Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Block	Analyst:	Janet Jennings	Bill Number:	AB 970
Related Bills:	See Legislative History	Telephone:	845-3495	Amended Date:	April 27, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: University Park And Research Educational And Technological Tax Credit

SUMMARY

This bill would provide an income tax credit for investments made in business or educational institutions within the University Park and Research Center.

SUMMARY OF AMENDMENTS

The April 27, 2010, amendments removed language related to the Education Code and added the provisions discussed in this analysis. This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the language of the bill, the purpose of the bill is to facilitate economic development within the University Park and Research Center in the City of Chula Vista.

EFFECTIVE/OPERATIVE DATE

This bill would become effective January 1, 2011, and would be specifically operative for taxable years beginning on or after January 1, 2011.

POSITION

Pending.

ANALYSIS

Current Federal Law

A "new markets tax credit" (NMTC) is allowed for a taxpayer's qualified equity investments to acquire stock or a similar equity interest in a community development entity (CDE). The CDE's primary mission must be serving, or providing investment capital for, low-income communities or low-income persons as certified by the Secretary of the Treasury. The taxpayer's federal NMTC totals 39 percent of the qualified equity investment made in the CDE but is spread over a seven-year period as follows:

- A 5 percent credit for the year the qualified equity investment is purchased and for the first two years thereafter (i.e., 15 percent for the first three years).
- A 6 percent credit for years four through seven (i.e., 24 percent for the subsequent four years).

Board Position:			Department Director	Date
______ S	______ NA	______ NP		
______ SA	______ O	______ NAR	Selvi Stanislaus	6/2/10
______ N	______ OUA	X PENDING		

Before a CDE can sell qualified equity investments eligible for the federal NMTC, it must apply for and be granted an allocation of the NMTC from the Community Development Financial Institution Fund (CDFIF), a branch of the U. S. Department of the Treasury; through a competitive application and rigorous review process. Geographic diversity is not a consideration in the evaluation process.

Additional rules are provided that do all of the following:

- Require the taxpayer to reduce the basis of the equity investment by the amount of the credit.
- Allow the taxpayer to carry over to future years credits that are in excess of tax liability.
- Require the taxpayer to recapture credits previously utilized to reduce tax in the event that the CDE redeems the investment, the investment ceases to be used in the required manner, or the CDE ceases to be a qualified community development entity.

Current California Law

Although California does not conform to the federal NMTC, a 20 percent state credit is allowed for each "qualified investment" in a California "community development financial institution" (CDFI). Unlike the federal NMTC, the "qualified investment" in the California CDFI must be at least $50,000, be for a minimum duration of 60 months, and may consist of either of the following:

- A deposit or loan that does not earn interest, or
- An equity investment.

A California CDFI is defined as a private financial institution located in California and certified by the California Organized Investment Network that has community development as its primary mission and lends in urban, rural, or reservation-based communities in California. A CDFI includes a community development bank, a community development loan fund, a community development credit union, a micro-enterprise fund, a community development corporation-based lender, or a community development venture fund.

California law provides for a recapture of the CDFI credit if the "qualified investment" is reduced or withdrawn before the end of the 60-month period. This credit will cease to be operative for taxable years beginning on or after January 1, 2012.

THIS BILL

For taxable years beginning on or after January 1, 2011, this bill would enact uncodified law requiring the Franchise Tax Board to authorize a taxpayer to claim either a credit against the amount of tax, as defined under the Personal Income Tax Law (PITL) or the Corporation Tax Law (CTL), for a seven-year period. The amount of the credit would be equal to 5 percent of the amount, as certified by the City of Chula Vista, invested in a businesses or educational institutions located within, or with the intent to locate within, the University Park and Research Center in the City of Chula Vista during the taxable year.

The bill specifies that in the fourth, fifth, sixth, or seventh year that a taxpayer claims the credit, the amount of the credit shall be equal to 6 percent.

This bill defines University Park and Research Center as an area encompassing up to 375 acres owned by, and wholly located within the geographic boundaries of, the City of Chula Vista.

This bill would also establish the University Park and Research Center Educational and Technological Fund. The bill would authorize the City of Chula Vista to collect private moneys for deposit in the fund, and to make loans to, or donations for, business or educational institutions within, or intending to locate within, the University Park and Research Center.

IMPLEMENTATION CONSIDERATIONS

Department personnel are available to work with the author to resolve these concerns and any other issues that arise as the bill moves through the legislative process.

The form of this bill is unprecedented in that the provisions are uncodified. As a result, provisions of existing PITL and CTL and related laws that define various terms and provide rules for the administration of tax credits under the PITL and the CTL are not available to administer the credits proposed by this bill. For example, the bill uses the terms as "taxpayer" and "taxable year" but they are not defined by the bill. In addition, rules under existing codified law concerning the application of credits would not be applicable to the credits under the bill. Furthermore, providing the substantative provisions of a tax credit in uncodified law appears to conflict with longstanding practices of the Legislature. Uncodified law creates many uncertainties normally resolved by existing codified law, which could lead to disputes with taxpayers and greatly complicate implementation of this bill.

Under this bill, the amount of the tax credit allowed is not based on the contribution a taxpayer provides to the University Park and Research Center Educational and Technological Fund. Rather the tax credit is based on the investment from the fund. If the author’s intent is to allow a credit similar to the federal new markets tax credit the author needs to amend the bill

The bill fails to state what the 6 percent credit would be based on, or how taxpayers would decide in which year of the fourth through seventh years the credit is to be claimed. The author needs to amend the bill to clarify what the credit is to be based on. If it is the author’s intent to allow both a 5 percent credit in the first three years and a 6 percent credit in years four through seven, the bill needs to be amended.

To clarify that the City of Chula Vista will certify the credit allocation, the bill needs to be amended.

TECHNICAL CONSIDERATIONS

The approach of providing substantative provisions of a tax credit in uncodified law appears to conflict with longstanding practices of the Legislature.

The bill would require the Franchise Tax Board to authorize a taxpayer to claim the credit; however, it is the law that authorizes the credit. It is recommended that the author amend the bill to remove the unnecessary language.

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. Those states do not allow a credit comparable to the credit proposed by this provision. However, those states do provide either enterprise zone tax incentives in economically depressed areas or financial incentives (i.e., industrial development bonds, infrastructure loans and grants, venture capital funds, and other community development assistance programs) to promote community development.

FISCAL IMPACT

Costs have not been determined at this time, but will be developed as the bill moves through the legislative process and implementation considerations are resolved.

ECONOMIC IMPACT

Based on the provisions in this bill, we are unable to determine an estimated revenue impact at this time. Because the bill does not specify the dollar amount of investment in businesses or educational institutions, we do not have enough information to complete a revenue estimate.

A new college campus could require billions of dollars in capital to build. The potential revenue loss from this bill could range from approximately $10 million to over $100 million per year. For instance, if the annual investment totaled approximately $320 million, the credit amount would grow from approximately $15 million in the 2011 taxable year to $120 million by the 2017 taxable year.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this measure.

POLICY CONCERNS

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the credit by the Legislature.

This bill lacks carryover language. As a result, any unused credit would be lost if the taxpayer is unable to use the entire credit amount in the year claimed. The author may wish to add language allowing a limited carryover period.

LEGISLATIVE STAFF CONTACT

Legislative Analyst	Revenue Manager	Asst. Legislative Director
Janet Jennings	Monica Trefz	Patrice Gau-Johnson
(916) 845-3495	(916) 845-4002	(916) 845-5521
janet.jennings@ftb.ca.gov	monica.trefz@ftb.ca.gov	patrice.gau-johnson @ftb.ca.gov