


REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: Decmebr 13, 2010

TO: Honorable Members of the Jobs and Business Development Committee

FROM: Gerry F. Miller 
Chief Legislative Analyst

WAS# 10-12-1133

Job creation tax benefit

SUMMARY

Motion (Garcetti-Smith, CF# 10-1048) seeks to establish a job creation tax benefit that would provide a business tax reduction of as much as \$5,000 for each new job created by a business paying the City's business tax. Another Motion (Parks-Krekorian, CF#10-0994) would establish a job creation benefit for businesses that hire the disabled or the indigent, similar to a program implement in San Francisco. The Business Tax Advisory Committee (BTAC) has proposed a job creation tax benefit program that would provide a business tax reduction of between \$100 and \$500 per job created. The Office of Finance is currently seeking a contractor to study a range of business tax reforms and incentives, including a job creation tax benefit program.

Several program elements must be established before a contractor is able to analyze the economic and fiscal impacts of a job creation tax benefit program. Likewise, the City Attorney will need to understand the criteria of the program before preparing the legal analysis requested by Council. At the direction of Council, this report was prepared to provide a framework of criteria relevant to a job creation tax benefit program, evaluate options within that framework, and recommend program elements for additional study.

In addition to evaluating the program elements suggested herein, its is recommended that the tax reform study consultant investigate other program elements that may arise in the course of their work and report on program adjustments that may be appropriate.

This program has the potential to significantly reduce business tax revenues with additional administrative demands on both businesses and the City. Every 10,000 jobs created would reduce the City general fund by \$5 million to \$7.5 million. It may be more prudent to reduce business tax rates to provide a similar level of tax reduction benefit without the additional administrative demands.

RECOMMENDATIONS

That the City Council instruct the Office of Finance to supplement the scope of work on the business tax reform study to include the following terms regarding a job creation tax benefit program:

- A. Provide the tax benefit to any business that has registered in a timely manner and does not have any outstanding, unpaid tax liability;
- B. Provide that the total tax benefit may not exceed the business's tax liability;
- C. Limit employee eligibility to residents of the City of Los Angeles;
- D. Provide a base tax benefit each year for up to three years of \$500 per job created, with an additional \$250 credit for employees that qualify as indigent, disabled, a veteran, a senior, newly graduated, or recently or long-term unemployed;
- E. Operate the program for five years, allowing businesses qualifying for the program in the last year to obtain multi-year benefits;
- F. Evaluate other benefit rate structures to determine the threshold at which the program would remain effective; and
- G. Evaluate other terms as appropriate to identify necessary program adjustments.

BACKGROUND

Job creation tax benefit programs are a common approach to encouraging economic growth when unemployment rates are high. The current economic downturn has resulted in extended unemployment rates in the Los Angeles-Long Beach Metropolitan area in excess of 12%. Motion (Garcetti-Smith) proposes the implementation of a job creation tax benefit that would provide between \$1,000 and \$5,000 in credit against business tax liability for every job created. Motion (Parks-Krekorian) would target such job creation tax benefits to businesses that create jobs and newly hire employees who are indigent or disabled.

Concurrently, BTAC considered and recommended to Council a job creation tax benefit that would provide \$100 to \$500 for each job created. In July 2010, the Jobs and Business Development Committee considered and approved a scope of work to study several business tax reforms and incentives recommended by BTAC, including the job creation tax benefit. At the same time, the Office of Finance (Finance) recommended that the City seek the services of an analyst to evaluate the economic and fiscal impacts of these reforms and incentives. Council approved these actions in August 2010 and Finance is currently conducting a competitive bidding process to identify a contractor to complete this work.

The Job Committee considered and approved both Motions, with an amending instruction that the Chief Legislative Analyst (CLA) report back with an evaluation of the implementation elements of a job creation tax benefit, with an associated fiscal and legal analysis. This report

provides information concerning the implementation elements that need to be included in such a program. Fiscal analysis will be provided by the economic analyst under contract with Finance. The City Attorney may provide legal analysis once the framework for this tax program has been identified.

