



Bill Analysis

Author: Durazo and Bloom

Sponsor:

Bill Number: SB 424

Related Bills: See Legislative
History

Introduced: February 12, 2021

SUBJECT

Homeless Employment Hiring Tax Credit

SUMMARY

This bill would, under the Corporation Tax Law (CTL), create the California Homeless Hiring Tax Credit available to a qualified taxpayer that employs a homeless individual.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to create access to good jobs and living wages for homeless individuals.

ANALYSIS

This bill would, under the CTL, for each taxable year beginning on or after January 1, 2022, and before January 1, 2027, allow a qualified taxpayer that employs an eligible individual, to receive a credit in an amount determined, not to exceed thirty thousand dollars per taxable year.

A qualified taxpayer shall be allowed the credit in the following amounts per taxable year:

- \$2,500 for each eligible individual that works 500 hours for the eligible employer during the taxable year in which the credit is claimed.
- \$5,000 for each eligible individual that works 1,000 hours for the eligible employer during the taxable year in which the credit is claimed.
- \$7,500 for each eligible individual that works 1,500 hours for the eligible employer during the taxable year in which the credit is claimed.
- \$10,000 for each eligible individual that works 2,000 hours for the eligible employer during the taxable year in which the credit is claimed.

This bill defines the following terms and phrases:

“Continuum of care” has the same meaning as in Section 578.3 of Title 24 of the Code of Federal Regulations, which is defined as the group organized to carry out the responsibilities and is composed of representatives of organizations, including nonprofit homeless providers, victim service providers, faith-based organizations, governments, businesses, advocates, public housing agencies, school districts, social service providers, mental health agencies, hospitals, universities, affordable housing developers, law enforcement, organizations that serve homeless and formerly homeless veterans, and homeless and formerly homeless persons to the extent these groups are represented within the geographic area and are available to participate.

“Eligible employer” means a taxpayer that is either of the following:

A. An employer that meets all of the following requirements:

- Has 500 employees or less.
- Pays wages subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code.
- Pays family-supporting wages at or exceeding the jurisdiction’s prevailing wage, as determined by the Employment Development Department (EDD).

B. An employer that meets the above requirements and is certified as a “high-road” employer by the Labor and Workforce Development Agency (LWDA).

“Eligible individual” means a person who is homeless on the date of the hire or anytime during the 60-day period immediately before the hire, or someone who is receiving supportive services from a homeless services provider as designated by a local continuum of care or coordinated entry system.

“‘High-road’ employer” means an employer that pays family-supporting wages at or exceeding the jurisdiction’s prevailing wage, competes based on the quality of their services and products, and engages workers and their representatives in the project of building skills and competitiveness in an effort to advance the workers’ career objectives.

“Person who is homeless” means an individual whose primary nighttime residence is any of the following:

- A public or private place not designated for or ordinarily used as a regular housing accommodation.
- Sleeping accommodation for an individual, including a car, park, abandoned building, bus station, train station, airport, or camping ground.
- A publicly or privately operated shelter designated to provide temporary living arrangements, including a permanent housing, permanent supportive, or transitional facility.

“Person who is homeless” also includes any of the following:

- An individual who is fleeing, or is attempting to flee, domestic violence, has no other residence, and lacks the resources or support networks to obtain other permanent housing.
- An individual who will imminently lose their primary nighttime residence, provided that, the residence will be lost within 14 days of receiving certification from a continuum of care in coordination with the EDD indicating the individual meets the criteria of a “person who is homeless,” no subsequent residence has been identified, and the individual lacks the resources or support networks needed to obtain other permanent housing.
- An individual that has not had a lease, ownership interest, or occupancy agreement in permanent housing in the 60 days before receiving certification, from a continuum of care in coordination with the EDD indicating the individual meets the criteria of a “person who is homeless.”

“Qualified taxpayer” means an eligible employer that pays wages subject to withholding under Division 6 (commencing with Section 13000) of the Unemployment Insurance Code to an eligible individual.

