



Analysis of Amended Bill

Author: Ting and Lara

Sponsor:

Bill Number: AB 2355

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Amended: March 22, 2018

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Related Bills: See Legislative
History

Subject: Disallow Credits to Taxpayers that Contract or Subcontract to Build Border Wall

Summary

This bill would, under the Personal Income Tax Law and the Corporation Tax Law, prohibit taxpayers that contract or subcontract to build, maintain, or provide materials for a border wall, from claiming certain tax credits.

Recommendation – No position.

Summary of Amendments

The March 22, 2018, amendments removed intent language and replaced it with the provisions of the bill discussed in this analysis.

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

The analysis only discusses the provisions of the bill that impact the department.

Reason for the Bill

The reason for the bill is to discourage taxpayers from contributing to the building of a border wall by denying them certain tax credits in California.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2019.

Federal/State Law

Existing federal and state tax law allow a Research Credit. The Research Credit is designed to encourage companies to increase their research and development activities. State law lacks a sunset date.

Current state law allows a New Employment Credit 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 for each qualified full-time employee. This credit is available for taxable years beginning on or after January 1, 2014, and before January 1, 2021.

Current state law allows a California Competes Credit 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. This credit is available for taxable years beginning on or after January 1, 2014, and before January 1, 2025.

This Bill

This bill would, for taxable years beginning on or after January 1, 2019, disallow a Research Credit, New Employment Credit, or California Competes Credit, to a taxpayer that contracts or subcontracts to build, maintain, or provide materials for President Trump's Border Wall.

"President Trump's Border Wall" would mean any physical wall or barrier constructed along the border between the United States and Mexico, consistent with President Donald J. Trump's campaign promises to build a border wall or Executive Order 13767¹ signed January 25, 2017, by President Donald J. Trump, regardless of whether the wall or barrier is paid for by the government of the United States, the government of Mexico, increased trade tariffs, or any combination of funds from those sources.

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 lacks administrative details necessary to implement the prohibition on credits specified in the bill, and determine its impacts to the department's systems, forms, and processes. For example, the bill is silent on the following issues:

- What are the definitions of "a taxpayer that contracts or subcontracts?"
- How would the department know if a taxpayer was a contractor or subcontractor on the wall?

¹ Titled "Border Security and Immigration Enforcement Improvements."

- If a taxpayer is a contractor or subcontractor for part of a year, would that prevent them from claiming credits for the entire year? A partial year? In perpetuity?
- What does it mean to “build,” “maintain” or “provide materials?”

Legislative History

Research of California legislation found no proposed or enacted legislation similar to this bill.

Other States’ Information

Review of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable restrictions on eligibility for 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 Discussion

This bill is estimated to result in a revenue gain; however, estimating the revenue gain from eliminating credits for taxpayers associated with the construction, maintenance, or providing materials to President Trump’s border wall, cannot be predicted. To determine the magnitude of the gain, both the taxpayer’s tax liability and the dollar amount of credit available to that taxpayer would need to be known. Because it is difficult to predict the number of taxpayers affected by this bill, their tax liability, and the credit available to offset tax, the revenue impact is unknown.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue that this bill would discourage California taxpayers from participating in building a wall and thus prevent the building of the wall.

Opponents: Some may argue that this bill may be overly broadly interpreted, inadvertently resulting in the disallowance of credits for taxpayers that have no connection with the specified activities.

Policy Concerns

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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