

AMENDED IN SENATE JULY 7, 2011

AMENDED IN SENATE FEBRUARY 23, 2011

SENATE BILL

No. 116

Introduced by Senator De León

**(Coauthors: Senators DeSaulnier, Hancock, Hernandez, Leno,
Lowenthal, Price, Steinberg, and Wolk)**

(Coauthors: Assembly Members Blumenfield and Hueso)

January 19, 2011

An act to amend Sections 23101, 25113, 25128, 25128.5, and 25136 of, to add Section 25128.7 to, and to repeal Section 25128.5 of, Sections 17053.86, 23686, and 25136.1 to, to add and repeal Section 6377 of, and to repeal and amend Sections 17053.80 and 23623 of, the Revenue and Taxation Code, relating to taxation, ~~to take effect immediately, tax levy~~ making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 116, as amended, De León. Income taxes: *credits: contributions to education funds: hiring credit: single sales factor: factor: sales and use taxes: manufacturing exemption.*

(1) *The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.*

This bill, under both laws, for taxable years beginning on or after January 1, 2012, would allow a credit of 75% of a taxpayer's contribution to either the K-12 Investment Tax Credit Program Special Fund, a continuously appropriated special fund, or the Higher Education Investment Tax Credit Program Special Fund, established by this bill, for specified education purposes, as provided. This bill would specify that the aggregate amount of credit that may be allocated

under both laws shall not exceed \$1,000,000,000 for each calendar year.

The Corporation

(2) *The Corporation Tax Law* imposes taxes measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, apportions the business income between this state and other states and foreign countries in accordance with a specified 4-factor formula based on the property, payroll, and sales within and without this state, except that in the case of an apportioning trade or business that derives more than 50% of its gross business receipts from conducting one or more qualified business activities, as defined, business income is apportioned in accordance with a specified 3-factor formula. Existing law, for taxable years beginning on or after January 1, 2011, authorizes a taxpayer required to apportion its business income in accordance with the 4-factor formula to make an annual election to have that business income apportioned in accordance with a single sales factor formula.

This bill would eliminate the authorization for specified taxpayers to elect to have business income apportioned in accordance with a single sales factor formula and instead require those taxpayers to apportion their business income in accordance with a single sales factor formula for taxable years beginning on or after January 1, 2011, and would make related changes. *This bill would, for taxable years beginning on or after January 1, 2011, authorize specified taxpayers to elect to have business income apportioned in accordance with the 4-factor formula rather than in accordance with a single sales factor formula, if the tax before the application of any credits using the 4-factor formula to apportion business income is not less than the tax before the application of any credits using the single sales factor formula to apportion that income. This bill would also revise the method by which source of income is determined for a qualified taxpayer, as defined.*

(3) *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 net increase in full-time employees 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. Those laws establish a cut-off date when the total amount of credit allocated under those laws reaches \$400,000,000.

This bill, under both laws, for taxable years beginning on or after January 1, 2011, would increase the amount of the credit to \$4,000 for each net increase in full-time employees hired by a qualified employer that employs 50 or fewer employees, as of the last day of the preceding taxable year. This bill would change the cut-off date to either when the total amount of credit allocated under those laws reaches \$400,000,000, as provided, or on December 31, 2012, which ever occurs first.

(4) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

This bill would exempt from those taxes the sale of, and the storage, use, or other consumption in this state, of tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property; in research and development; to maintain, repair, measure, or test specified property; and by a contractor for use in a construction contract with a qualified person, as specified. This exemption would only become operative if a sales and use tax increase extension is enacted and the exemption would remain in effect until July 1, 2016.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws.