Framework Elements

A range of policy options are available regarding the structure of this program. Issue areas include:

- Which businesses qualify for the benefit?
- How will a new job be measured?
- Should employee criteria be established?
- Will geographic area determine benefit qualification?
- How is a new job defined?
- Can the benefit be structured to provide for long-term job creation?
- What amount of benefit should be provided?

In addition, details concerning program implementation will need to be developed, such as how businesses will apply for the credit, how the Office of Finance will review and approve credits, and how the data will be audited over time.

Which businesses qualify for the benefit?

There are about 425,000 businesses registered with the City's business tax program. The proposed job creation tax benefit should be available to any business currently paying a tax liability. No benefit should exceed a business's tax liability. In addition, the benefit should only be available to businesses that have registered in a timely manner and do not have any outstanding, unpaid tax liability. This has been the standard for other tax benefit programs and should remain the standard.

The City currently provides a Small Business tax exemption and a New Business tax exemption, eliminating all tax liability on businesses that qualify for these programs. These businesses should not qualify for the job creation tax benefit since they do not have a tax liability.

How Will a New Job be Measured?

Businesses currently report their total number of employees on annual federal and State payroll tax reports. These reports can serve as the basis to determine the total year-to-year number of employees retained by a business. Because federal and State payroll tax reports and the City's business tax are all based on a calendar year, it will be possible to align a City job creation tax benefit program with data available on payroll tax reports. Additional documentation may be necessary if this program includes tax credits based on geographic location or identified class, as discussed below.

Request for the tax credit would appear on the City's business tax renewal form, with businesses showing the number of employees they reported in the current tax year and the year prior to that. Any year-over-year increase in the number of employees would indicate the number of credits the

business could obtain. Benefits for additional years would require that the number of employees be sustained.

Finance would be able to verify the appropriate application of tax credits during any standard audit. Businesses would need to retain all records necessary to explain their claim for a credit when they are audited.

Should Employee Criteria be Established?

A key factor in the development of the job creation tax benefit is whether certain criteria should be established related to the new employee's situation. Motion (Parks-Krekorian) recommends job creation benefits for disabled and indigent people, while the BTAC proposal recommends that benefits be doubled if hired employees meet certain criteria consistent with State law. Motion (Garcetti-Smith) is silent on the subject of specific criteria for hired employees.

A range of qualifying criteria can be identified and established within this program. First and foremost, it may be appropriate to limit qualified hires based on geographic factors. The business tax is a City General Fund revenue and supports the delivery of City services. It may not be appropriate for businesses located outside the City to hire residents who live outside the City, and still receive a tax benefit. This situation would not reduce unemployment in the City, nor would it create any additional secondary tax benefits in the City.

Will geographic area determine benefit qualification?

Geographic limitations for benefit qualification already exists in the Empowerment Zone and Enterprise Community programs. Similarly, this job creation benefit could be limited to either businesses located in the City that hire any person regardless to the person's residential location, or it could be provided to any business that hires a City resident. This would provide some nexus with the City and support either the reduction of unemployment in the City or an increase in general business activity within the City. Another approach would be to provide the benefit only to businesses that conduct at least 75% of their business in the City without regard to the business location or the employee's residential location, which again would create growth in business activity in the City.

Another set of criteria would be based on defined classes, such as the disabled and the indigent. Many types of tax benefits are provided to defined classes of individuals, such as property tax credits for owner-occupied housing or utility rate reductions for seniors. Likewise, this program could be set up to focus on business hiring practices. Classes that have been identified include the disabled and the indigent, seniors, veterans, the newly graduated, and the recently and long-term unemployed. Definitions for these classes are available in State and federal law, such as California Revenue & Tax Code Section 17053.74 (Attachment 1). The San Francisco Business and Tax Regulation Code defines indigent and disabled to support their Empowerment Zone job benefit program (Attachment 2).

What Amount of Benefit Should be Provided?

The amount of the benefit provided will determine how many taxpayers take advantage of the benefit. Motion (Garcetti-Smith) recommends a benefit of between \$1,000 and \$5,000 per job

created. BTAC recommends a scale of between \$100 and \$500 per job created, based on the taxpayer's business classification.

