



Analysis of Original Bill

Author: Brough	Sponsor:	Bill Number: AB 1900
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Subject: Employer Wages Paid to Qualified Full-Time Retail Employees Credit

Summary

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), create a credit for qualified taxpayers that hire qualified full-time employees.

This analysis does not address the bill's changes to the provisions of the Government Code relating to local municipal capital investment programs as these provisions do not impact the department's programs and operations.

Recommendation – No position.

Reason for the Bill

The reason for the bill is to encourage retail employers to hire employees in California.

Effective/Operative Date

As an urgency measure, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2018.

Federal/State Law

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Current state law allows a New Employment Credit (NEC) that is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract or former Enterprise Zone. The qualified taxpayer must receive a tentative credit reservation from the Franchise Tax Board (FTB) for that qualified full-time employee.

This Bill

This bill would, for each taxable year beginning on or after January 1, 2018, allow a credit to a qualified taxpayer equal to 17.5 percent of qualified wages paid or incurred during the taxable year with respect to a qualified employee.

The bill would define the following terms:

- “Qualified employee” means a full-time employee.
- “Qualified taxpayer” means a person that is engaged in a trade or business and meets both of the following conditions:
 - Is either
 - Not engaged in business in this state before January 1, 2018, or
 - Engaged in business in this state before January 1, 2018, and has a net increase in full-time qualified employees on or after January 1, 2018.
 - Is a retail trade entity that occupies any of the following:
 - An existing building of at least 500,000 square feet.
 - A developed or renovated greenfield site of at least 100 acres.
 - A combination of infill, existing buildings, and a renovated or redeveloped Greenfield site that is at least 500,000 square feet.

“Qualified taxpayer” would specifically exclude a person that is located within a 25-mile radius of any other person engaged in a business or trade of like kind.

- “Qualified wages” means wages subject to withholding under Division 6¹ of the Unemployment Insurance Code.

The credit would be available to a qualified taxpayer for five consecutive taxable years beginning on the date that the qualified taxpayer is either first engaged in a trade or business in this state or first has a net increase in full-time employees, as specified.

Any excess credit may be carried over for up to six taxable years, or until exhausted.

Any deduction allowed for wages paid or incurred by the qualified taxpayer would be reduced by the amount of the credit allowed.

The credit would be required to be claimed on a timely filed original return.

The FTB would be allowed to adopt regulations as necessary or appropriate to carry out the purpose of the credit. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to any standard, criterion, procedure, determination, rule, notice or guideline established or issued by the FTB.

¹ Commencing with Section 1300

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill uses terms and phrases that are undefined, i.e., "full-time," "retail trade entity," "business or trade of a like kind." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended to add definition for these terms and phrases.

The credit would be allowed for wages paid to all qualified employees during a taxable year. If the author intends that the credit be limited to, for example, only those wages paid to those qualified employees that represent the net increase in employment, this bill should be amended.

Because "increase in employment" is also undefined, the bill would allow employers to move employees to another entity within the combined or related group and have them counted as an increase in employment, which in turn would mean that all full-time employee wages would now qualify for the credit. For example, if there are corporations A, B, and C in a combined group, corporation A could hire an employee into corporation A and then move the employee to corporation B and have that count as an "increase in employment," as defined in the bill. If this is contrary to the author's intent, the bill should be amended.

Because the bill fails to state otherwise, the credit, once triggered, would be available to a qualified taxpayer for five consecutive years without regard to maintaining an increase in employment. If this is contrary to the author's intent, this bill should be amended.

The department lacks experience to determine whether the occupancy requirement or other requirements to be a "qualified taxpayer" are met. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. It is recommended that this bill be amended to include a certifying agency.

Legislative History

AB 661 (Fuller, 2017/2018) would have expanded the NEC by modifying eligibility for the credit, the definition of qualified employee and the credit's calculation. SB 661 failed to pass out of the house of origin by the constitutional deadline.

SB 507 (Hueso, 2017/2018) would have expanded the NEC by adding two new types of qualified employees. SB 507 failed to pass out of the house of origin by the constitutional deadline.

SB 1216 (Hueso, 2015/2016) would have allowed a credit to a qualified employer who employed a qualified employee who was an ex-felon. SB 1216 failed to pass out of the house of origin by the constitutional deadline.

AB 1404 (Grove, 2015/2016) would have allowed a credit to a qualified employer who employs a qualified employee and pays the qualified employee a wage that exceeds the minimum wage during the taxable year. AB 1404 failed to pass out of the house of origin by the constitutional deadline.

SB 90 (Galgiani and Canella, Chapter 70, Statutes of 2013) modified AB 93 as chaptered on July 11, 2013. Specifically, SB 90, for purposes of the NEC, modified the definition of qualified employee, excluded sexually oriented businesses from the definition of qualified taxpayer and small business, and modified the defined geographical area that the hiring credit may be generated in.

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 NEC, established the California Competes Tax Credit Committee, and created the California Competes Credit under the PITL and CTL.

Other States' Information

Review of *Illinois, Florida, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

Fiscal Impact

This bill would impact the department's programming, printing, and processing costs. As the bill continues to move through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1900 as Introduced January 22, 2018
For Taxable Years Beginning On or After January 1, 2018
Assumed Enactment after June 30, 2018

(\$ in Billions)

Fiscal Year	Revenue
2018-2019	- \$11.0
2019-2020	- \$ 9.5
2020-2021	- \$ 9.5

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

Revenue Discussion

Based on FTB tax data, it is estimated that \$224 billion of wages paid by qualified employers would be eligible for the credit in 2018. Applying the credit of 17.5 percent results in an estimated credit generated of \$39 billion in the 2018 taxable year. This estimate assumes that in taxable year 2018, all qualified taxpayers would begin generating credits would continue to do so for five consecutive years and each cohort thereafter would do the same. The amount of credit claimed would be limited by the taxpayer's tax liability. It is estimated that 23 percent of the credit, or \$9 billion, would be claimed in the year generated.

This bill specifies that the wage expense deduction would be reduced by the amount of the credit allowed. To arrive at the offsetting tax effect of wage expense deductions that would be otherwise allowed under current law, the credit amount is multiplied by the marginal tax rate of 6 percent, or \$600 million in reduced deductions. This results in a net revenue loss of approximately \$8.5 billion in the 2018 taxable year. Approximately 60 percent of the credit would be claimed by corporate taxpayers and the remaining 40 percent by personal impact taxpayers.

Because the operative date is January 1, 2018, and the assumed enactment date is after June 30, 2018, the revenue effect for all of taxable year 2018 will fall in fiscal year 2018-19.

Fiscalization of the remaining taxable years is split between fiscal years. The results of the fiscalization are reflected in the above table.

Support/Opposition

Support: None Provided.

Opposition: None Provided.

Arguments

Proponents: Some may argue that the credit established by this bill would encourage retail trade businesses to locate and expand in California thus increasing employment in the state.

Opponents: Some may argue that the bill's provisions are overly complex and could result in underutilization of the credit.

Policy Concerns

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense.

This bill fails to limit the aggregate amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited to a specified amount on a per taxable year basis.

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

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