

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN SENATE MAY 19, 2010

AMENDED IN SENATE APRIL 6, 2010

SENATE BILL

No. 1391

Introduced by Senator Yee

February 19, 2010

An act to add Sections 17060 and 23603 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1391, as amended, Yee. ~~Tax credits~~ *Income taxes: business tax incentives*: reporting information and recapture.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits ~~against~~, *deductions, exclusions, exemptions, and other tax benefits with respect to* the taxes imposed by those laws.

This bill would require a taxpayer, *as described*, doing business in California that claims a *business tax-credit incentive, as provided*, to submit to the Franchise Tax Board on the original return specified information, including the number of employees employed by the taxpayer in the state ~~and the number of jobs created by the tax credit~~.

The bill would also require, in cases in which a taxpayer has a net decrease in the number of full-time employees for a ~~credit~~ *business tax incentive* added by statute on or after January 1, 2011, the ~~credit~~ *business tax incentive* to be disallowed and the entire amount of any ~~credit~~ *business tax incentives* previously allowed to be recaptured *or the tax liability to be recomputed* and the taxpayer to be liable for any credits on previous tax returns, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17060 is added to the Revenue and
 2 Taxation Code, to read:
 3 17060. (a) Notwithstanding any other provision of this part,
 4 for taxable years beginning on or after January 1, 2011, a taxpayer
 5 doing business in this state that claims any business-credit against
 6 the “net tax,” as defined in Section 17039, shall annually include
 7 tax incentive shall annually include on the timely filed original
 8 return the following information return, in the form and manner
 9 as required by forms and instructions prescribed by the Franchise
 10 Tax Board:
 11 (1) ~~The by the Franchise Tax Board, the~~ number of full-time,
 12 part-time, and temporary employees, as defined, employed by the
 13 taxpayer in the state for the current and preceding taxable years.
 14 (2) ~~The number of full-time jobs, part-time jobs, and temporary~~
 15 ~~jobs created by the tax credit.~~
 16 (b) (1) Notwithstanding any other law, for any business-credit
 17 against the “net tax,” as defined in Section 17039, that is allowed
 18 tax incentive that is allowed by an act that takes effect on or after
 19 the effective date of the act adding this section January 1, 2011,
 20 both of the following shall apply if the taxpayer has a net decrease,
 21 as determined under subdivision (c), in the number of full-time
 22 equivalent employees in the state according to the information
 23 provided pursuant to subdivision (a):
 24 (1)
 25 (A) The entire amount of the ~~credits~~ business tax incentives for
 26 all taxable years shall be disallowed.
 27 (2)
 28 (B) Any previously allowed ~~credits~~ business tax incentives shall
 29 be recaptured or the tax liability shall be recomputed and the
 30 taxpayer shall be liable for the entire amount of any ~~credits~~ tax
 31 from disallowed business tax incentives on previous tax returns.
 32 (2) For purposes of this subdivision, a “business tax incentive”
 33 means a credit, deduction, exclusion, exemption, or any other tax
 34 benefit provided by the state added to this part on or after January
 35 1, 2011, enacted with the principal purpose of creating new jobs

1 *in the state, and allowed to taxpayers engaged in or carrying on*
2 *any trade, business, profession, vocation or calling, or commercial*
3 *activity in the state, including activities in the state that benefit an*
4 *affiliated entity of the taxpayer, with respect to the income*
5 *attributable to the taxpayer's trade, business, profession, vocation*
6 *or calling, or commercial activity.*

7 (c) (1) The net decrease in full-time equivalent employees *in*
8 *the state* shall be determined, on and after January 1, 2014, on a
9 full-time equivalent basis by subtracting from the amount
10 determined in subparagraph (A) the amount determined in
11 subparagraph (B).

12 (A) The total number of full-time equivalent employees *in the*
13 *state* employed in the three preceding taxable years by the taxpayer
14 and by any trade or business acquired by the taxpayer during the
15 current taxable year, divided by three.

16 (B) The total number of full-time equivalent employees
17 employed *in the state* in the current taxable year by the taxpayer
18 and by any trade or business acquired by the taxpayer during the
19 current taxable year.

20 (2) “Full-time equivalent” means either of the following:

21 (A) In the case of a full-time employee paid hourly qualified
22 wages, “full-time equivalent” means the total number of hours
23 worked for the taxpayer by the employee (not to exceed 2,000
24 hours per employee) divided by 2,000.

