



## Bill Analysis

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Sponsor:

Bill Number: SB 1333

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Related Bills: See Legislative  
History

## SUBJECT

Corporation Tax Law Credits: Homelessness

## SUMMARY

This bill would, under the Corporation Tax Law (CTL), create the California Homeless Hiring Tax Credit available to a qualified taxpayer that employs a homeless individual.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

## RECOMMENDATION

No position

## SUMMARY OF AMENDMENTS

Not applicable.

## REASON FOR THE BILL

The reason for the bill is to encourage qualified employers that provide family-sustaining career pathways to hire and retain employees from the homeless population who have systematically faced barriers to employment.

## ANALYSIS

The bill would, under the CTL, allow a tax credit to a qualified taxpayer that employs an eligible individual, for each taxable year beginning on or after January 1, 2021, and before January 1, 2026.

The bill would specify a calculation of the credit as follows:

- Allow a credit of \$2,500 for each eligible individual that worked 500 hours during the taxable year in which the credit is claimed.
- Allow a credit of \$5,000 for each eligible individual that worked 1,000 hours during the taxable year in which the credit is claimed.
- Allow a credit of \$7,500 for each eligible individual that worked 1,500 hours during the taxable year in which the credit is claimed.

- Allow a credit of \$10,000 for each eligible individual that worked 2,000 hours during the taxable year in which the credit is claimed.
- The credit could not exceed \$30,000 per taxable year.

The bill would define the following terms and phrases:

- “Qualified taxpayer” means an “eligible employer” that pays wages subject to withholding to an “eligible individual.”
- “Eligible employer” means a taxpayer that is either of the following: (1) An employer that has 500 employees or less, pays wages subject to withholding, and pays family-supporting wages at or exceeding the jurisdiction’s prevailing wage, as determined by the Employment Development Department (EDD); or (2) An employer that has 500 employees or less, and pays wages subject to withholding, and pays family-supporting wages at or exceeding the jurisdiction’s prevailing wage, as determined by the EDD, and is certified as a “high-road” employer by the California Labor and Workforce Development Agency (LWDA).
- “High-road’ employer” means an employer that pays family-supporting wages at or exceeding the jurisdiction’s prevailing wage, competes based on the quality of its services and products, and engages workers and its representatives in the project of building skills and competitiveness in an effort to advance the workers’ career objectives.
- “Eligible individual” means a person who is homeless on the date of the hire or anytime during the 60-day period immediately before the hire, or someone who is receiving supportive services from a homeless services provider as designated by a local continuum of care or coordinated entry system.
- “Person who is homeless” means an individual whose primary nighttime residence is any of the following: (1) A public or private place not designated for or ordinarily used as a regular housing accommodation; (2) Sleeping accommodation for an individual, including a car, park, abandoned building, bus station, train station, airport, or camping ground; or (3) A publicly or privately operated shelter designated to provide temporary living arrangements, including a permanent housing, permanent supportive, or transitional facility. This term includes any of the following: (1) An individual who is fleeing, or is attempting to flee, domestic violence, has no other residence, and lacks the resources or support networks to obtain other permanent housing; (2) An individual who will imminently lose their primary nighttime residence, provided that the residence will be lost within 14 days of receiving an eligible individual certification (as described below), no subsequent residence has been identified, and the individual lacks the resources or support networks needed to obtain other permanent housing; or (3) An individual that has not had a lease, ownership interest, or occupancy agreement in permanent housing in the 60 days before receiving an eligible individual certification (as described below).

- “Continuum of care” has the same meaning as Section 578.3 of Title 24 of the Code of Federal Regulations, generally including social service organizations that serve the homeless.

The eligible employer would be required to submit both of the following certifications to the Franchise Tax Board (FTB) for each eligible individual employed:

- Eligible employer certification. The taxpayer would be required to submit a request for and receive a certification from the EDD. The EDD would be required to issue the certification that would expire after two years, to an employer that qualifies as an “eligible employer” as defined in this bill.
- Eligible individual certification. A continuum of care would be required to, in coordination with the EDD, issue a certification that would expire after one year, to an “eligible individual” as defined in this bill.