The San Francisco tax credit program extends benefits over several years, with benefit rates lower in later years. This program element might encourage businesses to retain employees once hired. Neither Motion, nor the BTAC proposal, recommended a multi-year benefit.

Another element of benefit rate is whether additional benefits are provided if the person hired qualifies under a defined class. BTAC has proposed, for example, that employees who qualify under California Revenue and Tax Code Section 17053.74 would allow the business to receive double tax benefits. As discussed above, these classes could include the disabled, the indigent, seniors, veterans, the newly graduated, and the recently or long-term unemployed.

A program that combines all three elements (a base rate, multi-year benefits, and additional credit for defined classes) could create an incentive that is most useful to businesses. Together, these elements are intended to create new jobs, retain those jobs over time, and focus hiring on candidates who meet certain qualifications. A rate of \$500 for any hire, with an additional \$250 for employees who fits within one of the identified classes is recommended as a starting point for analysis.

Program Term

Proposals for the Job Creation Benefit Program have suggested that a term be established during which the tax credit will be available. BTAC has proposed that the credit be available as long as the City's unemployment rate drops below the 2006 or 2007 rate, which is the historically lowest unemployment rate in the Los Angeles-Long Beach Metropolitan Area. Setting the benefit at such a low rate would likely result in an effective permanent status for the benefit.

Another approach would be to establish a sunset date on this program, with a required review at the program's end. This ensures that the program will be evaluated for effectiveness and allow either for adjustments to the program to improve effectiveness or for the program's closure.

Regardless of the manner in which the program would either end or be suspended, any participant in the program should be allowed to receive full benefits provided. For example, if the program provides both a first-year benefit and follow-up year benefits to encourage job retention, then participants who receive the first year benefit should receive the follow-up year benefits even if the program is suspended or closed.

LIMITATIONS OF A JOB CREATION BENEFIT

There are a number of concerns related to the effectiveness of a job creation tax benefit within the City's business tax program. The following issues should be addressed in the business tax reform study that will be conducted through the Office of Finance. Analysis should include recommendations for program development that would address these issues.

Compatibility with City Tax System

Job creation tax benefits are a typical benefit that the federal and state governments use to stimulate job growth in the business sector. For each job created, a business receives a credit against their income taxes. Although business income tax revenues are reduced, these tax credit programs generally create a positive effect on state and federal budgets because there is an increase in revenues from personal income taxes paid by those who are newly employed.

The City of San Francisco has a payroll tax instead of a gross receipts tax. A job creation tax benefit under that program reduces any growth in taxes collected, but does not reduce revenues collected below the current tax revenue.

A job creation tax benefit program would not have a direct positive or neutral revenue impact in the City of Los Angeles. The City does not have a personal income tax nor does it have a payroll tax. As a result, a job creation tax benefit will reduce current taxes collected. It would not result in a direct corresponding increase in revenues through another tax revenue stream, nor would it simply forego collection of new revenues. There are arguments to be made that people with new jobs and salaries will create indirect impacts resulting from purchases that would otherwise have been out of their fiscal reach. Likewise, greater business activity may generate higher business tax revenues. But these benefits are tied to the employment of City residents or the delivery of benefits to business activities located in the City.

Relevance to Taxpayers

No data are currently available to indicate which incentive rates would effectively encourage business owners to add jobs. Even at minimum wage salaries, one job created would have an expense of at least \$20,000. A tax incentive of \$500 may not be enough to encourage a business owner to add a job, or the amount of the incentive may only encourage the addition of low wage jobs. A sensitivity analysis is needed to determine at which rates businesses will more likely participate in the job creation tax benefit program.

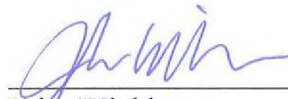
Potential Fiscal Impact

If successful, this tax incentive has the potential to significantly reduce City general fund revenues. There are currently approximately 425,000 businesses paying the City's business tax. Of those, 44% pay no taxes for various reasons, such as they qualify for the small business and new business exemptions. The remaining 56%, about 262,000 accounts, are estimated to generate approximately \$411 million in business tax revenues in FY 2010-2011.

