STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Bryan & Davies

Sponsor:

Bill Number: AB 1861

Related Bills: See Legislative History

Introduced: February 8, 2022
Amended: April 7, 2022
Revised: April 27, 2022

SUBJECT

Foster Care Hiring Tax Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), provide a tax credit to a qualified taxpayer that hires employees who were or are in foster care.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 7, 2022, amendments modified the maximum credit cap to $30,000 per qualified taxpayer per taxable year, clarified the eligibility and verification requirements, clarified the age requirement, updated the reference to section 17053.81 and added a reporting due date for Section 41 requirements, and made other nonsubstantive changes.

The April 27, 2022, revision added a coauthor to the bill.

This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for this bill is to provide a tax credit to employers of individuals who were or are in foster care.

ANALYSIS

This bill would, under the PITL and the CTL, for taxable years beginning on or after January 1, 2023, and before January 1, 2028, provide a credit to a qualified taxpayer that hires an eligible individual and receives a tentative credit reservation from the Franchise Tax Board (FTB) for that eligible individual.

The qualified taxpayer would be allowed a credit of up to $30,000 per taxable year. The amount of the credit for each eligible individual who works for the eligible employer during the taxable year would be determined as follows:

- $2,500 for each eligible individual who works at least 500 hours, but fewer than 1,000 hours.
- $5,000 for each eligible individual who works at least 1,000 hours, but fewer than 1,500 hours.
- $7,500 for each eligible individual who works at least 1,500 hours, but fewer than 2,000 hours.
- $10,000 for each eligible individual who works at least 2,000 hours.

This bill would define the following terms and phrases:

"Qualified taxpayer" would mean an eligible employer that pays wages subject to withholding under the Unemployment Insurance Code (UIC) to an eligible individual.

“Eligible employer” would mean a taxpayer that meets all of the following requirements:

- Pays wages subject to California withholding.
- Pays at least 120 percent of minimum wage.
- Provides to the FTB, upon request, a copy of the verification received for each eligible individual for each taxable year that the credit is claimed for that eligible individual by that eligible employer.

"Eligible individual" would mean a person who meets all of the following criteria:

- Is at least 16 years of age and not older than 26 years of age on the last day of the taxable year.
- Has spent time in foster care on or after becoming 13 years of age.
- Eligibility has been verified by a county child welfare agency or the State Department of Social Services (SDSS). The verification required must be provided in a form and manner prescribed by the FTB.

"Minimum wage" would mean the wage established under the Labor Code.

The total aggregate amount of the credit that could be allocated by credit reservations per calendar year to all qualified taxpayers would not exceed $30,000,000, plus the unallocated credit amount, if any, from the preceding calendar year.

A qualified taxpayer would be required to request a credit reservation from the FTB, in the form and manner prescribed by the FTB, pursuant to either of the following:

- Upon hiring an eligible individual, within 30 days from the date the employee first performs services for the qualified taxpayer for wages subject to withholding under the UIC, or
- With respect to each eligible individual hired in a previous taxable year, no later than one year and 30 days from the date of the receipt of the immediate prior reservation.

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

For purposes of this credit, 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.
- Allocate credits and any carryover of unallocated credits from the prior calendar year.

Credits in excess of the tax liability may be carried over for up to three years.

A deduction for 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.

If this credit is claimed by the qualified taxpayer, the Homeless Hiring Tax Credit would be reduced by the amount of this credit allowed.

The FTB may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. The Administrative Procedures Act would be inapplicable to any rules, guidelines, or procedures prescribed by the FTB.

The credit provisions would remain in effect until December 1, 2028, and be repealed as of that date.

For purpose of complying with Section 41 of the Revenue and Taxation Code (RTC), the Legislature finds and declares that the specific objective of the credit is to remove barriers to workforce participation and create employment opportunities for youth and young adults transitioning out of the foster care system to support their ability to achieve self-sufficiency in adulthood.

The FTB would be required to report by June 1, 2025, and annually thereafter, to the Legislature the total dollar amount of the credits allowed with respect to the relevant fiscal year. The report must be submitted pursuant to the requirements of the Government Code. The disclosure for purposes of this requirement would be exempt from the prohibition against disclosure of information under the RTC.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2023, and before January 1, 2028.

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. There is no limit on the number of individuals an employer can hire to qualify to claim the WOTC. The WOTC is operative until December 31, 2025.

The amount of the WOTC employers may claim with respect to each individual varies based on the target group of the individual hired, the wages paid to that individual in the first year of employment, and the number of hours that individual worked.

An employer must receive certification from the Internal Revenue Service that an individual is a member of a targeted group before the credit may be claimed.

