

ASSEMBLY BILL

No. 121

Introduced by Assembly Member Maze

January 10, 2007

An act to amend Sections 17053.74 and 23622.7 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 121, as introduced, Maze. Income and corporation taxes: credits: enterprise zones: foster youth hiring preference.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a hiring credit for qualified taxpayers who hire qualified employees, as defined, within enterprise zones, subject to specific criteria.

This bill would revise the definition of "qualified employee" for this purpose, to include "qualified former foster care recipient," as defined.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17053.74 of the Revenue and Taxation
- 2 Code is amended to read:
- 3 17053.74. (a) There shall be allowed a credit against the "net
- 4 tax" (as defined in Section 17039) to a taxpayer who employs a
- 5 qualified employee in an enterprise zone during the taxable year.
- 6 The credit shall be equal to the sum of each of the following:

- 1 (1) Fifty percent of qualified wages in the first year of
2 employment.
- 3 (2) Forty percent of qualified wages in the second year of
4 employment.
- 5 (3) Thirty percent of qualified wages in the third year of
6 employment.
- 7 (4) Twenty percent of qualified wages in the fourth year of
8 employment.
- 9 (5) Ten percent of qualified wages in the fifth year of
10 employment.
- 11 (b) For purposes of this section:
- 12 (1) “Qualified wages” means:
 - 13 (A) (i) Except as provided in clause (ii), that portion of wages
14 paid or incurred by the taxpayer during the taxable year to qualified
15 employees that does not exceed 150 percent of the minimum wage.
 - 16 (ii) For up to 1,350 qualified employees who are employed by
17 the taxpayer in the Long Beach Enterprise Zone in aircraft
18 manufacturing activities described in Codes 3721 to 3728,
19 inclusive, and Code 3812 of the Standard Industrial Classification
20 (SIC) Manual published by the United States Office of
21 Management and Budget, 1987 edition, “qualified wages” means
22 that portion of hourly wages that does not exceed 202 percent of
23 the minimum wage.
 - 24 (B) Wages received during the 60-month period beginning with
25 the first day the employee commences employment with the
26 taxpayer. Reemployment in connection with any increase, including
27 a regularly occurring seasonal increase, in the trade or business
28 operations of the taxpayer does not constitute commencement of
29 employment for purposes of this section.
 - 30 (C) Qualified wages do not include any wages paid or incurred
31 by the taxpayer on or after the zone expiration date. However,
32 wages paid or incurred with respect to qualified employees who
33 are employed by the taxpayer within the enterprise zone within
34 the 60-month period prior to the zone expiration date shall continue
35 to qualify for the credit under this section after the zone expiration
36 date, in accordance with all provisions of this section applied as
37 if the enterprise zone designation were still in existence and
38 binding.
- 39 (2) “Minimum wage” means the wage established by the
40 Industrial Welfare Commission as provided for in Chapter 1

1 (commencing with Section 1171) of Part 4 of Division 2 of the
2 Labor Code.

3 (3) “Zone expiration date” means the date the enterprise zone
4 designation expires, is no longer binding, or becomes inoperative.

5 (4) (A) “Qualified employee” means an individual who meets
6 all of the following requirements:

7 (i) At least 90 percent of whose services for the taxpayer during
8 the taxable year are directly related to the conduct of the taxpayer’s
9 trade or business located in an enterprise zone.

10 (ii) Performs at least 50 percent of his or her services for the
11 taxpayer during the taxable year in an enterprise zone.

12 (iii) Is hired by the taxpayer after the date of original designation
13 of the area in which services were performed as an enterprise zone.

14 (iv) Is any of the following:

15 (I) Immediately preceding the qualified employee’s
16 commencement of employment with the taxpayer, was a person
17 eligible for services under the federal Job Training Partnership
18 Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving,
19 or is eligible to receive, subsidized employment, training, or
20 services funded by the federal Job Training Partnership Act, or its
21 successor.

