

AMENDED IN ASSEMBLY JANUARY 4, 2012

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 643

Introduced by Assembly Member Davis

February 16, 2011

An act to amend Section 2923.1 of, and to add Section 2923.51 to, the Civil Code, relating to real property transactions add Sections 17053.9 and 23629 to, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 643, as amended, Davis. ~~Mortgages: counseling.~~ *Income taxes: hiring credits: investment credits.*

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit in the amount of \$3,000 for each full-time employee hired by a qualified employer applicable to taxable years beginning on or after January 1, 2009, and ending upon a cut off date calculated based upon an estimate by the Franchise Tax Board of claims cumulatively totalling \$400,000,000 for all taxable years, as specified. Existing law also creates the California Tax Credit Allocation Committee, which has specified duties in regard to low-income housing credits.

This bill would instead calculate the cut off date for the above-described hiring credit based upon an estimate by the Franchise Tax Board of claims cumulatively totalling \$100,000,000 for all taxable years, as specified.

This bill would also authorize a credit under both laws, for taxable years beginning on or after January 1, 2013, and before January 1, 2020, in a specified amount for investments in low-income communities. The bill would limit the total amount of credit allowed pursuant to these provisions to \$500,000,000 per year. This bill would impose specified duties on the California Tax Credit Allocation Committee with regard to the application for, and allocation of, the credit. The bill would require the committee to establish and impose reasonable fees upon entities that apply for the allocation of the credit and use the revenue to defray the cost of administering the program, as specified, thereby making an appropriation. This bill would also appropriate \$150,000 from the Tax Credit Allocation Fee Account to the committee for purposes of implementing the tax credit.

This bill would result in a change in state taxes for the purpose of increasing state revenues 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.

~~(1) Existing law provides that a mortgage broker, as defined, who provides mortgage brokerage services to a borrower is the fiduciary of the borrower and any violation of the broker's fiduciary duty is a violation of the mortgage broker's license law. Existing law provides that this fiduciary duty includes a requirement that the mortgage broker place the economic interest of the borrower ahead of his or her own economic interest. Under existing law, a violation of the licensing laws of certain mortgage brokers is a crime.~~

~~This bill would provide that a mortgage broker, for purposes of these provisions, includes specified mortgage loan originators. This bill would provide that the fiduciary duty owed to a borrower includes a requirement that the mortgage broker provide a borrower prepurchase debt counseling that explains what a prudent debt-to-income ratio would be for the borrower, taking into account the borrower's income and credit rating. The bill would require the Department of Corporations, the Department of Financial Institutions, and the Department of Real Estate to collaborate to establish a standard for determining a prudent debt-to-income ratio for borrowers. Because a violation of these provisions by certain mortgage brokers would be a crime, this bill would impose a state-mandated local program.~~

~~(2) Existing law requires that, upon a breach of the obligation of a mortgage or transfer of an interest in property, the trustee, mortgagee, or beneficiary record a notice of default in the office of the county recorder where the mortgaged or trust property is situated and mail the notice of default to the mortgagor or trustor. Existing law, until January 1, 2013, prohibits a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default for an additional 30 days on loans made between January 1, 2003, to December 31, 2007, that secure owner-occupied residential real property, under certain circumstances.~~

~~This bill would prohibit a mortgagee, trustee, beneficiary, or authorized agent from filing a notice of default unless the borrower has been provided counseling relating to foreclosure prevention that includes assistance in negotiating an agreement to cure the default.~~

~~(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~^{yes}. Fiscal committee: yes. State-mandated local program: ~~yes~~^{no}.

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

- 1 SECTION 1. *The Legislature finds and declares all of the*
- 2 *following:*
- 3 (a) *California is entering the sixth year of the worst economic*
- 4 *recession since the Great Depression.*
- 5 (b) *Due to a systemic budget problem, the state is suffering from*
- 6 *chronic revenue shortfalls based in part on increasing reliance*
- 7 *on revenues from personal income tax rolls.*
- 8 (c) *Investment in small business ventures is a proven method*
- 9 *of stimulating economic activity, creating new jobs, and generating*
- 10 *revenue by expanding the tax base.*
- 11 (d) *The federal New Markets Credit Tax Program, created in*
- 12 *2000 with bipartisan support, has been an effective means of*
- 13 *stimulating state and regional economies due to its provision*
- 14 *allowing the creation of matching state programs to leverage*
- 15 *additional federal funds for investment capital benefitting local*
- 16 *communities. These investments accrue to small businesses,*
- 17 *schools, and other business-related real estate projects.*

1 (e) As of 2010, nine states, Ohio, Florida, Missouri, Louisiana,
2 Mississippi, Kentucky, Illinois, Oklahoma, and Connecticut, had
3 enacted matching state programs. On average, these states
4 successfully leveraged \$13 in federal new Markets Tax Credit for
5 every dollar of state credits initially allocated for the state
6 program.

