STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Amended Bill

Author: Caballero, et al.	Sponsor:	Bill Number: AB 2166
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Attorney: Bruce Langston	Related Bills: See Legislative History	

Subject: Agriculture Development Credit

Summary

This bill, under the Food and Agriculture Code (FAC), would create the Agriculture Technology Innovation Institute, and, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would create a credit for agricultural technology deployment.

This analysis only addresses those provisions of the bill that would impact the department's operations.

Recommendation – No position.

Summary of Amendments

The March 14, 2018, amendments added coauthors, revised tax credit requirements, and added a sunset date. The April 2, 2018, amendments added a coauthor, modified a definition, and reduced an appropriation to the Department of Food and Agriculture.

This is the department's first analysis of the bill.

Reason for the Bill

The reason for the bill is to create economic incentives for the adoption of agricultural technology that increases "on farm" efficiency related to the state's greenhouse gas reduction and other environmental goals, such as using less water.

Effective/Operative Date

This bill would be effective January 1, 2019, and specifically operative with regard to the tax credit for taxable years beginning on or after January 1, 2020, and before January 1, 2025.

Federal/State Law

Existing federal and state laws contain provisions specifically relating to farmers and agriculture, including special accounting and inventory methods, certain income deferral conditions, and the deduction of farming expenses.[1]

Existing federal and state 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 federal and state laws lack a comparable credit to the one that would be created by this bill.

This Bill

For each taxable year beginning on or after January 1, 2020, and before January 1, 2025, this bill, under the PITL and CTL, would allow a credit for each acre on which agricultural technology is deployed during the taxable year for at least three consecutive months, in an amount as follows:

- For tier 1 farms, which are farms less than 100 acres in size, fifty dollars ($50).
- For tier 2 farms, which are farms at least 100 acres but less than 500 acres in size, forty dollars ($40).
- For tier 3 farms, which are farms at least 500 acres but less than 1,000 acres in size, thirty dollars ($30).
- For tier 4 farms, which are farms at least 1,000 acres but less than 2,000 acres in size, twenty dollars ($20).
- For tier 5 farms, which are farms of 2,000 or more acres in size, ten dollars ($10). The credit amount on a tier 5 farm could not exceed fifty thousand dollars ($50,000) per taxpayer per taxable year.

Under the FAC, the Agriculture Technology Innovation Institute (Institute) would be responsible for the administration of the credit this bill would establish.

[1] On December 22, 2017, President Trump signed into law H.R. 1, originally known as the Tax Cuts and Jobs Act of 2017. Public Law (PL) 115-97. PL 115-97 modifies certain itemized deductions including the state and local tax deduction. Additionally, PL 115-97 accelerates the deduction of capital investments and makes other changes related to small business. The mandated state report of federal income tax changes, including those made by PL 115-97, will be submitted to the Legislature by the April 20, 2018, deadline.

This bill would define the following terms and phrases:

- "Agricultural technology," defined by reference to Section 25.3 of the FAC, created by this bill, means technology that improves the efficiency of water use, energy use, greenhouse gases, fertilizer use, or pesticide use, or that automates a part of the farming process to make farm workers more efficient.
- "Institute" means the Agriculture Technology Innovation Institute (Institute) within the Department of Food and Agriculture that would be created by this bill.

This bill, under the PITL and the CTL, would require the Institute to provide a certificate to a taxpayer who confirms all of the following:

- The deployment of agricultural technology for at least three consecutive months.
- Paying or incurring expenses, during the 12 months immediately preceding the taxpayer's application for certification, for the agricultural technology deployed, as required.
- One or both of the following:
    - An improvement of efficiency in water use, energy use, greenhouse gases, fertilizer use, or pesticide use within the business operations of the taxpayer, resulting from the deployment of the agricultural technology, demonstrated through metering, bill statements, or business logs or records.
    - An increase in farm worker efficiency demonstrated by subtracting the quotient of the crop yield divided by hours of work performed before the agricultural technology was deployed from the quotient of the crop yield divided by hours of work performed after that agricultural technology was deployed.

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

The credit would be repealed by its own terms on December 31, 2031.

This bill would express legislative intent to comply with Revenue and Taxation Code section 41 requiring new legislation which creates a new tax credit to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

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 is silent on whether the Institute would be required to provide to the Franchise Tax Board (FTB) the certificate. Additionally, this bill is silent on the information that would be required on each credit certificate. For ease of administration, the author may wish to consider amending the bill to require that the certification include the following:

- The taxpayer's name and property address.
- The taxpayer's social security number or taxpayer identification number.
- The certified credit amount.
- The date of the certification.

Technical Considerations

Retaining credit language in statute through the carryover period is unnecessary because existing state law provides this general rule. A repeal date of December 1, 2025, would address this concern.

Legislative History

AB 2957 (Gallagher, 2017/2018) would allow a credit to a qualified taxpayer that employs a qualified employee in a water innovation and technology zone. AB 2957 is pending before the Assembly Revenue and Taxation Committee.

AB 2537 (Grove, 2013/2014) would have allowed a credit for the installation of water-conserving plumbing fixtures. AB 2537 failed to pass by the constitutional deadline.

Other States' Information

Review of *Florida, Illinois, 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

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.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2166 as Amended April 2, 2018
For Taxable Years Beginning On or After January 1, 2020 and Before January 1, 2025
Assumed Enactment after June 30, 2018

($ in Millions)

Fiscal Year	Revenue
2018-2019	n/a
2019-2020	- $85
2020-2021	- $170

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

The revenue impact of the bill would depend on the size of California farms and the number of acres on which farmers would implement agricultural technologies that comply with the requirements of the bill. Because the amount of the credit is based on the number of acres rather than the implementation cost of the technology, the estimate assumes the credit would provide a very strong incentive with almost all farmers adopting agricultural technologies that would qualify for the credit.

Based upon farm size data from the United States Department of Agriculture, there are approximately 26 million acres of farmland in California. The estimate assumes 80 percent of farmers would take advantage of the credit in the first year and 95 percent in the subsequent five years. Using the credit amount by farm “tier” size specified in the bill, there would be an estimated $340 million in credits generated in the 2020 taxable year. Based upon FTB tax data for farms, it is estimated that 65 percent of taxpayers would have sufficient tax liability to claim the credit. For those taxpayers, 70 percent or $150 million would be used in the 2020 taxable year. The remaining credit would be utilized over the next three years.

The tax-year estimates are converted to fiscal-year revenue estimates and then rounded to arrive at the amounts shown in the above table.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may say that this bill would encourage the use of innovative and efficient agricultural technology.

Opponents: Some may say that providing a tax incentive to encourage innovation and efficiency will result in revenue losses, which have to be paid for with higher taxes on others or reductions in services.

Policy Concerns

This bill would allow tax credits for activities that are required by existing state and federal laws or regulations. For example, this bill would allow a credit based on an improvement of efficiency of greenhouse gases; however, California law (AB 32 and similar laws) currently restricts such emissions.

Because the bill fails to specify otherwise, the credit would be allowed for the deployment of agricultural technology to acreage located outside of the state.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense because the bill fails to disallow or reduce credits or deductions based on the same expenses that would generate this credit.

Except for Tier 5 farms, this bill fails to limit the total amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited by a maximum amount allowed (such as for Tier 5 farms) or either per-property or per-taxpayer basis.

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