

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Patterson, et al. Analyst: Jessica Deitchman Bill Number: AB 2164
Related Bills: See Legislative History Telephone: 845-6310 Introduced and Amended Dates: February 20, 2014 and March 11, 2014
Attorney: Bruce Langston Sponsor: _____

SUBJECT: Employer Provided Education and Training Credit/ "California Career Advancement Tax Credit"

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), create a new tax credit for employers that provide education or training for employees.

RECOMMENDATION

No position.

Summary of Amendments

The March 11, 2014, amendments modify the definition of "qualified education and training" under the CTL to make it the same as the PITL. Additionally, the amendments add an eight-year carryover to the credit. This is the department's first analysis of the bill.

Summary of Suggested Amendments

A technical amendment is suggested to provide additional clarity.

REASON FOR THE BILL

The reason for the bill is to provide an incentive to employers to provide valuable training for their employees.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2014, and before January 1, 2019.

ANALYSIS

FEDERAL/STATE LAW

Existing state and federal 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 credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Board Position:

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Executive Officer

Date

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Current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business, including training and education expenses for employees.

There are no federal or state credits comparable to the credit this bill would create.

THIS BILL

For taxable years beginning on or after January 1, 2014, and before January 1, 2019, this bill would allow a credit to employers that provide education or training to employees. The credit would be equal to up to 50 percent of the cost paid by the taxpayer for qualified education or training for a qualified employee; not to exceed \$2,500 per qualified employee per taxable year.

The bill would define the following terms:

- “Qualified education and training” is defined for PITL and CTL as either:
 - Education or training provided to the qualified employees to maintain or improve a skill required for the taxpayer’s trade or business, or
 - Education and training provided to the qualified employees in order to comply with the express requirements imposed by the taxpayer or by laws or regulations as a condition of the qualified employee’s retention of an established employment relationship with the taxpayer, qualified employee status, or rate of compensation.
- “Qualified employee” means an employee of the taxpayer employed within California during the taxable year.

The deduction otherwise allowed for the amount of education and training would be reduced by the amount of the credit allowed.

Additionally, the credit must be claimed on a timely filed, original return.

The credit could be carried over for eight years.

The credit would remain in effect only until December 1, 2019, and would be repealed as of this date.

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 uses broad terms to define qualified education and training. The broad terms could lead to taxpayers claiming more items for training than what the author had intended. It is recommended the author amend the bill to clarify what types of training should qualify for the credit.

The bill uses an undefined phrase “express requirement imposed by the taxpayer or by laws or regulations.” The absence of definitions to clarify this phrase could lead to disputes with taxpayers and would complicate the administration of this credit. It is recommended the bill be amended to provide a definition for this phrase.

TECHNICAL CONSIDERATIONS

To ensure consistency throughout the bill. It is recommended that the author use the term “taxpayer” and not “qualified taxpayer. The following amendments have been provided to make this correction.

On page 2, line 31, after “the” strikeout “qualified”

On page 2, line 35, after “the” strikeout “qualified”

On page 3, line 21, after “the” strikeout “qualified”

On page 3, line 25, after “the” strikeout “qualified”

LEGISLATIVE HISTORY

AB 1569 (Rodriguez, 2012/2013) would provide a tax credit of \$2,000 for each “registered apprentice” that is trained by a taxpayer in the taxable year. AB 1569 was introduced on January 30, 2014.

SB 1163 (Vasconcellos, 2001/2002) would have allowed a 100 percent credit for amounts paid or incurred, not to exceed \$1,500, for information technology training for the taxpayer or any employee of the taxpayer. The credit maximum would be increased to \$2,000 for a small business or if the training takes place in an underserved community. SB 1163 failed to pass out of the Assembly Revenue and Taxation Committee.

OTHER STATES’ INFORMATION

Review of Florida Illinois, Massachusetts, Michigan, Minnesota, and New York laws found no comparable tax credits or deductions. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

This bill would require some changes to the existing tax forms and instructions, and information systems. As 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

Estimated Revenue Impact of AB 2164 As Introduced February 20, 2014 and Amended March 11, 2014 For Taxable Years Beginning On or After January 1, 2014 Assumed Enactment After June 30, 2014 (\$ in Millions)		
2014-15	2015-16	2016-17
- \$600	- \$550	- \$490

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

Proponents: Some may argue that this credit would encourage employers to provide additional training to taxpayers and strengthen the skills of California's workforce.

Opponents: Some may argue that providing a tax credit limited to training provided may be overly narrow and inadvertently exclude other worthy expenses such as higher education reimbursement.

LEGAL IMPACT

This bill would allow a tax credit to a taxpayer that paid education or training expenses on a taxpayer that is employed in California. Historically, tax credits have been designed to provide incentives for taxpayers to perform various actions or activities within the state that they may not otherwise undertake. This bill restricts this credit to only allow business that employed employees in California to claim the credit, and this could raise constitutional concerns under the Commerce Clause of the United States Constitution because it could appear to favor in-state businesses. On August 28, 2012, (*Cutler v. Franchise Tax Board*), the Court of Appeal issued a unanimous opinion holding that California's Qualified Small Business Statute is unconstitutional. Specifically, the Court of Appeal held that the California-heavy requirements of this investment incentive statute facially discriminates against interstate commerce, and therefore violates the federal dormant commerce clause. While no court decision has yet invalidated, as a general matter, state income tax credits that provide an incentive for in-state activity, i.e., property placed in service in the state, employees employed in the state, etc., targeted tax credits that are conditioned on location in California may be subject to constitutional challenge.

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