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UNFINISHED BUSINESS

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Bill No: SB 1447  
Author: Bradford (D), Caballero (D) and Cervantes (D), et al.  
Amended: 8/27/20  
Vote: 21

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PRIOR VOTES NOT RELEVANT

ASSEMBLY FLOOR: Not available

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**SUBJECT:** Income tax: sales and use tax: credit: small business.

**SOURCE:** Author

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**DIGEST:** This bill allows a Sales and Use Tax or Income Tax credit for certain small businesses.

*Assembly Amendments* delete the bill's previous provisions and replace them with language that creates a new tax credit for certain small businesses.

**ANALYSIS:**

Existing law:

- 1) Allows various income tax credits, deductions, exemptions, and exclusions. The Legislature enacts such tax incentives to either compensate taxpayers for incurring certain expenses, such as child adoption, or to influence certain behavior, such as charitable giving.
- 2) Allows taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business. This includes expenses for employee wages, rent, utilities and other things reasonable and necessary to conducting their business.
- 3) Requires California taxpayers to file tax returns using the combined reporting method of corporate taxation, which requires a corporation computing its California tax liability to include the tax returns of its "unitary" subsidiaries

and affiliates into one report, and divide the corporation's overall income among the taxing jurisdictions in which it does business.

This bill:

- 1) Provides an allocated tax credit to certain qualified small businesses for the 2020 taxable year, equal to \$1,000 for each net increase in qualified employees, not to exceed \$100,000 per employer.
- 2) Requires the California Department of Tax and Fee Administration (CDTFA) to allocate the credit to qualified small businesses on a first-come-first-served basis, up to \$100 million.
- 3) Specifies that the qualified small business must apply to CDTFA between December 1, 2020, and January 15, 2021, to obtain a credit allocation. The credit may be used to reduce the qualified small business's sales and use tax or income tax liability. On the application, the qualified small business must make a non-revocable election to apply the amount of the credit to their sales and use taxes. If no election is included, the taxpayer must use the credit to reduce the qualified small business's income taxes.
- 4) Requires that a "qualified small business" must:
  - a) Pay "qualified wages"
  - b) As of December 1, 2019, employ 100 or fewer employees
  - c) Have a 50 percent decrease in gross receipts as determined by comparing gross receipts for the three-month period between April 1, 2019, and June 30, 2019, compared to the three-month period between April 1, 2020, and June 30, 2020.
  - d) Not be a taxpayer required to be included in a combined report.
- 5) Defines "qualified wages" to mean wages paid subject to the Unemployment Insurance Code, and "Qualified employees" to mean employees paid qualified wages and employed by the qualified small business taxpayer.
- 6) Calculates the credit based on the net increase in qualified employees on a monthly full-time equivalent basis:
  - a) The taxpayer calculates their average monthly full-time equivalent number of employees employed between April 1, 2020, and June 30, 2020.

- b) The taxpayer then calculates their average monthly full-time equivalent number of qualified employees employed between July 1, 2020, and November 30, 2020.
  - c) If the taxpayer has increased its number of average monthly full-time equivalents from the first period to the second, the amount of the credit is equal to \$1,000 times the number of additional full-time equivalents, up to \$100,000.
- 7) Defines “monthly full-time equivalent” basis as either:
- a) In the case of a qualified employee paid hourly qualified wages, monthly full-time equivalent means the total number of hours worked, for the qualified small business by the qualified employee, not to exceed 167 hours per qualified employee divided by 167, or
  - b) In the case of a salaried qualified employee, monthly full-time equivalent means the total number of weeks worked for the qualified small business employer by the qualified employee divided by 4.33 and multiplied by the time base the qualified employee works.
- 8) Requires taxpayers to reduce the normal business deduction allowed for wages paid by the amount of credit claimed.
- 9) Precludes wages paid used to calculate this credit to calculate any other credit.
- 10) Affirms that the taxpayer can only claim the credit on an original, timely-filed return.
- 11) Allows the taxpayer to carry forward the credit for up to five taxable years.
- 12) Requires any credits against sales and use taxes to be claimed only on returns filed on or before April 30, 2026.

