

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Torrico Analyst: Matthew Cooling Bill Number: AB 1508  
See Legislative  
Related Bills: History Telephone: 845-5983 Amended Dates: April 14, 2009 & April 16, 2009  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Employer Public School Or Vocational Institution Math Or Science Teacher Lending Credit

### SUMMARY

This bill would allow, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), a credit equal to an unspecified percentage of the qualified expenses related to lending an employee to a Title I public school to assist in the teaching of mathematics or science.

### SUMMARY OF AMENDMENTS

The April 14, 2009, amendments replaced legislative intent language to encourage school districts to include solar energy in their projects for modernization and new construction, with language allowing a credit to employers for lending qualified employees to assist in the teaching of mathematics or science in a public high school or vocational institution.

The April 16, 2009, amendments removed the term "vocational school" and redefined the term "public school," and made other changes in the conditions that needed to be satisfied in order to qualify for this credit.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to incentivize taxpayers in a wide range of industries to lend their employees to Title I public schools to promote the students' interest in the fields of mathematics and science.

### EFFECTIVE/OPERATIVE DATE

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

### POSITION

Pending.

Board Position:	Department Director	Date
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## ANALYSIS

### FEDERAL/STATE LAW

Current federal law provides that schools will qualify for the classification of Title 1 under the Elementary and Secondary Education Act of 1965, which specifies that schools in the eligible school attendance area receive federal funding to support the education of disadvantaged youth.<sup>1</sup>

The term "eligible school attendance area" means the following:

- In relation to a particular school, the geographical area in which the children who are normally served by that school reside; and
- A school attendance area in which the percentage of children from low-income families is at least as high as the percentage of children from low-income families served by the local educational agency as a whole.

Current federal law also defines the following terms:<sup>2</sup>

- "High concentration of low-income students," used with respect to a school, means a school that serves a student population 40 percent or more of whom are low-income individuals.
- "Low-income individual" means an individual who is determined by a State educational agency or local educational agency to be a child, ages 5 through 19, from a low-income family, based on either of the following:
  - Data used by the Secretary to determine allocations [20 U.S.C. 6333],
  - Data on children eligible for free or reduced-price lunches under the National School Lunch Act [42 U.S.C. 1751 et seq.],
  - Data on children in families receiving assistance under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.],
  - Data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.], or
  - Through an alternate method that combines or extrapolates from those data.

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) 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.

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<sup>1</sup> U.S. Code, Title 20, Section 6313

<sup>2</sup> U.S. Code, Title 20, Section 6537

## THIS BILL

This bill would allow a credit under PITL and CTL in the amount of an unspecified percentage of qualified expenses paid or incurred and related to an employer (taxpayer) lending a qualified employee to a Title I public school to assist in the teaching of mathematics or science.

This bill would define the following:

- “Qualified expenses” would mean:
  - ◆ The expenses paid or incurred by the taxpayer’s employee on the taxpayer’s behalf for the compensated hours of an employee attributed to an employer lending that employee to a Title I public school, and
  - ◆ Expenses paid or incurred by the taxpayer for wages paid to an employee that are allocable to teaching.
- “Qualified employee” would mean an employee whose employment specialty is in the areas of mathematics or science, as specified.
- “Title I public school” would mean any high school in California that is part of a public school district and at least 40 percent of its students come from low-income families.
- “Mathematics” would mean instruction that will develop students in the areas of mathematical reasoning and problem solving, which includes, but is not limited to, courses in algebra I, algebra II, linear algebra, calculus, geometry, trigonometry, mathematical analysis, probability and statistics, and advanced probability and statistics.
- “Science” would mean instruction that promotes development of the skills and procedures used in problem solving and recognition, data collection through observation and experimentation, and the formulation and testing of hypotheses. “Science” includes, but is not limited to, courses in biology, life science, physical science, physics, chemistry, and others.

For a taxpayer to receive the credit, the school district would have to issue a service record to the taxpayer that would certify the number of hours that the employee taught the qualified courses. Additionally, the service record would certify that no teacher currently employed by the school would be replaced by one of these teacher assistants, and the taxpayer would have to make charitable contributions, which include, but are not limited to, classroom materials, resources, equipment, and facilities.

