

AMENDED IN ASSEMBLY JANUARY 17, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 11, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 579

Introduced by Assembly Member Swanson

February 21, 2007

An act to amend Sections 7116 and 7117 of the Government Code, and to amend Sections 17053.45, 17268, 23645, and 24356.8 of the Revenue and Taxation Code, relating to military base recovery areas.

LEGISLATIVE COUNSEL'S DIGEST

AB 579, as amended, Swanson. Military base recovery areas.

Existing law authorizes a local governing body, as defined, to propose to the Department of Housing and Community Development a local agency military base recovery area to receive specified economic incentives to offset military base closures. The designations are binding for a period of 8 years.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits and deductions against the taxes imposed by those laws, including a credit for sales and use tax paid by a taxpayer, as defined, for the purchase of qualified property, as defined, for use in a local agency military base recovery area (LAMBRA), and a specified accelerated deduction in connection with property that is used exclusively in a trade or business conducted within a LAMBRA. Among other things, in order to be eligible for the credits and deduction, a taxpayer is required to increase, for the first 2 taxable years, the number of jobs in the LAMBRA.

This bill would delete the requirement to increase the number of jobs in the LAMBRA. This bill would also require each local military base recovery area governing body to update its economic development plan, as provided.

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. The Legislature finds and declares all of the
2 following:

3 (a) The health, safety, and welfare of the people of California
4 depend upon the development, stability, and expansion of private
5 business, industry, and commerce, and that there are certain areas
6 within the state that have been and will be severely economically
7 impacted because of the closure of military bases by the federal
8 Department of Defense.

9 (b) The closure of 29 major military bases resulted in a loss of
10 nearly 54 percent of the state’s military personnel since 1988 which
11 translates into a loss of more than 93,000 California military and
12 civilian jobs. California has recaptured less than 60 percent of
13 those jobs since the rounds of base closures began. Military base
14 closures have resulted in a loss of \$10 billion in annual revenues.

15 (c) That many communities want and need to attract new
16 business and private investment to compensate for the loss of
17 revenue that occurs when a military base closes or downsizes, but
18 that many communities have insufficient means to do so.

19 SEC. 2. Section 7116 of the Government Code is amended to
20 read:

21 7116. (a) A local agency military base recovery area governing
22 body shall provide information at the request of the department as
23 necessary for the department to prepare the report required pursuant
24 to Section 7115.

25 (b) A local agency military base recovery area governing body
26 shall provide information at the request of the department as
27 necessary for the department to determine whether the governing
28 body is complying with the terms of the approved application.

29 (c) If the department determines that a local agency military
30 base recovery area governing body is not complying with the terms
31 of the approved application for designation, the department shall

1 provide written notice of the program deficiencies and the
2 governing body shall be given six months to correct the
3 deficiencies.

4 (d) The department shall revoke the designation of a local
5 agency military base recovery area if the department determines
6 that the governing body granted the designation has not complied
7 with the terms of the approved application for designation within
8 six months after written notice pursuant to subdivision (c), and
9 shall not be considered a local agency military base recovery area
10 until the deficiencies are corrected.

11 (e) Any companies located in the local agency military base
12 recovery area shall not be penalized during any period of revocation
13 and may continue to operate with incentives provided pursuant to
14 this chapter.

15 (f) An audit of the program shall be made by the department
16 pursuant to Section 7076.1 with the cooperation of the governing
17 body to determine the effectiveness of the program under this
18 chapter.

19 (g) Each local agency military base recovery area governing
20 body shall, on or before January 1, 2010, update its economic
21 development plan that was included in its original application for
22 designation. *The economic development plan shall, at a minimum,*
23 *include an assessment of current financial and community*
24 *development strengths, needs, and opportunities; identification of*
25 *key regional and community-based partnerships; an explanation*
26 *of how the LAMBRA economic development strategy relates to the*
27 *city or countywide economic development strategy; strategies for*
28 *attracting private investment; strategies for addressing hiring and*
29 *retention of unemployed or underemployed residents and*
30 *low-income individuals in the communities surrounding the*
31 *LAMBRA; a clear articulation of goals and objectives; a list of*
32 *implementation activities and tasks, including timeframes, and a*
33 *process for evaluating performance, including qualitative and*
34 *quantitative benchmarks; and a funding schedule for the*
35 *management, oversight, and program delivery within the LAMBRA*
36 *relative to the benchmarks, goals, and objectives in the strategy.*

