STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Davies

Sponsor:

Related Bills: See Legislative History

Bill Number: AB 259

Introduced: January 15, 2021

SUBJECT

Income Tax Credit: Protecting Our Restaurants Tax Credit

SUMMARY

This bill would, under the Corporation Tax Law (CTL), allow a tax credit for the amount equal to 50 percent of the annual alcohol license or permit fee paid or incurred by certain restaurants.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to provide financial relief to restaurants that faced a financial burden as a result of local ordinances closing businesses due to the COVID-19 pandemic.

ANALYSIS

This bill would, under the CTL for taxable years beginning on or after January 1, 2020, and before January 1, 2022, allow a credit in an amount equal to 50 percent of the annual fee paid or incurred by an owner of qualified taxpayer for an alcohol license during that taxable year.

The bill would define the following:

- "Alcohol license" is defined as certain licenses issued to eating places, as described in the Business and Professional Code.
- "Qualified taxpayer" is defined as an establishment that has received an alcohol license.

This credit would be allowed in lieu of any other deduction that the qualified taxpayer may otherwise claim with respect to the costs paid or incurred by a taxpayer for an alcohol license or permit fee.

Section 4 of this bill contains language to comply with Revenue and Taxation Code (R&TC) section 41. The bill provides the goals of the credit and states that the measurement of the effectiveness would be the number of taxpayers receiving the credit.

The Franchise Tax Board (FTB) would be required to collaborate with the Legislative Analyst Office regarding the review of the credit effectiveness including the analysis of the demand of the credit and the economic impact of the credit. The Legislative Analyst Office would be required to publish its findings by December 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, 2020, and before January 1, 2022.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

Existing state and federal 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.

Under Revenue and Taxation Code (R&TC) 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.

There are currently no state credits comparable to the credit this bill would create.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill was introduced in the 2021 legislative session and would allow taxpayers a credit for taxable years beginning on or after January 1, 2020. If this bill were enacted in the 2021 legislative session, the credit allowed by this bill would be considered retroactive to the specified operative date of January 1, 2020, and credits claimed by taxpayers could be construed as a gift of public funds.

The bill is silent on whether a taxpayer that paid the annual fee for more than one license would be able to claim the credit for each license received. The lack of guidance could cause disputes between taxpayers and the department.

Additionally, clarification is needed to define whether the credit would be allowed for establishments that receive a license through the various types of transfers such as person to person transfer, double transfer, stock transfer, premises to premises transfer, drop partner and fiduciary transfer. To avoid disputes between taxpayers and the department, and to ensure consistency with the author’s intent, this bill should be amended.

The bill does not specify if credit would be allowed to reduce Alternative Minimum Tax (AMT) and built-in gains tax for S corporations. The lack of guidance could cause disputes between taxpayers and the department. To resolve these concerns, this bill should be amended.

Technical Considerations

This bill uses the undefined term “establishment” which is not a defined term.

This bill would only allow the credit for a fee paid or incurred by the owner or operator of the establishment. However, if the establishment paid or incurred the fee, then the credit would not be allowed. If this is not the author's intent, that provision should be amended.

Policy Considerations

This bill would provide a tax benefit for corporations under the CTL that would be unavailable to other business entities under the Personal Income Tax Law (PITL), such as sole proprietorships, partners in the general partnership, limited partnerships, limited liability companies not classified as corporations, limited liability partnerships, and trusts. Thus, this bill would provide differing treatment based solely on classification.

LEGISLATIVE HISTORY

AB 62 (Gray, 2021/2022), would create 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 is currently in the committee process.

AB 248 (Choi, 2021/2022), would create a credit for an amount equal to the amounts paid or incurred by a qualified taxpayer for the purchase of cleaning and sanitizing supplies used at business locations in this state to prevent the transmission of the novel coronavirus (COVID-19). AB 248 is currently in the committee process.

AB 2166 (Kiley, 2019/2020), would have allowed a net operating loss (NOL) carryback in certain conditions, and would state that the goal, purpose, and objective of the bill is to jumpstart California's economic recovery from the COVID-19 pandemic. AB 2166 did not pass out of the Assembly by the constitutional deadline.

AB 2493 (Choi, 2019/2020), would have increased the amounts of the research credit in California, and would state that the goals, purposes, and objectives of the bill include incentivizing more research into treatments, cures, and vaccines to address the global pandemic caused by COVID-19. AB 2493 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 259 as Introduced January 15, 2021
Assumed Enactment after June 30, 2021

($ in Millions)

Fiscal Year	Revenue
2021-2022	-$2.8
2022-2023	-$6.8
2023-2024	-$0.6

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.

Revenue Discussion

Based on data from Alcohol Beverage Control and California Census, corporate taxpayers generated approximately $10 million in type 41 and 47 alcohol license fees in each taxable year 2020 and 2021. It is estimated 65 percent, or $6 million, would be used by taxpayers with enough tax liability to offset the credit in each taxable year. There is no carryover provision for this credit.

To arrive at the offsetting tax effect of expense deduction that would otherwise be allowed under current law, it is estimated that qualified taxpayers would be able to deduct approximately $10 million in qualified expenses in each taxable year 2020 and 2021. Applying an average tax rate of 7.5 percent, results in an offsetting revenue gain of approximately $750,000 respectively.

The resulting net revenue loss for each taxable year 2020 and 2021 would be approximately $5.5 million.

It is estimated that 50 percent of taxpayers who had already filed their 2020 tax return would amend their return in the first year and 25 percent more would amend their return in the second year to claim the credit.

The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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