



Bill Analysis

Author: Villapudua

Sponsor:

Bill Number: AB 2770

Related Bills: See Legislative
History

Amended: March 24,
April 19, and April 25 2022

SUBJECT

Export Cargo and Export Equipment Access Tax Credits

SUMMARY

This bill would do the following:

Provision No. 1 - Export Cargo Tax Credit

Sections 3 and 5 of the bill, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), would provide a tax credit to businesses based on the number of tons of additional qualified cargo moved by the qualified taxpayer in the taxable year.

Provision No. 2 - Export Equipment Access Tax Credit

Sections 4 and 6 of the bill, under the PITL and CTL, would provide a tax credit to businesses based on the number of pieces of hired export equipment used by the qualified taxpayer in the taxable year.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 24, 2022, amendments removed the provisions related to local government finance and added provisions discussed in this analysis.

The April 19, 2022, amendments modified each credit program's operative dates to commence January 1, 2023, limited the number of years excess credits are eligible to be carried over for a nine-year period, for the Export Equipment Access Credit, required that any deduction be reduced by the amount of credit allowed, and made other nonsubstantive changes.

Amended March 24, April 19, and April 25, 2022

The April 25, 2022, amendments exempted the Franchise Tax Board (FTB) from the Administrative Procedure Act (APA) when the department prescribes rules, guidelines, procedures to carry out the bill's purpose, removed that unallocated credits be available for allocation during the following year, and made other technical changes.

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

REASON FOR THE BILL

The reason for this bill is to encourage the development and growth of California-originated export cargoes, improve access to foreign markets for California's exported goods, and create and support jobs provided by California employers who are able to grow their export business and maintain their export market.

Economic Impact – Summary Revenue Table (\$ in Millions)

Fiscal Year	2022-2023	2023-2024	2024-2025
Provision No. 1 - Export Cargo Tax Credit	-\$20	-\$30	-\$13
Provision No. 2 - Export Equipment Access Tax Credit	-\$15	-\$24	-\$11

ANALYSIS

Analysis Provision No. 1: Export Cargo Tax Credit (Sections 3 and 5)

This provision of the bill, under the PITL and CTL, for taxable years beginning on or after January 1, 2023, and before January 1, 2027, would provide a tax credit to qualified taxpayers that export additional qualified cargo. The credit amount would equal the product of \$1.50 and the number of tons of additional qualified cargo moved by the qualified taxpayer in the taxable year, unless the FTB reduces that amount due to a determination that the credits claimed will exceed the aggregate amount of credits available for that year.

This bill would define the following terms:

“Additional qualified cargo” means the amount of qualified cargo moved by a qualified taxpayer in a taxable year that exceeds the amount the qualified taxpayer moved in the preceding taxable year.

Amended March 24, April 19, and April 25, 2022

“Breakbulk or bulk cargo” means any nonliquid commodities, automobiles, trucks, lumber, agricultural products or commodities, machinery, equipment, materials, products, or other cargo transported as palletized or unpalletized bagged, packaged, wrapped, drummed, baled, or crated goods, or that are loaded in bulk directly into the hold of a ship that are shipped via oceangoing vessel. “Breakbulk or bulk cargo” does not include any liquid commodities handled in bulk or any containerized cargo.

“Containerized cargo” means any machinery, equipment, materials, products, commodities, or any other cargo transported by containers, that are rigid, sealable, and reusable metal boxes built to a recognized international standard, in which goods are shipped via oceangoing vessel.

“Export” means any breakbulk or bulk cargo or containerized cargo that is shipped in interstate or foreign commerce from the state to a foreign country or a domestic noncontiguous state or territory via oceangoing vessel.

“Oceangoing vessel” means a vessel, ship, or barge engaged, for compensation, in transporting breakbulk or bulk cargo or containerized cargo in interstate or foreign commerce.

“Public port” means any port or harbor operating under grant from the state, subject to the restrictions of the tidelands trust, or any other public port or harbor district established by a political subdivision of the state for the purposes of conducting interstate or foreign trade.

