



Bill Analysis

Author: Padilla

Sponsor:

Bill Number: SB 471

Related Bills: See Legislative
History

Introduced: February 13, 2023,
Amended: April 25, 2023

SUBJECT

Lithium Battery Manufacturer's Hiring Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), provide a credit to a qualified taxpayer located in a designated census tract that is engaged primarily in lithium production or manufacturing of electric batteries. The credit would be equal to 50% of the qualified wages paid to qualified full-time employees.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 25, 2023, amendments changed the operative date, added a credit percentage, amended the definitions of "qualified wages," "qualified taxpayer," and "qualified full-time employee," replaced "applicable region" with "designated census tract," and revised the repeal date of the bill.

REASON FOR THE BILL

The reason for the bill is to provide tax credits to lithium extraction and electric battery manufacturing businesses in certain areas of California.

ANALYSIS

For taxable years beginning on or after January 1, 2023, and before January 1, 2028, this bill would allow a credit to a qualified taxpayer that hires a qualified full-time employee and pays or incurs qualified wages attributable to work performed by the qualified full-time employee. The amount of credit would be equal to 50% of the qualified wages paid to the qualified full-time employee.

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This bill would define the following:

- “Qualified wages” means wages paid or incurred during the 36-month period beginning with the first day the qualified full-time employee commences employment with the qualified taxpayer that are equal to or exceed at least 150% of the minimum wage and do not exceed 350% of minimum wage for that taxable year.
- “Qualified taxpayer” means a person or entity located in a designated census tract, engaged primarily in either of the following businesses:
 - Lithium production.
 - Manufacturing of electric batteries.
- “Qualified full-time employee” means an individual who meets all of the following requirements and satisfies noted conditions:
 - Performs at least 50% of the employee’s services for the qualified taxpayer during the taxable year within a designated census tract.
 - Is hired by the qualified taxpayer on or after the effective date of the bill, and before January 1, 2028.
- Conditions to satisfy:
 - Is paid qualified wages by the qualified taxpayer for services not less than an average of 35 hours per week, or
 - Is a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified taxpayer.
- “Acquired” means any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.
- Under the PITL, “applicable region” means a designated census tract as defined in paragraph (7) of subdivision (b) of Revenue and Taxation Code (RTC) section 17053.73.
- Under the CTL, “designated census tract” has the same meaning as that term is defined in paragraph (7) of subdivision (b) of RTC section 17053.73.

This bill would provide that all employees of trades or businesses that are treated as related under Internal Revenue Code (IRC) sections 267, 318 or 707 would be treated as employed by a single taxpayer.

For taxpayers subject to the PITL, all employees of trades or businesses that are unincorporated, and that are under common control, would be treated as employed by a single taxpayer. The credit allowable with respect to each trade or business would be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and would be allocated in that manner. Principles that apply in the case of controlled groups of corporations would apply with respect to determining employment.

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For taxpayers subject to the CTL, all employees of all corporations that are members of the same controlled group of corporations would be treated as employed by a single qualified taxpayer. The credit allowable by this section with respect to each member would be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and would be allocated in that manner.

If an employer acquires the major portion of a trade or business of another employer (hereinafter predecessor) or the major portion of a separate unit of a trade or business of a predecessor, then for any taxable year ending after that acquisition, the employment relationship between a qualified full-time employee and an employer would not be treated as terminated if the employee continues to be employed in that trade or business.

This bill would define “controlled group of corporations” to mean a controlled group of corporations as defined per IRC section 1563(a), except that, “More than 50 percent” is substituted for “at least 80 percent” for each time the percentage appears in IRC section 1563(a)(1). Furthermore, the determination shall be made without regard to IRC sections 1563(a)(4) and (e)(3)(C).

This bill would apply rules provided in IRC sections 46(e) and 46(h), as in effect on November 4, 1990, and would apply to both of the following:

- An organization to which IRC section 593 applies and
- A Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT) subject to taxation under the CTL.

The credit claimed by a qualified taxpayer for a qualified full-time employee that is terminated must be recaptured by increasing the taxpayer’s taxable income by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee. This would occur if the qualified full-time employee is terminated by the qualified taxpayer at any time during the first 36 months, after commencing employment, whether or not consecutive, with the qualified taxpayer, unless any of the following occur:

- The qualified full-time employee voluntarily leaves the employment of the qualified taxpayer.
- The qualified employee becomes disabled and unable to perform the services of employment.
- The qualified employee was terminated for misconduct.
- The termination was due to a substantial reduction in the trade or business operations of the taxpayer, including reductions due to seasonal employment.

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- The terminated qualified employee is replaced by other qualified full-time employees to create a net increase in both the number of employees and the hours of employment.
- The termination of employment of the qualified full-time employee when that employment is considered seasonal employment and the qualified employee is rehired on a seasonal basis.

The employment relationship between the qualified taxpayer and a qualified full-time employee would not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the qualified taxpayer if the qualified full-time employee continues to be employed in that trade or business and the qualified taxpayer retains a substantial interest in that trade or business.

The unused credit could be carried over for up to 5 years, until exhausted.

As the bill does not specify, this credit would not reduce regular tax below the tentative minimum tax.

Any deduction allowed for qualified wages taken under this legislation will be reduced by the amount of the credit allowed.

Any credit allowed by this bill would be in lieu of any other credit that the qualified taxpayer may be allowed with respect to amounts taken into account in calculating the credit allowed.