The eligible employer would be required to submit both of the following certifications to the Franchise Tax Board (FTB) for each eligible individual employed:

- Eligible employer certification. The taxpayer would be required to submit a request for and receive a certification from the EDD. The EDD would be required to issue the certification that would expire after two years, to an employer that qualifies as an “eligible employer” as defined in this bill.
- Eligible individual certification. A continuum of care would be required to, in coordination with the EDD, issue a certification that would expire after one year, to an “eligible individual” as defined in this bill.

A continuum of care, in coordination with the EDD, shall issue certificates to eligible individuals who meet the definitions of "person who is homeless," and will expire one year after they are issued.

The total collective amount of the credit that may be allowed to all qualified taxpayers shall not exceed thirty million dollars per calendar year. The qualified taxpayer shall claim the credit on a timely filed original return. Credits will be allocated by the FTB on a first-come-first-served basis. If two or more tax returns reporting the credit are received on the same day and the credit limitation would be reached before allowing all the reported credits, the credit would be required to be allocated to those qualified taxpayers on a pro rata basis.

The FTB's determination with respect to the date a return is received and the timeliness of the return would be excluded from administrative or judicial review. The denial of the credit could be made in the same manner as a mathematical error, as allowed by Revenue and Taxation Code (RTC) section 19051.

Excess credits may be carried over for three years until the credit is exhausted.

The FTB would have the authority to adopt rules, guidelines, or procedures necessary or appropriate to carry out the provisions of the bill. The FTB would be exempt from the Administrative Procedure Act when prescribing rules, guidelines, or procedures to administer the credit that would be enacted by this bill.

Section 3 of this bill contains language to comply with RTC section 41. The bill would provide the goal of the credit. In addition, the bill would require the LWDA to prepare an annual report that would be used to measure the effectiveness of the credit. The report would be required to include: the number of employers that applied for certification; the number and percentage of employees that applied for and received certification; the distribution of employers based on industry sectors; the distribution of employees based on industry sectors; the wages of workers hired as a result of the credit. The bill would require the EDD to, on or before October 1, 2022, and annually thereafter, post the report on its Internet website, and inform the Chief Clerk of the Assembly and the Secretary of the Senate by letter of such posting.

This credit would remain in effect until December 1, 2027, 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, and before December 1, 2027.

Federal/State Law

Federal Law

The Work Opportunity Tax Credit (WOTC) is a federal income tax credit available to employers who hire and retain veterans and individuals from targeted groups with significant barriers to employment, including individuals that are qualified Supplemental Security Income recipients, individuals with a vocational rehabilitation referral. There is no limit on the number of individuals an employer can hire to qualify to claim the WOTC. Employers are required to obtain certification on or before the beginning work date.

State Law

Current state law allows, for taxable years beginning on or after January 1, 2014, and before January 1, 2026, the New Employment Credit that is available to a qualified taxpayer that hires a qualified full-time employee, has an overall net increase in employment, and pays or incurs qualified wages attributable to work performed by the qualified full-time employee in a designated census tract or economic development area. The qualified employee must meet any of certain conditions, including previous unemployment, veteran status, low income status, ex-offender convicted of a felony, or recipient of specified government assistance.

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.

This bill defines the credit allowed to a qualified taxpayer who has eligible individuals that work a specific number of hours. However, because the number of hours are specific rather than stated in ranges, it is unclear whether a separate credit is allowed when the employee reaches each threshold amount. For example, an eligible individual who worked 1700 hours for the same employer would arguably qualify for the 500 hour amount (\$2500), the 1000 hour amount (\$5000) and the 1500 hour amount (\$7500) for a total of \$15,000. For clarity and ease of administration, it is recommended that the bill be amended to state the credit threshold amounts as ranges.

This bill uses terms that are undefined, i.e., "family-supporting wages," "supportive services," "homeless service provider," "jurisdiction's prevailing wage," and "coordinated entry system". The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

The bill uses inconsistent terminology, i.e., "qualified taxpayer" and "eligible employer," that could lead to disputes with taxpayers. For clarity, it is recommended to use one term throughout the bill and combine the definitions.

