



Bill Analysis

Author: Umberg

Sponsor:

Bill Number: SB 49

Related Bills: See Legislative
History

Amended: February 1, 2021

SUBJECT

Tax Credit for license or permit costs for bars/restaurants and barbers/cosmetologists that closed due to COVID-19

SUMMARY

This bill would create a tax credit for eligible taxpayers affected by the COVID-19 state of emergency for amounts paid to a state agency or a local government for a permit, license, or other mandatory operating costs.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

The February 1, 2021, amendments replaced intent language with the provisions discussed in this analysis.

This is the department's first analysis of the bill and only addresses the provisions that impact the department.

REASON FOR THE BILL

The reason for this bill is to provide support to businesses that closed during the COVID-19 stay-at-home orders.

ANALYSIS

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, 2023, allow a tax credit in an amount equal to the amount paid or incurred in eligible costs by a qualified taxpayer before January 1, 2022.

This bill defines the following terms:

- “COVID-19 state of emergency” means the state of emergency proclaimed by the Governor on March 4, 2020.
- “COVID-19 stay-at-home order” means either of the following:
 - (A) Executive Order N-33-20, or any similar order issued by the Governor pursuant to the California Emergency Services Act or the State Department of Public Health that requires the closure of businesses in response to the COVID-19 state of emergency.
 - (B) Any order by a local government that requires the closure of businesses in response to the COVID-19 state of emergency, including, but not limited to, an order issued pursuant to the police power of a city or county or any order issued by a local health officer.
- “Eligible costs” means any amount paid to a state agency or a local government in connection with a permit, license, or other mandatory operating cost imposed by the state or a local government.
- “Local government” means a city, whether general law or chartered, county, or any officer of a city or county.
- “Qualified taxpayer” means a taxpayer for which both of the following apply:
 - (A) The taxpayer is a business that is either of the following:
 - A restaurant or bar.
 - An entity licensed, or that employs persons who are licensed, by the State Board of Barbering and Cosmetology under the Barbering and Cosmetology Act (Chapter 10 (commencing with Section 7301) of Division 3 of the Business and Professions Code).
 - (B) The taxpayer has temporarily ceased business operations in response to a COVID-19 stay-at-home order.

A qualified taxpayer claiming a credit allowed by this section shall declare, under penalty of perjury, that the qualified taxpayer has complied with all applicable COVID-19 state-at-home orders, in the form and manner prescribed by the Franchise Tax Board (FTB).

This bill would provide an unlimited carryover period for excess credit amounts. This credit would be repealed by its own terms on December 1, 2023.

Effective/Operative Date

This bill would become effective on January 1, 2022, and the credit provisions would be specifically operative for taxable years beginning on or after January 1, 2022, and before January 1, 2023.

Federal/State Law

Federal Law

No provision comparable in federal law.

State Law

Under Revenue and Taxation Code (R&TC) 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

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.

Under R&TC 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. The author may want to include section 41 requirements.

This bill uses terms that are undefined, such as "other mandatory operating cost." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the terms.

The bill defines "qualified taxpayer" as a "taxpayer that has temporarily ceased business operations in response to a COVID-19 stay-at-home order," which may be broader than the information required to be declared to the FTB regarding whether the taxpayer complied with "all applicable COVID-19 state-at-home orders." If this is contrary to the author's intent, the bill should be amended.

The declaration required to be submitted to FTB is unrelated to the credit. If the author's intent is for this credit to apply to those that comply with all stay-at-home order requirements, then (5)(B) should be amended to include this requirement.

Since this bill does not clearly limit costs eligible for the credit to amounts paid during the period that the taxpayer had ceased business during a stay-at-home order, any eligible cost by the qualified taxpayer made prior to January 1, 2022, even those paid before the business temporarily closed, would arguably qualify for this credit. If this is contrary to the author's intent, this bill should be amended.

Technical Considerations

For consistency of terminology, the following changes are recommended:

- On page 7, line 17, the term "state" should be replaced with "stay."
- On page 6, line 39, add "or incurred" after "paid."
- On page 8, line 11, add "or incurred" after "paid."
- On page 8, line 28, the term "state" should be replaced with "stay."

Policy Considerations

This bill does not limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited by a certain dollar amount per taxpayer.

LEGISLATIVE HISTORY

AB 259 (Davies, 2021/2022), would, under the CTL, allow a tax credit for the amount equal to 50 percent of the annual alcohol license or permit fee paid or incurred by certain restaurants. AB 259 has been referred to the Assembly Revenue and Taxation Committee.

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 49 as Amended February 1, 2021
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2021-2022	-\$23
2022-2023	-\$31
2023-2024	-\$12

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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