

AMENDED IN ASSEMBLY MAY 24, 2011

AMENDED IN ASSEMBLY MAY 10, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1195

**Introduced by Assembly ~~Member Allen~~ *Members Allen and Perea*
(*Coauthors: Assembly Members Harkey, Portantino, Swanson, and*
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 1195, as amended, ~~Allen. Corporation taxes.~~ *Personal income and corporation taxes: hiring credit.*

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. 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, under both laws, for taxable years beginning on or after January 1, 2011, ~~would allow the credit only for years in which the average California unemployment rate reaches or exceeds 7%, and~~ would expand the definition of “qualified employer” to mean a taxpayer that employed ~~40~~ 50 or fewer employees as of the last day of the

preceding taxable year. ~~This bill would, for taxable years beginning on or after January 1, 2011, allow a credit of \$3,000 for each of the first 3 years of employment for each qualified full-time employee, as prescribed.~~

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 2/3 of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: 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 3rd Extraordinary
3 Session of the Statutes of 2009, is repealed.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 3rd Extraordinary
6 Session of the Statutes of 2009, is amended to read:

7 17053.80. (a) ~~(1)~~ For each taxable year beginning on or after
8 January 1, 2009, ~~and before January 1, 2011~~, there shall be allowed
9 as a credit against the “net tax,” as defined in Section 17039, three
10 thousand dollars (\$3,000) for each net increase in qualified
11 full-time employees, as specified in subdivision (c), hired during
12 the taxable year by a qualified employer.

13 ~~(2)~~ For each taxable year beginning on or after January 1, 2011,
14 in which the average California unemployment rate, as determined
15 by the Employment Development Department, reaches or exceeds
16 ~~7 percent~~, there shall be allowed as a credit against the “net tax”
17 an amount equal to three thousand dollars ~~(\$3,000)~~ for each net
18 increase in qualified full-time employees, as specified in
19 subdivision (c), hired during the taxable year by a qualified
20 employer. There shall be allowed as an additional credit against
21 the “net tax” for the each of the two succeeding taxable years an
22 amount equal to three thousand dollars ~~(\$3,000)~~ for each qualified
23 employee with respect to whom the credit is allowed in the initial
24 year of employment, but only if the qualified taxpayer continues
25 to employ that qualified employee on a full-time basis in the
26 succeeding taxable year or years, as applicable.

1 (b) For purposes of this section:

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

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

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

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

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

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

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

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

24 (D) An employee certified as a qualified disadvantaged
25 individual or a qualified displaced employee in a local agency
26 military base recovery area (LAMBRA) designated in accordance
27 with Chapter 12.97 (commencing with Section 7105) of Division
28 7 of Title 1 of the Government Code.

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

31 (4) (A) For taxable years beginning on or after January 1, 2009,
32 and before January 1, 2011, “qualified employer” means a taxpayer
33 that, as of the last day of the preceding taxable year, employed a
34 total of 20 or fewer employees.

35 (B) For taxable years beginning on or after January 1, 2011,
36 “qualified employer” means a taxpayer that, as of the last day of
37 the preceding taxable year, employed a total of ~~40~~ 50 or fewer
38 employees.

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

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

5 (A) In the case of a full-time employee paid hourly qualified
6 wages, “annual full-time equivalent” means the total number of
7 hours worked for the taxpayer by the employee (not to exceed
8 2,000 hours per employee) divided by 2,000.

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

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

15 (1) (A) The net increase in qualified full-time employees shall
16 be determined on an annual full-time equivalent basis by
17 subtracting from the amount determined in subparagraph (C) the
18 amount determined in subparagraph (B).

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

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

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

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

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

35 (f) For purposes of this section, ~~all section:~~

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

39 (2) *In determining whether the taxpayer has first commenced*
40 *doing business in this state during the taxable year, the provisions*

1 *of subdivision (f) of Section 17276.20 without application of*
2 *paragraph (7) of that subdivision, shall apply.*

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

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

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

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

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

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

29 (h) (1) The Franchise Tax Board may prescribe rules,
30 guidelines, or procedures necessary or appropriate to carry out the
31 purposes of this section, including any guidelines regarding the
32 limitation on total credits allowable under this section and Section
33 23623 and guidelines necessary to avoid the application of
34 paragraph (2) of subdivision (f) through split-ups, shell
35 corporations, partnerships, tiered ownership structures, or
36 otherwise.

