



Bill Analysis

Author: Committee on
Budget

Sponsor:

Bill Number: AB 150

Related Bills: See Legislative History
Amended: June 27, 2021

SUBJECT

Budget Trailer Bill – Various Tax Credits and Data Sharing

SUMMARY

This bill would do the following:

Provision No. 1 – Rehabilitation of Certified Historic Structures Credit:

Sections 11 and 20 of the bill would extend the operative date of the credit under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL) to taxable years beginning before January 1, 2027. Furthermore, Sections 1 and 24 of the bill would extend the collaboration period related to the effectiveness of the credit between the specified parties to January 1, 2027, and would add the specific goals and performance metrics intended for the credit provisions to accomplish.

Provision No. 2 - Main Street Small Business Tax Credit, Part II:

Sections 5, 6, 8, 16, and 23 of the bill, for the taxable year beginning on or after January 1, 2021, and before January 1, 2022, under the Sales and Use Tax Law (SUTL), the PITL, and the CTL, would allow a qualified small business employer a small business hiring credit, subject to receiving a tentative credit reservation. The amount of the credit would be reduced if the qualified small business employer received a tentative credit reservation amount under Revenue and Taxation Code (RTC) section 6902.8.

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 seventy million dollars (\$70,000,000). The bill would establish a reporting requirement for the CDTFA and the Franchise Tax Board (FTB).

Provision No. 3 – Small Business Relief Act (SBRA):

Section 15 of the bill would create the SBRA, and would, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, allow entities taxed as a partnership or an S corporation to pay an additional elective tax at the entity level.

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Provision No. 4 – Credit for Entity-Paid Elective Tax:

Sections 7 and 12 of the bill, under the PITL, would allow a qualified taxpayer, who is an owner of a qualified entity that makes an annual election to pay an additional elective tax authorized by the bill, a tax credit in an amount equal to 9.3 percent (9.3%) of the qualified taxpayer's pro rata or distributive share, as applicable, of the qualified net income subject to the election made by an electing qualified entity for taxable years beginning on or after January 1, 2021, and before January 1, 2026.

Provision No. 5 – Homeless Hiring Tax Credit:

Sections 9, 17, and 26 of the bill would, under the PITL and the CTL, allow a qualified taxpayer that employs an eligible individual to receive a tax credit.

Provision No. 6 – Credit for Agriculture Product Donations to Food Banks:

Sections 10 and 18 of the bill would, under the PITL and the CTL, modify the credit for agricultural product donations to food banks by extending the operative date by five years. Section 10 of the bill would also extend the FTB's existing Section 41 reporting requirement for this credit by five years.

Provision No. 7 – California Competes Tax Credit Expansion:

Sections 13, 19, and 25 of the bill would, under the PITL and the CTL, increase the amount of the California Competes Tax Credit (CCTC) allocated for the 2021-22 fiscal year.

Provision No. 8 – Data Sharing with California Department of Health Care Services (DHCS):

Section 14 of the bill would require, upon FTB request, the DHCS to share data with the FTB for specified purposes related to the eligibility for the California Earned Income Tax Credit (CalEITC).

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The June 27, 2021, amendments removed intent language related to the Budget Act of 2021, and replaced it with the provisions discussed in this analysis.

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

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REASON FOR THE BILL

The reason for the bill is to make various statutory changes related to implementing the 2021 Budget Act.

ANALYSIS (All Provisions)

Economic Impact – Summary Revenue Table (\$ in Millions)

Fiscal Year	2021-2022	2022-2023	2023-2024
Provision No. 1 - Rehabilitation of Certified Historic Structures Credit	*	*	*
Provision No. 2 - Main Street Small Business Tax Credit, Part II	-\$48	-\$12	-\$3.7
Provision No. 3 and No. 4 – SBRA and Credit for Entity-Paid Elective Tax	\$1,300	\$650	\$600
Provision No. 5 - Homeless Hiring Tax Credit	-\$3.9	-\$10	-\$12
Provision No. 6 - Credit for Agriculture Product Donations to Food Banks	-\$0.1	-\$0.25	-\$0.35
Provision No. 7 - California Competes Tax Credit Expansion	**	**	**
Provision No. 8 - Data Sharing with DHCS	N/A	N/A	N/A

*Cannot be determined at this time.

**For revenue figures, refer to Department of Finance (DOF).

Analysis Provision No. 1

Rehabilitation of Certified Historic Structures Credit (Sections 1, 11, 20, and 24)

This provision of the bill would extend the operative date of the credit for rehabilitation of certified historic structures under the PITL and the CTL to taxable years beginning before January 1, 2027, and change the repeal date of the credit from December 1, 2026, to December 1, 2027. This bill would also extend the credit allocation period from the 2026 calendar year to the 2027 calendar year, as well as extending the collaboration of the Legislative Analyst Office (LAO), the California Tax

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Credit Allocation Committee (the Committee) and the Office of Historic Preservation for the annual RTC section 41 review requirements to remain in effect until January 1, 2027, and as of that date would be repealed.

Effective/Operative Date

As a provision within a bill providing for appropriations related to the Budget Bill, this provision would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2027.

Federal/State Law

Federal Law

Internal Revenue Code (IRC) section 47 allows a credit for the rehabilitation expenses of older and historic buildings.

State Law

For taxable years beginning on or after January 1, 2021, and before January 1, 2026, a tax credit is allowed against net tax under the PITL and the CTL for the rehabilitation expenses of certain homes and historic buildings determined in accordance with federal law (IRC section 47), except as follows:

- The 20 percent (20%) general credit for the qualified rehabilitation expenditures of a certified historic structure (other than expenses that qualify for the 25 percent (25%) credit below), and
- The 25 percent (25%) credit for the qualified rehabilitation expenditures of a certified historic structure if that structure meets any of the following conditions:
 - The rehabilitated structure is located on certain federal surplus property, surplus state real property, or on surplus land.
 - The rehabilitated structure includes affordable housing for lower-income households, as defined in Section 50079.5 of the Health and Safety Code.
 - The structure is located in a designated census tract, as defined in RTC section 17053.73(b)(7).
 - The structure is part of a military base reuse authority, established pursuant to Title 7.86 (commencing with Section 67800 of the Government Code (GC)).
 - The structure is a transit-oriented development that is a higher-density, mixed-use development within a walking distance of one-half mile of a transit station.

