AMENDED IN ASSEMBLY APRIL 13, 2009

california legislature—2009–10 regular session

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 amended, 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 credit based on "qualified wages," which, except as specified, is that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150% of the minimum wage, for qualified taxpayers who hire qualified employees within enterprise zones, subject to specific criteria. Existing law requires a taxpayer to obtain, from specified agencies, a certification providing that a qualified employee meets the requirements of the credit.

This bill would revise the definition of "qualified wages" for purposes of the credit to provide that qualified wages include that portion of wages paid or incurred by the taxpayer that do not exceed ____% of the minimum wage and to further revise the definition to provide that qualified wages include that portion of wages paid or incurred by the taxpayer that do not exceed ____% of the minimum wage for qualified employees that the qualified employer employs for at least 35 hours per week and for whom the taxpayer pays for at least 80% of specified forms of health care coverage. This bill would also revise the definition *of "qualified employee" by removing, as an element of eligibility as a qualified employee, residency in a targeted employment or targeted tax area. Additionally, this bill would require taxpayers to apply for, and obtain, the certification of a qualified employee within 21 days of the date of hire of the qualified employee. This bill would also require taxpayers to annually report specified information regarding qualified employees to certifying agencies which then must compile and report that information to the Department of Housing and Community Development, for an annual report presented by the department to the Legislature.*

~~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) *or (iii)*, 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.

(iii) "Qualified wages" means that portion of wages paid or incurred by the taxpayer during the taxable year that does not exceed ____ percent of the minimum wage for a qualified employee that the qualified employer employs for at least 35 hours per week and for whom the taxpayer pays for at least 80 percent of any of the following:

(I) Health care coverage that meets the minimum requirements set forth in Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(II) A group health insurance policy, as defined in subdivision (b) of Section 106 of the Insurance Code, that covers hospital, surgical, and medical care expenses, provided the maximum out-of-pocket costs for insureds do not exceed the maximum out-of-pocket costs for enrollees of health care service plans providing benefits under a preferred provider organization policy. For purposes of this section, a group health insurance policy shall not include Medicare supplement, vision-only, dental-only, Champus-supplement insurance, hospital indemnity, accident-only, or specified disease insurance that pays benefits on a fixed benefit, cash-payment-only basis.

(III) Any Taft-Hartley health and welfare fund or any other lawful collective bargaining agreement that provides for health and welfare coverage for collective bargaining unit or other employees thereby covered.

(IV) Any employer-sponsored group health plan meeting the requirements of the federal Employee Income Security Act of 1974, provided it meets the benefits required under subclause (I) or (II) of this clause.

(V) A multiple employer welfare agreement established pursuant to Section 742.20 of the Insurance Code, provided that its benefits have not changed after January 1, 2004, or that it meets the benefits required under subclause (I) or (II) of this clause.

(VI) Coverage provided under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22850) of Division 5 of Title 2 of the Government Code), provided it meets the benefits required under subclause (I) or (II) of this clause or is otherwise collectively bargained.

(VII) Health coverage provided by the University of California to students of the University of California who are also employed by the University of California.

(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 are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone 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) "Zone expiration date" means the date the enterprise zone designation expires, 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 whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

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

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

(iv) Is any of the following:

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

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

~~(aa)~~

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

~~(bb)~~

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

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

~~(cc)~~

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

~~(dd)~~

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

~~(ee)~~

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

~~(ff)~~

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

~~(gg)~~

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

~~(hh)~~

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

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

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

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

~~(aa)~~

(ia) Federal Supplemental Security Income benefits.

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

(ib) Temporary Assistance for Needy Families.

~~(cc)~~

(ic) Food stamps.

~~(dd)~~

(id) State and local general assistance.

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

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

~~(X)~~

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

~~(XI)~~

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

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal ~~Job Training Partnership~~ *Workforce Investment* Act or the ~~Greater Avenues for Independence Act of 1985~~ *California Work Opportunity and Responsibility to Kids Act* 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) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

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

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

(1) *(A)* Obtain*, within 21 days from the commencement date of employment*, 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 enterprise zone, a certification which 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 Employment Development Department shall develop a form for this purpose. The Department of Housing and Community Development shall develop regulations governing the issuance of certificates by local governments pursuant to subdivision (a) of Section 7086 of the Government Code.

(B) Applications for certification must be submitted to the certifying agency within 21 days of the commencement date of employment for the employee. The certifying agency shall not provide a certification for any employee whose employment commenced more than 21 days before the taxpayer requests a certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(l) (1) On or before March 1 of the calendar year following the calendar year in which a taxpayer obtained the certification required by subdivision (c), and every year thereafter, the taxpayer must report to the certifying entity the following information for each qualified employee:

(A) Total wages or other compensation paid to the qualified employee.

(B) The type of work performed by the qualified employee.

(C) The length of employment of the qualified employee.

(D) Any benefits provided by the taxpayer to the qualified employee.

(2) A certifying entity may refuse to issue a certification for a subsequently hired qualified employee to a taxpayer if a taxpayer has failed to report the information required by paragraph (1) for qualified employees who have already been certified.

(m) The amendments made to this section by the act adding subdivision shall apply to taxable years beginning on or after January 1, 2010, and to vouchers for hiring credits issued on or after January 1, 2010.