Depending on interest in this tax benefit program, general fund revenues could be reduced significantly. It is difficult at this point to determine how many jobs will be created in the City over the next year, but some guidepost data are available. State employment data indicate that 30,000 jobs were created in Los Angeles County in September 2010. Further, Los Angeles unemployment data peaked at 12.6% in 2010, which will be the base year against which a tax benefit will be measured. With slow economic growth in 2011 that does not include a City tax benefit program, a cumulatively large number of jobs should be created that qualify for this benefit. If this benefit works as intended, that number will be even larger.

It should be noted that with a benefit of \$500 per job, plus an additional \$250 per job for employees that qualify for certain defined classes, business tax revenues would be reduced from \$5M to 7.5M for every 10,000 jobs created. The critical unknown factors are how many jobs will be created and how many businesses will use the tax credit.

Given the various tax reform measures identified by the Council and BTAC, this measure may provide a level of benefit that is not as effective at attracting and retaining businesses while at the same time significantly reducing City revenues. An overall tax rate reduction for all businesses would have fewer administrative demands and may be a more effective tool. All of the proposed incentives and reforms should be evaluated together, including the job creation tax benefit, with approval based on the most productive and effective benefits.



John Wickham
Analyst

- Attachment 1 California Revenue and Tax Code Section 17053.74
- Attachment 2 San Francisco Business and Tax Regulations Code Section 906A, B
- Attachment 3 Motion (Garcetti-Smith)
- Attachment 4 Motion (Parks-Krekorian)

California Revenue and Tax Code

17053.74. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year.

The credit shall be equal to the sum of each of the following:

- (1) Fifty percent of qualified wages in the first year of employment.
- (2) Forty percent of qualified wages in the second year of employment.
- (3) Thirty percent of qualified wages in the third year of employment.
- (4) Twenty percent of qualified wages in the fourth year of employment.
- (5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

- (3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.
- (4) (A) "Qualified employee" means an individual who meets all of the following requirements:
- (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.
 - (ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.
 - (iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.
 - (iv) Is any of the following:
 - (I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.
 - (II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.
 - (III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.
 - (IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:
 - (aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

- (aa) Federal Supplemental Security Income benefits.
- (bb) Aid to Families with Dependent Children.
- (cc) Food stamps.
- (dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(6) "Seasonal employment" means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) Obtain from the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office or social services agency, or the local government administering the enterprise zone, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph

- (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose. The Department of Housing and Community Development shall develop regulations governing the issuance of certificates by local governments pursuant to subdivision (a) of Section 7086 of the Government Code.
- (2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.
- (d) (1) For purposes of this section:
- (A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.
- (B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.
- (C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.
- (2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.
- (e) (1) (A) If the employment, other than seasonal employment, of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.
- (B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued

by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to

the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

- (i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.
- (j)
 - (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.
 - (2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).
 - (3) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:
 - (A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.
 - (B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.
 - (4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (i).
- (k) The changes made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1997.

San Francisco Business and Tax Regulations Code

SEC. 906A. - ENTERPRISE ZONE TAX CREDIT.

