

ASSEMBLY BILL

No. 1139

Introduced by Assembly Member John A. Perez

February 27, 2009

An act to amend Sections 17053.74 and 23634 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1139, as introduced, John A. Perez. Income taxes: credits: enterprise zones.

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. Qualified employees includes, for purposes of the credit, an ex-offender, as defined.

This bill would revise the definition of “qualified employee” for this purpose, by providing that an ex-offender includes an individual who has been convicted of a felony or a misdemeanor offense punishable by incarceration, or a person charged with a felony or misdemeanor punishable by incarceration but placed on probation without a finding of guilt, with specified exclusions. This bill would also make technical, nonsubstantive changes to remove obsolete references in the credit provisions.

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 17053.74 of the Revenue and Taxation Code is amended to read:

17053.74. (a) There shall be allowed a credit against the “net tax” (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

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

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

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

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

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

(b) For purposes of this section:

(1) “Qualified wages” means:

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

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

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

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who

1 are employed by the taxpayer within the enterprise zone within
2 the 60-month period prior to the zone expiration date shall continue
3 to qualify for the credit under this section after the zone expiration
4 date, in accordance with all provisions of this section applied as
5 if the enterprise zone designation were still in existence and
6 binding.

7 (2) "Minimum wage" means the wage established by the
8 Industrial Welfare Commission as provided for in Chapter 1
9 (commencing with Section 1171) of Part 4 of Division 2 of the
10 Labor Code.

11 (3) "Zone expiration date" means the date the enterprise zone
12 designation expires, is no longer binding, or becomes inoperative.

13 (4) (A) "Qualified employee" means an individual who meets
14 all of the following requirements:

15 (i) At least 90 percent of whose services for the taxpayer during
16 the taxable year are directly related to the conduct of the taxpayer's
17 trade or business located in an enterprise zone.

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

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

22 (iv) Is any of the following:

23 (I) Immediately preceding the qualified employee's
24 commencement of employment with the taxpayer, was a person
25 eligible for services under the federal Job Training Partnership
26 Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving,
27 or is eligible to receive, subsidized employment, training, or
28 services funded by the federal Job Training Partnership Act, or its
29 successor.

30 (II) Immediately preceding the qualified employee's
31 commencement of employment with the taxpayer, was a person
32 eligible to be a voluntary or mandatory registrant under the Greater
33 Avenues for Independence Act of 1985 (GAIN) provided for
34 pursuant to Article 3.2 (commencing with Section 11320) of
35 Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions
36 Code, or its successor.

37 (III) Immediately preceding the qualified employee's
38 commencement of employment with the taxpayer, was an
39 economically disadvantaged individual 14 years of age or older.

1 (IV) Immediately preceding the qualified employee's
2 commencement of employment with the taxpayer, was a dislocated
3 worker who meets any of the following:

4 ~~(aa)~~

5 *(ia)* Has been terminated or laid off or who has received a notice
6 of termination or layoff from employment, is eligible for or has
7 exhausted entitlement to unemployment insurance benefits, and
8 is unlikely to return to his or her previous industry or occupation.

9 ~~(bb)~~

10 *(ib)* Has been terminated or has received a notice of termination
11 of employment as a result of any permanent closure or any
12 substantial layoff at a plant, facility, or enterprise, including an
13 individual who has not received written notification but whose
14 employer has made a public announcement of the closure or layoff.

15 ~~(cc)~~

16 *(ic)* Is long-term unemployed and has limited opportunities for
17 employment or reemployment in the same or a similar occupation
18 in the area in which the individual resides, including an individual
19 55 years of age or older who may have substantial barriers to
20 employment by reason of age.

21 ~~(dd)~~

22 *(id)* Was self-employed (including farmers and ranchers) and
23 is unemployed as a result of general economic conditions in the
24 community in which he or she resides or because of natural
25 disasters.

26 ~~(ee)~~

27 *(ie)* Was a civilian employee of the Department of Defense
28 employed at a military installation being closed or realigned under
29 the Defense Base Closure and Realignment Act of 1990.

30 ~~(ff)~~

31 *(if)* Was an active member of the armed forces or National Guard
32 as of September 30, 1990, and was either involuntarily separated
33 or separated pursuant to a special benefits program.