This bill would specify that this exemption does not apply to local sales and use taxes, transactions and use taxes, specified state sales and use taxes and portions of other specified state sales and use taxes, as provided.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

~~This bill would constitute 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~~ yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 6377 is added to the Revenue and
2 Taxation Code, to read:
3 6377. (a) (1) Subject to the limitations described in
4 subdivisions (d) and (e), there are exempted from the taxes imposed
5 by this part the gross receipts from the sale of, and the storage,
6 use, or other consumption in this state of, any of the following:
7 (A) Tangible personal property purchased for use by a qualified
8 person to be used primarily in any stage of the manufacturing,
9 processing, refining, fabricating, or recycling of tangible personal
10 property, beginning at the point any raw materials are received
11 by the qualified person and introduced into the process and ending
12 at the point at which the manufacturing, processing, refining,
13 fabricating, or recycling has altered that property to its completed
14 form, including packaging, if required.
15 (B) Tangible personal property purchased for use by a qualified
16 person to be used primarily in research and development.
17 (C) Tangible personal property purchased for use by a qualified
18 person to be used primarily to maintain, repair, measure, or test
19 any property described in subparagraph (A) or (B).
20 (D) Tangible personal property purchased by a contractor for
21 use in the performance of a construction contract for a qualified
22 person who will use the tangible personal property as an integral
23 part of the manufacturing, processing, refining, fabricating, or
24 recycling process, or as a research or storage facility for use in
25 connection with the manufacturing process.
26 (2) The exemption described in paragraph (1) shall not apply
27 to the gross receipts from the sale of, or the storage, use, or other
28 consumption of tangible personal property that is used primarily
29 in administration, general management, or marketing.
30 (b) For purposes of this section:
31 (1) “Acquire” includes any gift, inheritance, transfer incident
32 to divorce, or any other transfer, whether or not for consideration.

1 (2) “Fabricating” means to make, build, create, produce, or
2 assemble components or property to work in a new or different
3 manner.

4 (3) “Manufacturing” means the activity of converting or
5 conditioning tangible personal property by changing the form,
6 composition, quality, or character of the property for ultimate sale
7 at retail or use in the manufacturing of a product to be ultimately
8 sold at retail. Manufacturing includes any improvements to
9 tangible personal property that result in a greater service life or
10 greater functionality than that of the original property.

11 (4) “Primarily,” for the purposes of subdivision (a), means
12 tangible personal property used 50 percent or more of the time in
13 an activity described in subdivision (a).

14 (5) “Process” means the period beginning at the point at which
15 any raw materials are received by the qualified person and
16 introduced into the manufacturing, processing, refining,
17 fabricating, or recycling activity of the qualified person and ending
18 at the point at which the manufacturing, processing, refining,
19 fabricating, or recycling activity of the qualified person has altered
20 tangible personal property to its completed form, including
21 packaging, if required. Raw materials shall be considered to have
22 been introduced into the process when the raw materials are stored
23 on the same premises where the qualified person’s manufacturing,
24 processing, refining, fabricating, or recycling activity is conducted.
25 Raw materials that are stored on premises other than where the
26 qualified person’s manufacturing, processing, refining, fabricating,
27 or recycling activity is conducted, shall not be considered to have
28 been introduced into the manufacturing, processing, refining,
29 fabricating, or recycling process.

30 (6) “Processing” means the physical application of the materials
31 and labor necessary to modify or change the characteristics of
32 tangible personal property.

33 (7) “Qualified person” means a person that is either of the
34 following:

35 (A) A new trade or business that is primarily engaged in those
36 lines of business classified in Industry Groups 3111 to 3399,
37 inclusive, of the North American Industry Classification System
38 (NAICS) published by the United States Office of Management
39 and Budget (OMB), 2007 edition. In determining whether a trade

1 or business activity qualifies as a new trade or business, the
2 following rules shall apply:

3 (i) In any case where a person purchases or otherwise acquires
4 all or any portion of the assets of an existing trade or business,
5 irrespective of the form of entity, that is doing business in this state
6 (within the meaning of Chapter 2 (commencing with Section 23101)
7 of Part 11), the trade or business thereafter conducted by that
8 person, or any related person, shall not be treated as a new
9 business if the aggregate fair market value of the acquired assets,
10 including real, personal, tangible, and intangible property, used
11 by that person, or any related person, in the conduct of his or her
12 trade or business exceeds 20 percent of the aggregate fair market
13 value of the total assets of the trade or business being conducted
14 by the person, or any related person. For purposes of this
15 subparagraph only, the following rules shall apply:

16 (I) The determination of the relative fair market values of the
17 acquired assets and the total assets shall be made as of the last
18 day of the month following the quarterly period in which the
19 person, or any related person, first uses any of the acquired trade
20 or business assets in his or her business activity.