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Unlike the federal credit;

- The state credit is unavailable for expenditures with respect to a qualified building unless it is a certified historic structure.
- The state credit is allowed for qualified rehabilitation expenditure amounts for an owner-occupied residence if the expenses are determined to rehabilitate the historic character and improve the integrity of the residence in the year of completion. The credit would be allowed for amounts equal to or more than \$5,000, but does not exceed \$25,000.
- The state credit is zero dollars unless appropriations are provided in a bill related to the Budget Act.
- Certified historic structure has the same meaning as defined in IRC section 47(c)(3) that is a structure in this state and is listed on the California Register of Historical Resources.
- Qualified rehabilitation expenditure has the same meaning as that term is defined in IRC section 47(c)(2), except that qualified rehabilitation expenditures may include expenditures in connection with the rehabilitation of a building without regard to whether any portion of that building is or is reasonably expected to be a tax-exempt use property.
- Qualified rehabilitation expenditure has the same meaning as that term is defined in IRC section 47(c)(2), and also means rehabilitation expenditures incurred by the taxpayer with respect to a qualified residence for the rehabilitation of the exterior of the building or rehabilitation necessary for the function of that home, including, but not limited to, rehabilitation of electrical, plumbing, or foundation of the qualified residence.

In addition, the following apply:

- No deduction is allowed for that expense for which this credit is allowed, and if a credit is allowed with respect to property, the basis of that property would be reduced by the amount of the credit.
- Any unused credits could be carried over for up to eight years.
- The credit could reduce the regular tax plus the tax relating to the separate tax on lump-sum distributions, below tentative minimum tax for taxpayers subject to the PITL and the CTL.
- IRC section 47(c)(1)(B)(ii), relating to special rules for rehabilitation that may be expected to be completed in phases, would not apply.
- The recapture provisions described in IRC section 50(a) would apply when the property (or interest in the property) is sold within the recapture period, which for the federal historic credits is five years from the date the property is placed in service. Twenty percent (25%) of the recapture risk decreases each year.
- The credit provisions would remain in effect regardless of the expiration or repeal of IRC section 47, relating to the federal rehabilitation credit.

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Unlike the federal credit, the entire amount of credit generated can be claimed in the year the building is placed in service.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 451 (Atkins, Chapter 703, Statutes of 2019) created the Rehabilitation of Certified Historic Structures Credit that, under the PITL and the CTL, is available for allocation, upon appropriations, by the Committee for calendar years 2021 through 2026.

AB 771 (Atkins, 2015/2016), substantially similar to this bill, would have allowed a tax credit for the costs to rehabilitate a historic building. AB 771 did not pass by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

It is believed that the provisions will have an impact on the general fund, but due to their prospective nature the FTB is unable to provide the revenue impact at this time.

LEGAL IMPACT

None noted.

APPOINTMENTS (All Provisions)

None noted.

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SUPPORT/OPPOSITION (All Provisions)

None noted.

ARGUMENTS (All Provisions)

None noted.

Analysis Provision No. 2

Main Street Small Business Tax Credit, Part II (Sections 6, 8, 16, and 23)

This provision of the bill, for taxable years beginning on or after January 1, 2021, and before January 1, 2022, under the SUTL, the PITL and the CTL, would allow a small business hiring credit to a qualified small business employer that receives a tentative credit reservation under RTC section 6902.10.

A tentative credit reservation amount would be an amount equal to one thousand dollars (\$1,000) for each net increase in qualified employees, as specified, not to exceed one hundred fifty thousand dollars (\$150,000) for any qualified small business employer. For qualified small business employers that received a tentative credit reservation amount under Section 6902.8, the tentative credit reservation amount would be reduced by:

- If a qualified small business employer applied the credit against qualified sales and use taxes (SUT) pursuant to Section 6902.7, the credit amounts allocated to the qualified small business employer pursuant to Sections 6902.7 and 6902.8.
- If a qualified small business employer applied the credit under the PITL or the CTL, or both, the tentative credit reservation amount received by the qualified small business employer pursuant to Section 6902.8.

The aggregate amount of credit that may be allocated under this provision would be limited to seventy million dollars (\$70,000,000), plus any amount of credit not allocated, and not required to be allocated, under Main Street Small Business Tax Credit for the 2020 taxable year.

This provision of the 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 employed 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 employed 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.

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- Qualified employee means an employee who is paid qualified wages by a qualified small business employer, and shall not include an employee whose qualified wages are included in calculating any other credit allowed under the PITL or CTL, except for the Main Street Small Business Tax Credit for the 2020 taxable year.
- Qualified small business employer means a taxpayer that employed a total of 500 or fewer employees as of December 31, 2020, and meets either of the following requirements:
 - Has a 20-percent (20%) decrease or more in gross receipts determined by comparing gross receipts for the period beginning on January 1, 2020, and ending December 31, 2020, with the gross receipts for the period beginning on January 1, 2019, and ending December 31, 2019.
 - Is a fiscal year filer that has a decrease of 20 percent (20%) or more in gross receipts determined by comparing either of the following:
 - The gross receipts for fiscal year 2019-2020 to the gross receipts from fiscal year 2018-2019.
 - The average of gross receipts for fiscal year 2019-2020 and fiscal year 2020-2021 to the gross receipts from fiscal year 2018-2019.
- For a taxpayer that first commences business after January 1, 2019, but on or before January 1, 2020, has a decrease of 20 percent (20%) or more in gross receipts in the second quarter of 2020 determined by comparing gross receipts from January 1, 2020, through February 28, 2020, multiplied by 1.5 to the gross receipts for the period beginning on April 1, 2020, and ending on June 30, 2020.
- 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 withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code (UIC).
- Time base means the fraction of full-time employment that the qualified employee is employed.
- Weeks employed means the total number of calendar days that a qualified employee was employed by the qualified small business employer during the month, divided by seven, not to exceed 4.33.

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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).

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.

The lesser of either of the following:

- (A) The average monthly full-time equivalent qualified employees employed during the twelve-month period beginning July 1, 2020, and ending June 30, 2021, 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 twelve months and dividing the total by twelve.
- (B) The average monthly full-time equivalent qualified employees employed during the three-month period beginning on April 1, 2021, and ending on June 30, 2021, 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.