34 ~~(gg)~~

35 *(ig)* Is a seasonal or migrant worker who experiences chronic
36 seasonal unemployment and underemployment in the agriculture
37 industry, aggravated by continual advancements in technology and
38 mechanization.

39 ~~(hh)~~

1 (ih) Has been terminated or laid off, or has received a notice of
2 termination or layoff, as a consequence of compliance with the
3 Clean Air Act.

4 (V) Immediately preceding the qualified employee's
5 commencement of employment with the taxpayer, was a disabled
6 individual who is eligible for or enrolled in, or has completed a
7 state rehabilitation plan or is a service-connected disabled veteran,
8 veteran of the Vietnam era, or veteran who is recently separated
9 from military service.

10 (VI) Immediately preceding the qualified employee's
11 commencement of employment with the taxpayer, was an
12 ex-offender. ~~An individual shall be treated as convicted if he or~~
13 ~~she was placed on probation by a state court without a finding of~~
14 ~~guilt.~~ *An ex-offender means an individual who has been convicted*
15 *of a felony or a misdemeanor offense punishable by incarceration*
16 *or a person charged with a felony offense or a misdemeanor offense*
17 *punishable by incarceration but placed on probation by a state*
18 *court without a finding of guilt. Ex-offender shall not include an*
19 *individual whose record has been expunged.*

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

23 ~~(aa)~~

24 (ia) Federal Supplemental Security Income benefits.

25 ~~(bb) Aid to Families with Dependent Children.~~

26 (ib) *Temporary Assistance for Needy Families.*

27 ~~(cc)~~

28 (ic) Food stamps.

29 ~~(dd)~~

30 (id) State and local general assistance.

31 (VIII) Immediately preceding the qualified employee's
32 commencement of employment with the taxpayer, was a member
33 of a federally recognized Indian tribe, band, or other group of
34 Native American descent.

35 (IX) Immediately preceding the qualified employee's
36 commencement of employment with the taxpayer, was a resident
37 of a targeted employment area, as defined in Section 7072 of the
38 Government Code.

1 (X) An employee who qualified the taxpayer for the enterprise
2 zone hiring credit under former Section 17053.8 or the program
3 area hiring credit under former Section 17053.11.

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

8 (B) Priority for employment shall be provided to an individual
9 who is enrolled in a qualified program under the federal ~~Job~~
10 ~~Training Partnership Workforce Investment Act~~ or the ~~Greater~~
11 ~~Avenues for Independence Act of 1985~~ *California Work*
12 *Opportunity and Responsibility to Kids Act (CalWorks)* or who is
13 eligible as a member of a targeted group under the Work
14 Opportunity Tax Credit (Section 51 of the Internal Revenue Code),
15 or its successor.

16 (5) "Taxpayer" means a person or entity engaged in a trade or
17 business within an enterprise zone designated pursuant to Chapter
18 12.8 (commencing with Section 7070) of the Government Code.

19 (6) "Seasonal employment" means employment by a taxpayer
20 that has regular and predictable substantial reductions in trade or
21 business operations.

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

23 (1) Obtain from the Employment Development Department, as
24 permitted by federal law, the local county or city ~~Job Training~~
25 ~~Partnership Workforce Investment Act~~ administrative entity, the
26 local county ~~GAIN~~ *CalWorks* office or social services agency, or
27 the local government administering the enterprise zone, a
28 certification which provides that a qualified employee meets the
29 eligibility requirements specified in clause (iv) of subparagraph
30 (A) of paragraph (4) of subdivision (b). The Employment
31 Development Department may provide preliminary screening and
32 referral to a certifying agency. The Employment Development
33 Department shall develop a form for this purpose. The Department
34 of Housing and Community Development shall develop regulations
35 governing the issuance of certificates by local governments
36 pursuant to subdivision (a) of Section 7086 of the Government
37 Code.

