Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Simitian	Analyst:	William Koch	Bill Number:	SB 425
Related Bills:	See Prior Analysis	Telephone:	845-4372	Amended Date:	June 11, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Commute Expenditures Reduction Credit/Parking Subsidy Deduction Disallowed Unless All Employees Are Offered Parking Cash-Out

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

__X__ 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 ________________.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO ________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 16, 2009, STILL APPLIES.

__X__ OTHER – See comments below.

SUMMARY

This bill would make two changes to current law:

1. Allow a tax credit for qualifying expenses relating to commute reduction and
2. Disallow the deduction of parking subsidies.

SUMMARY OF AMENDMENTS

The June 11, 2009, amendments would reduce the amount of the tax credit for commute reduction expenditures, as specified, and would provide a date certain to determine if a person or entity meets the definition of a "taxpayer" to qualify for the tax credit. The amendments would also make technical, non-substantive changes to this bill. The provision that would disallow the deduction of parking subsidies was not changed by the June 11, 2009, amendments.

As a result of the amendments, the "This Provision," "Implementation Consideration," "Fiscal Impact," and "Economic Impact" for the tax credit for commute reduction expenditures provision of this bill, as provided in the department's analysis of this bill as amended April 16, 2009, have been revised. The remainder of that analysis still applies.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Brian Putler	07/15/09
____ N	____ OUA	__X__ PENDING		

<u>Provision 1:</u> Tax Credit for Commute Reduction Expenditures

<u>THIS PROVISION</u>

For taxable years beginning on or after January 1, 2009, this provision would allow specified taxpayers to claim a credit under personal income and corporate tax law equal to 80 percent of the costs paid or incurred during the taxable year by the specified taxpayer, as defined, for qualified commute reduction expenditures.

The maximum credit would be:

- $163 for taxable years beginning on or after January 1, 2009, and before January 1, 2010
- $168 for taxable years beginning on or after January 1, 2010, and before January 1, 2011
- $173 for taxable years beginning on or after January 1, 2011, and before January 1, 2012
- $183 for taxable years beginning on or after January 1, 2012.

This provision would do the following:

- Define a “taxpayer” as a person or entity engaged in a trade or business within California who employs a maximum of 20 full-time employees as of June 30th of the taxable year.

- Define “Employee” as a person employed by the taxpayer on a full-time basis, who, at minimum, works 30 hours per week for compensation.

- Define “qualified commute reduction expenditures” as costs paid or incurred by the taxpayer for any of the following:

  1. Subsidizing employees commuting in:

     - vanpools, as defined
     - private commuter buses or buspools, as defined
     - subscription taxipools, as defined
     - a carpool, as defined
     - a ferry

  2. Subsidizing monthly transit passes for its employees or use by the employee’s dependents, as specified.

  3. Providing free or subsidized parking to carpools, vanpools, or any other vehicle used in a ridesharing arrangement within California.

4. Making facility improvements to encourage employees, for the purpose of commuting to or from that employee's place of employment, to participate in ridesharing arrangements, to bicycle or to walk. Facility improvements would include the construction of bus shelters, the installation of bicycle racks and other bicycle related facilities, and the modification of parking lots, as specified.
5. Making facility improvements to encourage employees to use an alternative transportation method, or subsidizing employees who already use an alternative transportation method, as specified, that reduces the use of a motor vehicle by a single occupant to travel to or from that employee's place of employment.
6. Subsidizing employees who travel to or from a telecommuting facility.

- Allow the credit to be carried over until exhausted.
- Require the credit to be in lieu of any deduction otherwise allowable for the same costs.
- Provide Franchise Tax Board with the authority to prescribe rules, guidelines, or procedures necessary or appropriate to administer the credit.

IMPLEMENTATION CONSIDERATIONS

Implementing this provision would not significantly impact the department.

FISCAL IMPACT

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

ECONOMIC IMPACT – Provisions 1 & 2

Revenue Estimate

Based on the data and assumptions discussed below, this bill would result in the following losses beginning in 2009.

Estimated Revenue Impact of SB 425 Assumed Enactment after 6/30/09 Assumed Effective for Taxable Years Beginning on or after 1/1/09			
	2009/10	2010/11	2011/12
Provision 1: Tax Credit for Commute Reduction Expenditures	-$3,170,000	-$3,400,000	-$3,650,000
Provision 2: Parking Subsidy Deduction Disallowed (Taxable Compensation & Denied Deductions)	$3,140,000	$3,350,000	$3,600,000
***Net Revenue Impact**	**-$30,000**	**-$50,000**	**-$50,000**

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

*Note: The net revenue impact is the result of netting gains from denied deductions and taxable compensation against losses due to the proposed credit. Each of the provisions of the revenue estimate has a potential error associated with it that is relative to the gross estimate for each provision. This error becomes significant when compared to the net revenue loss for this bill. Therefore, the potential error of this estimate is significantly greater than the estimate itself. The actual impact of this bill could result in a revenue loss or gain in the millions of dollars.