22 (II) Immediately preceding the qualified employee’s
23 commencement of employment with the taxpayer, was a person
24 eligible to be a voluntary or mandatory registrant under the Greater
25 Avenues for Independence Act of 1985 (GAIN) provided for
26 pursuant to Article 3.2 (commencing with Section 11320) of
27 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
28 Code, or its successor.

29 (III) Immediately preceding the qualified employee’s
30 commencement of employment with the taxpayer, was an
31 economically disadvantaged individual 14 years of age or older.

32 (IV) Immediately preceding the qualified employee’s
33 commencement of employment with the taxpayer, was a dislocated
34 worker who meets any of the following:

35 (aa) Has been terminated or laid off or who has received a notice
36 of termination or layoff from employment, is eligible for or has
37 exhausted entitlement to unemployment insurance benefits, and
38 is unlikely to return to his or her previous industry or occupation.

39 (bb) Has been terminated or has received a notice of termination
40 of employment as a result of any permanent closure or any

1 substantial layoff at a plant, facility, or enterprise, including an
2 individual who has not received written notification but whose
3 employer has made a public announcement of the closure or layoff.

4 (cc) Is long-term unemployed and has limited opportunities for
5 employment or reemployment in the same or a similar occupation
6 in the area in which the individual resides, including an individual
7 55 years of age or older who may have substantial barriers to
8 employment by reason of age.

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

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

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

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

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

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

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

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

40 (aa) Federal Supplemental Security Income benefits.

1 (bb) Aid to Families with Dependent Children.

2 (cc) Food stamps.

3 (dd) State and local general assistance.

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

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

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

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

19 *(XII) Immediately preceding the qualified employee's*
20 *commencement of employment with the taxpayer, was a "qualified*
21 *former foster care recipient," which means an individual who is*
22 *certified by the local designated agency to have met both the*
23 *following:*

24 *(aa) Having attained 17 years of age but not 25 years of age*
25 *on the hiring date.*

26 *(bb) Having, before attaining 18 years of age, been either a*
27 *recipient of foster care maintenance payments under a state plan*
28 *approved under Part E of Title IV of the Social Security Act (42*
29 *U.S.C. Sec. 301), or in foster care under the responsibility of a*
30 *state.*

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

37 (5) "Taxpayer" means a person or entity engaged in a trade or
38 business within an enterprise zone designated pursuant to Chapter
39 12.8 (commencing with Section 7070) of the Government Code.

1 (6) “Seasonal employment” means employment by a taxpayer
2 that has regular and predictable substantial reductions in trade or
3 business operations.

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

5 (1) Obtain from the Employment Development Department, as
6 permitted by federal law, the local county or city Job Training
7 Partnership Act administrative entity, the local county GAIN office
8 or social services agency, or the local government administering
9 the enterprise zone, a certification which provides that a qualified
10 employee meets the eligibility requirements specified in clause
11 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
12 Employment Development Department may provide preliminary
13 screening and referral to a certifying agency. The Employment
14 Development Department shall develop a form for this purpose.
15 The Department of Housing and Community Development shall
16 develop regulations governing the issuance of certificates by local
17 governments pursuant to subdivision (a) of Section 7086 of the
18 Government Code.

19 (2) Retain a copy of the certification and provide it upon request
20 to the Franchise Tax Board.

21 (d) (1) For purposes of this section:

22 (A) All employees of trades or businesses, which are not
23 incorporated, that are under common control shall be treated as
24 employed by a single taxpayer.

25 (B) The credit, if any, allowable by this section with respect to
26 each trade or business shall be determined by reference to its
27 proportionate share of the expense of the qualified wages giving
28 rise to the credit, and shall be allocated in that manner.

29 (C) Principles that apply in the case of controlled groups of
30 corporations, as specified in subdivision (d) of Section 23622.7,
31 shall apply with respect to determining employment.

32 (2) If an employer acquires the major portion of a trade or
33 business of another employer (hereinafter in this paragraph referred
34 to as the “predecessor”) or the major portion of a separate unit of
35 a trade or business of a predecessor, then, for purposes of applying
36 this section (other than subdivision (e)) for any calendar year
37 ending after that acquisition, the employment relationship between
38 a qualified employee and an employer shall not be treated as
39 terminated if the employee continues to be employed in that trade
40 or business.

