Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

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Related Bills: See Legislative History | Telephone: 845-4786 | Introduced Date: 01/27/99

Attorney: Doug Bramhall | Sponsor:

SUBJECT: Residential Swimming Pool Safety Devices Credit

SUMMARY

Under the Personal Income Tax Law (PITL), this bill would allow a one-time credit equal to 80% of identified costs, up to $1,000 per year, for adding or upgrading approved safety devices for a residential swimming pool located in this state that is owned by the taxpayer and built before January 1, 2000.

EFFECTIVE DATE

This bill is a tax levy and would be effective immediately upon enactment. It would apply to taxable or income years beginning on or after January 1, 1999, and before January 1, 2003.

LEGISLATIVE HISTORY

AB 813 (97/98); AB 3305 (1996)

BACKGROUND

AB 3305 (Stats. 1996, Ch. 925) adopted the Swimming Pool Safety Act (the "Act") in the Health and Safety Code. Among other things, the Act required that, beginning January 1, 1998, whenever a construction permit is issued for construction of a new swimming pool at a private, single-family house, the pool shall be equipped with at least one of the following measures:

- an enclosure meeting certain requirements;
- an approved safety pool cover;
- exit alarms on doors providing access to the pool; or
- self-closing, self-latching devices on all doors with direct access to the pool.

For purposes of the Act, “swimming pool” or “pool” means any structure intended for swimming or recreational bathing that contains water over 18 inches deep. A pool includes above-ground or below-ground structures, including hot tubs, spas and nonportable wading pools.

Board Position:			Department Director	Date
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SPECIFIC FINDINGS

Existing federal and state 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, enterprise zone or program area hiring credits). These credits generally provide incentives for taxpayers to perform various actions or activities which they may not otherwise undertake.

Existing state law limits the application of the low-income housing credit and the research credit to the tax attributable to the taxpayer's passive activities. The purpose of the passive activity loss (PAL) limitation is to prevent taxpayers from using a credit from a passive activity to offset tax attributable to other income. Credit amounts in excess of the PAL limitation may be carried over to offset tax attributable to passive income in subsequent years.

This bill would allow a one-time credit equal to 80% of the amount paid or incurred, not to exceed $1,000 per year, to add or upgrade approved safety devices for any residential swimming pool in this state that is owned by the taxpayer and built before January 1, 2000.

"Approved safety devices" would be defined as safety devices described in the Swimming Pool Safety Act.

This bill would provide that if a taxpayer's allowable credit could not be used in any given year, the excess could be carried over to the following year only.

Since **the bill** does not specify otherwise, the general rules in state law regarding the division of credits would apply, and this credit would not reduce regular tax below the tentative minimum tax for alternative minimum tax purposes. This credit is not included in the list of passive activity credits; therefore, taxpayers who generate this credit from passive activities, such as residential rentals, would be able to use the credit to offset tax attributable to non-passive income.

Policy Considerations

It seems likely that this bill would apply mainly to pools built prior to the mandated Health and Safety Code requirements effective January 1, 1998; however this bill would allow a credit for the addition of safety devices required under state law for a pool built in 1999. As a result, for pools built in 1999, a credit would be allowed for a mandated behavior rather than to influence behavior.

This bill would allow a credit for adding or upgrading approved safety devices in any residential swimming pool located in the state, including properties that a taxpayer is renting to another person. For rental property, when federal tax law benefits are taken into consideration, this bill could result in a taxpayer receiving more than 100% of the cost of the safety devices in tax benefits.

Implementation Considerations

The bill provides for a one-time credit equal to 80% of the amount paid or incurred, not to exceed a maximum credit amount of $1,000 per year. Clarification is needed on whether the "one-time" and $1,000 limitations apply to a single residential swimming pool, a single year, or a single taxpayer. For example, the taxpayer could theoretically claim the credit on pools both at his residence and at rental property, or incur costs in more than one year, and claim a credit of up to $1,000 in each year.

FISCAL IMPACT

Departmental Costs

Once the implementation concerns are resolved, this bill should not significantly impact the department's costs.

Tax Revenue Estimate

Based on limited data and assumptions discussed below, this bill would result in the following revenue losses.

Estimate Revenue Impact of SB 250 As Introduced 1/27/99 [$ In Millions]		
1999-00	2000-01	2001-02
($10)	($4)	($4)

The bill would be effective for taxable years beginning on or after January 1, 1999, with enactment assumed after June 30.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Tax Revenue Discussion

The revenue impact of this bill would be determined by (1) the number of taxpayers who add or upgrade approved safety devices for residential swimming pools, (2) the amounts paid or incurred for adding or upgrading such devices, and (3) the amount of credits that may be applied to reduce tax liabilities.

The proposed credit would be available to taxpayers who own existing structures intended for swimming or recreational bathing that contain water over 18 inches deep, or who construct/install such structures during 1999. Based on a study by the National Spa and Pool Institute, in California as of 1990, there were 662,000 in-ground pools/spas, 179,000 above ground pools, and 687,000 filtered spas. The number of pools is projected to increase at a rate of roughly 50,000 each year. Many of the existing 1.9 million pools/spas are located in cities or counties where local ordinances already require some type of safety barrier, but thousands remain unprotected.

Costs for various approved safety devices range from a low of $20 for a tot-stopper door latch that could be installed by the taxpayer to well over the maximum credit of $1,000 for wrought-iron fencing with a self-closing and latching gate or a pool cover certified by the American Society for Testing Materials.

Assuming that:

- roughly one-quarter of residences with existing pools/spas have already installed approved safety devices: 482,000;
- the number of additional taxpayers each year who would install approved safety devices is 5% of those who have already installed safety devices: 24,000 taxpayers each year; and
- taxpayers adding or upgrading safety devices would spend on average $250;

derives costs totaling $6 million each year to retrofit existing pools. Multiplying total costs by the proposed credit percentage of 80% derives credits totaling $4.8 million annually. For taxpayers who construct/install new pools/spas during 1999 (50,000), it is assumed two-thirds would install approved safety devices that would also qualify for the proposed credit. Applying the same assumptions would result in additional credits of $6.7 million for the 1999 taxable year only. (New pools (as defined) constructed at private, single-family homes in 1999 would be required to be equipped with at least one approved safety device. However, sales of above ground pools are difficult to track for enforcement purposes; hence, the two-thirds assumption.)

It is assumed that the amount of credits which could be applied to reduce tax liabilities would be 90% of the total amount generated each year, or approximately $10 million in 1999, and $4 million in subsequent years that the credit is available.

BOARD POSITION

Pending.