

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN SENATE MAY 8, 2012

AMENDED IN SENATE FEBRUARY 13, 2012

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 246

Introduced by Assembly Member Wieckowski
(Coauthors: Assembly Members Alejo, Bonilla, and Williams)
(Coauthor: Senator Pavley)

February 3, 2011

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

LEGISLATIVE COUNSEL’S DIGEST

AB 246, as amended, Wieckowski. Income taxes: credit: hiring.

The Personal Income Tax Law and the Corporation Tax Law allow 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, with a maximum cumulative credit of \$400,000,000 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, redefine “qualified employer” to mean a disabled veteran business enterprise, a disadvantaged business enterprise, a

microbusiness, or a small business, as defined. This bill would, for taxable years beginning on or after January 1, 2012, allow a credit in the amount of \$4,500 for each net increase in full-time employees, who are paid qualified wages of less than \$16 per hour and a credit in the amount of \$9,100 for each net increase in full-time employees, who are paid qualified wages of \$16 or more per hour, as provided.

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3 Extraordinary Session of the Statutes of 2009, is repealed.

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

7 17053.80. (a) (1) For each taxable year beginning on or after
8 January 1, 2009, and before January 1, 2012, there shall be allowed
9 as a credit against the "net tax," as defined in Section 17039, three
10 thousand dollars (\$3,000) for each net increase in qualified
11 full-time employees, as specified in subdivision (c), hired during
12 the taxable year by a qualified employer.

13 (2) For each taxable year beginning on or after January 1, 2012,
14 there shall be allowed as a credit against the "net tax," as defined
15 in Section 17039, an amount as specified in subparagraphs (A),
16 (B), and (C) for each net increase in qualified full-time employees,
17 or portion thereof, as specified in subdivision (c), for the taxable
18 year by a qualified employer.

19 (A) For each net increase in qualified full-time employees, or
20 portion thereof, who are paid qualified wages of less than sixteen
21 dollars (\$16) per hour, or an equivalent amount if the qualified
22 wages are paid other than on an hourly basis, four thousand five
23 hundred dollars (\$4,500).

1 (B) For each net increase in qualified full-time employees, or
2 portion thereof, who are paid qualified wages of sixteen dollars
3 (\$16) per hour or more, or an equivalent amount if paid other than
4 on an hourly basis, nine thousand one hundred dollars (\$9,100).

5 (C) If the net increase in qualified full-time employees for a
6 taxable year, as determined under subdivision (c), is less than the
7 sum of the net increase in qualified full-time employees determined
8 under subparagraphs (A) and (B), the amount of credit allowed
9 shall equal the net increase in qualified full-time employees
10 determined under subdivision (c) multiplied by the amount under
11 subparagraph (A) or (B), depending on which net increase in
12 qualified full-time employees calculated under that subparagraph
13 is greater than zero.

14 (D) A credit shall only be allowed if the qualified employer has
15 a net increase in qualified full-time employees for the taxable year,
16 as determined under subdivision (c).

17 (b) For purposes of this section:

18 ~~(1) "Acquired" includes a gift, inheritance, transfer incident to~~
19 ~~divorce, or any other transfer, whether or not for consideration.~~

20 ~~(2)~~

21 (1) "Qualified full-time employee" means:

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

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

29 ~~(3)~~

30 (2) A "qualified *full-time* employee" shall not include any of
31 the following:

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

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

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

4 (D) An employee certified as a qualified disadvantaged
5 individual or a qualified displaced employee in a local agency
6 military base recovery area (LAMBRA) designated in accordance
7 with Chapter 12.97 (commencing with Section 7105) of Division
8 7 of Title 1 of the Government Code.

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

11 (4)

12 (3) (A) For taxable years beginning on or after January 1, 2009,
13 and before January 1, 2012, “qualified employer” means a taxpayer
14 that, as of the last day of the preceding taxable year, employed a
15 total of 20 or fewer employees.

16 (B) For taxable years beginning on or after January 1, 2012,
17 “qualified employer” means an employer that as of the last day of
18 the preceding taxable year and the last day of the current taxable
19 year, was any of the following:

20 (i) A “disabled veteran business enterprise” as defined in
21 paragraph (7) of subdivision (b) of Section 999 of the Military and
22 Veterans Code.

23 (ii) A “disadvantaged business enterprise” as defined in
24 subdivision (f) of Section 2051 of the Public Contract Code.

25 (iii) A “microbusiness” as defined in paragraph (2) of
26 subdivision (d) of Section 14837 of the Government Code.

27 (iv) A “small business” as defined in paragraph (1) of
28 subdivision (d) of Section 14837 of the Government Code.

29 (5)

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

33 (6)

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

35 (A) In the case of a full-time employee paid hourly qualified
36 wages, “annual full-time equivalent” means the total number of
37 hours worked for the qualified employer by the employee (not to
38 exceed 1,820 hours per employee) divided by 1,820.

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

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

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

11 (B) The total number of qualified full-time employees employed
12 in the preceding taxable year by the qualified employer and by a
13 trade or business acquired by the qualified employer during the
14 current taxable year.

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

18 (2) For a qualified employer that first commences doing business
19 in this state during the taxable year, the number of qualified
20 full-time employees for the immediately preceding prior taxable
21 year shall be zero.

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

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

29 (f) For purposes of this section:

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

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

37 (g) (1) (A) A credit under this section and Section 23623 shall
38 be allowed only for credits claimed on timely filed original returns
39 received by the Franchise Tax Board on or before the cutoff date
40 established by the Franchise Tax Board.

