

Author: Maienschein, et al. Analyst: Jessica Deitchman Bill Number: AB 1629  
Related Bills: See Prior Telephone: 845-6310 Amended Date April 18, 2017  
Analysis Attorney: Bruce Langston Sponsor: \_\_\_\_\_

**SUBJECT:** Employer Wages Paid to Disabled Employees Credit

## **SUMMARY**

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), create an income tax credit for certain employers that hire employees eligible to be paid a “special minimum wage” and pay them at least regular minimum wage.

## **RECOMMENDATION – NO POSITION**

## **SUMMARY OF AMENDMENTS**

The April 18, 2017, amendments added a co-author, limited the availability of the credit, and modified the definition of qualified employee. As a result of the amendments, a new implementation consideration has been identified. Except for the “This Bill,” “Technical Considerations,” “Economic Impact,” and “Implementation Considerations” sections, the department’s analysis of the bill as introduced February 17, 2017 still applies. The technical consideration was removed from the analysis by the department. The “Fiscal Impact” and “Policy Concerns” sections have been restated for convenience.

## **THIS BILL**

For taxable years beginning on or after January 1, 2018, and before January 1, 2023, under the PITL and CTL, this bill would allow a credit to a qualified employer who pays a qualified employee a wage that equals or exceeds the state minimum wage during the taxable year. The credit would be in an amount equal to the difference between the special minimum wage paid or incurred to the qualified employee and the minimum wage, multiplied by the number of hours worked by the qualified employee for the qualified employer during the taxable year.

The credit would be allowed only for the wages paid for the first 24 months of continuous employment of a qualified employee by a qualified taxpayer.

The bill would define the following terms:

- “Minimum wage” means the wage established by the Industrial Welfare Commission.
- “Qualified employee” means an individual who meets all of the following requirements:
  - May be paid a special minimum wage, pursuant to Section 214 (c) of Title 29 of the United States Code or Section 1191 or 1191.5 of the Labor Code, that is subject to withholding under the Unemployment Insurance Code.
  - Has not previously been employed by the qualified employer.
  - Was first hired by the qualified employer on or after January 1, 2018.

- “Qualified employer” means a taxpayer that employs a qualified employee in this state.

In the case of any pass-thru entity, the determination of whether a taxpayer is a qualified employer would be made at the entity level and any credit under this bill would be allowed to the pass-thru entity and passed through to the partners or shareholders.

- For purposes of this bill, the term “pass-thru entity” would mean any partnership or S Corporation.

A qualified taxpayer would be required to do both of the following:

- Obtain from the Industrial Welfare Commission a certification that a qualified employee meets the eligibility requirements, as specified. The certification would include the dollar amount of special minimum wage applicable to each qualified employee.
- Retain the certification and provide a copy of it upon request to the Franchise Tax Board (FTB).

This bill would exempt the FTB’s standards, criteria, procedures, determinations, rules, notices or guidelines from the requirements of the Administrative Procedure Act.

Unused credits could be carried over for five years or until exhausted.

Any deduction otherwise allowed would be required to be reduced by the credit allowed.

On or before June 1, 2023, the FTB would be required to submit a report to the Legislature that contains the following:

- The number of Californians with developmental disabilities employed during each year this bill is operative,
- The number of employers who used and applied for a credit each year, and
- The number of employees for whom a credit was authorized by this bill was claimed.

This bill would remain in effect only until December 1, 2023, and would be repealed as of that date.

## **IMPLEMENTATION CONSIDERATIONS**

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

The FTB would be required to report the number of Californians with developmental disabilities employed during the year. It is unclear how the FTB could determine this reporting requirement or whether another state agency currently gathers this information. It is recommended that this reporting requirement be removed or assigned to an appropriate state agency.

The bill would allow employers to move employees to another related entity and have that employee counted as a “new employee” for purposes of calculating this credit. 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, costs will be identified and the department will pursue a budget change proposal if necessary.

## **ECONOMIC IMPACT**

### **Revenue Estimate**

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1629 As Amended April 18, 2017 Assumed Enactment After June 30, 2017		
2017-18	2018-19	2019-20
- \$80,000	- \$400,000	- \$1,000,000

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

### **Revenue Discussion**

The revenue impact of this bill would depend on the number of California employers who have qualified disabled employed persons who are certified special minimum wage workers and are paid the prevailing minimum wage in California.

Using US Department of Labor statistics for certificate holders and additional data on workers qualified for the special minimum wage, the number of newly hired workers paid special minimum wages in California would be approximately 1,400 in 2018. It is assumed that 10 percent of these disabled persons work for for-profit entities that would claim this credit. It further is assumed that for-profit employers would learn about the new law and gradually increase wages paid to qualified employees. It is estimated that, 20 percent of for-profit employers would generate a credit in 2018, 50 percent in 2019, 85 percent in 2020, and 90 percent each year thereafter. It is assumed this bill would provide a small incentive for hiring disabled employees and the estimated number of qualified employees would increase 10 percent each year.

Using studies prepared by the US General Accounting Office on the special minimum wage, it was estimated the average special minimum wage worker would be paid 50 percent of California's minimum wage rate. Under current California law, the minimum wage would increase incrementally each year. The minimum wage in California would be \$11 in 2018, \$12 in 2019, and would increase to \$15 by 2022. Taxpayers would earn a credit for the difference between the special minimum wage and the California minimum wage. In 2018, the average

special minimum wage is estimated to be \$5.50 per hour. The estimated average credit would be equal to \$5.50 per employee per hour of wages earned ( $\$11.00 - \$5.50 = \$5.50$ ). Assuming the qualified employee works 20-hours per week and 50 weeks per year, the total estimated tax credit generated would be \$175,000 in 2018, \$670,000 in 2019, and \$1.4 million in 2020.

It is assumed that 80 percent of the credit generated would be used in the year generated and the remaining credits would be used over the next several years.

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

## **POLICY CONCERNS**

This bill would allow an employer a tax credit based on wages paid to a qualified employee and under current law, allow a deduction for those same wages, although reduced by the credit allowed. Thus, allowing an employer in certain circumstances to claim multiple tax benefits for the same item of expense.

## **LEGISLATIVE STAFF CONTACT**

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