

AMENDED IN ASSEMBLY SEPTEMBER 1, 2011

CALIFORNIA LEGISLATURE—2011–12 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 40

Introduced by Assembly Member Allen

August 29, 2011

An act to amend Sections 23101 and 25128 of, to amend and repeal Section 25128.5 of, to amend and repeal Section 25136 of, to add Sections 6377, 25128.7, 25136.1, and 25136.2 to, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 40, as amended, Allen. ~~Corporation~~ *Income taxes: sales hiring credit: singles sales factor: sales-tax and use taxes: manufacturing exemption.*

(1) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

On and after January 1, 2012, this bill would ~~exempt~~ *provide partial exemptions equal to* specified percentages of ~~specified state~~ sales and use taxes imposed at a combined rate of 5% ~~of~~ *for* the sale of, and the storage, use, or other consumption in this state, of tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of tangible personal property; in research and development; to maintain, repair, measure, or test specified tangible

personal property; and by a contractor for use in a construction contract with a qualified person, as specified.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.

This bill would specify that this exemption does not apply to local sales and use taxes or transactions and use taxes.

(2) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer, until a ~~cut-off~~ *cut-off* date on which a maximum cumulative credit of \$400,000,000 has been reached for all taxable years. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, and before January 1, 2014, authorize a credit in the amount of \$4,000 for each full-time employee, as specified, and expand the definition of “qualified employer” to mean a taxpayer that employed 50 or fewer employees as of the last day of the preceding taxable year. This bill would also provide that the credit, under both laws, would be repealed as of December 31, 2014.

(3) The Corporation Tax Law imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. That law, for taxable years beginning on or after January 1, 2011, allows a taxpayer to have that income apportioned in accordance with a single sales factor formula, except as provided, pursuant to an irrevocable annual election, as specified. That

law also provides that sales of tangible and intangible personal property are in this state in accordance with specified criteria.

This bill would, for taxable years beginning or after January 1, 2012, revise the rules which determine whether a taxpayer is doing business within this state, revise the provisions which determine whether specific sales occur in this state, and require a taxpayer, except as provided, to apportion its income in accordance with a single sales factor.

(4) This bill would ~~constitute~~ *include* a change in state statute that would result in a taxpayer paying a higher tax 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.

(5) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(6) 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 6377 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6377. (a) (1) Except as provided in subdivision ~~on (e)~~, (e),
- 4 on and after January 1, 2012, there are exempted from 78 $\frac{3}{4}$ percent
- 5 of the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3
- 6 the gross receipts from the sale of, and the storage, use, or other
- 7 consumption in this state of, any of the following:
- 8 (A) Tangible personal property purchased for use by a qualified
- 9 person to be used primarily in any stage of the manufacturing,
- 10 processing, refining, fabricating, or recycling of tangible personal
- 11 property, beginning at the point any raw materials are received by

1 the qualified person and introduced into the process and ending at
2 the point at which the manufacturing, processing, refining,
3 fabricating, or recycling has altered the property to its completed
4 form, including packaging, if required.

5 (B) Tangible personal property purchased for use by a qualified
6 person to be used primarily in research and development.

7 (C) Tangible personal property purchased for use by a qualified
8 person to be used primarily to maintain, repair, measure, or test
9 any property described in subparagraph (A) or (B).

10 (D) Tangible personal property purchased by a contractor for
11 use in the performance of a construction contract for a qualified
12 person that will use the tangible personal property as an integral
13 part of the manufacturing, processing, refining, fabricating, or
14 recycling process, or as a research or storage facility for use in
15 connection with the manufacturing process.

16 (2) The exemption established by this section shall not apply
17 to the gross receipts from the sale of, or the storage, use, or other
18 consumption of any of the following:

19 (A) Tangible personal property that is used primarily in
20 administration, general management, or marketing.

21 (B) Consumables with a useful life of less than one year.

22 (C) Furniture, inventory, equipment used in the extraction
23 process, or equipment used to store finished products that have
24 completed the manufacturing process.

25 (b) For purposes of this section:

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

28 (2) “Fabricating” means to make, build, create, produce, or
29 assemble components or *tangible personal* property to work in a
30 new or different manner.

