STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Committee on Budget

Sponsor:

Bill Number: AB 158

Related Bills: See Legislative History

Amended: August 26, 2022

SUBJECT

Main Street Credit, Workers' Tax Credit, Paycheck Protection Program (PPP) Conformity, and Data Sharing

SUMMARY

This bill would do the following:

Provision No. 1 - Main Street Small Business Credit II:

Sections 2 and 7 of the bill, under the Personal Income Tax Law (PITL) and the Corporation Tax law (CTL), would make a nonsubstantive technical change to reference the amendments of AB 194 (Assembly Committee on Budget, Chapter 55, Statutes of 2022), relating to the Main Street Small Business Credit I and II.

Provision No. 2 - Credit for Dues Paid to a Bona Fide Labor Organization:

Section 3 of the bill would, under the PITL, create a tax credit for dues paid by qualified taxpayers to a bona fide labor organization (referred to as the workers' tax credit).

Provision No. 3 - PPP Extension Act (PPPEA) of 2021:

Sections 4 and 8 of the bill would, under the PITL and the CTL, add specific operative date language for loans forgiven pursuant to the PPPEA of 2021 (Public Law (PL) 117-6).

Provision No. 4 – Data Sharing:

Sections 6 and 11 of the bill would, under the Administration of Franchise and Income Tax Law (AFITL), allow for the Franchise Tax Board (FTB) to exchange data with the California Department of Social Services (DSS), and the Department of Health Care Services (DHCS) for purposes of identifying taxpayers who may qualify for specified antipoverty credits, Volunteer Income Tax Assistance (VITA), and CalFile.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The August 26, 2022, amendments removed intent language relating to the Budget Act of 2022, 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.

REASON FOR THE BILL

The reason for the bill is to make various statutory changes relating to implementation of the Budget Act of 2022.

ANALYSIS

Analysis of Provision No. 1: Main Street Small Business Credit II (Sections 2 and 7)

This provision would make a nonsubstantive technical change to the Main Street Small Business Credit II.

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 comparable provision in federal law.

State Law

For each taxable year beginning on or after January 1, 2021, and before January 1, 2022, under the PITL and CTL, state law allowed a Main Street Small Business Credit II to a qualified small business employer that received a tentative credit reservation. The credit was equal to $1,000 for each net increase in qualified employees, as specified, not to exceed $150,000 for any qualified small business employer. For qualified small business employers that received a tentative credit reservation under Main Street Small Business Credit I, the tentative credit reservation amount was reduced by:

- If a qualified small business employer applied the credit against qualified sales and use taxes (SUT), the credit amounts allocated to the qualified small business employer pursuant to Main Street Small Business Credit I.

- If a qualified small business employer applied the credit under the PITL or CTL, or both, the tentative credit reservation amount received by the qualified small business employer pursuant to Main Street Small Business Credit I.

To be eligible for the credit under Main Street Small Business Credits I and II, the qualified small business employer was required to:

- Submit a timely application to the California Department of Tax and Fee Administration for a tentative credit reservation amount for the small business hiring tax credit.
- Claim the credit on a timely filed original return.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 194 (Assembly Committee on Budget, Chapter 55, Statutes of 2022), the companion bill to SB 194 (Senate Committee on Budget and Fiscal Review, 2021/2022), among other things, under the PITL and the CTL, removed the requirement that a small business hiring credit be claimed on a timely filed original return. Instead, a qualified small business employer that received a tentative credit reservation is allowed to claim the credit on an amended return. (SB 194 was held by the Assembly Committee on Budget without further action as the provisions of the bill were incorporated into AB 194.)

AB 150 (Assembly Committee on Budget, Chapter 82, Statutes of 2021), the companion bill to SB 150 (Senate Committee on Budget and Fiscal Review, 2021/2022), among other things, under the PITL, the CTL and the SUT Law, allowed a qualified small business employer a small business hiring credit subject to receiving a tentative credit reservation for taxable year beginning on or after January 1, 2021, and before January 1, 2022. The amount of the credit is reduced if the qualified small business employer received a tentative credit reservation amount under Section 6902.8. (SB 150 was held by the Assembly Committee on Budget without further action as the provisions of the bill were incorporated into AB 150.)