7 (f) In the 2010–11 fiscal year, \$350 million of California’s State
8 Hiring Tax Credit credits went unused.

9 (g) Given the current economic climate and the lack of use of
10 the state hiring tax credit, it is reasonable for the Legislature to
11 search for and consider other alternatives to stimulate hiring and
12 generate economic activity with a view to shortening the current
13 recession and promoting permanent economic recovery.

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

17 ~~17053.80. (a) For each taxable year beginning on or after~~
18 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
19 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
20 ~~for each net increase in qualified full-time employees, as specified~~
21 ~~in subdivision (c), hired during the taxable year by a qualified~~
22 ~~employer.~~

23 ~~(b) For purposes of this section:~~

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

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

27 ~~(A) A qualified employee who was paid qualified wages by the~~
28 ~~qualified employer for services of not less than an average of 35~~
29 ~~hours per week.~~

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

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

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

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

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

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

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

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

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

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

21 ~~(A) In the case of a full-time employee paid hourly qualified~~
22 ~~wages, “annual full-time equivalent” means the total number of~~
23 ~~hours worked for the taxpayer by the employee (not to exceed~~
24 ~~2,000 hours per employee) divided by 2,000.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (b) For purposes of this section:

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

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

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

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

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

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

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

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

13 (D) An employee certified as a qualified disadvantaged
14 individual or a qualified displaced employee in a local agency
15 military base recovery area (LAMBRA) designated in accordance
16 with Chapter 12.97 (commencing with Section 7105) of Division
17 7 of Title 1 of the Government Code.

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

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

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

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

27 (A) In the case of a full-time employee paid hourly qualified
28 wages, “annual full-time equivalent” means the total number of
29 hours worked for the taxpayer by the employee (not to exceed
30 2,000 hours per employee) divided by 2,000.

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

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

37 (1) (A) The net increase in qualified full-time employees shall
38 be determined on an annual full-time equivalent basis by
39 subtracting from the amount determined in subparagraph (C) the
40 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 first commence doing business in this
8 state during the taxable year, the number of full-time employees
9 for the immediately preceding prior taxable year shall be zero.

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

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

17 (f) For purposes of this section:

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

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

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

29 (B) For purposes of this paragraph, the cut-off date shall be the
30 last day of the calendar quarter within which the Franchise Tax
31 Board estimates it will have received timely filed original returns
32 claiming credits under this section and Section 23623 that
33 cumulatively total ~~four hundred~~ *one hundred* million dollars
34 ~~(\$400,000,000)~~ *(\$100,000,000)* for all taxable years.

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

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

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

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

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

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

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

26 *SEC. 4. Section 17053.9 is added to the Revenue and Taxation*
27 *Code, to read:*

28 *17053.9. There is hereby created the California New Markets*
29 *Tax Credit Program as provided in this section and Section*
30 *23622.9. The purpose of this program is to stimulate economic*
31 *development, and hasten California's economic recovery, by*
32 *granting tax credits for investment in California, including, but*
33 *not limited to, retail businesses, real property, financial institutions,*
34 *and schools. The California Tax Credit Allocation Committee shall*
35 *have responsibility for the administration of this program as*
36 *provided in this section and Section 23622.9. The program shall*
37 *be as follows:*

38 (a) (1) *For taxable years beginning on or after January 1, 2013,*
39 *and before January 1, 2020, there shall be allowed to a taxpayer*
40 *that holds a qualified equity investment on a credit allowance date*

1 of the investment which occurs during the taxable year, as a credit
2 against the “net tax,” as defined in Section 17039, an amount
3 equal to the applicable percentage described in paragraph (2).

4 (2) For purposes of paragraph (1), the applicable percentage
5 shall be 39 percent of the qualified equity investment.

6 (b) For purposes of this section:

7 (1) “Credit allowance date” means, with respect to any qualified
8 equity investment, the date on which the investment is initially
9 made.

10 (2) “Equity investment” means either of the following:

11 (A) Any stock, other than nonqualified preferred stock as defined
12 in Section 351(g)(2) of the Internal Revenue Code, in an entity
13 which is a corporation.