37 SEC. 3. Section 7117 of the Government Code, as added by
38 Section 1 of Chapter 1216 of the Statutes of 1993, is amended to
39 read:

1 7117. A business located within a local agency military base
2 recovery area shall be eligible for the tax benefits set forth within
3 Sections 17053.46, 17276.2, 23646, and 24416.2 of the Revenue
4 and Taxation Code only if it provides a net increase in jobs in the
5 local agency military base recovery area within the first two years
6 from the business' initial date of operation. If the business fails to
7 meet its obligations under the local agency military base recovery
8 area plan or the requirements of this act, any tax benefits received
9 under those sections shall be recaptured, as provided in each of
10 those sections.

11 SEC. 4. Section 17053.45 of the Revenue and Taxation Code
12 is amended to read:

13 17053.45. (a) For each taxable year beginning on or after
14 January 1, 1995, there shall be allowed as a credit against the "net
15 tax" (as defined by Section 17039) an amount equal to the sales
16 or use tax paid or incurred by the taxpayer in connection with the
17 purchase of qualified property to the extent that the qualified
18 property does not exceed a value of one million dollars
19 (\$1,000,000).

20 (b) For purposes of this section:

21 (1) "LAMBRA" means a local agency military base recovery
22 area designated in accordance with Section 7114 of the Government
23 Code.

24 (2) "Taxpayer" means a taxpayer that conducts a trade or
25 business within a LAMBRA.

26 (3) "Qualified property" means property that is each of the
27 following:

28 (A) Purchased by the taxpayer for exclusive use in a trade or
29 business conducted within a LAMBRA.

30 (B) Purchased before the date the LAMBRA designation expires,
31 is no longer binding, or becomes inoperative.

32 (C) Any of the following:

33 (i) High-technology equipment, including, but not limited to,
34 computers and electronic processing equipment.

35 (ii) Aircraft maintenance equipment, including, but not limited
36 to, engine stands, hydraulic mules, power carts, test equipment,
37 handtools, aircraft start carts, and tugs.

38 (iii) Aircraft components, including, but not limited to, engines,
39 fuel control units, hydraulic pumps, avionics, starts, wheels, and
40 tires.

1 (iv) Section 1245 property, as defined in Section 1245(a)(3) of
2 the Internal Revenue Code.

3 (c) The credit provided under subdivision (a) shall be allowed
4 only for qualified property manufactured in California unless
5 qualified property of a comparable quality and price is not available
6 for timely purchase and delivery from a California manufacturer.

7 (d) In the case where the credit otherwise allowed under this
8 section exceeds the “net tax” for the taxable year, that portion of
9 the credit which exceeds the “net tax” may be carried over and
10 added to the credit, if any, in succeeding years, until the credit is
11 exhausted. The credit shall be applied first to the earliest taxable
12 years possible.

13 (e) Any taxpayer who elects to be subject to this section shall
14 not be entitled to increase the basis of the property as otherwise
15 required by Section 164(a) of the Internal Revenue Code with
16 respect to sales or use tax paid or incurred in connection with the
17 purchase of qualified property.

18 (f) (1) The amount of credit otherwise allowed under this
19 section and Section 17053.46, including any credit carryover from
20 prior years, that may reduce the “net tax” for the taxable year shall
21 not exceed the amount of tax that would be imposed on the
22 taxpayer’s business income attributed to a LAMBRA determined
23 as if that attributable income represented all the income of the
24 taxpayer subject to tax under this part.

25 (2) Attributable income is that portion of the taxpayer’s
26 California source business income that is apportioned to the
27 LAMBRA. For that purpose, the taxpayer’s business income that
28 is attributable to sources in this state shall first be determined in
29 accordance with Chapter 17 (commencing with Section 25101) of
30 Part 11. That business income shall be further apportioned to the
31 LAMBRA in accordance with Article 2 (commencing with Section
32 25120) of Chapter 17 of Part 11, as modified for purposes of this
33 section in accordance with paragraph (3).

