

AMENDED IN ASSEMBLY JANUARY 12, 2012

AMENDED IN ASSEMBLY JANUARY 4, 2012

AMENDED IN ASSEMBLY APRIL 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 643**

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**Introduced by Assembly ~~Member~~ Members Davis and V. Manuel  
Pérez**

February 16, 2011

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An act to add *and repeal* Sections 17053.9 and ~~23629~~ 23622.9 *to of*, 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. 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 cutoff date calculated based upon an estimate by the Franchise Tax Board of claims cumulatively totaling \$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 cutoff date for the above-described hiring credit based upon an estimate by the Franchise

Tax Board of claims cumulatively totaling \$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~~ \$50,000,000 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.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
 State-mandated local program: 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 on
- 7 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

1 communities. These investments accrue to small businesses,  
2 schools, and other business-related real estate projects.

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

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

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

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17 Session of the Statutes of 2009, is repealed.

18 SEC. 3. 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 during  
32 the taxable year by the qualified employer for services of not less  
33 than an average of 35 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 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 cutoff date  
28 established by the Franchise Tax Board.

29 (B) For purposes of this paragraph, the cutoff 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 one hundred million dollars (\$100,000,000) for  
34 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 cutoff 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 cutoff 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 equal  
3 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 a  
39 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 *(D) When the United States Census Bureau discontinues using*  
4 *the decennial census to report median family income on a census*  
5 *tract basis, census block group data shall be used based on the*  
6 *American Community Survey.*

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

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

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

18 (iii) Less than 5 percent of the average of the aggregate  
19 unadjusted base of the property of the entity is attributable to  
20 collectibles, as defined in Section 408(m)(2) of the Internal  
21 Revenue Code.

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

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

31 *(C) A “qualified active low-income community business” shall*  
32 *include startup businesses.*

33 (5) “Qualified business” has the same meaning as that in Section  
34 1397C(d) of the Internal Revenue Code except that:

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

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

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

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

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

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

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

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

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

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

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

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

37 (C) A “qualified equity investment” shall include any equity  
38 investment which would, notwithstanding clause (i) of  
39 subparagraph (A), be a qualified equity investment in the hands

1 of the taxpayer if the investment was a qualified equity investment  
 2 in the hands of a prior holder.

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

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

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

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

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

14 (D) Financial counseling and other services in support of  
 15 business activities to businesses located in, and residents of,  
 16 low-income communities.

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

19 (c) (1) The California Tax Credit Allocation Committee shall  
 20 adopt guidelines necessary or appropriate to carry out the purposes  
 21 of this section. The adoption of the guidelines shall not be subject  
 22 to the rulemaking provisions of the Administrative Procedure Act  
 23 of Chapter 3.5 (commencing with Section 11340) of Part 1 of  
 24 Division 3 of Title 2 of the Government Code. ~~The~~

25 (2) *The* committee shall establish and impose reasonable fees  
 26 upon entities that apply for the allocation pursuant to subdivision  
 27 (d) and use the revenue to defray the cost of administering the  
 28 program. The committee shall establish the fees in a manner that  
 29 ensures that ~~(1)~~ (A) the total amount collected equals the amount  
 30 reasonably necessary to defray the commission’s costs in  
 31 performing its administrative duties under this section, and ~~(2)~~ (B)  
 32 the amount paid by each entity reasonably corresponds with the  
 33 value of the services provided to the entity.

34 (3) *In developing guidelines the committee shall adopt an*  
 35 *allocation process that does all of the following:*

36 (A) *Creates an equitable distribution process that ensures that*  
 37 *low-income communities across the state have an opportunity to*  
 38 *benefit from the program.*

39 (B) *Sets minimum organizational capacity standards that*  
 40 *applicants must meet in order to receive an allocation of credits.*

1 (C) Requires annual reporting by each community development  
2 organization that receives an allocation. The report shall include,  
3 but is not limited to, the impact the credit had on the low-income  
4 community, the amount of moneys used, and the types of activities  
5 funded through the equity investment. The reporting period shall  
6 be for a period of eight years following the allocation of credits.

