



Bill Analysis

Author: Ta, et al.

Sponsor:

Bill Number: AB 2128

Related Bills: See Legislative
History

Amended: May 1, 2024

SUBJECT

Work Opportunity Tax Credit

SUMMARY

This bill, under the Personal Income Tax law (PITL) and Corporation Tax Law (CTL), would authorize a tax credit for qualified taxpayers in an amount equal to 40 percent of qualified first-year wages.

RECOMMENDATION

No position—The Franchise Tax Board (FTB) has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

The May 1, 2024, amendments added several coauthors, modified the operative date to taxable years beginning on or after January 1, 2025, and before January 1, 2030, and modified the repeal date.

The May 1, 2024, amendments also modified the initial due date for FTB's report to the Legislature. As a result, the implementation consideration discussed in the FTB's analysis of the bill as introduced on February 6, 2024, has been modified. The previously identified technical considerations and policy considerations remain.

REASON FOR THE BILL

The reason for this bill is to reduce recidivism rates by reducing unemployment among recently released individuals with felony convictions.

ANALYSIS

This bill, under the PITL and the CTL, for taxable years beginning on or after January 1, 2025, and before January 1, 2030, would allow a credit to qualified taxpayers. The credit would be equal to 40 percent of qualified first-year wages paid or incurred to a qualified employee and limited to \$5,000 for each qualified employee, regardless of taxable year.

This bill would define the following terms:

“Qualified taxpayer” means a taxpayer with fewer than five employees that pays qualified first-year wages to a qualified employee.

“Qualified employee” means an individual who satisfies all of the following:

- Is employed by a qualified taxpayer during the taxable year.
- Has worked for the qualified taxpayer for at least six months.
- Has been convicted of a felony under any statute of the United States, or of any state.
- Is employed by the qualified taxpayer to perform services within the state of California.
- Has a hiring date that is not more than one year after the date the individual was convicted or was released from prison.

“Qualified first-year wages” means wages paid or incurred to a qualified employee within the one-year period beginning on the date the qualified employee begins performing services for the qualified taxpayer. “Qualified first-year wages” would not include the following:

- Amounts paid or incurred by a qualified taxpayer for any period to an individual for whom the qualified taxpayer received federally funded payments for on-the-job training of the individual for that period.
- Amounts paid or incurred by the qualified taxpayer to an individual for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, a strike or lockout during the period of that strikeout or lockout.
- In the event that a qualified taxpayer pays or incurs qualified wages to a qualified employee in two separate taxable years, “qualified first-year wages” shall not include any amount paid or incurred that was used to calculate the amount of any credit allowed in a prior year.

Any deduction otherwise allowed for wages paid or incurred by the qualified taxpayer to the qualified employee would be reduced by the amount of the credit allowed.

This credit would be required to be taken in lieu of any other credit that the qualified taxpayer may otherwise claim with respect to wages paid to a qualified employee.

The bill includes Revenue and Taxation Code (RTC) section 41 requirements. This bill would require the FTB to report to the Legislature no later than December 1, 2027, and each year thereafter, on the number of taxpayers that received the credit and the average dollar value of credits allowed.

The RTC section 41 reporting requirements would be treated as an exception to the general prohibition against disclosure of confidential taxpayer information.

The credit would be repealed on December 1, 2030.

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, 2025, and before January 1, 2030.

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. There is no limit on the number of individuals an employer can hire to qualify to claim the WOTC.

The amount of the WOTC employers may claim varies based on the target group of the individual hired, the wages paid to that individual in the first year of employment, and the number of hours that individual worked. There is a maximum amount of WOTC that can be earned for each targeted group.

For the long-term family assistance recipient target group only, the WOTC is available to employers who hire members of this group for up to a two-year period.

- In the first year, the employer may claim a tax credit equal to 40 percent of the first-year wages, up to the maximum tax credit, if the individual works at least 400 hours.
- In the second year, the employer may claim a tax credit equal to 50 percent of the second-year wages, up to the maximum tax credit, if the individual works at least 400 hours.

For all other target groups, the WOTC is available to employers who hire members of these groups, based on the individual's hours worked and wages earned in the first year.

- If the individual works at least 120 hours, the employer may claim a tax credit equal to 25 percent of the individual's first-year wages, up to the maximum tax credit.
- If the individual works at least 400 hours, the employer may claim a tax credit equal to 40 percent of the individual's first-year wages, up to the maximum tax credit.

The Consolidated Appropriations Act (CAA), 2021 (PL 116-260) extended the federal WOTC until December 31, 2025, and applies to individuals who begin work for employers after December 31, 2020.

State Law

For taxable years beginning on or after January 1, 2014, and before January 1, 2026, the New Employment Credit (NEC) 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 one of the following:

- Previous unemployment.
- Veteran status.
- Recipient of the federal Earned Income Tax Credit.
- Ex-offender convicted of a felony.
- Recipient of specified government assistance.

