



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	04/05/10	Bill No:	SB 974
Tax:	Sales and Use	Author:	Steinberg & Hancock
Related Bills:			

This analysis is limited to the sales and use tax provisions of this measure.

BILL SUMMARY

Among other things, this bill would authorize an income tax credit for “qualified taxpayers” equal to the amount allocated to a local educational agency by the California Tax Credit Allocation Committee (CTCAC), as specified.

In lieu of claiming that credit, the bill would allow qualified taxpayers to claim credit against sales tax reimbursement or use tax paid to a retailer, or, claim a refund of sales and use tax taxes paid on or before January 1, 2011.

ANALYSIS

CURRENT LAW

Under existing law, a sales tax is imposed on retailers for the privilege of selling tangible personal property in this state. The use tax is imposed on the storage, use, or other consumption of tangible personal property purchased in this state. Either the sales tax or the use tax applies with respect to all sales or purchases of tangible personal property, unless the sale or use of that property is specifically exempted or excluded from the tax.

Existing Sales and Use Tax Law has two separate provisions that allow taxpayers, in lieu of claiming an income tax credit, to claim either a refund or credit with the Board. The first, Revenue and Taxation Code Section 6902.2, which was added in 1994 by SB 1811 (Ch. 547), permits taxpayers under limited circumstances to receive a refund from the Board of sales tax reimbursement paid on purchases that otherwise qualified for the manufacturers’ investment income tax credit (which expired on January 1, 2004).

The second provision was added during the 2009-10 Third Extraordinary Session (SBx3 15, Ch. 17). That measure added Section 6902.5 to allow qualified taxpayers, in lieu of claiming the income tax credit related to certain expenditures attributable to motion picture production in California, to claim a refund of “qualified” sales and use tax imposed on that qualified taxpayer. The income tax credit is available for taxable years beginning on or after January 1, 2011.

PROPOSED LAW

This bill, among other things, would add Section 6902.6 to the Sales and Use Tax Law, Section 17057.6 to the Personal Income Tax Law, and Section 23610.5 to the Corporation Tax Law, to do, among other things, the following:

1. Allow a credit to a qualified taxpayer against the personal income tax or the corporation tax of an amount (currently unspecified in the bill), as allocated by the CTCAC;

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2. Allow a qualified taxpayer, in lieu of claiming the income or corporation tax credit, to make an irrevocable election to apply the credit amount against sales tax reimbursement paid and use taxes paid to a retailer by the qualified taxpayer, or, elect to claim a refund of sales and use tax paid on or before January 1, 2011;
3. Define “qualified taxpayer” to mean a business entity that enters into a contract or memorandum of understanding with a local educational agency that applies for a portion of the career pathways investment credit, authorized under the bill;
4. Require the CTCAC to determine and allocate the career pathways investment credit ceiling;
5. Authorize CTCAC to charge a fee for applications for allocations, as specified, in an amount which it determines is reasonably sufficient to cover its costs, and the costs of the Board and the Franchise Tax Board (FTB) in carrying out the responsibilities required by the bill; and
6. Require the Board to provide an annual listing to the CTCAC and the FTB of the qualified taxpayers who during the year have made an irrevocable election to claim a credit or refund of the sales and use taxes paid and the credit amount claimed by each.

As a tax levy, the bill would become effective immediately. However, the income tax and corporation tax credit authorized under the bill applies to taxable years beginning on or after January 1, 2011.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author in order to provide tax incentives for business to invest in “career pathways” that encourage students to stay in school and train for the careers of the future. According to the author, the bill is intended to encourage local businesses to partner with schools to provide internships, teacher externships, curriculum development, and to hire graduates. This proposal provides targeted tax credits, making both business and students more effective.
2. **It is not clear whether a qualified taxpayer who does not pay income tax or pays only the corporate minimum franchise tax may receive a refund or claim credit for sales tax reimbursement or use tax paid.** Existing Sales and Use Tax Law Section 6902.2 provides a similar refund of sales tax reimbursement or use tax that taxpayers may claim “in lieu of” claiming the (former) manufacturers’ investment credit on personal income or corporate tax returns. For taxpayers who actually paid only the corporate minimum franchise tax because they satisfied their franchise tax liability by claiming other credits, such as research and development credits, a controversy arose as to whether such a taxpayer may claim a refund of sales tax reimbursement or use tax “in lieu of” claiming the franchise tax credit. The bill should clarify whether the Legislature intends for qualified taxpayers who actually pay no income tax or the corporate minimum franchise tax to be able to receive refunds or credits of sales tax reimbursement or use tax.