34 (3) Income shall be apportioned to a LAMBRA by multiplying
35 the total California business income of the taxpayer by a fraction,
36 the numerator of which is the property factor, plus the payroll
37 factor, and the denominator of which is two. For purposes of this
38 paragraph:

39 (A) The property factor is a fraction, the numerator of which is
40 the average value of the taxpayer’s real and tangible personal

1 property owned or rented and used in the LAMBRA during the
2 taxable year, and the denominator of which is the average value
3 of all the taxpayer’s real and tangible personal property owned or
4 rented and used in this state during the taxable year.

5 (B) The payroll factor is a fraction, the numerator of which is
6 the total amount paid by the taxpayer in the LAMBRA during the
7 taxable year for compensation, and the denominator of which is
8 the total compensation paid by the taxpayer in this state during the
9 taxable year.

10 (4) The portion of any credit remaining, if any, after application
11 of this subdivision, shall be carried over to succeeding taxable
12 years, as if it were an amount exceeding the “net tax” for the
13 taxable year, as provided in subdivision (d).

14 (g) If the qualified property is disposed of or no longer used by
15 the taxpayer in the LAMBRA, at any time before the close of the
16 second taxable year after the property is placed in service, the
17 amount of the credit previously claimed, with respect to that
18 property, shall be added to the taxpayer’s tax liability in the taxable
19 year of that disposition or nonuse.

20 (h) If the taxpayer is allowed a credit for qualified property
21 pursuant to this section, only one credit shall be allowed to the
22 taxpayer under this part with respect to that qualified property.

23 (i) The amendments made to this section by Section 5 of Chapter
24 987 of the Statutes of 1999 shall apply to taxable years beginning
25 on or after January 1, 1998.

26 SEC. 5. Section 17268 of the Revenue and Taxation Code is
27 amended to read:

28 17268. (a) For each taxable year beginning on or after January
29 1, 1995, a taxpayer may elect to treat 40 percent of the cost of any
30 Section 17268 property as an expense that is not chargeable to the
31 capital account. Any cost so treated shall be allowed as a deduction
32 for the taxable year in which the taxpayer places the Section 17268
33 property in service.

34 (b) In the case of a husband or wife filing separate returns for
35 a taxable year in which a spouse is entitled to the deduction under
36 subdivision (a), the applicable amount shall be equal to 50 percent
37 of the amount otherwise determined under subdivision (a).

38 (c) (1) An election under this section for any taxable year shall
39 meet both of the following requirements:

1 (A) Specify the items of Section 17268 property to which the
2 election applies and the portion of the cost of each of those items
3 that is to be taken into account under subdivision (a).

4 (B) Be made on the taxpayer's return of the tax imposed by this
5 part for the taxable year.

6 (2) Any election made under this section, and any specification
7 contained in that election, may not be revoked except with the
8 consent of the Franchise Tax Board.

9 (d) (1) For purposes of this section, "Section 17268 property"
10 means any recovery property that is each of the following:

11 (A) Section 1245 property (as defined in Section 1245(a)(3) of
12 the Internal Revenue Code).

13 (B) Purchased by the taxpayer for exclusive use in a trade or
14 business conducted within a LAMBRA.

15 (C) Purchased before the date the LAMBRA designation expires,
16 is no longer binding, or becomes inoperative.

17 (2) For purposes of paragraph (1), "purchase" means any
18 acquisition of property, but only if both of the following apply:

19 (A) The property is not acquired from a person whose
20 relationship to the person acquiring it would result in the
21 disallowance of losses under Section 267 or 707(b) of the Internal
22 Revenue Code (but, in applying Section 267(b) and Section 267(c)
23 of the Internal Revenue Code for purposes of this section, Section
24 267(c)(4) of the Internal Revenue Code shall be treated as
25 providing that the family of an individual shall include only his or
26 her spouse, ancestors, and lineal descendants).

27 (B) The basis of the property in the hands of the person acquiring
28 it is not determined by either of the following:

29 (i) In whole or in part by reference to the adjusted basis of the
30 property in the hands of the person from whom acquired.