25 (B) In the case of a salaried full-time employee, “full-time
26 equivalent” means the total number of weeks worked for the
27 taxpayer by the employee divided by 52.

28 (3) All employees of the trades or businesses that are treated as
29 related under either Section 267, 318, or 707 of the Internal
30 Revenue Code shall be treated as employed by a single taxpayer.

31 ~~(4) The amount of business credits recaptured pursuant to~~
32 ~~subdivision (b) shall include the business credits reported on~~
33 ~~previous tax returns and interest computed using the adjusted~~
34 ~~annual rate established in Section 19521 from the due date of the~~
35 ~~return for each taxable year in which the business credit was~~
36 ~~claimed to the date of the payment of the additional tax resulting~~
37 ~~from the application of this section.~~

38 (d)

39 (5)

1 (e) Section 19521, related to computation of interest, shall apply
2 to any tax from disallowed business tax incentives. For purposes
3 of this section, all of the following definitions apply:

4 (A) ~~“Business credit” means a credit added to this part on or~~
5 ~~after January 1, 2011, and allowed to taxpayers engaged in or~~
6 ~~carrying on any trade, business, profession, vocation or calling, or~~
7 ~~commercial activity in the state, including activities in the state~~
8 ~~that benefit an affiliated entity of the taxpayer.~~

9 (B)
10 (1) “Full-time employee” means an employee who works an
11 average of 35 hours in a week, calculated monthly.

12 (C)
13 (2) “Part-time employee” means an employee who works less
14 than an average of 35 hours in a week, calculated monthly.

15 (D)
16 (3) “Temporary employee” means an employee who works less
17 than 120 days per year.

18 (f) This section shall not apply to a taxpayer with 50 or fewer
19 employees and with net business income of less than five hundred
20 thousand dollars (\$500,000) for the taxable year. For purposes
21 of this subdivision, business income means:

22 (1) Income from a trade or business, whether conducted by the
23 taxpayer or by a passthrough entity owned directly or indirectly
24 by the taxpayer. For purposes of this paragraph, the term
25 “passthrough entity” means a partnership or an “S” corporation.

26 (2) Income from rental activity.

27 (3) Income attributable to a farming business.

28 (E)
29 (g) Nothing in this section shall limit the authority of the
30 Franchise Tax Board to audit the information provided by the
31 taxpayer pursuant to subdivision (a).

32 (e)
33 (h) Chapter 3.5 (commencing with Section 11340) of Part 1 of
34 Division 3 of Title 2 of the Government Code shall not apply to
35 any standard, criterion, procedure, determination, rule, notice, or
36 guideline established or issued by the Franchise Tax Board
37 pursuant to subdivision (a).

38 SEC. 2. Section 23603 is added to the Revenue and Taxation
39 Code, to read:

1 23603. (a) Notwithstanding any other provision of this part,
2 for taxable years on or after January 1, 2011, a taxpayer doing
3 business in the state that claims any business-credit against the
4 “tax,” as defined in Section 23036, *tax incentive* shall annually
5 include on the timely filed original return the following information
6 *return*, in the form and manner as required by forms and
7 instructions prescribed by the Franchise Tax Board:

8 ~~(1) The the Franchise Tax Board, the number of full-time,~~
9 part-time, and temporary employees, as defined, employed by the
10 taxpayer in the state for the current and preceding taxable years.

11 ~~(2) The number of full-time jobs, part-time jobs, and temporary~~
12 ~~jobs created by the tax credit.~~

13 (b) *(1)* Notwithstanding any other law, for any business-credit
14 against the “tax,” as defined in Section 23036, that is allowed by
15 *tax incentive that is allowed by* an act that takes effect on or after
16 the effective date of the act adding this section *January 1, 2011,*
17 both of the following shall apply if the taxpayer has a net decrease,
18 as determined under subdivision (c), in the number of full-time
19 equivalent employees *in the state* according to the information
20 provided pursuant to subdivision (a):

21 ~~(1)~~

22 (A) The entire amount of the ~~credits~~ *business tax incentives* for
23 all taxable years shall be disallowed.

