STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Fong

Sponsor:

Bill Number: AB 1920

Related Bills: See Legislative History

Amended: May 3, 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 for taxable years beginning on or after January 1, 2022, and before January 1, 2023.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 3, 2022, amendments added a provision to make any excess credit refundable for nonprofit organizations, provided that the bill is no longer a tax levy, and renumbered the PITL section. The amendments created new implementation, technical, and policy considerations.

This analysis only discusses the provisions that impact the department's programs and operations.

REASON FOR THE BILL

The reason for the bill is to provide financial relief to small and midsized employers and nonprofit organizations impacted by the COVID-19 pandemic.

ANALYSIS

For taxable years beginning on or after January 1, 2022, 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.

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

1) A “qualified taxpayer” would mean an employer that paid COVID-19 SPSL benefits, under Labor Code (LAB) section 248.6 or 248.7, to an employee or provider, as applicable, and would meet at least one of the following requirements:
   i. Employs less than 500 employees on average at any time during the taxable year.
   ii. Is a nonprofit organization pursuant to Internal Revenue Code (IRC) section 501(c)(3).
2) A “qualified taxpayer” would not include a public employer. A “public employer” would mean:
   i. The state and every state entity, including, but not limited to, the Legislature, the judicial branch, the University of California, and the California State University.
   ii. A political subdivision of the state, or agency or instrumentality of the state or subdivision of the state, including, but not limited to, a city, county, city and county, charter city, charter county, school district, community college district, joint powers authority, joint powers agency, and any public agency, authority, board, commission, or district.
3) A “qualified amount” would mean an amount equal to the amount paid by the qualified taxpayer as COVID-19 SPSL benefits under LAB sections 248.6 and 248.7, not to exceed the compensation limitations per covered employee, as specified in LAB section 248.6(b)(3), or per provider, as specified in LAB section 248.7(b)(3), as applicable.
4) A “covered employee” would mean an employee under LAB section 248.6, which includes an employee who is unable to work or telework for specified reasons related to COVID-19.
5) A “provider” would mean a provider under LAB section 248.7, relating to providers of in-home supportive services or waiver personal care services, as defined.

If this credit were to be allowed to a nonprofit organization under IRC section 501(c)(3), the credit would be applied against the tax imposed upon the nonprofit organization’s unrelated business income, regardless of whether the covered employee or provider that was paid a qualified amount performed work or activities related to the generation of unrelated business income or the unrelated business. In addition, for a nonprofit organization under IRC section 501(c)(3), any credit amount in excess of the tax liability for the taxable year, if any, would be a refundable credit paid from the Tax Relief and Refund Account. The bill directs these nonprofit organizations to use the refunded amounts only for employer contributions to the Unemployment Insurance Fund.

For any other qualified taxpayer, this bill would allow unused credits to be carried over for five years until exhausted.

As the bill does not specify otherwise, this credit would not reduce regular tax below the tentative minimum tax.

In addition, this bill provides that a deduction would not be allowed for any amount taken into account in the computation of this credit.

The Legislative Analyst's Office (LAO) would be required to collaborate with the Franchise Tax Board (FTB) and review other publicly available data to analyze the credits claimed by industries, regions, and businesses harmed by the COVID-19 pandemic, and provide a report to the Legislature on or before January 1, 2024. The FTB would be required to provide information as requested by the LAO. In addition, any information the FTB provides to the LAO would be treated as an exception to the general prohibition against disclosure of confidential tax information.

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 specifically operative for taxable years beginning on or after January 1, 2022, 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.

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 Revenue and Taxation Code (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 considerations, and is available to work with the author’s office to resolve these and other considerations that may be identified.

The definition of a qualified taxpayer provides that an employer must employ less than 500 employees “on average at any time” during the taxable year. The term “on average” conflicts with the term “at any time.” For clarity, the author may wish to either remove the term “on average,” “at any time,” or “on average at any time” from the definition.

This bill would require the department to provide information on the utilization of this credit to the LAO so they can report to the Legislature by January 1, 2024. However, the department would not have the data for the 2022 taxable year 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 LAO reporting requirements to allow the FTB the needed time to collect and provide the necessary data for the 2022 taxable year.

The May 3, 2022, amendments created a refundable credit for nonprofit organizations. Establishing a refundable tax credit program would have a significant impact on the department's programs and operations and require extensive changes to forms and systems. Additionally, treating a credit as refundable for some taxpayers, and not others, could lead to further complexities. The FTB would not be able to implement this change until taxable years beginning on or after January 1, 2024, for returns filed after January 1, 2025.

