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 ⅔ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 17053.80 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and Taxation Code, as added by Section 3 of Chapter 10 of the Third Extraordinary Session of the Statutes of 2009, is repealed.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. 2. 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) (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 "net tax," as defined in Section 17039, 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 "net tax," as defined in Section 17039, 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) "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)~~

(2) A "qualified *full-time* 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)~~

(3) (A) For taxable years beginning on or after January 1, 2009, and before January 1, 2012, "qualified employer" means 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, "qualified employer" means an employer that as of the last day of the preceding taxable year and the last day of the current taxable year, was any of the following:

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

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

(iii) A "microbusiness" as defined in paragraph (2) of subdivision (d) of Section 14837 of the Government Code.

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

~~(5)~~

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

~~(6)~~

(5) "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 qualified employer by the employee (not to exceed 1,820 hours per employee) divided by 1,820.

(B) In the case of a salaried full-time employee, "annual full-time equivalent" means the total number of weeks worked for the qualified employer 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 qualified employer and by a trade or business acquired by the qualified employer during the current taxable year.

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

(2) For a qualified employer that first commences doing business in this state during the taxable year, the number of qualified 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 succeeding seven years if necessary, until the credit is exhausted.

(e) A 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) A credit under this section and Section 23623 shall be allowed only for credits claimed on timely filed original returns received by the Franchise Tax Board on or before the cutoff date 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) "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)~~
(2) A "qualified *full-time* 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)~~
(3) (A) For taxable years beginning on or after January 1, 2009, and before January 1, 2012, "qualified employer" means 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, "qualified employer" means an employer that as of the last day of the preceding taxable year and the last day of the current taxable year was any of the following:
(i) A "disabled veteran business enterprise" as defined in paragraph (7) of subdivision (b) of Section 999 of the Military and Veterans Code.

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

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

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

~~(5)~~

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

~~(6)~~

(5) “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 qualified employer by the employee (not to exceed 1,820 hours per employee) divided by 1,820.

(B) In the case of a salaried full-time employee, “annual full-time equivalent” means the total number of weeks worked for the qualified employer 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 qualified employer and by a trade or business acquired by the qualified employer during the current taxable year.

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

(2) For a qualified employer that first commences doing business in this state during the taxable year, the number of qualified 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 succeeding seven years if necessary, until the credit is exhausted.

(e) A 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 (g) of Section 24416.20, without application of paragraph (7) of that subdivision, shall apply.

(g) (1) (A) A credit under this section and Section 17053.80 shall be allowed only for credits claimed on timely filed original returns 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 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 17053.80 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 17053.80 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 17053.80 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. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

O