STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Wiener	Sponsor:	Bill Number: SB 1336
	Related Bills: See Legislative History	Amended: March 16, 2022

SUBJECT

Qualified Tax Expenditure Credit for Cannabis Businesses

SUMMARY

Under the Personal Income tax Law (PITL) and Corporation Tax Law (CTL), this bill would, for taxable years beginning on or after January 1, 2022, and before an unspecified date, allow a credit to a qualified taxpayer equal to the amount of the qualified taxpayer's qualified expenditures in the taxable year limited to an unspecified dollar amount.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 16, 2022, amendments removed provisions of the bill relating to cannabis excise tax and replaced them with the provisions discussed in this analysis.

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

REASON FOR THE BILL

The reason for this bill is to provide tax relief to licensed cannabis businesses for qualified expenditures.

ANALYSIS

This bill would, under the PITL and CTL, for taxable years beginning on or after January 1, 2022, and before an unspecified date, allow a credit to a qualified taxpayer equal to the amount of the qualified taxpayer's qualified expenditures in the taxable year. The credit would be limited to a maximum of an unspecified amount in any taxable year to any qualified taxpayer.

The bill defines the following terms:

“Qualified expenditures” means amounts paid or incurred by a qualified taxpayer for any of the following:

- Employment compensation for the employees of the qualified taxpayer. “Employment compensation” means wages paid to full-time employees who are paid no less than 150 percent but no more than 350 percent of the applicable minimum wage. “Employment compensation” may include the monetary value to the full-time employee of health insurance benefits, childcare benefits, or pension benefits.
- Safety-related equipment, training, and services.
- Workforce development for employees of the qualified taxpayer.

“Qualified taxpayer” means a commercial cannabis business licensed pursuant to Division 10 (commencing with Section 26000) of the Business and Professions Code (BPC), related to cannabis.

Unused credits may be carried over in the following taxable year, and succeeding years if necessary, until the credit is exhausted.

This bill states there is an intent to comply with the reporting requirements of Revenue and Taxation Code (RTC) section 41.

The bill would remain in effect only until an unspecified date, and as of that date would be repealed.

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.

Federal/State 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.

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 BPC, 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 otherwise allowable deductions or credits assuming the entity has adequate records to substantiate these items.

Under RTC 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.

Implementation Considerations

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.

This bill uses terms that are undefined, e.g., "full-time," "safety-related equipment, training, and services," "minimum wage," and "workforce development." The absence of definitions to clarify these terms could lead to disputes with taxpayers. For clarity, it is recommended that the bill be amended.

Technical Considerations

The bill has an unspecified sunset date and limit on the maximum amount of credit. For FTB to properly administer the credit, the bill should be amended to include a sunset date and credit limit.

Policy Considerations

This bill does not have a sunset date or Section 41 requirements specified, which are generally provided to allow periodic review of the effectiveness of income tax law changes by the Legislature.

This bill does not yet 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. Credits are generally allowed for percentages of expenses or in a specified amount versus dollar for dollar of the amount of deduction.

This bill would allow a credit for qualified expenditures that are currently deductible as business expenses at the state level. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense. Providing both a credit and allowing the full amount to be deducted would have the effect of providing a double benefit for that item.

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Credits are generally enacted with a limited carryover period because experience shows credits typically are exhausted within eight years of being earned.

LEGISLATIVE HISTORY

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

SB 1293 (Bradford, 2021/2022), would under the PITL and CTL, for taxable years beginning on or after January 1, 2022, and before January 1, 2027, allow a credit against the net tax to a qualified taxpayer for business expenses of the taxpayers trade or business that the taxpayer could not deduct or claim for that taxable year under the federal income tax laws. SB 1293 is currently in the Senate Governance and Finance 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.

ECONOMIC IMPACT

Revenue Estimate

The bill has an unspecified maximum credit amount. Should an amount be specified, the estimate could vary. Since the amount of qualifying expenditures for cannabis businesses is also unknown, it is assumed for every $10 million in credits generated, approximately 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

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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