STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Rivas and Garcia	Sponsor:	Bill Number: AB 2956
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SUBJECT

Agricultural Overtime Premium Tax Credits Act of 2020

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would create the Agricultural Overtime Premium Tax Credits Act of 2020, and would allow a credit for the overtime wage premium paid or incurred by the taxpayer in the taxable year to an agricultural employee.

The Franchise Tax Board (FTB) would be required to report specified information to the Legislature in compliance with Section 41 of the Revenue and Taxation Code (R&TC).

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to ensure fair wages and hours for farmworkers by providing tax relief to California's agricultural employers thereby eliminating a competitive disadvantage from providing overtime compensation.

ANALYSIS

For each taxable year beginning on or after January 1, 2020, and before January 1, 2023, this bill, under the PITL and the CTL, would allow a credit equal to the overtime wage premium paid or incurred by the taxpayer in the taxable year to an agricultural employee.

This bill would define the following terms and phrases:

- "Agricultural employee" means a person employed in an agricultural occupation, as that term is defined in Labor Code section 859.
- "Overtime wage premium" means the portion of the amount paid to an employee for overtime hours determined by multiplying the number of overtime hours by the difference in the employee's regular rate of pay and the rate required to be paid to the employee for those overtime hours pursuant to Labor Code sections 860 or 862(a). (Refer to Appendix for more detail).
- "Overtime hours" means the amount of hours an employee worked in excess of the daily or weekly limits specified in Labor Code sections 860 and 862(a) for which the employee is required to be compensated at rates specified by those provisions.

This bill, under SEC. 4, would specify goals, purposes, and objectives of the credit as required by R&TC section 41. The performance indicator would be how many taxpayers are allowed this credit.

Notwithstanding R&TC section 19542, the FTB would be required to annually publish anonymized data on the Agricultural Overtime Premium Tax Credits Act of 2020 through the 2024 calendar year.

The credit would be repealed by its own terms on December 1, 2023.

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, 2023.

Federal/State Law

Under existing state and federal law, taxpayers engaged in the business of farming are allowed to deduct the expenses related to planting and growing crops as an ordinary and necessary business expense, which would include compensation to an agricultural employee.

Under California law, the CTL allows the assignment of certain eligible credits to taxpayers that are members of a combined reporting group. "Assignment" refers to the ability of a taxpayer that is a member of a combined reporting group to elect to transfer certain unused credits to a related corporation, as specified. The election to transfer any credit is irrevocable once made and is required to be made on the taxpayer's original return for the taxable year in which the assignment is made.

A credit earned by members of a combined reporting group may be assigned to an affiliated corporation that is a member of the same combined reporting group.

Under R&TC section 41, legislation that would create a new tax expenditure, which includes a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state, is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax benefit.

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

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.

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. For clarity and ease of administration, it is recommended that this bill be amended to include a certifying agency.

This bill would require the FTB to annually publish "anonymized data" on the Agricultural Overtime Premium Tax Credits Act of 2020 through the 2024 calendar year. It is unclear whether this data would consist of the "number of taxpayers allowed the credits." For clarity and ease of administration, it is recommended that the bill be amended.

Additionally, the reporting requirement would be operative through the 2024 calendar year. Tax returns are generally filed a year in arrears. Personal income tax returns may be filed, with extension, until October 15th of the following year. Corporate returns may be filed even later, depending on when the taxpayer's fiscal year ends. For instance, the FTB would complete processing of returns for tax year 2020, the first year of the credit, by April 2022. Thus, the earliest that data from these returns could be published by the FTB would be approximately April 2022. If the author's intent is to have the published information include complete information for each taxable year of the credit, the author may wish to amend the bill.

It is recommended that the bill be amended to grant regulatory authority for purposes of administering this bill's provisions, and an exemption from the rulemaking procedures required under the Administrative Procedures Act (APA).

Technical Considerations

For consistency with terminology, it is recommended that the phrase "or incurred" be inserted after the term "paid" on page 2, line 16, and page 3, line 22.