This bill would limit the total aggregate amount of the credit allowed to thirty million dollars (\$30,000,000) per calendar year. The FTB would be required to allocate the credit to taxpayers on a first-come-first-served basis. If two or more tax returns reporting the credit are received on the same day and the credit limitation would be reached before allowing all the reported credits, the credit would be required to be allocated to those qualified taxpayers on a pro rata basis.

The FTB's determination with respect to the date a return is received and the timeliness of the return would be excluded from administrative or judicial review. The denial of the credit could be made in the same manner as a mathematical adjustment, as allowed by Revenue and Taxation Code (R&TC) section 19051.

The credit would be required to be claimed on a timely filed original return.

Any unused credit could be carried over for up to three taxable years, until exhausted.

The FTB would have the authority to adopt rules, guidelines, or procedures necessary or appropriate to carry out the provisions of the bill. The FTB would be exempt from the Administrative Procedure Act when prescribing rules, guidelines, or procedures to administer the credit that would be enacted by this bill.

Section 3 of this bill contains language to comply with R&TC section 41. This language would be excluded from the numbered sections of the R&TC. The bill would provide the goal of the credit. In addition, the bill would require the LWDA to prepare an annual report that would be used to measure the effectiveness of the credit. The report would be required to include: the number of employers that applied for certification; the number and percentage of employees that applied for and received certification; the distribution of employers based on industry sectors; the distribution of employees based on industry sectors; the wages of workers hired as a result of the credit. The bill would require the EDD to, on or before October 1, 2021, and annually thereafter, post the report on its Internet website, and inform the Legislature by letter of such posting.

This credit would remain in effect until December 1, 2026, and be repealed as of that date.

### *Effective/Operative Date*

As a tax levy, the bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2026.

### *Federal/State Law*

#### *Federal Law*

The Work Opportunity Tax Credit (WOTC) is a federal income tax credit available to employers who hire and retain veterans and individuals from targeted groups with significant barriers to employment, including individuals that are qualified Supplemental Security Income recipients, individuals with a vocational rehabilitation referral. There is no limit on the number of individuals an employer can hire to qualify to claim the WOTC. Employers are required to obtain certification on or before the beginning work date.

#### *State Law*

Current state law allows, for taxable years beginning on or after January 1, 2014, and before January 1, 2026, the 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. The qualified employee must meet any of certain conditions, including previous unemployment, veteran status, low income status, ex-offender convicted of a felony, or recipient of specified government assistance.

### *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, i.e., "family-supporting wages," "supportive services," "homeless service provider," "jurisdiction's prevailing wage," and "coordinated entry system". The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

The bill uses inconsistent terminology, i.e., “qualified taxpayer” and “eligible employer,” that could lead to disputes with taxpayers. For clarity, it is recommended to use one term throughout the bill and combine the definitions.

Taxpayers would not know whether or not the credit cap of \$30,000,000 was reached before filing their return, and that could result in denial of the credit and assessment of interest and penalties.

The bill is silent on the method that the LWDA would obtain the information used for performance measure of “the wages of workers hired as a result of the credit” in the report EDD is required to post on its Internet website. For example, the bill is silent on whether the LWDA would obtain information from the FTB.

If the report that would be posted by EDD would require information from California income tax returns, data would not be available by the required posting date of October 1, 2021. The earliest date that data would be available for the taxable year beginning on January 1, 2021, would be approximately March 2023.

In addition, if the report that would be posted by EDD would require information from California income tax returns, the bill fails to allow the disclosure of tax return information to the LWDA or prohibit the LWDA from further disclosure of confidential taxpayer information. An exception from the general disclosure provisions should be added to specifically allow the FTB to comply with the bill's provision on disclosure of tax information and apply the appropriate disclosure restrictions to the Legislative Analyst Office.

### *Technical Considerations*

For consistency of terminology, the following changes are recommended:

- On page 5, line 35, replace the word “confirmations” with “returns.”
- On page 5, line 39, replace the word “confirmation” with “return.”
- On page 6, line 1, replace the word “confirmation” with “return.”
- On page 7, line 4, replace “subdivision (b)” with “paragraph (1).”

For clarity, on page 4, lines 7 and 8, it is recommended that the phrase “subparagraph (A)” be replaced with “subparagraph (A)(i) and (ii).”

