STATE OF CALIFORNIA
Franchise Tax Board

Summary Analysis of Amended Bill

Author: Calderon	Sponsor:	Bill Number: AB 1228
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Subject: Credits for the Purchase of Compostable Cutlery

Summary

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

Recommendation – No position.

Summary of Amendments

The April 30, 2019, amendments removed "reusable" cutlery language, modified the definition of a "qualified taxpayer," modified the operative date, added a sunset date, specified that the credit would be allowed in lieu of a deduction, added Legislative intent, and made other technical changes.

As a result of the amendments, one of the department's implementation considerations and two of the policy concerns discussed in the department's analysis of the bill as amended April 4, 2019, were resolved. Except for the "Reason for the Bill," "Effective/Operative Date," "This Bill," "Implementation Considerations," "Economic Impact," and "Policy Concerns," sections, the remainder of the department's analysis of the bill as amended April 4, 2019, still applies. The "Fiscal Impact" section and outstanding "Implementation Considerations" and "Policy Concerns" have been restated below for convenience.

Reason for the Bill

The reason for the bill is to encourage the food service industry to lessen single-use plastic cutlery waste by offering a tax credit for purchases of compostable cutlery.

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, and before January 1, 2025.

This Bill

This bill would, under the PITL and CTL for taxable years beginning on or after January 1, 2020, and before January 1, 2025, allow a tax credit to a qualified taxpayer in an amount equal to 20 percent of costs paid or incurred by the taxpayer, during the taxable year, for the purchase of compostable cutlery.

This bill would define "qualified taxpayer" as a taxpayer that is a food service business.

This bill specifies that no deduction would be allowed for the same expenses for which the credit was allowed.

This bill states that it is the intent of the Legislature to comply with Revenue and Taxation Code (R&TC) section 41.

This credit would be repealed by its own terms on December 1, 2025.

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 the terms "compostable cutlery" and "food service business," that are undefined. The absence of definitions to clarify these terms 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.

Because the bill fails to specify otherwise, the credit would be allowed for cutlery purchased and/or used outside of California. If this is contrary to the author's intent, this bill should be amended.

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 30, 2019
Assumed Enactment after June 30, 2019

($ in Millions)

Fiscal Year	Revenue
2019-2020	-$0.7
2020-2021	-$1.7
2021-2022	-$1.9

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, in 2018, there were approximately 156,000 food service businesses located in California. It is assumed that less than three percent of purchased cutlery is compostable. Using an average cost of approximately $4,000 per year, it is estimated that food service businesses would spend $13.5 million in taxable year 2020 on compostable cutlery. Applying a 20 percent credit rate results in an estimated $2.7 million credit generation. It is assumed that taxpayers would quickly learn of the credit and that 90 percent, or $2.4 million credit would be generated in the first year it is available. The credit would grow each year thereafter, peaking at $3.3 million in taxable year 2024.

It is estimated that 80 percent, including the S corporation adjustment, or $2 million, would be earned by taxpayers that have a tax liability to offset with the credit. Of that amount, 90 percent, or $1.7 million, would be claimed in the year generated and the remaining credit would go unused.

To arrive at the offsetting tax effect of the expense deduction that would otherwise be allowed under current law, it is estimated that qualified taxpayers would be unable to deduct approximately $2 million in qualified expenses in the 2020 taxable year. Applying an average tax rate of 7 percent, results in an offsetting revenue gain of $140,000. The resulting net revenue loss, for taxable year 2020, would be $1.6 million. The revenue loss would increase to $2.2 million by taxable year 2024.

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 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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