DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: 05/16/2012
POSITION: Oppose

BILL NUMBER: AB 2656
AUTHOR: Calderon, Charles

BILL SUMMARY: California Transportation Financing Authority: tax credit certificates for exporters and importers: income tax credit.

This bill would authorize the California Transportation Financing Authority (CTFA) to award tax credit certificates to California's importers and exporters as follows: (1) a cargo tax credit of $3.125 per ton to importers or exporters who increase the amount of cargo moved through the ports by a specified amount; (2) a hiring tax credit of $3,000 for each new cargo-moving job; and (3) a tax credit equal to 2 percent of their capital expenditures for a new cargo facility. This bill specifies that an individual taxpayer is limited to $250,000 in tax credits per tax year. The aggregate amount of all tax credits that can be issued is $100 million per year from tax year 2013 to 2017 up to $500 million. Any portion of the authorization for $500 million that is not used in those five years may be awarded in a future calendar year.

FISCAL SUMMARY

According to the Franchise Tax Board (FTB), this bill would result in General Fund losses to the state of $25 million in 2012-13, $85 million in 2013-14, and $100 million in 2014-15.

The FTB states that if the bill is amended to address its implementation concerns, the bill would not significantly impact its costs.

The State Treasurer's Office states that the CTFA would require additional staff to administer this new tax credit program and costs that are unknown at the time of this analysis. The bill allows the administering authority to charge application fees which could ultimately offset most or all of the administrative costs. However, one-time start-up funds would be needed and are not identified in the bill language.

COMMENTS

The Department of Finance is opposed to this bill because of its cost to the state's General Fund in a time of fiscal crisis and serious budget deficits. It is not clear that the credit would do anything other than reward increases in specific firms' exports while other firms decline due to market conditions unrelated to the ports. Under this bill, the ports in total could see a substantial net decline in shipping volume yet the state would still be providing credits.

ANALYSIS

1. Programmatic Analysis

   Current state and federal laws provide various tax credits and other tax benefits designed to provide tax relief for taxpayers who incur certain expenses (e.g., renter's credit, dependent credit) or to influence behavior, including business practices and decisions (e.g. research credits or economic development area hiring credits). These benefits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Analyst	Date	Program Budget Manager	Date
C. White		Kristin Shelton	

Department Deputy Director	Date

Governor's Office:	By:	Date:	Position Approved_______ Position Disapproved_______

ANALYSIS (continued)

Under current law, the CTFA exists within the State Treasurer's Office and is authorized to issue, or approve the issuance of, revenue bonds to finance transportation projects.

This bill would authorize the CTFA to award tax credit certificates for tax years 2013 to 2017 to a person that is an exporter or importer, as defined, in an aggregate amount not to exceed $250,000 per taxable year. In order to qualify for the tax credit certificate, the exporter or importer must demonstrate at least one of the following:

- Their export or import cargo value or tonnage increased by at least 5 percent over the prior year;
- They have exported or imported export or import cargo tonnage through California ports in excess of $400,000 tons in a taxable year during 2013 to 2017.
- They have exported or imported cargo through California airports with export or import cargo value in excess of $250,000 in a taxable year during 2013 to 2017 that they did not export or import through California airports in the preceding taxable year.

This bill would authorize the CTFA, for tax years 2013 to 2017, to award a tax credit certificate for $3,000 for each net increase in qualified full-time employees hired in California during a tax year by an exporter or importer. The aggregate amount of the credit allowed to the taxpayer within the tax year cannot exceed $250,000.

This bill would authorize the CTFA, for tax years 2013 to 2017, to award a tax credit certificate to an exporter or importer in an amount not to exceed 2 percent of the total capital costs for a cargo facility constructed in California within the tax year. The aggregate amount of the credit allowed to the taxpayer within the tax year cannot exceed $250,000.

This bill would specify that the total amount of tax credit certificates that can be authorized and awarded is $100 million per year for the tax years from 2013 to 2017, for a total of no more than $500 million over the five years. Any portion of the authorization for $500 million that is not used in those five years may be awarded in a future calendar year in 2018 or later.