SB 1447 (Bradford, et al., Chapter 41, Statutes of 2020), under the PITL and the CTL, allowed 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 SUT, as specified.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Implementing this provision would not significantly impact the department's programs and operations.

ECONOMIC IMPACT

Revenue Estimate

AB 158 Provision No. 1 as amended August 26, 2022, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

Analysis of Provision No. 2: Credit for Dues Paid to a Bona Fide Labor Organization (Section 3)

Under the PITL, this provision would, for taxable years beginning on or after January 1, 2024, allow a credit to a qualified taxpayer (workers' tax credit) in an amount equal to the greater of the following:

- Dues paid in that taxable year by the qualified taxpayer multiplied by the workers' tax credit adjustment factor.
- The amount equal to dues paid in the taxable year by the qualified taxpayer, not to exceed $100. On an annual basis, beginning on January 1, 2025, the amount would be recomputed in the same manner as the recomputation of income tax brackets under subdivision (h) of Section 17041.

If no appropriation for the credit is included in a Budget Act or a bill providing for appropriations related to the annual Budget Act, enacted after May 1, 2024, the workers' tax credit adjustment factor would be 0% and the dollar amount allowed would be $0 for that taxable year.

This provision states that the intent of the Legislature is for the workers' tax credit adjustment factor and the maximum dollar amount allowed be set in a manner to limit the annual revenue loss from this credit to $400 million.

This provision defines the following terms:

"Bona fide labor organization" means a labor organization that satisfies all the following:

- Is exempt from income taxes pursuant to Section 23701a.
- Represents employees in California as to wages, hours, and working conditions.
- Its officers have been democratically elected by its membership or otherwise in a manner consistent with federal law.
- Is free of domination or interference by any employer and has received no improper assistance or support from any employer.

"Dues" means the amount paid or incurred during the taxable year by a taxpayer for dues or dues equivalents paid to a bona fide labor organization.

"Qualified taxpayer" means an individual who satisfies both of the following:

- Is represented for purposes of collective bargaining by, and who pays dues or dues equivalents to, a bona fide labor organization.
- Meets any of the following requirements:
    - Has wages subject to withholding pursuant to Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.
    - Is a provider of in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code (WIC), or pursuant to Section 14132.95, 14132.952, or 14132.956 of the WIC.
    - Is a provider of waiver personal care services pursuant to Section 14132.97 of the WIC.

The provision states that the credit, would be in lieu of any other credit or deduction that the qualified taxpayer may otherwise be allowed, with respect to amounts used to calculate the credit.

For purposes of complying with Section 41, the FTB would be required to provide a report to the Legislature beginning in the 2026 calendar year, and annually thereafter while the credit is in effect.

The report would include the:

- Total number of returns claiming the credit.
- Total dollar amount of credits claimed for the most recent tax year for which information is available.

For purposes of the Section 41 report, the general prohibition against disclosure of taxpayer information applicable to the FTB would not apply.

Effective/Operative Date

As a provision within a bill providing for appropriations relating to the Budget Bill, this provision would be effective immediately upon enactment, and specifically operative for taxable years beginning on or after January 1, 2024.

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 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.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

No legislation, similar to Provision No. 2, has been identified.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Provision No. 2 would mostly impact the department's systems. Staff estimates the cost to implement this provision to be approximately $555,000 for fiscal year 2023-2024, $955,000 for fiscal year 2024-2025, $566,000 for fiscal year 2025-2026 and $182,000 for fiscal years 2026-2027 and 2027-2028. Estimated on-going annual cost is approximately $2,235,000.

ECONOMIC IMPACT

Revenue Discussion

According to AB 158 Provision No. 2, the amount of credit is the greater of dues paid in that taxable year by the qualified taxpayer multiplied by the workers' tax credit adjustment factor or the amount of dues paid not to exceed $100. Should the workers' tax credit adjustment factor be equal to 100%, the revenue loss could be up to $2.1 billion for taxable year 2024.

LEGAL IMPACT

None noted.

