

SUMMARY ANALYSIS OF AMENDED BILL

Author: Patterson, et al. Analyst: Jessica Deitchman Bill Number: AB 1329
 Related Bills: See Prior Analysis Telephone: 845-6310 Amended Date: May 5, 2015
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Defensible Space for Fuel Management Activities Credit
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SUMMARY

This bill would, under the Personal Income Tax Law (PITL), allow a tax credit for certain costs paid to create defensible space on real property.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 5, 2015, amendments added and clarified definitions and added co-authors. As a result of the May 5, 2015, amendments, several, but not all, of the implementation, policy, and technical concerns as discussed in the department’s analysis of the bill as introduced February 27, 2015, have been resolved, and additional implementation concerns have been identified. As a result, the “This Bill,” “Implementation Considerations,” and “Economic Impact” sections have been revised. The remainder of the department’s analysis of the bill as introduced February 27, 2015 still applies. For convenience the “Fiscal Impact,” and “Policy Concerns” are provided below.

THIS BILL

For taxable years beginning on or after January 1, 2016, this bill would allow a credit equal to the qualified costs paid or incurred by a qualified taxpayer during the taxable year for fuel management activities performed on qualified real property.

The amount of credit allowed by this bill could not exceed the lesser of:

- \$2,500 per qualified taxpayer per taxable year, or
- 50 percent of a qualified taxpayer’s total tax liability for the previous taxable year.

A deduction would not be allowed for any amount paid or incurred for which a credit is allowed.

This bill would require the Franchise Tax Board (FTB) to establish a procedure to verify that the amount was paid or incurred by the qualified taxpayer for fuel management activities on qualified property.

The bill would define the following:

- “Defensible space” would mean the area adjacent to a structure or dwelling where wildfire prevention or protection practices are implemented to provide defense from an approaching wildfire or to minimize the spread of a structure fire to wildlands or surrounding areas.

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- “Fuel management activities” would mean any of the following, provided that the activity meets or exceeds the requirements of the 2015 California Forest Practice Rules:
 - the creation of a defensible space around structures,
 - the establishment of fuel breaks,
 - the thinning of woody vegetation for the primary purpose of reducing risk to structures from wildfire,
 - the secondary treatment of woody fuel by looping, scattering, piling, chipping, or removing from the site, or
 - prescribed burning.¹
- “Hazardous fire area” would have the same meaning as defined in Section 4251 of the Public Resources Code.²
- “Licensed contractor” means a contractor licensed under the Contractors' State License Law³ with a license that relates to duties necessary to provide fuel management activities.
- “Professional forester” means a person licensed under the Professional Foresters Law.⁴
- “Qualified costs” means 25 percent of the costs paid or incurred by a qualified taxpayer for labor or services performed for fuel management activities by a licensed contractor or professional forester, which costs are evidenced by records and documents, including, but not limited to, a written certification.
- “Qualified real property” would mean real property that is located within a hazardous fire area or a very high fire hazard severity zone in this state.
- “Qualified taxpayer” would mean a taxpayer who owns qualified real property. A taxpayer who owns a share of qualified real property may be allowed a share of the credit based on the taxpayer’s share of the qualified costs.
- “Wildfire” would mean an unplanned, unwanted wildland fire, including unauthorized human-caused fires, escaped wildland fire use events, escaped prescribed fire projects and all other wildland fires where the objective is to extinguish the fire.
- “Written Certification” means a written evaluation by the State Board of Forestry and Fire Protection or local fire department that certifies the establishment of defensible space, provided that the certification shall be obtained within 30 days after completion of the work establishing the defensible space. The qualified taxpayer shall retain a copy of the certification and provide it to the FTB upon request.
- “Very high fire hazard severity zone” would have the same meaning as that term is defined in subdivision (i) of Section 51177 of the Government Code.⁵

¹ Provided these activities meet or exceed the requirements of the 2015 California Forest Practice Rules.

² Means any area which is designated as a hazardous fire area by the board or director.

³ Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

⁴ Article 3 (commencing with Section 750) of Chapter 2.5 of Division 1 of the Public Resources Code.

⁵ Means an area designated by the director pursuant to Section 51178 that is not a state responsibility area.

