Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

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Related Bills: See Legislative History | Telephone: 845-6458 | Introduced Date: 02-03-2000

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: Employer Provided Public Transit Passes Credit

SUMMARY

Under the Personal Income Tax Law (PITL) and Bank and Corporation Tax Law (B&CTL), this bill would allow a credit equal to 40% of the cost paid or incurred by an employer for providing subsidized public transit passes to an employee, with an annual aggregate credit cap for all taxpayers of $1 million per calendar year.

This bill would amend Department of Finance calculation regarding reduction of the Vehicle License Fee (VLF). It also would required the California Research Bureau to report by January 1, 2004, on the amount of credits used and the public transit ridership in California. This analysis will address the bill's provisions regarding the VLF and the Research Bureau report only as they impact the department's programs or operations.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would become effective immediately and would apply to taxable or income years beginning on or after January 1, 2000, and before January 1, 2005.

LEGISLATIVE HISTORY

AB 171 (1997) would have provided a tax credit for an employer who subsidized its employees' public transit passes or subsidized monthly vanpool fare. AB 1702 (1998) would have provided a tax credit for employer provided subsidized public transit passes. Both bills failed passage in the Legislature.

PROGRAM HISTORY

Prior state law allowed employers a ridesharing tax credit with two components. Employers were allowed a tax credit equal to 10% to 40% of the cost of providing subsidized public transit passes to employees, depending upon whether the employer offered free or subsidized parking. The second component was a tax credit for the purchase or lease of specified shuttle or commuter vehicles as part of an employer-sponsored ridesharing incentive program. The credit was 20% for an employer with 200 or more employees and 30% for an employer with fewer than 200 employees.

Board Position:			Department Director	Date
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Prior state law also provided a transit-related tax credit to employees equal to 40% of the subscription costs paid or incurred for participation in a non-employer-sponsored vanpool program.

The above credits were allowed for taxable or income years beginning on or after January 1, 1989, and before January 1, 1996.

SPECIFIC FINDINGS

Existing federal and state law allows taxpayers to deduct ordinary and necessary business expenses, which generally would include providing transit passes or other commuter benefits to employees.

Existing federal law allows employees certain exclusions from gross income for the value of employer-provided commuter transportation, transit passes, or qualified parking. Employees generally cannot deduct their regular costs of commuting to and from their place of business under either federal or state law.

Current state law allows an employee to exclude from gross income the amount of compensation or the fair market value of any benefit (except salary or wages) received from an employer for participation in any ridesharing program in California, including the value of a monthly transit pass for use by the employee or his or her dependents.

Under the PITL and B&CTL, **this bill** would allow a credit equal to 40% of the cost paid or incurred by an employer for providing subsidized public transit passes to an employee. The aggregate amount of credit allowed to all taxpayers could not exceed $1 million each calendar year.

This bill would define “employer,” “employee,” and “transit pass.”

The credit allowed by **this bill** would be in lieu of any deduction to which the taxpayer would otherwise be entitled for costs on which the credit is based.

In the case where the credit allowed exceeds the amount of tax, the credit could be carried forward for 10 years or until exhausted, whichever occurs first.

Since **this bill** does not specify otherwise, the general rules in income tax law regarding the division of credits between taxpayers who share in the costs would apply.

Implementation Considerations

This bill provides a $1 million per calendar year overall cap on the credit amount allowed to all taxpayers, but does not state how this limitation would be implemented, how the maximum amount would be allocated if returns with credits totaling more than $1 million are filed with respect to a calendar year, nor who would decide how to allocate the credit if total returns filed during a calendar year claiming the credit exceed $1 million. Generally, credits which are capped on an aggregate basis are allocated by a state body. Without such allocation, it would be difficult, if not impossible, for FTB to determine when this cap is reached.

Administration of the $1 million dollar cap would effectively require that refunds be delayed for all taxpayers claiming the proposed credit until after October 15th, the automatic extension filing date. This is because the total pool of claimed credits would not be known until all returns are timely received, credits added, and compared to the $1 million cap.

Additionally, when aggregate credit amounts are capped, the cap is measured on a taxable or income year basis, rather than a calendar year basis, which is how the credit itself is calculated.

Once these concerns are resolved, the department could implement this bill in its annual update.

Technical Considerations

Because of an apparent transposition error in drafting, the provision of this bill regarding the Vehicle License Fee has been inadvertently added to the PITL. The references to Section 17054.2 on page 2, lines 6 and 8, should be changed to reference Section 10754.2, consistent with the introductory language in the bill appearing before the Legislative Counsel's Digest.

FISCAL IMPACT

Departmental Costs

Once the implementation concern is resolved, this bill would not significantly impact the department’s costs.

Tax Revenue Estimate

This bill is estimated to create revenue losses under the PITL and B&CTL as shown in the following table.

Fiscal Year Cash Flow Effective 1/1/00 Enactment Assumed After June 30, 2000 $ Millions		
2000-01	2001-02	2002-03
-$1	-$1	-$1

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 provision will be determined by the number of employers that are providing subsidized transit passes and the average amount of credit applied.

The above estimates are based on state tax return data for the previous transit pass tax credit of an average of 30% credit amount. The previous impact was increased to reflect the 40% credit allowed in the bill. The amount of credits generated would be approximately $2 million for tax year 2000. However, the credits generated exceed the maximum credit amount of $1 million as stated in the bill. Therefore, the total credit amount per year is $1 million.

BOARD POSITION

Pending.