

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Muratsuchi Analyst: Michelle Chan Bill Number: AB 927  
 Related Bills: See Prior Analysis Telephone: 845-6805 Amended Date: April 29, 2013  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Employer Hiring Credit/Aerospace Employers Who Hire New Full-Time Employees and Veterans

**SUMMARY**

This bill would create a tax credit under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL) for an aerospace employer that hires certain new employees.

**RECOMMENDATION**

No position.

**SUMMARY OF AMENDMENTS**

The April 29, 2013, amendments modified several definitions, clarified the calculation of the credit amount, eliminated the credit carryover period, and made several technical, nonsubstantive changes. As a result of the amendments, several of the department's implementation, technical, and policy concerns discussed in the department's analysis of the bill as amended April 8, 2013, were resolved and additional concerns were identified. The "This Bill," "Implementation Considerations," "Policy Concerns," and "Economic Impact" sections have been revised, the remainder of the department's analysis of the bill as amended April 8, 2013, still applies. The "Fiscal Impact" section has been restated for convenience.

**ANALYSIS****THIS BILL**

This bill would, for taxable years beginning on or after January 1, 2014, allow a credit for a qualified employer in the following amounts:

- \$3,000 for each increase in qualified full-time employees hired during the taxable year, determined on an annual full-time equivalent basis, and
- An additional \$1,000 for each qualified full-time employee hired during the taxable year if the qualified full-time employee is a veteran or an additional \$2,000 for each qualified full-time employee hired during the taxable year if the qualified full time employee is a service-connected disabled veteran, as measured by the percentage of increase in an annual full-time equivalent that the veteran or service-connected disabled veteran represents.

Board Position:

\_\_\_\_\_ S                      \_\_\_\_\_ NA                        X   NP  
 \_\_\_\_\_ SA                      \_\_\_\_\_ O                      \_\_\_\_\_ NAR  
 \_\_\_\_\_ N                      \_\_\_\_\_ OUA

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The total amount of credits allowed to a qualified employer shall not exceed \$5,000,000 for all taxable years.

This bill would define the following terms and phrases:

- “Qualified employer” means a taxpayer who employed qualified full-time employees who are located in this state and meets any of the following:
  1. The taxpayer manufactures, assembles, tests, renovates, or converts aircraft and spacecraft.
  2. The taxpayer manufactures or designs aircraft or spacecraft engines and engine parts.
  3. The taxpayer manufactures or designs aircraft and spacecraft auxiliary components, including detection equipment, navigation, and guidance systems.
  4. The taxpayer provides aircraft and spacecraft support services, including launching, operating, and retrieving air and space vehicles.
  5. The taxpayer has contracted with the United States military or federal government for the purpose of national defense related to aerospace, including the manufacturing of missiles and military airplanes.
- “Qualified full-time employee” means either of the following:
  1. An employee who was paid wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code by the qualified employer for services of not less than an average of 35 hours per week.
  2. An employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code,<sup>1</sup> by the qualified employer.
- “Service-connected disabled veteran” means a veteran who is disabled by an injury or illness that was incurred or aggravated during active military service.
- “Veteran” means a person honorably discharged from the Armed Forces of the United States.<sup>2</sup>

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<sup>1</sup> Labor Code Section 515(c) defines "full-time employment" as employment in which an employee is employed for 40 hours per week.

<sup>2</sup> Armed Forces of the United States as defined in the Revenue and Taxation Code Section 17022 includes all regular and reserve components, and commissioned officers and personnel of the Coast Guard and of the uniformed services that are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force.

- “Annual full-time equivalent” means either of the following:
  1. In the case of a full-time employee paid hourly qualified wages, “annual full-time equivalent” means the total number of hours worked for the taxpayer by the employee (not to exceed 2,000 hours per employee) divided by 2,000.
  2. In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the taxpayer by the employee divided by 52.