The maximum amount of the credit allowable would be limited to an unspecified percentage of the charitable contributions made to the school for that taxable year. This bill would allow a credit carryover for eight years. No other deduction would be allowed for the amount of any expenses for which this credit is allowed.

## 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 specify both the percentage of expenses paid or incurred used to determine the amount of the credit and the percentage of charitable donations made to determine the maximum amount of the credit that can be claimed. Without specifying these amounts, the department would be unable to implement this bill. The department would also be unable to determine any economic impact until those percentages are specified. It is recommended that the author amend the bill and specify these percentages.

Additionally, the provision that would specify a limit on the amount of the credit does not specify if the charitable donations to the school shall be made by the taxpayer claiming the credit or if the charitable donations include the teacher assistant services. It is recommended that the author amend this bill to include language that would clarify the definition of charitable donations for the purposes of this bill.

This bill uses the term “compensated hours incurred by or on behalf of the taxpayer,” which is undefined. The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this credit. This term could also be defined to include employer expenses other than wages, i.e., health benefits paid, retirement benefits paid, and any other compensation that is not wages subject to withholding in this state. The author may wish to clarify this term to limit the amount of expenses that would be used to calculate the credit.

This bill uses the term “employment specialty” but does not define this term. An absence of a definition for this term could lead to disputes between the department and taxpayers. It is recommended that the author amend the bill to define “employment specialty.”

The definitions for the terms “mathematics” and “science” in this bill could lead to disputes between the department and taxpayers because both terms are defined to mean instruction designed to develop a particular skill set, as specified, and both definitions include a broad range of subject areas. It is recommended that the author amend the definition of “mathematics” and “science” to clarify that “mathematics” and “science” are not specifically defined by instruction in these subject areas. In addition, to clarify the definitions of “mathematics” and “science,” the author may wish to look to the Content Standards for Mathematics<sup>3</sup> and Science<sup>4</sup> adopted by the State Board of Education in 1997 and 1998, respectively.

This bill defines the term “Title I public school” as a high school where 40 percent of the students come from low-income families or that 40 percent of the students come from families eligible to receive federal Title I funds. This could lead to confusion between federal Title I schools and the schools labeled Title I under this bill. It is recommended that the author define Title I public school as any high school that is classified a Title I school under Title 20 of the United States Code, sections 6301 to 6339 and sections 6571 to 6578.

## TECHNICAL CONSIDERATIONS

Amendment 1 has been provided to clarify that the wages treated as qualified expenses are California wages subject to withholding in this state.

Amendment 2 has been provided to correct a drafting error related to the definition of charitable donations.

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<sup>3</sup> Mathematics Content Standards: <http://www.cde.ca.gov/be/st/ss/documents/mathstandard.pdf>

<sup>4</sup> Science Content Standards: <http://www.cde.ca.gov/be/st/ss/documents/sciencestnd.pdf>

## LEGISLATIVE HISTORY

AB 462 (Wyland and Zettel, 2001/2002) would have allowed employers to claim a credit equal to 50 percent of the expenses related to lending an employee to a public school to teach mathematics or science. This bill failed to pass out of the house of origin by the constitutional deadline.

SB 558 (Morrow 2001/2002) would have allowed employers to claim a credit equal to an unspecified percentage of the expenses related to lending an employee to a public school to teach mathematics or science. This bill failed passage out of the Senate Revenue and Taxation Committee.

SB 1948 (Lewis, 1999/2000) would have allowed employers to claim a credit equal to 50 percent of the expenses related to lending an employee to a public school to teach math or science. This bill failed passage from the Senate Revenue and Taxation Committee.

## 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. Florida does not have a personal income tax. These states do not have a credit similar to the one proposed by this bill.

## FISCAL IMPACT

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

## ECONOMIC IMPACT

The revenue impact of this bill would be determined by the amount of qualified expenses applicable for lending qualified employees and the amount of credits that can be applied to reduce tax liabilities.

Because the credit percentage applicable to qualified expenses is unspecified, a revenue estimate can not be provided.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 1508  
As Amended April 16, 2009

AMENDMENT 1

On page 2, line 20, after teaching, insert:  
and subject to withholding in this state.

AMENDMENT 2

On page 3, line 38, strikeout "based on"