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

23634. (a) For each taxable year beginning on or after January 1, 1998, there shall be allowed a credit against the "tax" (as defined by Section 23036) to a qualified taxpayer who employs a qualified employee in a targeted tax area 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) ~~That~~ *(i) Except as provided in clause (ii), that* portion of wages paid or incurred by the qualified taxpayer during the taxable year to qualified employees that does not exceed ~~150~~ ____ percent of the minimum wage.

(ii) "Qualified wages" means that portion of wages paid or incurred by the taxpayer during the taxable year that does not exceed ____ percent of the minimum wage for qualified employees that the qualified employer employs for at least 35 hours per week and for whom the taxpayer pays for at least 80 percent of any of the following:

(I) Health care coverage that meets the minimum requirements set forth in Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(II) A group health insurance policy, as defined in subdivision (b) of Section 106 of the Insurance Code, that covers hospital, surgical, and medical care expenses, provided the maximum out-of-pocket costs for insureds do not exceed the maximum out-of-pocket costs for enrollees of health care service plans providing benefits under a preferred provider organization policy. For purposes of this section, a group health insurance policy shall not include Medicare supplement, vision-only, dental-only, Champus-supplement insurance, hospital indemnity, accident-only, or specified disease insurance that pays benefits on a fixed benefit, cash-payment-only basis.

(III) Any Taft-Hartley health and welfare fund or any other lawful collective bargaining agreement that provides for health and welfare coverage for collective bargaining unit or other employees thereby covered.

(IV) Any employer-sponsored group health plan meeting the requirements of the federal Employee Income Security Act of 1974, provided it meets the benefits required under subclause (I) or (II) of this clause.

(V) A multiple employer welfare agreement established pursuant to Section 742.20 of the Insurance Code, provided that its benefits have not changed after January 1, 2004, or that it meets the benefits required under subclause (I) or (II) of this clause.

(VI) Coverage provided under the Public Employees' Medical and Hospital Care Act (Part 5 (commencing with Section 22850) of Division 5 of Title 2 of the Government Code), provided it meets the benefits required under subclause (I) or (II) of this clause or is otherwise collectively bargained.

(VII) Health coverage provided by the University of California to students of the University of California who are also employed by the University of California.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified 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 qualified taxpayer on or after the targeted tax area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the 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)~~

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

~~(bb)~~

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

~~(cc)~~

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

~~(dd)~~

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

~~(ee)~~

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

~~(ff)~~

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

~~(gg)~~

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

~~(hh)~~

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

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

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

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

~~(aa)~~

(ia) Federal Supplemental Security Income benefits.

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

(ib) Temporary Assistance for Needy Families.

~~(cc)~~

(ic) Food stamps.

~~(dd)~~

(id) State and local general assistance.

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

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

~~(X)~~

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

of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal ~~Job Training Partnership~~ *Workforce Training* Act or the ~~Greater Avenues for Independence Act of 1985~~ *California Work Opportunities and Responsibility to Kids Act* 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) *(A)* Obtain, *within 21 days of the commencement date of employment*, 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 Community Development shall develop regulations for the issuance of certificates pursuant to subdivision (g) of Section 7097 of the Government Code, and shall develop forms for this purpose.

(B) Applications for certification must be submitted to the certifying agency within 21 days of the commencement date of employment for the employee. The certifying agency shall not provide a certification for any employee whose employment commenced more than 21 days before the taxpayer requests a certification.

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

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

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

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

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

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

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

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (f)) for any calendar year ending after that acquisition, the employment relationship between a

qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(k) (1) On or before March 1 of the calendar year following the calendar year in which a taxpayer obtained the certification required by subdivision (c), and every year thereafter, the taxpayer must report to the certifying entity the following information for each qualified employee:

(A) Total wages or other compensation paid to the qualified employee.

(B) The type of work performed by the qualified employee.

(C) The length of employment of the qualified employee.

(D) Any benefits provided by the taxpayer to the qualified employee.

(2) A certifying entity may refuse to issue a certification for a subsequently hired qualified employee to a taxpayer if a taxpayer has failed to report the information required by paragraph (1) for qualified employees who have already been hired.

(l) The amendments made to this section by the act adding subdivision shall apply to taxable years beginning on or after January 1, 2010, and to vouchers for hiring credits issued on or after January 1, 2010.

SEC. 3. (a) On or before October 1 of each calendar year, an agency required to provide a certification regarding a qualified employee pursuant to subdivision (c) of Section 17053.74 and subdivision (d) of Section 23634 of the Revenue and Taxation Code shall provide the Department of Housing and Community Development with a report, in a form and manner determined by the department, that includes, but is not limited to, a compilation of the information provided to the certifying agency by a taxpayer pursuant to subdivision (l) of Section 17053.74 and subdivision (k) of Section 23634 of the Revenue and Taxation Code.

(b) The Housing and Community Development Department shall consider the completeness and timeliness of the reports as part of its auditing requirements under Section 7076.1 of the Government Code.

(c) Annually, the Housing and Community Development Department shall submit the information provided pursuant to subdivision (a) as a compilation report.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

All matter omitted in this version of the bill appears in the bill as introduced in the Assembly, February 27, 2009 (JR11)

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