This provision of the bill also would provide the following:

- The credit would only be allowed if claimed on a timely filed original return.
- 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 IRC sections 267, 318, or 707 shall be treated as employed by a single qualified small business employer.

If a qualified small business employer changes its business form to a different entity type after receiving a tentative credit reservation under Section 6902.10 and continues operation, the new entity shall be allowed the credit. The qualified wages paid or incurred by the qualified small business employer shall apply to the new entity as if those qualified wages were paid or incurred by the new entity.

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An S corporation that makes the election under Section 6902.10 would be allowed to apply the full credit amount against qualified SUT, and no amount of credit would be allowed to reduce the shareholder's liability under the PITL.

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 6902.10 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 (APA):

- Adopt any regulations necessary or appropriate to carry out the purposes of the PITL and the CTL Main Street Small Business Tax Credit sections that would be enacted by this bill, and
- Adopt rules, guidelines, procedures, or other guidance to carry out the purposes of the PITL and the 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 6902.9, 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, amount of gross receipts, and the net increase in the qualified employees.

The PITL and the CTL tax credits would be repealed by their own terms on December 1, 2022.

To be eligible for the credit, the qualified small business employer would be required to submit a timely application for a tentative credit reservation amount to the CDTFA that includes the following information:

- The net increase in qualified employees.
- Which tax the credit would be applied to, specifically:
 - If the credit will be applied under the PITL, CTL, or both.
 - If, in lieu of the credit under the PITL or CTL, they make an irrevocable election to apply the credit against qualified SUT, the election would be allowed only for a qualified small business employer with an active seller's permit or active certificate of registration-use tax. The election could not be amended by the qualified small business employer or converted entity.

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- Valid state employer identification number of the qualified small business employer.
- Any other information and documentation as deemed necessary by the CDTFA.

The CDTFA would be required to do the following:

- Allocate the small business hiring credit.
- Accept applications from qualified small business employers for tentative credit reservation amounts during the period beginning November 1, 2021, and ending November 30, 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.
- Cancel or reduce a qualified small business employer's tentative credit reservation amount if the qualified small business employer fails to provide application information or documentation required by subdivision (c) to the department within 15 calendar days after the department requests the information.
- Make tentative credit reservation amounts for the period of December 1, 2021, through April 1, 2022, available to qualified small business employers and converted entities that applied for a tentative credit but did not receive it because tentative credit amount exceeded the aggregate amount of credit 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.

The CDTFA would be allowed to do the following:

- Revise, on or before March 30, 2022, a qualified small business employer's election to apply a credit against qualified SUT and instead apply the credit to taxes administered under the PITL or CTL, or both, if the qualified small business employer's seller's permit or certificate of registration-use tax has been suspended, revoked, canceled, or closed.
- Reduce a qualified small business employer's tentative credit reservation amount for clerical errors or upon request by the applicant.

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Section 41 Requirements

Under RTC section 41, this provision of the bill, would specify that the purpose of the Main Street Small Business Tax Credit, Part II 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 January 1, 2024, 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 SUTL.

The reports would be required to be submitted in compliance with GC section 9795.

Effective/Operative Date

As a provision within a bill providing for appropriations related to the Budget Bill, this provision would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2022.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

Main Street Small Business Tax Credit for the 2020 taxable year

For each taxable year beginning on or after January 1, 2020, and before January 1, 2021, under the PITL and CTL, current state law allows a small business hiring credit to a qualified small business employer that receives a tentative credit reservation under RTC section 6902.8, 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.

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To be eligible for the credit, the qualified small business employer is 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 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 SUT.
 - 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 is determined by subtracting the amount determined in paragraph (1) from the amount determined in paragraph (2).

- 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.
- 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.

The FTB is 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.

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The FTB is authorized to do the following without having to comply with the requirements of the APA:

- 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 provision of this bill.

In addition, the FTB is 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.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 1447 (Bradford, et al., Chapter 41, Statutes of 2020) allows, for the taxable year beginning on or after January 1, 2020, and before January 1, 2021, a small business hiring credit to a “qualified small business employer” that receives a tentative credit reservation.

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

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 New Employment Credit (NEC), established the Committee, and created the CCTC under the PITL and the CTL.

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SB 90 (Galgiani and Cannella, 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 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 did not 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.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Staff estimates a cost of approximately \$107,000 for fiscal year 2021-2022, \$184,000 for fiscal year 2022-2023, and \$184,000 for fiscal year 2023-2024 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 provision of the bill would result in the following revenue loss:

Estimated Revenue Impact of Provision No. 2 as Amended June 27, 2021
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2021-2022	-\$48
2022-2023	-\$12
2023-2024	-\$3.7

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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

Combining the unused credit allocation amount from Main Street Small Business Hiring Credit for the 2020 taxable year and the credit allocation amount from this bill, it is assumed the total credit available for allocation would be approximately \$120 million. Approximately \$85 million in credits, or 70 percent (70%) of the maximum credit allocation, is expected to be generated in tax year 2021.

It is estimated that approximately 85 percent (85%), or \$70 million, would be generated by taxpayers that have sufficient tax liability to offset with the credit. Of that amount, approximately 75 percent (75%), or \$53 million, would claim the credit in the year generated and the remaining credit would be used over the subsequent five 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.

Analysis Provision No. 3

Small Business Relief Act (Section 15)

Elective Tax at Entity Level

This provision of the bill would create the SBRA under newly created Part 10.4 of the RTC. The provision would, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, allow a qualified entity doing business in this state, as defined by Section 23101, to annually elect to pay an elective tax. For entities required to file a return under Sections 18633 (partnership returns), 18633.5 (Limited Liability Company (LLC) returns), or 18601 (S corporation returns), the elective tax would be according to or measured by its qualified net income. The tax would be computed at the rate of 9.3 percent (9.3%) for the taxable year for which the election is made.

For purposes of this provision, the qualified net income of the qualified entity would be the sum of the pro rata share or distributive share of income subject to tax under the PITL for the taxable year of each qualified taxpayer, as defined in Section 17052.10 and explained in Provision No. 4 of this analysis. The qualified entity would include in its qualified net income the pro rata share or distributive share of the income of any of its partners, shareholders, or members upon their consent. A partner, shareholder, or member that does not consent would not prevent the qualified entity from making an election to pay the elective tax.