31 (3) “Manufacturing” means the activity of converting or
32 conditioning tangible personal property by changing the form,
33 composition, quality, or character of the property for ultimate sale
34 at retail or use in the manufacturing of a product to be ultimately
35 sold at retail. Manufacturing includes any improvements to tangible
36 personal property that result in a greater service life or greater
37 functionality than that of the original property. Manufacturing
38 includes the generation of electricity.

(4) “Primarily,” for the purpose of subdivision (a), means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(5) “Process” means the period beginning at the point at which any raw materials are received by the qualified person and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified person’s manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified person’s manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(6) “Processing” means the physical application of the materials and labor necessary to modify or change the characteristics of *tangible personal* property.

(7) “Qualified person” means a person that is either of the following:

(A) A new trade or business that is primarily engaged in those lines of business classified in Industry Groups 3111 to 3399, inclusive, Industry Group 5112, NAICS Industry 221119, or NAICS Industry 541711 of the North American Industry Classification System (NAICS) published by the United States Office of Management and Budget (OMB), 2007 edition. In determining whether a trade or business activity qualifies as a new trade or business, the following rules shall apply:

(i) In any case where a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Chapter 2 (commencing with Section 23101) of Part 11), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including, real, personal, tangible, and intangible property) used

1 by that person (or any related person) in the conduct of ~~his or her~~
2 *its* trade or business exceeds 20 percent of the aggregate fair market
3 value of the total assets of the trade or business being conducted
4 by the person (or any related person). For purposes of this
5 subparagraph only, the following rules shall apply:

6 (I) The determination of the relative fair market values of the
7 acquired assets and the total assets shall be made as of the last day
8 of the month following the quarterly period in which the person
9 (or any related person) first uses any of the acquired trade or
10 business assets in ~~his or her~~ *its* business activity.

11 (II) Any acquired assets that constituted property described in
12 Section 1221(a) of the Internal Revenue Code in the hands of the
13 transferor shall not be treated as assets acquired from an existing
14 trade or business, unless those assets also constitute property
15 described in Section 1221(a) of the Internal Revenue Code in the
16 hands of the acquiring person (or related person).

17 (ii) In any case where a person (or any related person) is engaged
18 in one or more trade or business activities in this state, or has been
19 engaged in one or more trade or business activities in this state
20 within the preceding 36 months (prior trade or business activity),
21 and thereafter commences an additional trade or business activity
22 in this state, the additional trade or business activity shall only be
23 treated as a new business if the additional trade or business activity
24 is classified under a different Industry Group (4-digit) of the
25 NAICS published by the United States OMB, 2007 edition, than
26 are any of the person's (or any related person's) current or prior
27 trade or business activities in this state.

28 (iii) In any case where a person, including all related persons,
29 is engaged in trade or business activities wholly outside of this
30 state and that person first commences doing business in this state
31 (within the meaning of Chapter 2 (commencing with Section
32 23101) of Part 11) on or after January 1, 2012, (other than by
33 purchase or other acquisition described in clause (i)), the trade or
34 business activity shall be treated as a new business.

35 (iv) In any case where the legal form under which a trade or
36 business activity is being conducted is changed, the change in form
37 shall be disregarded and the determination of whether the trade or
38 business activity is a new business shall be made by treating the
39 person as having purchased or otherwise acquired all or any portion

1 of the assets of an existing trade or business under the rules of
2 clause (i).

3 (v) *A qualified person shall not be regarded as a new trade or*
4 *business when the qualified person has conducted business*
5 *activities in a new trade or business for three or more years.*

6 (B) A trade or business, other than a new trade or business
7 described in subparagraph (A), that is primarily engaged in those
8 lines of business classified in Industry Groups 3111 to 3399,
9 inclusive, Industry Group 5112, NAICS Industry 221119, or
10 NAICS Industry 541711 of the NAICS published by the United
11 States OMB, 2007 edition.

