ASSEMBLY BILL No. 1439

Introduced by Assembly Member Levine

February 23, 2007

An act to add Sections 17053.15 and 23631 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

legislative counsel's digest

AB 1439, as introduced, Levine. Personal income tax and corporation tax laws: credits: employee fitness.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, 2008, in an amount equal to 10% of the amount paid or incurred by a qualified taxpayer, as defined, during the taxable year for qualified fitness expenditures, as defined, for the taxpayer's employees performing services in this state.

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:

SECTION 1. Section 17053.15 is added to the Revenue and Taxation Code, to read:

17053.15. (a) For each taxable year beginning on or after January 1, 2008, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to 10 percent of the amount paid or incurred by a qualified taxpayer during the taxable year for qualified fitness expenditures.

(b) For purposes of this section, both of the following definitions apply:

(1) (A) "Qualified fitness expenditures" means amounts paid on or incurred by a qualified taxpayer for any of the following:

(i) The costs of equipping, operating, and maintaining a facility owned by the taxpayer, located on the taxpayer's premises in this state, and used exclusively for the purpose of promoting the physical fitness of the taxpayer's employees in this state, including, but not limited to, a gymnasium, weight training room, aerobics workout space, swimming pool, running track, or any indoor or outdoor court, field, or other site used for competitive sports events or games.

(ii) The cost of equipping of, or providing any financial support to, an amateur athletic team that engages in vigorous athletic activity and is under the sponsorship of the taxpayer, either alone or jointly with one or more other employers, if the membership of the team consists entirely of the employees of the taxpayer in this state, or the taxpayer and another employer or employers with whom the taxpayer has joined to provide employee fitness equipment and financial support.

(iii) The cost of subsidizing an employee's membership with a health studio or a health club that is located in this state.

(iv) Fifty percent of the cost of employing a qualified person or an organization to provide, on the taxpayer's business premises in this state, either of the following services:

(I) Information and guidance on subjects relating to personal and family health, including, but not limited to, nutrition, hygiene, and methods of preventing, recognizing, and combating substance abuse.

(II) Instruction in, and opportunity for, fitness enhancements activity, including, but not limited to, dance or other aerobic exercise, yoga, muscle stretching, and martial arts routines.

(v) Costs incurred in connection with hiring an organization to operate an employee fitness facility, provide employee fitness equipment and financial support, or provide employee fitness instruction, on the taxpayer's premises in this state.

(B) For purposes of this paragraph, the following definitions apply:

(i) "Amateur athletic team" means a team of persons who engage in competitive athletic events for which no monetary remuneration is provided, all of whom are employed by the taxpayer or an employer with whom the taxpayer has joined to provide the employee fitness equipment and financial support.

(ii) "Qualified person" means a person certified by a recognized national organization to provide the instruction and information, as described in clause (iv) of subparagraph (A).

(iii) "Vigorous athletic activity" means exertion that makes a person sweat and breathe hard, such as basketball, soccer, running, swimming laps, fast bicycling, fast dancing, and similar aerobic activities.

(2) "Qualified taxpayer" means any employer that has employees in this state.

(c) The credit allowed by this section shall be in lieu of any deduction to which the taxpayer otherwise may be entitled for expenses on which a credit under this section is claimed.

(d) The credit allowed by this section to a qualified taxpayer may not exceed either of the following:

(1) Fifty percent of the qualified taxpayer's "net tax" for that taxable year.

(2) An amount that is equal to fifty dollars ($50) multiplied by the average number of taxpayer's full-time employees in this state as of the last day of the third, sixth, ninth, and twelfth months in that taxable year.

(e) When two or more qualified taxpayers jointly establish and operate an employee fitness facility, provide employee fitness equipment and financial support, or provide employee fitness instruction in accordance with this section, the participating taxpayers may apportion the total amount of the tax credit allowed by this section in any manner they consider appropriate, subject to any applicable regulations promulgated by the Franchise Tax Board, not to exceed the limitations imposed by subdivision (d).

(f) (1) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and in the six succeeding years if necessary, until the credit is exhausted.

(2) A qualified taxpayer that files an amended return may not receive any amount of credit, or credit carryover, pursuant to this section in excess of the amount claimed by the taxpayer on its

original return for the taxable year. This paragraph does not apply to increases in the amount of credit claimed under this section on an amended return due to the use of any credit amount previously carried forward for the taxable year on the original return or any eligible prior taxable year.

(g) Verification of payments to not-for-profit or for-profit corporation, or to a person who provides health or fitness instruction to a taxpayer's employees, must be in writing and must be retained by the taxpayer in support of the credit claimed on the tax return.

(h) Application for credit for payments made to construct or rehabilitate a facility used for the purpose of promoting the physical fitness of the taxpayer's employees in this state must be submitted to the Franchise Tax Board within six months after the local building inspector deems that the construction or rehabilitation of the facility is substantially completed. Application for credit for qualified fitness expenditures must be submitted to the Franchise Tax Board with the tax return on which the credit is claimed.