This bill would specify that it is the intent of the legislature to enact legislation to comply with the requirements of Revenue and Taxation Code (R&TC) section 41.⁶

This bill would allow any unused credit to be carried over for up to seven years or until exhausted.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Because the bill fails to specify otherwise, the FTB would be subject to the rulemaking procedures required under the Administrative Procedures Act (APA).⁷ Following these procedures may delay the immediate implementation of this bill. To prevent any delay, it is recommended that the author add a provision exempting the FTB from the APA when the FTB is prescribing rules, guidelines, or procedures necessary or appropriate to carry out the purpose of this bill.

It is unclear how the credit limitation would be determined when a property is owned by more than one qualified taxpayer. Would the limit be determined individually by each qualified taxpayer or would the limit be based on the total of all the qualified taxpayers' previous year's tax liability?

The amount of the credit allowed by this bill could not exceed the lesser of two thousand five hundred dollars (\$2,500) per qualified taxpayer per taxable year or 50 percent of a qualified taxpayer's total tax liability for the previous taxable year.

It is unclear how the credit limit would be determined for a qualified taxpayer that filed jointly in the prior year and not jointly in the current year. Would 100 percent of the prior year's joint liability be subject to the 50 percent limit? One half of the prior year's joint liability?

The credit available to a qualified taxpayer with zero or negative taxable income, or no filing requirement in the prior year would be zero because this bill limited the credit to the lesser of 50 percent of the qualified taxpayer's prior year tax liability or \$2,500. If this is contrary to the author's intent the bill should be amended to either remove the cap that references a prior year cap or to specifically address the those taxpayers that had either did not file or had no tax liability in the prior year.

⁶ R&TC section 41 requires any new tax credit legislation introduced on or after January 1, 2015, to include specific goals, purposes, objectives, and performance measures.

⁷ Government Code section 11340.

Additionally, it is unclear how other credits might be applied to determine the amount of the taxpayer's "total tax" to calculate the 50 percent cap. It is recommended the bill be amended to specify the order that other credits should be applied.

Because the bill specifies that prescribed burning would be allowed "provided these activities meet or exceed the requirements of the 2015 California Forest Practice Rules," the rules as they exist for 2015 would be the only rules considered in future years. If this is contrary to the author's intent, the bill should be amended.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process and the implementation concerns are resolved, 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 AB 1329 As Amended May 5, 2015 Assumed Enactment After June 30, 2015 (\$ in Millions)		
2015-16	2016-17	2017-18
\$0	- \$170	- \$180

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

Revenue Discussion

This estimate is based on 2010 census housing data, current Cal Fire data on cities with Very High Fire Hazard Severity (VHFHS) zones, and recent local fire district reporting. Based on this data it is estimated that there are 4.8 million structures in counties or cities where there are Hazardous Fire Areas or designated VHFHS zones. Data suggests that of these, there would be 675,000 residential or business structures in Hazardous Fire Areas or VHFHS zones in 2016 subject to defensible space requirements and that may qualify for this credit. It is assumed that annually about one third, or approximately 220,000, of these properties would have qualifying costs for either full fuel management activities to bring their properties in compliance or for lesser maintenance costs to keep these properties in compliance.

Research indicates the average professional fire protection project costs are approximately \$3,800 per year. At 25 percent of allowable costs, the average credit is calculated at \$950 per property for total credits of \$209 million in 2016. It is expected that 85 percent of the credit, or \$177 million, would be used to offset current tax liabilities in the year generated with all of the remainder being used over the following three tax years. It is further assumed that 10 percent of those who file would be business entities subject to the PITL and would not be allowed the expense deduction, resulting in a deduction offset of approximately \$5 million resulting in a net liability decrease of \$172 million for taxable year 2016.

The tax year estimates were converted to fiscal year estimates and rounded to arrive at the amounts reflected in the table above.

POLICY CONCERNS

This bill would allow a tax credit for expenditures for creating the defensible space required by existing state law.⁸

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the credit by the Legislature.

LEGISLATIVE STAFF CONTACT

Jessica Deitchman
Legislative Analyst, FTB
(916) 845-6310

jessica.deitchman@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484

jame.eiserman@ftb.ca.gov

Gail Hall
Legislative Director, FTB
(916) 845-6333

gail.hall@ftb.ca.gov or

⁸ In January 2005, California Public Resources Code section 4291 became effective, thereby extending the defensible space clearance around homes and structures from 30 feet to 100 feet.