

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Denham, et al. Analyst: Matthew Cooling Bill Number: SBX6 7
Related Bills: See Legislative History Telephone: 845-5983 Introduced Date: February 24, 2010
Attorney: Patrick Kusiak Sponsor:

SUBJECT: Employer Hiring Credit/Wages Paid to Each Qualified Veteran

SUMMARY

This bill would provide certain employers a 25 percent tax credit for wages paid to qualified veterans, as specified.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to incentivize employers to hire currently unemployed veterans to bring them back into the workforce, thus reducing the rate of unemployed veterans.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective upon enactment and specifically operative for taxable years beginning on or after January 1, 2010.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal laws allow a taxpayer to deduct expenses paid or incurred in the ordinary course of a taxpayer's trade or business, including employee wages and benefits.

Under existing federal law, the Work Opportunity Tax Credit program, an employer may qualify for a tax credit of up to \$9,000 if the employee is a member of a designated target group including qualified veterans receiving Food Stamps or qualified veterans with a service connected disability who:

- Have a hiring date that is not more than one year after having been discharged or released from active duty, or
Have aggregate periods of unemployment during the one year period ending on the hiring date that equal or exceed six months.

Table with Board Position (S, NA, NP, SA, O, NAR, N, OUA, X PENDING) and Department Director/Date (Ellie Root for Selvi Stanislaus, 04/14/10)

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers that incur certain expenses or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

The New Jobs credit enacted in 2009 allows a credit for taxable years beginning on or after January 1, 2009, for a qualified employer in the amount of \$3,000 for each qualified full-time employee hired in the taxable year, determined on an annual full-time equivalent basis. The credit is allocated by the Franchise Tax Board (FTB) on a first-come-first-served basis and has a maximum cap of \$400 million for all taxable years. The credit remains in effect until December 1 of the calendar year after the year in which the cumulative credit limit has been reached and is repealed as of that date. Any credits not used in the taxable year may be carried forward up to eight years.

### THIS BILL

For taxable years beginning on and after January 1, 2010, this bill would provide a tax credit in an amount equal to 25 percent of the qualified wages, not to exceed \$6,000, paid to employees who are qualified veterans.

This bill would define “qualified veteran” as an individual who satisfies all of the following:

1. Is a member of the Armed Forces of the United States who has been honorably discharged within the five calendar years prior to employment,
2. Received unemployment compensation within California for no less than four weeks during the 12 calendar months before the date of employment, and
3. Is employed by the taxpayer for not less than 120 hours during the calendar year in which the credit is generated

This bill would define a “qualified taxpayer” as a taxpayer whose business is primarily in California or does business primarily in California or with Californians.

This bill would provide that the credit that would be allowed under this section would be reduced by any other credit or deduction that the qualified taxpayer may otherwise claim.

This bill would allow any unused credits to be carried forward to future taxable years until the credit is exhausted.

### 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.

This bill fails to define the term “wages.” “Wages” are generally defined by reference to amounts subject to withholding under the California Unemployment Insurance Code. Amendments 1 and 4 have been provided to define the term.

The definition for “qualified taxpayer” is unclear. This bill would state that a qualified taxpayer does business primarily in California or is a Californian. Without clarification on what “primarily in California” or “a Californian” means, it would be difficult to determine whether a business is a California business for the purposes of this credit.

### TECHNICAL CONSIDERATIONS

Amendments 2 and 5 would make a minor technical change to the provision requiring the qualified veteran to have worked at least 120 hours before the employer can claim the credit.

This bill states that the credit would be decreased by the amount of any other credits or deductions the qualified taxpayer may otherwise claim. The language of this provision would always reduce the amount of any credit to zero because taxpayers may claim various credits and deductions, including a deduction for 100 percent of wages paid to employees. Often, credits include provisions to reduce the amount of any deductions otherwise allowable for the same expense used to calculate the credit. Amendments 3 and 6 would revise the language to reduce the amount of other deductions otherwise allowable by the amount of the credit allowed by this bill.

