STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Original Bill

Author: Gallagher	Sponsor:	Bill Number: AB 2945
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Attorney: Bruce Langston	Related Bills: See Legislative History	

Subject: Employer Wages Paid to Hearing Impaired Employees Credit

Summary

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), create a tax credit for wages paid by a taxpayer to employees that have little to no functional hearing.

Recommendation – No position.

Reason for the Bill

The reason for the bill is to encourage taxpayers to employ individuals with little to no functional hearing.

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, 2020.

Federal/State Law

Current state and federal 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.

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 (FTB) for that qualified full-time employee.

This Bill

For each taxable year beginning on or after January 1, 2020, this bill would allow, under the PITL and CTL, a tax credit equal to the qualified wages paid or incurred to a qualified employee by an employer during the taxable year, not to exceed 35 percent of the first $6,000 of qualified wages.

The bill would define the following terms:

- "Qualified employee" means an employee who has little to no functional hearing.
- "Qualified wages" means wages subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.

A taxpayer that is a sexually oriented business, as defined,[1] would be ineligible for the credit.

Any credit amount in excess of tax could be carried forward indefinitely.

A deduction otherwise allowed for any amount paid or incurred by the taxpayer upon which the credit is based would be required to be reduced by the amount of the credit allowed.

The bill specifies that the provisions of Section 41[2] would be inapplicable.

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.

This bill uses the undefined phrase, "little to no functional hearing." The absence of a definition to clarify this phrase could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the phrase.

The department lacks expertise on hearing disabilities. It is unclear how a taxpayer or the department would verify that an employee has limited or no hearing. Typically, credits involving areas for which the department lacks expertise are certified by another agency that possess 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.

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[1] As described in clause (v) of subparagraph (C) of paragraph (11) of subdivision (b) of Section 17053.73.
[2] Under Revenue and Taxation Code 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.

It is unclear whether the credit amount would be calculated as 35 percent of wages up to $6,000 or 100 percent of wages up to $2,100 (35% x $6,000 = $2,100). For clarity and to ensure consistency with the author's intent, the bill should be amended to specify how the credit would be calculated and the maximum credit allowable per taxable year if it should be calculated on a per taxpayer or per qualified employee basis.

Technical Considerations

For clarity, it is recommended the term "qualified taxpayer" be added to the language to clearly define which taxpayers would qualify for the credit and which taxpayers are excluded.

Legislative History

AB 1586 (Gallagher, 2017/2018), substantially similar to this bill, would have created a tax credit for certain taxpayers that employ employees that have little to no functional hearing. AB 1586 failed to pass out of the house of origin by the constitutional deadline.

AB 1629 (Maienschein, 2017/2018) would have allowed a credit for employers that hire employees eligible to be paid a special minimum wage and pay them at or above the minimum wage. AB 1629 failed to pass out of the house of origin by the constitutional deadline.

AB 1404 (Grove, 2015/2016) would have allowed a credit for employers that hire employees eligible to be paid a special minimum wage and paid them at or above the minimum wage. AB 1404 failed to pass out of the house of origin by the constitutional deadline.

AB 2582 (Maienschein, 2015/2016) would have allowed a credit for employers that hire employees eligible to be paid a special minimum wage and paid them at or above minimum wage. AB 2582 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

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2945 as Introduced on February 16, 2018
For Taxable Years Beginning On or After January 1, 2020
Assumed Enactment after June 30, 2018

($ in Millions)

Fiscal Year	Revenue
2018-2019	$0
2019-2020	- $120
2020-2021	- $260

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

Based on United States Census Bureau data for disabled labor force employment, it is estimated there would be 150,000 qualified employed individuals with hearing disabilities working for for-profit firms in taxable year 2020. It is then assumed that there would be a short phase-in period as taxpayers learn about the credit, resulting in an estimated $720 million in qualified wages in taxable year 2020, $900 million in taxable year 2021, increasing to $1 billion in taxable year 2026. For purposes of this estimate, it is assumed employers would generate the credit on the first $6,000 in qualified wages for each year a hearing impaired individual is employed. Applying a credit percent of 35 percent resulted in approximately $250 million in credit generated. It is estimated that 90 percent, or $230 million would be used in 2020 and the remainder would be carried over the next two years.

This bill specifies that the wage deduction would be reduced by the amount of the credit allowed. To arrive at the offsetting tax effect of wage deductions that would be otherwise allowed under current law, the credit amount is multiplied by the average marginal tax rate resulting in an estimated $10 million offsetting gain in taxable year 2020. This offset results in a $220 million revenue loss in taxable 2020, and increases to $380 million in taxable year 2026.

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

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some may argue that this bill could encourage hiring of employees with little to no functional hearing individuals by offering a tax credit to employers.

Opponents: Some may argue that this credit is overly narrow and inadvertently excludes other groups of individuals that have difficulty obtaining employment who could benefit from an incentive being offered to employers that hire these employees.

Policy Concerns

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

This bill would allow taxpayers to claim multiple tax benefits for the same item of expense because wages paid to employees may also be eligible under another provision of state tax law for a wage credit.

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a carryover period limitation because experience shows credits typically are exhausted within eight years of being earned.

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