14 (B) Any capital interest in an entity which is a partnership.

15 (3) (A) “Low-income community” means a population census
16 tract where any of the following applies:

17 (i) The tract has a poverty rate of at least 20 percent.

18 (ii) The tract is not located within a metropolitan area, and the
19 median family income does not exceed 80 percent of the statewide
20 median family income.

21 (iii) The tract is located within a metropolitan area, and the
22 median family income does not exceed 80 percent of the greater
23 statewide median family income or the metropolitan area median
24 family income.

25 (iv) The tract is located within a high migration rural county,
26 and the median income does not exceed 85 percent of the statewide
27 median family income. For purposes of this clause, “high migration
28 rural county” means a county which, during the 20-year period
29 ending with the year in which the most recent census was
30 conducted, has a net out migration of inhabitants from the county
31 of at least 10 percent of the population of the county at the
32 beginning of that period.

33 (B) Where a community is in a location that is not tracted for
34 population census tracts, the equivalent county divisions shall be
35 used for purposes of determining poverty rates and median family
36 income.

37 (C) Where a community is in a population census tract with a
38 population of less than 2,000, the community shall be treated as
39 a low-income community if the tract is within an empowerment
40 zone designated under Section 1391 of the Internal Revenue Code

1 *and is contiguous to one or more low-income communities, as*
2 *determined under this paragraph.*

3 (4) (A) *“Qualified active low-income community business”*
4 *means, with respect to any taxable year, a corporation, including*
5 *a nonprofit corporation, or partnership that, for that taxable year,*
6 *meets all of the following conditions:*

7 (i) *Derives at least 50 percent of its total gross income from the*
8 *active conduct of a qualified business in a low-income community*
9 *in California.*

10 (ii) *A substantial portion of the use of the tangible property of*
11 *the entity, whether owned or leased, is within a low-income*
12 *community in California. “Substantial portion” shall be defined*
13 *as 40 percent or more of the tangible property of the entity.*

14 (iii) *Less than 5 percent of the average of the aggregate*
15 *unadjusted base of the property of the entity is attributable to*
16 *collectibles, as defined in Section 408(m)(2) of the Internal Revenue*
17 *Code.*

18 (iv) *Less than 5 percent of the average of the aggregate*
19 *unadjusted base of the property of the entity is attributable to*
20 *nonqualified financial property, as defined in Section 1397C(e)*
21 *of the Internal Revenue Code.*

22 (B) *A “qualified active low-income community business” shall*
23 *include a business carried on by an individual as a proprietor, if*
24 *that business meets the requirements of subparagraph (A) were it*
25 *incorporated or a trade or business that would qualify if that trade*
26 *or business were separately incorporated.*

27 (5) *“Qualified business” has the same meaning as that in*
28 *Section 1397C(d) of the Internal Revenue Code except that:*

29 (A) *In lieu of applying subparagraph (B) of paragraph (2), the*
30 *rental to others of real property located in any low-income*
31 *community shall be treated as a qualified business if there are*
32 *substantial improvements located on that real property.*

33 (B) *Paragraph (3) of that section shall not apply.*

34 (6) (A) *“Qualified community development entity” means a*
35 *domestic corporation or partnership that meets all of the following*
36 *conditions:*

37 (i) *Has a primary mission of serving, or providing investment*
38 *capital for, low-income communities or low-income persons.*

1 (ii) *Maintains accountability to residents of low-income*
2 *communities through their representation on any governing board*
3 *of the entity or on any advisory board to the entity.*

4 (iii) *Is certified by the California Tax Credit Allocation*
5 *Committee for purposes of this section as being a qualified*
6 *community development entity.*

7 (B) *A domestic corporation or partnership shall be deemed a*
8 *“qualified community development entity” if it has entered into*
9 *an allocation agreement with the Community Development*
10 *Financial Institutions Fund of the United States Department of*
11 *the Treasury with respect to credits authorized by Section 45D of*
12 *the Internal Revenue Code of 1986, as amended, and if the*
13 *allocation agreement includes the state within its service area.*

14 (7) (A) *“Qualified equity investment” means any equity*
15 *investment in a qualified community development entity if all of*
16 *the following conditions are met:*

17 (i) *The investment is acquired by the taxpayer at its original*
18 *issue, directly or through an underwriter, solely in exchange for*
19 *cash.*

20 (ii) *Substantially all of the cash is used by the qualified*
21 *community development entity to make low-income community*
22 *investments. This requirement shall be deemed met if at least 85*
23 *percent of the aggregate gross assets of the qualified community*
24 *development entity are invested in qualified low-income community*
25 *investments in California.*