12 (8) “Qualified person” shall not include a person that is a
13 member of a combined reporting group that is required to apportion
14 its income pursuant to subdivision (b) of Section 25128 as that
15 section read on January 1, 2011. For purposes of this paragraph,
16 a person is a member of a combined reporting group if its tax
17 liability or net income for purposes of Part 11 (commencing with
18 Section 23001) is determined by a combined report pursuant to
19 Section 25101 or 25110, or is an entity included in the combined
20 report. For purposes of the preceding sentence, “member” has the
21 same meaning as that term is defined in paragraph (10) of
22 subdivision (b) of Section 25106.5 of Title 18 of the California
23 Code of Regulations as that paragraph read on January 1, 2011,
24 and “combined reporting group” has the same meaning as that
25 term is defined in paragraph (3) of subdivision (b) of Section
26 25106.5 of Title 18 of the California Code of Regulations as that
27 paragraph read on January 1, 2011.

28 (9) “Refining” means the process of converting a natural
29 resource to an intermediate or finished product.

30 (10) “Related person” means any person that is related to another
31 person under either Section 267 or 318 of the Internal Revenue
32 Code.

33 (11) “Research and development” means those activities that
34 are described in Section 174 of the Internal Revenue Code or in
35 any regulations thereunder.

36 (12) “Tangible personal property” includes, but is not limited
37 to, all of the following:

38 (A) Machinery and equipment, including component parts and
39 contrivances such as belts, shafts, moving parts, and operating
40 structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party.

(C) Property used in pollution control that meets or exceeds standards established by this state or any local or regional governmental agency within this state.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process are not included.

(E) Property used in recycling.

(13) “Useful life” for tangible personal property that a qualified person treats as having a useful life of one or more years for state income or franchise tax purposes shall be deemed to have a useful life of one or more years for purposes of this section. Useful life for tangible personal property that a qualified person treats as having a useful life of less than one year for state income or franchise tax purposes shall be deemed to have a useful life of less than one year for purposes of this section.

(c) An exemption shall not be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer ~~subsequently furnishes the board with a copy of the exemption certificate~~ *retains the exemption certificate in its records*. The exemption certificate shall contain the sales price of the tangible personal property, the sale of, or the storage, use, or other consumption of which is exempt pursuant to subdivision (a) and shall be furnished to the board upon request.

(d) Notwithstanding subdivision (a), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5

(commencing with Section ~~4200~~) 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)).

(e) Notwithstanding subdivision (a), on and after January 1, 2012, for a qualified person described in subparagraph (B) of paragraph (7) of subdivision (b), or for a contractor performing a construction contract as described in subparagraph (D) of paragraph (1) of subdivision (a), the exemption established by this section shall apply only with respect to 60 percent of the tax levied by Sections 6051, 6051.3, 6201, and 6201.3.

(f) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of property which, within one year from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(g) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax pursuant to this section, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(h) The exemption established by this section shall apply to a lease of tangible personal property classified as a “continuing sale” or “continuing purchase” in accordance with Section 6006.1 or 6010.1, and to the rentals payable pursuant to such a lease, provided the lessee is a qualified person and the tangible personal property is used in an activity described in subdivision (a).

(i) At the time necessary information technologies and electronic data warehousing capabilities of the board are sufficiently established, the board shall determine an efficient means by which qualified persons may electronically apply for, and receive, an exemption certificate that contains information that would assist retailers in complying with this part with respect to the exemption established by this section.

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

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

17053.80. (a) There shall be allowed as a credit against the “net tax,” as defined in Section 17039, the amount specified in paragraph (1) or (2) for each net increase in qualified full-time employees, as specified in subdivision (c), hired during the taxable year by a qualified employer.

(1) For each taxable year beginning on or after January 1, 2009, and before January 1, 2012, the credit shall be equal to three thousand dollars (\$3,000).

(2) For each taxable year beginning on or after January 1, 2012, and before January 1, 2014, the credit shall be equal to four thousand dollars (\$4,000).

(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) For taxable years beginning on or after January 1, 2009, and before January 1, 2012, a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.

(B) For taxable years beginning on or after January 1, 2012, and before January 1, 2014, a taxpayer that, as of the last day of the preceding taxable year, employed a total of 50 or fewer employees.

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

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

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

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

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

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

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

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

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

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

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

(f) For purposes of this section:

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

(2) In determining whether the taxpayer has first commenced doing business in this state during the taxable year, the provisions of subdivision (f) of Section 17276.20, without application of paragraph (7) of that subdivision, shall apply.

