

SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Ducheny Analyst: Marion Mann DeJong Bill Number: AB 490

Related Bills: See Legislative History Telephone: 845-6979 Amended Date: 05/25/1999

Attorney: Patrick Kusiak Sponsor:

SUBJECT: Headquarters Operation Credit/FTB Report To Legislature Regarding Number & Value Of Credits Claimed

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 18, 1999.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO neutral.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 18, 1999, STILL APPLIES.
- OTHER - See comments below.

SUMMARY OF BILL

This bill would create a new headquarters credit equal to 6% of the eligible costs paid or incurred by a qualified taxpayer that either locates a new corporate headquarters in this state or maintains or expands an existing corporate headquarters in this state. The bill also would require the Franchise Tax Board to report to the Legislature by January 1, 2006, on the number and value of the headquarters credit claimed.

SUMMARY OF AMENDMENT

The May 25, 1999, amendments made two minor technical changes and added the reporting requirement.

The amendments resolved one of the Technical Considerations raised in the department's analysis of the bill as introduced February 18, 1999. Except for that Technical Consideration and the Board Position, the prior analysis still applies. The Implementation Consideration and remaining Technical Considerations are reiterated below. The Board Position is changed to reflect the action taken by the Franchise Tax Board at its last meeting. In addition, amendments are provided to resolve the department's remaining Technical Considerations.

IMPLEMENTATION CONSIDERATIONS

This credit was originally proposed in AB 1313 (1993/94) and was modified by AB 556 (1995/96). The definitions used in the credit were crafted to match the original intent to provide a credit only for the building and personal property associated with headquarters and research and development functions. The later versions of the credit (in AB 556 and this bill) make it appear that the author may intend to provide a credit for a building and personal property in which

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manufacturing activities are performed. If this is the author's intent, substantial changes should be made to the bill. Department staff is available to assist the author with any necessary amendments.

TECHNICAL CONSIDERATIONS

This bill would raise the following technical considerations. Amendments to resolve these issues are provided at the author's request.

- Amendment 3 would specify that the term of the lease for a transaction that is not treated as a sale for California sales and use tax purposes begins on the effective date of the lease agreement (i.e., an operating lease or "continuing sale" for sales and use tax purposes). This is the same as a lease for a transaction that is treated as a sale for California sales and use tax purposes (i.e., a finance or purchase lease for sales and use tax purposes).
- Amendment 2 would clarify that for purposes of "true leases" (defined under the bill as a lease that is not a sale for sales and use tax purposes), "eligible costs" are not required to be capitalized into the basis of the qualified property.
- Amendment 1 would narrow the reference to basis to "cost basis" as defined in Section 24912 of the Revenue and Taxation Code to eliminate the potential for moving the credit (and "eligible costs") to other entities within an affiliated group in non-recognition (i.e., tax-deferred) transactions.
- Amendment 4 would clarify the definition of "recaptured," by specifying that once a nonqualifying event has occurred, the qualified taxpayer is not thereafter entitled to claim the credit for additional costs paid or incurred in subsequent years that would have otherwise been eligible costs.

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 February 18, 1999.

Marion Mann DeJong
845-6979
Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 490
As Amended May 25, 1999

AMENDMENT 1

On page 2, modify lines 10 through 12 as follows:

by the qualified taxpayer that are included in the ~~basis, as determined under Article 2 (commencing with Section 24911) of Chapter 15,~~ cost basis, as defined in Section 24912, of qualified property placed in

AMENDMENT 2

On page 7, after line 33, insert:

(iv) Paragraph (1) of subdivision (b) shall not apply to the lessee.

AMENDMENT 3

On page 9, modify line 23 as follows:

for a fixed term of at least five years. For purposes of this subparagraph, the term of a lease commences on the effective date of the lease agreement.

AMENDMENT 4

On page 13, modify lines 16 and 17 as follows:

year, shall be disallowed, ~~that no more eligible costs are paid or incurred that~~ no credit shall be allowed for additional costs paid or incurred in subsequent years that would have otherwise been eligible costs except for this subdivision, and the amount of previously claimed