The net increase in qualified employees would be determined on an annual full-time equivalent basis by comparing the number of full-time employees employed by the taxpayer in the current taxable year, including the number of employees employed by a trade or business acquired by the taxpayer during the current taxable year, with the number of qualified full-time employees employed by the taxpayer in the preceding taxable year, including the number of employees employed by a trade or business acquired by the taxpayer during the current taxable year. For taxpayers who first commenced doing business in the state during the taxable year, the number of qualified full-time employees for the immediately preceding taxable year would be zero.

All employees of the trades or businesses that are treated as related under either Section 267, 318, or 707 of the Internal Revenue Code<sup>3</sup> shall be treated as employed by a single taxpayer.

Taxpayers would only be able to claim this credit on an original timely filed return received by the Franchise Tax Board (FTB). The total amount of credits that may be allowed by this bill shall not exceed \$35,000,000 for a taxable year. The credits would be allowed to a taxpayer on a first-come, first-served basis. The date a return is received would be determined by the FTB. Determinations made by the FTB with respect to the date a return is received and whether a return has been timely filed would not be reviewable in any administrative or judicial proceeding.

Additionally, any disallowance of the credit due to the cumulative total of the credit being reached would be treated as a math error, and would not be subject to review in any administrative or judicial proceeding.

This bill would require the FTB to provide periodic notice on its website of the amount of the credit claimed on timely filed original returns and would allow the FTB to prescribe rules, guidelines, or procedures necessary to carry out the provisions of the bill, including any guidelines necessary to avoid the application of the credit limitation to a qualified employer through split-ups, shell corporations, partnerships or tiered ownership structures. Any rules, guidelines or procedures established would be exempt from the Administrative Procedures Act.

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<sup>3</sup> Losses, expenses, and interest with respect to transactions between related taxpayers, constructive stock ownership, and transactions between partner and partnership.

### 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 additional credit for the hiring of certain veterans would be measured by the percentage of increase in annual full-time equivalents that the veterans represent. The bill is silent on how the percentage would be calculated. For clarity and to ensure consistency with the author's intent, this bill should be amended.

The phrases "the purpose of national defense related to aerospace" and "service-connected disabled veteran" could be more broadly interpreted than the author intends. For example, it appears that a contractor that provided the office supplies under contract to the U.S. military or N.A.S.A could meet the definition of a "qualified employer" for purposes of this credit. To avoid disputes between taxpayers and the department, the author may wish to amend this bill.

The FTB lacks the ability to verify (1) the taxpayer has contracted with the United States military or federal government for the purpose of national defense related to aerospace.  
(2) a veteran who is disabled by an injury or illness that was incurred or aggravated during active military service. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. Additionally, the certification could be provided by the taxpayer upon the department's request.

A taxpayer that had the credit disallowed solely because the taxable year (\$35 million) or qualified employee limitation (\$5 million) had been reached could be subject to underpayment penalties. If this is contrary to the author's intent, this bill should be amended.

### **FISCAL IMPACT**

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved. As the bill continues to move through the legislative process and the implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

### **ECONOMIC IMPACT**

#### Revenue Estimate

Estimated Revenue Impact of AB 927 As Amended April 29, 2013 For Taxable Years Beginning On or After January 1, 2014 Assumed Enactment After June 30, 2013 (\$ in Millions)		
2013-14	2014-15	2015-16
- \$9.7	- \$29.0	- \$31.0

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

## **POLICY CONCERNS**

This bill does not require any deduction otherwise allowed for qualified wages to be reduced because of the credit allowed by this bill. As a result, a taxpayer could claim the credit proposed by this bill and a deduction for 100 percent of the wages the credit was based upon. Additionally, because this bill fails to specify otherwise, multiple credits based on the same wage expenditures would be allowed. Generally, a credit is allowed in lieu of any deduction or credit already allowable in order to eliminate multiple tax benefits.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a credit by the Legislature.

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