7 (D) Provides for an annual return of unused credits so that they  
8 may be reallocated to other community development entities.

9 (4) The committee shall annually report on its Internet Web site  
10 the information provided by low-income community development  
11 entities and on the geographic distribution of the credits.

12 (d) (1) The aggregate amount of credit that may be allowed in  
13 any calendar year pursuant to this section and Section 23622.9  
14 shall be ~~fifty million dollars (\$50,000,000)~~; an amount equal to  
15 the sum of the following:

16 (A) Fifty million dollars (\$50,000,000) in credits for the 2012  
17 calendar year and each calendar year thereafter, through and  
18 including the 2019 calendar year.

19 (B) The unused credit amount, if any, for the preceding calendar  
20 year.

21 (2) The aggregate amount of credit specified under paragraph  
22 (1) shall be allocated by the California Tax Credit Allocation  
23 Committee among entities that apply for the allocation. The  
24 California Tax Credit Allocation Committee shall give priority to  
25 applications that either are submitted by an entity that has a record  
26 of successfully providing capital or technical assistance to  
27 disadvantaged businesses or communities or entities that intend  
28 to make qualified low-income community investments in one or  
29 more businesses in which persons unrelated to the entity hold the  
30 majority equity interest.

31 (e) Any credits used under subdivision (a) for a qualified equity  
32 investment where a recapture event occurs at any time before the  
33 close of the seventh taxable year after the qualified equity  
34 investment shall be included in the income in the taxable year in  
35 which the recapture event occurred. For purposes of this  
36 subdivision, a “recapture event” shall include any of the following  
37 that occur any time before the close of the seventh taxable year  
38 after the qualified equity investment in a qualified community  
39 development entity:

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

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

6 (3) The investment is redeemed by a qualified community  
7 development entity.

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

25 (g) This section shall remain in effect only until December 1,  
26 2020, and as of that date is repealed.

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

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

39 (a) (1) For taxable years beginning on or after January 1, 2013,  
40 and before January 1, 2020, there shall be allowed to a taxpayer

1 that holds a qualified equity investment on a credit allowance date  
2 of the investment which occurs during the taxable year, as a credit  
3 against the “tax,” as defined in Section 23036, an amount equal  
4 to the applicable percentage described in paragraph (2).

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

7 (b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

38 (C) Where a community is in a population census tract with a  
39 population of less than 2,000, the community shall be treated as a  
40 low-income community if the tract is within an empowerment

1 zone designated under Section 1391 of the Internal Revenue Code  
2 and is contiguous to one or more low-income communities, as  
3 determined under this paragraph.

4 *(D) When the United States Census Bureau discontinues using*  
5 *the decennial census to report median family income on a census*  
6 *tract basis, census block group data shall be used based on the*  
7 *American Community Survey.*

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

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

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

19 (iii) Less than 5 percent of the average of the aggregate  
20 unadjusted base of the property of the entity is attributable to  
21 collectibles, as defined in Section 408(m)(2) of the Internal  
22 Revenue Code.

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

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

32 *(C) A “qualified active low-income community business” shall*  
33 *include startup businesses.*

34 (5) “Qualified business” has the same meaning as that in Section  
35 1397C(d) of the Internal Revenue Code except that:

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

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

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

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

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

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

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

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

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

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

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

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

37 (C) A “qualified equity investment” shall include any equity  
38 investment which would, notwithstanding clause (i) of  
39 subparagraph (A), be a qualified equity investment in the hands

1 of the taxpayer if the investment was a qualified equity investment  
2 in the hands of a prior holder.

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

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

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

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

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

14 (D) Financial counseling and other services in support of  
15 business activities to businesses located in, and residents of,  
16 low-income communities.

