Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Wright & Bradford	Analyst:	William Koch	Bill Number:	SB 830
Related Bills:	See Legislative History	Telephone:	845-4372	Introduced Date Amended Date:	February 18, 2011 April 12, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Trade Infrastructure Investment Tax Credit

SUMMARY

This bill would create a trade infrastructure investment tax credit under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL) for taxpayers that invest in, and use, public port facilities in California.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

Summary of Amendments

This bill as introduced February 18, 2011, would have created a trade infrastructure investment tax credit and an import-export cargo tax credit. The April 12, 2011, amendments deleted the provisions of the bill relating to the import-export cargo tax credit and made technical changes to the trade infrastructure investment tax credit.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the legislative findings in this bill, the primary purpose is to is to encourage the development and growth of California-originated export cargoes and California-destined import cargoes, and to encourage and help finance the further investment in, and subsequent increased use of, California's public port facilities and districts.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2012, and would be specifically operative for taxable years beginning on or after January 1, 2011, and before January 1, 2021. In addition, the credit provisions of this bill would be repealed on December 1, 2022, unless, prior to that date, a statute is enacted to delete or extend that date.

Board Position:			Executive Officer	Date
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ANALYSIS

FEDERAL/STATE LAW

Existing federal and state laws generally allow a depreciation deduction for the obsolescence or wear and tear of property used in the production of income or property used in a trade or business. The amount of this deduction is determined, in part, by the cost (or basis) of the property. In addition, the property must have a limited, useful life of more than one year. The depreciation deduction is generally allowed over a period approximating the property's economic life rather than deducted in the year purchased or acquired. As an incentive for businesses to invest in property, occasionally an accelerated depreciation deduction is allowed. That is, a deduction is allowed at a faster rate than the decline in the property's economic value would warrant.

Depreciable property includes equipment, machinery, vehicles, and buildings, but excludes land. Significant improvements to property are added to the basis of the property and are depreciated over the property's remaining useful life.

Existing federal and state laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research tax credits or economic development area hiring tax credits). These tax credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

THIS BILL

For taxable years beginning on or after January 1, 2011, and before January 1, 2021, under the PITL and CTL, this bill would allow a trade infrastructure investment tax credit of up to five percent of the total capital costs for each year for a qualified taxpayer that has completed a qualified project constructed in this state. Under the PITL, the statutory language specifies the credit may not to exceed 50 percent of the total capital costs of each qualifying project constructed in the state. The 50 percent credit limitation does not appear in the statutory language for this credit under the CTL. However, the lack of the 50 percent credit limitation language in the CTL is without consequence because the credit would only be allowed for ten taxable years at a maximum of five percent per year, which mathematically results in a 50 percent maximum credit.

This bill would provide the following definitions:

- "Capital costs" would mean all costs and expenses incurred in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period commencing with the date on which the acquisition, installation, or equipping began and ending on the date in which the qualifying project was placed in service by one or more qualified taxpayers. Costs incurred prior to January 1, 2011, would be excluded as "capital costs" and ineligible for the tax credit.

- "Qualified taxpayer" would mean a taxpayer who is qualified by the Franchise Tax Board (FTB) for the receipt of a credit.

- "Qualifying project" would mean a project completed by one or more qualifying taxpayers that meets all of the following requirements:

    1. The total capital cost of the project may not be less than $5 million.
    2. The predominant trade or business activity to be conducted at the project site must constitute industrial, warehousing, or port and harbor operations and cargo handling, including any port and port harbor activity, as defined.
    3. The project is certified by the FTB, as specified.

In addition, this bill would define a number of other terms, including: breakbulk, bulk cargo, export, import, oceangoing vessel, port or port and harbor activity, project, and public port.

This bill would authorize the following duties to the FTB:

- To audit any certified qualifying project or inspect the construction site of the qualifying project.
- To verify claims and costs presented to the FTB in an application.

If the FTB finds that funds for which a qualifying taxpayer received tax credits are not invested in and expended with respect to capital costs, this bill would authorize the FTB to recapture the tax credits and assess interest that would be computed from the original due date of the return on which the tax credit was taken. If the taxpayer sells, transfers, or otherwise disposes of a qualifying project within ten years of the taxable year in which the credit was first claimed, the credit would be recaptured, as specified.

