ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author:	Wieckowski	Analyst:	Jessica Matus	Bill Number:	AB 1009
Related Bills:	See Legislative History	Telephone:	845-6310	Introduced Date:	February 18, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: New Employee Tax Credit

SUMMARY

This bill would amend existing law to provide a tax credit to employers with 100 or less employees.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

According to the author's office, this bill is to provide a tax incentive to businesses to stimulate the economy and promote hiring in California.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment.

This bill has two operative dates. The changes made to the definition of "qualified employer," would be specifically operative for taxable years beginning on or after January 1, 2012. The changes made to the limitation related to the deletion of rules for determining when an employer first commences business would be operative for taxable years beginning on or after January 1, 2011.

ANALYSIS

FEDERAL/STATE LAW

Current state law allows a credit for taxable year 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 basis equivalent. This credit is allocated by the Franchise Tax Board (FTB) and has a 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until December 1 of the calendar year after the year in which the cumulative credit limit has been reached and is repealed after that date. Any credits not used in the taxable year may be carried forward up to eight taxable years.

Board Position:			Executive Officer	Date
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A qualified employer is a taxpayer employing 20 or less employees.

THIS BILL

For taxable years beginning on or after January 1, 2012, this bill would change existing law to define a qualified employer as a taxpayer that employs 100 or less employees.

Under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), the bill eliminates the rules under existing law that determine whether a taxpayer has first commenced doing business in this state during the taxable year.

Further, under both the PITL[1] and CTL,[2] modifications have been made to eliminate the anti-abuse rules listed in the original language of the law. These rules were designed to prevent existing business from being treated as first commencing business in the state when the business simply changed structure, i.e., changed from a sole proprietor to an S-corporation.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would occur during the department's normal annual update.

LEGISLATIVE HISTORY

AB 236 (Swanson, 2011/2012) would allow a credit of $5,000 for each full-time employee hired that is either an ex-offender or has been unemployed for 12 consecutive months. This bill is currently in the Assembly Revenue and Taxation suspense file.

AB 304 (Knight, 2011/2012) would allow a credit of $3,000 or $5,000 to an employer with 30 or more employees that moves or establishes a headquarters within California. This bill is currently in the Assembly Revenue and Taxation suspense file.

SB 156 (Emmerson/Cook, 2011/2012) would modify the current Jobs Tax Credit to increase the allowance of the credit from employers with 20 or less employees to employers with 50 or less employees. This bill is currently in the Senate Appropriations Committee.

SB 640 (Runner, 2011/2012) would allow a credit of $500 per month for each full time employee hired who has received unemployment benefits for six months prior to being hired. This bill is currently in the Senate Rules Committee.

AB 340 (Knight, 2009/2010) would have allowed a hiring credit to employers who established a headquarters within California. This bill failed passage out of the Assembly Revenue and Taxation Committee.

[1] California Revenue and Taxation Code (R&TC) section 17276.20(f)
[2] R&TC section 24416.20(g)

SB 508 (Dutton 2009/2010), SBX6 11 (Dutton, 2009/2010), and SBX8 59 (Dutton, 2009/2010) are identical. These bills would have provided a tax credit for the first $6,000 of wages paid or incurred to an individual documented by the Employee Development Department. SB 508 failed passage out of the Senate Revenue and Taxation Committee by the constitutional deadline; SBX6 11 (Dutton, 2009/2010) failed passage out of the Senate Revenue and Taxation Committee; SBX8 59 failed passage out of the Senate Revenue and Taxation Committee without further action.

SB 612 (Runner, 2009/2010) would have provided a tax credit of $500 per month for each qualified employee employed by a taxpayer. This bill failed passage out of the Senate Revenue and Taxation Committee.

AB 1523 (Ashburn, 2003/2004) would have allowed a hiring credit to employers with fewer than 19 employees. This bill failed passage out of the Senate Appropriations Committee.

AB 2365 (Correa, 2003/2004) would have allowed a credit for wages paid to a qualified employee who is hired in the taxpayer’s manufacturing trade or business. This bill failed passage out of the Assembly Appropriations Committee.

ABX3 15 (Stats. 2009, Ch. 10) and SBX3 15 (Stats. 2009, Ch. 17) provides for a tax credit of $3,000 for each net job increase.

PROGRAM BACKGROUND

As of April 2, 2011, the total Personal Income Tax and Business Entity returns claiming the new Jobs Tax Credit was 6,994, and the amount of credits generated was $45.3 million. The cut-off date is the last day of the calendar quarter within which the FTB estimates it will have received timely filed original returns claiming the credit that cumulatively total $400 million.

OTHER STATES’ INFORMATION

The states surveyed include *Florida, New York, Illinois, Massachusetts, Michigan, and Minnesota.* These states were selected due to their location and similarities to California's economy, business entity types, and tax laws.

Florida allows businesses located in an enterprise zone (EZ) a credit based on wages paid to new employees. Other wage-based credits are offered to businesses that are located in high crime areas or in rural areas.

New York allows a wage credit to a business that hires a full time employee (either one in targeted group or not) for a newly created job in an Empire Zone.

Illinois allows a job tax credit for taxpayers conducting a trade or business in an EZ or a High Impact Business. The credit is $500 for each eligible employee hired to work in the zone during the tax year. It is available for eligible employees hired on or after January 1, 1986.

Massachusetts allows a Full Employment credit to employers who participate in the Full Employment Program and continue to employ a participant for at least one full month. The taxpayer may claim a credit of $100 per month of eligible employment per participant, up to $1,200 per participant.

Michigan and *Minnesota* do not offer wage credits.

FISCAL IMPACT

This bill would require a calculation for the credit that would require the existing job credit form be modified. These changes could be incorporated into the department's annual changes, and as such, the costs would be minor.

ECONOMIC IMPACT

Revenue Estimate

The current Jobs Tax Credit is capped at $400 million. The Jobs Tax Credit requires the FTB to disallow credits claimed on returns filed after the end of the calendar quarter in which the department believes the cap will be reached. The current projection is that the existing Jobs Tax Credit will be exhausted during the 2011 taxable year based on historic trends of credit usage. If so, there would be no credit available in the 2012 taxable year. Therefore, any proposals to expand the credit in 2012 would have no revenue impact. The actual credit usage will be monitored throughout the current filing season. If it becomes clear that a much smaller than expected portion of eligible taxpayers are claiming the credit, the estimates will be revised to reflect the availability of credits in 2012.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Some taxpayers may say that this bill would provide a tax incentive to businesses to stimulate the economy and promote hiring in California.

Con: Some taxpayers may say that with the state's current fiscal crisis, efforts to increase credit usage among businesses should be avoided.

POLICY CONCERNS

This bill makes changes to both the PITL[3] and CTL[4] to specifically eliminate current anti-abuse rules.[5] These rules were designed to prevent an existing business from being treated as first commencing business in the state when the business simply changed structure, i.e. changed from a sole proprietor to an S-corporation. This bill could allow taxpayers in certain circumstances to claim multiple tax benefits by claiming the credit multiple times.

LEGISLATIVE STAFF CONTACT

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[3] CR&TC section 17276(f)
[4] CR&TC section 24416(g)
[5] If the anti-abuse rules are added back to the bill, strike out “(f) of section 17276” and insert, “(g) of section 24416.” Additionally, all references to section 24416 should be updated to 24416.20 and all references to 17276 should be updated to 17276.20.