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

19 (c) (1) The California Tax Credit Allocation Committee shall  
20 adopt guidelines necessary or appropriate to carry out the purposes  
21 of this section. The adoption of the guidelines shall not be subject  
22 to the rulemaking provisions of the Administrative Procedure Act  
23 of Chapter 3.5 (commencing with Section 11340) of Part 1 of  
24 Division 3 of Title 2 of the Government Code. ~~The~~

25 (2) *The* committee shall establish and impose reasonable fees  
26 upon entities that apply for the allocation pursuant to subdivision  
27 (d) and use the revenue to defray the cost of administering the  
28 program. The committee shall establish the fees in a manner that  
29 ensures that ~~(1)~~ (A) the total amount collected equals the amount  
30 reasonably necessary to defray the commission’s costs in  
31 performing its administrative duties under this section, and ~~(2)~~ (B)  
32 the amount paid by each entity reasonably corresponds with the  
33 value of the services provided to the entity.

34 (3) *In developing guidelines the committee shall adopt an*  
35 *allocation process that does all of the following:*

36 (A) *Creates an equitable distribution process that ensures that*  
37 *low-income communities across the state have an opportunity to*  
38 *benefit from the program.*

39 (B) *Sets minimum organizational capacity standards that*  
40 *applicants must meet in order to receive an allocation of credits.*

1 (C) Requires annual reporting by each community development  
2 organization that receives an allocation. The report shall include,  
3 but is not limited to, the impact the credit had on the low-income  
4 community, the amount of moneys used, and the types of activities  
5 funded through the equity investment. The reporting period shall  
6 be for a period of eight years following the allocation of credits.

7 (D) Provides for an annual return of unused credits so that they  
8 may be reallocated to other community development entities.

9 (4) The committee shall annually report on its Internet Web site  
10 the information provided by low-income community development  
11 entities and on the geographic distribution of the credits.

12 (d) (1) The aggregate amount of credit that may be allowed in  
13 any calendar year pursuant to this section and Section 17053.9  
14 shall be ~~fifty million dollars (\$50,000,000)~~; an amount equal to  
15 the sum of the following:

16 (A) Fifty million dollars (\$50,000,000) in credits for the 2012  
17 calendar year and each calendar year thereafter, through and  
18 including the 2019 calendar year.

19 (B) The unused credit amount, if any, for the preceding calendar  
20 year.

21 (2) The aggregate amount of credit specified under paragraph  
22 (1) shall be allocated by the California Tax Credit Allocation  
23 Committee among entities that apply for the allocation. The  
24 California Tax Credit Allocation Committee shall give priority to  
25 applications that either are submitted by an entity that has a record  
26 of successfully providing capital or technical assistance to  
27 disadvantaged businesses or communities or entities that intend  
28 to make qualified low-income community investments in one or  
29 more businesses in which persons unrelated to the entity hold the  
30 majority equity interest.

31 (e) Any credits used under subdivision (a) for a qualified equity  
32 investment where a recapture event occurs at any time before the  
33 close of the seventh taxable year after the qualified equity  
34 investment shall be included in the income in the taxable year in  
35 which the recapture event occurred. For purposes of this  
36 subdivision, a “recapture event” shall include any of the following  
37 that occur any time before the close of the seventh taxable year  
38 after the qualified equity investment in a qualified community  
39 development entity:

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

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

6 (3) The investment is redeemed by a qualified community  
7 development entity.

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

25 (g) This section shall remain in effect only until December 1,  
26 2020, and as of that date is repealed.

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

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

33 23623. (a) For each taxable year beginning on or after January  
34 1, 2009, there shall be allowed as a credit against the "tax," as  
35 defined in Section 23036, three thousand dollars (\$3,000) for each  
36 net increase in qualified full-time employees, as specified in  
37 subdivision (c), hired during the taxable year by a qualified  
38 employer.