Analysis of Provision No. 3: PPPEA of 2021 (Sections 4 and 8)

This provision would add a specific operative date for the amendments made by AB 194 (Ch. 55, Stats. 2022), for taxable years beginning on or after January 1, 2019. This change ensures that covered loans made during the PPPEA extended period, and subsequently forgiven, would be eligible for the same exclusion from gross income and the same exceptions to the deduction, tax basis, and attributes provisions applicable to covered loans forgiven under federal PPP Acts.

This bill contains a provision that the benefits authorized by this provision would not constitute a gift of public funds.

Effective/Operative Date

As a provision within a bill providing for appropriations relating to the Budget Bill, this provision would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2019.

Federal/State Law

Federal Law

Under Section 1106 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (PL 116-136), a recipient of a covered loan made during the covered period of February 15, 2020, to June 30, 2020, under the PPP is eligible for forgiveness of indebtedness on the loan in an amount generally equal to the sum of certain costs incurred and payments made during either the eight-week or 24-week period beginning on the date of the origination of the covered loan, including payroll costs, certain mortgage interest payments, certain rent payments and certain utility payments. The CARES Act specifically excluded the income resulting from the discharge of PPP loans from gross income for federal purposes under section 1106 of the Act (pursuant to the authority of Title 15 United States (U.S.) Code 636(a) (7)).

The Paycheck Protection Program Flexibility Act of 2020 (PL 116-142), amended the CARES Act and the Small Business Act to modify certain provisions related to loan forgiveness under the PPP, among other provisions and extended the covered period to December 31, 2020.

The Consolidated Appropriations Act (CAA), 2021 (PL 116-260), extended the covered period from December 31, 2020, to March 31, 2021, and provided a “second draw” for certain businesses under the PPP. In addition to the loan forgiveness itself being excluded from gross income, payroll and certain non-payroll expenses paid with loan monies were deductible. Additionally, no basis or tax attribution adjustments were required with respect to the underlying expenses. The PPPEA extended the covered period of the PPP to June 30, 2021.

State Law

California generally conforms to Internal Revenue Code (IRC) section 61 pursuant to Revenue and Taxation Code (RTC) sections 17071 and 24271 as of January 1, 2015, except as otherwise provided. For taxable years beginning on or after January 1, 2019, California conforms to Section 1106 of the CARES Act, the Paycheck Protection Program and Health Care Enhancement Act, Paycheck Program Flexibility Act of 2020, and the CAA (AB 1577 Stats. 2020 Ch. 39 and AB 80 Stats. 2021 Ch. 17) relating to the:

- Exclusions from gross income for PPP loan forgiveness and certain Economic Injury Disaster Loan forgiveness,
- Allowance of deductions for expenses paid with the forgiven loan amounts not included in income under such sections, and
- Allowance of tax basis increases and not requiring tax attribute reduction as a result of those forgiven loan amounts being excluded from gross income.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 194 (Assembly Committee on Budget, Chapter 55, Statutes of 2022) under the PITL and CTL, expanded the exclusion from gross income for covered loan amounts, for loans forgiven pursuant to the PPPEA of 2021.

AB 80 (Burke, Chapter 17, Statutes of 2021) under the PITL and CTL, extended the exclusion from gross income of covered loan amounts that are forgiven under the PPP established by section 1106 of the CARES Act, modified by the Paycheck Protection Program and Health Care Enhancement Act, the Paycheck Program Flexibility Act of 2020, and the CAA, 2021, from taxable years beginning on or after January 1, 2019.

AB 1577 (Burke, Chapter 39, Statutes of 2020) under the PITL and the CTL, provided an exclusion from gross income for covered loan amounts forgiven pursuant to the federal CARES Act, Paycheck Protection Program and Health Care Enhancement Act, or the Paycheck Program Flexibility Act of 2020 for taxable years beginning on and after January 1, 2020.

PROGRAM BACKGROUND

The PPP provides forgivable loans to businesses to fund payroll costs including benefits for the covered period that begins on the date of origination and ends either with the eight-week or 24-week period after the date of origination of a covered loan or 10 months after the last day of the covered period, whichever is earlier. Funds can also be used to pay interest on mortgages, rent, and utilities. These loans are implemented by the Small Business Administration (SBA) to help businesses keep their workforce employed during the COVID-19 crisis.

