
THIRD READING

Bill No: SB 1336
Author: Wiener (D)
Amended: 5/19/22
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 4-0, 5/4/22
AYES: Caballero, Nielsen, Durazo, Wiener
NO VOTE RECORDED: Hertzberg

SENATE APPROPRIATIONS COMMITTEE: 5-0, 5/19/22
AYES: Portantino, Jones, Kamlager, Laird, Wieckowski
NO VOTE RECORDED: Bates, Bradford

SUBJECT: Income taxes: credit: cannabis businesses: qualified expenses

SOURCE: United Food and Commercial Workers, Western States Council

DIGEST: This bill creates a Personal Income and Corporation tax credit for cannabis licensees incurring specified costs.

ANALYSIS:

Existing law:

- 1) Allows various tax credits against the Personal Income and Corporation Taxes., including a new employment credit (NEC), that taxpayers can claim against the Personal Income or Corporation Tax when they hire a qualified full-time qualified employee on or after January 1, 2014.
- 2) Defines, under the NEC, qualified full-time employees to include previously unemployed persons, veterans, ex-offenders, low-income families with children; work at least an average of 35 hours per week; and meet other specified requirements. To claim the credit taxpayers must:

- a) Pay qualified wages attributable to work performed by the qualified full-time employee in a designated geographic area (census tracts or economic development areas);
 - b) Receive a tentative credit reservation from the Franchise Tax Board (FTB) for that qualified full-time employee; and
 - c) Certify each qualified employee annually.
- 3) Sets the amount of NEC at 35 percent of qualified wages, on wages between 150 percent and 350 percent of minimum wage, with the top and bottom wage range increasing over time due to increases in the minimum wage rate. However, taxpayers must have a net increase in its total number of full-time employees working in California when compared to its base year based on annual full-time equivalents to claim the credit.
- 4) Allows, generally, taxpayers engaged in a trade or business to deduct all expenses considered ordinary and necessary in conducting that trade or business, including expenses for employee wages, rent, utilities and other things reasonable and necessary to conduct their business.
- 5) Enacts the Control, Regulate and Tax Adult Use of Marijuana Act, which legalized commercial adult-use cannabis for adults age 21 and older (Proposition 64, 2016). Among other provisions, the Act allows for the licensure and regulation of both commercial adult-use and medicinal use cannabis activities by various state agencies, so long as licensees are also approved by the local agencies in which they conduct cannabis business activity.
- 6) Enacts the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA), which consolidated the licensure and regulation of both commercial adult-use and medicinal use cannabis activities. Among other provisions, MAUCRSA established a system of 20 plus license categories, which includes distributor, retailer, and microbusiness, among others.

This bill:

- 1) Enacts a credit against the Personal Income and Corporation taxes for qualified taxpayers making qualified expenditures, defined as:

- a) Wages paid to full-time employees who are paid no less than 150 percent but no more than 350 percent of the applicable minimum wage, including health insurance, childcare, retirement, or pension benefits, as defined.
 - b) Safety-related equipment, training, and services, as defined.
 - c) Workforce development for employees of the qualified taxpayer, as defined.
- 2) Defines a qualified taxpayer as a commercial cannabis licensee that provides employment compensation, employer-provided group health insurance, and employer-provided retirement benefits or pension benefits, including stock in the licensed commercial cannabis employer to employees under employee stock ownership plans where the employer pays for the full value of the stock.
 - 3) Caps the credit at \$250,000 per taxpayer per taxable year, which applies to all taxpayers within a combined report.
 - 4) Allows the credit in taxable years beginning on or after January 1, 2023, and ending before January 1, 2028.
 - 5) Permits taxpayers to carry the credit forwards for seven successive taxable years until exhausted.
 - 6) Reduces any otherwise allowable credit or deduction by the amount of qualified expenditures that generate a credit under the bill.

Background

Tax expenditures. California law allows various income tax credits, deductions, exemptions, and exclusions. The Legislature enacts such tax incentives either to compensate taxpayers for incurring certain expenses, such as child adoption, or to influence certain behavior, such as charitable giving. The Legislature uses tax incentives to encourage taxpayers to do something that but for the tax credit, they would otherwise not do. The Department of Finance is required annually to publish a list of state tax expenditures, currently totaling around \$81 billion per year.