26 (iii) *The investment is designated for purposes of this section*
27 *by the qualified community development entity.*

28 (B) *“Qualified equity investment” does not include any equity*
29 *investment issued by a qualified community development entity*
30 *more than one year after the date that the entity receives an*
31 *allocation under subdivision (d).*

32 (C) *A “qualified equity investment” shall include any equity*
33 *investment which would, notwithstanding clause (i) of*
34 *subparagraph (A), be a qualified equity investment in the hands*
35 *of the taxpayer if the investment was a qualified equity investment*
36 *in the hands of a prior holder.*

37 (D) *Section 1202(c)(3) of the Internal Revenue Code, relating*
38 *to purchases by a corporation of its own stock, shall apply.*

39 (8) *“Qualified low-income community investment” means any*
40 *of the following:*

- 1 (A) Any capital or equity investment in, or loan to, a qualified
 2 low-income community business.
- 3 (B) Any capital or equity investment in, or loan to, a real estate
 4 project in a low-income community.
- 5 (C) The purchase from another qualified community
 6 development entity of any loan made by that entity which is a
 7 qualified low-income community investment.
- 8 (D) Financial counseling and other services in support of
 9 business activities to businesses located in, and residents of,
 10 low-income communities.
- 11 (E) Any equity investment in, or loan to, a qualified community
 12 development entity.
- 13 (c) The California Tax Credit Allocation Committee shall adopt
 14 guidelines necessary or appropriate to carry out the purposes of
 15 this section. The adoption of the guidelines shall not be subject to
 16 the rulemaking provisions of the Administrative Procedure Act of
 17 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
 18 3 of Title 2 of the Government Code. The committee shall establish
 19 and impose reasonable fees upon entities that apply for the
 20 allocation pursuant to subdivision (d) and use the revenue to defray
 21 the cost of administering the program. The committee shall
 22 establish the fees in a manner that ensures that (1) the total amount
 23 collected equals the amount reasonably necessary to defray the
 24 commission's costs in performing its administrative duties under
 25 this section, and (2) the amount paid by each entity reasonably
 26 corresponds with the value of the services provided to the entity.
- 27 (d) (1) The aggregate amount of credit that may be allowed in
 28 any calendar year pursuant to this section and Section 23622.9
 29 shall be fifty million dollars (\$50,000,000).
- 30 (2) The aggregate amount of credit specified under paragraph
 31 (1) shall be allocated by the California Tax Credit Allocation
 32 Committee among entities that apply for the allocation. The
 33 California Tax Credit Allocation Committee shall give priority to
 34 applications that either are submitted by an entity that has a record
 35 of successfully providing capital or technical assistance to
 36 disadvantaged businesses or communities or entities that intend
 37 to make qualified low-income community investments in one or
 38 more businesses in which persons unrelated to the entity hold the
 39 majority equity interest.

1 (e) Any credits used under subdivision (a) for a qualified equity
2 investment where a recapture event occurs at any time before the
3 close of the seventh taxable year after the qualified equity
4 investment shall be included in the income in the taxable year in
5 which the recapture event occurred. For purposes of this
6 subdivision, a “recapture event” shall include any of the following
7 that occur any time before the close of the seventh taxable year
8 after the qualified equity investment in a qualified community
9 development entity:

10 (1) The qualified community development entity ceases to be a
11 qualified community development entity.

12 (2) The proceeds of the investment cease to be used as required
13 under clause (ii) of subparagraph (A) of paragraph (7) of
14 subdivision (b).

15 (3) The investment is redeemed by a qualified community
16 development entity.

17 (f) An exception to the provisions of clause (ii) of subparagraph
18 (A) of paragraph (7) of subdivision (b) shall exist wherein an
19 investment shall be considered held by a community development
20 entity even if the investment has been sold or repaid, provided that
21 the community development entity reinvests an amount equal to
22 the capital returned to or recovered by the community development
23 entity from the original investment, exclusive of any profits
24 realized, in another qualified low-income community investment
25 within 12 months of the receipt of that capital. A community
26 development entity shall not be required to reinvest capital
27 returned from qualified low-income community investments after
28 the sixth anniversary of the issuance of the qualified equity
29 investment, the proceeds of which were used to make the qualified
30 low-income community investment, and the qualified low-income
31 community investment shall be considered held by the community
32 development entity through the seventh anniversary of the qualified
33 equity investment’s issuance.

34 (g) This section shall remain in effect only until December 1,
35 2020, and as of that date is repealed.

