



## Bill Analysis

Author: Bradford, et al.

Bill Number: SB 1447

### SUBJECT

Small Business Hiring Credit

### SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would allow a qualified small business employer a small business hiring credit, subject to receiving a tentative credit reservation. In lieu of the credit under the PITL or CTL, an irrevocable election could be made to apply the credit amount against qualified sales or use taxes, as specified.

The California Department of Tax and Fee Administration (CDTFA) would administer the tentative credit reservation process and allocate the credit, not to exceed a cumulative total of one hundred million dollars (\$100,000,000).

This bill would establish a reporting requirement for the CDTFA and the Franchise Tax Board (FTB).

This analysis only addresses the provisions that would impact the department.

### REASON FOR THE BILL

The reason for this bill is to provide financial relief to qualified small businesses for the economic disruptions resulting from COVID-19 that have resulted in unprecedented job losses.

### ANALYSIS

For each taxable year beginning on or after January 1, 2020, and before January 1, 2021, this bill, under the PITL and CTL, would allow a small business hiring credit to a qualified small business employer that receives a tentative credit reservation under Section 6902.8 of the Revenue and Taxation Code (R&TC), equal to one thousand dollars (\$1,000) for each net increase in qualified employees, as specified. The credit shall not exceed one hundred thousand dollars (\$100,000) for any qualified small business employer.

This bill would define the following terms and phrases:

- “Monthly full-time equivalent” means either of the following:
  - In the case of a qualified employee paid hourly qualified wages, the total number of hours worked per month for the qualified small business employer by the qualified employee, not to exceed 167 hours per month per qualified employee, divided by 167.
  - In the case of a salaried qualified employee, the total number of weeks worked per month for the qualified small business employer by the qualified employee divided by 4.33 multiplied by the time base the qualified employee worked.
- “Qualified employee” means an employee who is paid qualified wages by a qualified small business employer, and shall not include an employee whose wages are included in calculating any other credit allowed under the PITL or CTL.
- “Qualified small business employer” means a taxpayer that meets both of the following requirements:
  - As of December 31, 2019, employed a total of 100 or fewer employees.
  - Has a 50-percent decrease in gross receipts determined by comparing gross receipts for the three-month period beginning on April 1, 2020, and ending June 30, 2020, with the gross receipts for the three-month period beginning on April 1, 2019, and ending June 30, 2019, if it would have met the requirement of having a significant decline in gross receipts for that quarter as determined under Section 2301(c)(2)(B)(i) of Public Law 116-136.
- “Qualified small business employer” does not include a taxpayer required to be included in a combined report under Section 25101 or 25110, or authorized to be included in a combined report under Section 25101.15.
- “Qualified wages” means wages subject to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.
- “Time base” means the fraction of full-time employment that the qualified employee works.

To be eligible for the credit, the qualified small business employer would be required to do the following:

- Submit a timely application to the CDTFA, described below, for a tentative credit reservation amount for the small business hiring tax credit, including the following information:
  - The net increase in qualified employees, as discussed below.
  - Whether the credit will be applied under the PITL, CTL, or both.
  - Whether, in lieu of the credit under the PITL or CTL, they make an irrevocable election to apply the credit against qualified sales and use tax.
  - Any other information as deemed necessary by the department.
- Claim the credit on a timely filed original return.

The net increase in qualified employees of a qualified small business employer shall be determined by subtracting the amount determined in paragraph (1) from the amount determined in paragraph (2).

1. The average monthly full-time equivalent qualified employees employed during the three-month period beginning April 1, 2020, and ending June 30, 2020, by the qualified small business employer. The average monthly full-time equivalent qualified employees is determined by adding the total monthly full-time equivalent qualified employees employed by the qualified small business employer for all three months and dividing the total by three.
2. The average monthly full-time equivalent qualified employees employed during the five-month period beginning July 1, 2020, and ending November 30, 2020, by the qualified small business employer. The average monthly full-time equivalent qualified employees is determined by adding the total monthly full-time equivalent qualified employees employed by the qualified small business employer for all five months and dividing the total by five.

This bill also would provide the following:

- Unused credits could be carried over for five years or until exhausted.
- Any deduction otherwise allowed for qualified wages shall be reduced by the amount of the credit allowed.
- All employees of the trades or businesses that are treated as related under Section 267, 318, or 707 of the Internal Revenue Code shall be treated as employed by a single qualified small business employer.

The FTB would be required to do the following:

- Determine the date a return is received by the FTB. The determination with respect to whether a return has been timely filed may not be reviewed in any administrative or judicial proceeding.
- Assess any amount of tax resulting from any disallowance of a credit claimed due to a determination of the date the return is received or the application of the limitation specified in Section 6902.8 as a mathematical error appearing on the return in the same manner as provided by Section 19051.

The FTB would be authorized to do the following without having to comply with the requirements of the Administrative Procedures Act:

- Prescribe any regulations necessary or appropriate to carry out the purposes of PITL and CTL credit sections that would be enacted by this bill, and
- Prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of the PITL and CTL credit sections that would be enacted by this bill.

In addition, the FTB would be authorized to provide to the CDTFA information related to the credit allowed by Section 6902.7, and the PITL and CTL credit sections, including, but not limited to, the qualified small business employer names, amounts of tax credits allowed under each section, and the net increase in qualified employees.

The PITL and CTL tax credits would be repealed by their own terms on December 1, 2021.