- (a) A credit against this tax shall be allowed for each person who maintains a fixed place of business within the San Francisco Enterprise Zone and who, between January 1, 1992 and the effective date of this legislation, creates one or more new jobs and hires employees who qualify under Subsection (b) of this Section; provided, however, that in no event shall the tax credit reduce a person's tax liability to less than zero. Moreover, the tax credits shall only serve as an offset against the additional tax that would be paid as a result of additional hiring by a business within the zone. Each person claiming this credit shall file with the Tax Collector, on a form prescribed by the Tax Collector, an affidavit attesting to facts establishing his or her entitlement to the tax credit; said affidavit shall be supported by state tax credit forms (EDD, DSS, and PIC).
- (b) An employee is a "qualified employee" for purposes of computing this tax credit if he or she is newly hired by the taxpayer on or after January 1, 1992 and either (1) is receiving subsidized employment training or services under the terms of the Federal Job Training Partnership Act (JTPA); or (2) is registered in the Greater Avenues for Independence (GAIN) Program; or (3) is certified by the Employment Development Department as eligible for the federal Work Opportunity Credit Program; or (4) is receiving General Assistance.
- (c) The tax credit, for each qualified employee, shall be a varying percentage of the additional tax that would be incurred as a result of additional wages paid for work performed within the Enterprise Zone, and the dollar amount of such tax credit shall depend both upon the duration of employment as of the date payroll taxes are due, and the eligible wages paid, as follows:
 - (1) The eligible wages to which the percentage is applied shall be limited to wages paid for work performed by the qualified employee while physically present within San Francisco.
 - (2) The percentage to be applied to eligible wages shall depend upon the employee's duration of employment as follows:

Duration of Employment	Credit Allowed on Payroll Tax Liability
First 24 months	100%
Second 24 months	50%
Third 24 months	25%
Fourth 24 months	15%
Fifth 24 months	10%

- (d) On or after the effective date of this legislation a credit against this tax shall be allowed for each person who maintains a fixed place of business within the San Francisco Enterprise Zone and who hires new employees who qualify under Subsection (f) of this Section; provided, however, that in no event shall the tax credit reduce a person's tax liability to less than zero. Moreover, the tax credits shall only serve as an offset against the tax that would be paid as a result of hiring by a business within the zone. Each person claiming this credit shall file with the Tax Collector, on a form prescribed by the Tax Collector, an affidavit attesting to facts establishing his or her entitlement to the tax credit; said affidavit shall be supported by applicable State tax credit forms (EDD, DSS) and an approved state enterprise zone voucher.
- (e) "Enterprise zone" means the area within the City and County of San Francisco designated as an enterprise zone by the State Department of Housing and Community Development pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.
- (f) "Qualified employee" means a San Francisco resident who meets all of the following requirements:
- (1) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.
 - (2) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.
 - (3) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.
 - (4) Is any of the following:
 - (i) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the Federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, subsidized employment, training, or services funded by the Federal Job Training Partnership Act, or its successor.
 - (ii) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

- (iii) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.
- (iv) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:
 - (aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.
 - (bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.
 - (cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.
 - (dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.
 - (ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.
 - (ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.
 - (gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.
 - (hh) Has been terminated or laid off or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.
- (v) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or

enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

- (vi) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.
 - (vii) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:
 - (aa) Federal Supplemental Security Income benefits.
 - (bb) Aid to Families with Dependent Children.
 - (cc) Food stamps.
 - (dd) State and local general assistance.
 - (viii) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.
 - (ix) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.
- (g) The tax credit, for each qualified employee, shall be a varying percentage of the tax that would be incurred as a result of wages paid for work performed within the Enterprise Zone, and the dollar amount of such tax credit shall depend both upon the duration of employment as of the date payroll taxes are due, and the eligible wages paid, as follows:
- (1) The eligible wages to which the percentage is applied shall be limited to wages paid for work performed by the qualified employee while physically present within San Francisco.
 - (2) The percentage to be applied to eligible wages shall depend upon the employee's duration of employment as follows:

Duration of Employment	Credit Allowed on Payroll Tax Liability
First 24 months	100%
Second 24 months	50%

Third 24 months	25%
Fourth 24 months	15%
Fifth 24 months	10%

- (h) This Section 906A shall expire by operation of law on December 31, 2021, unless extended by the Board of Supervisors or the voters, and the City Attorney shall cause it to be removed from future editions of the Business and Tax Regulations Code.

SEC. 906B. - NEW JOBS TAX CREDIT.

- (a) Purpose. The purpose of this provision is to increase the number of permanent jobs (which in no case shall be a job lasting less than two years) within the City and County of San Francisco by providing an incentive for businesses to create or relocate jobs in San Francisco that otherwise would be situated elsewhere. The Board of Supervisors encourages business to consider the placement of San Francisco residents in jobs which are created or relocated and which result in tax credits as provided in this Section.

