STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Bauer-Kahan

Sponsor:

Bill Number: AB 769

Related Bills: See Legislative History

Introduced: February 13, 2023

SUBJECT

Clean Air Act Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), provide a tax credit to a qualified taxpayer in the amount of $800 per ton of criteria air pollutant reduced beyond a specified baseline amount.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to provide a tax credit for emissions reductions that exceed federal Clean Air Act (CAA) standards.

ANALYSIS

This bill, under the PITL and CTL, for taxable years beginning on or after January 1, 2023, and before January 1, 2028, would provide a tax credit to a qualified taxpayer. The credit amount would be equal to $800 per ton of criteria air pollutant reduced beyond the baseline amount.

This bill would define the following terms:

"Baseline amount," with respect to criteria air pollutants, means the level of criteria air pollutants the taxpayer may emit to meet the requirements of the federal CAA.

"Qualified taxpayer" means a taxpayer that satisfies all of the following:

- Is a "major source" emitter, as "major source" is defined in Section 63.2 of Title 40 of the Code of Federal Regulations.
- Has emissions levels of criteria air pollutants for the taxable year that are at least 5% lower than the requirements set by the federal CAA.

Credits in excess of the tax liability could be carried over for up to five years.

The Franchise Tax Board (FTB) may prescribe any regulations necessary or appropriate to carry out the purposes of this section, including any regulations to prevent improper claims from being filed or improper payments from being made with respect to net earnings from self-employment.

The FTB would be allowed to prescribe rules, guidelines, procedures, or other guidance to administer this credit. The Administrative Procedures Act would not apply to any rule, guideline, or procedure prescribed by the FTB.

This bill would, for purposes of complying with Section 41, require the FTB to prepare a report, to the Legislature, that would include the number of taxpayers allowed a credit and the average dollar value of credits allowed. This report would be due by June 1, 2024, and annually thereafter.

This credit would be repealed by its own terms on December 1, 2028.

Effective/Operative Date

As a tax levy bill, this bill would be effective immediately upon enactment, and specifically operative for taxable years beginning on or after January 1, 2023, and before January 1, 2028.

Federal/State Law

Existing federal and state laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Implementation Considerations

FTB staff has identified the following implementation considerations for purposes of a high-level discussion; additional considerations may be identified as the bill moves through the legislative process. FTB staff is available to work with the author's office to resolve these and other considerations that may be identified.

Typically, credits involving areas for which the FTB does not have the expertise are verified by another agency or agencies that possess the relevant expertise. FTB does not have the expertise or access to the required data to determine if a taxpayer's emission levels of criteria air pollutants for the year are at least 5% lower than the requirements set by the federal CAA or reduced beyond a baseline amount. Further, the FTB does not have access to the number of tons reduced and may have difficulty verifying this information to compute the credit amount. It is recommended that the bill be amended to add a certifying agency and to address these concerns. The certification language would specify the responsibilities of both the certifying agency and the taxpayer.

This bill defines "baseline amount" as "the level of criteria air pollutants the taxpayer may emit to meet the requirements of the federal CAA." However, the definition of "qualified taxpayer" requires emission levels of criteria air pollutants of at least 5% lower than the requirements of the federal CAA. So, only a taxpayer with emissions levels of at least 5% less than the requirements of the CAA would be eligible for the credit, even though a taxpayer's emissions are less than the baseline amount. If that is contrary to the author's intent, the bill should be amended.

The definition of a qualified taxpayer states, "Has emissions levels of criteria air pollutants for the taxable year that are at least 5% lower than the requirements set by the federal CAA." The author may wish to add a cite to the specific section of the federal CAA that contains the amount requirements to avoid confusion.

The bill uses the undefined term "criteria air pollutant," which is a term from the federal CAA. It is recommended that the bill be amended to add a reference to the definition in the applicable federal law.

This bill includes the undefined terms "improper claims" and "improper payments." The author may wish to define these terms for clarity to the taxpayers and FTB.

This bill would require the FTB to prepare a report on the performance of the credit allowed by this bill on or before June 1, 2024. If the author's intent is to review a report that contains complete information for the 2023 taxable year, it is recommended that the reporting due date be extended to July of 2026. 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 November 15, 2025. 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 July of 2026 to provide information for the 2023 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

Consider replacing the word “beyond” with “below” in Section 17053.76(a) and Section 23622(a).

Consider removing the phrase, “or improper payments from being made with respect to net earnings from self-employment” in Sections 17053.76(d)(1) and 23622(d)(1) as the reference is not necessary.

Policy Considerations

This credit would be allowed for a reduction in criteria air pollutant that occurs either inside or outside of California.

Taxpayers with emissions below 5% of the federal CAA requirements would be eligible for a credit for each ton of criteria air pollutant below the baseline amount. However, a taxpayer with emissions at 3% or 4% below the federal CAA requirements would not be eligible for any credit, even though their emissions could be below the baseline amount.

LEGISLATIVE HISTORY

AB 1279 (Muratsuchi and Garcia, et al., Chapter 337, Statutes of 2022) declared it the policy of the state to achieve net-zero Greenhouse Gas (GHG) emissions and reduce anthropogenic GHG emissions by 85% below 1990 levels no later than 2045, and to achieve and maintain net negative GHG emissions thereafter.

AB 32 (Nunez, et al., Chapter 488, Statutes of 2006) established the California Global Warming Solutions Act of 2006, which created a comprehensive, multi-year program to reduce greenhouse gas emissions in California by 25% by 2020.

AB 1395 (Muratsuchi, 2021/2022), would have declared that it is the policy of the state to achieve net zero GHG emissions and reduce anthropogenic GHG emissions by at least 90% below the 1990 level no later than 2045. AB 1395 did not pass out of the Senate by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

Department staff is unable to determine the costs to administer this bill until the implementation considerations are resolved but anticipates the costs to be significant. As the bill moves through the legislative process, costs to implement this bill will be determined.

ECONOMIC IMPACT

Revenue Estimate

To determine the revenue impact of criteria air pollutant reduced beyond the baseline amount, both the frequency of emissions and the amount of emissions reduced below the baseline must be known. Since it is difficult to predict the frequency of emissions and the amount of emissions that would be reduced below the baseline, the revenue impact is unknown.

However, it is estimated that for every 100,000 tons of criteria pollutants reduced beyond baseline, $80 million of credits would be generated. Of that amount an estimated 50%, or $40 million, would be claimed in the year generated and the remaining credit would be used over the subsequent five years.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

None on file.

ARGUMENTS

None on file.

LEGISLATIVE CONTACT

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