STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Durazo

Sponsor:

Bill Number: SB 313

Related Bills: See Legislative History

Introduced: February 4, 2021

SUBJECT

Refundable California Competes Tax Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), modify the California Competes Tax Credit (CCTC) to be refundable for qualified taxpayers that reinvest the refund in immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to encourage the improvement, expansion and development of media production facilities in this state.

ANALYSIS

This bill would, for taxable years beginning on or after January 1, 2022, allow a qualified taxpayer to elect to be paid a refund of the CCTC to the extent their CCTC exceeds the tax liability computed under the PITL or CTL for the taxable year after being credited against other amounts due. The refund would be paid from the Tax Relief and Refund Account. The amount refunded, if any, would not exceed the amount of total taxes imposed by the state and paid by the qualified taxpayer during the taxable year.

To be eligible for the refundable CCTC, the qualified taxpayer would be required, upon request, to provide necessary information, including certification from Governor's Office of Business and Economic Development (GO-Biz), that the taxpayer is a qualified taxpayer, as determined by and in the form and manner prescribed by the Franchise Tax Board (FTB).

If a qualified taxpayer does not elect to be paid a refund under the provisions of this bill, then any excess credits could be carried over for six years or until the credit has been exhausted.

A qualified taxpayer that receives a refund would be required to reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities in the state. A qualified taxpayer would be prohibited from reinvesting the refund for the improvement of the immobile capital equipment unless the improvements are made under a project labor agreement and using a skilled and trained workforce.

For purposes of the election to receive a refund of the CCTC allowed under the provisions of this bill, the following definitions would apply:

A. "Qualified taxpayer" means a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs in the state each year for a period of 10 years.
B. "Full-time equivalent" means the workload of the full-time equivalent job is comparable to one year of full-time work. One year of full-time work is measurable by the number of hours worked in one year, or by total wages paid in one year for that industry divided by the average annual salary.
C. "Immobile capital equipment" means property of the type defined in Internal Revenue Code (IRC) section 1250(c). IRC section 1250(c) property is defined as, "…any real property (other than section 1245 property, as defined in section 1245(a)(3)) which is or has been property of a character subject to the allowance for depreciation provided in section 167."
D. "Project labor agreement" has the same meaning as that defined in Public Contract Code Section 2500(b)(1).
E. "Skilled and trained workforce" has the same meaning as provided in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the Public Contract Code.

The bill would allow FTB to prescribe any regulations necessary or appropriate to carry out the purposes of this subdivision, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to the refund of the credit. In addition, the FTB may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this subdivision. The FTB would not be subject to the rulemaking provisions under the Administrative Procedures Act.

Effective/Operative Date

This bill would become effective January 1, 2022, and be specifically operative for taxable years beginning on or after January 1, 2022, and before January 1, 2030.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

The CCTC is an income or franchise tax credit available to businesses that come to California or stay and grow in California. CCTC agreements are negotiated by the GO-Biz and approved by the CCTC Committee (Committee), consisting of the State Treasurer, the Director of the Department of Finance, the Director of GO-Biz (Chair), and one appointee each by the Speaker of the Assembly and Senate Committee on Rules.

Upon approval of the tax credit agreement by the Committee, GO-Biz informs the FTB of the terms and conditions of the written agreement. The FTB reviews the books and records of taxpayers allocated a CCTC to ensure that the taxpayer complied with the terms and conditions of the written agreement. In the case of a small business, the FTB reviews the books and records of the taxpayer if it deems the review appropriate or necessary in the best interest of the state. If the FTB determines that a possible breach of the agreement has occurred, GO-Biz is provided detailed information regarding the basis of the possible breach.

The credit is available for taxable years beginning on or after January 1, 2014, and before January 1, 2030.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional considerations 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 considerations that may be identified.

