

SUMMARY ANALYSIS OF AMENDED BILL

Author: Runner Analyst: Jahna Alvarado Bill Number: SB 640
 Related Bills: See Prior Analysis Telephone: 845-5683 Amended Date: April 27, 2011
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Employer Hiring Credit/ Qualified Full Time Employees Who Have Received Unemployment Insurance Benefits For Not Less Than 6 Months Prior To Hiring

SUMMARY

This bill would provide a tax credit for a taxpayer who employs qualified employees.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

SUMMARY OF AMENDMENTS

The April 27, 2011, amendments would do the following:

1. Modify the definition of “qualified amount,” “qualified employee,” and “qualified job.”
2. Specify that the credit this bill would allow would be in lieu of any credit otherwise allowed.
3. Add repeal language.

The April 27, 2011, amendments completely resolved two implementation considerations and one policy concern, and partially resolved one policy concern. For convenience, all new and existing concerns are provided below.

As a result of the April 27, 2011, amendments, the “This Bill,” “Implementation Considerations,” “Economic Impact,” and “Policy Concerns” sections have been revised. The “Effective/Operative Date,” “Technical Considerations,” and “Fiscal Impact” sections have been included for convenience. The remainder of the department’s analysis of the bill as introduced February 18, 2011, still applies.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and would be specifically operative for taxable years beginning on or after January 1, 2011.

Board Position:	Asst. Legislative Director	Date
_____ S _____ NA <u> X </u> NP _____ SA _____ O _____ NAR _____ N _____ OUA	Patrice Gau-Johnson	05/09/11

ANALYSIS

THIS BILL

For taxable years beginning on or after January 1, 2011, this bill would allow a tax credit for a qualified amount for each qualified employee employed in a qualified job during the taxable year by the taxpayer. The maximum aggregate qualified amount that could be allowed for any qualified employee would be \$6,000.

This bill would define the following terms:

- “Qualified amount” would be equal to the sum of \$500 per month for each qualified employee employed by the taxpayer in a qualified job, multiplied by the number of consecutive calendar months, not to exceed 12 consecutive months, that the taxpayer employs the qualified employee in a qualified job. For a qualified employee that worked at least two weeks for the taxpayer and earned a gross salary of at least \$750, the qualified amount would be reduced to \$250 per month for a two-week pay period; the 12 consecutive calendar month limitation may include two two-week pay periods.
- “Qualified employee” means any person who actively received unemployment insurance benefits for not less than six months immediately prior to the time he or she was first hired by the taxpayer for a qualified job.
- “Qualified job” means a non-seasonal, full-time employment position within the State of California that would qualify the employee for benefits under the Unemployment Insurance Code, excluding any benefits received under Unemployment Insurance Code section 1279.5,¹ and result in a minimum gross salary of \$1,500 in any month in which the taxpayer seeks to apply the credit.

This credit would be allowed in lieu of any other credit based on a qualified employee that would be otherwise allowed.

This bill would allow unused credits to be carried over for six years.

Because this bill fails to specify otherwise, the corporate credit would be eligible for assignment.

The credit would be repealed by its own terms on January 1 of the calendar year after the full calendar year that California’s average unemployment rate falls below 10 percent.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high level discussion; additional concerns may be identified as the bill moves through the legislative process. In order for the Franchise Tax Board (FTB) to implement this bill, clarification is necessary for the following issues.

¹ Unemployment Insurance Code section 1279.5-defines unemployed and unemployment benefits.

This bill uses the undefined terms, “actively received unemployment insurance benefits,” “nonseasonal, full-time employment position,” and “unemployment insurance benefits.” The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit. For example, unemployment benefits paid by a jurisdiction outside of California could qualify an individual for purposes of this credit. If this is contrary to the author’s intention, this bill should be amended. The author may wish to consider the definition of “qualified full-time employee” contained in the existing hiring credit.²

Because this bill would require an individual to have received unemployment insurance benefits for a specified period to qualify for the credit, an individual that had been unemployed for the specified period who was ineligible for unemployment insurance benefits would fail to qualify for the credit. If this is contrary to the author’s intention, this bill should be amended.

It is unclear whether the qualified amount of \$250 that would be allowed for two two-week pay periods is intended to address mid-month hiring and separations. Lack of clarity could lead to disputes with taxpayers and would complicate the administration of this credit. If it is the author’s intention that the \$250 qualified amount would be limited to the calendar months that a qualified employee is hired and is separated from employment if applicable, this bill should be amended.

Although this bill would establish the minimum requirements for being eligible for the \$250 qualified amount, it is silent on both the maximum number of hours employed during a month and the maximum gross monthly income for purposes of determining whether the qualified amount for the month would be the \$250 or the \$500 amount. As a result, a qualified employee could be eligible for both the \$500 qualified amount and the \$250 qualified amount in the same month while still remaining subject to the \$6,000 maximum aggregate qualified credit amount. If the author intends that a qualified employee could only satisfy requirements for one of the two qualified amounts in any given month, this bill should be amended.

It is unclear how, by whom, and the timing of determining the state’s “average unemployment rate.” Lack of clarity could lead to disputes between taxpayers and the department. In order to avoid disputes, the author may wish to consider amending this bill to specify which governmental entity would be responsible for determining the state’s “average unemployment rate,” how that rate would be determined, and when the determination would be made and reported each year, and who would be authorized to legally conclude that the statute has been repealed by its own terms.

The FTB lacks the ability to verify the minimum duration of receipt of unemployment insurance benefits that this bill would require. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. For example, the agency responsible for paying the unemployment insurance benefits could serve as the certifying agency. For individuals receiving benefits from the state of California, the Employment Development Department could serve as the certifying agency. The certification language would specify the responsibilities of both the certifying agency and the taxpayer.

² Revenue and Taxation Code sections 17053.80(b)(2) and 23623(b)(2).

TECHNICAL CONSIDERATIONS

On page 2, line 30, and page 3, line 37, strikeout the phrase “in which the taxpayer seeks to apply the credit authorized” and replace with the phrase “for which the credit is allowed” to provide clarity and consistency with recently enacted tax credit terminology.

FISCAL IMPACT

If the implementation and technical considerations addressed in this analysis are resolved, the department’s costs to implement this bill are expected to be minor.

ECONOMIC IMPACT

Estimated Revenue Impact of SB 640 - Wage Credit for Employing Certain Unemployed For Taxable Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2011 (\$ in Millions)				
2010-11	2011-12	2012-13	2013-14	2014-15
\$0	-\$150	-\$270	-\$320	-\$330

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

POLICY CONCERNS

Because this bill fails to specify otherwise, a taxpayer could claim the credit proposed by this bill and a deduction for the wages paid to a qualified employee. Generally, a credit is allowed in lieu of any deduction or credit already allowable in order to eliminate multiple tax benefits.

LEGISLATIVE STAFF CONTACT

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