Policy Concerns

This bill would allow tax credits for expenditures that are required by existing state and federal laws or regulations.

This bill would allow a credit for overtime pay that is currently deductible as a business expense. 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 would allow this credit only for taxpayers who employ "agricultural employees," resulting in different tax treatment for similarly-situated taxpayers employing workers in different occupations.

This bill fails to restrict the proposed credit to employees who are employed within California (and are thus themselves subject to California tax on their earnings).

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited on a per-taxpayer basis. This bill would provide a 100 percent credit of the overtime wage premium.

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 HISTORY

Research of California legislation history found no legislation similar to the provisions of this bill.

PROGRAM BACKGROUND

Historically, agricultural workers have generally been exempt from statutory requirements for overtime. The Phase-In Overtime for Agricultural Workers Act of 2016 (AB 1066, Chapter 313, Statutes of 2016) phases out over a four-year period, from 2019 to 2022, inclusive, the agricultural worker exemption from California's overtime requirements for work exceeding 8 hours in a single day and 40 hours in a workweek. This Act decreased the previously allowed 10-hour overtime threshold over four 30-minute steps annually and decreased the weekly overtime threshold over four 5-hour steps annually.

The Governor may temporarily suspend a scheduled phase-in of overtime, starting in 2019, until full implementation of phase-in overtime requirements or January 1, 2022, whichever comes first, if the Governor suspends minimum wage increases based on economic conditions.

Commencing January 1, 2020, an agricultural employee generally may not be employed more than nine hours in any one workday or work in excess of 50 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over nine hours in any workday or over 50 hours in any workweek.

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 2956 as Introduced February 21, 2020
Assumed Enactment after June 30, 2020

($ in Millions)

Fiscal Year	**Revenue**
2020-2021	-$110
2021-2022	-$180
2022-2023	-$100

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.

Based on Employee Development Department (EDD) labor market data and University of California agricultural labor study, it is estimated that agricultural employment can range from 480,000 to 1.1 million workers. To account for the fluctuation in employment, five overtime scenarios were created to calculate amounts of overtime that could be generated.

Research indicates the average agricultural employee works about 55 hours per week, or approximately 5 hours of overtime a week. Based on the Labor Code overtime regulations, it is estimated the average number of overtime hours would increase from 17 million in taxable year 2020 to 50 million in taxable year 2022.

Research further indicates the average qualified employee would earn approximately $15.00 per hour in base pay, and overtime pay between one and half and two times that amount, depending on the year and the number of the employees working for the entity. To calculate the credit, the total amount of overtime hours is multiplied by the difference in the employee's regular rate of pay and the rate required to be paid to the employee for those overtime hours, resulting in a total estimated credit generated of $130 million in taxable year 2020, increasing to $650 million by taxable year 2022.

It is estimated that 65 percent, including the S corporation adjustment, or $85 million, would be earned by taxpayers with sufficient tax liability to offset with the credit. Because the credit has no carryover provision, it is estimated that 55 percent, or $47million, would be claimed in the year generated and the remainder would go unused. Approximately 85 percent would be claimed by personal income taxpayers and 15 percent by corporate taxpayers.

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

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

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Appendix A

Labor Code sections 860 and 862(a)

Labor Code Section	Summary
860	Starting January 1, 2020, a person employed in an agricultural occupation, for an employer who employs 25 or fewer employees, shall not be employed more than nine hours in any one workday or work in excess of 50 hours in any one workweek, unless the employee receives one and one-half times that employee's regular rate of pay for all hours worked over nine hours in any workday or over 50 hours in any workweek. By January 1, 2022, overtime would begin after the person worked eight hours in any one workday or works in excess of 40 hours in any one workweek.
862(a)	Beginning January 1, 2022, any work performed by a person, employed in an agricultural occupation, in excess of 12 hours in one day would generally be compensated at the rate of no less than twice the employee's regular rate of pay.