3. **Why reference “affiliate.”** On page 9, line 34, the bill refers to “affiliate,” for purposes of specifying who is required to submit to the Board the irrevocable election to claim a sales and use tax refund or credit. Since it does not appear that affiliates are eligible for the income tax or corporation tax credit authorized under this bill, perhaps this reference should be stricken.
4. **Period for obtaining a refund or applying a credit needs clarification.** The bill provides that a qualified taxpayer may claim a refund for sales and use taxes paid on or before January 1, 2011. However, it is unclear how far back a claimant could seek a refund in situations where the claimant has a large credit that is sufficient to apply to sales or use tax paid several years earlier. The general limitations period (Sales and Use Tax Law Section 6902) under which claims for refund or credit are allowable is three years from the due date of the return for which the tax was overpaid. Is it the author’s intent to allow refunds for periods beyond the general three-year limitations period?
5. **Also, it is unclear whether a qualified taxpayer may offset unused credits against its own sales or use tax liability.** In subdivision (a) of proposed Section 6902.6, the bill authorizes qualified taxpayers to apply the credit against “sales tax reimbursement paid and use taxes paid to a *retailer* by the qualified taxpayer” and requires the taxpayer to specify the amount paid on or before January 1, 2011. In (d)(1), the bill would allow the claimant to obtain a refund of sales and use taxes paid. In (d)(3), the bill enables the taxpayer to offset any remaining credit against the “sales and use taxes” until it is exhausted. Does this mean that, for any qualified taxpayer that may also be responsible for payment of sales or use tax to the Board, that the remaining credit may be applied to that amount, or is it the intent of the author to limit the available credit to only the amount that is actually paid to retailers? Can a qualified taxpayer apply the credit to any unpaid sales or use tax liability, or interest or penalty? This should be clarified.
6. **With respect to funding, income tax credits and sales tax credits (or refunds) are not synonymous.** A credit claimed against income or corporate tax primarily only reduces the State’s General Fund. Under this bill, when an otherwise allowable income tax credit is claimed against sales or use tax, or refunded under the Sales and Use Tax Law, the State’s General Fund would be reduced, but several other state and local funding sources would also be reduced, as follows:

Rate	Jurisdiction
5.00%	State (General Fund)
1.00%	State (General Fund – expires 7/1/11)
0.25%	State (Fiscal Recovery Fund)
0.50%	State (Local Revenue Fund)
0.50%	State (Local Public Safety Fund)
1.00%	Local (City/County)
8.25%	Total Statewide Rate

Additional district taxes levied in various local jurisdictions would also be reduced.

7. **Should the Board provide the FTB with information on the amount of the refund issued or credit allowed to the qualified taxpayer?** Subdivision (f) requires the Board to provide to the CTCAC and the FTB an annual listing of the qualified taxpayers who, during the year, have made an irrevocable election to claim a refund or credit in lieu of taking the income or corporation tax credit. Specifically, the bill requires the Board to provide FTB with the *credit amount claimed* by each qualified taxpayer. It appears it would be more useful for the FTB to receive information regarding the actual amount refunded or credited, since amounts claimed may not necessarily be the same as the actual amount credited or refunded.

COST ESTIMATE

The bill would authorize CTCAC to impose a fee for the submission of applications for allocations, in an amount it determines is sufficient to cover the Board's and the FTB's costs in carrying out the agencies' responsibilities required by the bill. The Board's administrative costs is currently unknown due to the uncertainty of how many qualified taxpayers would be allocated tax credits for which the Board would be required to verify and possibly audit.

REVENUE ESTIMATE

The bill would place a cap on the allowable income tax credits. It is unclear what that amount will be as of the date of this analysis.

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