ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Brown	Analyst:	Jessica Deitchman	Bill Number:	AB 2659
Related Bills:	See Legislative History	Telephone:	845-6310	Introduced Date Amended Date:	February 21, 2014 March 24, 2014
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Health Access Zone Employer Hiring Credit

SUMMARY

Among other things, this bill would, under the Personal Income Tax Law (PITL), allow a credit for certain employers in a health access zone.

This analysis discusses only the provisions of the bill that would impact the department.

RECOMMENDATION

No position.

Summary of Amendments

The March 24, 2014, amendments corrected cross referencing errors and added a sunset date to the provisions as introduced on February 21, 2014. This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to create a tax incentive to address California's shortage of primary care physicians, nurses and other health care professionals in underserved areas.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2015 and specifically operative for taxable years beginning on or after January 1, 2016, and before January 1, 2021.

ANALYSIS

<u>FEDERAL/STATE LAW</u>

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.

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Existing federal law provides special tax incentives for empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

Current state law allows a New Hiring Tax Credit that is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract[1] or former Enterprise Zone.[2] The qualified taxpayer must receive a tentative credit reservation from the Franchise Tax Board (FTB) for that qualified full-time employee.

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, unless specifically excluded by statute, including, wages paid to employees.

THIS BILL

For taxable years beginning on or after January 1, 2016, and before January 1, 2021, this bill would establish "health access zones" (zones) under the Government Code and under the PITL, provide a tax credit of $5,000 for each net increase in qualified full-time health access zone employees hired by a qualified health access zone employer.

Eligibility would be limited to qualified health access zone employers that receive a certificate of eligibility from the Director of Statewide Health Planning and Development and the California Healthcare Workforce Policy Commission.

The bill would define the following terms:

- "Annual full-time equivalent" means either:
  - In the case of an employee paid hourly, the total number of hours worked for the qualified health access zone employer by the qualified employee divided by 2,000.
  - In the case of a salaried employee, the total number of weeks worked by the qualified employee for the qualified health access zone employer divided by 52.
- "Health access zone" would be defined by reference to subdivision(e) of Section 7091 of the Government Code to mean a contiguous geographic area that meets both of the following requirements:
  - Demonstrates measureable and documented health disparities and poor health outcomes.
  - Is small enough to allow for the incentives offered under this chapter to have a significant impact on improving health.
  - Is designated as a health access zone by the commission (California Healthcare Workforce Policy Commission) and the director (Director of Statewide Health Planning and Development).

[1] A census tract within the state that is determined by the Department of Finance to have a civilian unemployment rate that is within the top 25 percent of all census tracts within the state and has a poverty rate within the top 25 percent of all census tracts within the state.
[2] "Former enterprise zone" means an enterprise zone designated as of March 1, 2012, and any expansion of an enterprise zone prior to December 31, 2012, as in effect on December 31, 2012, excluding any census tract within an enterprise zone that is identified by the Department of Finance as a census tract with the lowest civilian. unemployment and poverty.

- "Qualified full-time health access zone employee" means an individual who meets all of the following requirements:
    - Is a health professional licensed or certified under division 2 of the Business and Professions Code, such as but not limited to, a nurse or physician assistant.
    - Performs 100 percent of his or her services for the qualified health access zone employer during the taxable year in a zone.
    - At least 90 percent of the services for the qualified health access zone employer during the taxable year are providing: primary care, including obstetrics, gynecological services, pediatric services, geriatric services; behavioral health services[3]; or dental services.
    - Is hired by the qualified health access zone employer after the date of original designation of the area where services were performed as a health access zone.
- Is an employee that meets one of the following:
    - Was paid qualified wages for services of not less than an average of 35 hours per week, or
    - Was a salaried employee and was paid compensation during the taxable year for full time employment.[4]
- "Qualified health access zone employer" means an individual who is a health access zone practitioner[5], or in the case of a pass-thru entity, all of the partners or shareholders of the pass-thru entity are health access zone practitioners. A pass-thru entity means a partnership or an S-corporation.
- "Qualified Wages" means wages subject to division 6 of the unemployment insurance code that are equal or greater than 150 percent of the state minimum wage.

The net increase in qualified full time employees of a qualified health access zone employer would be determined by subtracting the total number of full time employees employed in the current taxable year by the qualified health access zone employer from the total number of qualified full-time employees employed in the preceding taxable year by the qualified health access zone employer.

