

**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: September 2, 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 New Jobs Tax Credit to taxpayers that employ 50 or fewer employees and increase the amount of the credit to \$4,000 for taxable years beginning on or after January 1, 2012 and before January 1, 2014.

Provision No. 2:

For taxable years beginning on or after January 1, 2012:

- 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 use a sales factor rules that assigns only 50 percent of the mandatory sales 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.

|   |                              |          |
|---|------------------------------|----------|
| Board Position:   | Interim Legislative Director | Date     |
| <input type="checkbox"/> S <input type="checkbox"/> NA <input checked="" type="checkbox"/> NP<br><input type="checkbox"/> SA <input type="checkbox"/> O <input type="checkbox"/> NAR<br><input type="checkbox"/> N <input type="checkbox"/> OUA | Anne Maitland                | 09/13/11 |

## **SUMMARY OF AMENDMENTS**

The September 2, 2011, amendments modified the operative date of the mandatory single sales factor and related provisions to be operative for taxable years beginning on or after January 1, 2012. The September 2, 2011, amendments also made non-substantive technical changes. The "This Provision" and the "Effective/Operative Date" sections for Provisions 1 and 2 are provided and reflect the changes made with the September 2, 2011, amendments. The Fiscal Impact and Revenue Estimate are provided and reflect the changes made to the bill by the September 2, 2011, amendments. The remainder of the analysis of the bill still applies. The Support and Opposition are provided and 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, 2012 and before January 1, 2014, 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 repeal the credit as of December 31, 2014.

#### **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, 2012 and before January 1, 2014.

### **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, 2012.
- Repeals the elective single sales factor provisions for years beginning on or after January 1, 2012.

- 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, 2012, 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, 2012.
- 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.

**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, 2012.

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 September 2, 2011<br>For Tax Years Beginning On or After January 1, 2012<br>Enactment Assumed After June 30, 2011 |               |                 |                 |                 |
|--|---------------|-----------------|-----------------|-----------------|
|  | 2011-12       | 2012-13         | 2013-14         | 2014-15         |
| Job Tax Credit   | -\$30,000,000 | -\$49,000,000   | -\$11,000,000   | \$33,000,000    |
| Mandatory SSF  | \$390,000,000 | \$1,000,000,000 | \$1,000,000,000 | \$1,000,000,000 |
| Special sales rule-<br>cable corps   | -\$12,000,000 | -\$34,000,000   | -\$37,000,000   | -\$38,000,000   |
| <b>Net Fiscal Impact</b>   | \$348,000,000 | \$917,000,000   | \$952,000,000   | \$995,000,000   |

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

## **SUPPORT/OPPOSITION<sup>1</sup>**

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.

Con:<sup>1</sup> 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**

David Scott  
Legislative Analyst ,FTB  
(916) 845-5806  
[david.scott@ftb.ca.gov](mailto:david.scott@ftb.ca.gov)

Anne Maitland  
Interim Legislative Director, FTB  
(916) 845-6333  
[anne.maitland@ftb.ca.gov](mailto:anne.maitland@ftb.ca.gov)

---

<sup>1</sup> 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](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]