Taxpayers would not know whether or not the credit cap of \$30,000,000 was reached before filing their return, and that could result in denial of the credit and assessment of interest and penalties.

The bill is silent on the method that the LWDA would obtain the information used for performance measure of "the wages of workers hired as a result of the credit" in the report EDD is required to post on its Internet website. For example, the bill is silent on whether the LWDA would obtain information from the FTB.

If the report that would be posted by EDD would require information from California income tax returns, data would not be available by the required posting date of October 1, 2022. The earliest date that data would be available for the taxable year beginning on January 1, 2023, would be approximately March 2025.

In addition, if the report that would be posted by EDD would require information from California income tax returns, the bill fails to allow the disclosure of tax return information to the LWDA or prohibit the LWDA 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 LWDA.

This bill would, by reference to "eligible employer," impose the same requirements on a "high road" employer as an eligible employer; however, the "high road employer" definition includes only one of the same requirements of "eligible employer." If the author does not intend for all of the requirements for an "eligible employer" to apply to a "high road employer," the bill should be amended.

Technical Considerations

For consistency of terminology, the following changes are recommended:

- On page 5, line 35, replace the word "confirmations" with "returns."
- On page 5, line 39, replace the word "confirmation" with "return."
- On page 6, line 1, replace the word "confirmation" with "return."
- On page 7, line 4, replace "subdivision (b)" with "paragraph (1)."

To clarify the definition of “Person who is homeless,” the following changes are recommended:

- On page 4, line 31, delete the phrase “(B) ‘Person who is homeless’ includes any of the following:”
- On page 4, line 32, replace the reference “(i)” with “(iv).”
- On page 4, line 35, replace the reference “(ii)” with “(v).”
- On page 5, line 1, replace the reference “(iii)” with “(vi).”

The bill as written, would require a “high-road employer” to meet the requirements listed in (b)(2)(A) for an “eligible employer”. If this is contrary to the author’s intent, the bill should be amended.

This bill would grant the FTB the authority to prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this bill. Existing law already provides the FTB this authority. For ease and speed of implementation it is suggested that the bill be amended to instead authorize the FTB to issue any regulations necessary or appropriate to carry out the purposes of this bill.

Policy Considerations

This bill would provide a tax benefit for corporations under the CTL that would be unavailable to other business entities under the Personal Income Tax Law (PITL), such as partnerships, limited liability companies not classified as corporations, and sole proprietors. Thus, this bill would provide differing treatment based solely on classification.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits (i.e. credits or deductions) for the same wages paid.

For clarity, on page 4, lines 7 and 8, it is recommended that the phrase “subparagraph (A)” be replaced with “subparagraph (A)(i) and (ii).”

LEGISLATIVE HISTORY

SB 1333 (Durazo, et al., 2019/2020), similar to this bill, would have created the California Homeless Hiring Tax Credit available to a qualified taxpayer that employs a homeless individual. SB 1333 did not pass out of the Senate by the constitutional deadline.

AB 1169 (Frazier, 2019/2020) would have, under the PITL, allowed a credit to a qualified employer for wages paid to qualified employees. AB 1169 did not pass out of the Assembly by the constitutional deadline.

AB 1726 (Arambula, 2019/2020) would have, under the PITL and the CTL, provided a tax credit to certain employers that hire employees who are members of a targeted group. AB 1726 did not pass out of the Assembly by the constitutional deadline.

AB 2041 (Dahle, 2019/2020) would have, under the PITL and the CTL, established a credit for qualified wages paid to a qualified employee that is a former foster youth or ex-offender that is age 18 to 25 by a qualified taxpayer. AB 2041 did not 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

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 424 as Introduced February 12, 2021
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2021-2022	-\$4.4
2022-2023	-\$11
2023-2024	-\$13

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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