



Bill Analysis

Author: Gray

Sponsor:

Bill Number: AB 62

Related Bills: See Legislative
History

Introduced: December 7, 2020

SUBJECT

COVID-19 workplace safety expense credit

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), 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.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

None.

REASON FOR THE BILL

The reason for this bill is to mitigate the financial impacts of the COVID-19 Emergency Temporary Standards on small and essential businesses.

ANALYSIS

This bill would, under the PITL and the CTL, for each taxable year beginning on or after January 1, 2021, allow a qualified taxpayer to receive a credit in an amount equal to the total amount paid or incurred during the taxable year by the qualified taxpayer to comply with the regulations adopted by the Occupational Safety and Health Standards Board on November 19, 2020, relating to COVID-19 prevention and approved by the Office of Administrative Law.

This bill defines a "qualified taxpayer," as either a small business as defined by Section 14837 of the Government Code (generally, an independently owned business with 100 or fewer employees and average annual gross receipts of \$15 million or less); or an employer that employs a workforce identified by the State Public Health Officer on the list of Essential Critical Infrastructure Workers.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2021.

Federal/State Law

Federal Law

No provision comparable in federal law.

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.

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.

The Division of Occupational Safety and Health (Cal/OSHA)

On November 30, 2020, the Office of Administrative Law approved Cal/OSHA's emergency regulations requiring employers to protect workers from hazards related to COVID-19. The regulations require that employers implement a site-specific written COVID-19 prevention program to address COVID-19 health hazards, correct unsafe or unhealthy conditions and provide face coverings. When there are multiple COVID-19 infections or outbreaks at the worksite, employers must provide COVID-19 testing and notify public health departments. The regulations also require accurate recordkeeping and reporting of COVID-19 cases.

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.

Typically, credits involving areas for which the department lacks 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. It is recommended that this bill be amended to include a certifying agency.

An employer that employs a workforce identified by the State Public Health Officer on the list of Essential Critical Infrastructure Workers is a qualified taxpayer under this bill. However, the author may want to provide clarity as to how much of the employer's workforce needs to be identified as Essential Critical Infrastructure Workers.

The list of essential workers issued by the State Public Health Officer may change. The author may wish to include a citation in the bill in the event the list changes.

Technical Considerations

Under R&TC section 41, legislation that would create a new tax expenditure, which includes a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state, is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax benefit. The author may want to include these goals, purposes, objectives, and performance measures.

Policy Considerations

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited either on a per-project or per-taxpayer basis. This bill would provide a 100 percent credit which would be unusual.

This bill would allow a credit that may be a deductible as business expenses. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense.

In addition, this bill lacks a sunset date, which is generally provided to allow periodic review of the effectiveness of income tax law changes by the Legislature.

LEGISLATIVE HISTORY

AB 2166 (Kiley, 2019/2020), would have under the PITL and CTL, allowed a net operating loss 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 failed to pass out of the Assembly by the constitutional deadline.

AB 2493 (Choi, 2019/2020), would have under the PITL and CTL, 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 failed to pass out of the Assembly 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 failed to 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

This bill would allow a credit in an amount equal to the costs paid or incurred for small business or essential critical infrastructure workers to comply with the OSHSB Covid-19 regulations. To determine the magnitude of the potential impact to the General Fund, the number of small businesses and/or essential critical infrastructure workers, as well as the costs of complying with the OSHSB Covid-19 regulations must be known. Since it is difficult to predict the costs each business and essential critical infrastructure workers would incur in complying with the regulations, the revenue impact to the General Fund is unknown.

It is estimated that for every \$1 million in credits generated, approximately \$350,000 would be claimed each year.

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

None noted.

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LEGISLATIVE CONTACT

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