24 ~~(2)~~

25 (B) Any previously allowed ~~credits~~ *business tax incentives* shall
26 be recaptured *or the tax liability shall be recomputed* and the
27 taxpayer shall be liable for the entire amount of any ~~credits~~ *tax*
28 *from disallowed business tax incentives* on previous tax returns.

29 (2) *For purposes of this subdivision, a “business tax incentive”*
30 *means a credit, deduction, exclusion, exemption, or any other tax*
31 *benefit provided by the state added to this part on or after January*
32 *1, 2011, enacted with the principal purpose of creating new jobs*
33 *in the state, and allowed to taxpayers engaged in or carrying on*
34 *any trade, business, profession, vocation or calling, or commercial*
35 *activity in the state, including activities in the state that benefit an*
36 *affiliated entity of the taxpayer, with respect to the income*
37 *attributable to the taxpayer’s trade, business, profession, vocation*
38 *or calling, or commercial activity.*

39 (c) (1) The net decrease in full-time equivalent employees *in*
40 *the state* shall be determined, on and after January 1, 2014, on a

1 full-time equivalent basis by subtracting from the amount
2 determined in subparagraph (A) the amount determined in
3 subparagraph (B).

4 (A) The total number of full-time equivalent employees
5 employed in the three preceding taxable years by the taxpayer and
6 by any trade or business acquired by the taxpayer during the current
7 taxable year, divided by three.

8 (B) The total number of full-time equivalent employees
9 employed *in the state* in the current taxable year by the taxpayer
10 and by any trade or business acquired by the taxpayer during the
11 current taxable year.

12 (2) “Full-time equivalent” means either of the following:

13 (A) In the case of a full-time employee paid hourly qualified
14 wages, “full-time equivalent” means the total number of hours
15 worked for the taxpayer by the employee (not to exceed 2,000
16 hours per employee) divided by 2,000.

17 (B) In the case of a salaried full-time employee, “full-time
18 equivalent” means the total number of weeks worked for the
19 taxpayer by the employee divided by 52.

20 (3) All employees of the trades or businesses that are treated as
21 related under either Section 267, 318, or 707 of the Internal
22 Revenue Code shall be treated as employed by a single taxpayer.

23 ~~(4) The amount of business credits recaptured pursuant to~~
24 ~~subdivision (b) shall include the business credits reported on~~
25 ~~previous tax returns and interest computed using the adjusted~~
26 ~~annual rate established in Section 19521 from the due date of the~~
27 ~~return for each taxable year in which the business credit was~~
28 ~~claimed to the date of the payment of the additional tax resulting~~
29 ~~from the application of this section.~~

30 (d)

31 ~~(5)~~

32 (e) *19521, relating to computation of interest, shall apply to*
33 *any tax from disallowed business tax incentives.* For purposes of
34 this section, all of the following definitions apply:

35 (A) ~~“Business credit” means a credit added to this part on or~~
36 ~~after January 1, 2011, and allowed to taxpayers engaged in or~~
37 ~~carrying on any trade, business, profession, vocation or calling, or~~
38 ~~commercial activity in the state, including activities in the state~~
39 ~~that benefit an affiliated entity of the taxpayer.~~

40 (B)

1 (1) “Full-time employee” means an employee who works an
2 average of 35 hours in a week, calculated monthly.

3 ~~(C)~~

4 (2) “Part-time employee” means an employee who works less
5 than an average of 35 hours in a week, calculated monthly.

6 ~~(D)~~

7 (3) “Temporary employee” means an employee who works less
8 than 120 days per year.

9 (f) *This section shall not apply to a taxpayer with 50 or fewer*
10 *employees and with income subject to tax under this part of less*
11 *than five hundred thousand dollars (\$500,000) for the taxable*
12 *year.*

13 ~~(d)~~

14 (g) Nothing in this section shall limit the authority of the
15 Franchise Tax Board to audit the information provided by the
16 taxpayer pursuant to subdivision (a).

17 ~~(e)~~

18 (h) Chapter 3.5 (commencing with Section 11340) of Part 1 of
19 Division 3 of Title 2 of the Government Code shall not apply to
20 any standard, criterion, procedure, determination, rule, notice, or
21 guideline established or issued by the Franchise Tax Board
22 pursuant to subdivision (a).

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

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27 **CORRECTIONS:**

28 **Text—Pages 3, 4 and 6.**

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