- (b) General Rule.

- (1) Any business, as defined in Section 902.2 of Part III of the Municipal Code, shall be allowed a credit against the Payroll Expense Tax for each new job created on or after July 1, 1993; however, in no event shall the tax credit reduce a taxpayer's liability for such tax to less than zero. Each taxpayer claiming the tax credit shall file with the Tax Collector, on a form prescribed by the Tax Collector, an affidavit under penalty of perjury attesting to the facts required by the Tax Collector to establish the taxpayer's entitlement to the tax credit consistent with this Section and regulations adopted by the Tax Collector.
- (2) No business shall be allowed a credit under this Section for any job which previously had been performed in San Francisco for a predecessor employer.

- (c) Amount of Credit.

- (1) For purposes of this Section, the amount of the new jobs tax credit for any given year, subject to the conditions below, shall be a percentage of the additional Payroll Expense Tax that otherwise would be due (assuming for this purpose that the Business Tax does not apply) for an individual hired after July 1, 1993 and prior to January 1, 1998 for a job qualifying for the credit based on the employee's duration of employment as follows:

Duration of Employment	Tax Credit
First 12 months	100%
Second 12 months	50%

For an individual hired on or after January 1, 1998 for a job qualifying for the credit the credit shall be as follows:

Duration of Employment	Tax Credit
First 24 months	100%
Next 24 months	50%

- (2) For purposes of this Section, "base year liability" for any given tax year shall be the employer's highest Payroll Tax liability (exclusive of any credits granted under this provision) for any prior year from 1992 on.
 - (3) No credit shall be allowed for any first year of employment to the extent that such credit would reduce the employer's Payroll Tax Expense liability below that employer's base year liability.
 - (4) No credit shall be allowed for any second year of employment to the extent that such credit for second year employment and any credits for first year of employment would reduce the employer's Payroll Tax Expense liability below the employer's previous base year liability.
 - (5) No credit shall be allowed for any third or fourth year of employment to the extent that such credit for third or fourth year employment and any credits for first and second year of employment would reduce the employer's Payroll Tax Expense liability below the employer's previous base year liability.
 - (6) For purposes of this limitation, it shall be presumed that the employer is liable for the Payroll Expense Tax, regardless of the Business Tax.
- (d) Small Business Tax Exemption. If after the new jobs tax credit the net tax does not exceed \$2,500, and the taxpayer is a "small business enterprise" as defined in Section 905-A of this Part, the taxpayer shall be exempt from taxation under this ordinance.
- (e) Regulations. The Tax Collector is directed to adopt and promulgate and to enforce rules and regulations relating to the application of this Section including provisions which provide penalties due to fraud, any underpayment of tax, or an intent to evade this ordinance or authorized rules and regulations. The Board of Review shall approve, modify or disapprove the rules and regulations prescribed by the Tax Collector pursuant to this ordinance. Any rules and regulations adopted by the Tax Collector shall also be approved by the City Attorney, and further provided that any modifications determined by the Board of Review shall be approved as to legal form by the City Attorney. The rules and regulations shall become effective 30 days after receipt by the Clerk of the Board, unless the Board of Supervisors disapproves or modifies the regulations. The Board of Supervisors' determination to modify or disapprove a rule or regulation submitted by the Tax Collector pursuant to this ordinance shall not impair the ability of the Tax Collector to submit the same or a similar rule or regulation to the Board of Supervisors if the Tax Collector determines it is necessary to effectuate the purpose of this ordinance.

- (f) Report on Effect of Tax Credit. The Tax Collector shall submit a report to the Board of Supervisors on May 31, 1994, and every year thereafter for which the tax credit is available, which evaluates the effect of the tax credit on employment and local tax revenues. The Tax Collector shall also make available to the Board of Supervisors the aggregate information of the dollar value of the new jobs tax credits claimed each year by businesses.

- (g) Expiration. The New Jobs Tax Credit provided in this Section shall expire on December 31, 2002, unless the Board of Supervisors extends the credit.