31 (ii) Under Section 1014 of the Internal Revenue Code, relating
32 to basis of property acquired from a decedent.

33 (3) For purposes of this section, the cost of property does not
34 include that portion of the basis of the property that is determined
35 by reference to the basis of other property held at any time by the
36 person acquiring the property.

37 (4) This section shall not apply to estates and trusts.

38 (5) This section shall not apply to any property for which the
39 taxpayer may not make an election for the taxable year under

1 Section 179 of the Internal Revenue Code because of the provisions
2 of Section 179(d) of the Internal Revenue Code.

3 (6) In the case of a partnership, the dollar limitation in
4 subdivision (f) shall apply at the partnership level and at the partner
5 level.

6 (7) This section shall not apply to any property described in
7 Section 168(f) of the Internal Revenue Code, relating to property
8 to which Section 168 of the Internal Revenue Code does not apply.

9 (e) For purposes of this section:

10 (1) "LAMBRA" means a local agency military base recovery
11 area designated in accordance with the provisions of Section 7114
12 of the Government Code.

13 (2) "Taxpayer" means a taxpayer that conducts a trade or
14 business within a LAMBRA.

15 (f) The aggregate cost of all Section 17268 property that may
16 be taken into account under subdivision (a) for any taxable year
17 shall not exceed the following applicable amounts for the taxable
18 year of the designation of the relevant LAMBRA and taxable years
19 thereafter:

20		
21		The applicable
22		amount is:
23	Taxable year of designation.....	\$100,000
24	1st taxable year thereafter.....	100,000
25	2nd taxable year thereafter.....	75,000
26	3rd taxable year thereafter.....	75,000
27	Each taxable year thereafter.....	50,000

28
29 (g) This section shall apply only to property that is used
30 exclusively in a trade or business conducted within a LAMBRA.

31 (h) Any amounts deducted under subdivision (a) with respect
32 to property that ceases to be used in the trade or business within
33 a LAMBRA at any time before the close of the second taxable
34 year after the property was placed in service shall be included in
35 income for that year.

36 (i) Any taxpayer who elects to be subject to this section shall
37 not be entitled to claim for the same property the deduction under
38 Section 179 of the Internal Revenue Code, relating to an election
39 to expense certain depreciable business assets.

1 SEC. 6. Section 23645 of the Revenue and Taxation Code is
2 amended to read:

3 23645. (a) For each taxable year beginning on or after January
4 1, 1995, there shall be allowed as a credit against the “tax” (as
5 defined by Section 23036) for the taxable year an amount equal
6 to the sales or use tax paid or incurred by the taxpayer in
7 connection with the purchase of qualified property to the extent
8 that the qualified property does not exceed a value of twenty
9 million dollars (\$20,000,000).

10 (b) For purposes of this section:

11 (1) “LAMBRA” means a local agency military base recovery
12 area designated in accordance with Section 7114 of the Government
13 Code.

14 (2) “Taxpayer” means a corporation that conducts a trade or
15 business within a LAMBRA.

16 (3) “Qualified property” means property that is each of the
17 following:

18 (A) Purchased by the taxpayer for exclusive use in a trade or
19 business conducted within a LAMBRA.

20 (B) Purchased before the date the LAMBRA designation expires,
21 is no longer binding, or becomes inoperative.

22 (C) Any of the following:

23 (i) High-technology equipment, including, but not limited to,
24 computers and electronic processing equipment.

25 (ii) Aircraft maintenance equipment, including, but not limited
26 to, engine stands, hydraulic mules, power carts, test equipment,
27 handtools, aircraft start carts, and tugs.

28 (iii) Aircraft components, including, but not limited to, engines,
29 fuel control units, hydraulic pumps, avionics, starts, wheels, and
30 tires.

31 (iv) Section 1245 property, as defined in Section 1245(a)(3) of
32 the Internal Revenue Code.

33 (c) The credit provided under subdivision (a) shall only be
34 allowed for qualified property manufactured in California unless
35 qualified property of a comparable quality and price is not available
36 for timely purchase and delivery from a California manufacturer.

