qualifying project" to include a project to be undertaken by one or more qualifying taxpayers that meets all of the following requirements:

- The total capital cost of the project may not be less than $5 million.
- The predominant trade or business activity to be conducted at the project site must constitute industrial, warehousing, or port and harbor operations and cargo handling, including any port and port harbor activity, as defined.
- The project is certified by the FTB, as specified.

This bill would authorize the following duties to the FTB:

- To audit any certified qualifying project or inspect the construction site of the qualifying project.
- To verify claims and costs presented to the FTB in an application.

If the FTB finds that funds for which a qualifying taxpayer received tax credits are not invested in and expended with respect to capital costs, this bill would authorize the FTB to recapture the tax credits and assess interest that would be computed from the original due date of the return on which the tax credit was taken.

Import-Export Cargo Tax Credit

This bill would allow a tax credit under CTL and PITL in an amount equal to no more than $5 multiplied by the taxpayer's number of tons of "additional qualified cargo" for the tax year.

This bill defines the following requirements for the import-export cargo tax credit:

- The term "additional cargo" means the amount of qualified cargo moved in the current taxable year over and above the cargo moved in the taxable year.
- The term "qualified cargo" means any "breakbulk" or "bulk cargo" or "containerized" cargo, including all agricultural products and commodities, that is imported or exported to or from a manufacturing, fabrication, assembly, distribution, processing, or warehouse facility located in California and is moved by way of an oceangoing vessel berthed at a public port facility in California during the taxable year and certified by the FTB as meeting the terms of this section.
- The term "qualified taxpayer" means a taxpayer who is qualified by the FTB for the receipt of a credit.
- The term "ton" is described as a net ton of 2,000 pounds, and for containerized cargo, it would exclude the weight of the container.

This bill would require the FTB to certify additional cargo as qualifying cargo upon making a finding that the terms specified in the bill are met.

The FTB may promulgate rules and regulations necessary to implement the provisions of this bill.

Trade Infrastructure Investment and Import-Export Tax Credits

Under this bill, no project would be certified unless the FTB determines that the proposed project would generate sufficient revenue for the state to offset the cost to the state of providing the tax credits.

A qualified taxpayer seeking certification of a qualifying project would be required to submit an application to the FTB and require the applicant to pay a fee to cover the costs of the FTB's review and evaluation of the project application.

This bill would require the FTB to notify the qualified taxpayer within 90 days of any tax credit authorization legislation signed by the Governor.

This bill would allow the credits to be carried forward for eleven years, until exhausted.

This bill would require the FTB to develop a methodology designed to estimate economic impacts from the completion to determine if the project receives certification. Examples of economic impacts included in the bill are the following:

- The total state tax revenues generated by the project and project-related economic activity.
- The total local tax and user fee revenues generated by the project and project-related economic activity.
- The total jobs created by the project and project-related economic activity, including the impact of the project on the employment of California residents.

Under this bill, the FTB would be required to submit notice of its certification of a project to the Department of Finance, the Joint Legislative Budget Committee, and the Legislative Analyst. The Legislature would be required to enact a statute by January 1, 2012, specifying the total amount of the credit allowable to all qualified taxpayers for the 2011 taxable year or annually each year thereafter, before the credit would be allocated to each qualified taxpayer.

This bill would require the Legislative Analyst's Office to prepare an evaluation of the effectiveness of the tax credits and the economic impact of the tax credits on the port and maritime industry located in California and regionally.

IMPLEMENTATION CONSIDERATIONS

The department has identified many undefined terms, inconsistent use of certain items, and broad implementation issues and has listed several of these concerns below. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- It appears that this bill is structured as an "allocated tax credit" subject to legislative funding; however, it is unclear what methods are to be used to allocate the tax credit. It is recommended that the bill be amended to provide clarification of the mechanics of applying for and receiving allocation of this tax credit, including how the FTB would allocate if applications for tax credit exceed the dollars available to allocate.

- This bill is unclear about "when" the tax credit would actually be allowed–it appears the tax credit could be allowed BEFORE expenditures are actually paid or incurred. It is also unclear whether the taxpayer would receive the entire tax credit in one year or multiple years without regard to when the expenses are incurred.

- The definition of "qualified taxpayer" is ambiguous and needs clarity. If the intent of the author is that any PITL and CTL taxpayer may claim these credits, the word "taxpayer" could be used with no definition.

- The terms of this bill are unclear regarding what variables to use in the methodology to estimate the economic impacts from a completed qualifying project. The economy contains many facets, and the bill is silent regarding which aspects of the economy need to be considered in the revenue analysis.

- The assumptions that would be used to determine if a qualifying project produces sufficient revenue to offset the cost of the credits would be dependent on changes in California tax law or industry conditions at particular point in time. Timely notification to the investing taxpayer of the status of a project would prove difficult to implement.

- This bill would require the FTB to estimate total jobs created by the project and project related economic activity, including the impact of the project on the employment of California residents. Assessing employment impacts would be beyond the scope of the department's expertise. The Employment Development Department possesses the relevant expertise appropriate to the subject.

TECHNICAL CONSIDERATIONS

The department has identified the following technical concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- On page 17, line 7 and page 26, line 33, "Title 26 of the United States Code" should be replaced with "Internal Revenue Code."
- On page 21, line 19 and page 24, line 34, "Interest that may" should be replaced with "Interest shall" to clarify that the assessment of interest is not discretionary.
- The Import-export cargo tax credit provisions use the phrase "additional qualified cargo," but only "additional cargo" is defined in the bill. It is recommended that on page 22, line 6 and page 31, line 31, the word "qualified" is inserted after the word "additional."
- On page 22, line 8, it appears the word "previous" was incorrectly omitted from describing "taxable year."
- On page 22, lines 12 through 15, and page 31, lines 37 through 40, after "For purpose of this section," the sentence appears to be incomplete.
- On page 22. line 18, the reference to "23670" should be changed to "17057.6".

FISCAL IMPACT

Staff have determined that implementing this bill would have a significant impact to the department. The additional costs have not been determined at this time. As the implementation concerns are resolved and the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ARGUMENTS/POLICY CONCERNS

This bill would require the FTB to implement certification procedures that would practically guarantee that all projects applying for the credit would be certified as generating revenue greater than the cost of the credit, even in cases where this bill would result in a net loss of revenue to the state.

For example, an investing taxpayer funds a project (which would have been undertaken whether or not a tax credit is offered) and the project generates $1,000 in taxes (revenue to the state). Under this bill, FTB would certify the project cost if it is less than the $1,000 (revenue to the state) and ignores the consideration that the project would have already been undertaken. Thus, the credit would result in a net loss of revenue to the state.

Under this bill, multiple taxpayers would be able to claim the infrastructure investment credit for the same qualifying project, limited only by the total aggregate capital costs of that project. California would be providing a 100 percent tax credit, which is unprecedented for a project owned by investors.

LEGISLATIVE STAFF CONTACT

Legislative Analyst	Revenue Manager	Asst. Legislative Director
Gail Hall	Monica Trefz	Patrice Gau-Johnson
(916) 845-6111 gail.hall@ftb.ca.gov	(916) 845-4002 monica.trefz@ftb.ca.gov	(916) 845-5521 patrice.gau-johnson@ftb.ca.gov