Date of Hearing: August 31, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
SB 51 (Durazo) – As Amended August 30, 2020

Policy Committee: Revenue and Taxation Vote: 9 - 0

Urgency: No State Mandated Local Program: No Reimbursable: No

SUMMARY:

This bill allows a taxpayer to receive its California Competes Tax Credit (CCTC) as a refund if the taxpayer meets specified job creation goals and reinvests the refund in certain capital equipment for media production facilities. Specifically, this bill:

1) Allows a taxpayer that has created at least 5,000 prevailing wage, full-time or full-time equivalent jobs each year for 10 years (qualified taxpayer) to receive its CCTC as a refund from the Tax Relief and Refund Account. This refund cannot exceed the amount of "total taxes" imposed by the state and paid by the qualified taxpayer during the taxable year.

2) Requires a qualified taxpayer who receives the CCTC as a refund to reinvest the refund into immobile capital equipment that supports infrastructure improvements, expansion or developments for media production facilities in California.

3) Prohibits a qualified taxpayer from reinvesting a CCTC refund for the improvement of immobile capital equipment unless the improvements are made under a project labor agreement and using a skilled and trained workforce.

FISCAL EFFECT:

1) Additional cost pressures to expand the CCTC program. This bill does not increase the overall amount of credits the Governor's Office of Business and Economic Development (GO-Biz) may allocate each year. However, this bill will pressure the Legislature to expand the program because it creates a more flexible refundable credit for certain firms.

2) Possible accelerated General Fund revenue loss of millions of dollars in the year a qualified taxpayer receives a refund from the Tax Relief and Refund Account. Under current law, the timing of the revenue loss associated with each CCTC agreement depends on whether the taxpayer carries over unused credit amounts into future years. This bill could accelerate revenue losses by allowing a qualified taxpayer to receive a refund of the remaining credit amount instead of carrying over unused credit amounts into future years.

3) One-time modest administrative costs to GO-Biz to make application changes and modify the existing review processes and checklist.

4) Unknown costs to FTB to develop regulations and implement a process to determine refund amounts for a qualified taxpayer.

COMMENTS:

1) **Background**. The CCTC program provides tax benefits to businesses in exchange for meeting contractual hiring and investment targets. Current law allows up to $180 million in annual credits. The CCTC is a nonrefundable income tax credit, meaning that if the credit amount exceeds a taxpayer's liability, the taxpayer must carry over remaining amounts to offset future tax liability. GO-Biz administers the CCTC program and reviews submitted applications, and GO-Biz typically first scores applications based on the requested credit amounts and the investment and hiring goal. A company with a tax credit agreement can only claim the credit after it has met its agreed-upon hiring and investment goals. Credit amounts can range from the tens of thousands of dollars to the tens of millions.

2) **How would this bill work**? This bill allows a qualified taxpayer to receive its CCTC as a refund against any state taxes paid. In theory, this bill could allow a taxpayer with little-to-no income tax liabilities but significant other state tax liabilities to benefit from the CCTC program in a way it currently cannot. This bill does not change the underlying CCTC process: GO-Biz would process the credit application and determine the credit amount. Once that credit agreement is reached and once the taxpayer can claim the credit, FTB would determine the refund amount.

3) **Staff comments**. This bill creates a new business refundable CCTC for qualified firms. Remaining questions and issues include:

   a) **Hiring requirements lack detail.** This bill requires a taxpayer to have created 5,000 jobs each year over 10 years. However, as the Assembly Committee on Revenue and Taxation notes in its analysis, this bill's drafting allows the CCTC applicant to count in its application any employees who are fired and then re-hired as well as employees already hired, thereby providing a "windfall" benefit to the applicant. The author plans to submit a Letter to the Senate Daily Journal to clarify that a taxpayer must prospectively create 5,000 new jobs each year for a period of ten years.

   b) **Lack of definition of "total taxes."** This bill limits the refund to the amount of total taxes imposed by the state and paid by the taxpayer in the taxable year when the refund is claimed. This bill does not define "total taxes," which could include tax programs administered by FTB, the Employment Development Department (EDD) and the California Department of Tax and Fee Administration (CDTFA). Moreover, this bill does not explicitly allow the sharing of taxpayer information between various departments, which may make it difficult to ensure compliance.

4) **Purpose**. According to supporters, this bill "will make California Competes more workable and attractive to film and television companies that commit to investing in jobs over the next ten years."

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