39 (b) For purposes of this section:

- 1 (1) “Acquired” includes any gift, inheritance, transfer incident  
2 to divorce, or any other transfer, whether or not for consideration.
- 3 (2) “Qualified full-time employee” means:
- 4 (A) A qualified employee who was paid qualified wages during  
5 the taxable year by the qualified employer for services of not less  
6 than an average of 35 hours per week.
- 7 (B) A qualified employee who was a salaried employee and  
8 was paid compensation during the taxable year for full-time  
9 employment, within the meaning of Section 515 of the Labor Code,  
10 by the qualified employer.
- 11 (3) A “qualified employee” shall not include any of the  
12 following:
- 13 (A) An employee certified as a qualified employee in an  
14 enterprise zone designated in accordance with Chapter 12.8  
15 (commencing with Section 7070) of Division 7 of Title 1 of the  
16 Government Code.
- 17 (B) An employee certified as a qualified disadvantaged  
18 individual in a manufacturing enhancement area designated in  
19 accordance with Section 7073.8 of the Government Code.
- 20 (C) An employee certified as a qualified employee in a targeted  
21 tax area designated in accordance with Section 7097 of the  
22 Government Code.
- 23 (D) An employee certified as a qualified disadvantaged  
24 individual or a qualified displaced employee in a local agency  
25 military base recovery area (LAMBRA) designated in accordance  
26 with Chapter 12.97 (commencing with Section 7105) of Division  
27 7 of Title 1 of the Government Code.
- 28 (E) An employee whose wages are included in calculating any  
29 other credit allowed under this part.
- 30 (4) “Qualified employer” means a taxpayer that, as of the last  
31 day of the preceding taxable year, employed a total of 20 or fewer  
32 employees.
- 33 (5) “Qualified wages” means wages subject to Division 6  
34 (commencing with Section 13000) of the Unemployment Insurance  
35 Code.
- 36 (6) “Annual full-time equivalent” means either of the following:
- 37 (A) In the case of a full-time employee paid hourly qualified  
38 wages, “annual full-time equivalent” means the total number of  
39 hours worked for the taxpayer by the employee (not to exceed  
40 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

27 (f) For purposes of this section:

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

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

35 (g) (1) (A) Credit under this section and Section 17053.80 shall  
36 be allowed only for credits claimed on timely filed original returns  
37 received by the Franchise Tax Board on or before the cutoff date  
38 established by the Franchise Tax Board.

39 (B) For purposes of this paragraph, the cutoff date shall be the  
40 last day of the calendar quarter within which the Franchise Tax

1 Board estimates it will have received timely filed original returns  
2 claiming credits under this section and Section 17053.80 that  
3 cumulatively total one hundred million dollars (\$100,000,000) for  
4 all taxable years.

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

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

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

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

21 (h) (1) The Franchise Tax Board may prescribe rules, guidelines  
22 or procedures necessary or appropriate to carry out the purposes  
23 of this section, including any guidelines regarding the limitation  
24 on total credits allowable under this section and Section 17053.80  
25 and guidelines necessary to avoid the application of paragraph (2)  
26 of subdivision (f) through split-ups, shell corporations, partnerships,  
27 tiered ownership structures, or otherwise.

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

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

36 SEC. 8. Notwithstanding Section 50199.9 of the Health and  
37 Safety Code, or any other law, the sum of one hundred fifty  
38 thousand dollars (\$150,000) is hereby appropriated from the Tax  
39 Credit Allocation Fee Account to the California Tax Credit  
40 Allocation Committee for purposes of implementing the California

1 New Markets Tax Credit Program as provided in Sections 17053.9  
 2 and 23622.9 of the Revenue and Taxation Code. The appropriated  
 3 funds shall remain in the Tax Credit Allocation Fee Account until  
 4 such time as the funds are required for purposes of implementing  
 5 this new program, and shall only be available for expenditure until  
 6 January 1, 2020. It is the intent of the Legislature that these  
 7 appropriated funds shall be reimbursed by the application fees  
 8 collected by the committee for this new program.

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

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13 **CORRECTIONS:** \_\_\_\_\_

14 **Title—Lines 1 and 2.**

15 **Digest—Pages 1 and 2.**

16 **Text—Pages 8 and 14.**

17 \_\_\_\_\_