Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Nazarian	Analyst:	Jessica Deitchman	Bill Number:	AB 428
Related Bills:	See Prior Analysis	Telephone:	845-6310	Amended Date:	May 12, 2015
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	Seismic Retrofit of At-Risk Property Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), allow a credit for costs to seismically retrofit "at-risk" buildings.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 12, 2015 amendments clarified and added definitions. As a result of these amendments, the "Implementation Concerns" as provided in the department's analysis of the bill as introduced February 19, 2015, have been resolved, the "This Bill," and "Economic Impact" sections have been revised and a "Technical Consideration" section has been created. The remainder of the department's analysis of the bill as introduced February 19, 2015, still applies. The "Fiscal Impact" section has been restated below for convenience.

THIS BILL

For taxable years beginning on or after January 1, 2016, and before January 1, 2021, this bill would allow a qualified taxpayer a credit in an amount equal to 30 percent of the qualified taxpayer's qualified costs.

The bill would define the following phrases:

- "Qualified taxpayer" means a taxpayer that is an owner of a qualified building located in this state. A taxpayer that owns a proportional share of a qualified building in this state may claim the credit allowed by this bill based on the taxpayer's share of the qualified costs.
- "Qualified costs" means the costs paid or incurred by the taxpayer for any completed seismic retrofit construction on a qualified building, including any engineering or architectural design work necessary to permit or complete the seismic retrofit construction and does not include any of the following costs paid or incurred by the qualified taxpayer:
    - Maintenance, including abatement of deferred or inadequate maintenance, and correction of violations unrelated to the seismic retrofit construction.
    - Repair, including repair of earthquake damage.
    - Seismic retrofit construction required by local building codes as a result of addition, repair, building relocation, change of use, or occupancy.

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  - Other work or improvement required by local building or planning codes as a result of the intended seismic retrofit construction.
  - Rent reductions or other associated compensation, compliance actions, or other related coordination involving the qualified taxpayer and any other party, including a tenant, insurer, or lender.
  - Replacement of existing building components, including equipment, except as needed to complete the seismic retrofit construction.
  - Bracing or securing nonpermanent building contents.
  - The offset of costs, reimbursements, or other costs transferred from the qualified taxpayer to others.
  - Any amount paid by the qualified taxpayer to the jurisdiction with authority for building code enforcement for issuing the certification required.

- "Qualified building" means a building that has been certified as an at-risk property by the local building code enforcement for the area within which the building is located. A qualified building includes a mobilehome registered by the Department of Housing and Community Development.
- "At-risk property" means a building that is deemed hazardous and in danger of collapse in the event of a catastrophic earthquake, including, but not limited to, soft story buildings, concrete residential buildings, and pre-1994 concrete residential buildings.
- "Seismic retrofit construction" means alteration of a qualified building or its components to substantially mitigate seismic damage. Seismic retrofit construction would be for work performed voluntarily, and for which qualified costs were paid or incurred, on or after January 1, 2016. Seismic retrofit construction would include, but not be limited to, the following:
  - Anchoring the structure to the foundation
  - Bracing cripple walls
  - Bracing hot water heaters
  - Installing automatic gas shutoff valves
  - Repairing or reinforcing the foundation to improve the integrity of the foundation against seismic damage
  - Anchoring fuel storage
  - Installing earthquake-resistant bracing system for mobilehomes that are registered with the California Department of Housing and Community Development

To be eligible for the credit, both of the following must apply:

- The qualified taxpayer must obtain, and retain, certification from the jurisdiction with authority for building code enforcement, upon a review of the building, that the building completed construction satisfies the definition of seismic retrofit construction. The certification shall identify what part of the completed construction, if any, is not seismic retrofit construction. Upon request, the qualified taxpayer would be required to provide a copy of the certification to the Franchise Tax Board (FTB); and

- The jurisdiction with authority for building code enforcement in which a qualified building is located has entered into an agreement with the state to provide certifications pursuant to this section and to not seek reimbursement from the state for any costs incurred in providing those certifications.

The qualified taxpayer may claim one-fifth of the credit amount for the taxable year in which the credit is allocated and one-fifth of the credit amount for each of the subsequent four taxable years.

The qualified costs used to calculate the credit would be reduced by any grant provided by a public entity for the seismic retrofit construction.

This bill would allow unused credits to be carried over for up to five years, if necessary.

This credit would be in lieu of any other credit or deduction that the qualified taxpayer may otherwise claim under PITL and CTL with respect to qualified costs.

This section would remain in effect only until December 1, 2021, and as of that date is repealed.

The bill states that the provisions of Revenue and Taxation Code (R&TC) section 41[1] would not apply.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

TECHNICAL CONSIDERATIONS

For clarity of definitions, the following amendments are recommended:

On page 2, line 15, after “enforcement” insert “authority”

On page 5, line 28, after “enforcement” insert “authority”

FISCAL IMPACT

The department’s costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

[1] R&TC section 41 requires any bill introduced on or after January 1, 2015, that creates a new tax credit to contain language specifying goals, purposes, objectives, performance measures, and data collection and reporting requirements.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 428 As Amended May 12, 2015 Assumed Enactment After June 30, 2015 ($ in Millions)		
2015-16	2016-17	2017-18
- $1.4	- $5.2	- $9.1
This estimate assumes that there will be no new mandates requiring retrofitting activities anywhere in the state. The costs could increase significantly if a state-wide mandate is put in place.		

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

Revenue Discussion

This bill would establish a credit for qualified costs incurred for seismic retrofit construction on an at-risk building. Based on discussions with industry experts and 2013 U.S. Census data on buildings in earthquake areas, it is estimated that approximately 2,150 buildings would undergo retrofitting each year. Data provided by the California Seismic Safety Commission indicated the retrofitting cost is approximately $20,000 for residential housing, $10,000 for mobilehomes, and $100,000 for commercial buildings. This data results in an estimated $83 million dollars in retrofitting costs for 2013. The estimate was grown[2] for inflation to $88 million in qualified expenditures for 2016. The amount of estimated qualified expenses was then reduced by the estimated amount of retrofitting grants issued annually (estimated at $10 million annually). This results in $78 million in qualified retrofitting costs incurred for 2016.

The credit is equal to 30 percent of qualified costs. This results in approximately $23 million in credit generated in 2016. The credit must be taken evenly over five years, resulting in approximately $5 million available in tax year 2016. The credit available will peak, when there is a five-combined-year period, in 2020 at approximately $24 million. Experience shows that 70 percent of the available credit will be used in the year the credit is generated and the remaining 30 percent of the credit will be used over the subsequent four years. This results in an estimated credit usage beginning at approximately $3 million in taxable year 2016 and peaking in 2020 at approximately $20 million. An adjustment was made to reflect the decreased depreciation deduction allowed when the credit is claimed.

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[2] Indexed using Department of Finance forecasts.

The tax year estimates were converted to fiscal year estimates, and then rounded to arrive at the estimates shown in the table above.

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