36 SEC. 5. Section 23622.9 is added to the Revenue and Taxation
37 Code, to read:

38 23622.9. There is hereby created the California New Markets
39 Tax Credit Program as provided in this section and Section
40 17053.9. The purpose of this program is to stimulate economic

1 *development, and hasten California’s economic recovery, by*
2 *granting tax credits for investment in California, including, but*
3 *not limited to, retail businesses, real property, financial institutions,*
4 *and schools. The California Tax Credit Allocation Committee shall*
5 *have responsibility for the administration of this program as*
6 *provided in this section and Section 17053.9. The program shall*
7 *be as follows:*

8 *(a) (1) For taxable years beginning on or after January 1, 2013,*
9 *and before January 1, 2020, there shall be allowed to a taxpayer*
10 *that holds a qualified equity investment on a credit allowance date*
11 *of the investment which occurs during the taxable year, as a credit*
12 *against the “tax,” as defined in Section 23036, an amount equal*
13 *to the applicable percentage described in paragraph (2).*

14 *(2) For purposes of paragraph (1), the applicable percentage*
15 *shall be 39 percent of the qualified equity investment.*

16 *(b) For purposes of this section:*

17 *(1) “Credit allowance date” means, with respect to any qualified*
18 *equity investment, the date on which the investment is initially*
19 *made.*

20 *(2) “Equity investment” means either of the following:*

21 *(A) Any stock, other than nonqualified preferred stock as defined*
22 *in Section 351(g)(2) of the Internal Revenue Code, in an entity*
23 *which is a corporation.*

24 *(B) Any capital interest in an entity which is a partnership.*

25 *(3) (A) “Low-income community” means a population census*
26 *tract where any of the following applies:*

27 *(i) The tract has a poverty rate of at least 20 percent.*

28 *(ii) The tract is not located within a metropolitan area, and the*
29 *median family income does not exceed 80 percent of the statewide*
30 *median family income.*

31 *(iii) The tract is located within a metropolitan area, and the*
32 *median family income does not exceed 80 percent of the greater*
33 *statewide median family income or the metropolitan area median*
34 *family income.*

35 *(iv) The tract is located within a high migration rural county*
36 *and the median income does not exceed 85 percent of the statewide*
37 *median family income. For purposes of this clause, “high migration*
38 *rural county” means a county which, during the 20-year period*
39 *ending with the year in which the most recent census was*
40 *conducted, has a net out migration of inhabitants from the county*

1 of at least 10 percent of the population of the county at the
2 beginning of that period.

3 (B) Where a community is in a location that is not tracted for
4 population census tracts, the equivalent county divisions shall be
5 used for purposes of determining poverty rates and median family
6 income.

7 (C) Where a community is in a population census tract with a
8 population of less than 2,000, the community shall be treated as
9 a low-income community if the tract is within an empowerment
10 zone designated under Section 1391 of the Internal Revenue Code
11 and is contiguous to one or more low-income communities, as
12 determined under this paragraph.

13 (4) (A) “Qualified active low-income community business”
14 means, with respect to any taxable year, a corporation, including
15 a nonprofit corporation, or partnership that, for that taxable year,
16 meets all of the following conditions:

17 (i) Derives at least 50 percent of its total gross income from the
18 active conduct of a qualified business in a low-income community
19 in California.

20 (ii) A substantial portion of the use of the tangible property of
21 the entity, whether owned or leased, is within a low-income
22 community in California. “Substantial portion” shall be defined
23 as 40 percent or more of the tangible property of the entity.

24 (iii) Less than 5 percent of the average of the aggregate
25 unadjusted base of the property of the entity is attributable to
26 collectibles, as defined in Section 408(m)(2) of the Internal Revenue
27 Code.

28 (iv) Less than 5 percent of the average of the aggregate
29 unadjusted base of the property of the entity is attributable to
30 nonqualified financial property, as defined in Section 1397C(e)
31 of the Internal Revenue Code.

32 (B) A “qualified active low-income community business” shall
33 include a business carried on by an individual as a proprietor, if
34 that business meets the requirements of subparagraph (A) were it
35 incorporated or a trade or business that would qualify if that trade
36 or business were separately incorporated.

37 (5) “Qualified business” has the same meaning as that in
38 Section 1397C(d) of the Internal Revenue Code except that:

39 (A) In lieu of applying subparagraph (B) of paragraph (2), the
40 rental to others of real property located in any low-income

1 community shall be treated as a qualified business if there are
2 substantial improvements located on that real property.

