STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Umberg, et al.

Sponsor:

Related Bills: See Legislative History

Bill Number: SB 49

Amended: March 8, 2021, April 6, 2021, April 29, 2021, and May 11, 2021

SUBJECT

California Fair Fees Tax Credit

SUMMARY

This bill would create a tax credit for certain taxpayers affected by emergency orders.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 8, 2021, amendments removed provisions of the bill related to the Business Professions Code and the Government Code (GC) and modified the tax credit.

The April 6, 2021, amendments added coauthors, removed the provisions that based the tax credit amount on eligible costs paid or incurred by the qualified taxpayer, and added requirements limiting the proposed credit.

The April 29, 2021, amendments specified credit amounts and requirements and added a principal co-author. These amendments resolved the technical considerations and some implementation considerations, however some implementation considerations still remain. In addition new implementation considerations and one technical consideration were identified.

The May 11, 2021, amendments changed the operative date, extended the credit to qualified taxpayers who temporarily ceased business operations during the 2020 calendar year and made other technical changes.

REASON FOR THE BILL

The reason for this bill is to provide support to businesses that were required to close due to an emergency order.

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, 2021, and before January 1, 2026, allow a tax credit to a qualified taxpayer in the applicable following amounts:

A. If the qualified taxpayer has temporarily ceased business operations for at least 30 consecutive days, but less than 90 consecutive days, during the taxable year, one thousand dollars ($1,000).
B. If the qualified taxpayer has temporarily ceased business operations for at least 90 consecutive days, but less than 180 consecutive days, during the taxable year, the sum of the credit amount specified in point A above, and two thousand dollars ($2,000), for a total of three thousand dollars ($3,000).
C. If the qualified taxpayer has temporarily ceased business operations for 180 consecutive days or more during the taxable year, the sum of the credit amounts specified in point B above, and three thousand dollars ($3,000), for a total of six thousand dollars ($6,000).

For taxable years beginning on or after January 1, 2021, and before January 1, 2022, only, if a qualified taxpayer temporarily ceased business operations during the 2020 calendar year, the qualified taxpayer would be allowed the following amounts, in addition to any amount allowed above:

A. If the qualified taxpayer temporarily ceased business operations for at least 30 consecutive days, but less than 90 consecutive days, during the 2020 calendar year, one thousand dollars ($1,000).
B. If the qualified taxpayer temporarily ceased business operations for at least 90 consecutive days, but less than 180 consecutive days, during the 2020 calendar year, the sum of the credit amount specified in point A above, and two thousand dollars ($2,000), for a total of three thousand dollars ($3,000).
C. If the qualified taxpayer has temporarily ceased business operations for 180 consecutive days or more during the 2020 calendar year, the sum of the credit amounts specified in point B above, and three thousand dollars ($3,000), for a total of six thousand dollars ($6,000).

This bill defines the following terms:

- "Emergency order" means any order issued by the Governor pursuant to the California Emergency Services Act, any state agency, or any local government that requires the closure of businesses in response to a state of emergency.
- "Qualified taxpayer" means a taxpayer for which the following apply:
    - The taxpayer is a business that requires substantial in-person contact to conduct its business operations.
    - The taxpayer temporarily ceased business operations for at least 30 consecutive days during the taxable year or in the 2020 calendar year in response to an emergency order.
    - The taxpayer had average annual gross receipts of ten million dollars or less over the three preceding taxable year.
- "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 GC.

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

On an annual basis beginning January 1, 2022, and each January thereafter until January 1, 2027, for purposes of complying with Section 41 of the Revenue and Taxation Code (RTC), the FTB would be required to provide any data requested by the Legislative Analyst's Office (LAO), related to the California Fair Fees Tax Credit. The LAO, in collaboration with the FTB, would be required to review the effectiveness of the tax credit.

The credit would be known, and may be cited, as the California Fair Fees Tax Credit.

Unused credits could be carried over for seven years or until exhausted. This credit would be repealed by its own terms on December 1, 2026.

Effective/Operative Date

This bill would become effective immediately, as a tax levy, and would be specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2026.

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, and 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.

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

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 uses a term "substantial in-person contact" that is undefined. The use of the term "substantial" would be subjective and may lead to confusion in absence of a definition to clarify this term. Furthermore, the absence of clarifying language 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 term.

This bill would require the LAO in collaboration with the FTB to review the utilization and effectiveness of this credit by January 1, 2023. The department would not have that specific data until after July 2024. The author may wish to amend the bill to change the due date of the report to allow the department to collect the necessary data.

Technical Considerations

For consistency of terminology, the following changes are recommended:

- In Section 17053.70 (a), strike out "the applicable of" and insert "in"
- In Section 23670 (a), strike out "the applicable of" and insert "in"

Policy Considerations

None noted.

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 is currently in 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

Because it is difficult to predict when an emergency order would require the closure of businesses in response to when a state of emergency would be issued and how long the emergency order would last, the revenue impact is unknown. It is estimated, however, that for every $1 million in credits generated, approximately $500,000 would be used in the year generated by taxpayers with sufficient tax liability to offset with the credit. The remaining credits would be used in the following 7 years.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

The Senate Rules Committee analysis dated May 22, 2021, listed the following support and opposition.

Support: California Chamber of Commerce, California Restaurant Association, and Garden Grove Chamber of Commerce.

Opposition: None received.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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