

AMENDED IN ASSEMBLY JANUARY 11, 2012

AMENDED IN ASSEMBLY JUNE 13, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 248

Introduced by Assembly Member Perea

February 3, 2011

An act to add and repeal Section 17053.90 of, *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 248, as amended, Perea. ~~Personal income tax: physicians: Income taxes: credit:~~ qualified medical services *exclusion: hiring credit.*

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

This bill would reduce the total amount of credit that may be allocated under those laws to \$250,000,000.

This bill would authorize a credit against those taxes for each taxable year beginning on or after January 1, ~~2012~~ 2013, and before January 1, ~~2017~~ 2016, in an amount equal to 25% of the value of qualified medical services, as defined, personally provided by a qualified taxpayer during the taxable year. *This bill would cap the total amount of credit that may be allocated to \$150,000,000.*

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: ~~majority~~ ^{$\frac{2}{3}$} . 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3 Extraordinary Session of the Statutes of 2009, is repealed.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 ~~17053.80.— (a) For each taxable year beginning on or after~~
5 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
6 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
7 ~~for each net increase in qualified full-time employees, as specified~~
8 ~~in subdivision (c), hired during the taxable year by a qualified~~
9 ~~employer.~~
10 ~~(b) For purposes of this section:~~
11 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
12 ~~to divorce, or any other transfer, whether or not for consideration.~~
13 ~~(2) “Qualified full-time employee” means:~~
14 ~~(A) A qualified employee who was paid qualified wages by the~~
15 ~~qualified employer for services of not less than an average of 35~~
16 ~~hours per week.~~
17 ~~(B) A qualified employee who was a salaried employee and~~
18 ~~was paid compensation during the taxable year for full-time~~
19 ~~employment, within the meaning of Section 515 of the Labor Code,~~
20 ~~by the qualified employer.~~
21 ~~(3) A “qualified employee” shall not include any of the~~
22 ~~following:~~
23 ~~(A) An employee certified as a qualified employee in an~~
24 ~~enterprise zone designated in accordance with Chapter 12.8~~
25 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
26 ~~Government Code.~~
27 ~~(B) An employee certified as a qualified disadvantaged~~
28 ~~individual in a manufacturing enhancement area designated in~~
29 ~~accordance with Section 7073.8 of the Government Code.~~

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

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

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

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

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

25 ~~(e) The net increase in qualified full-time employees of a~~
26 ~~qualified employer shall be determined as provided by this~~
27 ~~subdivision:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 ~~(4) The Franchise Tax Board shall periodically provide notice~~
39 ~~on its Web site with respect to the amount of credit under this~~

1 section and Section 23623 claimed on timely filed original returns
2 received by the Franchise Tax Board.

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

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

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

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

21 17053.80. (a) For each taxable year beginning on or after
22 January 1, 2009, there shall be allowed as a credit against the “net
23 tax,” as defined in Section 17039, three thousand dollars (\$3,000)
24 for each net increase in qualified full-time employees, as specified
25 in subdivision (c), hired during the taxable year by a qualified
26 employer.

27 (b) For purposes of this section:

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

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

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

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

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

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

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

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

11 (D) An employee certified as a qualified disadvantaged
12 individual or a qualified displaced employee in a local agency
13 military base recovery area (LAMBRA) designated in accordance
14 with Chapter 12.97 (commencing with Section 7105) of Division
15 7 of Title 1 of the Government Code.

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

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

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

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

25 (A) In the case of a full-time employee paid hourly qualified
26 wages, “annual full-time equivalent” means the total number of
27 hours worked for the taxpayer by the employee (not to exceed
28 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

18 (f) For purposes of this section:

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

22 (2) In determining whether the taxpayer has first commenced
23 doing business in this state during the taxable year, the provisions
24 of subdivision (f) of Section ~~17276~~ *17276.20*, without application
25 of paragraph (7) of that subdivision, shall apply.

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

30 (B) For purposes of this paragraph, the cut-off date shall be the
31 last day of the calendar quarter within which the Franchise Tax
32 Board estimates it will have received timely filed original returns
33 claiming credits under this section and Section 23623 that
34 cumulatively total ~~four~~ *two* hundred *fifty* million dollars
35 ~~(\$400,000,000)~~ *(\$250,000,000)* for all taxable years.

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

38 (3) (A) The determinations of the Franchise Tax Board with
39 respect to the cut-off date, the date a return is received, and whether

1 a return has been timely filed for purposes of this subdivision may
 2 not be reviewed in any administrative or judicial proceeding.

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

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

13 (h) (1) The Franchise Tax Board may prescribe rules,
 14 guidelines, or procedures necessary or appropriate to carry out the
 15 purposes of this section, including any guidelines regarding the
 16 limitation on total credits allowable under this section and Section
 17 23623 and guidelines necessary to avoid the application of
 18 paragraph (2) of subdivision (f) through split-ups, shell
 19 corporations, partnerships, tiered ownership structures, or
 20 otherwise.