Revenue Discussion:

The revenue impact of this bill is determined by combining the following revenue streams:

1. The revenue gain due to taxable parking cash-out payments
2. The revenue gain due to denial of deductions for employers that fail to offer employees cash in lieu of a qualified parking space.
3. The revenue loss generated by allowing qualified employers an income tax credit for qualified commute reduction expenditures.

Parking Cash-Out Requirements

This provision would prohibit parking subsidy deductions for employers who are currently subject to California's parking cash-out program and fail to offer their employees cash in-lieu of a qualified parking space. Based on a study conducted by the Legislative Analyst Office during 2002 and applying a growth rate, it is estimated that during 2009 about 333,000 parking spaces would fall under California's parking cash-out program. This estimate assumes an 80 percent occupancy rate, reducing the number of parking spaces to 266,000.

Although employer behavioral response to this provision is unknown, it is anticipated that employers would either: 1) offer other transportation commuter fringe benefits, 2) offer cash in lieu of a parking space, or 3) fail to offer cash in lieu of a parking space and forego related tax deductions. It is assumed that 40 percent of such parking spaces represent employers that become compliant by offering alternative transportation benefits and that 30 percent of parking spaces represent employers that become compliant by offering cash in lieu of a parking space. The remaining 30 percent of parking spaces represent employers that would fail to offer cash in lieu of a parking space and forgo related tax deductions.

Group A – Employers that become compliant by offering other transportation commuter benefits would have no revenue implications.

Group B – Employers that offer cash in lieu of a parking space. For this group, any cash received by employers would be classified as taxable income. Based on a review of cash-out program literature, it is assumed that 12 percent of employees offered cash would take advantage of the program. This means that of the 80,000 employees associated with this group, 12 percent, or approximately 9,600 employees, would opt for cash payment (266,000 x 30% x 12%). California taxpayers are able to forgo reporting this income as long as the cash payment is used for ridesharing purposes. It is estimated that about 70 percent of payments would fall under this exception, leaving 30 percent, or 2,880 parking spaces, where cash is offered that would be subject to state income taxes. Assuming an annual expense of $2,800 (240 x 12 months) and an average marginal tax rate of 5 percent, this portion of the provision would result in a revenue gain of $400,000 (2,880 parking spaces x $2,800 annual expense x 5%) once fully implemented. For tax year 2009, since it will take time for employers to opt out of their parking leases to offer cash, the revenue gain for the first year is estimated to total approximately 10 percent or $40,000.

Group C- Employers that fail to offer cash payment in lieu of a parking space and forego related parking subsidy deductions. Assuming that employers incur an annual expense of $2,800 for the 80,000 parking spaces that are associated with this group, and after taking into account businesses that solely conduct business in California and those that apportion their income, about $76 million in deductions are estimated to be denied under this bill. Assuming an average marginal tax rate of 4 percent, this portion of the provision would result in a revenue gain of approximately $3 million in fiscal years 2009/10, 2010/11 and 2011/12.

Qualified Commute Reduction Expenditure Credit

The revenue impact of allowing a new tax credit for qualified commute expenses is driven by the amount of qualified expenses incurred by businesses that employ up to 20 employees.

Based on a review of federal estimates for employer related transportation fringe benefits, total California employer-paid expenses are estimated to total $2.4 billion. Based on supporting federal and CA Employment Development Department data it is estimated that about 15 percent or $365 million of total employer-paid transportation fringe benefits would meet the definition of a qualified expense but that only 20 percent or $73 million of these expenses would be paid by qualified employers. Total expenses are increased by 10 percent to $80 million to account for other facility improvement expenses, as defined within the bill. Applying the credit limit of 80 percent of qualified expenses totals $64 million ($80 million x 80%) in credits generated during tax year 2009. After limiting qualified expenses to 80 percent of costs, all employers are anticipated to have expenses that exceed the $163 limit. Therefore, it is assumed that 5.5 percent or $3.52 million of costs would represent those costs that fall below the credit limit. Since under current law an employer is allowed to deduct transportation expenses, total credits generated are reduced to $3.34 million to account for this existing expenditure. For the first year it is assumed that only 95 percent of credits generated would be used to reduce tax liabilities, with 5 percent in credits used for the following tax year. Therefore, for 2009, $3.17 million of credits would be used ($3.34 million x 95% usage).

The revenue in the chart assumes that this bill is enacted after June 30, 2009 and therefore the entire impact for tax year 2009 would be realized during fiscal year 2009/10. Similar calculations were performed for fiscal years 2010/11 and 2011/12.

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