STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Villapudua

Sponsor:

Bill Number: AB 2035

Related Bills: See Legislative History

Introduced: February 14, 2022
Amended: March 29, 2022

SUBJECT

New Employment Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), amend the existing New Employment Credit (NEC) to expand eligibility to additional industries and extend the pilot area designation period.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 29, 2022, amendments modified the definition of a "qualified full-time employee" to remove the starting wage threshold, updated the hour requirement, added an hour requirement for specified industries, and added conditions that would allow an employee to meet the qualified full-time employee definition. In addition, the amendments changed the definition of "qualified wages," specified an operative date, and made other nonsubstantive changes.

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

REASON FOR THE BILL

The reason for the bill is to provide the restaurant and bar industry with tax relief through the already-existing NEC Program and extend the period for designated pilot areas.

ANALYSIS

This bill would expand the definition of a "qualified full-time employee" to include a person employed by a qualified taxpayer that is described in the following codes or sectors of the North American Industry Classification System (NAICS):

- Code 711110 Theater Companies and Dinner Theaters
- Code 722511 Full-Service Restaurants
- Code 722513 Limited-Service Restaurants
- Code 722514 Cafeterias, Grill Buffets, and Buffets
- Code 722515 Snack and Nonalcoholic Beverage Bars
- Code 722410 Drinking Places (Alcoholic Beverages)

This bill would modify the definition of a "qualified full-time employee" by removing the starting wage requirement. This bill also modifies the conditions that, if met, would make an individual a qualified full-time employee. This bill reduces the requirement that the employee be paid qualified wages for services of not less than an average of 30 hours per week from 35 hours per week or, for employers that are primarily engaged in providing services as described in the list above, an average of 25 hours per week. In addition, the bill modifies the separation period from service in the Armed Forces of the United States to 24 months from 12 months.

The bill also adds the following conditions that, if met, would make an individual a qualified employee:

- Individuals who received six weeks of unemployment compensation within the 36 months preceding employment.
- Individuals who are qualified supplemental nutrition assistance program benefits recipient prior to employment.

The percentages in the definition of "qualified wages" would be modified to mean the portion of wages paid or incurred by the qualified taxpayer during the taxable year to each qualified full-time employee that exceeds 100 percent of minimum wage, but does not exceed 300 percent of minimum wage. The definition was also updated to cap the wages paid to a qualified full-time employee employed in a designated pilot area to 300 percent of minimum wage.

Additionally, this bill modifies the ability of the Governor's Office of Business and Economic Development (GO-Biz) to designate pilot areas.

The bill would provide that the applicable period, and any extended period, for the designation of a designated pilot area cannot extend past December 31, 2025.

This bill would amend the CTL definition of a "base year" so that it is the same as the PITL definition.

Additionally, the bill would provide a repeal date of December 1, 2030, and would specify an operative date for these changes of January 1, 2023.

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, 2026.

Federal/State Law

Federal Law

Existing federal law provides special tax incentives for empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

State Law

For taxable years beginning on or after January 1, 2014, and before January 1, 2026, current state law allows a 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 former Enterprise Zone. The qualified taxpayer must receive a tentative credit reservation from the Franchise Tax Board (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.

Implementation Considerations

None Noted.

Technical Considerations

The definition of "qualified wages" makes the following reference to a provision that would be removed by this amendment: "For qualified full-time employees described in the preceding sentence, clause (ii) of subparagraph (A) of paragraph (10) is modified by substituting "ten dollars ($10) per hour or an equivalent amount for salaried employees" for "150 "100 percent of the minimum wage." The author may wish to amend the bill to remove this language.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 1349 (Caballero, 2021/2022) would, under the PITL and CTL, modify the existing NEC to remove the requirement that work be performed in a designated census tract or economic development area, remove all requirements relating to those designated areas, expand the definition of a qualified full-time employee, modify the definition of a qualified taxpayer, add Section 41 intent language, add a tax levy provision, and make other technical nonsubstantive changes. SB 1349 is currently in the committee process.

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 amended the existing NEC to remove the FTB's responsibility to provide a searchable database on its website and create the California New Employment Credit (California NEC). AB 3029 did not pass out of the house of origin 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 out of the house of origin by the constitutional deadline.

AB 1404 (Grove, 2015/2016) 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 1404 did not pass out of the house of origin 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-felon. SB 1216 did not pass out of the committee 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), repealed the geographically targeted economic development area tax incentives and the New Jobs Tax Credit under the PITL and CTL, created a NEC, established the California Competes Tax Credit (CCTC) Committee, and created the CCTC under the PITL and CTL.

PROGRAM BACKGROUND

The NEC Program was created in 2014 to promote employment for businesses that operate in areas with historically high unemployment and high poverty rates. The NEC 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.

The NEC will be repealed on January 1, 2026.

FISCAL IMPACT

This bill would require some changes to the existing tax forms and instructions, and information/reservation systems. As the bill continues to move through the legislative process, costs will be identified and resources requested.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2035 as Amended March 29, 2022
Assumed Enactment after June 30, 2022

Fiscal Year	**Revenue**
2022-2023	-$150,000
2023-2024	-$350,000
2024-2025	-$450,000

*This estimate does not include the revenue impact of the five "designated pilot areas." The bill provides that the GO-Biz can designate the pilot areas based on criteria that qualified census tracts and/or economic development areas meet. Because there is no way to predict which qualified census tracts and/or economic development areas will be a designated pilot area, the revenue impact of designated pilot areas is unknown.

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

None on file.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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