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The elective tax authorized by this bill would be in addition to, and not in place of, any other tax or fee required to be paid under the PITL or the CTL. The collection and assessment of this elective tax would be governed by the provisions of the Administration of Franchise and Income Tax Law (AFITL). The definitions included in the PITL, CTL, and AFITL would also generally apply to the SBRA.

The election would be irrevocable and would be made on an original, timely filed return for the taxable year of the election in the form and manner as prescribed by the FTB. All partners, members and shareholders of the qualified entity would be bound by the election for the taxable year.

For purposes of this provision, the following definitions would apply:

- Qualified entity would mean an entity that meets both of the following requirements for the taxable year:
 - The entity is taxed as a partnership or S corporation.
 - The entity's partners, members, or shareholders in that taxable year are exclusively corporations as defined under the CTL, or individuals, fiduciaries, estates, or trusts subject to tax under the PITL.
- Qualified entity cannot be a publicly traded partnership or an entity permitted or required to be included in a combined reporting group.

The elective tax authorized by this provision would be due and payable as follows:

- For taxable years beginning on or after January 1, 2021, and before January 1, 2022, on or before the due date of the original return without extension for the taxable year of the election.
- For each taxable year beginning on or after January 1, 2022, and before January 1, 2026:
 - On or before June 15th of the taxable year of the election, an amount equal to, or greater than, either 50 percent (50%) of the elective tax paid for the prior taxable year or one thousand dollars (\$1,000), whichever is greater, and
 - On or before the due date of the original return without extension for the taxable year of the election, an amount equal to the amount of the elective tax, less the payment made on or before June 15th of the taxable year.

If no payment is made by June 15th as required, the qualified entity would not be able to make the election for the taxable year.

This provision would not change any filing requirements under the PITL, the AFITL, or the CTL.

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This provision would allow FTB to adopt regulations that are necessary or appropriate to implement this provision. In addition, the requirements of the APA would not apply to any regulation, rule, guideline, procedure, or other guidance prescribed to carry out the purposes of this provision.

If enacted, Part 10.4 would remain in effect only until December 1, 2026, and as of that date would be repealed. If before December 1, 2026, the federal \$10,000 (\$5,000 in the case of married filing separate) limitation on individual deductions for taxable years 2018 through 2025, enacted under the Tax Cuts and Jobs Act, is repealed, this provision would become inoperative for taxable years beginning on or after the January 1 after the federal limitation is repealed, and would be repealed December 1 of that taxable year.

Effective/Operative Date (Provisions No. 3 and No. 4)

As a provision within a bill providing for appropriations related to the Budget Bill, this provision 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

Federal law, prior to 2018, allowed individuals to deduct certain expenses, such as medical expenses, charitable contributions, interest, and taxes, as itemized deductions. Certain other expenses for the production of income and certain employee business expenses were considered miscellaneous itemized deductions and only the portion that exceeded 2 percent (2 %) of adjusted gross income could be deducted. Also, itemized deductions were further limited for high-income taxpayers.

Federal law, for taxable years beginning on or after January 1, 2018, under the Tax Cuts and Jobs Act, changed several itemized deductions, including:

- Suspending both the deduction for miscellaneous itemized deductions and the overall limitation on itemized deductions for high-income taxpayers for taxable years beginning after December 31, 2017, and before January 1, 2026.
- Limiting the total deduction for state and local income, sales, and property taxes to ten thousand dollars (\$10,000) (five thousand dollars (\$5,000) if married filing separate). This is commonly referred to as the state and local taxes (SALT) deduction limitation.

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The Internal Revenue Service (IRS) issued Notice 2020-75, dated November 9, 2020, which provides that the Department of Treasury and the IRS intend to issue regulations clarifying that tax payments made at the entity level would not be subject to the state and local taxes (SALT) deduction limitation applicable to partners and shareholders, who itemize deductions. Specifically, the announcement said the proposed regulations would:

“...clarify that State and local income taxes imposed on and paid by a partnership or an S corporation on its income are allowed as a deduction by the partnership or S corporation in computing its non-separately stated taxable income or loss for the taxable year of payment, and therefore are not subject to the State and local tax deduction limitation for partners and shareholders who itemize deductions.”

The Notice provides that these pass-through entities can pay SALT at the entity level, and the tax deduction that flows through to the individual partners and shareholders will not be subject to the individual SALT limitation for itemized deduction purposes.

State Law

State law generally conforms to federal law as of the “specified date” of January 1, 2015, with modifications, allowing individuals to deduct certain expenses, such as medical expenses, charitable contributions, interest, and taxes, as itemized deductions. State law retains the deduction for SALT, miscellaneous itemized deductions, and the limitation for high-income taxpayers.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY (Provisions No. 3 and No. 4)

SB 104 (McGuire and Caballero, et al., 2021/2022), similar to this provision, would have added to the RTC, Part 10.4, to create the SBRA, and would, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, have allowed entities taxed as a partnership or an S corporation to pay an additional elective tax, at the entity level. In addition, under the PITL, SB 104 would have allowed a qualified taxpayer, who is an owner of a qualified entity, which makes an annual election to

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pay additional elective tax authorized by the bill, a tax credit in an amount equal to 94.9 percent (94.9%) of the owner's pro rata or distributive share of the elective tax amount paid by the entity for taxable years beginning on or after January 1, 2021, and before January 1, 2026. SB 104 was held in the Senate without further action and most provisions of that bill were incorporated into AB 150.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT (Provisions No. 3 and No. 4)

This provision of the bill would impact the department's systems, resulting in programming, processing and form revisions as well as the need for taxpayer outreach. Staff estimates the cost to implement these provisions of this bill to be approximately \$2,960,000 for fiscal year 2021-2022, and estimated on-going annual costs of approximately \$2,235,000.

ECONOMIC IMPACT (Provisions No. 3 and No. 4)

Revenue Estimate

Provisions No. 3 and No. 4 of the bill would result in the following revenue impact:

Estimated Revenue Impact of Provisions No. 3 and No. 4 as Amended on June 27, 2021
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2021-2022	\$1,300
2022-2023	\$650
2023-2024	\$600

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.