JUN 15 2010

10-1048

MOTION JOBS & BUSINESS DEVELOPMENT

The unemployment rate in the City of Los Angeles is 13.2 percent, well above the national average. The federal government offers employee tax credits to businesses that hire within the empowerment zone area. These tax credits are extremely effective as evidenced by the retention and expansion of business in the City of Los Angeles such as the recent announcement of Baxter Pharmaceuticals to stay in the City of Los Angeles because of the expansion of the state enterprise zone tax credits.

In December, 2009 we wrote to President Obama urging him to consider the expansion of the Empowerment Zone tax credits to municipalities, such as Los Angeles with unemployment rates above the national average. In January 2010, the Chief Legislative Analyst was instructed to include in the recommendations to the Business Tax Advisory Committee (BTAC) a job creation tax credit.

The unemployment rate in Los Angeles is still higher than the national average, and unfortunately, legislation for a new jobs tax credit at the Federal level has not yet been passed. As a result it is important to move ahead and use our local authority over our own business tax system to make recommendations that will provide tax relief to both our existing businesses, as well as new businesses with the specific intent of encouraging job creation. This effort would provide relief to existing businesses, and will compliment current recommendations being worked on by the council and the Mayor, with input from BTAC, to create job growth.

I THEREFORE MOVE that the City Attorney in consultation with the Chief Legislative Analyst, the Office of Finance, and the Business Tax Advisory Committee, be requested to prepare and present an ordinance that would create a job creation tax credit for businesses that hire new employees as follows: the tax credit shall be between \$1,000 and \$5,000 per new Los Angeles resident hired; and the tax credit would remain in place until the City's unemployment rate is reduced to below pre-recession levels.

PRESENTED BY:

Eric Garcetti

ERIC GARCETTI
Councilmember, 13th District

SECONDED BY:

Greig Smith

GREIG SMITH
Councilmember, 12th District

JUN 15 2010

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ORIGINAL

10-0994

MOTION JOBS & BUSINESS DEVELOPMENT

There is an effort underway to review the City's business tax structure and we have established a Business Tax Advisory Committee (BTAC) to assist in that effort. As part of this review the BTAC should consider a business tax break for any businesses that hire disabled and/or indigent employees.

The County and City of San Francisco have developed a similar program to provide qualifying businesses with a tax credit to be applied against the City's 1.5% payroll tax. Although the City of Los Angeles does not currently have a payroll tax, a percentage reduction of the business gross receipt tax could be the incentive needed to assist businesses and enhance the employment of these two specific hard to place employment groups, the disabled* and the indigent**.

The Director of Finance has indicated that currently, the City provides a variety of business incentives that range from specific areas in the City to City-wide availability. For example, the Empowerment Zone incentive credits are targeted to specific areas within the City and are based on Federal legislation of the identified empowerment zones. Other incentives apply Citywide, such as the Small Business exemption, New Business exemption and Creative Artists exemption.

The Office of Finance has further indicated that the City of Los Angeles could create a similar incentive for businesses such as that of San Francisco's EZ Payroll Tax Credit, with obvious modifications due to the difference in taxing schemes between the two jurisdictions. The City of Los Angeles would be positioned to provide a credit or incentive against the qualifying entities' Business Tax.

Given that every effort should be made to create jobs in the City, incentives that create job opportunities for the disabled and the indigent should be part of that effort.

I THEREFORE MOVE that the Business Tax Advisory Committee be requested to evaluate the San Francisco model for tax incentives to businesses that hire the disabled and the indigent, as further described in the text of this Motion, and report with recommendations to institute a business tax credit or other business tax inducement for businesses that hire disabled persons and indigent persons.

PRESENTED BY: Bernard C. Parks
BERNARD C. PARKS
Councilmember, 8th District

SECONDED BY: Paul Kurbovic



JUN 8 2010

* Disabled is defined as: "the qualification of an employee as disabled refers to the Americans with Disabilities Act (ADA) definitions."

** Indigent is defined as: "any person who qualifies for, and is receiving public assistance under various City, County, State or Federal programs."