3 (B) Paragraph (3) of that section shall not apply.

4 (6) (A) “Qualified community development entity” means a
5 domestic corporation or partnership that meets all of the following
6 conditions:

7 (i) Has a primary mission of serving, or providing investment
8 capital for, low-income communities or low-income persons.

9 (ii) Maintains accountability to residents of low-income
10 communities through their representation on any governing board
11 of the entity or on any advisory board to the entity.

12 (iii) Is certified by the California Tax Credit Allocation
13 Committee for purposes of this section as being a qualified
14 community development entity.

15 (B) A domestic corporation or partnership shall be deemed a
16 “qualified community development entity” if it has entered into
17 an allocation agreement with the Community Development
18 Financial Institutions Fund of the United States Department of
19 the Treasury with respect to credits authorized by Section 45D of
20 the Internal Revenue Code of 1986, as amended, and if the
21 allocation agreement includes the state within its service area.

22 (7) (A) “Qualified equity investment” means any equity
23 investment in a qualified community development entity if all of
24 the following conditions are met:

25 (i) The investment is acquired by the taxpayer at its original
26 issue, directly or through an underwriter, solely in exchange for
27 cash.

28 (ii) Substantially all of the cash is used by the qualified
29 community development entity to make low-income community
30 investments. This requirement shall be deemed met if at least 85
31 percent of the aggregate gross assets of the qualified community
32 development entity are invested in qualified low-income community
33 investments in California.

34 (iii) The investment is designated for purposes of this section
35 by the qualified community development entity.

36 (B) “Qualified equity investment” does not include any equity
37 investment issued by a qualified community development entity
38 more than one year after the date that the entity receives an
39 allocation under subdivision (d).

1 (C) A “qualified equity investment” shall include any equity
2 investment which would, notwithstanding clause (i) of
3 subparagraph (A), be a qualified equity investment in the hands
4 of the taxpayer if the investment was a qualified equity investment
5 in the hands of a prior holder.

6 (D) Section 1202(c)(3) of the Internal Revenue Code, relating
7 to purchases by a corporation of its own stock, shall apply.

8 (8) “Qualified low-income community investment” means any
9 of the following:

10 (A) Any capital or equity investment in, or loan to, a qualified
11 low-income community business.

12 (B) Any capital or equity investment in, or loan to, a real estate
13 project in a low-income community.

14 (C) The purchase from another qualified community
15 development entity of any loan made by that entity which is a
16 qualified low-income community investment.

17 (D) Financial counseling and other services in support of
18 business activities to businesses located in, and residents of,
19 low-income communities.

20 (E) Any equity investment in, or loan to, a qualified community
21 development entity.

22 (c) The California Tax Credit Allocation Committee shall adopt
23 guidelines necessary or appropriate to carry out the purposes of
24 this section. The adoption of the guidelines shall not be subject to
25 the rulemaking provisions of the Administrative Procedure Act of
26 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
27 3 of Title 2 of the Government Code. The committee shall establish
28 and impose reasonable fees upon entities that apply for the
29 allocation pursuant to subdivision (d) and use the revenue to defray
30 the cost of administering the program. The committee shall
31 establish the fees in a manner that ensures that (1) the total amount
32 collected equals the amount reasonably necessary to defray the
33 commission’s costs in performing its administrative duties under
34 this section, and (2) the amount paid by each entity reasonably
35 corresponds with the value of the services provided to the entity.

36 (d) (1) The aggregate amount of credit that may be allowed in
37 any calendar year pursuant to this section and Section 17053.9
38 shall be fifty million dollars (\$50,000,000).

39 (2) The aggregate amount of credit specified under paragraph
40 (1) shall be allocated by the California Tax Credit Allocation

1 Committee among entities that apply for the allocation. The
2 California Tax Credit Allocation Committee shall give priority to
3 applications that either are submitted by an entity that has a record
4 of successfully providing capital or technical assistance to
5 disadvantaged businesses or communities or entities that intend
6 to make qualified low-income community investments in one or
7 more businesses in which persons unrelated to the entity hold the
8 majority equity interest.

9 (e) Any credits used under subdivision (a) for a qualified equity
10 investment where a recapture event occurs at any time before the
11 close of the seventh taxable year after the qualified equity
12 investment shall be included in the income in the taxable year in
13 which the recapture event occurred. For purposes of this
14 subdivision, a “recapture event” shall include any of the following
15 that occur any time before the close of the seventh taxable year
16 after the qualified equity investment in a qualified community
17 development entity:

18 (1) The qualified community development entity ceases to be a
19 qualified community development entity.