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

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

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

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

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

11 (2) If an employer acquires the major portion of a trade or
12 business of another employer—~~hereinafter~~ *hereafter* in this
13 paragraph referred to as the “predecessor”) or the major portion
14 of a separate unit of a trade or business of a predecessor, then, for
15 purposes of applying this section (other than subdivision (e)) for
16 any calendar year ending after that acquisition, the employment
17 relationship between a qualified employee and an employer shall
18 not be treated as terminated if the employee continues to be
19 employed in that trade or business.

20 (e) (1) (A) If the employment, other than seasonal employment,
21 of any qualified employee, with respect to whom qualified wages
22 are taken into account under subdivision (a) is terminated by the
23 taxpayer at any time during the first 270 days of that employment
24 (whether or not consecutive) or before the close of the 270th
25 calendar day after the day in which that employee completes 90
26 days of employment with the taxpayer, the tax imposed by this
27 part for the taxable year in which that employment is terminated
28 shall be increased by an amount equal to the credit allowed under
29 subdivision (a) for that taxable year and all prior taxable years
30 attributable to qualified wages paid or incurred with respect to that
31 employee.

32 (B) If the seasonal employment of any qualified employee, with
33 respect to whom qualified wages are taken into account under
34 subdivision (a) is not continued by the taxpayer for a period of
35 270 days of employment during the 60-month period beginning
36 with the day the qualified employee commences seasonal
37 employment with the taxpayer, the tax imposed by this part, for
38 the taxable year that includes the 60th month following the month
39 in which the qualified employee commences seasonal employment
40 with the taxpayer, shall be increased by an amount equal to the

1 credit allowed under subdivision (a) for that taxable year and all
2 prior taxable years attributable to qualified wages paid or incurred
3 with respect to that qualified employee.

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

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

8 (ii) A termination of employment of a qualified employee who,
9 before the close of the period referred to in paragraph (1), becomes
10 disabled and unable to perform the services of that employment,
11 unless that disability is removed before the close of that period
12 and the taxpayer fails to offer reemployment to that employee.

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

17 (iv) A termination of employment of a qualified employee due
18 to a substantial reduction in the trade or business operations of the
19 taxpayer.

20 (v) A termination of employment of a qualified employee, if
21 that employee is replaced by other qualified employees so as to
22 create a net increase in both the number of employees and the
23 hours of employment.

24 (B) Subparagraph (B) of paragraph (1) shall not apply to any
25 of the following:

26 (i) A failure to continue the seasonal employment of a qualified
27 employee who voluntarily fails to return to the seasonal
28 employment of the taxpayer.

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

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

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

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

8 (C) For purposes of paragraph (1), the employment relationship
9 between the taxpayer and a qualified employee shall not be treated
10 as terminated by reason of a mere change in the form of conducting
11 the trade or business of the taxpayer, if the qualified employee
12 continues to be employed in that trade or business and the taxpayer
13 retains a substantial interest in that trade or business.

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

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

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

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

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

28 (h) The credit allowable under this section shall be reduced by
29 the credit allowed under Sections 17053.10, 17053.17 and 17053.46
30 claimed for the same employee. The credit shall also be reduced
31 by the federal credit allowed under Section 51 of the Internal
32 Revenue Code.

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

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

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

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

10 (2) Attributable income shall be that portion of the taxpayer’s
11 California source business income that is apportioned to the
12 enterprise zone. For that purpose, the taxpayer’s business income
13 attributable to sources in this state first shall be determined in
14 accordance with Chapter 17 (commencing with Section 25101) of
15 Part 11. That business income shall be further apportioned to the
16 enterprise zone in accordance with Article 2 (commencing with
17 Section 25120) of Chapter 17 of Part 11, modified for purposes
18 of this section in accordance with paragraph (3).

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

24 (A) The property factor is a fraction, the numerator of which is
25 the average value of the taxpayer’s real and tangible personal
26 property owned or rented and used in the enterprise zone during
27 the taxable year, and the denominator of which is the average value
28 of all the taxpayer’s real and tangible personal property owned or
29 rented and used in this state during the taxable year.

30 (B) The payroll factor is a fraction, the numerator of which is
31 the total amount paid by the taxpayer in the enterprise zone during
32 the taxable year for compensation, and the denominator of which
33 is the total compensation paid by the taxpayer in this state during
34 the taxable year.

