



Analysis of Amended Bill

Author: Calderon	Sponsor:	Bill Number: AB 1228
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Subject: Reusable or Compostable Cutlery Credits

Summary

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a tax credit for purchases of reusable or compostable cutlery.

Recommendation – No position.

Summary of Amendments

The April 4, 2019, amendments removed the provisions related to the Public Resources Code and replaced them with the provisions that would establish a credit for purchases of reusable or compostable cutlery.

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

Reason for the Bill

The reason for the bill is to encourage the purchasing of reusable or compostable cutlery by offering a tax credit.

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 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 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 law lacks a credit comparable to the credit this bill would create.

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.

This Bill

This bill would, under the PITL and CTL for taxable years beginning on or after January 1, 2019, allow a tax credit to a qualified taxpayer in an amount equal to costs paid or incurred by the taxpayer, during the taxable year, for reusable or compostable cutlery.

This bill would define "qualified taxpayer" as a taxpayer that is a food service business with a gross income for the taxable year in which the credit is claimed of ____ dollars (\$____) or less.

The bill would allow, in addition to the tax credit, a deduction for amounts used in the calculation of the credit.

This bill states that it is the intent of the Legislature to comply with R&TC section 41.

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 that are undefined or unspecified, i.e., "reusable or compostable cutlery," "food service business," and, "____ dollars." The absence of definitions to clarify these terms and specific dollar amounts 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 terms.

This bill uses the phrase "gross income." However, "net income" is the customary term used within the CTL. For consistency and to avoid disputes between taxpayers and the department, it is recommended that this bill be amended to reference the correct term "net income."

This bill lacks a requirement that the credit be allowed for food service businesses located in California. If this is contrary to the author's intent, this bill should be amended.

This bill lacks a limitation on the amount of the credit. If this is contrary to the author's intent, this bill should be amended.

Legislative History

None.

Other States' Information

The states surveyed include *Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Illinois, Massachusetts, Michigan, Minnesota, and New York laws lack a comparable tax credit that this bill would allow.

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 1228 as Amended April 4, 2019
Assumed Enactment after June 30, 2019

(\$ in Millions)

Fiscal Year	Revenue
2019-2020	-\$850
2020-2021	-\$1000
2021-2022	-\$1200

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 data from the National Restaurant Association, there were approximately 156,000 food service businesses located in California in 2018. Research indicates that the average food service business serves approximately 160,000 customers per year. If all food service businesses purchased compostable or reusable cutlery, at an average replacement cost of approximately \$28,000 per year, they would spend an average of \$4.3 billion annually. It is estimated that maintaining reusable cutlery would increase those costs by an additional \$3.5 billion, for a total of \$7.8 billion.

It is assumed that approximately 40 percent, or \$3 billion, of all cutlery purchases are for compostable or reusable cutlery. Adjusting for changes in the economy over time results in an estimated \$3.1 billion in purchases made during the 2019 taxable year. Applying a credit rate of 100 percent results in \$3.1 billion in credit generated in 2019.

It is estimated that 75 percent, including the S corporation adjustment, or \$2.5 billion, would be earned by taxpayers who have a tax liability to offset with the credit. Of that amount, 25 percent, or \$580 million, would be claimed in the year generated and the remaining credit would go unused.

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

Policy Concerns

This bill would allow a credit and a deduction for the same expenses. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense.

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

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.

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