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

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

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

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

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

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

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

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

(i) This section shall remain in effect only until December 31, 2014, and as of that date is repealed.

SEC. 4. Section 23101 of the Revenue and Taxation Code is amended to read:

23101. (a) “Doing business” means actively engaging in any transaction for the purpose of financial or pecuniary gain or profit.

(b) For taxable years beginning on or after January 1, 2011, a taxpayer is doing business in this state for a taxable year if any of the following conditions has been satisfied:

(1) The taxpayer is organized or commercially domiciled in this state.

(2) Sales, as defined in subdivision (e) or (f) of Section 25120 as applicable for the taxable year, of the taxpayer in this state exceed the lesser of five hundred thousand dollars (\$500,000) or 25 percent of the taxpayer’s total sales. For purposes of this paragraph, sales of the taxpayer include sales by an agent or independent contractor of the taxpayer. For purposes of this paragraph, sales in this state shall be determined using the rules for assigning sales under Sections 25135 and 25136, and the regulations thereunder, as modified by regulations under Section 25137.

(3) The real property and tangible personal property of the taxpayer in this state exceed the lesser of fifty thousand dollars

1 (\$50,000) or 25 percent of the taxpayer's total real property and
2 tangible personal property. The value of real and tangible personal
3 property and the determination of whether property is in this state
4 shall be determined using the rules contained in Sections 25129
5 to 25131, inclusive, and the regulations thereunder, as modified
6 by regulation under Section 25137.

7 (4) The amount paid in this state by the taxpayer for
8 compensation, as defined in subdivision (c) of Section 25120,
9 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent
10 of the total compensation paid by the taxpayer. Compensation in
11 this state shall be determined using the rules for assigning payroll
12 contained in Section 25133 and the regulations thereunder, as
13 modified by regulations under Section 25137.

14 (c) (1) The Franchise Tax Board shall annually revise the
15 amounts in paragraphs (2), (3), and (4) of subdivision (b) in
16 accordance with subdivision (h) of Section 17041.

17 (2) For purposes of the adjustment required by paragraph (1),
18 subdivision (h) of Section 17041 shall be applied by substituting
19 "2012" in lieu of "1988."

20 (d) The sales, property, and payroll of the taxpayer include the
21 taxpayer's pro rata or distributive share of pass-through entities.
22 For purposes of this subdivision, "pass-through entities" means a
23 partnership or an "S" corporation.

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

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

30 23623. (a) There shall be allowed as a credit against the "tax,"
31 as defined in Section 23036, the amount specified in paragraph
32 (1) or (2) for each net increase in qualified full-time employees,
33 as specified in subdivision (c), hired during the taxable year by a
34 qualified employer.

35 (1) For each taxable year beginning on or after January 1, 2009,
36 and before January 1, 2012, the credit shall be equal to three
37 thousand dollars (\$3,000).

38 (2) For each taxable year beginning on or after January 1, 2012,
39 and before January 1, 2014, the credit shall be equal to four
40 thousand dollars (\$4,000).

(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) For taxable years beginning on or after January 1, 2009, and before January 1, 2012, a taxpayer that, as of the last day of the preceding taxable year, employed a total of 20 or fewer employees.

(B) For taxable years beginning on or after January 1, 2012, and before January 1, 2014, a taxpayer that, as of the last day of the preceding taxable year, employed a total of 50 or fewer employees.

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

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

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

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

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

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

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

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

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

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

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

(f) For purposes of this section:

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

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

1 of subdivision (g) of Section 24416.20, 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 a timely filed original return
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 Internet Web site with respect to the amount of credit under
27 this 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,
30 guidelines, or procedures necessary or appropriate to carry out the
31 purposes of this section, including any guidelines regarding the
32 limitation on total credits allowable under this section and Section
33 17053.80 and guidelines necessary to avoid the application of
34 paragraph (2) of subdivision (f) through split-ups, shell
35 corporations, partnerships, tiered ownership structures, or
36 otherwise.

37 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
38 Division 3 of Title 2 of the Government Code does not apply to
39 any standard, criterion, procedure, determination, rule, notice, or

1 guideline established or issued by the Franchise Tax Board
2 pursuant to this section.

3 (i) This section shall remain in effect only until December 31,
4 2014, and as of that date is repealed.

