Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Bonta	Analyst:	Diane Deatherage	Bill Number:	AB 1661
Related Bills:	None	Telephone:	845-4783	Amended Date:	May 7, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Tax Credit Based on Gross Sales and Net Operating Loss Deduction Carryover/25 Years for Healthy Options for Everyone (HOPE) Incentive Zone Businesses

SUMMARY

This bill would, under the Government Code, establish the Healthy Options for Everyone Act of 2014 (HOPE Act) and, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow qualified businesses (1) a credit based on gross sales and (2) extend the net operating loss (NOL) carryover period.

Where appropriate, the provisions that would allow a tax credit based on gross sales and extend the NOL carryover deduction period are discussed separately in this analysis.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 7, 2014, amendments would:

- Add provisions that would allow a HOPE Incentive Zone to be established only in an area that qualifies as a food desert and specify that the designation of a zone would be effective for seven years;
- Add new and amended existing definitions within the bill; and
- Specify a sunset date for the tax credit based on gross sales and the extension of the NOL period provisions.

Except for the "Effective/Operative Date," "This Bill," "Implementation Considerations," "Economic Impact," "Support/Opposition," and "Policy Concerns" sections, the remainder of the department's analysis of the bill as amended April 1, and April 21, 2014, still applies. For convenience, the restated implementation, technical, and policy concerns and the "Fiscal Impact" section are provided below.

Board Position:			Legislative Director	Date
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EFFECTIVE/OPERATIVE DATE

Tax Credit Based on Gross Sales

This provision would become effective January 1, 2015, and specifically operative for taxable years beginning on or after January 1, 2015, and before January 1, 2022.

Extension of NOL Carryover Period

This provision would become effective January 1, 2015, and specifically operative for NOLs generated in taxable years beginning on or after January 1, 2015, and before January 1, 2022.

ANALYSIS

<u>THIS BILL</u>

The bill would establish the HOPE of 2014 which would allow a city, county, or city and county, after a public hearing, to establish by ordinance a HOPE Incentive Zone within its boundaries for the purpose of increasing the availability of fresh fruits and vegetables, and other grown foods within the zone.

A HOPE Incentive Zone would only be established in a geographic area within the boundaries, of the city, county, or city and county that qualifies as a food desert.

The designation of a HOPE Incentive Zone would be effective for a period of seven years from the date of the ordinance that established that zone.

For taxable years beginning on or after January 1, 2015, and before January 1, 2022, the bill would allow a tax credit in an amount equal to 20 percent of a qualified taxpayer's gross sales within a HOPE Incentive Zone during the taxable year.

The bill would also allow a qualified taxpayer to extend its NOL carryover period to 25 years for an NOL for any taxable year beginning on or after January 1, 2015, and before January 1, 2022.

The bill would define the following term and phrases:

- "Qualified business" means a business primarily engaged in the retail sale of canned food, dry foods goods, fresh fruits and vegetables, and fresh meats, fish, and poultry.
- "Primarily" means 80 percent or more.
- "Qualified taxpayer" means a qualified business that has primarily done business within a HOPE Incentive Zone during the taxable year.
- "Food desert" means a low-income census tract where at least 33 percent of the tract's population or a minimum of 500 people in the tract have low access to a supermarket or large grocery store.

- "Low access to a supermarket or large grocery store" means more than one mile from a supermarket or large grocery store in a census tract that is in an urban area, as designated by the United States Census Bureau, and more than 10 miles from a supermarket or large grocery store in a census tract that is not in an urban area.
- "Low-income census tract" means any census tract where the poverty rate for the tract is at least 20 percent or, for tracts not located within a metropolitan area, the median family income for the tract does not exceed 80 percent of statewide median family income, or, for tracts located within a metropolitan area, the median family income for the tract does not exceed 80 percent of the greater statewide median family income or the metropolitan area median family income.

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. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill refers to the definition of a "qualified business" that is defined as a business primarily engaged in the retail sale of canned food, dry foods goods, fresh fruits and vegetables, and fresh meats, fish, and poultry. "Primarily" would mean 80 percent or more. The absence of the basis on which the determination of a "qualified business" should be made (i.e., dollar amount of gross sales, number of items sold, etc.) could lead to disputes with taxpayers and would complicate the administration of this bill.

This bill uses a phrase that is undefined, i.e., "primarily done business." The absence of the definition to clarify this phrase could lead to disputes with taxpayers and would complicate the administration of this bill.

It is unclear how the department would determine that the "primarily" requirements had been met. For example, in some communities, a box truck that is a market on wheels (mobile market) comes around. How would the Franchise Tax Board verify that the truck (or business with multiple trucks) had met the 80-percent threshold?

The HOPE incentives as listed in the findings and declarations are inconsistent with the incentives this bill would create. The author may wish to amend the bill language for overall clarification of the incentives.

TECHNICAL CONSIDERATIONS

This bill needs to be amended where the phrase "as that term is used in Section 51043.3 of the Government Code" appears, as it should be "as defined in Section 51043.3 of the Government Code."

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved, but anticipates the costs would be significant.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1661 As Amended May 7, 2014 Assumed Enactment After June 30, 2014 ($ in Millions)			
	2014-15	2015-16	2016-17
Tax Credit Based on Gross Sales	- $12.5	- $31	- $33
Extension of NOL Carryover Period*	$0	$0	$0

*This provision would have no immediate tax revenue impact because the NOL provision would not take effect until after 20 years, but it is estimated to have a negligible impact on tax revenues after 20 years.

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

SUPPORT/OPPOSITION[1]

Support: American Federation of State, County and Municipal Employees, AFL-CIO and California Food Policy Advocates.

Opposition: None provided.

POLICY CONCERNS

Tax Credit Based on Gross Sales

This provision lacks carryover language. As a result, any unused credit would be lost if the taxpayer is unable to use the entire credit amount in the year claimed.

[1] Analyses from the Assembly Committee on Local Government, dated April 8, 2014, and the Assembly Revenue and Taxation Committee, dated April 25, 2014.

The bill would specify that only 80 percent of the qualified taxpayer's sales would be required to be “canned food, dry foods goods, fresh fruits and vegetables, and fresh meats, fish, and poultry.” This provision is silent on if the taxpayer is allowed only to offset income generated within the HOPE Incentive Zone with the HOPE Incentive Zone credit. Also, if a taxpayer has only 80 percent sales of canned food, dry foods goods, fresh fruits and vegetables, and fresh meats, fish, and poultry, the bill is silent on whether the credit would be computed on 100 percent of gross sales within a HOPE Incentive Zone (which includes 20 percent of items other than canned food, dry foods goods, fresh fruits and vegetables, and fresh meats, fish, and poultry) or if the credit would be limited to only the 80 percent of gross sales of the listed specified foods within the zone.

This bill would fail to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited either on a per-project or per-taxpayer basis. This bill would provide an unlimited amount of credit, which would be unprecedented.

Generally, credits are limited as a percentage of amounts paid or incurred. This bill would allow a credit based on the amount of the taxpayer's gross sales, which would be unprecedented. The result of allowing a credit on gross sales would be to increase a taxpayer's profit margin via a tax credit.

Extension of NOL Carryover Period

This provision would allow a qualified business that has primarily done business within a HOPE Incentive Zone during the taxable year to carryover NOLs for 25 years; however, this provision is silent as to whether a business would be required to only offset income generated within the zone with the NOL created within the zone.

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