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

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

29 **SECTION 1.**

30 *SEC. 3.* Section 17053.90 is added to the Revenue and Taxation
 31 Code, to read:

32 17053.90. (a) For each taxable year beginning on or after
 33 January 1, ~~2012~~ 2013, and before January 1, ~~2017~~ 2016, there shall
 34 be allowed as a credit against the “net tax,” as defined in Section
 35 17039, an amount equal to 25 percent of the value of qualified
 36 medical services personally provided by a qualified taxpayer during
 37 the taxable year.

38 (b) For purposes of this section:

1 (1) “Emergency medical services” has the same meaning as
2 “emergency services and care” as that term is defined in
3 subdivision (a) of Section 1317.1 of the Health and Safety Code.

4 (2) “Local community clinic” means a community clinic or free
5 clinic as defined in subparagraphs (A) and (B) of paragraph (1) of
6 subdivision (a) of Section 1204 of the Health and Safety Code.

7 (3) “Qualified medical services” means medical services
8 provided by a qualified taxpayer free of charge or at a reduced rate
9 at a local community clinic, or emergency medical services
10 provided by a qualified taxpayer free of charge or at a reduced rate
11 in an emergency department of a general acute care hospital
12 licensed pursuant to Section 1250 of the Health and Safety Code.

13 (4) “Qualified taxpayer” means a physician or surgeon licensed
14 by the Medical Board of California or the Osteopathic Medical
15 Board of California.

16 (c) The amount of credit allowed to any qualified taxpayer by
17 this section shall not exceed five thousand dollars (\$5,000) per
18 taxable year.

19 (d) (1) The value of medical services provided shall be
20 determined according to the usual, reasonable, and customary rate
21 as described in Section 1300.71(a)(3)(B) of Title 28 of the
22 California Code of Regulations.

23 (2) In the case of medical services being provided at a reduced
24 rate, the amount used to calculate the value of the qualified medical
25 services provided shall be the difference between the value of the
26 medical services provided, as determined by paragraph (1), and
27 the reduced rate charged.

28 (e) No other credit or deduction shall be allowed by this part
29 for any amount for which a credit is claimed under this section.

30 (f) *A credit shall not be allowed under this section for emergency*
31 *medical services for which a qualified taxpayer has received*
32 *reimbursement pursuant to Chapter 2.5 (commencing with Section*
33 *1797.98a) of Division 2.5 of the Health and Safety Code.*

34 ~~(f)~~

35 (g) The local community clinic or general acute care hospital,
36 as described in this section, shall provide documentation to the
37 qualified taxpayer regarding the value of services provided, as
38 prescribed by this section.

39 ~~(g)~~

1 (h) If the credit allowed by this section exceeds the “net tax”
2 for the taxable year, the excess may be carried over to reduce the
3 “net tax” for the succeeding eight taxable years, or until the credit
4 has been exhausted, whichever occurs first.

5 (i) (1) (A) *Notwithstanding subdivision (a), a credit under this*
6 *section shall be allowed only for credits claimed on a timely filed*
7 *original return received by the Franchise Tax Board on or before*
8 *the cut-off date established by the Franchise Tax Board.*

9 (B) *For purposes of this paragraph, the cut-off date shall be*
10 *the last day of the calendar quarter within which the Franchise*
11 *Tax Board estimates it will have received timely filed original*
12 *returns claiming credits under this section that cumulatively total*
13 *one hundred fifty million dollars (\$150,000,000) for all taxable*
14 *years.*

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

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

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

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

32 ~~(h)~~

33 (j) *This section shall remain in effect only until December 1,*
34 *2017 2016, and as of that date is repealed. However, any unused*
35 *credit may continue to be carried forward, as provided in*
36 *subdivision (g).*

37 *SEC. 4. Section 23623 of the Revenue and Taxation Code, as*
38 *added by Section 8 of Chapter 10 of the Third Extraordinary*
39 *Session of the Statutes of 2009, is repealed.*

1 ~~23623. (a) For each taxable year beginning on or after January~~
2 ~~1, 2009, there shall be allowed as a credit against the “tax,” as~~
3 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
4 ~~net increase in qualified full-time employees, as specified in~~
5 ~~subdivision (c), hired during the taxable year by a qualified~~
6 ~~employer.~~
7 ~~(b) For purposes of this section:~~
8 ~~(1) “Acquired” includes any gift, inheritance, transfer incident~~
9 ~~to divorce, or any other transfer, whether or not for consideration.~~
10 ~~(2) “Qualified full-time employee” means:~~
11 ~~(A) A qualified employee who was paid qualified wages during~~
12 ~~the taxable year by the qualified employer for services of not less~~
13 ~~than an average of 35 hours per week.~~
14 ~~(B) A qualified employee who was a salaried employee and~~
15 ~~was paid compensation during the taxable year for full-time~~
16 ~~employment, within the meaning of Section 515 of the Labor Code,~~
17 ~~by the qualified employer.~~
18 ~~(3) A “qualified employee” shall not include any of the~~
19 ~~following:~~
20 ~~(A) An employee certified as a qualified employee in an~~
21 ~~enterprise zone designated in accordance with Chapter 12.8~~
22 ~~(commencing with Section 7070) of Division 7 of Title 1 of the~~
23 ~~Government Code.~~
24 ~~(B) An employee certified as a qualified disadvantaged~~
25 ~~individual in a manufacturing enhancement area designated in~~
26 ~~accordance with Section 7073.8 of the Government Code.~~
27 ~~(C) An employee certified as a qualified employee in a targeted~~
28 ~~tax area designated in accordance with Section 7097 of the~~
29 ~~Government Code.~~
30 ~~(D) An employee certified as a qualified disadvantaged~~
31 ~~individual or a qualified displaced employee in a local agency~~
32 ~~military base recovery area (LAMBRA) designated in accordance~~
33 ~~with Chapter 12.97 (commencing with Section 7105) of Division~~
34 ~~7 of Title 1 of the Government Code.~~
35 ~~(E) An employee whose wages are included in calculating any~~
36 ~~other credit allowed under this part.~~
37 ~~(4) “Qualified employer” means a taxpayer that, as of the last~~
38 ~~day of the preceding taxable year, employed a total of 20 or fewer~~
39 ~~employees.~~

