



Bill Analysis

Author: Choi, et al.

Sponsor:

Bill Number: AB 1890

Related Bills: See Legislative
History

Introduced: February 9, 2022
Amended: March 10, 2022

SUBJECT

COVID-19 Supplemental Paid Sick Leave (SPSL) Employer Tax Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a tax credit to employers that paid COVID-19 SPSL.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 10, 2022, amendments removed intent language relating to a tax credit for hygiene supplies to prevent the spread of COVID-19, and replaced them with the provisions discussed in this analysis.

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

REASON FOR THE BILL

The reason for the bill is to provide financial relief to employers impacted by the COVID-19 pandemic.

ANALYSIS

For taxable years beginning on or after January 1, 2021, and before January 1, 2023, this bill would, under the PITL and CTL, allow a qualified taxpayer an income tax credit in an amount equal to the qualified amount.

Introduced February 9, 2022 and Amended March 10, 2022

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

- 1) "Qualified amount" means an amount equal to the amount paid in COVID-19 SPSL benefits under Section 248.6 of the Labor Code (LC), which generally requires employers with more than 25 employees to provide up to 80 hours (or 10 days) of COVID-19 SPSL.
- 2) "Qualified taxpayer" means an employer that employs more than 25 employees.

This bill would allow unused credits to be carried over for five years or until exhausted.

For purposes of Revenue and Taxation Code (RTC) section 41, the bill provides that the goals, purposes, and objectives of the tax is to provide relief for businesses required to provide additional COVID-19 SPSL. The performance indicators to determine whether the tax credit is achieving its stated goal, purpose, and objective, would include the number of taxpayers and the amount of tax credits allowed.

No later than January 10, 2024, the Franchise Tax Board (FTB) would be required to report to the Legislature the number of taxpayers and the average dollar amount of the credit allowed by this bill. In addition, this reporting would be treated as an exception to the disclosure rules under RTC section 19542.

The bill also provides that these provisions serve the public purpose of securing the financial condition of businesses that were economically harmed by the COVID-19 pandemic, and would not constitute a gift of public funds.

This credit would be repealed by its own terms on December 1, 2023.

Effective/Operative Date

This bill would be effective January 1, 2023, and retroactively operative for taxable years beginning on or after January 1, 2021, and before January 1, 2023.

Federal/State Law

Federal Law

The American Rescue Plan Act of 2021 (ARPA), provides eligible employers a refundable tax credit against employment taxes to reimburse them for the cost of providing sick leave to employees unable to work or telework due to a COVID-19 quarantine order, advice to self-quarantine, for experiencing COVID-19 symptoms and seeking a medical diagnosis, awaiting results of a test or diagnosis of COVID-19 when exposed or when the employer requests the test or diagnosis, obtaining COVID-19 immunization, or recovering from injury or illness from a COVID-19 immunization.

Introduced February 9, 2022 and Amended March 10, 2022

Eligible employers are those with fewer than 500 employees and certain governmental employers. Employers are allowed a sick leave credit of up to 80 hours, at a maximum of \$511 per day, but no more than \$5,110 per employee in total, plus related health care costs. The credit was allowed for wages paid on April 1, 2021, through September 30, 2021.

State Law

Existing 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.

The Main Street Small Business Tax Credit, for the taxable year beginning on or after January 1, 2020, and before January 1, 2021, under the Sales and Use Tax Law (SUTL), the PITL and the CTL, allowed a small business hiring credit to a qualified small business employer that received a tentative credit reservation under RTC section 6902.8, equal to \$1,000 for each net increase in qualified employees, as specified. The credit could not exceed \$100,000 for any qualified small business employer. In lieu of the credit under the PITL or CTL, an irrevocable election could be made to apply the credit amount against qualified sales or use taxes (SUT), as specified. These tax credits were repealed by their own terms on December 1, 2021.

The Main Street Small Business Tax Credit, Part II, for the taxable year beginning on or after January 1, 2021, and before January 1, 2022, under the SUTL, the PITL and the CTL, allows a small business hiring credit to a qualified small business employer that received a tentative credit reservation under RTC section 6902.10. A tentative credit reservation amount could be an amount equal to \$1,000 for each net increase in qualified employees, as specified, not to exceed \$150,000 for any qualified small business employer. In lieu of the credit under the PITL or CTL, an irrevocable election can be made to apply the credit amount against qualified SUT, as specified. These tax credits will be repealed by their own terms on December 1, 2022.

Under RTC section 41, legislation that would create a new tax expenditure is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the credit.

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.

Introduced February 9, 2022 and Amended March 10, 2022

This bill would require the department to provide a report on the utilization of this credit by January 10, 2024. However, the department would not have the data for both the 2021 and 2022 taxable years by the required reporting date. The earliest the FTB could provide complete data for a tax year is generally one year after the original due date for individual returns, and one year after the extended due date for corporation returns. For example, for corporations, the extended due date for the 2022 taxable year would generally be November 15, 2023, meaning that the FTB would not have complete data until November 2024 at the earliest. The author may wish to amend the bill to extend the due date of the reporting requirements to November 2024 to allow the department to collect the necessary data for both the 2021 and 2022 taxable years.