To clarify the definition of “Person who is homeless,” the following changes are recommended:

- On page 4, line 31, delete the phrase “(B) ‘Person who is homeless’ includes any of the following:”
- On page 4, line 32, replace the reference “(i)” with “(iv).”
- On page 4, line 35, replace the reference “(ii)” with “(v).”
- On page 5, line 1, replace the reference “(iii)” with “(vi).”

This bill would grant the FTB the authority to prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this bill. Existing law already provides the FTB this authority. For ease and speed of implementation it is suggested that the bill be amended to instead authorize the FTB to issue any regulations necessary or appropriate to carry out the purposes of this bill.

### *Policy Concerns*

This bill would provide a tax benefit for corporations under the CTL that would be unavailable to other business entities under the Personal Income Tax Law (PITL), such as partnerships, limited liability companies not classified as corporations, and sole proprietors. Thus, this bill would provide differing treatment based solely on classification.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits (i.e. credits or deductions) for the same wages paid.

### **LEGISLATIVE HISTORY**

AB 1169 (Frazier, 2019/2020) would have, under the PITL, allowed a credit to a qualified employer for wages paid to qualified employees. AB 1169 failed to pass out of the Assembly by the constitutional deadline.

AB 1726 (Arambula, 2019/2020) would have, under the PITL and the CTL, provided a tax credit to certain employers that hire employees who are members of a targeted group. AB 1726 failed to pass out of the Assembly by the constitutional deadline.

AB 2041 (Dahle, 2019/2020) as amended, would, under the PITL and the CTL, establish a credit for qualified wages paid to a qualified employee that is a former foster youth or ex-offender that is age 18 to 25 by a qualified taxpayer. AB 2041 remains in the Assembly Revenue and Taxation Committee.

AB 3065 (Lackey, 2019/2020) would, under the PITL and the CTL, provide a tax credit to certain employers that hire employees who are foster youth, former foster youth, or homeless youth. AB 3065 remains in the Assembly Committee on Revenue and Taxation.

SB 422 (Hueso, 2019/2020) would have, under the PITL and the CTL, allowed a credit to a qualified employer for wages paid to certain full-time employees. SB 422 failed to pass out of the Assembly Appropriations Committee.

### **PROGRAM BACKGROUND**

None noted.

## FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved.

## ECONOMIC IMPACT

### *Reference Section 41 Language in Bill*

For purposes of Section 41, the goal of the credit is to encourage employers to hire and retain individuals from the homeless population which have been found to face systemic barriers to employment.

### *Revenue Estimate*

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 1333 as Introduced on February 21, 2020  
Assumed Enactment after June 30, 2020

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2020-2021	-\$4.8
2021-2022	-\$16
2022-2023	-\$21

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.

Because the impact of current economic circumstances is unknown, this estimate is subject to change.

### *Revenue Discussion*

Based on data from The United States Interagency Council on Homelessness, the United States Census and various industry studies, it is estimated there would be 205,000 homeless individuals in California in 2021. Of those, it is estimated 14,000 would be employed by qualified taxpayers. Using the maximum credit limitations prescribed in the bill, it is estimated the average credit would be \$7,200 per qualified employee. This results in a total credit generated of approximately \$100 million in the 2021 taxable year.

This estimate assumes the \$30 million cap would be met each year. Based on FTB data, it is estimated that 85 percent, or \$25 million of credits would be generated by taxpayers with sufficient tax liability to offset with the credit. Of that amount, approximately 60 percent, or \$15 million, would claim the credit in the year generated and the remaining credit would be used over the subsequent two years.

The credit is based on a first-come-first-served basis. Therefore, once the \$30 million cap has been met, any additional claim would be denied. It is estimated that taxpayers who claim the remaining \$70 million in credits above the cap would be assessed approximately \$2.3 million in underpayment and monthly penalties.

The net impact would result in a revenue loss of roughly \$13 million in the 2021 taxable year.

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

#### **LEGAL IMPACT**

None noted.

#### **APPOINTMENTS**

None noted.

#### **SUPPORT/OPPOSITION**

To be determined.

#### **ARGUMENTS**

To be determined.

#### **LEGISLATIVE STAFF CONTACT**

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