## **Background**

In recent years, the Legislature has enacted two income tax credits to spur employment growth. The New Jobs Credit (ABX3 15 (Krekorian)/SBX3 15 (Calderon), 2009) which expired on January 1, 2014, offered \$3,000 for every new employee hired in certain geographically-targeted areas. Additionally, in 2013, the Legislature enacted AB 93 (Committee on Budget) and SB 90 (Committee on Budget and Fiscal Review), which reformed California’s economic development policies by eliminating enterprise zones and other geographically-targeted

economic development area, including the New Employment Credit. Taxpayers may claim this credit for wages paid to qualified employees within former enterprise zones and other areas that suffer from high levels of poverty and unemployment. The credit lasts from the 2014 taxable year until the 2026 taxable year. The credit is only available to those employers for the portion of wages paid between 150% and 350% of minimum wage. Additionally, the credit is calculated only on the increase in employees calculated employed as compared to a base year.

*COVID-19 pandemic.* The COVID-19 pandemic, also known as the coronavirus pandemic, is an ongoing, widespread outbreak of the disease caused by a strain of the coronavirus. This severe, acute respiratory syndrome was first identified in Wuhan, China in late December 2019. The first cases in the United States occurred in early 2020 and the first California case was confirmed in late January. To control the spread of the disease, California, and other states, issued mandatory “stay-at-home” orders. These devastated the economy and left thousands out of work and struggling to pay for necessities. California’s unemployment rate rose to a record high 16.3 percent in May as the state’s employer’s lost 2,415,000 nonfarm payroll jobs, according to the Employment Development Department. According to Federal Reserve Bank Chair Jerome Powell, 40 percent of households earning less than \$40,000 annually lost their jobs in March.

## **Comments**

- 1) *Windfall?* This bill allows a credit to employers that happened to have met the various requirements indicated in the bill: a decrease in gross receipts year over year, and have increase the number of employees between July 1, 2020, and November 30, 2020, in excess of the amount of their employees employed between April 1, 2020, and June 30, 2020. Although the credit is for employees hired between July 1, 2020, and November 30, 2020, at the time this bill would be enacted, most of this time period for meeting these requirements has already elapsed. Thus, this bill will serve as a reward for employers who already hired employees. Additionally, it is unclear whether employers will hire additional workers they would not have hired anyway in exchange for a \$1,000 nonrefundable tax credit.
- 2) *No newbies.* SB 1447 applies only to qualified small business employers that had a reduction in gross receipts between April 1, 2019, and June 30, 2019 compared to between April 1, 2020, and June 30, 2020. If a business began operations after June 30, 2019, they could not qualify for this credit. As a result, this bill excludes new small businesses that may have equally suffered from the impacts of the pandemic.

3) *Sales and use tax too.* Because many small businesses are not consistently profitable, especially given the effects of the COVID-19 pandemic, they may be unable to benefit from a nonrefundable income tax credit. As a result, SB 1447 allows the credit to offset a taxpayer's sales and use tax liability as well, similar to the Film and TV production credit. The Legislature will also consider SB 115 (Committee on Budget and Fiscal Review), which provides \$100 million to offset revenue losses of local agencies resulting from SB 1447's credit.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: No  
Unknown.

**SUPPORT:** (Verified 8/31/20)

California Capital Financial Development Corporation  
California Chamber of Commerce  
National Association of Women Business Owners California  
National Association of Women Business Owners Sacramento Valley  
Small Business California

**OPPOSITION:** (Verified 8/31/20)

None received

**ARGUMENTS IN SUPPORT:** According to the California Chamber of Commerce, "Businesses of all sizes are reeling from the catastrophic impacts of COVID-19 and California is experiencing unemployment levels similar to those seen during the Great Depression. SB 1447 begins to address these pervasive issues and provides employers impacted by the pandemic with an avenue to begin the economic recovery process. Specifically, SB 1447 would create the Small Business Hiring Credit Fund in the State Treasury for the sole purpose of applying the credits. The fund would be capped at \$100,000,000 and would allocate tax credits to employers who employed 100 or fewer employees as of December 19, 2019 and lost at least 50% of their typical revenue between April 1 and June 30, 2020. SB 1447 would establish a baseline for a company's headcount between April 1 and June 30, 2020. Businesses would then be eligible for a tax credit of \$1,000 for each employee hired above that baseline between July 1 and November 30, 2020 that could be used to offset state taxes owed through 2026. SB 1447

encourages job growth since and also strengthens one of California's true competitive advantages – our skilled workforce ”

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