Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Swanson | Analyst: Jessica Matus | Bill Number: AB 236

Related Bills: See Legislative History | Telephone: 845-6310 | Introduced Date: February 3, 2011

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: New Jobs Credit/Ex-Offender Or Person Who Has Been Unemployed For 12 Or More Consecutive Months

SUMMARY

The bill would expand the existing New Jobs Tax Credit.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Suggested Amendments

Amendments have been provided below to replace references to incorrect code sections.

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 and specifically operative for taxable years beginning on or after January 1, 2011.

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 (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.

Board Position:			Department Director	Date
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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 tax law, SBX3 15 (Calderon, Stats. 2009, Third Extraordinary Session, Ch. 17), allows a credit, for taxable years beginning on or after January 1, 2009, to 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) 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 as of that date. Any credits not used in the taxable year may be carried forward up to eight years.

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

Under current state law, the Corporation Tax Law allows the assignment of certain credits to taxpayers that are members of a combined reporting group and adds the following provisions:

- Provides that an "eligible credit" may be assigned by a taxpayer to an "eligible assignee."
  - "Eligible credit" means any credit earned by a taxpayer in a taxable year beginning on or after July 1, 2008, or any credit earned in any taxable year beginning before July 1, 2008, which is eligible to be carried forward to the taxpayer's first taxable year beginning on or after July 1, 2008.
  - "Eligible assignee" means any "affiliated corporation" that is a member of a combined reporting group at certain specified times.
  - "Affiliated corporation" means a corporation that is a member of a combined reporting group.
- Provides that the election to assign any credit is irrevocable once made and is required to be made on the taxpayer's original return for the taxable year in which the assignment is made.

THIS BILL

For taxable years beginning on or after January 1, 2011, the credit amount for the existing New Jobs Tax Credit would be increased from $3,000 to $5,000 for hiring employees who are "ex-offenders" or who have been unemployed for 12 or more consecutive months prior to being hired by the employer. The existing credit of $3,000 would continue for employees who do not qualify as an ex-offender or unemployed.

This bill would modify the definition of "qualified full-time employee" as follows:

- "Qualified full-time employee" would include an ex-offender who was convicted of a felony, but would exclude a sex offender or the equivalent under the laws of another state or territory, under military law, or under federal law, or a person convicted of a serious or violent felony as defined by the Penal Code.[2] Also included would be employees who were unemployed for 12 consecutive months prior to being hiring by employer.

Additionally, for taxable years beginning on or after January 1, 2011, the calculation of the increase in annual full-time employees would be modified to include the employees of a trade or business acquired in a preceding year with the number employees employed by the taxpayer during the preceding year.

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.

[2] Penal Code section 290 is known as the "Sex Offender Registration Act."
[2] Penal Code subdivision (c) of sections 667.5 and subdivision (c) 1192.7 define "violent felony" and "serious felony."

This bill would increase the amount of the credit from $3,000 to $5,000 for ex-offenders. The $3,000 credit would continue after 2010. Additionally, the existing credit is not a per employee credit. It is based on a "net increase in full-time employees" determined on a full-time equivalent basis. These two rules are conflicting and could cause computational issues for the credit. It is recommended the author amend the bill to clarify how to apply the $5,000 credit and the computation of the two separate credit pools.

This bill fails to specify a timeframe that an individual would be considered an “ex-offender” or “unemployed.” For example, without a timeframe, an employee that was convicted of a felony ten years ago could qualify the taxpayer for this credit. As well as, if an employee that was unemployed for 12 consecutive months 10 years ago could qualify the taxpayer for the credit. The author may consider further defining “qualified employee” by adding a timeframe for which the criteria would apply.

TECHNICAL CONSIDERATIONS

The bill references California Revenue and Taxation Code (CR&TC) sections that have been renumbered. All references to CR&TC section 24416 should be deleted and replaced with CR&TC section 24416.20 and all references to CR&TC section 17276 should be deleted and replaced with CR&TC section 17276.20.

LEGISLATIVE HISTORY

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 is currently in the Assembly Rules 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 less than 20 employees to employers with 50 or less employees. This bill is currently in the Senate Governance and Finance 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 6 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 by the constitutional deadline.

AB 1139 (Perez, 2009/2010) would have modified the definition of ex-offender for purposes of the existing Enterprise Zone (EZ) hiring credit. This bill failed passage out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 1973 (Swanson, 2009/2010) was identical to this bill. This bill failed passage out of the Senate Appropriations Committee by the constitutional deadline.

AB 2617 (Tran, 2009/2010) would have provided 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 failed passage out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 2630 (Emmerson, et al., 2009/2010) would have provided 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 was 5.5 percent or lower. This bill failed passage out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

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; and SBX8 59 failed passage out of the Senate Rules Committee by the constitutional deadline.

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 by the constitutional deadline.

SB 974 (Steinberg, et al., 2009/2010) would have established the career pathways investment credit, modify the enterprise zone (EZ) hiring credit for taxpayers subject to the personal income tax law, and modify the targeted tax area (TTA) hiring credit. This bill failed passage out of the Assembly by the constitutional deadline.

ABX3 15 (Krekorian, Stats. 2010, 3rd Ex. Sess. 2009, Ch. 10) and
SBX3 15 (Calderon, Stats. 2010, 3rd Ex. Sess. 2009, Ch. 17) created the New Jobs Tax Credit, which provides a tax credit of $3,000 for each net job increase.

PROGRAM BACKGROUND

As of March 5, 2011, the total Personal Income Tax and Business Entity returns claiming the New Jobs Credit was 5,580 and the amount of credits generated was $38.5 million. The cut-off date is the last day of the calendar quarter within which 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, 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, Illinois, New York, Michigan, and *Minnesota* do not offer a credit similar to the one proposed by this bill.

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.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 236 For Taxable Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2011 ($ in Millions)				
2010-11	2011-12	2012-13	2013-14	2014-15
$0	-$16	-$2	-$1	-$1

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

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, additional tax expenditures should be avoided.

LEGISLATIVE STAFF CONTACT

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