20 (2) The proceeds of the investment cease to be used as required
21 under clause (ii) of subparagraph (A) of paragraph (7) of
22 subdivision (b).

23 (3) The investment is redeemed by a qualified community
24 development entity.

25 (f) An exception to the provisions of clause (ii) of subparagraph
26 (A) of paragraph (7) of subdivision (b) shall exist wherein an
27 investment shall be considered held by a community development
28 entity even if the investment has been sold or repaid, provided that
29 the community development entity reinvests an amount equal to
30 the capital returned to or recovered by the community development
31 entity from the original investment, exclusive of any profits
32 realized, in another qualified low-income community investment
33 within 12 months of the receipt of that capital. A community
34 development entity shall not be required to reinvest capital
35 returned from qualified low-income community investments after
36 the sixth anniversary of the issuance of the qualified equity
37 investment, the proceeds of which were used to make the qualified
38 low-income community investment, and the qualified low-income
39 community investment shall be considered held by the community

1 *development entity through the seventh anniversary of the qualified*
2 *equity investment's issuance.*

3 *(g) This section shall remain in effect only until December 1,*
4 *2020, and as of that date is repealed.*

5 *SEC. 6. Section 23623 of the Revenue and Taxation Code, as*
6 *added by Section 8 of Chapter 10 of the Third Extraordinary*
7 *Session of the Statutes of 2009, is repealed.*

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

14 ~~(b) For purposes of this section:~~

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

17 ~~(2) "Qualified full-time employee" means:~~

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

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

25 ~~(3) A "qualified employee" shall not include any of the~~
26 ~~following:~~

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

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

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

37 ~~(D) An employee certified as a qualified disadvantaged~~
38 ~~individual or a qualified displaced employee in a local agency~~
39 ~~military base recovery area (LAMBRA) designated in accordance~~

1 with Chapter 12.97 (commencing with Section 7105) of Division
2 7 of Title 1 of the Government Code.

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

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

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

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

12 (A) In the case of a full-time employee paid hourly qualified
13 wages, “annual full-time equivalent” means the total number of
14 hours worked for the taxpayer by the employee (not to exceed
15 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 ~~(h) (1) The Franchise Tax Board may prescribe rules, guidelines~~
39 ~~or procedures necessary or appropriate to carry out the purposes~~
40 ~~of this section, including any guidelines regarding the limitation~~

1 on total credits allowable under this section and Section 17053.80
2 and guidelines necessary to avoid the application of paragraph (2)
3 of subdivision (f) through split-ups, shell corporations, partnerships,
4 tiered ownership structures, or otherwise.

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

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

13 *SEC. 7. Section 23623 of the Revenue and Taxation Code, as*
14 *added by Section 8 of Chapter 17 of the Third Extraordinary*
15 *Session of the Statutes of 2009, is amended to read:*

16 23623. (a) For each taxable year beginning on or after January
17 1, 2009, there shall be allowed as a credit against the “tax,” as
18 defined in Section 23036, three thousand dollars (\$3,000) for each
19 net increase in qualified full-time employees, as specified in
20 subdivision (c), hired during the taxable year by a qualified
21 employer.

22 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (A) In the case of a full-time employee paid hourly qualified
22 wages, “annual full-time equivalent” means the total number of
23 hours worked for the taxpayer by the employee (not to exceed
24 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

11 (f) For purposes of this section:

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

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

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

23 (B) For purposes of this paragraph, the cut-off date shall be the
24 last day of the calendar quarter within which the Franchise Tax
25 Board estimates it will have received timely filed original returns
26 claiming credits under this section and Section 17053.80 that
27 cumulatively total ~~four hundred~~ *one hundred* million dollars
28 ~~(\$400,000,000)~~ *(\$100,000,000)* for all taxable years.