(i) The Franchise Tax Board shall prescribe rules and regulations necessary to administer this section, including the provisions of subdivision (e).

SEC. 2. Section 23631 is added to the Revenue and Taxation Code, to read:

23631. (a) For each taxable year beginning on or after January 1, 2008, there shall be allowed as a credit against the "tax," as defined in Section 23036, an amount equal to 10 percent of the amount paid or incurred by a qualified taxpayer during the taxable year for qualified fitness expenditures.

(b) For purposes of this section, both of the following definitions apply:

(1) (A) "Qualified fitness expenditures" means amounts paid on or incurred by a qualified taxpayer for any of the following:

(i) The costs of equipping, operating, and maintaining a facility owned by the taxpayer, located on the taxpayer's premises in this state, and used exclusively for the purpose of promoting the physical fitness of the taxpayer's employees in this state, including, but not limited to, a gymnasium, weight training room, aerobics workout space, swimming pool, running track, or any indoor or outdoor court, field, or other site used for competitive sports events or games.

(ii) The cost of equipping of, or providing any financial support to, an amateur athletic team that engages in vigorous athletic activity and is under the sponsorship of the taxpayer, either alone or jointly with one or more other employers, if the membership of the team consists entirely of the employees of the taxpayer in this state or the taxpayer and another employer or employers with whom the taxpayer has joined to provide employee fitness equipment and financial support.

(iii) The cost of subsidizing an employee's membership with a health studio or a health club that is located in this state.

(iv) Fifty percent of the cost of employing a qualified person or an organization to provide, on the taxpayer's business premises in this state, either of the following services:

(I) Information and guidance on subjects relating to personal and family health, including, but not limited to, nutrition, hygiene, and methods of preventing, recognizing, and combating substance abuse.

(II) Instruction in, and opportunity for, fitness enhancements activity, including, but not limited to, dance or other aerobic exercise, yoga, muscle stretching, and martial arts routines.

(v) Costs incurred in connection with hiring an organization to operate an employee fitness facility, provide employee fitness equipment and financial support, or provide employee fitness instruction, on the taxpayer's premises in this state.

(B) For purposes of this paragraph, the following definitions apply:

(i) "Amateur athletic team" means a team of persons who engage in competitive athletic events for which no monetary remuneration is provided, all of whom are employed by the taxpayer or an employer with whom the taxpayer has joined to provide the employee fitness equipment and financial support.

(ii) "Qualified person" means a person certified by a recognized national organization to provide the instruction and information, as described in clause (iv) of subparagraph (A).

(iii) "Vigorous athletic activity" means exertion that makes a person sweat and breathe hard, such as basketball, soccer, running, swimming laps, fast bicycling, fast dancing, and similar aerobic activities.

(2) "Qualified taxpayer" means any employer that has employees in this state.

(c) The credit allowed by this section shall be in lieu of any deduction to which the taxpayer otherwise may be entitled for expenses on which a credit under this section is claimed.

(d) The credit allowed by this section to a qualified taxpayer may not exceed either of the following:

(1) Fifty percent of the qualified taxpayer's "tax" for that taxable year.

(2) An amount that is equal to fifty dollars ($50) multiplied by the average number of taxpayer's full-time employees in this state as of the last day of the third, sixth, ninth, and twelfth months in that taxable year.

(e) When two or more qualified taxpayers jointly establish and operate an employee fitness facility, provide employee fitness equipment and financial support, or provide employee fitness instruction in accordance with this section, the participating taxpayers may apportion the total amount of the tax credit allowed by this section in any manner they consider appropriate, subject to any applicable regulations promulgated by the Franchise Tax Board, not to exceed the limitations imposed by subdivision (d).

(f) (1) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and in the six succeeding years if necessary, until the credit is exhausted.

(2) A qualified taxpayer that files an amended return may not receive any amount of credit or credit carryover pursuant to this section in excess of the amount claimed by the taxpayer on its original return for the taxable year. This paragraph does not apply to increases in the amount of credit claimed under this section on an amended return due to the use of any credit amount previously carried forward for the taxable year on the original return or any eligible prior taxable year.

(g) Verification of payments to not-for-profit or for-profit corporation, or to a person who provides health or fitness instruction to a taxpayer's employees, must be in writing and must be retained by the taxpayer in support of the credit claimed on the tax return.

(h) Application for credit for payments made to construct or rehabilitate a facility used for the purpose of promoting the physical fitness of the taxpayer's employees in this state must be submitted to the Franchise Tax Board within six months after the local building inspector deems that the construction or rehabilitation of the facility is substantially completed. Application for credit for qualified fitness expenditures must be submitted to the Franchise Tax Board with the tax return on which the credit is claimed.

(i) The Franchise Tax Board shall prescribe rules and regulations necessary to administer this section, including the provisions of subdivision (e).

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

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