

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:

- 1 SECTION 1. Section 17053.15 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17053.15. (a) For each taxable year beginning on or after
- 4 January 1, 2008, there shall be allowed as a credit against the "net
- 5 tax," as defined in Section 17039, an amount equal to 10 percent

1 of the amount paid or incurred by a qualified taxpayer during the
2 taxable year for qualified fitness expenditures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 23631. (a) For each taxable year beginning on or after January
25 1, 2008, there shall be allowed as a credit against the "tax," as
26 defined in Section 23036, an amount equal to 10 percent of the
27 amount paid or incurred by a qualified taxpayer during the taxable
28 year for qualified fitness expenditures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (h) Application for credit for payments made to construct or
38 rehabilitate a facility used for the purpose of promoting the physical
39 fitness of the taxpayer's employees in this state must be submitted
40 to the Franchise Tax Board within six months after the local

1 building inspector deems that the construction or rehabilitation of
2 the facility is substantially completed. Application for credit for
3 qualified fitness expenditures must be submitted to the Franchise
4 Tax Board with the tax return on which the credit is claimed.

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

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

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