(B) For purposes of this paragraph, the cutoff 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 cutoff 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 an administrative or judicial proceeding.

(B) A 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. An 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 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 splitups, 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 a 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 1 of the calendar year after the year of the cutoff date, and as of that December 1 is repealed.

SEC. 3. Section 23623 of the Revenue and Taxation Code, as added by Section 8 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.

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

23623. (a) (1) For each taxable year beginning on or after January 1, 2009, and before January 1, 2012, 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.

(2) For each taxable year beginning on or after January 1, 2012, there shall be allowed as a credit against the "tax," as defined in Section 23036, an amount as specified in subparagraphs (A), (B), and (C) for each net increase in qualified full-time employees, or portion thereof, as specified in subdivision (c), for the taxable year by a qualified employer.

(A) For each net increase in qualified full-time employees, or portion thereof, who are paid qualified wages of less than sixteen dollars (\$16) per hour, or an equivalent amount if the qualified wages are paid other than on an hourly basis, four thousand five hundred dollars (\$4,500).

(B) For each net increase in qualified full-time employees, or portion thereof, who are paid qualified wages of sixteen dollars (\$16) per hour or more, or an equivalent amount if paid other than on an hourly basis, nine thousand one hundred dollars (\$9,100).

(C) If the net increase in qualified full-time employees for a taxable year, as determined under subdivision (c), is less than the sum of the net increase in qualified full-time employees determined under subparagraphs (A) and (B), the amount of credit allowed shall equal the net increase in qualified full-time employees determined under subdivision (c) multiplied by the amount under subparagraph (A) or (B), depending on which net increase in qualified full-time employees calculated under that subparagraph is greater than zero.

(D) A credit shall only be allowed if the qualified employer has a net increase in qualified full-time employees for the taxable year, as determined under subdivision (c).

(b) For purposes of this section:

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

~~(2)~~

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

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

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

9 (3)

10 (2) A “qualified *full-time* employee” shall not include any of
11 the following:

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

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

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

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

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

29 (4)

30 (3) (A) For taxable years beginning on or after January 1, 2009,
31 and before January 1, 2012, “qualified employer” means a taxpayer
32 that, as of the last day of the preceding taxable year, employed a
33 total of 20 or fewer employees.

34 (B) For taxable years beginning on or after January 1, 2012,
35 “qualified employer” means an employer that as of the last day of
36 the preceding taxable year and the last day of the current taxable
37 year was any of the following:

38 (i) A “disabled veteran business enterprise” as defined in
39 paragraph (7) of subdivision (b) of Section 999 of the Military and
40 Veterans Code.

1 (ii) A “disadvantaged business enterprise” as defined in
2 subdivision (f) of Section 2051 of the Public Contract Code.

3 (iii) A “microbusiness” as defined in paragraph (2) of
4 subdivision (d) of Section 14837 of the Government Code.

5 (iv) A “small business” as defined in paragraph (1) of
6 subdivision (d) of Section 14837 of the Government Code.

7 ~~(5)~~

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

11 ~~(6)~~

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

13 (A) In the case of a full-time employee paid hourly qualified
14 wages, “annual full-time equivalent” means the total number of
15 hours worked for the qualified employer by the employee (not to
16 exceed 1,820 hours per employee) divided by 1,820.

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

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

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

27 (B) The total number of qualified full-time employees employed
28 in the preceding taxable year by the qualified employer and by a
29 trade or business acquired by the qualified employer during the
30 current taxable year.

31 (C) The total number of qualified full-time employees employed
32 in the current taxable year by the qualified employer and by a trade
33 or business acquired during the current taxable year.

34 (2) For a qualified employer that first commences doing business
35 in this state during the taxable year, the number of qualified
36 full-time employees for the immediately preceding prior taxable
37 year shall be zero.

38 (d) In the case where the credit allowed by this section exceeds
39 the “tax,” the excess may be carried over to reduce the “tax” in

1 the following year, and succeeding seven years if necessary, until
2 the credit is exhausted.

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

6 (f) For purposes of this section:

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

10 (2) In determining whether the taxpayer has first commenced
11 doing business in this state during the taxable year, the provisions
12 of subdivision (g) of Section 24416.20, without application of
13 paragraph (7) of that subdivision, shall apply.

14 (g) (1) (A) A credit under this section and Section 17053.80
15 shall be allowed only for credits claimed on timely filed original
16 returns received by the Franchise Tax Board on or before the
17 cut-off date established by the Franchise Tax Board.

18 (B) For purposes of this paragraph, the cutoff date shall be the
19 last day of the calendar quarter within which the Franchise Tax
20 Board estimates it will have received timely filed original returns
21 claiming credits under this section and Section 17053.80 that
22 cumulatively total four hundred million dollars (\$400,000,000)
23 for all taxable years.

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

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

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

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

1 (h) (1) The Franchise Tax Board may prescribe rules,
2 guidelines, or procedures necessary or appropriate to carry out the
3 purposes of this section, including guidelines regarding the
4 limitation on total credits allowable under this section and Section
5 17053.80 and guidelines necessary to avoid the application of
6 paragraph (2) of subdivision (f) through splitups, shell corporations,
7 partnerships, tiered ownership structures, or otherwise.

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

13 (i) This section shall remain in effect only until December 1 of
14 the calendar year after the year of the cutoff date, and as of that
15 December 1 is repealed.

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