1 (e) (1) (A) If the employment, other than seasonal employment,
2 of any qualified employee, with respect to whom qualified wages
3 are taken into account under subdivision (a) is terminated by the
4 taxpayer at any time during the first 270 days of that employment
5 (whether or not consecutive) or before the close of the 270th
6 calendar day after the day in which that employee completes 90
7 days of employment with the taxpayer, the tax imposed by this
8 part for the taxable year in which that employment is terminated
9 shall be increased by an amount equal to the credit allowed under
10 subdivision (a) for that taxable year and all prior taxable years
11 attributable to qualified wages paid or incurred with respect to that
12 employee.

13 (B) If the seasonal employment of any qualified employee, with
14 respect to whom qualified wages are taken into account under
15 subdivision (a) is not continued by the taxpayer for a period of
16 270 days of employment during the 60-month period beginning
17 with the day the qualified employee commences seasonal
18 employment with the taxpayer, the tax imposed by this part, for
19 the taxable year that includes the 60th month following the month
20 in which the qualified employee commences seasonal employment
21 with the taxpayer, shall be increased by an amount equal to the
22 credit allowed under subdivision (a) for that taxable year and all
23 prior taxable years attributable to qualified wages paid or incurred
24 with respect to that qualified employee.

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

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

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

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

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

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

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

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

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

17 (iii) A failure to continue the seasonal employment of a qualified
18 employee, if it is determined that the failure to continue the
19 seasonal employment was due to the misconduct (as defined in
20 Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California
21 Code of Regulations) of that qualified employee.

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

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

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

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

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

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

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

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

11 (h) The credit allowable under this section shall be reduced by
12 the credit allowed under Sections 17053.10, 17053.17, and
13 17053.46 claimed for the same employee. The credit shall also be
14 reduced by the federal credit allowed under Section 51 of the
15 Internal Revenue Code.

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

20 (i) In the case where the credit otherwise allowed under this
21 section exceeds the “net tax” for the taxable year, that portion of
22 the credit that exceeds the “net tax” may be carried over and added
23 to the credit, if any, in succeeding taxable years, until the credit is
24 exhausted. The credit shall be applied first to the earliest taxable
25 years possible.

26 (j) (1) The amount of the credit otherwise allowed under this
27 section and Section 17053.70, including any credit carryover from
28 prior years, that may reduce the “net tax” for the taxable year shall
29 not exceed the amount of tax which would be imposed on the
30 taxpayer’s business income attributable to the enterprise zone
31 determined as if that attributable income represented all of the
32 income of the taxpayer subject to tax under this part.

33 (2) Attributable income shall be that portion of the taxpayer’s
34 California source business income that is apportioned to the
35 enterprise zone. For that purpose, the taxpayer’s business income
36 attributable to sources in this state first shall be determined in
37 accordance with Chapter 17 (commencing with Section 25101) of
38 Part 11. That business income shall be further apportioned to the
39 enterprise zone in accordance with Article 2 (commencing with

1 Section 25120) of Chapter 17 of Part 11, modified for purposes
2 of this section in accordance with paragraph (3).

3 (3) Business income shall be apportioned to the enterprise zone
4 by multiplying the total California business income of the taxpayer
5 by a fraction, the numerator of which is the property factor plus
6 the payroll factor, and the denominator of which is two. For
7 purposes of this paragraph:

8 (A) The property factor is a fraction, the numerator of which is
9 the average value of the taxpayer's real and tangible personal
10 property owned or rented and used in the enterprise zone during
11 the taxable year, and the denominator of which is the average value
12 of all the taxpayer's real and tangible personal property owned or
13 rented and used in this state during the taxable year.

14 (B) The payroll factor is a fraction, the numerator of which is
15 the total amount paid by the taxpayer in the enterprise zone during
16 the taxable year for compensation, and the denominator of which
17 is the total compensation paid by the taxpayer in this state during
18 the taxable year.