For taxable years beginning on or after January 1, 2023, and before January 1, 2026, the designated census tract or economic development area requirements to do not apply to certain qualified taxpayers engaged in the following industries:

- Semiconductor manufacturing or semiconductor research and development
- Electric airplane manufacturing
- Lithium production
- Manufacturing of lithium batteries

Implementation Considerations

The FTB has identified the following implementation consideration and is available to work with the author's office to resolve these and other considerations that may be identified.

This bill would require the FTB to submit a report to the Legislature detailing the number of taxpayers that receive a credit and the average dollar value of credits allowed by December 1, 2027. If the author's intent is to be able to review a report that contains complete information for the 2025 taxable year, it is recommended that the reporting due date be extended to April of 2028. This allows time for the FTB to complete processing of corporation returns that file on a calendar and fiscal year basis. Corporate filers that file on extension may file as late as October 15, 2027. The FTB needs approximately six months to complete return processing and to compile the needed data to prepare a report. As a result, it is recommended that the reporting due date be no earlier than April of 2028 to provide complete information for the 2025

taxable year. If the reporting due date remains unchanged, the report would include the information available as of six months prior to the date the report is due.

Technical Considerations

For consistency of terminology, the following changes are recommended:

- In Section 17053.10 (b)(3)(A) and Section 23621.1(b)(3)(A), add the words “during the taxable year,” before “within the one-year period....”
- In Section 17053.10 (b)(3)(B)(iii) and Section 23621.1(b)(3)(B)(iii), replace the words “prior year” with “prior taxable year”.
- In Section 17053.10(d)(2) and Section 23621.1(d)(2)), replace “that receive a credit” with “allowed a credit”.

Policy Considerations

This credit would be required to be taken in lieu of any other credit that the qualified taxpayer may otherwise claim with respect to wages paid to a qualified employee. This clause would limit the ability of a taxpayer to claim any other work or employment related credits if the employees qualifying for the other credit met the definition of a qualifying employee under this bill. This may lead to the denial of larger employment related credits which in turn may have the unintended impact of limiting the hiring of qualified employees under this statute if it limits the qualified taxpayer’s ability to claim a larger credit. If this is contrary to the author’s intent, the in-lieu language may be replaced by a credit limitation to avoid providing a double benefit.

LEGISLATIVE HISTORY

AB 2294 (Schiavo, 2023/2024) would, under the PITL and CTL, modify the existing NEC to remove the requirement that work be performed in a designated census tract or economic development area, and expand the definition of a qualified full-time employee. AB 2294 is currently in the Assembly Revenue and Taxation Committee.

SB 553 (Limon, 2021/2022) would have created a tax credit to certain employers that hire employees who are members of a targeted group. SB 553 did not pass out of the Senate Committee on Appropriations by the constitutional deadline.

AB 1726 (Arambula, 2019/2020) would have created a tax credit for 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 916 (Quirk-Silva and Arambula, 2017/2018) would have created a tax credit for certain employers that hire employees who are members of a targeted group. AB 916 did not pass out of the Senate Committee on Appropriations by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None Noted.

FISCAL IMPACT

The FTB's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be determined.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2128 as amended on May 1, 2024
Assumed Enactment after June 30, 2024

Fiscal Year	Revenue
2024-2025	-\$100,000
2025-2026	-\$200,000
2026-2027	-\$200,000

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.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Assembly Revenue and Taxation Committee Analysis 04-26-2024

Support:

Asian Prisoner Support Committee; Initiate Justice; REDF; Returning Home Foundation; Sister Warriors Freedom Coalition; Southeast Asia Resource Action Center.

Opposition:

California Federation of Teachers AFL-CIO; California Tax Reform Association; California Teachers Association.

ARGUMENTS

Assembly Revenue and Taxation Committee Analysis 04-26-2024

Proponents:

Initiative Injustice submitted the following statement which reads in part:

“This bill provides a solution by incentivizing smaller businesses with fewer than five employees to hire a formerly incarcerated person within a year of release. Not only would this bill be aimed to help formerly incarcerated people, which disproportionately consist of people of color, but also aid smaller businesses that are struggling in a post COVID economy. Further, this would mitigate California's financial deficit by reducing the unemployment rate, recidivism incarceration costs, and other public safety expenditures. For every formerly incarcerated person that secures employment due to the incentives of hiring formerly incarcerated people, the State of California would spend \$5,000 but save \$132,860 for every employee that does not reoffend due to having secure employment and the means to starting a new life.”

Opponents:

The American Federation of State, County and Municipal Employees (AFSCME), AFL-CIO, submitted the following statement which reads in part:

“While it is vital to make sure that Californians reentering society after incarceration receive as much assistance as possible, AB [2128] would contribute to California's already unstable revenue stream. Recently, the Legislative Analyst's Office (LAO) estimated that the state's budget deficit is as high as \$73 billion. The Legislature and the Governor face the difficult task of balancing the budget in the next few months. Many core services could face steep cuts - core services that many Californians rely on to be able to take care of themselves and their families. A proposal like AB [2128] will likely lead to the instability of the state's General Fund and less money being available for future policy initiatives aimed at making the re-entry process easier for Californians leaving prison.”

LEGISLATIVE CONTACT

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