State Law

For taxable years beginning on or after January 1, 2014, and before January 1, 2026, current state law allows a New Employment Credit (NEC) that is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract or economic development area. The qualified taxpayer must receive a tentative credit reservation from the FTB for that qualified full-time employee. Additionally, the FTB must provide a searchable database on its website reporting the name of the person or entity claiming the credit, the total amount of credit claimed, and the number of new jobs created.

For taxable years beginning on or after January 1, 2022, and before January 1, 2027, current state law allows a Homeless Hiring Tax Credit (HHTC) that is available to a qualified taxpayer that hires an eligible individual who is homeless. To be eligible, the eligible individual must be certified by a certifying organization. Qualified taxpayers receive $2,500 to $10,000 in tax credit per eligible individual based on the actual hours worked in the taxable year. Qualified taxpayers may claim up to $30,000 of credit per taxable year. Qualified taxpayers must make a tentative credit reservation with the FTB to claim the credit.

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

Implementation Considerations

The department has identified the following implementation consideration, and is available to work with the author's office to resolve this and other considerations that may be identified.

The bill would require the FTB to report information relating to this credit under the RTC section 41 requirements by fiscal year. Income tax returns are filed based on taxable years. For clarity, it is suggested that the bill be amended to replace the phrase "fiscal year" with "taxable year".

Technical Considerations

The bill provides the total aggregate amount of the credit that could be allocated by credit reservations per calendar year to all qualified taxpayers would not exceed $30,000,000, plus the unallocated credit amount, if any, from the preceding calendar year. The author may wish to clarify if the unallocated amounts from prior years can also be rolled over, or whether only the unallocated credit amount from the immediately preceding year can be rolled over.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 150 (Assembly Committee on Budget, Chapter 82, Statutes of 2021) among other things, established the HHTC.

AB 2035 (Villapudua, 2021/2022) would, under the PITL and CTL, amend the existing NEC to expand eligibility to additional industries, modify the base year definition, extend the pilot area designation period, and make other nonsubstantive changes. AB 2035 is currently in the committee process.

AB 1169 (Frazier, 2019/2020) would have 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 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 allowed a credit to a qualified employer for wages paid to certain qualified full-time employees who are former foster youth or ex-offender and are between the age of 18 and 25 years of age. AB 2041 did not pass out of the Assembly by the constitutional deadline.

AB 3065 (Lackey, 2019/2020) would have provided a tax credit to certain employers that hire employees who are foster youth, former foster youth, or homeless youth. AB 3065 did not pass out of the Assembly by the constitutional deadline.

SB 422 (Hueso, 2019/2020) would have allowed qualified employers an income tax credit based on wages paid to certain full-time employees who among other things are an ex-offender previously convicted of a felony and are between the age of 18 and 25 years of age on the date hired by the qualified employer. SB 422 did not pass out of the Senate by the constitutional deadline.

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

AB 3029 (Arambula, 2017/2018) would have created a California NEC that would have allowed a credit to qualified full-time employees who were ex-offenders. AB 3029 did not pass by the constitutional deadline.

SB 661 (Fuller, 2017/2018) would have expanded the NEC by adding a new type of qualified employee. SB 661 did not pass by the constitutional deadline.

SB 1216 (Hueso, 2015/2016) would have allowed a credit to a qualified employer who employed a qualified employee who was an ex-offender. SB 1216 did not pass by the constitutional deadline.

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

AB 93 (Assembly Committee on Budget, Chapter 69, Statutes of 2013) among other things, created the NEC.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. Implementing this bill would require the department to create a credit reservation system. As the bill moves through the legislative process, costs will be identified.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1861 as Amended April 7, 2022
Assumed Enactment after June 30, 2022

($ in Millions)

Fiscal Year	Revenue
2022-2023	-$2.3
2023-2024	-$5.1
2024-2025	-$6.1

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The Assembly Revenue and Taxation Committee analysis, dated April 15, 2022, lists the following registered support and opposition to the bill:

Support

Alliance for Children's Rights
Aspiranet
California Alliance of Caregivers
California Coalition for Youth
County of Alameda
National Association of Social Workers, California Chapter
UNITE-LA

Opposition

California Federation of Teachers

ARGUMENTS

The Assembly Appropriations Committee analysis, dated May 9, 2022, includes the following arguments in support and opposition to the bill:

Proponents

This bill is supported by a large coalition of organizations providing support to foster youth, including the California Alliance of Caregivers, which argues “foster youth are at a considerable disadvantage compared to other eligible workers within the same age group.”

Opponents

This bill is opposed by the California Federation of Teachers and California Teachers Association, which argue providing state tax credits is not the right solution to the problem, as such reduction in revenue lowers Proposition 98 education funding in the state budget.

LEGISLATIVE CONTACT

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