

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1009

Introduced by Assembly Member Wieckowski

February 18, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1009, as amended, Wieckowski. Income tax: credits: full-time employees: hires.

The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws, including a credit for taxable years beginning on or after January 1, 2009, in the amount of \$3,000 for each full-time employee hired by a qualified employer, *with a maximum cumulative credit of \$400,000,000 for all taxable years*. Those laws define “qualified employer” as a taxpayer that employed 20 or fewer employees as of the last day of the preceding taxable year.

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, redefine “qualified employer” to mean a disabled veteran business enterprise, a disadvantaged business enterprise, a microbusiness, or a small business, respectively, as defined and redefine “qualified full-time employee,” as provided.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article

XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. Section 17053.80 of the Revenue and Taxation
2 Code, as added by Section 3 of Chapter 10 of the Third
3 Extraordinary Session of the Statutes of 2009, is repealed.

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

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

13 (b) For purposes of this section:

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

16 (2) ~~“Qualified”~~ For taxable years beginning on or after January
17 1, 2012, “qualified full-time employee” means:

18 (A) A qualified employee who was unemployed for the 30 days
19 immediately prior to being hired by the qualified employer and
20 who was paid qualified wages during the taxable year by the
21 qualified employer for services of not less than an average of 35
22 hours per week.

23 (B) A qualified employee who was unemployed for the 30 days
24 immediately prior to being hired by the qualified employer and
25 who was a salaried employee and was paid compensation during
26 the taxable year for full-time employment, within the meaning of
27 Section 515 of the Labor Code, by the qualified employer.

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

30 (A) An employee certified as a qualified employee in an
31 enterprise zone designated in accordance with Chapter 12.8

1 (commencing with Section 7070) of Division 7 of Title 1 of the
2 Government Code.

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

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

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

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

16 (4) (A) For taxable years beginning on or after January 1, 2009,
17 and before January 1, 2012, “qualified employer” means a taxpayer
18 that, as of the last day of the preceding taxable year, employed a
19 total of 20 or fewer employees.

20 (B) For taxable years beginning on or after January 1, 2012,
21 “qualified employer” means a taxpayer that, as of the last day of
22 the preceding taxable year, was any of the following:

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

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

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

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

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

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

36 (A) In the case of a full-time employee paid hourly qualified
37 wages, “annual full-time equivalent” means the total number of
38 hours worked for the taxpayer by the employee (not to exceed
39 1,820 hours per employee) divided by 1,820.

1 (B) In the case of a salaried full-time employee, “annual
2 full-time equivalent” means the total number of weeks worked for
3 the 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 “net tax,” the excess may be carried over to reduce the “net
22 tax” in the following year, and succeeding seven years if necessary,
23 until 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~~ 17276.20, without application
34 of paragraph (7) of that subdivision, shall apply.

35 (g) (1) (A) Credit under this section and Section 23623 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 23623 that
3 cumulatively total four hundred million dollars (\$400,000,000)
4 for 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 *Internet* Web site with respect to the amount of credit under
19 this section and Section 23623 claimed on timely filed original
20 returns received by the Franchise Tax Board.

21 (h) (1) The Franchise Tax Board may prescribe rules,
22 guidelines, or procedures necessary or appropriate to carry out the
23 purposes of this section, including any guidelines regarding the
24 limitation on total credits allowable under this section and Section
25 23623 and guidelines necessary to avoid the application of
26 paragraph (2) of subdivision (f) through ~~split-ups~~ *splitups*, shell
27 corporations, partnerships, tiered ownership structures, or
28 otherwise.

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

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

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

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

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

(b) For purposes of this section:

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

(2) ~~“Qualified For taxable years beginning on or after January 1, 2012,”~~ “qualified full-time employee” means:

(A) A qualified employee who was unemployed for the 30 days immediately prior to being hired by the qualified employer and who was paid qualified wages during the taxable year by the qualified employer for services of not less than an average of 35 hours per week.

(B) A qualified employee who was employed for the 30 days immediately prior to being hired by the qualified employer and who was a salaried employee and was paid compensation during the taxable year for full-time employment, within the meaning of Section 515 of the Labor Code, by the qualified employer.

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

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

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

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

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

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

9 (B) For taxable years beginning on or after January 1, 2012,
10 “qualified employer” means a taxpayer that, as of the last day of
11 the preceding taxable year, was any of the following:

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

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

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

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

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 1,820 hours per employee) divided by 1,820.

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 “tax,” the excess may be carried over to reduce the “tax” in
12 the following year, and succeeding seven years if necessary, until
13 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~~ *(g) of Section 24416.20*, without
24 application of paragraph (7) of that subdivision, shall apply.

25 (g) (1) (A) Credit under this section and Section 17053.80 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 17053.80 that
33 cumulatively total four hundred million dollars (\$400,000,000)
34 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 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 *Internet* Web site with respect to the amount of credit under
9 this section and Section 17053.80 claimed on timely filed original
10 returns received by the Franchise Tax Board.

11 (h) (1) The Franchise Tax Board may prescribe rules,
12 guidelines, or procedures necessary or appropriate to carry out the
13 purposes of this section, including any guidelines regarding the
14 limitation on total credits allowable under this section and Section
15 17053.80 and guidelines necessary to avoid ~~split-ups~~ *splitups*, shell
16 corporations, partnerships, tiered ownership structures, or
17 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. 5. This act provides for a tax levy within the meaning of
27 Article IV of the Constitution and shall go into immediate effect.