“Qualified cargo” means any breakbulk or bulk cargo or containerized cargo that is exported from a farming, manufacturing, fabrication, assembly, distribution, processing, or warehouse facility located in the state and that is moved by way of an oceangoing vessel berthed at a public port facility in the state during the taxable year and certified by the FTB as meeting the terms of this credit. For purposes of this credit, all agricultural products and commodities shipped from or to the state by way of an oceangoing vessel berthed at a public port facility in the state shall be considered qualified cargo.

“Qualified taxpayer” means a commercial entity, all or a portion of whose activities involve the export of breakbulk or bulk cargo or containerized cargo to or from cargo facilities located within the state. For purposes of this credit, a marine terminal, intermodal rail terminal, or truck terminal that handles cargo, but that is not a usual and regular final destination or origination point of those cargoes, not be considered a qualified taxpayer.

“Ton” means a net ton of 2,000 pounds and, for containerized cargo, shall exclude the weight of the container.

Amended March 24, April 19, and April 25, 2022

To be eligible for the credit, this bill would require a qualified taxpayer, during the taxable year the credit is sought, to submit an application to the FTB to obtain certification of qualified cargo. The application information would include the following:

1. A verified statement of the estimated additional cargo volume data for the taxable year for which the credit is being sought and the cargo volumes for the taxable year prior to the taxable year of the application, specifically including the total annual volume and tons of breakbulk or containerized cargo exported from farming, manufacturing, fabrication, assembly, distribution, processing, or warehousing facilities located in the state.
2. Any other information required by the FTB.

This bill would authorize or require the FTB to do the following:

1. Authorize the FTB to request additional information from the applicant prior to taking further action on an application when a taxpayer submits an incomplete application.
2. Authorize the FTB to audit an applicant in order to verify claims presented in the application.
3. Authorize the FTB to develop a standard form and instructions to facilitate the submission of applications.
4. Require the FTB to issue a certification for qualified cargo to a qualified taxpayer upon making a finding that the certification requirements are met.

This bill would require the applicant to do the following:

1. Remit a fee to the FTB equal to reasonable costs of FTB's review and evaluation of the application and certification.
2. To receive certification, the applicant would be required to provide to the FTB a verified statement of the actual additional cargo volume data for the taxable year for which the credit is being sought when that data is available.

The total aggregate amount of the credit for the taxable year beginning on and after January 1, 2023, and before January 1, 2024, that may be awarded to all qualified taxpayers would be limited to ninety million dollars (\$90,000,000).

The total aggregate amount of the credit for each taxable year beginning on and after January 1, 2024, that may be awarded to all qualified taxpayers would be zero dollars, unless otherwise specified in the annual Budget Act.

Amended March 24, April 19, and April 25, 2022

The dollar amount to be multiplied by the additional qualified cargo would be limited to one dollar and fifty cents. However, the FTB would be required to reduce that dollar amount, equally for all qualified taxpayers, if the FTB determines that, due to the cumulative amount of qualified cargo certified by the FTB for this credit program the cumulative amount of the credit claimed by qualified taxpayers will exceed the total aggregate amount of the credit for that taxable year.

The FTB would be required to post on its internet website the total aggregate amount of the credit authorized by the Legislature for the following taxable year and the estimated dollar amount to be multiplied by the additional qualified cargo for that taxable year.

If the FTB finds that any claims regarding additional cargo for which a qualified taxpayer received credits were inaccurate, the qualified taxpayer shall remit the amount of the credit back to the FTB in a form and manner as specified by the FTB.

This bill would provide that the FTB may assess and collect interest on recovered credits computed from the original due date of the return on which the credit was taken.

This bill would provide that the provisions provided by this credit shall be in addition to and shall not limit the authority of the FTB to assess or to collect under any other provision of law.

This bill would provide that the excess credit may be carried over to reduce the "net tax" in the following taxable year, and up to and including eight succeeding years if necessary, until the credit is exhausted.