37 (d) In the case where the credit otherwise allowed under this
38 section exceeds the “tax” for the taxable year, that portion of the
39 credit which exceeds the “tax” may be carried over and added to
40 the credit, if any, in succeeding years, until the credit is exhausted.

1 The credit shall be applied first to the earliest taxable years
2 possible.

3 (e) Any taxpayer who elects to be subject to this section shall
4 not be entitled to increase the basis of the property as otherwise
5 required by Section 164(a) of the Internal Revenue Code with
6 respect to sales or use tax paid or incurred in connection with the
7 purchase of qualified property.

8 (f) (1) The amount of the credit otherwise allowed under this
9 section and Section 23646, including any credit carryovers from
10 prior years, that may reduce the “tax” for the taxable year shall
11 not exceed the amount of tax that would be imposed on the
12 taxpayer’s business income attributed to a LAMBRA determined
13 as if that attributable income represented all the income of the
14 taxpayer subject to tax under this part.

15 (2) Attributable income shall be that portion of the taxpayer’s
16 California source business income that is apportioned to the
17 LAMBRA. For that purpose, the taxpayer’s business income that
18 is attributable to sources in this state shall first be determined in
19 accordance with Chapter 17 (commencing with Section 25101).
20 That business income shall be further apportioned to the LAMBRA
21 in accordance with Article 2 (commencing with Section 25120)
22 of Chapter 17, modified for purposes of this section in accordance
23 with paragraph (3).

24 (3) Income shall be apportioned to a LAMBRA by multiplying
25 the total California business income of the taxpayer by a fraction,
26 the numerator of which is the property factor, plus the payroll
27 factor, and the denominator of which is two. For purposes of this
28 paragraph:

29 (A) The property factor is a fraction, the numerator of which is
30 the average value of the taxpayer’s real and tangible personal
31 property owned or rented and used in the LAMBRA during the
32 taxable year, and the denominator of which is the average value
33 of all the taxpayer’s real and tangible personal property owned or
34 rented and used in this state during the taxable year.

35 (B) The payroll factor is a fraction, the numerator of which is
36 the total amount paid by the taxpayer in the LAMBRA during the
37 taxable year for compensation, and the denominator of which is
38 the total compensation paid by the taxpayer in this state during the
39 taxable year.

1 (4) The portion of any credit remaining, if any, after application
2 of this subdivision, shall be carried over to succeeding taxable
3 years, as if it were an amount exceeding the “tax” for the taxable
4 year, as provided in subdivision (d).

5 (g) If the qualified property is disposed of or no longer used by
6 the taxpayer in the LAMBRA, at any time before the close of the
7 second taxable year after the property is placed in service, the
8 amount of the credit previously claimed, with respect to that
9 property, shall be added to the taxpayer’s tax liability in the taxable
10 year of that disposition or nonuse.

11 (h) If the taxpayer is allowed a credit for qualified property
12 pursuant to this section, only one credit shall be allowed to the
13 taxpayer under this part with respect to that qualified property.

14 (i) The amendments made to this section by Section 83 of
15 Chapter 987 of the Statutes of 1999 shall apply to taxable years
16 beginning on or after January 1, 1998.

17 SEC. 7. Section 24356.8 of the Revenue and Taxation Code
18 is amended to read:

19 24356.8. (a) For each taxable year beginning on or after
20 January 1, 1995, a taxpayer may elect to treat 40 percent of the
21 cost of any Section 24356.8 property as an expense that is not
22 chargeable to the capital account. Any cost so treated shall be
23 allowed as a deduction for the taxable year in which the taxpayer
24 places the Section 24356.8 property in service.

25 (b) (1) An election under this section for any taxable year shall
26 meet both of the following requirements:

27 (A) Specify the items of Section 24356.8 property to which the
28 election applies and the portion of the cost of each of those items
29 that is to be taken into account under subdivision (a).

30 (B) Be made on the taxpayer’s return of the tax imposed by this
31 part for the taxable year.

32 (2) Any election made under this section, and any specification
33 contained in that election, may not be revoked except with the
34 consent of the Franchise Tax Board.