21 (II) Any acquired assets that constituted property described in
22 Section 1221(a) of the Internal Revenue Code in the hands of the
23 transferor shall not be treated as assets acquired from an existing
24 trade or business, unless those assets also constitute property
25 described in Section 1221(a) of the Internal Revenue Code in the
26 hands of the acquiring person or related person.

27 (ii) In any case where a person, or any related person, is
28 engaged in one or more trade or business activities in this state,
29 or has been engaged in one or more trade or business activities
30 in this state within the preceding 36 months, “prior trade or
31 business activity,” and thereafter commences an additional trade
32 or business activity in this state, the additional trade or business
33 activity shall be treated as a new business only if the additional
34 trade or business activity is classified under a different Industry
35 Group (4 digit) of the NAICS published by the United States OMB,
36 2007 edition, than are any of the person’s or any related person’s
37 current or prior trade or business activities in this state.

38 (iii) In any case where a person, including all related persons,
39 is engaged in trade or business activities wholly outside of this
40 state and that person first commences doing business in this state

1 *(within the meaning of Chapter 2 (commencing with Section 23101)*
2 *of Part 11) on or after June 30, 2012, other than by purchase or*
3 *other acquisition described in clause (i), the trade or business*
4 *activity shall be treated as a new business.*

5 *(iv) In any case where the legal form under which a trade or*
6 *business activity is being conducted is changed, the change in form*
7 *shall be disregarded and the determination of whether the trade*
8 *or business activity is a new business shall be made by treating*
9 *the person as having purchased or otherwise acquired all or any*
10 *portion of the assets of an existing trade or business under the*
11 *rules of clause (i).*

12 *(v) A “qualified person” shall not be regarded as a new trade*
13 *or business when the person has conducted business activities in*
14 *a new trade or business for three or more years.*

15 *(B) A trade or business, other than a new trade or business as*
16 *described in subparagraph (A), that is primarily engaged in those*
17 *lines of business classified in Industry Groups 3111 to 3399,*
18 *inclusive, of the NAICS published by the United States OMB, 2007*
19 *edition.*

20 *(8) Notwithstanding paragraph (7), “qualified person,” for*
21 *purposes of this section, does not include an apportioning trade*
22 *or business described in subdivision (b) of Section 25128.*

23 *(9) “Refining” means the process of converting a natural*
24 *resource to an intermediate or finished product.*

25 *(10) “Related person” means any person that is related to*
26 *another person under either Section 267 or 318 of the Internal*
27 *Revenue Code.*

28 *(11) “Research and development” means those activities that*
29 *are described in Section 174 of the Internal Revenue Code or in*
30 *any regulations thereunder.*

31 *(12) “Tangible personal property” includes, but is not limited*
32 *to, all of the following:*

33 *(A) Machinery and equipment, including component parts and*
34 *contrivances such as belts, shafts, moving parts, and operating*
35 *structures.*

36 *(B) All equipment or devices used or required to operate,*
37 *control, regulate, or maintain the machinery, including, without*
38 *limitation, computers, data-processing equipment, and computer*
39 *software, together with all repair and replacement parts with a*
40 *useful life of one or more years therefor, whether purchased*

1 *separately or in conjunction with a complete machine and*
2 *regardless of whether the machine or component parts are*
3 *assembled by the qualified person or another party.*

4 *(C) Property used in pollution control that meets or exceeds*
5 *standards established by this state or any local or regional*
6 *governmental agency within this state.*