37 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
38 Division 3 of Title 2 of the Government Code does not apply to
39 any standard, criterion, procedure, determination, rule, notice, or

1 guideline established or issued by the Franchise Tax Board
2 pursuant to this section.

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

6 SEC. 3. Section 23623 of the Revenue and Taxation Code, as
7 added by Section 8 of Chapter 10 of the 3rd Extraordinary Session
8 of the Statutes of 2009, is repealed.

9 SEC. 4. Section 23623 of the Revenue and Taxation Code, as
10 added by Section 8 of Chapter 17 of the 3rd Extraordinary Session
11 of the Statutes of 2009, is amended to read:

12 23623. (a) ~~(1)~~ For each taxable year beginning on or after
13 January 1, 2009, ~~and before January 1, 2011~~, there shall be allowed
14 as a credit against the “tax,” as defined in Section 23036, three
15 thousand dollars (\$3,000) for each net increase in qualified
16 full-time employees, as specified in subdivision (c), hired during
17 the taxable year by a qualified employer.

18 ~~(2) For each taxable year beginning on or after January 1, 2011,~~
19 ~~in which the average California unemployment rate, as determined~~
20 ~~by the Employment Development Department, reaches or exceeds~~
21 ~~7 percent, there shall be allowed as a credit against the “net tax”~~
22 ~~an amount equal to three thousand dollars (\$3,000) for each net~~
23 ~~increase in qualified full-time employees, as specified in~~
24 ~~subdivision (e), hired during the taxable year by a qualified~~
25 ~~employer. There shall be allowed as an additional credit against~~
26 ~~the “net tax” for the each of the two succeeding taxable years an~~
27 ~~amount equal to three thousand dollars (\$3,000) for each qualified~~
28 ~~employee with respect to whom the credit is allowed in the initial~~
29 ~~year of employment, but only if the qualified taxpayer continues~~
30 ~~to employ that qualified employee on a full-time basis in the~~
31 ~~succeeding taxable year or years, as applicable.~~

32 (b) For purposes of this section:

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

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

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

39 (B) A qualified employee who was a salaried employee and
40 was paid compensation during the taxable year for full-time

1 employment, within the meaning of Section 515 of the Labor Code,
2 by the qualified employer.

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

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

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

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

15 (D) An employee certified as a qualified disadvantaged
16 individual or a qualified displaced employee in a local agency
17 military base recovery area (LAMBRA) designated in accordance
18 with Chapter 12.97 (commencing with Section 7105) of Division
19 7 of Title 1 of the Government Code.

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

22 (4) (A) For taxable years beginning on or after January 1, 2009,
23 and before January 1, 2011, “qualified employer” means a taxpayer
24 that, as of the last day of the preceding taxable year, employed a
25 total of 20 or fewer employees.

26 (B) For taxable years beginning on or after January 1, 2011,
27 “qualified employer” means a taxpayer that, as of the last day of
28 the preceding taxable year, employed a total of ~~40~~ 50 or fewer
29 employees.

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

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

34 (A) In the case of a full-time employee paid hourly qualified
35 wages, “annual full-time equivalent” means the total number of
36 hours worked for the taxpayer by the employee (not to exceed
37 2,000 hours per employee) divided by 2,000.

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

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

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

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

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

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

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

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

24 (f) For purposes of this ~~section~~, *all section*:

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

28 (2) *In determining whether the taxpayer has first commenced*
 29 *doing business in this state during the taxable year, the provisions*
 30 *of subdivision (g) of Section 24416.20, without application of*
 31 *paragraph (7) of that subdivision, shall apply.*

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

36 (B) For purposes of this paragraph, the cut-off date shall be the
 37 last day of the calendar quarter within which the Franchise Tax
 38 Board estimates it will have received timely filed original returns
 39 claiming credits under this section and Section 17053.80 that

1 cumulatively total four hundred million dollars (\$400,000,000)
2 for all taxable years.

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

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

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

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

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

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

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

35 SEC. 5. This act provides for a tax levy within the meaning of
36 Article IV of the Constitution and shall go into immediate effect.

O