35 (c) (1) For purposes of this section, “Section 24356.8 property”
36 means any recovery property that is:

37 (A) Section 1245 property (as defined in Section 1245(a)(3) of
38 the Internal Revenue Code).

39 (B) Purchased by the taxpayer for exclusive use in a trade or
40 business conducted within a LAMBRA.

1 (C) Purchased before the date the LAMBRA designation expires,
2 is no longer binding, or becomes inoperative.

3 (2) For purposes of paragraph (1), “purchase” means any
4 acquisition of property, but only if all of the following apply:

5 (A) The property is not acquired from a person whose
6 relationship to the person acquiring it would result in the
7 disallowance of losses under Section 267 or 707(b) of the Internal
8 Revenue Code (but, in applying Sections 267(b) and 267(c) of the
9 Internal Revenue Code for purposes of this section, Section
10 267(c)(4) of the Internal Revenue Code shall be treated as
11 providing that the family of an individual shall include only his or
12 her spouse, ancestors, and lineal descendants).

13 (B) The property is not acquired by one component member of
14 an affiliated group from another component member of the same
15 affiliated group.

16 (C) The basis of the property in the hands of the person acquiring
17 it is not determined in whole or in part by reference to the adjusted
18 basis of that property in the hands of the person from whom
19 acquired.

20 (3) For purposes of this section, the cost of property does not
21 include so much of the basis of that property as is determined by
22 reference to the basis of other property held at any time by the
23 person acquiring that property.

24 (4) This section shall not apply to any property for which the
25 taxpayer may not make an election for the taxable year under
26 Section 179 of the Internal Revenue Code because of the provisions
27 of Section 179(d) of the Internal Revenue Code.

28 (5) For purposes of subdivision (b), both of the following apply:

29 (A) All members of an affiliated group shall be treated as one
30 taxpayer.

31 (B) The taxpayer shall apportion the dollar limitation contained
32 in subdivision (f) among the component members of the affiliated
33 group in whatever manner the board shall by regulations prescribe.

34 (6) For purposes of paragraphs (2) and (5), “affiliated group”
35 has the meaning assigned to it by Section 1504 of the Internal
36 Revenue Code, except that, for these purposes, the phrase “more
37 than 50 percent” shall be substituted for the phrase “at least 80
38 percent” each place it appears in Section 1504(a) of the Internal
39 Revenue Code.

1 (7) This section shall not apply to any property described in
2 Section 168(f) of the Internal Revenue Code.

3 (8) In the case of an “S” corporation, the dollar limitation
4 contained in subdivision (f) shall be applied at the entity level and
5 at the shareholder level.

6 (d) For purposes of this section:

7 (1) “LAMBRA” means a local agency military base recovery
8 area designated in accordance with the provisions of Section 7114
9 of the Government Code.

10 (2) “Taxpayer” means a corporation that conducts a trade or
11 business within a LAMBRA.

12 (e) Any taxpayer who elects to be subject to this section shall
13 not be entitled to claim additional depreciation pursuant to Section
14 24356 with respect to any property that constitutes Section 24356.8
15 property.

16 (f) The aggregate cost of all Section 24356.8 property that may
17 be taken into account under subdivision (a) for any taxable year
18 shall not exceed the following applicable amounts for the taxable
19 year of the designation of the relevant LAMBRA and taxable years
20 thereafter:

21		
22		The applicable
23		amount is:
24	Taxable year of designation.....	\$100,000
25	1st taxable year thereafter.....	100,000
26	2nd taxable year thereafter.....	75,000
27	3rd taxable year thereafter.....	75,000
28	Each taxable year thereafter.....	50,000

29
30 (g) This section shall apply only to property that is used
31 exclusively in a trade or business conducted within a LAMBRA.

32 (h) Any amounts deducted under subdivision (a) with respect
33 to property that ceases to be used in the trade or business within
34 a LAMBRA at any time before the close of the second taxable
35 year after the property was placed in service shall be included in
36 income for that year.

37 (i) Any taxpayer who elects to be subject to this section shall
38 not be entitled to claim for the same property the deduction under

- 1 Section 179 of the Internal Revenue Code, relating to an election
- 2 to expense certain depreciable business assets.

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