Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Wieckowski	Analyst:	Jessica Deitchman	Bill Number:	AB 234
Related Bills:	See Legislative History	Telephone:	845-6310	Amended Date:	January 4, 2012
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Modify New Jobs Tax Credit

SUMMARY

This bill would modify the existing New Jobs Tax Credit by limiting the credit to qualified employers who hire any employee that was unemployed for at least the 30 days prior to being hired.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The January 4, 2012, amendments removed provisions that would have made changes related to a healthy foods pilot program and replaced them with provisions that would modify the existing New Jobs Tax Credit. This is the department's first analysis of the bill.

Summary of Suggested Amendments

The amendments provided below under the "Technical Considerations" discussion would accomplish the following:

1. Correct a nomenclature error;
2. Clarify existing language.

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 specifically operative for taxable years beginning on or after January 1, 2012.

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ANALYSIS

FEDERAL/STATE LAW

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. These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Current federal law allows employers who hire employees from a "targeted group," as defined, to elect to claim a work opportunity tax credit (WOTC).[1] The credit is equal to 40 percent of the qualified first-year wages for that year. The amount of the qualified first-year wages that may be taken into account with respect to any individual is limited to $6,000 per year ($12,000 per year in the case of any individual who is a qualified veteran).

Under the Government Code, state law provides for several types of geographically targeted economic development areas (G-TEDAs): Enterprise Zones (EZs), Manufacturing Enhancement Areas (MEAs), Targeted Tax Areas (TTAs), and Local Agency Military Base Recovery Areas (LAMBRAs).

Under the Revenue and Taxation Code, existing state law provides special tax incentives for taxpayers conducting business activities within a G-TEDA. These incentives include a hiring credit, sales or use tax credit, business expense deduction, and special net operating loss treatment. Two additional incentives include net interest deduction for businesses that make loans to businesses within G-TEDAs and a credit for employees working in an EZ.

Hiring Credit: A business located in a G-TEDA is eligible for a hiring credit equal to a percentage of wages paid to qualified employees. A qualified employee must be hired after the area is designated as a G-TEDA and meet certain other criteria. At least 90 percent of the qualified employee's work must be directly related to a trade or business located in the G-TEDA and at least 50 percent of the employee's services must be performed inside the G-TEDA.

The credit is based on the lesser of the actual hourly wage paid or 150 percent of the current minimum hourly wage, under special circumstances for the Long Beach EZ, the maximum is 202 percent of the minimum wage. The amount of the credit must be reduced by any other federal or state jobs tax credits, and the taxpayer's deduction for ordinary and necessary trade or business expenses must be reduced by the amount of the hiring credit.

Current state law allows a New Jobs Tax 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. Full-time equivalent is calculated by subtracting the number of hours worked by all employees for the current year from the prior year's total number of hours worked. Each 40-hour increment, or portion thereof, is then multiplied by the credit amount. 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.

[1] Internal Revenue Code (IRC) 51-Work Opportunity Tax Credit

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 the existing New Jobs Tax Credit 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).[2]

- A “disadvantaged business enterprise”[3] is a business that is a “disadvantaged business enterprise,” as defined in the code of federal regulations, that is:

  1. An individual proprietorship, partnership, corporation, or joint venture, and
  2. Organized for profit with a place of business located in the US and which makes a significant contribution to the US economy through payment of tax or use of American products, material, or labor.

  The federal code of regulations defines a disadvantaged business to mean a small business concern[4]:

    (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[5] who own it.

- A “micro-business” is a specified small business that has average annual gross receipts of $2.5 million or less for the previous three years, or is a specified manufacturer with 25 or fewer employees.[6]

[2] Military and Veterans Code section 999, subdivision (b), paragraph (7).
[3] Public Contract Code, section 2051, subdivision (f)
[4] 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.
[5] 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.
[6] Government Code section 1483, subdivision (d), paragraph (2).

- 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 million or less over the last three years, or is a specified manufacturer with 100 or fewer employees.[7]

For taxable years beginning on or after January 1, 2012, this bill would also 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. Further, this bill would modify the amount of the existing tax credit to be equal to $4,500 for employees whose wages are less than $16 per hour or $9,100 for employees whose wages exceed $16 per hour. The credit amount would be determined based on the increase in qualified full-time employees determined using the “annual full-time equivalent” calculation.

Under this bill, “annual full time equivalent” would be calculated using the total number of hours worked for the taxpayer by the employee (not to exceed 1,820 hours per employee) divided by 1,820, instead of the current calculation that uses 2,000 hours.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is working with the author’s office to resolve these and other concerns that may be identified.

This bill would increase the amount of the existing credit from $3,000 to either $4,500 or $9,100 for each net increase in “qualified employees.” The amount of credit allowed would depend on the hourly wage paid to each newly hired employee. The existing New Jobs Tax Credit is determined using a “full-time equivalent” calculation that determines overall increase in total hours worked resulting in a net increase in actual new jobs. The calculation does not factor in wages paid to employees. As a result, department staff would be unable to determine which credit amount, $4,500 or $9,100 would apply. It is recommended that the bill be amended to remove the conflict and to avoid confusion between the department and taxpayers.

TECHNICAL CONSIDERATIONS

On page 5, line 29, after “(a)” insert “1”.
On page 6, line 8, after “more than” insert “or equal to”.
On page 13, line 16, after “more than” insert “or equal to”.
On page 5, line 30, after “and” strike out “taxable years beginning”

LEGISLATIVE HISTORY

AB 236 (Swanson, 2011/2012) would modify the current New Jobs Tax Credit to 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 was held under submission in the Assembly Revenue and Taxation Committee.

[7] Government Code section 14837, subdivision (d), paragraph (1).

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 Committee.

AB 1009 (Wieckowski, 2011/2012) would modify the current New Jobs Tax Credit to increase the allowance of the credit from employers with less than 20 employees to employers with 100 or less employees. This bill was held under submission in the Assembly Revenue and Taxation Committee.

SB 156 (Emmerson/Cook, 2011/2012) would modify the current New 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 was held under submission in the Senate Appropriations 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 December 3, 2011, the total Personal Income Tax and Business Entity returns claiming the New Jobs Tax Credit was 12,903, and the amount of credits generated was $76 million. The credit will remain in effect until the criteria for the cut-off date has been met. 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 complete re-drafting of current forms and procedures for the existing New Jobs Tax Credit. The total cost to implement this bill is unable to be determined at this time. As the bill continues to move through the legislative process, and implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact of this bill is unable to be determined. The current New Jobs Tax Credit calculates the credit on a "full-time equivalent basis" by using the total hours worked by all employees. This bill would allow a credit based on the specific wages of specific employees hired. The "full-time equivalent" calculation does not use wages paid or specific employees. As a result, it is unclear how to determine which credit amount, $4,500 or $9,100, would apply.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Some taxpayers may say that this bill would increase the usage of the New Jobs Tax Credit and provide tax relief to businesses.

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

Jessica Deitchman	Patrice Gau-Johnson
Legislative Analyst, FTB	Asst. Legislative Director, FTB
(916) 845-6310	(916) 845-5521
jessica.deitchman@ftb.ca.gov	patrice.gau-johnson@ftb.ca.gov