This bill would specify that the CTFA establish processes and procedures for applicants to apply for tax credit certificates. **This bill would** establish the Job and Trade Competitiveness Fee Account to deposit applicant fees that are charged by the CTFA to cover its costs. Until the collection of fees are sufficient to cover the costs incurred by the CTFA, **the bill specifies** that the CTFA may borrow to cover any necessary expenses, and such loans would be repayable from the Job and Trade Competitiveness Fee Account.

Discussion

A background sheet provided by the author's office states the following: "AB 2656 will help maintain California dominance as an international trading hub by providing a cargo tax credit of $3.125 per ton to importers or exporters who increase the amount of cargo moved through the ports. It also provides a hiring tax credit of $3,000 for each new cargo-moving job and a tax credit equal to 2 percent of the amount of capital expenditures for a new cargo facility. A taxpayer is limited to a total of $250,0000 worth of tax credits per taxable year...AB2656 will protect California's economy by keeping in competitive and will spur job growth by providing a tax incentive to those who create a new cargo-

ANALYSIS (continued)

moving job. These tax incentives are also in line with President Obama's National Export Initiative to double U.S. exports over the next five years."

The purpose of this bill is to maintain the competitiveness of California's ports. Competitive threats exist from various sources, though it appears that the greatest threat facing California's ports is going to come from the completion of the Expansion Project of the Panama Canal, which is scheduled to be complete in 2014. This is a massive multi-billion dollar project that is intended to double the capacity of the Panama Canal by allowing more and bigger ships to transit. However, competitive threats exist in all facets of business, and it is unclear why the California ports should receive preferential treatment in the form of tax credits for capital expenditures, hiring, and volume.

This bill authorizes the CTFA to administer the tax credit program. To date, CTFA has never administered such a program. The CTFA was created within the State Treasurer's Office when the Governor signed AB 798 on October 11, 2009. The statute, Government Code 64105, authorizes the CTFA to issue, or approve the issuance of, revenue bonds to finance transportation projects. The State Treasurer's Office states the following: "Reviewing Government Code 64105, it's unclear to our office how a tax credit program fits the current objectives and core function of the CTFA."

The FTB has several implementation concerns with this bill and notes the following:

- An exporter or importer that met the cargo tonnage and dollar value threshold amounts could avoid the incremental nature of the credit by alternating the flow of their cargo from California's airports to ports every other taxable year.
- The language in the R&TC that would limit the aggregate credits to the lesser of the amount of the tax credit certificates or $250,000 duplicates language contained in the Government Code and creates ambiguity as to the entity responsible for administering this limitation. Lack of clarity on the administration of the credit could result in disputes between the authority, the FTB, and taxpayers. If it is the author's intent that the FTB's responsibility would be limited to confirming that reported tax credits "matched" to a tax credit certificate as to taxpayer, tax credit amount, and taxable year, this bill should be amended. In addition, it is unclear whether the recapture language regarding erroneous awards of credits under the Government Code would apply if this limitation is exceeded.
- It is unclear how the recapture of erroneously awarded and previously used credits would occur. For example, would the recapture occur in the taxable year that erroneously awarded credits were cancelled and, if so, would interest be charged from the due date for the taxable year in which the credit was originally claimed, or in the taxable year or years that the credit was originally reported via the filing of an amended return?
- To insure efficiency and accuracy of data transfer and use, it is suggested that the electronic copy of the tax credit certificates include the names and taxpayer identification number of an exporter's or importer's partners or shareholders, if any, the taxable year the credit certificate applies to, and be provided in a form and manner prescribed by the department.

2. Fiscal Analysis

According to the Franchise Tax Board (FTB), this bill would result in General Fund losses to the state of $25 million in 2012-13, $85 million in 2013-14, and $100 million in 2014-15.

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Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	(Fiscal Impact by Fiscal Year) (Dollars in Thousands) 2011-2012	FC	2012-2013	FC	2013-2014	Fund Code
1147/Pers Inc Tax	RV	Yes	U	0	U	-25,000	U	-85,000	0001
1730/FTB	SO	No		----- No/Minor Fiscal Impact -----					0001
0964/TranspFinAth	SO	No		----- See Fiscal Analysis -----					0001