19 (4) The portion of any credit remaining, if any, after application
20 of this subdivision, shall be carried over to succeeding taxable
21 years, as if it were an amount exceeding the "net tax" for the
22 taxable year, as provided in subdivision (i).

23 (k) The changes made to this section by the act adding this
24 subdivision shall apply to taxable years beginning on or after
25 January 1, 1997.

26 SEC. 2. Section 23622.7 of the Revenue and Taxation Code
27 is amended to read:

28 23622.7. (a) There shall be allowed a credit against the "tax"
29 (as defined by Section 23036) to a taxpayer who employs a
30 qualified employee in an enterprise zone during the taxable year.
31 The credit shall be equal to the sum of each of the following:

32 (1) Fifty percent of qualified wages in the first year of
33 employment.

34 (2) Forty percent of qualified wages in the second year of
35 employment.

36 (3) Thirty percent of qualified wages in the third year of
37 employment.

38 (4) Twenty percent of qualified wages in the fourth year of
39 employment.

1 (5) Ten percent of qualified wages in the fifth year of
2 employment.

3 (b) For purposes of this section:

4 (1) “Qualified wages” means:

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

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

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

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

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

35 (3) “Zone expiration date” means the date the enterprise zone
36 designation expires, is no longer binding, or becomes inoperative.

37 (4) (A) “Qualified employee” means an individual who meets
38 all of the following requirements:

- 1 (i) At least 90 percent of whose services for the taxpayer during
2 the taxable year are directly related to the conduct of the taxpayer's
3 trade or business located in an enterprise zone.
- 4 (ii) Performs at least 50 percent of his or her services for the
5 taxpayer during the taxable year in an enterprise zone.
- 6 (iii) Is hired by the taxpayer after the date of original designation
7 of the area in which services were performed as an enterprise zone.
- 8 (iv) Is any of the following:
 - 9 (I) Immediately preceding the qualified employee's
10 commencement of employment with the taxpayer, was a person
11 eligible for services under the federal Job Training Partnership
12 Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving,
13 or is eligible to receive, subsidized employment, training, or
14 services funded by the federal Job Training Partnership Act, or its
15 successor.
 - 16 (II) Immediately preceding the qualified employee's
17 commencement of employment with the taxpayer, was a person
18 eligible to be a voluntary or mandatory registrant under the Greater
19 Avenues for Independence Act of 1985 (GAIN) provided for
20 pursuant to Article 3.2 (commencing with Section 11320) of
21 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
22 Code, or its successor.
 - 23 (III) Immediately preceding the qualified employee's
24 commencement of employment with the taxpayer, was an
25 economically disadvantaged individual 14 years of age or older.
 - 26 (IV) Immediately preceding the qualified employee's
27 commencement of employment with the taxpayer, was a dislocated
28 worker who meets any of the following:
 - 29 (aa) Has been terminated or laid off or who has received a notice
30 of termination or layoff from employment, is eligible for or has
31 exhausted entitlement to unemployment insurance benefits, and
32 is unlikely to return to his or her previous industry or occupation.
 - 33 (bb) Has been terminated or has received a notice of termination
34 of employment as a result of any permanent closure or any
35 substantial layoff at a plant, facility, or enterprise, including an
36 individual who has not received written notification but whose
37 employer has made a public announcement of the closure or layoff.
 - 38 (cc) Is long-term unemployed and has limited opportunities for
39 employment or reemployment in the same or a similar occupation
40 in the area in which the individual resides, including an individual

1 55 years of age or older who may have substantial barriers to
2 employment by reason of age.

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

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

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

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

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

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

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

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

34 (aa) Federal Supplemental Security Income benefits.

35 (bb) Aid to Families with Dependent Children.

36 (cc) Food stamps.

37 (dd) State and local general assistance.

38 (VIII) Immediately preceding the qualified employee's
39 commencement of employment with the taxpayer, was a member

1 of a federally recognized Indian tribe, band, or other group of
2 Native American descent.