5 SEC. 7. ~~Section 25128 of the Revenue and Taxation Code is~~
6 ~~amended to read:~~

7 ~~25128. (a) (1) Notwithstanding Section 38006, for taxable~~
8 ~~years beginning before January 1, 2012, all business income shall~~
9 ~~be apportioned to this state by multiplying the business income~~
10 ~~by a fraction, the numerator of which is the property factor plus~~
11 ~~the payroll factor plus twice the sales factor, and the denominator~~
12 ~~of which is four, except as provided in subdivision (b) or (c).~~

13 ~~(2) Notwithstanding Section 38006, for taxable years beginning~~
14 ~~on or after January 1, 2012, all business income of an apportioning~~
15 ~~trade or business described in paragraph (1) shall be apportioned~~
16 ~~to this state by multiplying the business income by the sales factor,~~
17 ~~unless the trade or business meets the criteria of subdivision (b)~~
18 ~~or makes an election to apportion its income in accordance with~~
19 ~~Section 25128.7.~~

20 ~~(b) If an apportioning trade or business derives more than 50~~
21 ~~percent of its "gross business receipts" from conducting one or~~
22 ~~more qualified business activities, as defined in subdivision (c),~~
23 ~~all business income of the apportioning trade or business shall be~~
24 ~~apportioned to this state by multiplying business income by a~~
25 ~~fraction, the numerator of which is the property factor plus the~~
26 ~~payroll factor plus the sales factor, and the denominator of which~~
27 ~~is three.~~

28 ~~(c) For purposes of this section:~~

29 ~~(1) "Agricultural business activity" means any activity relating~~
30 ~~to any stock, dairy, poultry, fruit, furbearing animal, or truck farm,~~
31 ~~plantation, ranch, nursery, or range. "Agricultural business activity"~~
32 ~~also includes any activity relating to cultivating the soil or raising~~
33 ~~or harvesting any agricultural or horticultural commodity,~~
34 ~~including, but not limited to, the raising, shearing, feeding, caring~~
35 ~~for, training, or management of animals on a farm as well as the~~
36 ~~handling, drying, packing, grading, or storing on a farm of any~~
37 ~~agricultural or horticultural commodity in its unmanufactured state,~~
38 ~~but only if the owner, tenant, or operator of the farm regularly~~
39 ~~produces more than one-half of the commodity so treated.~~

1 ~~(2) “Apportioning trade or business” means a distinct trade or~~
2 ~~business whose business income is required to be apportioned~~
3 ~~under Sections 25101 and 25120, limited, if applicable, by Section~~
4 ~~25110, using the same denominator for each of the applicable~~
5 ~~payroll, property, and sales factors.~~

6 ~~(3) “Banking or financial business activity” means any activity~~
7 ~~attributable to dealings in money or moneyed capital in substantial~~
8 ~~competition with the business of national banks.~~

9 ~~(4) “Extractive business activity” means any activity relating~~
10 ~~to the production, refining, or processing of oil, natural gas, or~~
11 ~~mineral ore.~~

12 ~~(5) “Gross business receipts” means gross receipts described in~~
13 ~~subdivision (f) of Section 25120 (other than gross receipts from~~
14 ~~sales or other transactions within an apportioning trade or business~~
15 ~~between members of a group of corporations whose income and~~
16 ~~apportionment factors are required to be included in a combined~~
17 ~~report under Section 25101, limited, if applicable, by Section~~
18 ~~25110), whether or not the receipts are excluded from the sales~~
19 ~~factor by operation of Section 25137.~~

20 ~~(6) “Qualified business activity” means any of the following:~~

21 ~~(A) An agricultural business activity.~~

22 ~~(B) An extractive business activity.~~

23 ~~(C) A savings and loan activity.~~

24 ~~(D) A banking or financial business activity.~~

25 ~~(7) “Savings and loan activity” means any activity performed~~
26 ~~by savings and loan associations or savings banks which have been~~
27 ~~chartered by federal or state law.~~

28 ~~(d) In any case where the income and apportionment factors of~~
29 ~~two or more savings associations or corporations are required to~~
30 ~~be included in a combined report under Section 25101, limited, if~~
31 ~~applicable, by Section 25110, both of the following shall apply:~~