For qualified health access zone employers that first commence doing business in the health access zone during the taxable year, the number of full-time employees for the immediately preceding prior taxable year would be zero.

The health access zone employer shall provide certification of eligibility[6] upon request to the FTB.

[3] Including mental health and alcohol and substance abuse services.
[4] Within the meaning of Section 515 of the Labor Code.
[5] As defined in Section 7091 of the Government Code, which means a means a person who is licensed under Division 2 (commencing with Section 500) of the Business and Professions Code and who provides any of the services defined for a "qualified full-time health access zone employee".

[6] Described in Section 7097 of the Government Code.

The credit may be carried over for up to 10 years, or until exhausted.

The FTB may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section.

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 definition of "health access zone" lacks specificity and could be overly broadly interpreted resulting in larger designated zones than the author intends. The author may wish to amend the bill to clarify specifically what characteristics an area must possess to be designated a health access zone.

It is unclear how a partial "full-time equivalent" would be treated in determining a credit amount. It is recommended the bill be amended to specify how much credit a partial "full-time equivalent" would be allowed.

TECHNICAL CONSIDERATIONS

For clarity, it is recommended that qualified wages be further defined with following amendment. On page 9, line 22, after "wage." Insert, "in the taxable year".

The bill uses the term "qualified full-time health access zone employee" throughout the bill, but fails to use it when detailing the net increase requirement. For consistency, it is recommended that the bill be amended to use the term "qualified full-time health access zone employee" in both sections of the bill.

LEGISLATIVE HISTORY

SB 90 (Galgiani and Canella, Chapter 70, Statutes of 2013), modified AB 93 as chaptered on July 11, 2013. Specifically, SB 90, for purposes of the new hiring tax credit, modified the definition of qualified employee, excluded sexually oriented businesses from the definition of qualified taxpayer and small business, and modified the defined geographical area that the hiring credit may be generated in.

AB 93 (Assembly Committee on Budget, Chapter 69, Statutes of 2013), repealed the geographically targeted economic development area tax incentives and the New Jobs Tax Credit under the PITL and Corporation Tax Law (CTL), created a New Hiring Tax Credit under the PITL and CTL, established the California Competes Tax Credit Committee, and created the California Competes Tax Credit under the PITL and CTL.

AB 231 (Perez, 2011/2012), among other things, would have modified the definition of qualified wages within the Enterprise Zone Hiring Credit to allow a greater portion of wages above the minimum wage to be used to calculate the credit and would have modified the definition of "qualified employee" to include additional categories of individuals. AB 231 failed to pass out of the Assembly by the constitutional deadline.

OTHER STATES' INFORMATION

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

FISCAL IMPACT

The costs to administer this bill have yet to be determined. As the bill continues to move through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

<u>Revenue Estimate</u>

Estimated Revenue Impact of AB 2659 As Amended March 24, 2014 Assumed Enactment After June 30, 2014 ($ in Millions)		
2015-16	2016-17	2017-18
- $470	- $380	- $70

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 the bill would encourage health professionals to provide health care to those in underserved areas.

Opponents: Some may argue that providing a tax credit limited to only health professionals may be overly narrow and inadvertently exclude other areas lacking qualified professionals.

POLICY CONCERNS

This bill would provide a tax benefit for hiring qualified health access zone employees under the PITL that would not be provided under the CTL to other business entities, including S-corporations. Thus, this bill would provide differing treatment based solely on business type.

The language fails to specify how employees of an acquired entity would be counted for purposes of determining if there has been an overall net increase. Consequently, if a taxpayer simply acquires a business with these employees, all those employees could be considered a net increase as compared with the year before.

Qualified wages are defined in the bill to mean wages specifically subject to certain code sections[7] for hourly employees that are equal to or greater than 150 percent of the state minimum wage. Because this code section does not include wages paid to salaried employees, the wages paid to salaried employees are not limited by the 150 percent of minimum wage limitation.

This bill would allow a credit for wages paid to qualified employees that are currently deductible as business expenses. Additionally, some of the employees may qualify for the "new employment credit." Generally, a credit is allowed in lieu of a deduction, and only one credit may be claimed on the wages paid to an employee, in order to eliminate multiple tax benefits for the same item of expense.

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[7] Wages subject to Division 6 of the Unemployment Insurance Code.