This bill would exempt the FTB from the APA when the department prescribes rules, guidelines, procedures, or other guidance to carry out this credit program.

This bill would require the Legislative Analyst Office (LAO) to prepare a report on the effectiveness of the Export Cargo Tax Credit. The report shall include among other items, the amount of credits issued. This report would be due by January 1, 2027.

This credit would be repealed by its own terms on December 1, 2027.

Effective/Operative Date

As a tax levy bill, 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, 2027.

Amended March 24, April 19, and April 25, 2022

Federal/State Law

Existing federal and 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.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation considerations have been resolved, but anticipate the costs to be significant.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2770 Amended April 25, 2022
Assumed Enactment after June 30, 2022

(\$ in Millions)

Fiscal Year	Revenue
2022-2023	-\$20
2023-2024	-\$30
2024-2025	-\$13

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.

Amended March 24, April 19, and April 25, 2022

Analysis Provision No. 2: Export Equipment Access Tax Credit (Sections 4 and 6)

This provision of the bill, under the PITL and CTL, for taxable years beginning on or after January 1, 2023, and before January 1, 2025, would provide a tax credit to qualified taxpayers based on the number of qualified pieces of hired export equipment used by the qualified taxpayer. The credit amount would equal the product of \$30 and the number of pieces of hired export equipment by the qualified taxpayer in the taxable year, unless the FTB reduces that amount due to a determination that the credits claimed will exceed the aggregate amount of credits available for that year.

This bill would define the following terms:

“Breakbulk or bulk cargo” means any nonliquid commodities, automobiles, trucks, lumber, agricultural products or commodities, machinery, equipment, materials, products, or other cargo transported as palletized or unpalletized bagged, packaged, wrapped, drummed, baled, or crated goods, or that are loaded in bulk directly into the hold of a ship that are shipped via oceangoing vessel. “Breakbulk or bulk cargo” does not include any liquid commodities handled in bulk or any containerized cargo.

“Containerized cargo” means any machinery, equipment, materials, products, commodities, or any other cargo transported by containers, that are rigid, sealable, and reusable metal boxes built to a recognized international standard, in which goods are shipped via oceangoing vessel.

“Export” means any breakbulk or bulk cargo or containerized cargo that is shipped in interstate or foreign commerce from the state to a foreign country or a domestic noncontiguous state or territory via oceangoing vessel.

“Export equipment” means any chassis used by an exporter to move an empty intermodal container which is subsequently loaded and taken to a marine terminal located within the state for export.

“Hired export equipment” shall mean any piece of export equipment that is hired for utilization in a nonrevenue repositioning prior to the equipment being utilized for an export move.

“Nonrevenue repositioning” means a repositioning of a chassis for hire which has no other transaction associated with its movement. Nonrevenue repositioning does not include any component of the hire of the export equipment to facilitate the move of an empty container that is paid by any third party other than the qualified taxpayer seeking a credit.

“Oceangoing vessel” means a vessel, ship, or barge engaged, for compensation, in transporting breakbulk or bulk cargo or containerized cargo in interstate or foreign commerce.

Amended March 24, April 19, and April 25, 2022

“Qualified taxpayer” means a commercial entity, all or a portion of whose activities involve the export of breakbulk or bulk cargo or containerized cargo to or from cargo facilities located within the state. For purposes of this credit, a marine terminal, intermodal rail terminal, or truck terminal that handles cargo, but that is not a usual and regular final destination or origination point of those cargoes, shall not be considered a qualified taxpayer.

To be eligible for the credit, this bill would require a qualified taxpayer to submit an application to the FTB to obtain certification of qualified pieces of hired equipment. The application information would include the following:

1. A verified statement of the estimated number of qualified pieces of hired equipment used in the year.
2. A verified statement of the estimated number of export moves associated with the equipment hires.
3. Any other information required by the FTB.

