



Analysis of Amended Bill

Author: Burke and Low

Sponsor:

Bill Number: AB 2700

Analyst: Jessica Deitchman

Phone: (916) 845-6310

Amended: March 21, 2018, and
May 7, 2018

Attorney: Bruce Langston

Related Bills: See Legislative
History

Subject: Credit for Education and Training

Summary

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), create two tax credits for costs related to specific education and training programs.

Recommendation – No position.

Summary of Amendments

The March 21, 2018, amendments removed provisions relating to certain reporting due dates and replaced them with provisions to create a tax credit for certain costs associated with employee development.

The May 7, 2018, amendments removed those provisions and recast the bill to provide two separate tax credits, as 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 encourage employers to participate in creating and providing education and training programs to assist in preparing students for high demand jobs.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for each taxable year beginning on or after January 1, 2018, and before January 1, 2028.

Federal/State Law

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 generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Under Revenue and Taxation Code (R&TC) section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

There are no federal or state credits comparable to the credit this bill would create.

This Bill

For each taxable year beginning on or after January 1, 2018, and before January 1, 2028, under the PITL and the CTL, this bill would allow a tax credit in an amount equal to 30 percent of the costs paid or incurred by a qualified taxpayer during the taxable year for qualified expenditures.

The bill would define the following:

- “Qualified expenditures” means the costs paid or incurred by a qualified taxpayer to create and administer an education and training program designed to prepare students for high demand jobs including, but not limited to, costs related to the development of curriculum, recruitment, training, and retention of instructors, and the creation of an application for the program on the qualified taxpayer’s Internet Web site.
- “Qualified taxpayer” means a person or entity engaged in a trade or business within the state that partners with a California Community College or the California State University to create and administer an education and training program designed to prepare students for high demand jobs.

This credit would only be allowed on a timely filed original return by a taxpayer.

The Franchise Tax Board (FTB) may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section. Chapter 3.5¹ 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.

This section would remain in effect until December 1, 2028, and as of that date is repealed.

¹ Commencing with Section 11340.

This bill would also create an additional credit available for taxable years beginning on or after January 1, 2018, and before January 1, 2028, under the PITL and the CTL, equal to 15 percent of costs paid or incurred by the qualified taxpayer during the taxable year for qualified expenditures.

The bill would define the following:

- “Qualified expenditures” means the costs paid or incurred by a qualified taxpayer that are related to program activities for the “Doing What Matters” program, including, but not limited to, costs related to partnering with the California Community Colleges to shape and develop curriculum.
- “Qualified taxpayer” means a person or entity engaged in a trade or business within the state and is a “Doing What Matters” business partner with the California Community Colleges Economic and Workforce Development Division.

This credit would only be allowed on a timely filed original return.

The Franchise Tax Board (FTB) may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section. Chapter 3.5² 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.

This section would remain in effect until December 1, 2028, and as of that date is repealed.

The bill states that it is the intent of the legislature to comply with Section 41.

Implementation Considerations

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

The definition for “qualified expenditures” under both credits is overly broad and may include expenditures that are contrary to the author’s intent. The author may want to amend the bill to clearly define the phrase and remove the phrase “but not limited to.”

The bill uses terms and phrases that are undefined, i.e., “education and training program,” “that partners with,” “that are related to program activities,” and “business partner.” The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. To clarify the author’s intent, it is recommended that the bill be amended.

² *ibid.*

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.

Because the bill fails to specify otherwise, the credit allowed by this bill would be available to any qualified taxpayer that pays or incurs qualified expenditures for training provided to anyone in or out of this state whether or not they are an employee of the qualified taxpayer. If this is contrary to the author's intent, the bill should be amended.

If this bill is enacted in late September or October of 2018, the department would have developed the forms and instructions for the 2018 taxable year. Thus, the department may incur additional costs to develop alternative forms and instructions in the short time frame necessary to ensure they are available for taxpayers.

Legislative History

AB 2164 (Patterson, et al., 2013/2014), would have allowed a credit to employers that provide education or training to employees. AB 2164 failed to pass out of the house of origin by the constitutional deadline.

Other States' Information

Review of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credit. 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

The revenue estimate for this bill would be dependent upon the number of "qualified taxpayers" and the amount of "qualified expenditures". Because the definitions of "qualified taxpayers" and "qualified expenditures" are overly broad, the revenue impact cannot be determined. However, every \$100 million in "qualified expenditures" would generate \$30 million in tax credits for "qualified expenditures" related to education and training programs for high demand jobs. In addition, every \$100 million in "qualified expenditures" would generate \$15 million in tax credits for "qualified expenditures" related to the "Doing What Matters" program. Assuming that 90 percent of taxpayers would have sufficient tax liabilities to claim the credit in the year generated, this results in a revenue loss of approximately \$27 million related to education and training programs for high demand jobs for every \$100 million in "qualified expenditures" and a revenue loss of approximately \$14 million related to the "Doing What Matters" program for every \$100 million in "qualified expenditures".

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.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue that this bill would provide an incentive for employers to administer an education and training program to prepare student for high demand jobs and thus increase the knowledge of the California workforce.

Opponents: Some may argue that the potential economic impact of this credit would outweigh any benefit it may provide.

Policy Concerns

This bill would allow a credit for costs that may be currently deductible as ordinary and necessary business expenses. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense.

The credit would be allowed for costs to administer an education and training program either inside or outside California.

This bill lacks carryover language. As a result, any unused credit would be lost if the taxpayer is unable to use the entire credit amount in the year claimed. The author may wish to add language allowing a limited carryover period.

Legislative Staff Contact

Jessica Deitchman
Legislative Analyst, FTB
(916) 845-6310
jessica.deitchman@ftb.ca.gov

Jame Eiserman
Revenue Manager, FTB
(916) 845-7484
jame.eiserman@ftb.ca.gov

Diane Deatherage
Legislative Director, FTB
(916) 845-6333
diane.deatherage@ftb.ca.gov