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

7 (X) An employee who qualified the taxpayer for the enterprise
8 zone hiring credit under former Section 23622 or the program area
9 hiring credit under former Section 23623.

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

14 (XII) *Immediately preceding the qualified employee’s*
15 *commencement of employment with the taxpayer, was a “qualified*
16 *former foster care recipient,” which means an individual who is*
17 *certified by the local designated agency to have met both the*
18 *following:*

19 (aa) *Having attained 17 years of age but not 25 years of age*
20 *on the hiring date.*

21 (bb) *Having, before attaining 18 years of age, been either a*
22 *recipient of foster care maintenance payments under a state plan*
23 *approved under Part E of Title IV of the Social Security Act (42*
24 *U.S.C. Sec. 301), or in foster care under the responsibility of a*
25 *state.*

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

32 (5) “Taxpayer” means a corporation engaged in a trade or
33 business within an enterprise zone designated pursuant to Chapter
34 12.8 (commencing with Section 7070) of Division 7 of Title 1 of
35 the Government Code.

36 (6) “Seasonal employment” means employment by a taxpayer
37 that has regular and predictable substantial reductions in trade or
38 business operations.

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

1 (1) Obtain from the Employment Development Department, as
2 permitted by federal law, the local county or city Job Training
3 Partnership Act administrative entity, the local county GAIN office
4 or social services agency, or the local government administering
5 the enterprise zone, a certification that provides that a qualified
6 employee meets the eligibility requirements specified in clause
7 (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The
8 Employment Development Department may provide preliminary
9 screening and referral to a certifying agency. The Employment
10 Development Department shall develop a form for this purpose.
11 The Department of Housing and Community Development shall
12 develop regulations governing the issuance of certificates by local
13 governments pursuant to subdivision (a) of Section 7086 of the
14 Government Code.

15 (2) Retain a copy of the certification and provide it upon request
16 to the Franchise Tax Board.

17 (d) (1) For purposes of this section:

18 (A) All employees of all corporations which are members of
19 the same controlled group of corporations shall be treated as
20 employed by a single taxpayer.

21 (B) The credit, if any, allowable by this section to each member
22 shall be determined by reference to its proportionate share of the
23 expense of the qualified wages giving rise to the credit, and shall
24 be allocated in that manner.

25 (C) For purposes of this subdivision, “controlled group of
26 corporations” means “controlled group of corporations” as defined
27 in Section 1563(a) of the Internal Revenue Code, except that:

28 (i) “More than 50 percent” shall be substituted for “at least 80
29 percent” each place it appears in Section 1563(a)(1) of the Internal
30 Revenue Code.

31 (ii) The determination shall be made without regard to
32 subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal
33 Revenue Code.

34 (2) If an employer acquires the major portion of a trade or
35 business of another employer (hereinafter in this paragraph referred
36 to as the “predecessor”) or the major portion of a separate unit of
37 a trade or business of a predecessor, then, for purposes of applying
38 this section (other than subdivision (e)) for any calendar year
39 ending after that acquisition, the employment relationship between
40 a qualified employee and an employer shall not be treated as

1 terminated if the employee continues to be employed in that trade
2 or business.

3 (e) (1) (A) If the employment, other than seasonal employment,
4 of any qualified employee with respect to whom qualified wages
5 are taken into account under subdivision (a) is terminated by the
6 taxpayer at any time during the first 270 days of that employment,
7 whether or not consecutive, or before the close of the 270th
8 calendar day after the day in which that employee completes 90
9 days of employment with the taxpayer, the tax imposed by this
10 part for the taxable year in which that employment is terminated
11 shall be increased by an amount equal to the credit allowed under
12 subdivision (a) for that taxable year and all prior taxable years
13 attributable to qualified wages paid or incurred with respect to that
14 employee.

