Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Emmerson and Cook	Analyst:	Jessica Matus	Bill Number:	SB 156
Related Bills:	See Legislative History	Telephone:	845-6310	Introduced Date:	February 2, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Employer Hiring Credit

SUMMARY

This bill would provide a tax credit to taxpayers that employ 50 or less employees.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

According to the author's office, the purpose of the bill is to stimulate job creation by offering a hiring incentive to businesses that have the ability to employ new workers and expand their current workforce.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment.

This bill has two operative dates. The changes made to the limitation related to businesses changing structure, would be operative for taxable years beginning on or after January 1, 2011. The changes made to the definition of "qualified employer," would be specifically operative for taxable years beginning on or after January 1, 2012.

ANALYSIS

FEDERAL/STATE LAW

Current law allows a 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. [1] A qualified employer is one that employs 20 or less employees. This credit is allocated by the Franchise Tax Board (FTB) and has a maximum 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until December 1 of the calendar year after the year in which the cumulative credit limit has been reached and is repealed after that date.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.

[1] ABX3 15 (Stats. 2009, Ch. 10) and SBX3 15 (Stats. 2009, Ch. 17)

Board Position:			Department Director	Date
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In addition, both the Personal Income Tax Law (PITL)[2] and Corporation Tax Law (CTL)[3], contain anti-abuse rules. These rules were designed to prevent an existing business from being treated as first commencing business in the state when the business simply changed structure, i.e. changed from a sole proprietor to an S-corporation.

THIS BILL

For taxable years beginning on or after January 1, 2012, this bill would change existing law to define a qualified employer as one that employs 50 or less employees.

Existing law that determines whether a taxpayer has first commenced doing business in this state during the taxable year has been eliminated in this bill for PITL and remains for CTL.

Further, under both the PITL and CTL, modifications have been made to current law to eliminate specifically the anti-abuse rules.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would occur during the department's normal annual update.

TECHNICAL CONSIDERATIONS

On page 13, line 36, strike out "(f) of section 17276" and insert "(g) of section 24416".

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

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 304 (Knight, 2011/2012) would allow a credit of $3,000 or $5,000, dependent on the specified criteria, 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 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 640 (Runner, 2011/2012) would allow a credit of $500 per month 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.

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[2] CR&TC section 17276.20(f)
[3] CR&TC section 24416.20(g)

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.

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.

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.

PROGRAM BACKGROUND

As of February 5, 2011, the total Personal Income Tax and Business Entity returns claiming the Jobs Tax credit was 5,220, and the amount of credits claimed was $37.2 million. The cut-off date will be 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 the existing Jobs Tax 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

The current Jobs Tax Credit is capped at $400 million. The Jobs Tax Credit requires the FTB to disallow credits claimed on returns filed after the end of the calendar quarter in which the department believes the cap will be reached. The current projection is that the existing Jobs Tax Credit will be exhausted during the 2011 taxable year based on historic trends of credit usage. If so, there would be no credit available in the 2012 taxable year. Therefore, any proposals to expand the credit in 2012 would have no revenue impact. The actual credit usage will be monitored throughout the current filing season. If it becomes clear that a much smaller than expected portion of eligible taxpayers are claiming the credit, the estimates will be revised to reflect the availability of credits in 2012.

SUPPORT/OPPOSITION

Support: None provided

Opposition: None provided

ARGUMENTS

Pro: According to the author, SB 156 is a job-creating bill that will stimulate the economy by offering a $3,000 tax credit to small businesses for each new full-time employee hired. In addition, this bill would stimulate job creation by offering a hiring tax incentive to businesses that have the ability to employ new workers and expand their current workforce.

Con: Some taxpayers may say that with the state facing a current, substantial deficit, and ongoing yearly deficits, additional tax expenditures should be avoided.

POLICY CONCERNS

This bill makes changes to the PITL, and fails to make the same changes to the CTL. This inconsistency could provide a tax benefit for the following: sole proprietorships, non-corporate partners of partnerships, limited partnerships, limited liability companies not electing to be taxed as corporations, limited liability partnerships, and real estate mortgage investment conduits. Therefore, this would be a benefit provided under the PITL that would not be provided to other business entities, such as corporations. Thus, this bill would provide differing treatment based solely on classification.

Further, this bill makes changes to both the PITL[4] and CTL[5] to specifically eliminate current anti-abuse rules. These rules were designed to prevent an existing business from being treated as first commencing business in the state when the business simply changed structure, i.e. changed from a sole proprietor to an S-corporation. This bill could allow taxpayers in certain circumstances to claim multiple tax benefits by claiming the credit multiple times.

LEGISLATIVE STAFF CONTACT

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[4] CR&TC section 17276(f)
[5] CR&TC section 24416(g)