



Bill Analysis

Author: Bradford

Sponsor:

Bill Number: SB 1293

Related Bills: See Legislative
History

Amended: April 28, 2022

SUBJECT

Cannabis Equity Tax Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), for taxable years beginning on or after January 1, 2022, and before January 1, 2027, would allow a Cannabis Equity Tax Credit to qualified taxpayers.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 28, 2022, amendments added a limit to the credit, modified what the credit amount is based on, and specified a carryover period.

The April 28, 2022, amendments resolved all Policy Considerations and one Technical Consideration, previously identified in the departmental analysis of the bill as amended on March 16, 2022.

REASON FOR THE BILL

The reason for this bill is to provide a credit to certain licensed cannabis businesses.

ANALYSIS

This bill would, under the PITL and CTL, for taxable years beginning on or after January 1, 2022, and before January 1, 2027, allow a credit to a qualified taxpayer in an amount equal to \$10,000.

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The bill defines a “qualified taxpayer,” as an equity applicant or licensee as defined in the Business and Professions Code, which requires demonstration of all of the following:

- In local jurisdictions with equity programs, applicants must be local equity applicants or licensees. In local jurisdictions without equity programs, applicants must be local applicants or licensees.
- Individually or in combination with other equity applicants who qualify, own at least 50 percent of the business.
- They satisfy at least one of the following:
 - Have a prior arrest or conviction for an offense under past criminal justice policies related to cannabis prohibition.
 - Reside in a low-income household, as defined.
 - Reside in an area that has been disproportionately impacted by past criminal justice policies related to cannabis prohibition.

The Department of Cannabis Control would provide the Franchise Tax Board (FTB) with a list of equity applicants and licensees, on January 1, 2023, and annually thereafter, for purposes of administering this credit.

Unused credits could be carried over for eight years until exhausted.

This credit would be repealed by its own terms on December 1, 2027.

For purposes of complying with Section 41 of the Revenue and Taxation Code (RTC), the FTB would be required to submit to the Legislature a report on or before July 31, 2023, and annually thereafter that includes the number of credits claimed and the total dollar amount of credits claimed.

The bill states that the disclosure provisions associated with the Section 41 requirements would be treated as an exception to general prohibition against disclosure applicable to FTB.

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, 2022, and before January 1, 2027.

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Federal/State Law

Federal Law

Federal law states that no deduction or credit is allowed for any amount paid or incurred during the taxable year in carrying on any trade or business that consists of trafficking in specified controlled substances, including cannabis.

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 the PITL, for taxable years beginning on or after January 1, 2020, and before January 1, 2025, licensees engaged in commercial cannabis activity, as defined in the Business and Professions Code, may deduct expenses and claim tax credits, related to that trade or business.

Under the CTL, a licensee engaged in commercial cannabis activity is allowed deductions or credits that are otherwise allowable, provided the entity has adequate records to substantiate these items.

Under RTC section 41, legislation that would create a new tax credit 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 consideration, and is available to work with the author's office to resolve this and other considerations that may be identified.

The bill requires the FTB to report information relating to the use of this credit under the RTC section 41 requirements. If the author's intent is to be able to review a report that contains complete information for the 2022 taxable year, it is recommended that the due date of the report be moved to March of 2025. This is because corporations are allowed to file on a fiscal year basis. The latest a fiscal year filer could file on extension would be September 15, 2024. The department generally needs about six months to complete return processing and compile the data needed to prepare a report. As a result, it is recommended that the due date for the report be no earlier than March of 2025. If the due date of the report remains unchanged, the report will include the information available as of the date when the report is prepared.

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Technical Considerations

For technical consistency, the following change should be made, to clarify that the Section 41 reporting requirement will be in effect only while the credit is in effect.

- In SEC. 4, subdivision (c), “while the credit is operative,” should be added after “and annually thereafter,”

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 603 (Bradford, 2021/2022) would, under the PITL and CTL, create a Cannabis Equity Business Tax Credit, related to licensing fees. SB 603 is currently pending in the Assembly Revenue and Taxation Committee and Assembly Business and Professions Committee.

SB 1336 (Wiener, 2021/2022) would, under the PITL and CT), for taxable years beginning on or after January 1, 2023, and before January 1, 2028, allow a credit to a qualified taxpayer equal to 25 percent of the amount of the qualified taxpayer’s qualified expenditures in the taxable year limited to \$250,000. SB 1336 is currently pending in the Senate Appropriations Committee.

AB 37 (Jones-Sawyer, Chapter 792, Statutes of 2019) under the PITL, for taxable years beginning on or after January 1, 2020, and before January 1, 2025, allows licensees engaged in commercial cannabis activity, to deduct expenses and claim tax credits, related to that trade or business.

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.

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ECONOMIC IMPACT

Revenue Discussion

To determine the revenue impact of this bill, the number of equity applicants and licensees and the amount of business expenses the taxpayer would be unable to deduct or claim as a credit due to IRC Section 280E must be known. This information is not currently available. The bill as specified would provide each qualified taxpayer a credit of \$10,000. It is estimated that for every 1,000 qualified taxpayers, total credits generated would be \$10 million. It is assumed that 70 percent, or \$7 million, would be earned by taxpayers with sufficient tax liability to offset with the credit. Of that amount, 65 percent, or approximately \$4.5 million, would be claimed in the year generated and the remaining credits would be used over the subsequent years or until exhausted.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The May 2, 2022, Senate Governance and Finance committee analysis included the following support and opposition.

Support

California Association of Black Lawyers

Opposition

None submitted.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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