The bill does not provide a course of action should the taxpayer receive a refundable CCTC and not reinvest the amount received in immobile capital equipment that supports infrastructure improvements, expansion or developments for media production facilities in the state. Additionally, the bill does not specify when the reinvestment must occur. The author may wish to amend the bill to clarify.

The FTB lacks the expertise to determine if the qualified taxpayer has properly reinvested in qualifying immobile capital equipment that supports infrastructure improvements, expansion, or developments for media production facilities. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. Any certification language should specify the responsibilities of both the certifying agency and the taxpayer. The author may wish to amend the bill to clarify.

This bill uses terms that are undefined, for example, "…the immobile capital equipment that "supports infrastructure improvements, expansion or developments," and "media production facilities." What would be the criteria to determine when there is an improvement, expansion or development? What qualifies as a media production facility? The absence of definitions to clarify these terms could lead to disputes with taxpayers. For clarity, the author may want to amend the bill to define the terms.

The bill also includes a limitation that the amount refunded not exceed the "total taxes imposed by the state and paid by the qualified taxpayer during the taxable year" that is undefined. The author may want to amend the bill to clarify that it is the total taxes "paid or incurred" as to not omit taxpayers with a tax liability that is unpaid, and that the liability means total taxes paid under the PITL or CTL for the taxable year.

The bill is silent regarding whether the refundable portion of the tax credit would be excluded from gross income for California income tax purposes.

With respect to the CTL refundable credit, this bill is silent as to whether the credit would be allowed to reduce alternative minimum tax and the $800 minimum franchise tax to zero. Generally, credits cannot reduce these amounts. Without guidance there could be disputes between taxpayers and the department. The author may wish to amend the bill to clarify.

For ease of administration, the author may want to clarify that the election to receive a CCTC refund shall be made in the form and manner prescribed by the FTB and shall be made on a timely filed, original tax return.

This bill exempts FTB regulatory authority from the rulemaking provisions under the Administrative Procedures Act. If this is contrary to the author's intent, the bill should be amended.

Technical Considerations

None noted.

Policy Considerations

Refundable tax credits are generally subject to federal income tax unless a federal income exclusion applies.

The bill includes a limitation that the amount refunded not exceed the "total taxes imposed by the state and paid by the qualified taxpayer during the taxable year." This limitation may preclude a taxpayer who owes little or no tax from receiving a refund of the CCTC. If that is contrary to the author's intent, the bill should be amended.

LEGISLATIVE HISTORY

SB 855 (Committee on Budget and Fiscal Review, Chapter 52, Statutes of 2018), among other things, extended the sunset date for the CCTC from taxable years beginning before January 1, 2025, to taxable years beginning before January 1, 2030, with the repeal date of December 1, 2030.

AB 961 (Gallagher, 2015/2016), would have modified the amount of funding for the CCTC. AB 961 did not pass out of the Assembly Revenue and Taxation Committee by the constitutional deadline.

AB 2055 (Gipson, 2015/2016), would have modified the items for GO-Biz to consider when allocating the credit to give special consideration to those installing zero or near-zero emissions equipment. AB 2055 did not pass out of the Assembly Appropriations Committee by the constitutional deadline.

PROGRAM BACKGROUND

Note 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, for taxable years beginning on or after January 1, 2022, allow CCTCs to be refundable up to the amount of total taxes imposed by the state and paid by the qualified taxpayer for the taxable year. The amount of credits allowed are subject to the completion of certain milestones. The amount and timing of the CCTC is subject to the written agreements between Go-Biz and the taxpayer. The amount of CCTC allocated is capped annually. The annual cap is not impacted by provisions in this bill, so the overall amount of credits available is unchanged.

It is unknown how many of the qualified taxpayers would receive allocations and meet the specified milestones to earn the credit. To the extent that taxpayers have earned credits in excess of their tax liability, those credits under this proposal may now be refunded up to the amount of total taxes paid. If there are any revenue impacts, they are likely to be an acceleration of credit usage compared to the current program design. However, the amount of possible acceleration in the credits claimed is unknown.

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.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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