As relevant to the PPP, according to the SBA's website, loan forgiveness is based on the employer rehiring and maintaining employees and their salary levels. Forgiveness is reduced if full-time headcount declines, or if salaries and wages decrease.

FISCAL IMPACT

Provision No. 3 would not significantly impact the department's costs; however, the changes proposed in this provision could result in additional amended returns being filed by impacted taxpayers that have already filed a tax return prior to enactment.

ECONOMIC IMPACT

Revenue Estimate

AB 158 Provision No. 3 as amended August 26, 2022, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

Analysis of Provision No. 4: Data Sharing (Section 6 and 11)

This provision would, under the AFITL, allow the DSS and the DHCS to exchange data with the FTB, for purposes directly connected with the federal Earned Income Tax Credit (Fed-EITC), the California Earned Income Tax Credit (Cal-EITC), and other federal and state antipoverty tax credits. Data that may be exchanged would include, but not be limited to, names, addresses, and contact information of individuals that may qualify for the Cal-EITC.

The FTB would be allowed to disclose individual income tax return information for taxable years beginning on or after January 1, 2020, and before January 1, 2022, to the DSS, and the DHCS. Information provided would be required to remain confidential and only be used for purposes of informing state residents of the availability of the VITA, CalFile, the Fed-EITC, the Cal-EITC, and other federal and state antipoverty tax credits that are designed to alleviate poverty and tax burdens of low-income households. The FTB would not be allowed to disclose or provide any federal tax information.

For purposes of this provision:

> "Voluntary Income Tax Assistance (VITA)" means the free basic income tax return preparation program, for federal and state personal income tax (PIT) returns, managed by the Internal Revenue Service (IRS) and operated by IRS partners and trained volunteers.
>
> "CalFile" means the FTB's free, direct, online program for taxpayers to complete and e-file their state PIT returns.

The DSS and DHCS, on an annual basis and before January 1 of each calendar year, would be required to provide the findings of outreach conducted to measure whether the outreach achieved its intended purpose of increasing the number of claims of the Fed-EITC and Cal-EITC as well as other state antipoverty tax credits.

Information required to be provided to the FTB must include, but is not limited to the following:

- The number of outreach contacts and the response rate of those contacts, if known.
- The number of individuals responding to outreach contacts.
- A description of each outreach program and the parameters of that program.
- The number of individuals who ultimately undertook the desired action and filed a return, if known.
- The name and amount of state and federal antipoverty tax credits claimed, if known.

Unauthorized disclosure or use of the information disclosure pursuant to this provision would be a misdemeanor pursuant to Section 19552.

The sum of $20,000 is appropriated from the General Fund to the FTB for purposes of administering this provision.

Effective/Operative Date

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

Federal/State Law

Current federal law provides that returns and tax information are confidential and may not be disclosed to federal or state agencies or employees except for authorized purposes. Agencies allowed access to federal return information include certain federal and state agencies, such as the FTB. A federal return is defined as any tax return, information return, declaration of estimated tax, or claim for refund under the IRC. Any FTB employee or member responsible for the improper disclosure of federal tax information is subject to felony criminal prosecution.

Current state tax law provides that information collected from income tax returns is considered confidential and, unless specifically available for other uses, must be used only to administer the income tax laws. The FTB may disclose taxpayer information only in limited circumstances and only to specific agencies as authorized by law. Improper disclosure of federal tax information is punishable as a felony, and improper disclosure of state tax information is punishable as a misdemeanor.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

No legislation, similar to the Provision No. 4, has been identified.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Provision No. 4 would appropriate $20,000 for purposes of Cal-EITC outreach. No additional departmental costs are associated with this provision.

ECONOMIC IMPACT

Revenue Estimate

AB 158 Provision No. 4 as amended August 26, 2022, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS (ALL PROVISIONS)

None noted.

SUPPORT/OPPOSITION (ALL PROVISIONS)

As per the Senate Rules Committee on Budget and Fiscal Review analysis of AB 158, the companion bill to SB 140, dated August 27, 2022, there is no support or opposition for this bill on file.

ARGUMENTS (ALL PROVISIONS)

As per the same analysis, no arguments for this bill were noted.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov