STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Min

Sponsor:

Related Bills: See Legislative History

Bill Number: SB 408

Introduced February 12, and Amended March 10 and April 29, 2021

SUBJECT

Credit for Restaurants, Bars, and Hotels that Temporarily Ceased Business due to Emergency Order

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would allow a $10,000 tax credit to qualified taxpayers that own and operate certain bars, hotels, or restaurants.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

This bill as introduced on February 12, 2021, was a spot bill that made nonsubstantive amendments to Revenue and Taxation Code (RTC) section 17028 related to the construction of the code. The March 10, 2021, amendments removed all previous language and replaced it with the provisions discussed in this analysis.

The April 29, 2021, amendments added a specific credit dollar amount, revised the tax credit requirements, defined new terms, extended both the repeal and operative dates, and added a carryover period.

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

REASON FOR THE BILL

The reason for this bill is to provide economic relief to small businesses that have been heavily impacted by the COVID-19 pandemic.

ANALYSIS

This bill would, under the PITL and CTL, create a $10,000 tax credit for a qualified taxpayer in each taxable year beginning on or after January 1, 2021, and before January 1, 2027. This bill provides the following definitions:

- "Qualified taxpayer" means a taxpayer that owns and operates, a bar, hotel, or restaurant for which all of the following apply:
  - The operation of the bar, hotel, or restaurant requires substantial in-person contact to conduct its business operations.
  - The taxpayer temporarily ceased business operations for the bar, hotel, or restaurant for at least 30 consecutive days during the 2020 or 2021 taxable year in response to an emergency order.
  - The taxpayer had gross receipts of $5,000,000 or less during the taxable year that it temporarily ceased business operations.
- "Bar" is any retail establishment that prepares, serves, and vends alcoholic beverages and holds certain specified license types under Section 23320 of the Business and Professions Code.
- "Hotel" means any hotel, motel, bed and breakfast inn, or other similar transient lodging establishment, but not a residential hotel, as defined in Section 50519 of the Health and Safety Code. "Hotel" would not include any short-term rentals on residential property.
- "Residential property" means improved real property used or occupied, or intended to be used or occupied, for residential purposes, including a single-family home, multifamily home, apartment, or condominium.
- "Restaurant" means a retail food establishment that prepares, serves, and vends food directly to the consumer.
- "Emergency order" means any order issued by the Governor pursuant to the Emergency Services Act, by any state agency, or by any local government that requires the closure of businesses in response to a state of emergency.
- "State of emergency" means a state of emergency proclaimed by the Governor pursuant to Article 13 (commencing with Section 8625) of Chapter 7 of Division 1 of Title 2 of the Government Code.

This bill would allow a tax credit under either the PITL or the CTL, but not both.

This bill would require a qualified taxpayer claiming a credit allowed by this bill to declare, under penalty of perjury, that the qualified taxpayer has complied with all applicable emergency orders, in the form and manner prescribed by the Franchise Tax Board (FTB).

This bill would allow this credit to be carried forward for seven years, until the credit is exhausted.

The credits would be repealed on December 1, 2027.

This bill would provide, for purposes of complying with RTC section 41, the specific goal, purpose, and objective is to provide necessary economic relief to taxpayers that own and operate businesses that have been heavily impacted by the COVID-19 pandemic. Effectiveness will be measured by the number of credits and the type of business claiming these credits.

This bill mandates that the Legislative Analyst's Office (LAO) will collaborate with the FTB to review the effectiveness of the tax credits and report its findings by December 1, 2022. The LAO would be required to report its findings to the Legislature in compliance with Section 9795 of the Government Code. To assist, the LAO may request information from the FTB in determining whether the tax credits meet the goal, purpose, and objective.

This bill would require the FTB to provide any data requested by the LAO.

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, 2021, and before January 1, 2027.

Federal/State Law

Existing federal and state laws provide various tax credits that are used to reduce the taxpayer's tax liability dollar-for-dollar. Generally for California, the credit is taken instead of any deduction otherwise allowable for the same costs. Any deduction allowed for the same costs may be reduced by the amount of the credit claimed for the current tax year. One benefit of allowing tax credits rather than deductions is that tax credits are claimed after taxable income has been calculated and, therefore, do not create differences between the taxable income amounts shown on the federal and state income tax returns.

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.

Personal income tax returns may be filed, with extension, until October 15. Corporate returns may be filed even later, depending on when the taxpayer's fiscal year ends. If the author's intent is to have the report contain complete information for the taxable year, the due date of the report should be changed. For instance, the return due date for corporate taxpayers with fiscal years beginning December 1, 2021, and ending November 30, 2022, is March 15, 2023, and with extension, September 15, 2023. The department would complete processing of these returns by March 2024. Thus, the earliest the data from these corporate returns could be included in a report would be approximately June 2024.

If requested, this bill could require the FTB to provide confidential taxpayer information to the LAO. However, the bill does not allow the disclosure of such information or prohibit the LAO from further disclosure of confidential taxpayer information. An exception from the general disclosure provisions should be added to specifically allow the FTB to comply with the bill's provision on disclosure of tax information and apply the appropriate disclosure restrictions to the LAO.

As written, this credit would only be able to be taken by an S Corporation or passed through to the shareholders. Typically when a credit is allowed under both the CTL and the PITL, both the S Corporation and its shareholders are allowed to claim the credit under the CTL and PITL, respectively. Under this bill, the S Corporation could claim the credit under the CTL to apply to its S Corporation tax or it could allow the credit under the PITL to pass through to its shareholders to apply to their personal income tax, but not both. If this is contrary to the author's intent, the bill should be amended.

Technical Considerations

None identified.

Policy Considerations

This bill would, once a taxpayer meets the requirements in either taxable year 2020 or 2021, allow a $10,000 credit to be taken each year for six taxable years. If this is contrary to the author's intent, this bill should be amended.

This bill requires only one report to be issued by the LAO, however, the bill allows taxpayers to generate a credit in each year for six taxable years. If this is contrary to the author's intent, this bill should be amended.

LEGISLATIVE HISTORY

None identified.

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

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 408 as Amended on April 29, 2021
Assumed Enactment after June 30, 2021

($ in Millions)

Fiscal Year	**Revenue**
2021-2022	-$35
2022-2023	-$32
2023-2024	-$31

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

FTBLegislativeServices@ftb.ca.gov