Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Roth, et al.	Analyst:	Diane Deatherage	Bill Number:	SB 251
Related Bills:	See Prior Analysis	Telephone:	845-4783	Amended Date:	May 20, 2015
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	Disabled Access Expenditures Credit

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would create a tax credit for disabled access expenditures.

This analysis only addresses the provisions of this bill that impact the department's programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 20, 2015, amendments added co-authors, removed provisions that would have made changes to the Civil Code, and revised the provisions discussed in this analysis. The amendments resolved some, but not all, of the implementation, policy, and technical concerns as discussed in the department's analysis of the bill as amended May 4, 2015. As a result of the May 20, 2015, amendments, the department has identified additional implementation and technical considerations. Except for the "This Bill," "Implementation Considerations," "Technical Considerations," "Economic Impact," and "Policy Concerns" sections, the remainder of the department's analysis of the bill as amended May 4, 2015, still applies. The "Fiscal Impact" and "Support/Opposition" sections have been restated below for convenience.

THIS BILL

For each taxable year beginning on or after January 1, 2016, and before January 1, 2023, this bill would provide to a taxpayer a credit under the PITL and CTL for the amount paid or incurred for eligible access expenditures in excess of $250.

For a taxpayer other than a small business, the credit would be in an amount equal to 50 percent of the difference between the total eligible access expenditures incurred by a taxpayer that do not exceed $10,250 and $250.

For a taxpayer that is a small business, the credit would be in an amount equal to 50 percent of the difference between the total eligible access expenditures incurred by a taxpayer that do not exceed $15,250 and $250.

The credit limitation would apply to a partnership and each partner. A similar rule would apply to an "S" corporation.

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"Eligible access expenditures" would have the same meaning as defined in Internal Revenue Code (IRC) section 44(c) except that the amounts may be paid or incurred by a taxpayer other than an eligible small business.

"Small business" would mean a trade or business that, in the three immediately preceding taxable years, had average gross receipts, less returns and allowances reportable to this state, of less than $3,500,000 and employed 25 or fewer full-time employees. Taxpayers required or authorized to be included in a combined report under CTL would also be subject to the $3,500,000 gross receipts limitation.

"Gross receipts, less returns and allowances reportable to this state" would mean the sum of the gross receipts for the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

"Full-time employee" would mean an employee of the taxpayer who works at least 30 hours per week.

The credit could be claimed only on a timely filed original return.

Any unused portion of the credit may be carried over for seven taxable years.

This bill specifies that no credit or deduction would be allowed for the same expenses for which the credit was allowed and that the adjusted basis of property would not be increased by the amount of credit allowed.

The rules, guidelines, and procedures established would be exempt from the regulatory requirements of the Administrative Procedures Act. [1]

The bill would remain in effect until December 1, 2023, and as of that date would be repealed.

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 department lacks expertise on disabled access expenditures and whether the expenditures comply with Americans with Disabilities Act (ADA)[2] requirements. 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. It is recommended that this bill be amended to include a certifying agency.

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[1] Government Code section 11340 et seq.
[2] Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2000).

The definition of full-time employee should specify the period of time over which a full-time employee would work at least 30 hours per week to be considered a full-time employee.

TECHNICAL CONSIDERATIONS

For clarity and internal consistency, the following amendments are recommended:

- Line 17 page 20 and line 8 on page 22 add "paid or incurred" after "expenditures."
- Line 20, page 20, and line 11, page 22 specify small business, as defined in paragraph (2) of subdivision (b).
- Line 30, page 20, add "and its shareholders" after "corporation."
- Line 34, page 20, and line 25, page 22 add "relating to eligible access expenditures," after "Internal Revenue Code."
- Lines 20-21, page 22 strikeout after "partner." because the sentence is unnecessary as "S" corporation law is found in the PITL.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 251 As Amended May 20, 2015 Assumed Enactment After June 30, 2015 ($ in Millions)		
2015-16	2016-17	2017-18
- $7.2	- $20	- $25

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

Revenue Discussion

Based on department data, there were approximately 780,000 active corporate filers in 2012. This number was grown[3] and the estimate assumes one percent of all corporations, or approximately 8,200 corporations would generate $20 million in credits in 2016. Taxpayers claiming the credit would no longer deduct qualifying expenses, resulting in an offsetting gain of $2.4 million. Corporations would use 50 percent of the credit in the year generated and the remaining credit would carry over.

In addition, there were approximately 3.2 million Schedule C filers and pass-through income tax filers. This number was grown and the estimate assumes one percent of personal income taxpayers or 35,000 taxpayers would generate approximately $21 million in credits in 2016. Taxpayers claiming the credit would no longer deduct qualifying expenses resulting in an offsetting gain of $2.5 million. Personal income taxpayers would use 40 percent of the credit in the year generated and the remaining credit would carry over.

This would result in a total loss of $37 million in the 2016 taxable year. The tax year estimates were converted to fiscal year estimates, and then rounded to arrive at the estimates shown in the table above.

SUPPORT/OPPOSITION[4]

Support: California Chamber of Commerce; Apartment Association of Orange County; Associated Builders and Contractors of California; CalAsian Chamber of Commerce; California Ambulance Association; California Association of Bed and Breakfast Inns; California Business Properties Association; California Citizens Against Lawsuit Abuse; California Grocers Association; California Hotel and Lodging Association; California Manufacturers and Technology Association; California Retailers Association; Camarillo Chamber of Commerce; Chamber of Commerce Alliance of Ventura and Santa Barbara Counties; Chamber of Commerce Mountain View; Civil Justice Association of California; Consumer Attorneys of California (in concept); Culver City Chamber of Commerce; East Bay Rental Housing Association; Fairfield-Suisun Chamber of Commerce; Family Business Association; Fullerton Chamber of Commerce; Greater Bakersfield Chamber of Commerce; National Association of Theatre Owners of California/Nevada; National Federation of Independent Business; Nor Cal Rental Housing Association; North Valley Property Owners Association; Orange County Business Council; Oxnard Chamber of Commerce; Rancho Cordova Chamber of Commerce; Redondo Beach Chamber of Commerce and Visitors Bureau; San Jose Silicon Valley Chamber of Commerce; Santa Maria Valley Chamber of Commerce Visitors and Convention Bureau; Simi Valley Chamber of Commerce and Visitors Bureau; South Bay Association of Chamber of Commerce; South Lake Tahoe Chamber of Commerce; Southwest California Legislative Council.

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[3] Indexed using Department of Finance forecasts.
[4] From Senate Governance and Finance Committee analysis, dated May 18, 2015.

Opposition: American Civil Liberties Union of California, Disability Rights California, United African-Asian Abilities Club.

POLICY CONCERNS

The credit would be allowed for eligible access expenditures paid or incurred either inside or outside California.

This bill provides a state credit in an amount equal to a federal credit for eligible access expenditures. In general, a taxpayer's federal income tax liability is significantly higher than his or her state income tax liability. As a result, a state tax credit equal in amount to a federal credit could be considered to provide a greater proportionate benefit for state tax purposes than for federal tax purposes.

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