This bill would require or authorize the FTB to do the following:

1. Authorize the FTB to request additional information from the applicant when a taxpayer submits incomplete information.
2. Authorize the FTB to audit an applicant in order to verify claims presented in the application.
3. Require the FTB to issue a certification for qualified pieces of hired equipment to a qualified taxpayer upon making a finding that the certification requirements are met.
4. Authorize the FTB to develop a standard form and instructions to facilitate the submission of information.

To receive certification, this bill would require the applicant provide to the FTB the following:

1. A summary of the number of qualified pieces of hired equipment used in the year accompanied by a verified statement and history of the equipment hires.
2. A summary of the number of export moves associated with the equipment hires accompanied by a verified statement and history of the export moves.
3. A verified statement correlating each piece of equipment to each export move.
4. Remit a fee equal to a reasonable costs of FTB's review and evaluation of the application and certification.

Amended March 24, April 19, and April 25, 2022

The total aggregate amount of the credit for the taxable year beginning on and after January 1, 2023, and before January 1, 2024, that may be awarded to all qualified taxpayers would be limited to eighty-one million dollars (\$81,000,000).

The total aggregate amount of the credit for each taxable year beginning on and after January 1, 2024, that may be awarded to all qualified taxpayers would be zero dollars, unless otherwise specified in the annual Budget Act.

The dollar amount to be multiplied by the number of pieces of hired export equipment would be limited to thirty dollars. However, the FTB shall reduce that dollar amount, equally for all qualified taxpayers, if the FTB determines that, due to the cumulative amount of qualified hired export equipment certified, the estimated cumulative amount of the credit claimed by qualified taxpayers will exceed the total aggregate amount of the credit authorized for the Budget Act for that taxable year.

The FTB would be required to post on its internet website the total aggregate amount of the credit authorized by the Legislature for the following taxable year and the estimated dollar amount to be multiplied by the number of pieces of hired export equipment for that taxable year.

If the FTB finds that any claims regarding hired export equipment for which a qualified taxpayer received credits were inaccurate, the qualified taxpayer shall remit the amount of the credit back to the FTB in a form and manner as specified by the FTB.

This bill would provide that the FTB may assess and collect interest on recovered credits computed from the original due date of the return on which the credit was taken.

This bill would provide that the provisions of this credit shall be in addition to and shall not limit the authority of the FTB to assess or to collect under any other provision of law.

This bill would provide that in the case where the credit allowed exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following taxable year, and up to and including eight succeeding years if necessary, until the credit is exhausted.

This bill specifies that business expense deductions would be reduced by the amount of the credit allowed.

This bill would exempt the FTB from the APA when the department prescribes rules, guidelines, procedures, or other guidance to carry out this credit program.

This bill would require the LAO to prepare a report on the effectiveness of the Export Equipment Access Tax Credit. The report would be required to include among other items, the amount of credits issued. This report would be due by January 1, 2025.

Amended March 24, April 19, and April 25, 2022

This credit would be repealed by its own terms on December 1, 2025.

Effective/Operative Date

As a tax levy bill, 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, 2025.

Federal/State Law

Existing federal and 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.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation considerations have been resolved, but anticipate the costs to be significant.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 2770 Amended April 25, 2022
Assumed Enactment after June 30, 2022

(\$ in Millions)

Fiscal Year	Revenue
2022-2023	-\$15
2023-2024	-\$24
2024-2025	-\$11

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.

Amended March 24, April 19, and April 25, 2022

LEGAL IMPACT

None noted.

LEGISLATIVE HISTORY (All Provisions)

AB 886 (Allen & Calderon, 2013/2014) would have provided tax credit certificates to California exporters and importers for increasing the amount of cargo they move through California ports and airports, increasing their number of employees at the ports, as well as for capital expenditures on facilities at those ports. AB 886 did not pass by the constitutional deadline.

SB 810 (Price, 2013/2014) would have provided tax credit certificates to California exporters and importers for the following: increasing the amount of cargo they move through California ports and airports, increasing their number of employees at the ports, as well as for capital expenditures on facilities at those ports. SB 810 did not pass out of the Governance and Finance Committee.