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Revenue Discussion

This proposal would allow entities taxed as a partnership or an S corporation to elect to pay an additional tax of 9.3 percent (9.3%) on their qualified net income. This additional tax would reduce the amount of income the owners of those businesses, would have to report for federal tax purposes. In addition, owners would receive a credit against California tax equal to their share of the tax paid by the business entity.

Using available tax return data, an analysis was completed to identify taxpayers with business income to determine whether they would elect to pay the additional tax and how that election would impact California revenue.

This estimate analyzed the taxpayers' combined state and federal impact of electing to pay the additional tax. The estimate assumed that taxpayers would elect to pay the additional tax if the benefits from their federal tax savings from the reduction in pass-through income and credits generated with the state would be greater than the additional California tax paid. It is assumed this would result in a revenue gain to the state. For taxpayers whose combined state and federal benefits would result in a higher tax liability to the shareholder, it is assumed that they would not elect to pay the additional tax.

Applying the 9.3 percent (9.3%) tax rate to the business income of taxpayers assumed to elect would produce a revenue gain of approximately \$9.3 billion in tax year 2021.

It is estimated that individual taxpayers will be able to use about \$8.4 billion in tax credits in 2021. The remaining credits may be used in the following five remaining years.

This results in net revenue gain of approximately \$900 million for tax year 2021.

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.

Analysis Provision No. 4

Credit for Entity-Paid Elective Tax (Sections 7 and 12)

This provision of the bill, under the PITL, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, would allow a qualified taxpayer, who is a partner, shareholder, or member of a qualified entity under the SBRA, that makes an annual election to pay the elective tax, as explained in Provision No. 3, a tax credit in an amount equal to the qualified amount. For nonresidents and part-year California

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residents, certain tax credits are allowed, but must be proportioned by the same ratio as the nonresident or part-year resident's taxable income to total taxable income. This provision would also specify that the tax credit under this provision would be allowed to a nonresident or part-year resident in its entirety.

For purposes of this provision, the following definitions would apply:

- Electing qualified entity means a qualified entity, as defined above that has elected to pay the elective tax under the SBRA.
- Qualified amount means an amount equal to 9.3 percent (9.3%) of the qualified taxpayer's pro rata or distributive share, as applicable, of qualified net income subject to the election made by an electing qualified entity under the SBRA.
- Qualified taxpayer means a taxpayer that is an individual, fiduciary, estate, or trust that is a partner, shareholder, or member of an electing qualified entity that consented to have their pro rata share or distributive share of income, as determined under the PITL or the CTL, subject to tax under the PITL, included in the qualified net income of the electing qualified entity; and does not include a business entity that is disregarded for federal tax purposes, or its partners or members.

Any excess credit allowed by this provision that exceeds the "net tax," may be carried over to reduce the "net tax" for five years, until the credit is exhausted.

Any disallowance of the credit due to any of the following conditions would be treated as a mathematical error appearing on the return, and would be assessed by the FTB in the same manner as provided by RTC section 19051:

- Timely payment was not made by the qualified entity.
- Payments made for the taxable year exceed the elective tax computed by the qualified entity under the SBRA.
- No election was made by the qualified entity or is allowed under the SBRA.

This provision would allow FTB to adopt regulations that are necessary or appropriate to implement this provision. In addition, the requirements of the APA would not apply to any regulation, rule, guideline, procedure, or other guidance prescribed to carry out the purposes of this provision.

For purposes of complying with Section 41, the Legislature finds and declares that the goal of this tax credit is to provide tax relief to small businesses facing unprecedented economic hurdles due to COVID-19.

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

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Federal/State Law

Existing federal and state laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption or first-time home buying) 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.

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

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT (Provision No. 4)

See FISCAL IMPACT section under Provision No. 3.

ECONOMIC IMPACT (Provision No. 4)

See ECONOMIC IMPACT section under Provision No. 3.

Analysis Provision No. 5

Homeless Hiring Tax Credit (Sections 9, 17, and 26)

This provision of the bill would, under the PITL and the CTL, for each taxable year beginning on or after January 1, 2022, and before January 1, 2027, allow a qualified taxpayer that employs an eligible individual, to receive a credit in an amount, not to exceed thirty thousand dollars (\$30,000) per taxpayer per taxable year.

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A qualified taxpayer would be allowed the credit in the following amounts per taxable year:

- \$2,500 for each eligible individual that works at least 500 hours but fewer than 1,000 hours for the eligible employer during the taxable year in which the credit is claimed.
- \$5,000 for each eligible individual that works at least 1,000 hours but fewer than 1,500 hours for the eligible employer during the taxable year in which the credit is claimed.
- \$7,500 for each eligible individual that works at least 1,500 hours but fewer than 2,000 hours for the eligible employer during the taxable year in which the credit is claimed.
- \$10,000 for each eligible individual that works at least 2,000 hours for the eligible employer during the taxable year in which the credit is claimed.

This provision would define the following terms and phrases:

- Continuum of care would have the same meaning as in Section 578.3 of Title 24 of the Code of Federal Regulations (CFR), which is defined as the group organized to carry out the responsibilities and is composed of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.
- Coordinated entry system" would mean a centralized or coordinated assessment system developed pursuant to Section 578.7 of Title 24 of the CFR, designed to coordinate homelessness program participation intake, assessment, and provision of referrals.
- Eligible employer would mean a taxpayer that meets all of the following requirements:
 - Pays wages subject to withholding under Division 6 (commencing with Section 13000) of the UIC.
 - Pays at least 120 percent (120%) of minimum wage.
 - Provides to the FTB, upon request, a copy of the certification received for each eligible individual for each tax year that the credit is claimed for the eligible individual by that eligible employer.