15 (B) If the seasonal employment of any qualified employee, with
16 respect to whom qualified wages are taken into account under
17 subdivision (a) is not continued by the taxpayer for a period of
18 270 days of employment during the 60-month period beginning
19 with the day the qualified employee commences seasonal
20 employment with the taxpayer, the tax imposed by this part, for
21 the taxable year that includes the 60th month following the month
22 in which the qualified employee commences seasonal employment
23 with the taxpayer, shall be increased by an amount equal to the
24 credit allowed under subdivision (a) for that taxable year and all
25 prior taxable years attributable to qualified wages paid or incurred
26 with respect to that qualified employee.

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

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

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

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

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

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

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

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

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

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

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

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

32 (C) For purposes of paragraph (1), the employment relationship
33 between the taxpayer and a qualified employee shall not be treated
34 as terminated by either of the following:

35 (i) By a transaction to which Section 381(a) of the Internal
36 Revenue Code applies, if the qualified employee continues to be
37 employed by the acquiring corporation.

38 (ii) By reason of a mere change in the form of conducting the
39 trade or business of the taxpayer, if the qualified employee

1 continues to be employed in that trade or business and the taxpayer
2 retains a substantial interest in that trade or business.

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

6 (f) Rules similar to the rules provided in Section 46(e) and (h)
7 of the Internal Revenue Code shall apply to both of the following:

8 (1) An organization to which Section 593 of the Internal
9 Revenue Code applies.

10 (2) A regulated investment company or a real estate investment
11 trust subject to taxation under this part.

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

16 (h) The credit allowable under this section shall be reduced by
17 the credit allowed under Sections 23623.5, 23625, and 23646
18 claimed for the same employee. The credit shall also be reduced
19 by the federal credit allowed under Section 51 of the Internal
20 Revenue Code.

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

25 (i) In the case where the credit otherwise allowed under this
26 section exceeds the “tax” for the taxable year, that portion of the
27 credit that exceeds the “tax” may be carried over and added to the
28 credit, if any, in succeeding taxable years, until the credit is
29 exhausted. The credit shall be applied first to the earliest taxable
30 years possible.

31 (j) (1) The amount of the credit otherwise allowed under this
32 section and Section 23612.2, including any credit carryover from
33 prior years, that may reduce the “tax” for the taxable year shall
34 not exceed the amount of tax which would be imposed on the
35 taxpayer’s business income attributable to the enterprise zone
36 determined as if that attributable income represented all of the
37 income of the taxpayer subject to tax under this part.

38 (2) Attributable income shall be that portion of the taxpayer’s
39 California source business income that is apportioned to the
40 enterprise zone. For that purpose, the taxpayer’s business

1 attributable to sources in this state first shall be determined in
2 accordance with Chapter 17 (commencing with Section 25101).
3 That business income shall be further apportioned to the enterprise
4 zone in accordance with Article 2 (commencing with Section
5 25120) of Chapter 17, modified for purposes of this section in
6 accordance with paragraph (3).

7 (3) Business income shall be apportioned to the enterprise zone
8 by multiplying the total California business income of the taxpayer
9 by a fraction, the numerator of which is the property factor plus
10 the payroll factor, and the denominator of which is two. For
11 purposes of this paragraph:

12 (A) The property factor is a fraction, the numerator of which is
13 the average value of the taxpayer's real and tangible personal
14 property owned or rented and used in the enterprise zone during
15 the income year, and the denominator of which is the average value
16 of all the taxpayer's real and tangible personal property owned or
17 rented and used in this state during the income year.

18 (B) The payroll factor is a fraction, the numerator of which is
19 the total amount paid by the taxpayer in the enterprise zone during
20 the income year for compensation, and the denominator of which
21 is the total compensation paid by the taxpayer in this state during
22 the income year.

23 (4) The portion of any credit remaining, if any, after application
24 of this subdivision, shall be carried over to succeeding taxable
25 years, as if it were an amount exceeding the "tax" for the taxable
26 year, as provided in subdivision (i).

27 (k) The changes made to this section by the act adding this
28 subdivision shall apply to taxable years on or after January 1, 1997.

29 SEC. 3. This act provides for a tax levy within the meaning of
30 Article IV of the Constitution and shall go into immediate effect.