32 ~~(1) The application of the more than 50 percent test of~~
33 ~~subdivision (b) shall be made with respect to the “gross business~~
34 ~~receipts” of the entire apportioning trade or business of the group.~~

35 ~~(2) The entire business income of the group shall be apportioned~~
36 ~~in accordance with either subdivision (a) or (b), or Section 25128.5~~
37 ~~or 25128.7, as applicable.~~

38 ~~(e) The amendments made to this section by the act adding this~~
39 ~~subdivision shall apply to taxable years beginning on or after~~
40 ~~January 1, 2012.~~

SEC. 7. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) (1) Notwithstanding Section 38006, for taxable years beginning before January 1, 2012, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).

(2) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2012, all business income of an apportioning trade or business described in paragraph (1) shall be apportioned to this state by multiplying the business income by the sales factor, unless the trade or business meets the criteria of subdivision (b) or makes an election to apportion its income in accordance with Section 25128.7.

(b) If an apportioning trade or business derives more than 50 percent of its “gross business receipts” from conducting one or more qualified business activities, as defined in subdivision (c), all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(c) For purposes of this section, a “qualified business activity” means the following:

- (1) An agricultural business activity.
- (2) An extractive business activity.
- (3) A savings and loan activity.
- (4) A banking or financial business activity.

(d) For purposes of this section:

(1) “Gross business receipts” means gross receipts described in subdivision ~~(e)~~ or (f) of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and apportionment factors are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110), whether or not the receipts are excluded from the sales factor by operation of Section 25137.

(2) “Agricultural business activity” means ~~activities~~ activity relating to any stock, dairy, poultry, fruit, furbearing animal, or

truck farm, plantation, ranch, nursery, or range. “Agricultural business activity” also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(3) “Extractive business activity” means ~~activities~~ *activity* relating to the production, refining, or processing of oil, natural gas, or mineral ore.

(4) “Savings and loan activity” means any ~~activities~~ *activity* performed by savings and loan associations or savings banks which have been chartered by federal or state law.

(5) “Banking or financial business activity” means ~~activities~~ *activity* attributable to dealings in money or moneyed capital in substantial competition with the business of national banks.

(6) “Apportioning trade or business” means a distinct trade or business whose business income is required to be apportioned under Sections 25101 and 25120, limited, if applicable, by Section 25110, using the same denominator for each of the applicable payroll, property, and sales factors.

~~(7) Paragraph (4) of subdivision (c) shall apply only if the Franchise Tax Board adopts the Proposed Multistate Tax Commission Formula for the Uniform Apportionment of Net Income from Financial Institutions, or its substantial equivalent, and shall become operative upon the same operative date as the adopted formula.~~

~~(8)~~

(7) In any case where the income and apportionment factors of two or more savings associations or corporations are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110, both of the following shall apply:

(A) The application of the more than 50 percent test of subdivision (b) shall be made with respect to the “gross business receipts” of the entire apportioning trade or business of the group.

(B) The entire business income of the group shall be apportioned in accordance with either subdivision (a) or (b), or ~~subdivision (b) of Section 25128.5 or 25128.7~~, as applicable.

(e) The amendments made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 2012.

SEC. 8. Section 25128.5 of the Revenue and Taxation Code is amended to read:

25128.5. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, and before January 1, 2012, any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board to apportion its income in accordance with this section, and not in accordance with Section 25128.

(b) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2011, and before January 1, 2012, all business income of an apportioning trade or business making an election described in subdivision (a) shall be apportioned to this state by multiplying the business income by the sales factor.

(c) The Franchise Tax Board is authorized to issue regulations necessary or appropriate regarding the making of an election under this section, including regulations that are consistent with rules prescribed for making an election under Section 25113.

(d) This section shall not apply to taxable years beginning on or after January 1, 2012, and as of December 1, 2012, is repealed.

SEC. 9. Section 25128.7 is added to the Revenue and Taxation Code, to read:

25128.7. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2012, any apportioning trade or business, other than an apportioning trade or business described in subdivision (b) of Section 25128, may make an irrevocable annual election on an original timely filed return, in the manner and form prescribed by the Franchise Tax Board, to apportion its income in accordance with this section, and not in accordance with Section 25128, if the “tax,” as defined in Section 23036 before the application of any credits, using this section to apportion its business income, is not less than the “tax,” as defined in Section 23036 before the application of any credits, using paragraph (2)

1 of subdivision (a) of Section 25128 to apportion its business
2 income.