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- Eligible individual would mean a taxpayer who meets both of the following criteria:
 - The person is homeless on the date of the hire or anytime during the 180-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 a community-based service provider that is connected to the local coordinated entry system or to a local Homeless Management Information System (HMIS).
 - The person has been issued a certification by a continuum of care or a community-based service provider that is connected to the local coordinated entry system or to a local HMIS, and that certification has not expired.
- HMIS would have the same meaning as in Section 578.3 of Title 24 of the CFR, and includes the use of a comparable database by a victim services provider or legal services provider that is permitted by the federal government under Part 576 of Title 24 of the CFR.
- Person who is homeless would be defined by reference to the definition of “homeless” in Section 578.3 of Title 24 of the CFR, generally meaning:
 - An individual or family who lacks or will imminently lose a fixed, regular, and adequate nighttime residence, and other specified situations” as explained in that regulation.
 - Minimum wage would mean the wage established pursuant to Chapter 1 of Part 4 of Division 2 of the Labor Code (commencing with Section 1171).
 - Qualified taxpayer means an eligible employer that pays wages subject to withholding under Division 6 (commencing with Section 13000) of the UIC to an eligible individual.

The eligible employer would be required to submit to the FTB, upon request, a certification issued by a continuum of care, or a community-based service provider that is connected to the local coordinated entry system or to a local HMIS, or other program, as specified by the FTB.

A continuum of care, or a community-based service provider that is connected to the local coordinated entry system or to a local HMIS would be required to issue certifications.

The total collective amount of the credit that may be allocated by credit reservation per calendar year to all qualified taxpayers could not exceed thirty million dollars (\$30,000,000), plus the unallocated credit amount, if any, from the preceding calendar year. The qualified taxpayer would be required to claim the credit on a timely filed original return of the qualified taxpayer and only with respect to an eligible individual for whom the qualified taxpayer has received a credit reservation.

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In order for the qualified taxpayer to be eligible for the credit with respect to an eligible individual, once the qualified taxpayer hires an eligible individual, the qualified taxpayer would be required to request a credit reservation from the FTB within 30 days of complying with the Employment Development Department's (EDD) new hire reporting requirements, as specified, in the form and manner prescribed by the FTB.

As determined by the FTB, the qualified taxpayer would be required to provide necessary information including the name, social security number, number of hours the employee is expected to work in the next 12 months, and the start date of employment of the eligible individual to obtain a credit reservation for the eligible individual.

The FTB would be required to do both of the following:

- Approve a tentative credit reservation with respect to an eligible individual hired during a taxable year.
- Subject to the annual cap of \$30,000,000, allocate an aggregate amount of credits, and allocate any carryover of unallocated credits from prior years.

Excess credits could be carried over for three years until the credit is exhausted.

Any deduction allowed for any amount of wages paid or incurred by the qualified taxpayer as a trade or business expense to an eligible individual would be reduced by the amount of the credit allowed.

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 APA when prescribing rules, guidelines, or procedures to administer the credit that would be enacted by this bill.

For purposes of complying with RTC section 41, Section 26 of the bill provides the goal of the credit is to encourage employers to hire and retain individuals from the homeless population who have been found to face systemic barriers to employment. In addition, on or before April 1, 2024, and annually thereafter, while the credit is in effect, the FTB would be required to post on its internet website a written report, which must contain the following:

- The number of employers who applied for credit reservations in the second calendar year prior to the year the report is posted.
- The total amount of credits reserved in the second calendar year prior to the year the report is posted.
- The total amount of credits claimed on tax returns during the year preceding calendar year.

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Within four calendar days of the report being posted onto the FTB's website, a letter indicating the posted report would be required to be delivered to the Chief Clerk of the Assembly and the Secretary of the Senate. The Chief Clerk of the Assembly and the Secretary of the Senate would be required to distribute the notice as they deem appropriate. The disclosures required under this provision would be treated as an exception to FTB's general prohibition against disclosure of tax information.

This credit would remain in effect until December 1, 2027, and as of that date would be repealed.

Effective/Operative Date

As a provision within a bill providing for appropriations related to the Budget Bill, this provision would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2022, and before January 1, 2027.

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 (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 economic development area. 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

None noted.

Technical Considerations

None noted.

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Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 424 (Durazo, et al., 2021/2022), similar to this provision would have, under the PITL and CTL, created the California Homeless Hiring Credit available to a qualified taxpayer that employs a person who is homeless or someone who is receiving supportive services from a homeless services provider. The provisions of SB 424 were incorporated into this bill.

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 did not 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 did not pass out of the Assembly by the constitutional deadline.

AB 2041 (Dahle, 2019/2020) would have, under the PITL and the CTL, established 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 did not pass out of the Assembly by the constitutional deadline.

SB 1333 (Durazo, et al., 2019/2020), similar to this provision, would have created the California Homeless Hiring Tax Credit available to a qualified taxpayer that employs a homeless individual. SB 1333 did not pass out of the Senate by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Staff estimates that the departmental costs to implement this provision of the bill would be approximately \$1,326,000 in fiscal year 2021-2022, \$1,230,000 for 2022-2023, and estimates an on-going cost of approximately \$960,000 each year until the end of the program to build and maintain the credit reservation system and other on-going activities.

ECONOMIC IMPACT

Revenue Estimate

This provision would result in the following revenue loss:

Estimated Revenue Impact of Provision No. 5 as Amended June 27, 2021
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2021-2022	-\$3.9
2022-2023	-\$10
2023-2024	-\$12

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 EDD and the Bureau of Labor Statistics, it is estimated that approximately 5,000 eligible individuals would be hired by qualified employers in the 2022 taxable year. Applying the applicable credit amounts and credit caps per taxpayer as specified in the bill, this would result in credits generated of approximately \$17 million in the 2022 taxable year.

It is estimated that approximately 80 percent (80%), including the S corporation adjustment, or \$14 million, would be earned by taxpayers with sufficient tax liability to offset with the credit. Of that amount 70 percent (70%), or \$10 million, would be claimed in the year generated and the remaining credit would be used over the subsequent three years.

To arrive at the offsetting tax effect of the wage expense deduction that would otherwise be allowed under current law, it is estimated that qualified taxpayers would be able to deduct approximately \$17 million in qualified expenses in taxable year 2022. Applying an average tax rate of 7 percent (7%), results in an offsetting revenue gain of \$1.2 million. The resulting net revenue loss would be \$8.8 million in the 2022 taxable year. The tax year estimates are converted to fiscal year estimates and then rounded to arrive at the amounts reflected in the above table.

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LEGAL IMPACT

None noted.