35 (4) The portion of any credit remaining, if any, after application
36 of this subdivision, shall be carried over to succeeding taxable
37 years, as if it were an amount exceeding the “net tax” for the
38 taxable year, as provided in subdivision (i).

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

4 SEC. 2. Section 23634 of the Revenue and Taxation Code is
5 amended to read:

6 23634. (a) For each taxable year beginning on or after January
7 1, 1998, there shall be allowed a credit against the “tax” (as defined
8 by Section 23036) to a qualified taxpayer who employs a qualified
9 employee in a targeted tax area during the taxable year. The credit
10 shall be equal to the sum of each of the following:

11 (1) Fifty percent of qualified wages in the first year of
12 employment.

13 (2) Forty percent of qualified wages in the second year of
14 employment.

15 (3) Thirty percent of qualified wages in the third year of
16 employment.

17 (4) Twenty percent of qualified wages in the fourth year of
18 employment.

19 (5) Ten percent of qualified wages in the fifth year of
20 employment.

21 (b) For purposes of this section:

22 (1) “Qualified wages” means:

23 (A) That portion of wages paid or incurred by the qualified
24 taxpayer during the taxable year to qualified employees that does
25 not exceed 150 percent of the minimum wage.

26 (B) Wages received during the 60-month period beginning with
27 the first day the employee commences employment with the
28 qualified taxpayer. Reemployment in connection with any increase,
29 including a regularly occurring seasonal increase, in the trade or
30 business operations of the qualified taxpayer does not constitute
31 commencement of employment for purposes of this section.

32 (C) Qualified wages do not include any wages paid or incurred
33 by the qualified taxpayer on or after the targeted tax area expiration
34 date. However, wages paid or incurred with respect to qualified
35 employees who are employed by the qualified taxpayer within the
36 targeted tax area within the 60-month period prior to the targeted
37 tax area expiration date shall continue to qualify for the credit
38 under this section after the targeted tax area expiration date, in
39 accordance with all provisions of this section applied as if the
40 targeted tax area designation were still in existence and binding.

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

(3) “Targeted tax area expiration date” means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

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

(i) At least 90 percent of his or her services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer’s trade or business located in a targeted tax area.

(ii) Performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in a targeted tax area.

(iii) Is hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area.

(iv) Is any of the following:

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

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

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

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

(aa)

1 ~~(ia)~~ Has been terminated or laid off or who has received a notice
2 of termination or layoff from employment, is eligible for or has
3 exhausted entitlement to unemployment insurance benefits, and
4 is unlikely to return to his or her previous industry or occupation.

5 ~~(bb)~~

6 ~~(ib)~~ Has been terminated or has received a notice of termination
7 of employment as a result of any permanent closure or any
8 substantial layoff at a plant, facility, or enterprise, including an
9 individual who has not received written notification but whose
10 employer has made a public announcement of the closure or layoff.

11 ~~(ee)~~

12 ~~(ic)~~ Is long-term unemployed and has limited opportunities for
13 employment or reemployment in the same or a similar occupation
14 in the area in which the individual resides, including an individual
15 55 years of age or older who may have substantial barriers to
16 employment by reason of age.

17 ~~(dd)~~

18 ~~(id)~~ Was self-employed (including farmers and ranchers) and
19 is unemployed as a result of general economic conditions in the
20 community in which he or she resides or because of natural
21 disasters.

22 ~~(ee)~~

23 ~~(ie)~~ Was a civilian employee of the Department of Defense
24 employed at a military installation being closed or realigned under
25 the Defense Base Closure and Realignment Act of 1990.

26 ~~(ff)~~

27 ~~(if)~~ Was an active member of the Armed Forces or National
28 Guard as of September 30, 1990, and was either involuntarily
29 separated or separated pursuant to a special benefits program.

30 ~~(gg)~~

31 ~~(ig)~~ Is a seasonal or migrant worker who experiences chronic
32 seasonal unemployment and underemployment in the agriculture
33 industry, aggravated by continual advancements in technology and
34 mechanization.

35 ~~(hh)~~

36 ~~(ih)~~ Has been terminated or laid off, or has received a notice of
37 termination or layoff, as a consequence of compliance with the
38 Clean Air Act.