3 (b) Notwithstanding Section 38006, for taxable years beginning
4 on or after January 1, 2012, all business income of an apportioning
5 trade or business making an election under subdivision (a) shall
6 be apportioned to this state by multiplying the business income
7 by a fraction, the numerator of which is the property factor plus
8 the payroll factor plus twice the sales factor, and the denominator
9 of which is four.

10 (c) The Franchise Tax Board is authorized to issue regulations
11 necessary or appropriate regarding the making of an election under
12 this section, including regulations that are consistent with rules
13 prescribed for making an election under Section 25113.

14 SEC. 10. Section 25136 of the Revenue and Taxation Code is
15 amended to read:

16 25136. (a) For taxable years beginning before January 1, ~~2012,~~
17 ~~and for taxable years beginning on or after January 1, 2011, and~~
18 ~~before January 1, 2012,~~ for which Section 25128.5 is operative
19 and an election under subdivision (a) of Section 25128.5 has not
20 been made, sales, other than sales of tangible personal property,
21 are in this state if:

22 (1) The income-producing activity is performed in this state; or

23 (2) The income-producing activity is performed both in and
24 outside this state and a greater proportion of the income-producing
25 activity is performed in this state than in any other state, based on
26 costs of performance.

27 (3) This subdivision shall apply, and subdivision (b) shall not
28 apply, for any taxable year beginning on or after January 1, 2011,
29 for which Section 25128.5 is not operative for any taxpayer subject
30 to the tax imposed under this part.

31 (b) For taxable years beginning on or after January 1, 2011, and
32 before January 1, 2012:

33 (1) Sales from services are in this state to the extent the
34 purchaser of the service received the benefit of the service in this
35 state.

36 (2) Sales from intangible property are in this state to the extent
37 the property is used in this state. In the case of marketable
38 securities, sales are in this state if the customer is in this state.

39 (3) Sales from the sale, lease, rental, or licensing of real property
40 are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(5) (A) If Section 25128.5 is operative, then this subdivision shall apply in lieu of subdivision (a) for any taxable year for which an election has been made under subdivision (a) of Section 25128.5.

(B) If Section 25128.5 is not operative, then this subdivision shall not apply and subdivision (a) shall apply for any taxpayer subject to the tax imposed under this part.

(C) Notwithstanding subparagraphs (A) or (B), this subdivision shall apply for purposes of paragraph (2) of subdivision (b) of Section 23101.

(c) The Franchise Tax Board may prescribe those regulations as necessary or appropriate to carry out the purposes of subdivision (b).

(d) This section shall not apply to taxable years beginning on or after January 1, 2012, and as of December 1, 2012, is repealed.

SEC. 11. Section 25136.1 is added to the Revenue and Taxation Code, to read:

25136.1. (a) Notwithstanding Section 38006, for taxable years beginning on or after January 1, 2012, sales are in this state if:

(1) Sales from services are in this state to the extent the purchaser of the service received the benefit of the services in this state.

(2) Sales from intangible property are in this state to the extent the property is used in this state. In the case of marketable securities, sales are in this state if the customer is in this state.

(3) Sales from the sale, lease, rental, or licensing of real property are in this state if the real property is located in this state.

(4) Sales from the rental, lease, or licensing of tangible personal property are in this state if the property is located in this state.

(b) The Franchise Tax Board may prescribe regulations as necessary or appropriate to carry out the purposes of this section.

SEC. 12. Section 25136.2 is added to the Revenue and Taxation Code, to read:

25136.2. (a) For taxable years beginning on or after January 1, 2012, a qualified taxpayer that apportions its business income under Section 25128 shall apply the following provisions:

(1) Notwithstanding Section 25137, qualified sales assigned to this state shall be equal to 50 percent of the amount of qualified

1 sales that would be assigned to this state pursuant to Section
2 25136.1 but for the application of this section. The remaining 50
3 percent shall not be assigned to this state.