Analysis Provision No. 6

Credit for Agriculture Product Donations to Food Banks (Sections 10 and 18)

This provision of the bill would, under the PITL and the CTL, modify this credit by extending the sunset date for five years to taxable years beginning before January 1, 2027, and the repeal date to December 1, 2027.

The existing annual FTB reporting requirement to the Legislature would also be extended five years.

Effective/Operative Date

As a provision within a bill providing for appropriations related to the Budget Bill, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2027.

Federal/State Law

Under current federal law, in general, a deduction is permitted for charitable contributions, subject to limitations dependent upon the type of taxpayer, the property contributed, and the donee organization. The amount of any deduction generally equals the fair market value of the contributed property on the date of the contribution.

California's PITL generally conforms to the federal rules relating to charitable contributions as of the specified date of January 1, 2015, but specifically does not conform to the enhanced deduction for a contribution of food inventory. The deduction under the PITL for charitable contributions of inventory is limited to the taxpayer's basis in the inventory, generally its cost. Additionally, the state's CTL does not adopt the general federal rules that allow enhanced deductions for C corporation contributions of inventory, and does not adopt the enhanced deduction for a contribution of food inventory. The deduction under the CTL for contributions of inventory is limited to the taxpayer's basis in the inventory (generally its cost), and may not exceed ten percent (10%) of the corporation's net income. Any excess may be carried forward for up to five years.

For taxable years beginning on or after January 1, 2020, and before January 1, 2022, current state law allows the credit equal to 15 percent (15%) of the qualified value of the qualified donation of fresh fruits or fresh vegetables and other specified agricultural products or processed foods.

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The qualified taxpayer is required to provide to the food bank the qualified value of the qualified donation items and information regarding the origin of where the qualified donation items were grown, processed, or both grown and processed.

Upon receipt and acceptance of the donation items, the food bank provides a certificate to the qualified taxpayer. The certificate must contain a statement signed and dated by a person authorized by the food bank that the donation items were accepted. The certificate must also contain the type and quantity of items donated, the name of the qualified taxpayer or qualified taxpayers, the name and address of the food bank, and, as provided by the qualified taxpayer, the origin of the donated items, and their qualified value.

Upon FTB request, the qualified taxpayer is required to provide a copy of the certification to the FTB.

The credit may only be claimed on a timely filed original return, and any excess credit may be carried over for up to seven years or until exhausted.

The FTB is required to report to the Legislature specified items, including qualified value of the qualified donated items, the county in which the qualified donation items originated, and the month the donation was made. The current reporting requirement will become inoperative January 1, 2021, pursuant to GC section 10231.5.

Under current law, the credit will remain in effect until December 1, 2022, and be repealed as of that date.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 614 (Eggman, et al., Chapter 431, Statutes of 2019), expanded the existing credit for donations of fruits and vegetables to a credit for donations of agriculture products by expanding the products eligible for the credit.

SB 837 (Committee on Budget and Fiscal Review, Chapter 32, Statutes of 2016), for taxable years beginning on or after January 1, 2017, and before January 1, 2022, created a credit for donations of fresh fruits and vegetables equal to 15 percent (15%) of the value of the products donated.

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AB 279 (Burke, et al., 2019/2020), this bill would have, under the PITL, replaced the FTB's mandated annual reporting requirement on the utilization of the credit for donated fresh fruits or vegetables to instead be two reports, the first due on or before December 1, 2019, and the second due on or before July 1, 2020. AB 279 did not pass by the constitutional deadline.

AB 2243 (Eggman, et al., 2019/2020), would have modified the credit for agriculture product donations to food banks (Agriculture Product Donations Credit) by extending by five years the date the credit becomes inoperative. AB 2243 did not pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 515 (Eggman, et al., 2015/2016), would have recast the donated fresh fruits or vegetables credit as the agriculture product donation to food bank credit. AB 515 was vetoed by the Governor, along with other tax credit bills, due to concerns related to the state's budget.

AB 152 (Fuentes, et al., Chapter 503, Statutes of 2011), created the donated fresh fruits or vegetables credit under the PITL and the CTL. This credit allows a 10 percent (10%) credit for donations of fresh fruits and vegetables made to a qualified nonprofit entity.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This provision of the bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This provisions would result in the following revenue loss:

Estimated Revenue Impact of Provision No. 6 as Amended June 27, 2021
 Assumed Enactment after June 30, 2021

(\$ in Dollars)

Fiscal Year	Revenue
2021-2022	-\$100,000
2022-2023	-\$250,000
2023-2024	-\$350,000

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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 California Association of Food Banks, it is estimated that \$3.6 million in qualified donations would be made in 2021. Applying the credit rate of 15 percent (15%) results in estimated credits generated of \$540,000 in tax year 2021. The credits generated were adjusted to reflect changes in the economy over time, resulting in estimated credits generated of \$500,000 in taxable year 2022, the first tax year under the extension proposal. Using current Donated Fruits and Vegetables Credit data, of the new generated amount, it is estimated that 95 percent (95%) of taxpayers, including the S corporation adjustment, would have a tax liability to offset with the credit. Of that amount, 50 percent (50%), or \$250,000, would claim the credit in the year generated and the remaining credit would be used over subsequent four years.

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 \$500,000 in qualified expenses in taxable year 2022. Applying an average tax rate of 6 percent (6%), results in an offsetting revenue gain of approximately \$30,000. The net revenue loss is estimated to be \$220,000 in taxable year 2022. It is assumed that 85 percent (85%) of the credit would be used by personal income taxpayers and the remaining 15 percent (15%) would be used by corporations.

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.

Analysis Provision No. 7

California Competes Tax Credit Expansion (Sections 13, 19, and 25)

This provision of the bill would, under the PITL and the CTL, increase the aggregate amount of credit that may be allocated under the CCTC for the 2021–2022 fiscal year from \$180,000,000 to \$290,000,000. In addition, the bill would make other nonsubstantive changes.

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This provision of the bill provides that, for purposes of Section 41, the specific goal, purpose, and objective of this increase in funding for the CCTC is to encourage business operations in the state. Detailed performance indicators include the number of taxpayers that have claimed credits under the provision, and the amount of the credit claimed. The LAO would be required to report its review to the Legislature by January 1, 2023, and in compliance with GC section 9795.

