

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, and before January 1, 2015, this bill would provide a qualified employer with a tax credit of either: (1) \$3,000 for each qualified employee, or (2) \$5,000 if the wage paid to a qualified employee is greater than or equal to 200 percent of the average wage in the county in which the qualified employee completes at least 50 percent of his or her work.

This bill would define the following:

- “Average Wage” means the average wage of each county, as determined by the Employment Development Department.
- “Headquarters” means the principal administrative office in California of a qualified employer that employs 30 or more qualified employees at that office.
- “Qualified employee” means an employee who was paid qualified wages by the qualified employer for services rendered for not less than an average of 35 hours per week and not less than 1,700 hours per year.
- “Qualified employer” means a taxpayer that is a person engaged in a trade or business within California that, on or after January 1, 2011, has either established a headquarters within California or relocated a headquarters to California, and, as of the last day of the preceding taxable year, employed a total of 30 or more employees who are located in California.
- “Qualified wages” means the amount of wages subject to income tax withholding under the Unemployment Insurance Code.¹

¹ Beginning with Section 13000 of the Unemployment Insurance Code, this section requires withholding state income taxes on wages paid to a resident employee for services performed either within or without this state, or to a nonresident employee for services performed in this state. As a result, this targets the credit towards the payment of wages subject to California tax.

This bill would require the credit to be available to a qualified employer for the first taxable year and succeeding taxable year where the qualified employer's headquarters are established within, or relocated to, California.

This bill would allow unused credits to be carried over for ten years or until exhausted.

This bill would specify that the credit allowed by this bill would be in lieu of any deduction or credit allowed for the same qualified wages.

This credit would be repealed on December 1, 2015.

IMPLEMENTATION CONCERNS

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.

The bill fails to define "located in California." This may be interpreted to mean that employees must reside in California. A requirement that an employee reside in California may be subject to constitutional challenge under the Commerce Clause of the United States Constitution. This challenge could be avoided if the bill instead required that employees be employed in California for the employer to claim the credit and then basing the credit on California wages paid or incurred.

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 Committee.

AB 1009 (Wieckowski, 2011/2012) would modify the current 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 Revenue and Taxation Committee.

SB 156 (Emmerson/Cook, 2011/2012) would modify the current 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 on the Senate floor.

SB 640 (Runner, 2011/2012) would allow a credit of \$500 per month (not to exceed 12 months) 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.

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 340 (Knight, 2009/2010) was identical to this bill. This bill failed passage out of the Assembly Revenue and Taxation Committee.

ABX3 15 (Stats. 2009, Ch. 10) and SBX3 15 (Stats. 2009, Ch. 17) provide for 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 Tax 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 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 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 to 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

Estimated Revenue Impact of AB 304 For Taxable Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2011		
2011-2012	2012-2013	2013-2014
-\$450,000	-\$3,400,000	-\$4,000,000

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

LEGAL IMPACT

This credit would be limited to an employer whose principal central administrative office would be located in California. Although the principal office could be the location of where the operation is managed, not where the work is performed, restrictions based on the location of a business could be subject to challenge as unconstitutional discrimination in favor of local commerce in violation of the Commerce Clause of the United States Constitution.

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.

POLICY CONCERNS

The bill currently requires that a taxpayer establish a headquarters in California and that as of the preceding taxable year employ 30 or more employees in California. This would mean that the taxpayer would have already had to have a presence in California to qualify for the credit. If this is contrary to the author's intent, the author may wish to amend the bill to specify the intent.

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