4 (2) All other sales shall be assigned pursuant to Section 25136.1.

5 (b) For purposes of this section:

6 (1) “Qualified taxpayer” means a member, as defined in
7 paragraph (10) of subdivision (b) of Section 25106.5 of Title 18
8 of the California Code of Regulations, as in effect on the effective
9 date of the act adding this section, of a combined reporting group
10 that is also a qualified group.

11 (2) “Qualified group” means a combined reporting group, as
12 defined in paragraph (3) of subdivision (b) of Section 25106.5 of
13 Title 18 of the California Code of Regulations, as in effect on the
14 effective date of the act adding this section, that satisfies the
15 following conditions:

16 (A) Has satisfied the minimum investment requirement for the
17 taxable year.

18 (B) For the combined reporting group’s taxable year beginning
19 in calendar year 2006, the combined reporting group derived more
20 than 50 percent of its United States network gross business receipts
21 from the operation of one or more cable systems.

22 (C) For purposes of satisfying the requirements of subparagraph
23 (B), the following rules shall apply:

24 (i) If a member of the combined reporting group for the taxable
25 year was not a member of the same combined reporting group for
26 the taxable year beginning in calendar year 2006, the gross business
27 receipts of that nonincluded member shall be included in
28 determining the combined reporting group’s gross business receipts
29 for its taxable year beginning in calendar year 2006 as if the
30 nonincluded member were a member of the combined reporting
31 group for the taxable year beginning in calendar year 2006.

32 (ii) The gross business receipts shall include the gross business
33 receipts of a qualified partnership, but only to the extent of a
34 member’s interest in the partnership.

35 (3) “Cable system” and “network” shall have the same meaning
36 as defined in Section 5830 of the Public Utilities Code, as in effect
37 on the effective date of the act adding this section. “Network
38 services” means video, cable, voice, or data services.

39 (4) “Gross business receipts” means gross receipts defined in
40 paragraph (2) of subdivision (f) of Section 25120 (other than gross

1 receipts from sales or other transactions between or among
2 members of a combined reporting group, limited, if applicable, by
3 Section 25110).

4 (5) “Minimum investment requirement” means qualified
5 expenditures of not less than two hundred fifty million dollars
6 (\$250,000,000) by a combined reporting group during the calendar
7 year that includes the beginning of the taxable year.

8 (6) “Qualified expenditures” means any combination of
9 expenditures attributable to this state for tangible property, payroll,
10 services, franchise fees, or any intangible property distribution or
11 other rights, paid or incurred by or on behalf of a member of a
12 combined reporting group.

13 (A) An expenditure for other than tangible property shall be
14 attributable to this state if the member of the combined reporting
15 group received the benefit of the purchase or expenditure in this
16 state.

17 (B) A purchase of or expenditure for tangible property shall be
18 attributable to this state if the property is placed in service in this
19 state.

20 (C) Qualified expenditures shall include expenditures by a
21 combined reporting group for property or services purchased, used,
22 or rendered by independent contractors in this state.

23 (D) Qualified expenditures shall also include expenditures by
24 a qualified partnership, but only to the extent of the member’s
25 interest in the partnership.

26 (7) “Qualified partnership” means a partnership if the
27 partnership’s income and apportionment factors are included in
28 the income and apportionment factors of a member of the combined
29 reporting group, but only to the extent of the member’s interest in
30 the partnership.

31 (8) “Qualified sales” means gross business receipts from the
32 provision of any network services, other than gross business
33 receipts from the sale or rental of customer premises equipment.
34 “Qualified sales” shall include qualified sales by a qualified
35 partnership, but only to the extent of a member’s interest in the
36 partnership.

37 (c) The rules in this section with respect to qualified sales by a
38 qualified partnership are intended to be consistent with the rules
39 for partnerships under paragraph (3) of subdivision (f) of Section
40 25137-1 of Title 18 of the California Code of Regulations.

1 SEC. 13. This act addresses the fiscal emergency declared and
2 reaffirmed by the Governor by proclamation on January 20, 2011,
3 pursuant to subdivision (f) of Section 10 of Article IV of the
4 California Constitution.

5 SEC. 14. This act provides for a tax levy within the meaning
6 of Article IV of the Constitution and shall go into immediate effect.

O