House of Representatives

General Assembly

File No. 427

February Session, 2010

Substitute House Bill No. 5389

House of Representatives, April 8, 2010

The Committee on Commerce reported through REP. BERGER of the 73rd Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT'S RECOMMENDATIONS FOR TAX CREDITS TO PROMOTE JOB CREATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 12-217ii of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2010, and applicable to income years commencing on or after January 1, 2010*):

(a) As used in this section:

(1) "Commissioner" means the Commissioner of Economic and Community Development;

(2) "Income year" means, with respect to entities subject to the insurance premiums tax under chapter 207, the corporation business tax under this chapter or the utilities company tax under chapter 212, the income year as determined under each of said chapters, as the case may be;

(3) "Taxpayer" means a person subject to tax under chapter 207, this chapter or chapter 212;

(4) "New job" means a full-time job which (A) did not exist in this state prior to a taxpayer's application to the commissioner for an eligibility certificate under this section for a job creation credit, and (B) is filled by a new employee;

(5) "New employee" means a person hired by the taxpayer to fill a new full-time job who is paid for a minimum of thirty-five hours per week and is employed for twelve consecutive months. A new employee does not include a person who was employed in Connecticut by a related person with respect to the taxpayer during the prior twelve months;

(6) "Full-time job" means a job in which an employee is required to work at least thirty-five or more hours per week. A full-time job does not include a temporary or seasonal job;

(7) "Related person" means (A) a corporation, limited liability company, partnership, association or trust controlled by the taxpayer, (B) an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer, (C) a corporation, limited liability company, partnership, association or trust controlled by an individual, corporation, limited liability company, partnership, association or trust that is in control of the taxpayer, or (D) a member of the same controlled group as the taxpayer; **[**and**]**

(8) "Control", with respect to a corporation, means ownership, directly or indirectly, of stock possessing fifty per cent or more of the total combined voting power of all classes of the stock of such corporation entitled to vote. "Control", with respect to a trust, means ownership, directly or indirectly, of fifty per cent or more of the beneficial interest in the principal or income of such trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership, limited liability company or association or of a beneficial interest in a trust shall be determined in accordance with the rules for

constructive ownership of stock provided in Section 267(c) of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, other than paragraph (3) of said Section 267(c); and

(9) "Baseline employees" means the total number of persons employed in full-time jobs by a taxpayer as of the last date of the month preceding the period for which an application for a tax credit pursuant to this section is submitted.

(b) (1) There is established a jobs creation tax credit program whereby a taxpayer who creates at least ten new jobs in Connecticut may be allowed a credit against the tax imposed under chapter 207, this chapter or chapter 212, in **[**an**]** the amount **[**up to sixty per cent of the income tax deducted and withheld from the wages of new employees and paid over to the state pursuant to chapter 229**]** of twenty-five hundred dollars per employee. The number of new employees shall be calculated by using the annual average of the monthly number of total full-time employees reported by the taxpayer, less the number of baseline employees.

(2) For each new employee, credits may be granted for five successive years.

(3) The credit shall be claimed in the income year in which it is **[**earned**]** awarded. Any credits not used in a tax year shall expire.

(c) Any taxpayer planning to claim a credit under the provisions of this section shall apply to the commissioner in accordance with the provisions of this section. The application shall be on a form provided by the commissioner, and shall contain sufficient information concerning the number of new jobs to be created, feasibility studies or business plans for the increased number of jobs, projected state and local revenue that might derive as a result of the job growth and other information necessary to demonstrate that there will be net benefits to the economy of the municipality and the state. The commissioner shall impose a fee for such application as the commissioner deems appropriate.

(d) The commissioner shall determine whether (1) the taxpayer making the application is eligible for the tax credit, and (2) the proposed job growth (A) is economically viable only with use of the tax credit, (B) would provide a net benefit to economic development and employment opportunities in the state, and (C) conforms to the state plan of conservation and development prepared pursuant to section 16a-24. The commissioner may require the applicant to submit such additional information as may be necessary to evaluate the application.

(e) (1) The commissioner, upon consideration of the application and any additional information the commissioner requires, may approve the credit application, in whole or in part, if the commissioner concludes that the increase in the number of jobs is economically viable only with the use of the tax credit and that the revenue generated due to economic development and employment opportunities created in the state exceeds the credit and any other credits to be taken. If the commissioner disapproves an application, the commissioner shall specifically identify the defects in the application and specifically explain the reasons for the disapproval. The commissioner shall render a decision on an application not later than ninety days after the date of its receipt by the commissioner.

(2) The total amount of credits granted to all taxpayers shall not exceed ten million dollars in any one fiscal year.

(3) A credit under this section may be granted to a taxpayer for not more than five successive income years.

(4) The commissioner may combine approval of a credit application with the exercise of any of the commissioner's other powers, including, but not limited to, the provision of other forms of financial assistance.

(f) Upon approving a taxpayer's credit application, the commissioner shall issue a credit allocation notice certifying that the credits will be available to be claimed by the taxpayer if the taxpayer otherwise meets the requirements of this section. No later than [thirty] forty-five days after the close of the taxpayer's income year, the taxpayer shall provide information to the commissioner regarding the number of new jobs created for the year. [and the income tax deducted and withheld from the wages of such new employees and paid over to the state for such year.] The commissioner shall issue a certificate of eligibility that includes the taxpayer's name, the number of new jobs created, and the amount of the credit certified for the year. The certificate shall be issued by the commissioner [sixty] not later than forty-five days [after the close of the taxpayer's income year or thirty days] after the information is provided. [, whichever comes first.]