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

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

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

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

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

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

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

20 *SEC. 8. Notwithstanding Section 50199.9 of the Health and*
21 *Safety Code, or any other law, the sum of one hundred fifty*
22 *thousand dollars (\$150,000) is hereby appropriated from the Tax*
23 *Credit Allocation Fee Account to the California Tax Credit*
24 *Allocation Committee for purposes of implementing the California*
25 *New Markets Tax Credit Program as provided in Sections 17053.9*
26 *and 23622.9 of the Revenue and Taxation Code. The appropriated*
27 *funds shall remain in the Tax Credit Allocation Fee Account until*
28 *such time as the funds are required for purposes of implementing*
29 *this new program, and shall only be available for expenditure until*
30 *January 1, 2020. It is the intent of the Legislature that these*
31 *appropriated funds shall be reimbursed by the application fees*
32 *collected by the committee for this new program.*

33 *SEC. 9. This act provides for a tax levy within the meaning of*
34 *Article IV of the Constitution and shall go into immediate effect.*

35 ~~SECTION 1. Section 2923.1 of the Civil Code is amended to~~
36 ~~read:~~

37 ~~2923.1. (a) A mortgage broker providing mortgage brokerage~~
38 ~~services to a borrower is the fiduciary of the borrower, and any~~
39 ~~violation of the broker's fiduciary duties shall be a violation of the~~
40 ~~mortgage broker's license law. This fiduciary duty includes a~~

1 requirement that the mortgage broker place the economic interest
2 of the borrower ahead of his or her own economic interest and a
3 requirement that the mortgage broker provide a borrower
4 prepurchase debt counseling that explains what a prudent
5 debt-to-income ratio would be for the borrower taking into account
6 the borrower's income and credit rating. A mortgage broker who
7 provides mortgage brokerage services to the borrower owes this
8 fiduciary duty to the borrower regardless of whether the mortgage
9 broker is acting as an agent for any other party in connection with
10 the residential mortgage loan transaction.

11 (b) For purposes of this section, the following definitions apply:

12 (1) "Licensed person" means a real estate broker licensed, or
13 mortgage loan originator endorsed, under the Real Estate Law
14 (Part 1 (commencing with Section 10000) of Division 4 of the
15 Business and Professions Code), a finance lender or broker or
16 mortgage loan originator licensed under the California Finance
17 Lenders Law (Division 9 (commencing with Section 22000) of
18 the Financial Code), a residential mortgage lender or mortgage
19 loan originator licensed under the California Residential Mortgage
20 Lending Act (Division 20 (commencing with Section 50000) of
21 the Financial Code), a commercial or industrial bank organized
22 under the Banking Law (Division 1 (commencing with Section
23 99) of the Financial Code), a savings association organized under
24 the Savings Association Law (Division 2 (commencing with
25 Section 5000) of the Financial Code), and a credit union organized
26 under the California Credit Union Law (Division 5 (commencing
27 with Section 14000) of the Financial Code).

28 (2) "Mortgage broker" means a licensed person who provides
29 mortgage brokerage services. For purposes of this section, a
30 licensed person who makes a residential mortgage loan is a
31 "mortgage broker," and subject to the requirements of this section
32 applicable to mortgage brokers, only with respect to transactions
33 in which the licensed person provides mortgage brokerage services.

34 (3) "Mortgage brokerage services" means arranging or
35 attempting to arrange, as exclusive agent for the borrower or as
36 dual agent for the borrower and lender, for compensation or in
37 expectation of compensation, paid directly or indirectly, a
38 residential mortgage loan made by an unaffiliated third party.

1 ~~(4) “Residential mortgage loan” means a consumer credit~~
2 ~~transaction that is secured by residential real property that is~~
3 ~~improved by four or fewer residential units.~~

4 ~~(e) The duties set forth in this section shall not be construed to~~
5 ~~limit or narrow any other fiduciary duty of a mortgage broker.~~

6 ~~(d) For purposes of this section, the Department of Corporations,~~
7 ~~the Department of Financial Institutions, and the Department of~~
8 ~~Real Estate shall collaborate to establish a standard for determining~~
9 ~~a prudent debt-to-income ratio for borrowers.~~

10 ~~SEC. 2. Section 2923.51 is added to the Civil Code, to read:~~

11 ~~2923.51. (a) A mortgagee, trustee, beneficiary, or authorized~~
12 ~~agent shall not file a notice of default pursuant to Section 2924~~
13 ~~unless the borrower has been provided counseling relating to~~
14 ~~foreclosure prevention that includes assistance in negotiating an~~
15 ~~agreement to cure the default.~~

16 ~~(b) For purposes of this section, “borrower” shall include a~~
17 ~~mortgagor or trustor.~~

18 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
19 ~~Section 6 of Article XIII B of the California Constitution because~~
20 ~~the only costs that may be incurred by a local agency or school~~
21 ~~district will be incurred because this act creates a new crime or~~
22 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
23 ~~for a crime or infraction, within the meaning of Section 17556 of~~
24 ~~the Government Code, or changes the definition of a crime within~~
25 ~~the meaning of Section 6 of Article XIII B of the California~~
26 ~~Constitution.~~

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