Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Wieckowski	Analyst:	Jessica Matus	Bill Number:	AB 1009
Related Bills:	See Legislative History	Telephone:	845-6310	Amended Date:	April 14, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Modify Jobs Tax Credit

SUMMARY

This bill would modify the existing Jobs tax credit by re-defining "qualified employers" and "qualified employees."

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The April 14, 2011, amendments would revise the definition of "qualified employee," "qualified employer," and the calculation used to determine "full time equivalent" for purposes of the existing Jobs tax credit. The amendments would also change the operative date of the bill. As a result of the amendments, the department's analysis of the bill as introduced February 2, 2011, no longer applies. This analysis replaces the prior analysis of the bill.

Summary of Suggested Amendments

Amendments have been provided below under "Technical Considerations" to correct cross-reference errors.

PURPOSE OF THE BILL

According to the author's office, the purpose of 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 and operative for taxable years beginning on or after January 1, 2011. The changes made to the definition of "qualified employer" would be specifically operative for taxable years beginning on or after January 1, 2012.

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ANALYSIS

FEDERAL/STATE LAW

Current state law, SBX 3 15 (Calderon, Stats. 2009, Third Extraordinary Session, Ch. 17) 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 basis equivalent. The calculation of annual full-time basis would be the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000. 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until December 1 of the calendar year after the year in which the cumulative credit limit has been reached and is repealed after that date.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.

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 re-define the term “qualified employer” to be a "disabled veteran business enterprise," a “disadvantaged business enterprise,” a “micro-business,” or a “small business.” These terms are defined by reference to other provisions of law as follows:

- A “disabled veteran business enterprise” is a business that is owned at least 51 percent by a disabled veteran(s); the management and control of daily business is completed by one or more disabled veteran(s); and it is a sole proprietorship, corporation, or partnership with its home office located in the United States (US).[1]

- A “disadvantaged business enterprise” is a business that is a “disadvantaged business enterprise” as defined in the code of federal regulations, that provides:[2]

> Disadvantaged business means a small business concern[3]:
> (a) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and
> (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals[4] who own it.

[1] Military and Veterans Code section 999, subdivision (b), paragraph (7).
[2] Section 23.62 of Title 49 of the Code of Federal Regulations
[3] Small business concern means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto except that a small business concern shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has annual average gross receipts in excess of $14 million over the previous three fiscal years.
[4] Socially and economically disadvantaged individuals means those individuals who are citizens of the United States (or lawfully admitted permanent residents) and who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, or Asian-Indian Americans and any other minorities or individuals found to be disadvantaged by the Small Business Administration pursuant to section 8 of the small business act, as provided.

- A “micro-business” is a specified small business that has average annual gross receipts of $2,500,000 or less for the previous three years, or is a specified manufacturer with 25 or fewer employees.[5]

- A “small business” is a specified independently owned and operated business that is not dominant in its field of operation, has its principal office located in California, has the officers domiciled in California, has 100 or fewer employees, and has average annual gross receipts of $10,000,000 or less over the last three years, or is a specified manufacturer with 100 or fewer employees.[6]

For taxable years beginning on or after January 1, 2011, this bill would change the definition of “qualified employee” to an employee who was unemployed for at least 30 days immediately prior to being hired by the taxpayer.

For taxable years beginning on or after January 1, 2011, the bill also makes changes to the definition of “annual full time equivalent” to mean the total number of hours worked for the taxpayer by the employee (1,820 hours per employee) divided by 1,820.

IMPLEMENTATION CONSIDERATIONS

The bill would allow a credit for employers that fall into several specific types of entities but fails to require that certification be provided to the department that the criteria has been met. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer.

TECHINCAL CONSIDERATIONS

On page 4, line 33, after “section” strikeout “17276” and insert “17276.20”.
On page 8, line 23, after “subdivision” strikeout “(f) of Section 17276” and insert “(g) of Section 24416.20”.

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.

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[5] Government Code section 14837,subdivision (d), paragraph (2).
[6] Government Code section 14837, subdivision (d), paragraph (1).

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 Governance and Finance 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.

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.

LEGISLATIVE STAFF CONTACT

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