

ANALYSIS OF AMENDED BILL

Author: Cervantes Analyst: Jessica Deitchman Bill Number: AB 162
Related Bills: See Legislative History Telephone: 845-6310 Introduced Date: January 13, 2017
Amended Date: February 28, 2017
Attorney: Bruce Langston Sponsor: _____

SUBJECT: California Competes Credit/Small Business Definition

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), modify the definition of small business for purposes of the California Competes Tax Credit.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

RECOMMENDATION – NO POSITION

Summary of Amendments

The February 28, 2017, amendments removed the intent language from the bill and replaced them with the provisions discussed in this analysis. This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for the bill is to modify the definition of small business in the California Competes Tax Credit to only allow businesses with 50 or less employees to qualify.

EFFECTIVE/OPERATIVE DATE

This bill would be effective on January 1, 2018 and operative for allocations made for the 2018-19 fiscal year and each fiscal year thereafter.

STATE LAW

Current state law allows the California Competes Tax Credit. This credit is administered by the Governor's Office of Business and Economic Development (GO-Biz). The amount of the credit available to a taxpayer for a taxable year is negotiated and set forth in a written agreement between GO-Biz and a taxpayer, and approved by the "California Competes Tax Credit Committee," consisting of the State Treasurer, the Director of the Department of Finance (DOF), the Director of GO-Biz, and one appointee each by the Speaker of the Assembly and Senate Committee on Rules.

GO-Biz will consider a variety of factors when determining which businesses will receive the credit, but must reserve 25 percent of the aggregate amount of the credit that may be allocated for small businesses.

Small business is defined as an entity that during the previous taxable year had an amount of aggregate gross receipts, less returns and allowances reportable to this state, of \$2,000,000 or less.¹

Upon approval of the written agreement by the Committee, GO-Biz informs the Franchise Tax Board (FTB) of the terms and conditions of the written agreement. The FTB reviews the books and records of taxpayers allocated a California Competes Tax Credit to ensure that the taxpayer complied with the terms and conditions of the written agreement. The FTB shall provide information to GO-Biz with respect to whether a taxpayer is a “small business.”

THIS BILL

This bill would modify the definition of “small business” in the California Competes Tax Credit for allocations made for the 2018-19 fiscal year and each fiscal year thereafter.

The definition of “small business” would be defined as a business having 50 or fewer full-time equivalent employees, on average in the current and two preceding tax years. Additionally, a small business shall not include a sexually oriented business.²

The bill would remove the requirement that the FTB notify GO-Biz as to whether business is considered a small business.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would occur during the department’s normal annual update.

LEGISLATIVE HISTORY

AB 2055 (Gipson, 2015/2016), would have modified the items for Go-Biz to consider when allocating the credit to give special consideration to those installing zero or near-zero emissions equipment. AB 2055 failed to pass by the constitutional deadline.

AB 961 (Gallagher, 2015/2016), would have modified the amount of funding for the California Competes Tax Credit. AB 961 failed to pass by the constitutional deadline.

AB 1560 (Quirk-Silva, et al., Chapter 378, Statutes of 2014), modified the funding for the California Competes Tax Credit.

¹ As defined in Revenue & Taxation Code (R&TC) sections 17053.73 and 23626.

² As defined in R&TC sections 17053.73 and 23626.

AB 93 (Assembly Committee on Budget, Chapter 69, Statutes of 2013), repealed the geographically targeted economic development area tax incentives and the New Jobs Tax Credit under the PITL and CTL, created a New Hiring Tax Credit, established the California Competes Tax Credit Committee, and created the California Competes Tax Credit under the PITL and CTL.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a credit comparable to the credit allowed by this bill. The laws of these states were selected due to their similarities to California's economy, business entity types, and tax laws

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.

ECONOMIC IMPACT

Revenue Estimate

This bill, as amended on February 28, 2017, would not impact state income or franchise tax revenue.

Revenue Discussion

This bill would modify the definition of "small business," but would not increase the total amount of funds allocated to the California Competes Tax Credit.

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

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may argue that this bill would prevent large entities that may meet the current definition of "small business" from qualifying to receive the credit.

Opponents: Some may argue that this bill is overly complicated and would require a count of full-time equivalent employees which could be difficult for employers to calculate.

LEGISLATIVE STAFF CONTACT

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