Cannabis industry employment. According to Leafly's Job Report 2022, legal cannabis supports 428,059 jobs nationwide. The report identifies California as the country's top cannabis market and cannabis employer, with a \$5 billion annual market and more than 83,000 jobs. The report includes direct cannabis jobs like cultivation and retail sales, as well as indirect ancillary jobs that serve licensed companies or depend on legal cannabis sales like accounting, human resources,

legal affairs, regulatory compliance, security, maintenance, and construction, among others. The report forecasts slowing job growth in the industry, and adds that “California’s structural problems—sky-high cannabis taxes, suffocating red tape, and local cannabis store bans—continue to hold back the industry.”

Cannabis employee salaries nationwide grew impressively between 2020 and 2021 for all employees from hourly positions to executives, according to Vangst’s 2021 Cannabis Industry Salary Guide. Trimmers and post-harvesters make between \$14 and \$22.50 per hour, while compensation for directors of cultivation range between \$85,000 and \$150,000. Manufacturing, delivery, and laboratory workers and managers can earn similar salaries and wages. Vangst indicates that all of the companies it surveys provide benefits, with 71% providing health benefits and 34.4% offering a 401(k) retirement plan.

Section 41. Section 41 of the Revenue and Taxation Code, requires any bill authorizing a new tax expenditure to contain, among other things, specific goals, purposes, and objectives that the tax expenditure will achieve, detailed performance indicators, along with data collection and reporting requirements (SB 1335, Leno, Chapter 845, Statutes of 2014). SB 1336 includes legislative intent that it will comply with Section 41.

Related/Prior Legislation

There are three other measures affecting cannabis taxation pending on the Senate Floor:

- SB 1074 (McGuire), which makes ineffective the cannabis cultivation tax on July 1, 2022, and then increases the excise tax in a commensurate amount.
- SB 1281 (Bradford) also makes ineffective the cannabis cultivation tax on January 1, 2023, reduces the excise tax rate from 15% to 5% effective on the same date, and shifts the point of collections for the excise tax from the distributor to the retailer.
- SB 1293 (Bradford), which creates a Personal Income and Corporation Tax credit for cannabis equity applicants and licensees.

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

According to the Senate Appropriations Committee, the FTB estimates of the revenue loss resulting from the bill and its implementation costs both have yet to be determined.

SUPPORT: (Verified 5/20/22)

United Food and Commercial Workers, Western States Council (source)
California Teamsters Public Affairs Council
Cannacraft
Eaze Technologies, Inc.
Embarc
Long Beach Green Room
March and Ash
MWG Holdings Group, Inc.
Shryne Group, Inc.
The Parent Company
UDW/AFSCME Local 3930

OPPOSITION: (Verified 5/20/22)

None received

ARGUMENTS IN SUPPORT: According to the author, “Senate Bill 1336 provides targeted tax relief to responsible commercial cannabis employers by establishing a carryforward cannabis tax credit that is 25% of the following qualified business expenditures paid for or incurred in a taxable year:

- Employment compensation, that is equal to or above 150% of minimum wage including benefits, for the employees of the business.
- Safety-related equipment and services.
- Workforce development and safety training for employees

“In the case where the credit allowed exceeds the net tax, under SB 1336 the excess may be carried over to reduce the net tax in the following taxable year, and succeeding years if necessary, until the credit is exhausted. The credit amount cannot exceed \$250,000 and can only be taken against applicable taxes until 2028. California’s legal cannabis industry currently faces an existential crisis as the state continues to battle a thriving illicit market. Roughly \$8 billion in sales flow through California’s illicit cannabis market each year, which is about double the amount of legal sales – and some estimates are even larger. A thriving illicit market is having, and will continue to have, significant impacts on workers in the cannabis industry. If this trend continues, employers may be unable to maintain high worker wages, benefits, and career growth opportunities. In addition to the problems associated with their ineligibility for typical business relief, cannabis

businesses also have additional overhead costs associated with health, safety, and security protections. Other businesses in California do not face these unique challenges. Targeted tax relief is needed to support California's struggling, legal cannabis businesses, and SB 1336 will provide this help.”

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