39 (V) Immediately preceding the qualified employee's
40 commencement of employment with the qualified taxpayer, was

1 a disabled individual who is eligible for or enrolled in, or has
2 completed a state rehabilitation plan or is a service-connected
3 disabled veteran, veteran of the Vietnam era, or veteran who is
4 recently separated from military service.

5 (VI) Immediately preceding the qualified employee's
6 commencement of employment with the qualified taxpayer, was
7 an ex-offender. ~~An individual shall be treated as convicted if he~~
8 ~~or she was placed on probation by a state court without a finding~~
9 ~~of guilt. An ex-offender means an individual who has been convicted~~
10 ~~of a felony or a misdemeanor offense punishable by incarceration~~
11 ~~or an individual charged with a felony offense or a misdemeanor~~
12 ~~offense punishable by incarceration but placed on probation by a~~
13 ~~state court without a finding of guilt. Ex-offender does not include~~
14 ~~an individual whose record has been expunged.~~

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

18 ~~(aa)~~

19 *(ia) Federal Supplemental Security Income benefits.*

20 ~~(bb) Aid to Families with Dependent Children.~~

21 *(ib) Temporary Assistance for Needy Families.*

22 ~~(cc)~~

23 *(ic) Food stamps.*

24 ~~(dd)~~

25 *(id) State and local general assistance.*

26 (VIII) Immediately preceding the qualified employee's
27 commencement of employment with the qualified taxpayer, was
28 a member of a federally recognized Indian tribe, band, or other
29 group of Native American descent.

30 (IX) Immediately preceding the qualified employee's
31 commencement of employment with the qualified taxpayer, was
32 a resident of a targeted tax area.

33 (X) Immediately preceding the qualified employee's
34 commencement of employment with the taxpayer, was a member
35 of a targeted group, as defined in Section 51(d) of the Internal
36 Revenue Code, or its successor.

37 (B) Priority for employment shall be provided to an individual
38 who is enrolled in a qualified program under the federal ~~Job~~
39 ~~Training Partnership Workforce Training Act~~ or the ~~Greater~~
40 ~~Avenues for Independence Act of 1985~~ *California Work*

Opportunity and Responsibility to Kids Act (CalWorks) or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) (A) “Qualified taxpayer” means a person or entity that meets both of the following:

(i) Is engaged in a trade or business within a targeted tax area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(ii) Is engaged in those lines of business described in Codes 2000 to 2099, inclusive; 2200 to 3999, inclusive; 4200 to 4299, inclusive; 4500 to 4599, inclusive; and 4700 to 5199, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(B) In the case of any passthrough entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 17053.34 shall be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term “passthrough entity” means any partnership or S corporation.

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

(c) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from the Employment Development Department, as permitted by federal law, the local county or city ~~Job Training Partnership~~ *Workforce Investment Act* administrative entity, the local county ~~GAIN~~ *CalWorks* office or social services agency, or the local government administering the targeted tax area, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Department of Housing and

1 Community Development shall develop regulations for the issuance
2 of certificates pursuant to subdivision (g) of Section 7097 of the
3 Government Code, and shall develop forms for this purpose.

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

6 (e) (1) For purposes of this section:

7 (A) All employees of all corporations that are members of the
8 same controlled group of corporations shall be treated as employed
9 by a single taxpayer.

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

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

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

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

23 (2) If an employer acquires the major portion of a trade or
24 business of another employer—~~hereinafter~~ *hereafter* in this
25 paragraph referred to as the “predecessor”) or the major portion
26 of a separate unit of a trade or business of a predecessor, then, for
27 purposes of applying this section (other than subdivision (f)) for
28 any calendar year ending after that acquisition, the employment
29 relationship between a qualified employee and an employer shall
30 not be treated as terminated if the employee continues to be
31 employed in that trade or business.