This credit would be repealed on December 1, 2032. However, for taxable years beginning on or after January 1, 2028, the credit would remain operative for any qualified taxpayer with respect to any qualified full-time employee who commenced employment with a qualified taxpayer in a designated census tract in a taxable year beginning before January 1, 2028.

This section would remain operative, after the designated census tract ceases to be a designated census tract, as defined in RTC section 17053.73, for any qualified taxpayer with respect to any qualified full-time employee for both of the following:

- For the remaining period of the 36-month period after the original date of hiring.
- Any wages paid or incurred with respect to a qualified full-time employee shall be treated as qualified wages under this section, provided the employee satisfies all other requirements.

The Franchise Tax Board (FTB) would be allowed to prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit. The Administrative Procedures Act would not apply to any rule, guideline, or procedure prescribed by the FTB for the credit.

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The FTB would be required to analyze and submit to the Legislature a report by May 1, 2032, on both of the following:

- The total dollar amount of credits claimed.
- The number of taxpayers who utilized the credits.

The reporting required would be treated as an exception to the general prohibition against disclosure applicable to FTB.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2023, and before January 1, 2028. For taxable years beginning on or after January 1, 2028, the credits would remain operative only with respect to qualified full-time employees who commenced employment with a qualified taxpayer in a designated census tract in a taxable year beginning before January 1, 2028.

Federal/State Law

Federal Law

Existing federal law provides special tax incentives for opportunity zones, empowerment zones and enterprise communities to provide economic revitalization of distressed urban and rural areas.

State Law

For taxable years beginning on or after January 1, 2014, and before January 1, 2026, current state law allows a New Employment Credit (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 former Enterprise Zone. 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, the total amount of credit claimed, and the number of new jobs created.

Implementation Considerations

None noted.

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Technical Considerations

For consistency of terminology, the following changes are recommended:

- In the definition of “qualified taxpayer,” the term “person or entity” should be replaced with “taxpayer.”
- The bill replaced the term “application region” with “designated census tract.” Under the CTL, the definition of an application region was replaced with the definition of a designated census tract. Under the PITL, the definition of an applicable region should be also replaced with the same definition of designated census tract.
- In SEC. 1., Section 17053.74(c)(5), the term “employer” should be replaced with the term “qualified taxpayer.”
- In SEC. 1., Section 17053.74(f) and SEC. 2., Section 23625.5(f), replace “The Franchise Tax Board may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section.” with “The Franchise Tax Board may prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this section.”
- In SEC. 2., Section 23625.5(e), “net tax” should be replaced with “tax.”

Policy Considerations

Under the CTL, the bill uses references different versions of the IRC to define “commonly controlled group of corporations.” If the author wishes to cite to a similar provision of California law, the author could replace those references with “a taxpayer required to be included in a combined report under Section 25101 or 25110, or as authorized to be included in a combined report under Section 25101.15.”

Under the CTL, the bill uses references IRC sections 46(e) and 46(h). However, IRC section 46 was repealed. The author may wish to amend the bill to eliminate these references.

This bill would propose to recapture the tax credit for the taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee if a qualified full-time employee was terminated by a qualified taxpayer during the first 36 months. The author may wish to reinstate the wage expense deduction for qualified wages paid or incurred with respect to terminated employees if the credit is recaptured.

This bill would require the FTB to prepare a report on the performance of the credit by May 1, 2032. If the author’s intent is to review the report to determine if the credit should be extended, the author may want an earlier reporting date, e.g., by July 1, 2030.

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LEGISLATIVE HISTORY

AB 2035 (Villapudua, 2021/2022) would have, under the PITL and CTL, amended the existing NEC to expand eligibility to additional industries and to extend the pilot area designation period. AB 2035 did not pass out of the house of origin by the constitutional deadline.

SB 1349 (Caballero, 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, expand the definition of a qualified full-time employee, modify the definition of a qualified taxpayer, add Section 41 intent language, add a tax levy provision, and would have made other technical nonsubstantive changes. SB 1349 was held in the Assembly without further action.

AB 1629 (Maienschein, et al., 2017/2018) would have, under the PITL and CTL, allowed a credit to a qualified employer who employed a qualified employee and paid the qualified employee a wage that exceeded the minimum wage during the taxable year. The credit would have been in an amount equal to the difference between the special minimum wage that would have been paid to a qualified employee and the minimum wage. AB 1629 did not pass out of the house of origin by the constitutional deadline.

AB 3029 (Arambula, 2017/2018) would have, under the PITL and CTL, amended the existing NEC to remove the FTB's responsibility to provide a searchable database on its website. AB 3029 did not pass out of the house of origin by the constitutional deadline.

SB 661 (Fuller, 2017/2018) would have, under the PITL and CTL, expanded the NEC by adding a new type of qualified employee. SB 661 did not pass out of the house of origin by the constitutional deadline.

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 determined.

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ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 471 as Amended April 25, 2023
Assumed Enactment after June 30, 2023

(\$ in Millions)

Fiscal Year	Revenue
2023-2024	-\$0.1
2024-2025	-\$0.5
2025-2026	-\$1.6

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

As per the April 28, 2023, Senate Governance and Finance Committee analysis of SB 471, the following organizations are in support and opposition of this bill.

Support

State Building and Construction Trades Council of California

Opposition

California Teachers Association

ARGUMENTS

None on file.

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LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov