

ASSEMBLY BILL

No. 11

Introduced by Assembly Member Portantino

December 6, 2010

An act to repeal and amend Sections 17053.80 and 23623 of, and to add and repeal Sections 17053.76 and 23622.9 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 11, as introduced, Portantino. Taxes: credits: small businesses.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit in an amount equal to \$3,000, prorated as provided, for each full-time employee hired during the taxable year by a qualified employer, as defined. Existing law caps the total amount of credit which may be allocated under those provisions to \$400,000,000.

This bill would reduce the total amount of credit which may be allocated under those laws to \$200,000,000.

This bill would also, for taxable years beginning on or after January 1, 2011, authorize a credit, under both laws, in an amount equal to 20% of the total amount of the annual workers' compensation premiums paid by a qualified taxpayer, as defined. This bill would cap the total amount of credit which may be allocated under these provisions to \$200,000,000.

This bill would constitute a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

- 1 SECTION 1. Section 17053.76 is added to the Revenue and
2 Taxation Code, to read:
3 17053.76. (a) For each taxable year beginning on or after
4 January 1, 2011, there shall be allowed as a credit against the “net
5 tax,” as defined in Section 17039, an amount equal to 20 percent
6 of the total amount of the annual workers’ compensation premiums
7 paid by a qualified taxpayer during the taxable year.
8 (b) For purposes of this section, “qualified taxpayer” means any
9 taxpayer that meets both of the following requirements:
10 (1) Except for a taxpayer who first commences doing business
11 in this state during the taxable year, the taxpayer employed a total
12 of 20 or fewer employees as of the last day of the preceding taxable
13 year.
14 (2) The taxpayer has, in the current taxable year, gross receipts,
15 less returns and allowances, reportable for that taxable year to this
16 state of one million dollars (\$1,000,000) or less.
17 (c) (1) (A) A credit under this section and Section 23622.9
18 shall be allowed only for credits claimed on timely filed original
19 returns received by the Franchise Tax Board on or before the
20 cut-off date established by the Franchise Tax Board and shall be
21 allocated on a first-come-first-served basis.
22 (B) For purposes of this paragraph, the cut-off date shall be the
23 last day of the calendar quarter within which the Franchise Tax
24 Board estimates it will have received timely filed original returns
25 claiming credits under this section and Section 23622.9 that
26 cumulatively total two hundred million dollars (\$200,000,000) for
27 all taxable years.
28 (2) The date a return is received shall be determined by the
29 Franchise Tax Board.
30 (3) (A) The determinations of the Franchise Tax Board with
31 respect to the cut-off date, the date a return is received, and whether
32 a return has been timely filed for purposes of this subdivision shall
33 not be reviewed in any administrative or judicial proceeding.

1 (B) Any disallowance of a credit claimed due to a determination
2 under this subdivision, including the application of the limitation
3 specified in paragraph (1), shall be treated as a mathematical error
4 appearing on the return. Any amount of tax resulting from such
5 disallowance shall be assessed by the Franchise Tax Board in the
6 same manner as provided by Section 19051.

7 (4) The Franchise Tax Board shall periodically provide notice
8 on its Internet Web site with respect to the amount of credit under
9 this section and Section 23622.9 claimed on timely filed original
10 returns received by the Franchise Tax Board.

11 (d) For purposes of this section:

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

15 (2) In determining whether the taxpayer has first commenced
16 doing business in this state during the taxable year, the provisions
17 of subdivision (f) of Section 17276, without the application of
18 paragraph (7) of that subdivision, shall apply.

19 (e) If any credit allowed by this section is claimed by the
20 taxpayer, any deduction or credit otherwise allowed under this part
21 for annual workers' compensation premiums shall not be allowed.

22 (f) In the case where the credit allowed under this section
23 exceeds the "tax," the excess credit may be carried over to reduce
24 the "tax" in the following taxable year, and succeeding eight
25 taxable years, if necessary, until the credit has been exhausted.

26 (g) The Franchise Tax Board may prescribe rules, guidelines,
27 or procedures necessary or appropriate to carry out the purposes
28 of this section, including any guidelines regarding the limitation
29 on total credits allowable under this section and Section 23622.9.

30 (h) This section shall remain in effect only until December 1 of
31 the calendar year after the year of the cut-off date, and as of that
32 December 1 is repealed.

33 SEC. 2. Section 17053.80 of the Revenue and Taxation Code,
34 as added by Section 3 of Chapter 10 of the Third Extraordinary
35 Session of the Statutes of 2009, is repealed.

36 ~~17053.80. (a) For each taxable year beginning on or after~~
37 ~~January 1, 2009, there shall be allowed as a credit against the "net~~
38 ~~tax," as defined in Section 17039, three thousand dollars (\$3,000)~~
39 ~~for each net increase in qualified full-time employees, as specified~~

1 in subdivision (c), hired during the taxable year by a qualified
2 employer.

3 (b) For purposes of this section:

4 (1) “Acquired” includes any gift, inheritance, transfer incident
5 to divorce, or any other transfer, whether or not for consideration.

6 (2) “Qualified full-time employee” means:

7 (A) A qualified employee who was paid qualified wages by the
8 qualified employer for services of not less than an average of 35
9 hours per week.

10 (B) A qualified employee who was a salaried employee and
11 was paid compensation during the taxable year for full-time
12 employment, within the meaning of Section 515 of the Labor Code,
13 by the qualified employer.

14 (3) A “qualified employee” shall not include any of the
15 following:

16 (A) An employee certified as a qualified employee in an
17 enterprise zone designated in accordance with Chapter 12.8
18 (commencing with Section 7070) of Division 7 of Title 1 of the
19 Government Code.

20 (B) An employee certified as a qualified disadvantaged
21 individual in a manufacturing enhancement area designated in
22 accordance with Section 7073.8 of the Government Code.

23 (C) An employee certified as a qualified employee in a targeted
24 tax area designated in accordance with Section 7097 of the
25 Government Code.

26 (D) An employee certified as a qualified disadvantaged
27 individual or a qualified displaced employee in a local agency
28 military base recovery area (LAMBRA) designated in accordance
29 with Chapter 12.97 (commencing with Section 7105) of Division
30 7 of Title 1 of the Government Code.

31 (E) An employee whose wages are included in calculating any
32 other credit allowed under this part.

33 (4) “Qualified employer” means a taxpayer that, as of the last
34 day of the preceding taxable year, employed a total of 20 or fewer
35 employees.

36 (5) “Qualified wages” means wages subject to Division 6
37 (commencing with Section 13000) of the Unemployment Insurance
38 Code.

39 (6) “Annual full-time equivalent” means either of the following:

1 (A) In the case of a full-time employee paid hourly qualified
2 wages, “annual full-time equivalent” means the total number of
3 hours worked for the taxpayer by the employee (not to exceed
4 2,000 hours per employee) divided by 2,000.

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

8 (c) The net increase in qualified full-time employees of a
9 qualified employer shall be determined as provided by this
10 subdivision:

11 (1) (A) The net increase in qualified full-time employees shall
12 be determined on an annual full-time equivalent basis by
13 subtracting from the amount determined in subparagraph (C) the
14 amount determined in subparagraph (B):

15 (B) The total number of qualified full-time employees employed
16 in the preceding taxable year by the taxpayer and by any trade or
17 business acquired by the taxpayer during the current taxable year.

18 (C) The total number of full-time employees employed in the
19 current taxable year by the taxpayer and by any trade or business
20 acquired during the current taxable year.

21 (2) For taxpayers who first commence doing business in this
22 state during the taxable year, the number of full-time employees
23 for the immediately preceding prior taxable year shall be zero.

24 (d) In the case where the credit allowed by this section exceeds
25 the “net tax,” the excess may be carried over to reduce the “net
26 tax” in the following year, and succeeding seven years if necessary,
27 until the credit is exhausted.

28 (e) Any deduction otherwise allowed under this part for qualified
29 wages shall not be reduced by the amount of the credit allowed
30 under this section.

31 (f) For purposes of this section:

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

35 (2) In determining whether the taxpayer has first commenced
36 doing business in this state during the taxable year, the provisions
37 of subdivision (f) of Section 17276, without application of
38 paragraph (7) of that subdivision, shall apply.

39 (g) (1) (A) Credit under this section and Section 23623 shall
40 be allowed only for credits claimed on timely filed original returns

1 received by the Franchise Tax Board on or before the cut-off date
2 established by the Franchise Tax Board.

3 (B) For purposes of this paragraph, the cut-off date shall be the
4 last day of the calendar quarter within which the Franchise Tax
5 Board estimates it will have received timely filed original returns
6 claiming credits under this section and Section 23623 that
7 cumulatively total four hundred million dollars (\$400,000,000)
8 for all taxable years.

9 (2) The date a return is received shall be determined by the
10 Franchise Tax Board.

11 (3) (A) The determinations of the Franchise Tax Board with
12 respect to the cut-off date, the date a return is received, and whether
13 a return has been timely filed for purposes of this subdivision may
14 not be reviewed in any administrative or judicial proceeding

15 (B) Any disallowance of a credit claimed due to a determination
16 under this subdivision, including the application of the limitation
17 specified in paragraph (1), shall be treated as a mathematical error
18 appearing on the return. Any amount of tax resulting from such
19 disallowance may be assessed by the Franchise Tax Board in the
20 same manner as provided by Section 19051.

21 (4) The Franchise Tax Board shall periodically provide notice
22 on its Web site with respect to the amount of credit under this
23 section and Section 23623 claimed on timely filed original returns
24 received by the Franchise Tax Board.

25 (h) (1) The Franchise Tax Board may prescribe rules, guidelines
26 or procedures necessary or appropriate to carry out the purposes
27 of this section, including any guidelines regarding the limitation
28 on total credits allowable under this section and Section 23623
29 and guidelines necessary to avoid the application of paragraph (2)
30 of subdivision (f) through split-ups, shell corporations, partnerships,
31 tiered ownership structures, or otherwise.

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

37 (i) This section shall remain in effect only until December 1 of
38 the calendar year after the year of the cut-off date, and as of that
39 December 1 is repealed.

1 SEC. 3. Section 17053.80 of the Revenue and Taxation Code,
2 as added by Section 3 of Chapter 17 of the Third Extraordinary
3 Session of the Statutes of 2009, is amended to read:

4 17053.80. (a) For each taxable year beginning on or after
5 January 1, 2009, there shall be allowed as a credit against the “net
6 tax,” as defined in Section 17039, three thousand dollars (\$3,000)
7 for each net increase in qualified full-time employees, as specified
8 in subdivision (c), hired during the taxable year by a qualified
9 employer.

10 (b) For purposes of this section:

11 (1) “Acquired” includes any gift, inheritance, transfer incident
12 to divorce, or any other transfer, whether or not for consideration.

13 (2) “Qualified full-time employee” means:

14 (A) A qualified employee who was paid qualified wages by the
15 qualified employer for services of not less than an average of 35
16 hours per week.

17 (B) A qualified employee who was a salaried employee and
18 was paid compensation during the taxable year for full-time
19 employment, within the meaning of Section 515 of the Labor Code,
20 by the qualified employer.

21 (3) A “qualified employee” shall not include any of the
22 following:

23 (A) An employee certified as a qualified employee in an
24 enterprise zone designated in accordance with Chapter 12.8
25 (commencing with Section 7070) of Division 7 of Title 1 of the
26 Government Code.

27 (B) An employee certified as a qualified disadvantaged
28 individual in a manufacturing enhancement area designated in
29 accordance with Section 7073.8 of the Government Code.

30 (C) An employee certified as a qualified employee in a targeted
31 tax area designated in accordance with Section 7097 of the
32 Government Code.

33 (D) An employee certified as a qualified disadvantaged
34 individual or a qualified displaced employee in a local agency
35 military base recovery area (LAMBRA) designated in accordance
36 with Chapter 12.97 (commencing with Section 7105) of Division
37 7 of Title 1 of the Government Code.

38 (E) An employee whose wages are included in calculating any
39 other credit allowed under this part.

1 (4) “Qualified employer” means a taxpayer that, as of the last
2 day of the preceding taxable year, employed a total of 20 or fewer
3 employees.

4 (5) “Qualified wages” means wages subject to Division 6
5 (commencing with Section 13000) of the Unemployment Insurance
6 Code.

7 (6) “Annual full-time equivalent” means either of the following:

8 (A) In the case of a full-time employee paid hourly qualified
9 wages, “annual full-time equivalent” means the total number of
10 hours worked for the taxpayer by the employee (not to exceed
11 2,000 hours per employee) divided by 2,000.

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

15 (c) The net increase in qualified full-time employees of a
16 qualified employer shall be determined as provided by this
17 subdivision:

18 (1) (A) The net increase in qualified full-time employees shall
19 be determined on an annual full-time equivalent basis by
20 subtracting from the amount determined in subparagraph (C) the
21 amount determined in subparagraph (B).

22 (B) The total number of qualified full-time employees employed
23 in the preceding taxable year by the taxpayer and by any trade or
24 business acquired by the taxpayer during the current taxable year.

25 (C) The total number of full-time employees employed in the
26 current taxable year by the taxpayer and by any trade or business
27 acquired during the current taxable year.

28 (2) For taxpayers who first commence doing business in this
29 state during the taxable year, the number of full-time employees
30 for the immediately preceding prior taxable year shall be zero.

31 (d) In the case where the credit allowed by this section exceeds
32 the “net tax,” the excess may be carried over to reduce the “net
33 tax” in the following year, and succeeding seven years if necessary,
34 until the credit is exhausted.

35 (e) Any deduction otherwise allowed under this part for qualified
36 wages shall not be reduced by the amount of the credit allowed
37 under this section.

38 (f) For purposes of this section:

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

4 (2) In determining whether the taxpayer has first commenced
5 doing business in this state during the taxable year, the provisions
6 of subdivision (f) of Section 17276, without application of
7 paragraph (7) of that subdivision, shall apply.

8 (g) (1) (A) Credit under this section and Section 23623 shall
9 be allowed only for credits claimed on timely filed original returns
10 received by the Franchise Tax Board on or before the cut-off date
11 established by the Franchise Tax Board.

12 (B) For purposes of this paragraph, the cut-off date shall be the
13 last day of the calendar quarter within which the Franchise Tax
14 Board estimates it will have received timely filed original returns
15 claiming credits under this section and Section 23623 that
16 cumulatively total ~~four~~ two hundred million dollars ~~(\$400,000,000)~~
17 ~~(\$200,000,000)~~ for all taxable years.

18 (2) The date a return is received shall be determined by the
19 Franchise Tax Board.

20 (3) (A) The determinations of the Franchise Tax Board with
21 respect to the cut-off date, the date a return is received, and whether
22 a return has been timely filed for purposes of this subdivision may
23 not be reviewed in any administrative or judicial ~~proceeding~~
24 *proceeding*.

25 (B) Any disallowance of a credit claimed due to a determination
26 under this subdivision, including the application of the limitation
27 specified in paragraph (1), shall be treated as a mathematical error
28 appearing on the return. Any amount of tax resulting from such
29 disallowance may be assessed by the Franchise Tax Board in the
30 same manner as provided by Section 19051.

31 (4) The Franchise Tax Board shall periodically provide notice
32 on its *Internet* Web site with respect to the amount of credit under
33 this section and Section 23623 claimed on timely filed original
34 returns received by the Franchise Tax Board.

35 (h) (1) The Franchise Tax Board may prescribe rules,
36 guidelines, or procedures necessary or appropriate to carry out the
37 purposes of this section, including any guidelines regarding the
38 limitation on total credits allowable under this section and Section
39 23623 and guidelines necessary to avoid the application of
40 paragraph (2) of subdivision (f) through split-ups, shell

1 corporations, partnerships, tiered ownership structures, or
2 otherwise.

3 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code does not apply to
5 any standard, criterion, procedure, determination, rule, notice, or
6 guideline established or issued by the Franchise Tax Board
7 pursuant to this section.

8 (i) This section shall remain in effect only until December 1 of
9 the calendar year after the year of the cut-off date, and as of that
10 December 1 is repealed.

11 SEC. 4. Section 23622.9 is added to the Revenue and Taxation
12 Code, to read:

13 23622.9. (a) For each taxable year beginning on or after
14 January 1, 2011, there shall be allowed as a credit against the “tax,”
15 as defined in Section 23036, an amount equal to 20 percent of the
16 total amount of workers’ compensation premiums paid by a
17 qualified taxpayer during the taxable year.

18 (b) For purposes of this section, “qualified taxpayer” means any
19 taxpayer that meets both of the following requirements:

20 (1) Except for a taxpayer who first commences doing business
21 in this state during the taxable year, the taxpayer employed a total
22 of 20 or fewer employees as of the last day of the preceding taxable
23 year.

24 (2) The taxpayer has, in the current taxable year, gross receipts,
25 less returns and allowances, reportable for that taxable year to this
26 state of one million dollars (\$1,000,000) or less.

27 (c) (1) (A) A credit under this section and Section 17053.76
28 shall be allowed only for credits claimed on timely filed original
29 returns received by the Franchise Tax Board on or before the
30 cut-off date established by the Franchise Tax Board and shall be
31 allocated on a first-come-first-served basis.

32 (B) For purposes of this paragraph, the cut-off date shall be the
33 last day of the calendar quarter within which the Franchise Tax
34 Board estimates it will have received timely filed original returns
35 claiming credits under this section and Section 17053.76 that
36 cumulatively total two hundred million dollars (\$200,000,000) for
37 all taxable years.

38 (2) The date a return is received shall be determined by the
39 Franchise Tax Board.

1 (3) (A) The determinations of the Franchise Tax Board with
2 respect to the cut-off date, the date a return is received, and whether
3 a return has been timely filed for purposes of this subdivision may
4 not be reviewed in any administrative or judicial proceeding.

5 (B) Any disallowance of a credit claimed due to a determination
6 under this subdivision, including the application of the limitation
7 specified in paragraph (1), shall be treated as a mathematical error
8 appearing on the return. Any amount of tax resulting from such
9 disallowance may be assessed by the Franchise Tax Board in the
10 same manner as provided by Section 19051.

11 (4) The Franchise Tax Board shall periodically provide notice
12 on its Internet Web site with respect to the amount of credit under
13 this section and Section 17053.76 claimed on timely filed original
14 returns received by the Franchise Tax Board.

15 (d) For purposes of this section:

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

19 (2) In determining whether the taxpayer has first commenced
20 doing business in this state during the taxable year, the provisions
21 of subdivision (f) of Section 17276, without the application of
22 paragraph (7) of that subdivision, shall apply.

23 (e) If any credit allowed by this section is claimed by the
24 taxpayer, any deduction or credit otherwise allowed under this part
25 for annual workers' compensation premiums shall not be allowed.

26 (f) In the case where the credit allowed under this section
27 exceeds the "net tax," the excess credit may be carried over to
28 reduce the "net tax" in the following taxable year, and succeeding
29 eight taxable years, if necessary, until the credit has been exhausted.

30 (g) The Franchise Tax Board may prescribe rules, guidelines,
31 or procedures necessary or appropriate to carry out the purposes
32 of this section, including any guidelines regarding the limitation
33 on total credits allowable under this section and Section 23622.9.

34 (h) This section shall remain in effect only until December 1 of
35 the calendar year after the year of the cut-off date, and as of that
36 December 1 is repealed.

37 SEC. 5. Section 23623 of the Revenue and Taxation Code, as
38 added by Section 8 of Chapter 10 of the Third Extraordinary
39 Session of the Statutes of 2009, is repealed.

23623. (a) For each taxable year beginning on or after January 1, 2009, there shall be allowed as a credit against the “tax,” as defined in Section 23036, three thousand dollars (\$3,000) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(b) For purposes of this section:

(1) “Acquired” includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(2) “Qualified full-time employee” means:

(A) A qualified employee who was paid qualified wages during the taxable year by the qualified employer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

(3) A “qualified employee” shall not include any of the following:

(A) An employee certified as a qualified employee in an enterprise zone designated in accordance with Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(B) An employee certified as a qualified disadvantaged individual in a manufacturing enhancement area designated in accordance with Section 7073.8 of the Government Code.

(C) An employee certified as a qualified employee in a targeted tax area designated in accordance with Section 7097 of the Government Code.

(D) An employee certified as a qualified disadvantaged individual or a qualified displaced employee in a local agency military base recovery area (LAMBRA) designated in accordance with Chapter 12.97 (commencing with Section 7105) of Division 7 of Title 1 of the Government Code.

(E) An employee whose wages are included in calculating any other credit allowed under this part.

(4) “Qualified employer” means a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.

1 ~~(5) “Qualified wages” means wages subject to Division 6~~
2 ~~(commencing with Section 13000) of the Unemployment Insurance~~
3 ~~Code.~~

4 ~~(6) “Annual full-time equivalent” means either of the following:~~

5 ~~(A) In the case of a full-time employee paid hourly qualified~~
6 ~~wages, “annual full-time equivalent” means the total number of~~
7 ~~hours worked for the taxpayer by the employee (not to exceed~~
8 ~~2,000 hours per employee) divided by 2,000.~~

9 ~~(B) In the case of a salaried full-time employee, “annual~~
10 ~~full-time equivalent” means the total number of weeks worked for~~
11 ~~the taxpayer by the employee divided by 52.~~

12 ~~(c) The net increase in qualified full-time employees of a~~
13 ~~qualified employer shall be determined as provided by this~~
14 ~~subdivision:~~

15 ~~(1) (A) The net increase in qualified full-time employees shall~~
16 ~~be determined on an annual full-time equivalent basis by~~
17 ~~subtracting from the amount determined in subparagraph (C) the~~
18 ~~amount determined in subparagraph (B).~~

19 ~~(B) The total number of qualified full-time employees employed~~
20 ~~in the preceding taxable year by the taxpayer and by any trade or~~
21 ~~business acquired by the taxpayer during the current taxable year.~~

22 ~~(C) The total number of full-time employees employed in the~~
23 ~~current taxable year by the taxpayer and by any trade or business~~
24 ~~acquired during the current taxable year.~~

25 ~~(2) For taxpayers who first commence doing business in this~~
26 ~~state during the taxable year, the number of full-time employees~~
27 ~~for the immediately preceding prior taxable year shall be zero.~~

28 ~~(d) In the case where the credit allowed by this section exceeds~~
29 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~
30 ~~the following year, and succeeding seven years if necessary, until~~
31 ~~the credit is exhausted.~~

32 ~~(e) Any deduction otherwise allowed under this part for qualified~~
33 ~~wages shall not be reduced by the amount of the credit allowed~~
34 ~~under this section.~~

35 ~~(f) For purposes of this section:~~

36 ~~(1) All employees of the trades or businesses that are treated as~~
37 ~~related under either Section 267, 318, or 707 of the Internal~~
38 ~~Revenue Code shall be treated as employed by a single taxpayer.~~

39 ~~(2) In determining whether the taxpayer has first commenced~~
40 ~~doing business in this state during the taxable year, the provisions~~

1 of subdivision (f) of Section 17276, without application of
2 paragraph (7) of that subdivision, shall apply.

3 (g) (1) (A) Credit under this section and Section 17053.80 shall
4 be allowed only for credits claimed on timely filed original returns
5 received by the Franchise Tax Board on or before the cut-off date
6 established by the Franchise Tax Board.

7 (B) For purposes of this paragraph, the cut-off date shall be the
8 last day of the calendar quarter within which the Franchise Tax
9 Board estimates it will have received timely filed original returns
10 claiming credits under this section and Section 17053.80 that
11 cumulatively total four hundred million dollars (\$400,000,000)
12 for all taxable years.

13 (2) The date a return is received shall be determined by the
14 Franchise Tax Board.

15 (3) (A) The determinations of the Franchise Tax Board with
16 respect to the cut-off date, the date a return is received, and whether
17 a return has been timely filed for purposes of this subdivision may
18 not be reviewed in any administrative or judicial proceeding.

19 (B) Any disallowance of a credit claimed due to a determination
20 under this subdivision, including the application of the limitation
21 specified in paragraph (1), shall be treated as a mathematical error
22 appearing on the return. Any amount of tax resulting from such
23 disallowance may be assessed by the Franchise Tax Board in the
24 same manner as provided by Section 19051.

25 (4) The Franchise Tax Board shall periodically provide notice
26 on its Web site with respect to the amount of credit under this
27 section and Section 17053.80 claimed on timely filed original
28 returns received by the Franchise Tax Board.

29 (h) (1) The Franchise Tax Board may prescribe rules, guidelines
30 or procedures necessary or appropriate to carry out the purposes
31 of this section, including any guidelines regarding the limitation
32 on total credits allowable under this section and Section 17053.80
33 and guidelines necessary to avoid the application of paragraph (2)
34 of subdivision (f) through split-ups, shell corporations, partnerships,
35 tiered ownership structures, or otherwise.

36 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
37 Division 3 of Title 2 of the Government Code does not apply to
38 any standard, criterion, procedure, determination, rule, notice, or
39 guideline established or issued by the Franchise Tax Board
40 pursuant to this section.

1 ~~(i) This section shall remain in effect only until December 1 of~~
2 ~~the calendar year after the year of the cut-off date, and as of that~~
3 ~~December 1 is repealed.~~

4 SEC. 6. Section 23623 of the Revenue and Taxation Code, as
5 added by Section 8 of Chapter 17 of the Third Extraordinary
6 Session of the Statutes of 2009, is amended to read:

7 23623. (a) For each taxable year beginning on or after January
8 1, 2009, there shall be allowed as a credit against the “tax,” as
9 defined in Section 23036, three thousand dollars (\$3,000) for each
10 net increase in qualified full-time employees, as specified in
11 subdivision (c), hired during the taxable year by a qualified
12 employer.

13 (b) For purposes of this section:

14 (1) “Acquired” includes any gift, inheritance, transfer incident
15 to divorce, or any other transfer, whether or not for consideration.

16 (2) “Qualified full-time employee” means:

17 (A) A qualified employee who was paid qualified wages during
18 the taxable year by the qualified employer for services of not less
19 than an average of 35 hours per week.

20 (B) A qualified employee who was a salaried employee and
21 was paid compensation during the taxable year for full-time
22 employment, within the meaning of Section 515 of the Labor Code,
23 by the qualified employer.

24 (3) A “qualified employee” shall not include any of the
25 following:

26 (A) An employee certified as a qualified employee in an
27 enterprise zone designated in accordance with Chapter 12.8
28 (commencing with Section 7070) of Division 7 of Title 1 of the
29 Government Code.

30 (B) An employee certified as a qualified disadvantaged
31 individual in a manufacturing enhancement area designated in
32 accordance with Section 7073.8 of the Government Code.

33 (C) An employee certified as a qualified employee in a targeted
34 tax area designated in accordance with Section 7097 of the
35 Government Code.

36 (D) An employee certified as a qualified disadvantaged
37 individual or a qualified displaced employee in a local agency
38 military base recovery area (LAMBRA) designated in accordance
39 with Chapter 12.97 (commencing with Section 7105) of Division
40 7 of Title 1 of the Government Code.

1 (E) An employee whose wages are included in calculating any
2 other credit allowed under this part.

3 (4) “Qualified employer” means a taxpayer that, as of the last
4 day of the preceding taxable year, employed a total of 20 or fewer
5 employees.