(g) The commissioner shall, upon request, provide a copy of the certificate of eligibility issued under subsection (f) of this section to the Commissioner of Revenue Services.

(h) (1) If (A) the number of new employees on account of which a taxpayer claimed the credit allowed by this section decreases to less than the number for which the commissioner issued an eligibility certificate during any of the four years succeeding the first full income year following the issuance of an eligibility certificate, and (B) those employees are not replaced by other employees who have not been shifted from an existing location of the taxpayer or a related person in this state, the taxpayer shall be required to recapture a percentage of the credit allowed under this section on its tax return, as determined under the provisions of subdivision (2) of this subsection. The commissioner shall provide notice of the required recapture amount to both the taxpayer and the Commissioner of Revenue Services.

(2) If the taxpayer is required under the provisions of subdivision (1) of this subsection to recapture a portion of the credit during (A) the first of such four years, then ninety per cent of the credit allowed shall be recaptured on the tax return required to be filed for such year, (B) the second of such four years, then sixty-five per cent of the credit allowed for the entire period of eligibility shall be recaptured on the

tax return required to be filed for such year, (C) the third of such four years, then fifty per cent of the credit allowed for the entire period of eligibility shall be recaptured on the tax return required to be filed for such year, (D) the fourth of such four years, then thirty per cent of the credit allowed for the entire period of eligibility shall be recaptured on the tax return required to be filed for such year.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2010, and applicable to income years commencing on or after January 1, 2010*	12-217ii

CE *Joint Favorable Subst.*

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 $	FY 12 $
Department of Revenue Services	GF - Revenue Impact	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill will result in a revenue impact to the General Fund as a result of changing the amount of the job creation tax credit from a percentage of the employee's Connecticut income tax withholding to a flat $2,500 per new job. The net impact of this change will depend on the salaries of the new jobs that are qualifying for the credit.

For new jobs with a salary of less than $87,000 the amount of the credit will increase and for jobs with a salary of more than $87,000 the amount of the credit will decrease. For example, for a new job with a salary of $40,000 the amount of the credit will increase from approximately $980 to $2,500. For a job with a salary of $100,000 the amount of the credit will decrease from approximately $2,890 to $2,500.

The bill also makes other changes to the job creation credit that are anticipated to make the credit more likely to be claimed by businesses that already qualify for the credit.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Bureau of Labor Statistics
Department of Revenue Services

OLR Bill Analysis
sHB 5389

AN ACT CONCERNING THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT'S RECOMMENDATIONS FOR TAX CREDITS TO PROMOTE JOB CREATION.

SUMMARY:

The law authorizes tax credits for businesses creating at least 10 new full-time jobs in Connecticut. This bill changes how businesses must calculate the credit and the timeframes for claiming them. Under current law, the credit can be for up to 60% of the income withheld for income taxes from the new employees' wages. The bill changes the credit to a flat $2,500 per new employee.

The bill provides a formula for calculating the number of new jobs that appears to prevent businesses from claiming credits by laying off current employees, creating new jobs, and filling them with new employees. Under current law, a business can count only those new jobs it created after the Department of Economic and Community Development (DECD) commissioner approved the business for a credit. The business can claim credits for these jobs only if it fills them with new employees.

The bill changes the timeframes for processing credit claims. It gives businesses 15 more days to submit credit claims to the commissioner by requiring them to do so within 45 days, instead of 30 days, after their income year closes. The bill changes the commissioner's deadline for approving a credit claim. Current law requires her to act on the claim 60 days after the close of the taxpayer's income year or 30 days after she receives the claim, whichever comes first. The bill requires her to act within 45 days after receiving the claim.

Lastly, the bill requires taxpayers to claim a credit in the income

year the commissioner awarded it instead of the income year the taxpayer earned it, as current law provides.

EFFECTIVE DATE: July 1, 2010 and applicable to income years beginning on or after January 1, 2010.

CALCULATING NEW JOBS

The bill tightens the criteria for creating new jobs and specifies the formula businesses must use to determine the number of new jobs they can count toward the credit.

Under current law, a business can claim a credit if the job meets two conditions: (1) the business created the job after the DECD commissioner approved the business for a tax credit and (2) the job is held by a new employee, excluding someone who previously worked for an affiliated business. Under the bill, the new employee must have held the job for 12 consecutive months before the business can count it toward the credit.

The bill also specifies how a business must calculate the number of new employees. The business must (1) calculate its average number of total full-time employees per month over the year and (2) subtract this average from the total number of people filling all full-time jobs on the last day of the month before the period for which it applied for the credits. The difference equals the jobs the business can count toward the credits.

BACKGROUND

Related bills

sHB 5209 (File 270) creates a new, limited-time job creation tax credit. The maximum credit equals $2,496 per employee for three consecutive years. sHB 5357 (File 278) extends the existing job creation credits to the personal income tax, thus allowing “S” corporations and limited liability partnerships and companies to qualify for them.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Substitute

Yea	20	Nay	0	(03/23/2010)