1 ~~(5) “Qualified wages” means wages subject to Division 6~~
 2 ~~(commencing with Section 13000) of the Unemployment Insurance~~
 3 ~~Code.~~
 4 ~~(6) “Annual full-time equivalent” means either of the following:~~
 5 ~~(A) In the case of a full-time employee paid hourly qualified~~
 6 ~~wages, “annual full-time equivalent” means the total number of~~
 7 ~~hours worked for the taxpayer by the employee (not to exceed~~
 8 ~~2,000 hours per employee) divided by 2,000.~~
 9 ~~(B) In the case of a salaried full-time employee, “annual~~
 10 ~~full-time equivalent” means the total number of weeks worked for~~
 11 ~~the taxpayer by the employee divided by 52.~~
 12 ~~(c) The net increase in qualified full-time employees of a~~
 13 ~~qualified employer shall be determined as provided by this~~
 14 ~~subdivision:~~
 15 ~~(1) (A) The net increase in qualified full-time employees shall~~
 16 ~~be determined on an annual full-time equivalent basis by~~
 17 ~~subtracting from the amount determined in subparagraph (C) the~~
 18 ~~amount determined in subparagraph (B).~~
 19 ~~(B) The total number of qualified full-time employees employed~~
 20 ~~in the preceding taxable year by the taxpayer and by any trade or~~
 21 ~~business acquired by the taxpayer during the current taxable year.~~
 22 ~~(C) The total number of full-time employees employed in the~~
 23 ~~current taxable year by the taxpayer and by any trade or business~~
 24 ~~acquired during the current taxable year.~~
 25 ~~(2) For taxpayers who first commence doing business in this~~
 26 ~~state during the taxable year, the number of full-time employees~~
 27 ~~for the immediately preceding prior taxable year shall be zero.~~
 28 ~~(d) In the case where the credit allowed by this section exceeds~~
 29 ~~the “tax,” the excess may be carried over to reduce the “tax” in~~
 30 ~~the following year, and succeeding seven years if necessary, until~~
 31 ~~the credit is exhausted.~~
 32 ~~(e) Any deduction otherwise allowed under this part for qualified~~
 33 ~~wages shall not be reduced by the amount of the credit allowed~~
 34 ~~under this section.~~
 35 ~~(f) For purposes of this section:~~
 36 ~~(1) All employees of the trades or businesses that are treated as~~
 37 ~~related under either Section 267, 318, or 707 of the Internal~~
 38 ~~Revenue Code shall be treated as employed by a single taxpayer.~~
 39 ~~(2) In determining whether the taxpayer has first commenced~~
 40 ~~doing business in this state during the taxable year, the provisions~~

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

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

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

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

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

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

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

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

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

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

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

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

13 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (f) For purposes of this section:

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

5 (2) In determining whether the taxpayer has first commenced
6 doing business in this state during the taxable year, the provisions
7 of subdivision—(f) (g) of Section—~~17276~~ 24416.20, without
8 application of paragraph (7) of that subdivision, shall apply.

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

14 (B) For purposes of this paragraph, the cut-off date shall be the
15 last day of the calendar quarter within which the Franchise Tax
16 Board estimates it will have received timely filed original returns
17 claiming credits under this section and Section 17053.80 that
18 cumulatively total—~~four~~ two hundred fifty million dollars
19 (~~\$400,000,000~~) (\$250,000,000) for all taxable years.

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

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

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

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

36 (h) (1) The Franchise Tax Board may prescribe rules,
37 guidelines, or procedures necessary or appropriate to carry out the
38 purposes of this section, including any guidelines regarding the
39 limitation on total credits allowable under this section and Section
40 17053.80 and guidelines necessary to avoid the application of

1 paragraph (2) of subdivision (f) through split-ups, shell
2 corporations, partnerships, tiered ownership structures, or
3 otherwise.

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

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

12 ~~SEC. 2.~~

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

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