### **LEGISLATIVE HISTORY**

AB 340 (Knight, 2009/2010) would have provided a hiring credit for hiring employees to work in a company relocating to California with 30 or more qualified employees, as specified. This bill failed to pass out of the house of origination by the Constitutional deadline.

AB 1973 (Swanson, 2009/2010) would allow an employer a credit equal to 20 percent of a new qualified employee’s salary, not to exceed \$5,000 in the first and second years of employment if the employee is a qualified ex-offender. This bill will be heard in the Assembly Revenue and Taxation Committee on April 12, 2010.

AB 2617 (Tran, 2009/2010) would provide a tax credit to a qualified taxpayer for qualified wages in an amount equal to 15 percent of the wages paid or incurred during the taxable year. This bill will be heard in the Assembly Revenue and Taxation Committee on May 3, 2010.

AB 2630 (Emmerson, et al., 2009/2010) would provide a tax credit of \$3,000 for each net increase in full-time employees hired during the taxable year by a qualified employer until the state employment rate is 5.5 percent or lower. This bill will be heard in the Assembly Revenue and Taxation Committee on May 3, 2010.

ABX3 15 (Krekorian, Stats. 2010 Third Extraordinary Session, Ch. 10) and SBX3 15 (Calderon, Stats. 2010 Third Extraordinary Session, Ch. 17) allowed several credits under the Revenue and Taxation Code, including the New Jobs Hiring Credit.

SBX8 63 and SB 1056 (Denham, 2009/2010) are identical to this bill and would provide a credit for hiring qualified veterans, as specified. SBX8 63 failed to move out of the Senate Rules Committee; SB 1056 has been referred to the Senate Revenue and Taxation Committee.

### **OTHER STATES' INFORMATION**

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* have no comparable credit. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

### **FISCAL IMPACT**

This bill would require a calculation for the credit that would require a new form or worksheet to be developed. 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.

### **ECONOMIC IMPACT**

#### Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SBX6-7 as Introduced on February 24, 2010 For Taxable Years Beginning On or After January 1, 2010 Enactment Assumed on September 30, 2010 (\$ in Millions)			
Fiscal Year	2010-11	2011-12	2012-13
Revenue Loss	-170	-190	-200

This analysis does not consider the possible changes in investment activity, employment, personal income, or gross state product that could result from this bill.

### **LEGAL IMPACT**

This bill would define a "qualified taxpayer" as a taxpayer whose location is in California. This definition could restrict this credit to businesses located in California. This bill could raise constitutional concerns under the Commerce Clause of the United States Constitution because it could appear to favor in-state businesses. For example, an out-of-state business with employees who perform services in California, file a state tax return, and pay tax on income sourced within the state, would be unable to claim this credit because they cannot satisfy the "business located in California" requirement of the bill. In addition, because this credit would not be refundable, the "qualified taxpayer" would have to be paying taxes in California to claim and use this credit, and as such, the limitations in the definition to those who are located in California are unnecessary.

## **POLICY CONCERNS**

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

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

## **LEGISLATIVE STAFF CONTACT**

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO SBX6 7  
AS INTRODUCED FEBRUARY 24, 2010

AMENDMENT 1

On page 2, after line 5, insert:

(c) For purposes of this section, "wages" means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

AMENDMMMENT 2

On page 2, line 17, ~~strikeout "in"~~ and insert:

for

AMENDMENT 3

On page 2, ~~strikeout lines 18 through 20 inclusive,~~ and insert:

(e) Any deduction otherwise allowable under this part for qualified wages shall be reduced by the amount of the credit allowed under this section.

AMENDMENT 4

On page 2, after line 34, insert:

(c) For purposes of this section, "wages" means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

AMENDMENT 5

On page 3, line 6, ~~strikeout "in"~~ and insert:

For

AMENDMENT 6

On page 3, strikeout lines 7 through 9 inclusive, and  
insert:

(e) Any deduction otherwise allowable under this part for qualified wages shall be reduced by the amount of the credit allowed under this section.