The CDTFA would be required to do the following:

- Allocate the small business hiring credit. The aggregate amount of credit that may be allocated under the sales and use tax provision and the income and franchise tax provisions shall not exceed one hundred million dollars (\$100,000,000).
- Accept applications from qualified small business employers for tentative credit reservation amounts during the period beginning December 1, 2020, and ending January 15, 2021, or an earlier date determined by CDTFA when the maximum cumulative total allocation amount is reached.
- Determine the date and time an application is received by the CDTFA. This determination may not be reviewed in any administrative or judicial proceeding.
- Promptly notify the applicant, no more than 30 days after the application is received, of the tentative credit reservation amount.
- Periodically provide on its website the aggregate credit allocated for tentative credit reservations and remaining credit amount available for allocation.
- Provide the FTB, in the form and manner agreed upon by CDTFA and FTB, any and all information provided by each applicant deemed necessary by the departments to administer and enforce these credits.

### *Section 41 Requirements*

This bill, in Section 5, in accordance with Section 41 of the R&TC, would specify that the purpose of the small business hiring credits is to provide financial relief for the economic disruptions resulting from COVID-19.

To measure whether the credits achieve their intended purpose, the following performance indicators would be used:

- The number of applications received for tentative credit reservation.
- The net increase in number of qualified employees represented on applications for tentative credit reservation.
- The average credit amount on tax returns claiming the credit.

By April 1, 2022, or earlier if data is available, this bill would require a report to the Legislature as follows:

- The FTB would report information on credits claimed under the PITL or CTL.
- The CDTFA would report information on credits claimed under the Sales and Use Tax Law.

The reports would be required to be submitted in compliance with Section 9795 of the Government Code.

### *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, 2021.

### *Federal/State Law*

#### *Federal Law*

No provision comparable in federal law.

#### *State Law*

#### *New Employment Credit*

For taxable years beginning on or after January 1, 2014, and before January 1, 2026, current state law allows a new employment credit (NEC) 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 FTB for that qualified full-time employee. Additionally, the FTB must provide a searchable database on its website reporting the name of the person or entity claiming the credit, the total amount of credit claimed, and the number of new jobs created.

*Implementation Considerations*

None noted.

*Technical Considerations*

None noted.

**LEGISLATIVE HISTORY**

SB 855 (Committee on Budget and Fiscal Review, Chapter 52, Statutes of 2018), among other changes, extended the repeal date for the NEC to December 1, 2029.

AB 1629 (Maienschein, et al., 2017/2018) would have allowed a credit to a qualified employer who employs a qualified employee and pays the qualified employee a wage that exceeds the minimum wage during the taxable year. The credit would have been in an amount equal for the difference between the special minimum wage that may be paid to a qualified employee and the minimum wage. AB 1629 failed to pass out of the house of origin by the constitutional deadline.

AB 3029 (Arambula, 2017/ 2018), would have replaced the NEC with a California new employment credit that would be available to a qualified taxpayer that hires a qualified full-time employee and pays or incurs qualified wages. AB 3029 failed to pass by the constitutional deadline.

SB 90 (Galgiani and Canella, Chapter 70, Statutes of 2013), modified AB 93 as chaptered on July 11, 2013. Specifically, SB 90, for purposes of the NEC, modified the definition of qualified employee, excluded sexually oriented businesses from the definition of qualified taxpayer and small business, and modified the defined geographical area that the hiring credit may be generated in.

AB 93 (Assembly Committee on Budget, Chapter 69, Statutes of 2013), repealed the geographically targeted economic development area tax incentives and the New Jobs Tax Credit under the PITL and CTL, created a NEC, established the California Competes Tax Credit (CCC) Committee, and created the California Competes Credit under the PITL and CTL.

**PROGRAM BACKGROUND**

None noted.

**FISCAL IMPACT**

Staff estimates a cost of approximately \$509,000 for fiscal year 2020/2021, \$372,000 for fiscal year 2021/2022, and \$188,000 for fiscal year 2022/2023 for resources to develop a tax form, modify information systems to capture return data to meet the bill's reporting requirement, and review returns.

**ECONOMIC IMPACT**

*Revenue Estimate*

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 1447  
 Assumed Enactment after June 30, 2020

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2020-2021	-\$65
2021-2022	-\$16
2022-2023	-\$4.7

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 Employment Development Department, it is estimated there would be 1.6 million businesses with 100 or fewer employees. To determine the number of qualified small business employers, it is estimated approximately 40 percent, or 700,000, of these businesses would have a decline in gross receipts of at least 50 percent relative to the second quarter (April, May, June) of 2019, and that 20 percent, or 140,000, of these businesses would have a reduction in the number of employees at the end of the second quarter of 2020.

It is estimated that 40 percent, or 56,000, of these qualified small business employers would have a net increase in qualified employees, as required under the provisions of this bill. Assuming an average increase of three employees per qualified small business employer would result in an increase of 168,000 employees, and that 70 percent, or 120,000 employees, would qualify as full-time equivalent. Applying the credit at \$1,000 per net increase in qualified employee, would result in a credit generated of \$100 million, the credit cap, in taxable year 2020. It is estimated that 85 percent, including the S corporation adjustment, or \$85 million, would be earned by taxpayers with sufficient tax liability to offset with this credit. It is estimated that 75 percent, or \$65 million, would be used in the year generated and the remaining would be used in the next two years.

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.

**VOTES**

Location	Date	Yes Votes	No Votes
Concurrence	August 31, 2020	36	0
Assembly Floor	August 31, 2020	76	0
Senate Floor	June 11, 2020	39	0

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