Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Yee	Analyst:	Gail Hall	Bill Number:	SB 1391
Related Bills:	See Prior Analysis	Telephone:	845-6111	Amended Date:	May 19, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Employer Tax Credit/Reporting Information/New Credits Chaptered After January 1, 2011, Would Be Recaptured If Taxpayer Has Net Decrease In Full-Time Employees

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

____ 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 6, 2010, STILL APPLIES.

__X__ OTHER – See comments below.

SUMMARY

This bill would disallow certain credits that reduce tax if the taxpayer fails to achieve specified employment requirements.

SUMMARY OF AMENDMENTS

The May 19, 2010, amendments made changes to operative dates included in the bill and resolved the implementation and technical considerations discussed in the department's analysis of the bill as amended April 6, 2010. In addition, the May 19, 2010, amendments created a new implementation concern.

Except for the “Effective/Operative Date,” “This Bill,” and “Fiscal Impact” discussions, the remainder of the analysis of the bill as amended April 6, 2010, still applies.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Brian Putler	06/09/10
____ N	____ OUA	__X__ PENDING		

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately and operative for taxable years beginning on or after January 1, 2011, and specifically operative for credits added to the law on or after the effective date of this bill. The calculation of the net decrease in full-time equivalent employees would be determined on and after January 1, 2014.

ANALYSIS

THIS BILL

This bill would require a taxpayer doing business in the state under Personal Income Tax Law (PITL) or Corporation Tax Law (CTL) to submit to the Franchise Tax Board (FTB) on a timely filed original return the following information in the form and manner as required by forms and instructions prescribed by the FTB:

- The number of full-time, part-time, and temporary employees, as defined, employed by the taxpayer in the state for the current and preceding taxable years.
- The number of full-time, part-time, and temporary jobs created by the tax credit.

This bill would provide that for any business credit that is added to the law after January 1, 2011, the credit would be disallowed and any credits previously allowed would be recaptured and the taxpayer would be liable for any credits on previous tax returns if the taxpayer has a net decrease in the number of full-time equivalent employees according to the information submitted to the FTB.

The net decrease in full-time equivalent employees would be determined on and after January 1, 2014, on a full-time equivalent basis as follows:

- The total number of full-time equivalent employees employed in the three preceding taxable years by the taxpayer and by any trade or business acquired by the taxpayer during the current taxable year, divided by three, minus

- The total number of full-time equivalent employees employed in the current taxable year by the taxpayer and by any trade or business acquired during the current taxable year.

This bill would define “full-time equivalent” to mean either of the following:

- In the case of a full-time employee paid hourly qualified wages, the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.
- In the case of a salaried full-time employee, the total number of weeks worked for the taxpayer by the employee divided by 52.

In addition, the bill would provide that all employees of the trades or businesses that are treated as related under either sections 267, 318, or 707 of the Internal Revenue Code would be treated as employed by a single taxpayer.

The amount of business credits recaptured would include the business credits reported on previous tax returns and interest computed using the adjusted annual rate from the due date of the return for each taxable year in which the business credit was claimed to the date of the payment of the additional tax from the recapture.

This bill would provide the following definitions:

- "Business credit" would mean a credit added to PITL or CTL on or after January 1, 2011, and allowed to taxpayers engaged in or carrying on any trade, business, profession, vocation or calling, or commercial activity in the state, including activities in the state that benefit an affiliated entity of the taxpayer.
- "Full-time employee" would mean an employee who works an average of 35 hours in a week, calculated monthly.
- "Part-time employee" would mean an employee who works less than an average of 35 hours in a week, calculated monthly.
- "Temporary employee" would mean an employee who works less than 120 days per year.

This bill would not limit the authority of the FTB to audit the information provided by the taxpayer. In addition, this bill would waive review by the Office of Administrative Law any standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the FTB relating to the information required to be submitted by a taxpayer relating to full-time, part-time, and temporary employees.

IMPLEMENTATION CONSIDERATIONS

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

The definition of "business credit" would mean a credit added into law on or after January 1, 2011, which is inconsistent with another provision of the bill on page 2, lines 17 and 18 that appear to provide that credits that take effect on or after the effective date of this bill could be disallowed.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

LEGISLATIVE STAFF CONTACT

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