Under this bill, the FTB would not certify a project unless a public port adopts a resolution determining that the proposed project would generate sufficient revenue for the state to offset the cost to the state of providing the tax credits.

A taxpayer seeking certification of a project would be required to submit an application to the FTB and the applicant would be required to pay a fee to cover the costs of the FTB's review and evaluation of the application.

Under this bill, a taxpayer may not claim a credit authorized under this bill unless the Legislature enacts a statute specifying the total amount of the credit allowable.

This bill would require the FTB to notify the taxpayer within 90 days of any tax credit authorization legislation signed by the Governor, as well as his or her pro rata share of the credit if the total amount authorized by the Legislature is less than the aggregate amount of the credit certified by the FTB.

This bill would allow the credit to be carried forward up to 11 years.

In addition, the FTB would be required to submit notice of its certification of a project to the Department of Finance, the Joint Legislative Budget Committee, and the Legislative Analyst.

This bill would require the Legislative Analyst's Office, by January 1, 2020, to prepare an evaluation of the effectiveness of the tax credit and the economic impact of the tax credit on the port and maritime industry located in California and regionally.

IMPLEMENTATION CONSIDERATIONS

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’s language would only allow the tax credit for a taxpayer that has completed a qualified project. If a project takes several years to complete, the taxpayer may not be able to claim the full amount of the credit because the amount that may be claimed per year is limited to five percent of the costs. For example, if a taxpayer completes a project in 2016, he or she would only be able to claim 25 percent of the total costs before the credit sunsets by its own terms.
- The bill would allow the tax credit to be “expressly assigned” to a new owner of the project, but fails to define that phrase or provide a mechanism for such assignment. Current law provides limited authority for credit assignment among affiliated corporations that are members of the same combined reporting group.
- The bill defines the terms “qualified taxpayer” and “qualifying project,” but fails to define “qualifying taxpayer” and “qualified project.” Inconsistent use of terms and the absence of definitions to clarify undefined terms could lead to disputes with taxpayers and would complicate the administration of this credit.
- Taxpayers would be unable to claim the tax credit authorized under this bill unless the Legislature enacts a statute specifying the total amount of the credit allowable, which could cause uncertainty for taxpayers; especially in areas such as making estimated tax payments. If a taxpayer anticipates allowance of a tax credit and reduces his or her estimated tax payments accordingly and subsequently is precluded from claiming the full amount of the tax credit, he or she could be subject to an underpayment of estimated tax penalty. The author’s intent is unclear in this situation.
- The bill provides authority for the FTB to develop forms and instructions, which the department already is authorized to do under current law. However, because this bill would apply to taxable years already underway, it is recommended the bill to be amended to provide the FTB an exemption to the Administrative Procedures Act so that the department can issue regulations without delay to ensure timely implementation of this bill.

TECHNICAL CONSIDERATIONS

The department has identified the following technical concern. Department staff is available to work with the author's office to resolve this and other concerns that may be identified.

- On page 5, line 2 and page 18, line 10, "Title 26 of the United States Code" should be replaced with "Internal Revenue Code".

LEGISLATIVE HISTORY

AB 2687 (Bradford, 2009/2010) contained provisions similar to this bill. AB 2687 was held in the Assembly Appropriations Committee without action.

OTHER STATES' INFORMATION

Research of other states that provide a credit similar to the credit proposed by this bill identified *Louisiana*.

Louisiana provides an investor tax credit equal to five percent per year of the total cost of a qualifying project in a Louisiana port jurisdiction.

FISCAL IMPACT

Implementing this bill could have a significant impact to the department. The additional costs have not been determined at this time. As the implementation concerns identified above are resolved and the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

The bill does not allow any credits to be claimed until the Legislature enacts a subsequent statute authorizing the utilization of the credits. As a result, this bill would not have a revenue impact. The parameters of this bill suggest that if future authorizations allow full utilization of the credit, the revenue loss from those future Legislative actions could be could be tens of millions of dollars per year.

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

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Pro: Some people could say this bill is needed to keep California's ports competitive with ports located in other areas.

Con: Some people could say this bill would provide tax credits to taxpayers that would have invested in California ports regardless of the existence of a tax credit.

LEGISLATIVE STAFF CONTACT

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