SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wildman   Analyst: Jeani Brent   Bill Number: AB 358

Related Bills: See Prior Analysis   Telephone: 845-3410   Amended Date: 05/28/1999

Attorney: Patrick Kusiak   Sponsor:

SUBJECT: Employer Qualified Wages Paid For Production Of Television Program Or Movie/FTB Report to Legislature Regarding Total Credits Claimed

____	DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ________.
X	AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
X	AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 11, 1999 .
X	FURTHER AMENDMENTS NECESSARY.
____	DEPARTMENT POSITION CHANGED TO ____________________.
X	REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 11, 1999 STILL APPLIES.
X	OTHER - See comments below.

SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would provide a credit equal to 10% of qualified wages and salaries paid to employees and contractors retained by the taxpayer in connection with the production of a television program or motion picture that costs less than $5 million to produce and is produced entirely in California.

This bill also would require the department to annually report to the Legislature on the total amount of credits claimed under the bill and would require the Employment Development Department (EDD) to annually report to the Legislature employment data for Standard Industrial Classification Code 781 (relating to motion picture and videotape production). The provisions regarding EDD are not discussed in this analysis.

SUMMARY OF AMENDMENT

The May 28, 1999, amendments changed the sunset date from January 1, 2007, to January 1, 2001, making it a one-year credit. In addition, the May 28, 1999, amendments included the criterion that to qualify a television program or motion picture must cost less than $5 million to produce. Finally, the May 28, 1999, amendments removed language regarding carryover of unused credits that is unnecessary because a similar provision exists elsewhere in the law.

The May 10, 1999, amendments changed the operative date from January 1, 1999, to January 1, 2000, included a sunset date of January 1, 2007, and provided that taxpayers may elect the credit under this bill in lieu of any other credit that may be allowable for the same costs. The May 10, 1999, amendments also added the requirement for the department to annually report to the Legislature on the total amount of credits claimed.

Board Position:			Department/Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR		
X N	____ OUA	____ PENDING	**Johnnie Lou Roasa**	**6/8/1999**

The amendments resolved several policy considerations, but raise an additional policy consideration and an additional implementation consideration, each identified as #3 below. The remaining policy and implementation considerations are included below.

Except for the above discussion, the implementation considerations, and revenue estimate, the department's analysis of the bill as introduced February 11, 1999, still applies. The Board position remains the same and is included below for convenience.

POLICY CONSIDERATIONS

This bill would raise the following policy considerations.

1. Most wage-based incentive credits in existing law define qualified wages as a percent of minimum wage, rather than allowing credit computations based upon the full amount of wages paid.

2. Conflicting tax policies come into play whenever a credit is provided for an expense item for which preferential treatment already is allowed in the form of an expense deduction or depreciation deduction. This bill would have the effect of providing a double benefit for deductible wages and salaries. On the other hand, making an adjustment to limit deductions or reduce basis in order to eliminate the double benefit creates a state and federal difference, which is contrary to the state's general federal conformity policy.

3. When expenditures qualify for more than one credit, recent legislation has replaced language requiring taxpayers to make an election for those expenditures with a provision limiting the taxpayer to only one credit with respect to qualified expenditures. This change allows taxpayers to make the choice of which credit to take on either the original or an amended return. The qualified wage credit under this bill would require taxpayers to make an election on the original return. Once made, an election is binding and generally cannot be revoked. In addition, with an election provision, the failure to make an election generally constitutes an election out of the provision and this "non-election" is binding.

IMPLEMENTATION CONSIDERATIONS

This bill would raise the following implementation considerations.

1. This bill provides that, to be a "qualified television program" or "qualified motion picture," the television program or motion picture must be "produced entirely within the state." However, the definition of "motion picture" includes any phase of production, whether the production "is completely finished, that is produced, adapted, or altered . . . ." The bill provides no further definition of "qualified television program." By stating varying criteria, the bill leaves unclear whether the entire motion picture or television program must be produced in California, or whether, for instance, a motion picture made in New York (at an assumed cost of $10 million) and then "altered" in Hollywood (cut, sound track added, etc., at an assumed cost of $2 million, of which $1 million is qualified wages) would qualify for a credit of $100,000 (10% of the $1 million in qualified wages).

2. The definitions of “qualified wages and salaries,” “motion picture,” and “qualified television program or qualified motion picture” are unclear. In addition, the bill does not define “television program” or “produced.” Unclear and undefined terms may cause disputes between taxpayers and the department. Department staff is available to assist the author with any necessary amendments.

3. This bill would provide an unlimited carryover of excess credit amounts. Credits with unlimited carryovers must be maintained on tax forms and systems even when the credit has expired. Since tax credits usually are used within eight years, most recently enacted credits contain limited carryover provisions, generally eight or ten years.

REVENUE ESTIMATE

The revenue impact of this bill is estimated to be as shown in the following table:

Revenue Impact of AB 358, As Amended May 28, 1999 Effective January 1, 2000: Assumed Enacted after June 30, 1999 $ Millions		
1999-0	2000-1	2001-2
-$13	-$40	-$26

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

REVENUE DISCUSSION

The revenue impact of this nonrefundable credit would depend on the amount of qualified wages paid and the tax liabilities of employers claiming this credit.

The amount of qualified wages is estimated as the product of the number of qualified newly-hired employees and the average wage. The number of qualified employees was estimated from data provided by the California Employment Development Department (EDD). According to EDD, total employment for SIC Code 781 (Motion Picture and Video Tape Production) was 143,300 in 1998.

EDD also provides average weekly earnings for people employed in SIC Code 78 (Motion Pictures). EDD data also reveals that the average annual growth rate of employment in SIC 78 was 6.6% and weekly wages was 6.6% for the period 1995 through 1998. These growth rates were used for projecting total employment and average weekly earnings for SIC 781 for the out years of this bill. Annual labor turnover rate is assumed to be 20% of total employment. The number of qualified employees for the year 2000 is estimated as the sum of new and replaced employees discounted by 69% to account for collective bargaining requirement, officers’ salaries, $5 million cost limit, and the fact that not all new employees are hired on the first day of the year.

For the year 2000, total employment for SIC 781 is estimated as 162,840 (143,300 * 1.066 * 1.066). The number of qualified employees is estimated as 12,639 as follow:

(10,082 new employees + 30,552 replaced employees)*(1-0.69) = 12,639

From this data it is calculated that qualified wages paid in California for workers within SIC 781 amounted to $928 million in 2000 (12,639 qualified employees in 2000, at $1,468 per week for 50 weeks).

The revenue loss for 2000, the first taxable year, is projected to be $70 million as follow:

$928 mil. in qualified wages*10% credit rate*75% utilization rate = $70 mil.

It should be noted that even though this credit is effective for only one year, 2000, its revenue impact is estimated to spread over more than one year, since some taxpayers would have to carry over unused credits to succeeding years and many fiscal filers would not fully claim this credit until the year 2001/2002.

BOARD POSITION

Neutral.

At its March 23, 1999, meeting, the Franchise Tax Board voted 2-0 to take a neutral position on this bill as introduced.