Effective/Operative Date

As a provision within a bill providing for appropriations related to the Budget Bill, this provision would be effective and operative immediately upon enactment.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

For taxable years beginning on or after January 1, 2014, and before January 1, 2030, the CCTC is an income or franchise tax credit available to businesses that come to California or stay and grow in California. CCTC agreements are negotiated by the GO-Biz and approved by the Committee, consisting of the State Treasurer, the Director of the DOF, the Director of GO-Biz, and one appointee each by the Speaker of the Assembly and Senate Committees on Rules.

Upon approval of the tax credit agreement by the Committee, GO-Biz informs the FTB of the terms and conditions of the written agreement. The FTB reviews the books and records of taxpayers allocated a CCTC to ensure that the taxpayer complied with the terms and conditions of the written agreement. In the case of a small business, the FTB reviews the books and records of the taxpayer if it deems the review appropriate or necessary in the best interest of the state. If the FTB determines that a possible breach of the agreement has occurred, GO-Biz is provided detailed information regarding the basis of the possible breach.

In the case where a taxpayer fails to satisfy the terms of their written CCTC agreement, GO-Biz is required to notify the FTB of the amount of the CCTC to be recaptured from the taxpayer. Any recapture, in whole or in part, is treated as a mathematical error appearing on the return, and is added to the tax otherwise due by the taxpayer for the taxable year in which the Committee's recapture determination occurs.

Implementation Considerations

None noted.

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Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 151 (Committee on Budget, 2021/2022), the companion bill to SB 151, would have, under the GC, among other things, created Article 4.4, the California Competes Grant (CCG) Program, and required the FTB to review the books and records of any qualified grantee that is allocated a CCG, and would, under the AFITL, have created Article 8, Collection of Recaptured California Competes Grants, and required the FTB to collect recaptured CCG amounts. AB 151 was held by the Senate Committee on Budget and Fiscal Review without further action as the provisions of that bill were incorporated into SB 151.

SB 150 (Committee on Budget and Fiscal Review, 2021/2022), companion bill to this bill, relating to various credits and data sharing, was held by the Assembly Committee on Budget without further action as the provisions of the bill were incorporated into this bill.

SB 313 (Durazo, 2021/2022) would have, under the PITL and the CTL, modified the CCTC to be refundable for qualified taxpayers that reinvest the refund in immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state. SB 313 was held in the Senate Governance and Finance Committee without further action.

SB 151 (Committee on Budget and Fiscal Review, Chapter 74, Statutes of 2021), companion bill to AB 151 (Committee on Budget, 2021/2022), among other things, under the GC, created Article 4.4, the California Competes Grant (CCG) Program, and requires the FTB to review the books and records of any qualified grantee that is allocated a CCG, and, under the AFITL, created Article 8, Collection of Recaptured California Competes Grants, and requires the FTB to collect recaptured CCG amounts.

SB 855 (Committee on Budget and Fiscal Review, Chapter 52, Statutes of 2018), among other things, extended the sunset date for the CCTC from taxable years beginning before January 1, 2025, to taxable years beginning before January 1, 2030, with the repeal date of December 1, 2030.

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AB 961 (Gallagher, 2015/2016) would have modified the amount of funding for the CCTC. AB 961 did not pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 2055 (Gipson, 2015/2016) would have modified the items for GO-Biz to consider when allocating the credit to give special consideration to those installing zero or near-zero emissions equipment. AB 2055 did not pass out of the Assembly Appropriations Committee by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This provision of the bill would increase the aggregate amount of credits that may be allocated under the CCTC, increasing the CCTC recipients whose books and records must be reviewed by the FTB, and increasing potential FTB collection activity for any recaptured credit amounts. Staff estimates that the department's costs to implement this provision of the bill would be \$84,000 for fiscal year 2021-2022 that would be absorbed by the department. The on-going annual costs are estimated to be \$144,000. The department will pursue a budget change proposal for the on-going years, if necessary.

ECONOMIC IMPACT

Revenue Estimate

In accordance with the bill provisions, staff defers to the DOF to determine the revenue impact of this provision of the bill.

Revenue Discussion

The amount and timing of the additional tax credits that would be allocated by GO-Biz, under this provision of the bill, is subject to the private equity share agreements between GO-Biz and taxpayers. Staff defers to the DOF for the estimated annual revenue loss for this credit.

LEGAL IMPACT

None noted.

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Analysis Provision No. 8

Data Sharing with California Department of Health Care Services (Section 14)

This provision of the bill would require DHCS to share data with the FTB, upon request, for purposes of identifying individuals enrolled in Medi-Cal who may be eligible for the CalEITC and the federal Earned Income Tax Credit (EITC). Data collected under this provision would remain confidential and would only be used for the following purposes:

- To analyze and create a plan to increase the number of eligible claims of the CalEITC and EITC.
- To decrease the barrier of tax filing for non-filers who may be eligible for the CalEITC and EITC.
- To develop a plan of the necessary changes to increase the relationship and coordination among state agencies to inform the greatest number of individuals eligible for the CalEITC or the EITC of their eligibility.

Effective/Operative Date

As a provision within a bill providing for appropriations related to the Budget Bill, this provision would be effective and operative immediately upon enactment.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

Current state law generally prohibits the sharing of information related to individuals enrolled in Medi-Cal with the FTB.

Additionally, existing state law prohibits the disclosure of any taxpayer information, except as specifically authorized by statute. Any Franchise Tax Board employee or member responsible for the unauthorized disclosure of state or federal tax information is subject to criminal prosecution. Improper disclosure of state tax information is a misdemeanor and improper disclosure of federal tax information is a felony.

Implementation Considerations

None noted.

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Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 1409 (Caballero, Chapter 114, Statutes of 2020) requires the FTB to analyze and develop a plan to increase the number of CalEITC claims and the EITC. The FTB is required to report to the Legislature by January 1, 2022, its analysis and plan. The analysis is required to include, but is not limited to, an outline of the changes needed to increase collaboration and coordination among state agencies to reach the greatest number of individuals eligible for the CalEITC. The FTB is also required to engage any state agency task force or group that exists to reduce poverty and other stakeholders that work to reduce poverty.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This provision of the bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This provision of the bill as amended June 27, 2021, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

LEGISLATIVE CONTACT

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