6 (5) “Qualified wages” means wages subject to Division 6
7 (commencing with Section 13000) of the Unemployment Insurance
8 Code.

9 (6) “Annual full-time equivalent” means either of the following:

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

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

17 (c) The net increase in qualified full-time employees of a
18 qualified employer shall be determined as provided by this
19 subdivision:

20 (1) (A) The net increase in qualified full-time employees shall
21 be determined on an annual full-time equivalent basis by
22 subtracting from the amount determined in subparagraph (C) the
23 amount determined in subparagraph (B).

24 (B) The total number of qualified full-time employees employed
25 in the preceding taxable year by the taxpayer and by any trade or
26 business acquired by the taxpayer during the current taxable year.

27 (C) The total number of full-time employees employed in the
28 current taxable year by the taxpayer and by any trade or business
29 acquired during the current taxable year.

30 (2) For taxpayers who first commence doing business in this
31 state during the taxable year, the number of full-time employees
32 for the immediately preceding prior taxable year shall be zero.

33 (d) In the case where the credit allowed by this section exceeds
34 the “tax,” the excess may be carried over to reduce the “tax” in
35 the following year, and succeeding seven years if necessary, until
36 the credit is exhausted.

37 (e) Any deduction otherwise allowed under this part for qualified
38 wages shall not be reduced by the amount of the credit allowed
39 under this section.

40 (f) For purposes of this section:

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

4 (2) In determining whether the taxpayer has first commenced
5 doing business in this state during the taxable year, the provisions
6 of subdivision (f) of Section 17276, without application of
7 paragraph (7) of that subdivision, shall apply.

8 (g) (1) (A) Credit under this section and Section 17053.80 shall
9 be allowed only for credits claimed on timely filed original returns
10 received by the Franchise Tax Board on or before the cut-off date
11 established by the Franchise Tax Board.

12 (B) For purposes of this paragraph, the cut-off date shall be the
13 last day of the calendar quarter within which the Franchise Tax
14 Board estimates it will have received timely filed original returns
15 claiming credits under this section and Section 17053.80 that
16 cumulatively total ~~four~~ two hundred million dollars (~~\$400,000,000~~)
17 (\$200,000,000) for all taxable years.

18 (2) The date a return is received shall be determined by the
19 Franchise Tax Board.

20 (3) (A) The determinations of the Franchise Tax Board with
21 respect to the cut-off date, the date a return is received, and whether
22 a return has been timely filed for purposes of this subdivision may
23 not be reviewed in any administrative or judicial proceeding.

24 (B) Any disallowance of a credit claimed due to a determination
25 under this subdivision, including the application of the limitation
26 specified in paragraph (1), shall be treated as a mathematical error
27 appearing on the return. Any amount of tax resulting from such
28 disallowance may be assessed by the Franchise Tax Board in the
29 same manner as provided by Section 19051.

30 (4) The Franchise Tax Board shall periodically provide notice
31 on its *Internet* Web site with respect to the amount of credit under
32 this section and Section 17053.80 claimed on timely filed original
33 returns received by the Franchise Tax Board.

34 (h) (1) The Franchise Tax Board may prescribe rules,
35 guidelines, or procedures necessary or appropriate to carry out the
36 purposes of this section, including any guidelines regarding the
37 limitation on total credits allowable under this section and Section
38 17053.80 and guidelines necessary to avoid the application of
39 paragraph (2) of subdivision (f) through split-ups, shell

1 corporations, partnerships, tiered ownership structures, or
2 otherwise.

3 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
4 Division 3 of Title 2 of the Government Code does not apply to
5 any standard, criterion, procedure, determination, rule, notice, or
6 guideline established or issued by the Franchise Tax Board
7 pursuant to this section.

8 (i) This section shall remain in effect only until December 1 of
9 the calendar year after the year of the cut-off date, and as of that
10 December 1 is repealed.

11 SEC. 7. This act provides for a tax levy within the meaning of
12 Article IV of the Constitution and shall go into immediate effect.

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