

SUMMARY ANALYSIS OF AMENDED BILL

Author: DeLeon & Steinberg Analyst: David Scott Bill Number: SB 116
 Related Bills: See Prior Analysis Telephone: 845-5806 Amended Date: August 29, 2011
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer Hiring Credit/Business Income Apportionment/Mandatory Single Sales Factor & Add Elective Four-Factor Formula

SUMMARY

Provisions of this bill would make the following changes:

Provision No. 1: Expand the current Jobs Tax Credit to taxpayers that employ 50 or fewer employees, increase the credit amount to \$4,000 per new hire, and change the cut-off date to the earlier of the end of the quarter that the \$400 million cap is reached or December 31, 2015.

Provision No. 2:

For taxable years beginning on or after January 1, 2011:

- Repeal the annual election to use single sales factor;
- Require taxpayers, not in a qualified business activity or that make an election to use the four-factor formula, to use a mandatory single sales factor;
- Require all taxpayers to use the “market rule” for assigning sales to the sales factor; and
- Allow qualified taxpayers to assign 50 percent of the mandatory sales factor to California.

This analysis will not address the bill’s provision for sales and use tax exemption for certain qualified tangible personal property as it does not impact the department or state income tax revenue.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

SUMMARY OF AMENDMENTS

The August 29, 2011, amendments changed authors and deleted the provision for a 75 percent credit for higher education.

Board Position:	Interim Legislative Director	Date
<input type="checkbox"/> S <input type="checkbox"/> NA <input checked="" type="checkbox"/> NP <input type="checkbox"/> SA <input type="checkbox"/> O <input type="checkbox"/> NAR <input type="checkbox"/> N <input type="checkbox"/> OUA	Anne Maitland	09/06/11

The "This Provision" and the "Effective/Operative Date" sections for Provisions 1 and 2 are provided below for convenience. The Fiscal Impact and Revenue Estimate are provided and reflect the changes made by the August 29, 2011, amendments. The remainder of the analysis of the bill, as amended on August 18, 2011, still applies. Additionally, the Support and Opposition have been updated to reflect what was reported in the Senate Floor analysis dated August 30, 2011.

PROVISION NO. 1 EXPAND JOBS CREDIT

Sections 17053.8 and 23623

For taxable years beginning on or after January 1, 2011, this provision would change existing law to define a qualified employer as one that employs 50 or fewer employees and increase the amount of the credit for each full-time equivalent hired from \$3,000 to \$4,000.

In addition, this bill would change the cut-off date of the credit to the earlier of when the \$400 million cap is reached or December 31, 2015.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this provision of the bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011 and before January 1, 2015.

PROVISION NO. 2: MANDATORY SINGLE SALES FACTOR

Sections 23101, 25128, 25128.5, 25136, and 25136.1

This provision would do the following:

- Makes the single sales factor apportionment formula mandatory for all apportioning trade or businesses, except those in a qualified business activity (extractive, agricultural, savings and loans, and banks and financials) or those apportioning trade or businesses that make an election to use the four-factor formula. The election is only available if the tax, before credits, using the four-factor formula is not less than the tax, before credits, using the single sales factor apportionment method. This election is available for taxable years beginning on or after January 1, 2011.
- Repeals the elective single sales factor provisions.
- Removes references to the provisions of the repealed elective single sales factor.
- Revises the provision that determines how to assign sales of other than tangible personal property, to require the use of "cost of performance" for assigning sales for taxable years beginning before January 1, 2011, and require all taxpayers, including those businesses in a qualified activity, to use the "market rule" for assigning sales of other than tangible personal property to California for taxable years beginning on or after January 1, 2011.

- Adds a provision to allow qualified taxpayers to exclude 50 percent of the total California sales of the apportioning trade or business determined under the market rule from the numerator of their single sales factor. A qualified taxpayer means:
 - a member of a combined reporting group that is also a qualified group; and
 - a qualified group that satisfies both of the following conditions:
 - has a minimum investment of \$250,000,000 in California for the taxable year; and
 - for 2006, derived more than 50 percent of its U.S. network gross business receipts from operations of one or more cable systems.
- Makes non-substantive changes to the order, but not the language, of the subdivision that defines a “qualified business activity.”

EFFECTIVE/OPERATIVE DATE

As an urgency measure, these provisions of the bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2011.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SB 116 as Amended on August 29, 2011 For Tax Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2011				
	2011-12	2012-13	2013-14	2014-15
Job Tax Credit	-\$90,000,000	-\$33,000,000	\$20,000,000	\$44,000,000
Mandatory SSF	\$1,300,000,000	\$1,100,000,000	\$1,100,000,000	\$1,000,000,000
Special sales rule-cable corps	-\$38,000,000	-\$38,000,000	-\$37,000,000	-\$39,000,000
Net Fiscal Impact	\$1,172,000,000	\$1,029,000,000	\$1,083,000,000	\$1,005,000,000

SUPPORT/OPPOSITION¹

Support: Apple Inc.
Bay Bio
BIOCOM
California Healthcare Institute
Community College League of California
Community Partnership
Genentech
Hunger Action Los Angeles
Mayor Antonio Villaraigosa, City of Los Angeles
Mayor Ronald O. Loveridge, City of Riverside
QUALCOMM
St. Mary's Center

Opposition: California Chamber of Commerce
California Manufacturers and Technology Association
California Taxpayers Association

ARGUMENTS

Pro: Supporters would argue that the new jobs credit provision would stimulate job creation by offering a tax incentive to businesses that have the ability to employ new workers and expand their current workforce. The single sales factor provision would make California consistent with the movement by other states to move to a mandatory single sales factor for all apportioning taxpayers doing business in this state.

Con²: In an opposition letter, the California Chamber of Commerce, the California Manufacturers and Technology Association and California Taxpayers Association state that the elective single sales factor was a "remarkable, although rare, bright spot in California's notoriously bad business climate." The three groups state that the state was correct in making the single sales factor elective in 2009 and that the attempt to make it mandatory negates the importance of business contributions to the state's overall economic health.

LEGISLATIVE STAFF CONTACT

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¹ As reported by the Senate Floor Analysis dated August 30, 2011, at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0101-0150/sb_116_cfa_20110830_202133_sen_floor.html [as of August 31, 2011]

² As reported by the Senate Floor Analysis dated August 30, 2011, at http://www.leginfo.ca.gov/pub/11-12/bill/sen/sb_0101-0150/sb_116_cfa_20110830_202133_sen_floor.html [as of August 31, 2011]