Technical Considerations

For consistency of terminology, the following changes are recommended:

- In Section 17052.9.1(b)(4), "Qualified amount" means an amount equal to the amount paid *or incurred* by the qualified taxpayer…
- In Section 17052.9.1(b)(5)(A), "Qualified taxpayer" means an employer that paid COVID-19 supplemental paid sick leave benefits, pursuant to Section 248.6 or 248.7 of the Labor Code, to a~~n~~ *covered* employee…
- In Section 23644(b)(4), "Qualified amount" means an amount equal to the amount paid *or incurred* by the qualified taxpayer…
- In Section 23644(b)(5)(A), "Qualified taxpayer" means an employer that paid COVID-19 supplemental paid sick leave benefits, pursuant to Section 248.6 or 248.7 of the Labor Code, to a~~n~~ *covered* employee…

Section 17052.9.1(b)(5)(A) provides that a qualified taxpayer could be an employer that paid COVID-19 SPSL, as applicable, and meets at least one requirement, including that the employer is a nonprofit organization pursuant to IRC section 501(c)(3). In addition, Section 17052.9.1(e)(1) provides a rule relating to a qualified taxpayer that is a nonprofit organization pursuant to IRC section 501(c)(3). Note for purposes of the PITL, any reference to IRC section 501 is interpreted to be a reference to RTC section 23701, et seq., which are the RTC provisions that apply to exempt organizations under the CTL. Section 23701(d), RTC's corresponding provision to IRC section 501(c)(3), applies to organizations and trusts subject to the CTL, not the

PITL. As such, it is recommended that "Section 17052.9.1(b)(5)(A)(ii) Is a nonprofit organization pursuant to Section 501(c)(3) of the Internal Revenue Code." be removed from Section 17052.9.1(b)(5)(A), and that the amendment made on May 3, 2022, to Section 17052.9.1(e) also be removed.

A refund under the CTL would generally be paid from the Corporation Tax Fund, rather than the Tax Relief and Refund Account. For consistency, the following change is recommended in Section 23644(e)(1),"*...*shall be paid from the ~~Tax Relief and Refund Account~~ *Corporation Tax Fund* and refunded to the qualified taxpayer."

Policy Considerations

The May 3, 2022, amendments created a refundable credit for nonprofit organizations. Historically, refundable credits (such as the state renter's credit, the federal Earned Income Tax Credit, and the federal credit for gasoline used for farming) have had significant problems with attempts at invalid and fraudulent claims.

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.

AB 84 (Committee on Budget, 2021/2022), companion bill to SB 114, would, under the LAB, 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 was referred to the Senate Budget and Fiscal Review Committee without further action.

AB 1890 (Choi, et al., 2021/2022) 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, 2021, and before January 1, 2023. AB 1890 was referred to the Assembly Revenue and Taxation Committee without further action.

SB 114 (Committee on Budget and Fiscal Review, Chapter 4, Statutes of 2022), under the LAB, 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 LAB, 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.

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 1920 as Amended on May 3, 2022
Assumed Enactment after June 30, 2022

($ in Millions)

Fiscal Year	**Revenue**
2022-2023	-$3,300
2023-2024	-$1,000
2024-2025	-$480

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

Support

As per the Assembly Revenue and Taxation Committee analysis, dated April 29, 2022, the following organizations support the bill:

California Apartment Association

California Chamber of Commerce

Opposition

Per the same analysis, there is no opposition noted.

ARGUMENTS

Proponents

As per the Assembly Revenue and Taxation Committee analysis, dated April 29, 2022, this bill is supported by the California Chamber of Commerce, which notes, in part:

> Specifically, AB 1920 would create a tax credit akin to the now expired federal tax credit for an employer that pays COVID-19 SPSL benefits. This credit would apply to employers with 500 or less employees or is a 501(c)(3) nonprofit. Federal tax credits helped offset some of small businesses' costs for prior COVID-19 paid sick leave mandates – but those credits have expired. Out of the 900 members that we polled, more than 500 of them had previously sought federal tax credits to help offset the cost of COVID-19 paid sick leave. With the expiration of those credits, 40% of respondents are concerned about being able to afford additional COVID-19 paid sick leave.

Opponents

Per the same analysis, there are no arguments in opposition.

LEGISLATIVE CONTACT

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