AB 2656 (Calderon, 2011/2012) would have provided tax credit certificates to California exporters and importers for increasing the amount of cargo they move through California ports and airports, increasing their number of employees at the ports, as well as for capital expenditures on facilities at those ports. AB 2656 failed to pass out of the Assembly Appropriations Committee by the constitutional deadline.

AB 2687 (Bradford 2009/2010) would have created two tax credits; the trade infrastructure investment tax credit and the import-export cargo tax credit. AB 2687 did not pass out of the Assembly Appropriations Committee.

Implementation Considerations (All Provisions)

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.

Typically, credits involving areas for which the department does not have the expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. FTB does not have the expertise required to process applications described in this bill and may need to hire outside consultants to evaluate and certify application information. It is recommended that this bill be amended to include a certifying agency with export equipment and cargo expertise. Further, it is not clear if the taxpayer is required to have a certification in order to claim the credit. It is recommended that the bill be amended to clarify that the taxpayer must submit an application and receive a certification in order to claim the credit.

Amended March 24, April 19, and April 25, 2022

The FTB has well-established procedures to address compliance and adjust tax credit amounts, assess additional tax and interest and to create forms and instructions to implement the tax law. To avoid controversies with taxpayers, the provisions of this bill that address those issues should be deleted.

The bill specifies total aggregate amount of the credits for each taxable year beginning on and after January 1, 2024, that may be awarded to all qualified taxpayers would be zero dollars, unless otherwise specified in the annual Budget Act. Making the credits available upon a specified amount in the budget causes uncertainty for taxpayers and the department and could impact utilization of the credits.

This bill uses the following undefined terms, such as “commercial entity” and “recognized international standard” for the Export Cargo Tax Credit and “qualified pieces of hired equipment”, and “export moves” for the Export Equipment Access Tax Credit. The absence of definitions to clarify terms in the bill could lead to disputes with taxpayers. For clarity, it is recommended that the bill be amended to define these terms.

The bill also indicates that for each credit the FTB may reduce that dollar amount, equally for all qualified taxpayers, if the FTB believes that, due to the cumulative amount of certified cargo and certified hired export equipment, by the FTB for the credit program, the cumulative amount of the credit claimed by qualified taxpayers will exceed the total aggregate amount of the credit for that taxable year. FTB would generally not have this ability since the universe of all returns changes on an ongoing basis and information would not be available within the time needed to make such a determination. The author may wish to amend the bill.

For both credits, the bill is silent as to which agency would be required to collect the specified Revenue and Taxation Code (RTC) section 41 data. If the FTB is required to provide data for this purpose, sufficient time to gather this data would be needed in order to ensure complete information, ideally one year from the extended due date of returns. The author may wish to amend the bill to clarify the responsible agency. Additionally, for the Export Equipment Access Tax Credit, data may not be available in time to provide the information needed for the January 1, 2025, report due date.

Amended March 24, April 19, and April 25, 2022

Technical Considerations (All Provisions)

For clarity, the following changes are recommended for each credit:

1. In subdivision (d)(4)(A) of 17060.5 and Section 23660.5, after, “used in the” add “taxable”
2. In subdivision (e)(1) and (e)(2) of 17060 and Section 23660, after, “beginning on” replace “and” with “or”
3. In subdivision (e)(1) and (e)(2) of 17060.5 and Section 23660.5, after, “beginning on” replace “and” with “or”
4. In subdivision (g) of 17060 and Section 23660, replace “up to and including eight succeeding” with “succeeding eight”
5. In subdivision (g)(1) of 17060.5 and Section 23660.5, replace “up to and including eight succeeding” with “succeeding eight”

Policy Considerations (All Provisions)

None noted.

APPOINTMENTS (All Provisions)

None noted.

SUPPORT/OPPOSITION (All Provisions)

The Assembly Revenue and Taxation Committee analysis dated April 15, 2022, indicates the following support and opposition:

Support

Pacific Merchant Shipping Association

Opposition

None on file.

ARGUMENTS (All Provisions)

To be determined.

LEGISLATIVE CONTACT

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