Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Wieckowski	Analyst:	Jessica Deitchman	Bill Number:	AB 246
Related Bills:	See Legislative History	Telephone:	845-6310	Amended Date:	February 13, 2012
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: New Jobs Credit Modification/Increase Credit Amount Based on Employee Wages

SUMMARY

This bill would modify the existing New Jobs Tax Credit by changing the definition of a qualified employer and increasing the amount of the credit to either $4,500 or $9,100, depending on the wages paid to employees.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

The February 13, 2012, amendments removed provisions that would have made changes related to water quality 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

An amendment has been provided below under the "Technical Considerations" to correct a cross reference error.

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.

Board Position:			Executive Officer	Date
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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 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. 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.

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[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 would be 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 U.S. 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]

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[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 increase the amount of the existing New Jobs 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, or portion thereof, 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

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

TECHNICAL CONSIDERATIONS

On page 13, line 31, after “Section” strike out “17039” and insert “23036”.

LEGISLATIVE HISTORY

AB 234 (Wieckowski, 2011/2012) would modify the current New Jobs Tax Credit to allow a credit of $4,500 or $9,100, expand the definition of qualified employer, and change the definition of a qualified employee. AB 246 is similar to AB 234 with the exception that AB 246 does not revise the definition of qualified employee. AB 234 was held under submission in the Assembly Revenue and Taxation Committee.

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.

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 was held under submission 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.

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

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 was held under submission in the Senate 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 31, 2011, the total Personal Income Tax and Business Entity returns claiming the New Jobs Tax Credit was 12,914, and the amount of credits generated was $76.1 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 calculation for the credit that would require a new form or worksheet to be developed. As a result, this bill would impact the department's printing, processing, and storage costs for tax returns. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 246 For Taxable Years Beginning On or After January 1, 2012 Enactment Assumed After June 30, 2012 ($ in Millions)		
2012-13	2013-14	2014-15
-$150	-$46	+$16

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 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

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