Technical Considerations

For consistency of terminology, the following change is recommended:

- In Section 3, subdivision (b), paragraph (2), replace, "The average dollar value of tax credits allowed." with "The average credit amount on tax returns claiming the credit."

Policy Considerations

This bill is retroactively operative for taxable years beginning on or after January 1, 2021, which could result in additional amended returns being filed by impacted taxpayers and increase costs for taxpayers and the department.

A taxpayer with 25 employees or less would not qualify for this credit. If this is not the intent, the author may wish to amend the bill to allow a different alternative for businesses with 25 or less employees.

In addition, almost seventy percent (70%) of business entity taxpayers pay the minimum franchise tax for the taxable year and are unlikely to see a substantial benefit from the tax credit within the five-year carryover period.

LEGISLATIVE HISTORY

AB 62 (Gray, 2021/2022), under the PITL and the CTL, would have created a credit for the total amount paid or incurred by a qualified taxpayer to comply with regulations adopted by Occupational Safety and Health Standards Board, relating to COVID-19 prevention. AB 62 did not pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

Introduced February 9, 2022 and Amended March 10, 2022

AB 84 (Committee on Budget, 2021/2022), companion bill to SB 114, would, under the LC, add Sections 248.6 and 248.7, relating to employment and the requirement for certain businesses to provide COVID-19 SPSL to their employees. AB 84 is in the committee process with the Senate Budget and Fiscal Review Committee.

AB 1864 (Gipson, 2021/2022) would, under the PITL and the CTL, allow an income tax credit to small business employers, as defined, for an unspecified amount per employee. AB 1864 is in the committee process with the Assembly Revenue and Taxation Committee.

AB 1920 (Fong, 2021/2022), similar to this bill, would, under the PITL and the CTL, allow a tax credit to employers that paid COVID-19 SPSL for taxable years beginning on or after January 1, 2022, and before January 1, 2023. AB 1920 is in the committee process with the Assembly Revenue and Taxation Committee.

SB 114 (Committee on Budget and Fiscal Review, Chapter 4, Statutes of 2022), under the LC, added Sections 248.6 and 248.7, relating to employment and the requirement for certain businesses to provide COVID-19 SPSL to their employees.

AB 150 (Committee on Budget, Chapter 82, Statutes of 2021), among other things, for the taxable year beginning on or after January 1, 2021, and before January 1, 2022, under the SUTL, the PITL, and the CTL, allowed the Main Street Small Business Tax Credit, Part II, to qualified small business employers a small business hiring credit, subject to receiving a tentative credit reservation. The amount of the credit is reduced if the qualified small business employer received a tentative credit reservation amount under RTC section 6902.8.

SB 95 (Skinner, Chapter 13, Statutes of 2021), under the LC, added Sections 248.2 and 248.3, relating to employment and the requirement for certain businesses to provide COVID-19 SPSL to their employees.

SB 1447 (Bradford, et al., Chapter 41, Statutes of 2020), under the SUTL, PITL and the CTL, allowed the Main Street Business Tax Credit to qualified small business employers 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.

AB 1842 (Salas, 2019/2020), under the PITL and the CTL, would have, among other things, created the COVID-19 Small Business/Nonprofit Tax Credit. AB 1842 did not pass out of the Assembly Judiciary Committee by the constitutional deadline.

AB 2496 (Choi, 2019/2020), would have, under the PITL and CTL, allowed a tax credit for cleaning and sanitizing supplies purchased by businesses for use in this state to prevent the transmission of COVID-19. AB 2496 did not pass out of the Assembly by the constitutional deadline.

Introduced February 9, 2022 and Amended March 10, 2022

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department’s costs to implement this bill have yet to be determined. 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 1890 as Amended March 10, 2022
Assumed Enactment after June 30, 2022

(\$ in Millions)

Fiscal Year	Revenue
2021-2022	-\$4,500
2022-2023	-\$8,500
2023-2024	-\$3,600
2024-2025	-\$1,700

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.

Introduced February 9, 2022 and Amended March 10, 2022

SUPPORT/OPPOSITION

Support

As per the Assembly Revenue and Taxation Committee report of AB 1890, dated March 31, 2022, the following organizations are in support of the bill:

- California Attractions and Parks Association
- California Chamber of Commerce
- California Farm Bureau
- California Restaurant Association
- California Retailers Association
- National Federation of Independent Businesses

Opposition

Per the Assembly Revenue and Taxation Committee report of AB 1890, dated March 31, 2022, there is no opposition for AB 1890 on file.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov