STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Schiavo

Sponsor:

Bill Number: AB 2294

Related Bills: See Legislative History

Introduced: February 12, 2024

SUBJECT

New Employment Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), modify the existing New Employment Credit (NEC) to remove the requirement that work be performed in a designated census tract or economic development area, expand the definition of a qualified full-time employee, and qualified wages.

RECOMMENDATION

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

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to expand the eligibility to federal work opportunity credit (WOTC) recipients, remove the existing New Employment Credit (NEC) boundaries, and allow previously excluded businesses as described in the North American Industry Classification System (NAICS) to qualify for the credit.

ANALYSIS

This bill would, for taxable years beginning on or after January 1, 2024, modify the NEC by removing the requirement that the work performed by the qualified full-time employee be in a designated census tract or economic development area.

This bill would, for taxable years beginning on or after January 1, 2024, modify the definition of a qualified full-time employee to include an individual who is a member of a targeted group as defined under the federal WOTC (Internal Revenue Code section 51(d)). Additionally, the requirement for a qualified full-time employee to perform at least 50 percent of their services for the qualified taxpayer in a designated census tract or economic development area would only apply to taxable years beginning before January 1, 2024.

This bill, for taxable years beginning on or after January 1, 2024, would modify the definition of qualified taxpayer by removing the requirement that the taxpayer be engaged in a trade or business within a designated census tract or economic development area. This bill would continue to exclude a taxpayer that is an employer that is a sexually oriented business and would allow the following employers to claim the credit:

- Employers that provide temporary help services, as described in Code 561320 of the NAICS.
- Employers that provide retail trade services as described in Sector 44-45 of NAICS.
- Employers that are primarily engaged in food services as described in Code 711110, 722511, 722513, 722514, or 722515 of NAICS.
- Employers that are primarily engaged in services described in Code 713210 (casinos, except casino hotels), 721120 (casino hotels), or 722410 (drinking places) of NAICS.

This bill defines qualified wages as wages paid or incurred by the qualified taxpayer to each qualified full-time employee that exceeds 100 percent of the minimum wage but not to exceed 350 percent of the minimum wage.

This bill provides that the changes made to expand the NEC under Chapter 55 of Statues of 2023 (SB 131, Committee on Budget and Fiscal Review) are operative for taxable years beginning on or after January 1, 2023. Those changes allow taxpayers in specified industries, who self-certify and provide verification, as specified, to be exempt from the designated census tract or economic development area requirement and for taxable years beginning on or after January 1, 2023, and before January 1, 2024, to request a tentative credit reservation on or before the last day of the month following the close of the taxable year for which the credit is claimed.

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, 2024.

Federal/State Law

Federal Law

Existing federal law provides special tax incentives for empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas. The WOTC is a federal income tax credit available to employers who hire and retain individuals from specified targeted groups who have consistently faced significant barriers to employment. Employers must apply for and receive a certification verifying the new hire is a member of a targeted group before they can claim the tax credit. After the required certification is secured, taxable employers claim the WOTC as a general business credit against their income taxes, and tax-exempt employers claim the WOTC against their payroll taxes. The credit is unavailable for wages paid to employers that begin work after December 31, 2025.

State Law

For taxable years beginning on or after January 1, 2014, and before January 1, 2026, current state law allows a NEC 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 taxpayer must receive a tentative credit reservation from the FTB for that qualified full-time employee. Additionally, the FTB must provide a searchable database on its website reporting the name of the person or entity claiming the credit.

Implementation Considerations

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

This bill would continue to require the FTB to provide as a searchable database on its internet website, for each taxable year beginning on or after January 1, 2014, and before January 1, 2026, the employer names, amounts of tax credit claimed, and number of new jobs created for each taxable year. The expansion of the NEC as provided for in this bill could result in an increase in the number of taxpayers claiming this credit. Accordingly, the cost to publish a searchable database containing the employer names, amounts of tax credit claimed, and number of new jobs created could also increase, as indicated below in "Fiscal Impact." The author may wish to consider amending the bill to modify the searchable database requirement, taking into account the potential increase in the population expected as a result of the provisions in this bill.

This bill would require the FTB to prepare a report on the performance of the credit allowed by this provision beginning on March 1, 2025. If the author's intent is to review a report that contains complete information for the 2024 taxable year, it is recommended that the reporting due date be extended to March of 2027. This date allows time for the FTB to complete processing of both personal income tax return and corporation returns that file on a fiscal year basis. Corporate fiscal filers that file on extension, may file as late as October 15, 2025. The FTB needs approximately 6 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 March of 2027 to provide information for the 2024 taxable year. If the reporting due date remains unchanged, the report would include the information available as of 6 months prior to the date the report is due.

Technical Considerations

The credit will only continue for taxable years beginning on or after January 1, 2026 with respect to qualified full-time employees who commenced employment with a qualified taxpayer in a designated census tract or economic development area in a taxable year beginning before January 1, 2026. The author may wish to amend if this is not the author's intent.

Policy Considerations

Existing law requires that the credit be claimed on a timely filed original return of the qualified taxpayer and only with respect to a qualified full-time employee for whom the qualified taxpayer has received a tentative credit reservation. The tentative credit reservation requirement serves the purpose of preventing taxpayers without a reservation from claiming the credit. Allowing a qualified taxpayer that received a reservation to claim the credit on an amended return would provide additional time to claim the credit if a qualified taxpayer did not have an opportunity to claim the credit on their original return. The author may wish to amend the bill to remove the timely filed original return requirement.

Part 4.5.5 of the Labor Code creates a minimum wage definition for fast food workers. Under the definition used in the bill, the determination of the credit may not be available for employers with fast food employees. If this is not the intent of the author, the bill should be amended to look to either definition.

LEGISLATIVE HISTORY

SB 131 (Senate Committee on Budget and Fiscal Review, Chapter 55, Statutes of 2023) expanded the NEC by providing that the designated census tract or economic development area requirements would not apply, and a later tentative credit reservation requirement would apply, to certain "qualified taxpayers" that are engaged in the following industries: semiconductor manufacturing or semiconductor research and development, electric airplane manufacturing, lithium production, and manufacturing of lithium batteries.

AB 93 (Assembly Committee on Budget, Chapter 69, Statutes of 2013), among other changes, created a NEC.

SB 90 (Galgiani and Canella, Chapter 70, Statutes of 2013), modified AB 93 as chaptered on July 11, 2013. Specifically, SB 90, for purposes of the NEC, modified the definition of qualified employee, excluded sexually oriented businesses from the definition of qualified taxpayer and small business, and modified the defined geographical area that the hiring credit may be generated in.

AB 2035 (Villapudua, 2021/2022) would have, under the Personal Income Tax Law (PITL) and Corporation Tax Law, (CTL) amended the existing NEC to expand eligibility to additional industries similar to SB 1349 and extended the pilot area designation period. AB 2035 did not pass out of the house of origin by the constitutional deadline.

SB 1349 (Caballero & Villapudua, 2021/2022) would have, under the PITL and CTL, modified the existing NEC to remove the requirement that work be performed in a designated census tract or economic development area, remove all requirements relating to those designated areas, and expand the definition of a qualified full-time employee. SB 1349 did not pass out of the Assembly by the constitutional deadline.

PROGRAM BACKGROUND

The NEC Program was created in 2014 to promote employment for businesses that operate in areas with historically high unemployment and high poverty rates. The 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. The NEC will be repealed on December 1, 2029.

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 2294 as Introduced on February 12, 2024

Assumed Enactment after June 30, 2024

($ in Millions)

Fiscal Year	Revenue
2024-2025	-$18
2025-2026	-$13.3
2026-2027	-$9.5

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.

Revenue Discussion

Based on FTB NEC data, industry employment data, and wage data from the U.S. Bureau of Labor Statistics, it is estimated that an additional 5 million employees would be eligible for the expanded NEC. Based on FTB NEC data trends, it is estimated that approximately 300,000 or 6 percent of eligible employees would be claimed and used in the computation of the credit. Based on this information, it is estimated that this credit expansion would result in a revenue loss of approximately $11 million in 2024 taxable year.

The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

LEGAL IMPACT

None noted.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support: None noted

Opposition: None noted

ARGUMENTS

Proponents: None noted

Opponents: None noted

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov