

SUMMARY ANALYSIS OF AMENDED BILL

Author: Steinberg Analyst: Jane Raboy Bill Number: SB 594
 Related Bills: See Prior Analysis Telephone: 845-5718 Amended Date: April 18, 2013
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Career Pathways State Investment Credit

SUMMARY

This bill would create a tax credit under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL) for taxpayers that provide career technical training in an amount allocated by the Career Pathways State Investment Committee (“Committee”).

This bill would also add provisions to the Education Code. The discussion of these changes is limited to the changes that would impact the department.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 18, 2013, amendments added legislative intent language and made numerous modifications to the Education Code including renaming the Career Pathways Investment Committee as the Career Pathways State Investment Committee, and made several other non substantive, technical changes.

The April 18, 2013, amendments resolved the existing “Technical Considerations” and the “Implementation Consideration” regarding the definition of “qualified taxpayer” and raised a new technical consideration. As a result, the “Implementation Considerations” and “Technical Considerations” sections have been revised. The remainder of the department’s analysis of the bill as introduced on February 22, 2013, still applies. The “Fiscal Impact,” “Economic Impact,” “Legal Impact,” and “Policy Concerns” sections are presented for convenience.

ANALYSIS

THIS BILL

This bill would allow a qualified taxpayer a nonrefundable tax credit in an amount equal to the amount allocated by the Committee as specified under the Education Code.

Board Position:	Acting Asst. Legislative Director	Date
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This bill would define a “qualified taxpayer,” as an “applicant” as defined in the Education Code that is either the sole owner if an individual, partners if the taxpayer is a partnership or shareholders if the taxpayer is an “S” corporation that was awarded an allocation of the career pathways investment credit by the Committee.

The Committee would report to the Franchise Tax Board (FTB), once each year, the identity of the qualified taxpayers for whom the career pathways credits are allocated each year.

The amount of any unused tax credit may be carried over and used as a credit against the income tax liability in subsequent years until exhausted.

In the event that a qualified taxpayer fails to comply with the requirements set forth in this bill, the credit would be disallowed and assessed, and collected until the requirements are satisfied. A disallowed credit would be treated as a math error.

IMPLEMENTATION CONSIDERATIONS

The bill lacks administrative details that must be developed in order to implement the bill and determine its impacts to the department’s systems, forms, and processes. For example:

- The bill lacks a certification process. Generally, credits that are allocated based on estimated expenditures are also subject to a certification process that would specify the responsibilities of a certifying agency, a department, and the taxpayer. For example, this bill is silent on who is responsible for certifying the actual expenditures the credit would be based upon and the form and manner the certifying agency would notify the taxpayer and the department of allocated and certified credits.
- The credit would be disallowed and assessed and collected “until the requirements are satisfied.” By whom, how, and when would the department and taxpayers be notified of a taxpayer’s noncompliance with the requirements? How and to whom would a taxpayer document that the requirements are subsequently satisfied? Would the credit be reinstated as a result of this documentation? Would the amount of the disallowed credit be subject to interest?
- Because this bill fails to specify otherwise, the CTL credit would be eligible for assignment. The bill is silent on whether and to what extent an assignee would become a party to the enforceable contract or memorandum of understanding required to obtain a credit allocation.

TECHNICAL CONSIDERATIONS

Page 15, lines 1, 8, and 25, needs to be amended where “California Career Pathways Investment Committee”, appears, as the correct reference should be “California Career Pathways State Investment Committee.”

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

Until the implementation concerns have been resolved, the FTB is unable to determine the revenue impact of this bill.

LEGAL IMPACT

This bill would restrict this tax credit by providing priority to applicants that have entered into a contract or memorandum of understanding with local educational agencies, community colleges, or workforce investment boards in communities located within California. This bill could raise constitutional concerns under the Commerce Clause of the United States Constitution because it could appear to improperly favor in-state activity over out-of-state activity. On August 28, 2012, (*Cutler v. Franchise Tax Board*), the Court of Appeal issued a unanimous opinion holding that California's Qualified Small Business Stock statutes were unconstitutional. Specifically, the Court of Appeal held that the statutory scheme's requirement of a large California presence in order to qualify for an investment incentive discriminated against interstate commerce, and therefore violated 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 such as the one proposed by this bill may be subject to constitutional challenge.

SUPPORT/OPPOSITION¹

Support: America's Edge, Bay Area Council, California Association of Regional Occupational Programs and Centers, California Chamber of Commerce, Metropolitan Education District, Sacramento City Unified School District, San Bernardino County District Advocates for Better Schools, San Francisco Unified School District, Silicon Valley Leadership Group, Southwest California Legislative Council, and the United Way of California.

Opposition: None provided.

POLICY CONCERNS

This bill would allow a credit for qualified expenditures that are currently deductible as business expenses. For example, a taxpayer is generally allowed to deduct wages expense for internships, equipment purchase, or instructional materials in the normal course of business.

¹ As reported by the Senate Committee Analysis dated April 22, 2013, at <http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0551-0600/sb_594_cfa_20130422_130631_sen_comm.html> [as of April 22, 2013].

This bill would allow the taxpayer to deduct these expenses while also claiming a credit on the tax return for the same expense. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense.

This bill would allow for an unlimited carryover period. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

Generally, credits are limited as a percentage of amounts paid or incurred. This bill would allow a credit equal to 50 percent of the allocated amount without regard to any amount having been paid or incurred, which is unprecedented.

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