32 (f) (1) (A) If the employment, other than seasonal employment,
33 of any qualified employee with respect to whom qualified wages
34 are taken into account under subdivision (a) is terminated by the
35 qualified taxpayer at any time during the first 270 days of that
36 employment (whether or not consecutive) or before the close of
37 the 270th calendar day after the day in which that employee
38 completes 90 days of employment with the qualified taxpayer, the
39 tax imposed by this part for the taxable year in which that
40 employment is terminated shall be increased by an amount equal

1 to the credit allowed under subdivision (a) for that taxable year
2 and all prior taxable years attributable to qualified wages paid or
3 incurred with respect to that employee.

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

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

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

20 (ii) A termination of employment of a qualified employee who,
21 before the close of the period referred to in subparagraph (A) of
22 paragraph (1), becomes disabled and unable to perform the services
23 of that employment, unless that disability is removed before the
24 close of that period and the qualified taxpayer fails to offer
25 reemployment to that employee.

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

30 (iv) A termination of employment of a qualified employee due
31 to a substantial reduction in the trade or business operations of the
32 taxpayer.

33 (v) A termination of employment of a qualified employee, if
34 that employee is replaced by other qualified employees so as to
35 create a net increase in both the number of employees and the
36 hours of employment.

37 (B) Subparagraph (B) of paragraph (1) shall not apply to any
38 of the following:

1 (i) A failure to continue the seasonal employment of a qualified
2 employee who voluntarily fails to return to the seasonal
3 employment of the qualified taxpayer.

4 (ii) A failure to continue the seasonal employment of a qualified
5 employee who, before the close of the period referred to in
6 subparagraph (B) of paragraph (1), becomes disabled and unable
7 to perform the services of that seasonal employment, unless that
8 disability is removed before the close of that period and the
9 qualified taxpayer fails to offer seasonal employment to that
10 qualified employee.

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

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

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

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

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

29 (ii) By reason of a mere change in the form of conducting the
30 trade or business of the qualified taxpayer, if the qualified
31 employee continues to be employed in that trade or business and
32 the qualified taxpayer retains a substantial interest in that trade or
33 business.

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

37 (g) Rules similar to the rules provided in Sections 46(e) and (h)
38 of the Internal Revenue Code shall apply to both of the following:

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

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

3 (h) For purposes of this section, “targeted tax area” means an
4 area designated pursuant to Chapter 12.93 (commencing with
5 Section 7097) of Division 7 of Title 1 of the Government Code.

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

12 (j) (1) The amount of the credit otherwise allowed under this
13 section and Section 23633, including any credit carryover from
14 prior years, that may reduce the “tax” for the taxable year shall
15 not exceed the amount of tax that would be imposed on the
16 qualified taxpayer’s business income attributable to the targeted
17 tax area determined as if that attributable income represented all
18 of the income of the qualified taxpayer subject to tax under this
19 part.

20 (2) Attributable income shall be that portion of the taxpayer’s
21 California source business income that is apportioned to the
22 targeted tax area. For that purpose, the taxpayer’s business income
23 attributable to sources in this state first shall be determined in
24 accordance with Chapter 17 (commencing with Section 25101).
25 That business income shall be further apportioned to the targeted
26 tax area in accordance with Article 2 (commencing with Section
27 25120) of Chapter 17, modified for purposes of this section in
28 accordance with paragraph (3).

29 (3) Business income shall be apportioned to the targeted tax
30 area by multiplying the total California business income of the
31 taxpayer by a fraction, the numerator of which is the property
32 factor plus the payroll factor, and the denominator of which is two.
33 For purposes of this paragraph:

34 (A) The property factor is a fraction, the numerator of which is
35 the average value of the taxpayer’s real and tangible personal
36 property owned or rented and used in the targeted tax area during
37 the taxable year, and the denominator of which is the average value
38 of all the taxpayer’s real and tangible personal property owned or
39 rented and used in this state during the taxable year.

1 (B) The payroll factor is a fraction, the numerator of which is
2 the total amount paid by the taxpayer in the targeted tax area during
3 the taxable year for compensation, and the denominator of which
4 is the total compensation paid by the taxpayer in this state during
5 the taxable year.

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

10 (5) In the event that a credit carryover is allowable under
11 subdivision (h) for any taxable year after the targeted tax area
12 designation has expired or been revoked, the targeted tax area shall
13 be deemed to remain in existence for purposes of computing the
14 limitation specified in this subdivision.

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