7 *(D) Special purpose buildings and foundations used as an*
8 *integral part of the manufacturing, processing, refining, or*
9 *fabricating process, or that constitute a research or storage facility*
10 *used during the manufacturing process. Buildings used solely for*
11 *warehousing purposes after completion of the manufacturing*
12 *process are not included.*

13 *(E) Property used in recycling.*

14 *(13) “Tangible personal property” does not include any of the*
15 *following:*

16 *(A) Consumables with a useful life of less than one year.*

17 *(B) Furniture, inventory, equipment used in the extraction*
18 *process, or equipment used to store finished products that have*
19 *completed the manufacturing process.*

20 *(14) “Useful life” for tangible personal property that a qualified*
21 *person treats as having a useful life of one or more years for state*
22 *income or franchise tax purposes shall be deemed to have a useful*
23 *life of one or more years for purposes of this section. Useful life*
24 *for tangible personal property that a qualified person treats as*
25 *having a useful life of less than one year for state income or*
26 *franchise tax purposes shall be deemed to have a useful life of less*
27 *than one year for purposes of this section.*

28 *(c) An exemption shall not be allowed under this section unless*
29 *the purchaser furnishes the retailer with an exemption certificate,*
30 *completed in accordance with any instructions or regulations as*
31 *the board may prescribe, and the retailer retains a copy of the*
32 *exemption certificate in his or her records. The exemption*
33 *certificate shall contain the sales price of the tangible personal*
34 *property that is exempt pursuant to subdivision (a), and shall be*
35 *furnished to the board upon request.*

36 *(d) (1) Notwithstanding subdivision (a), the exemption*
37 *established by this section shall not apply with respect to any tax*
38 *levied pursuant to Sections 6051.2, 6051.5, 6051.8, 6201.2, 6201.5,*
39 *and 6201.8, or pursuant to Article XIII of the California*
40 *Constitution.*

1 (2) Notwithstanding any other law, the exemption established
2 by this section shall not apply to any tax levied by a county, city,
3 or district pursuant to, or in accordance with, the Bradley-Burns
4 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing
5 with Section 7200)) or the Transactions and Use Tax Law (Part
6 1.6 (commencing with Section 7251)).

7 (e) Notwithstanding subdivision (a), for a qualified person that
8 is described in subparagraph (B) of paragraph (7) of subdivision
9 (b), and for a contractor performing a construction contract as
10 described in subparagraph (D) of paragraph (1) of subdivision
11 (a) for a qualified person as described in subparagraph (B) of
12 paragraph (7) of subdivision (b), the exemption established by this
13 section shall be limited to 20 percent of the amount that would
14 otherwise be allowed as an exemption under this section.

15 (f) Notwithstanding subdivision (a), the exemption provided by
16 this section shall not apply to any sale or use of property which,
17 within one year from the date of purchase, is either removed from
18 California or converted from an exempt use under subdivision (a)
19 to some other use not qualifying for the exemption.

20 (g) If a purchaser certifies in writing to the seller that the
21 property purchased without payment of the tax will be used in a
22 manner entitling the seller to regard the gross receipts from the
23 sale as exempt from the sales tax pursuant to this section, and
24 within one year from the date of purchase, the purchaser (1)
25 removes that property outside California, (2) converts that property
26 for use in a manner not qualifying for the exemption, or (3) uses
27 that property in a manner not qualifying for the exemption, the
28 purchaser shall be liable for payment of sales tax, with applicable
29 interest, as if the purchaser were a retailer making a retail sale
30 of the property at the time the property is so removed, converted,
31 or used, and the sales price of the property to the purchaser shall
32 be deemed the gross receipts from that retail sale.

33 (h) At the time necessary information technologies and
34 electronic data warehousing capabilities of the board are
35 sufficiently established, the board shall determine an efficient
36 means by which qualified persons may electronically apply for,
37 and receive, an exemption certificate that contains information
38 that would assist retailers in complying with this part with respect
39 to the exemption described by this section.

1 (i) This section shall remain in effect only until July 1, 2016,
2 and as of January 1, 2017, is repealed.

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

6 ~~17053.80.—(a) For each taxable year beginning on or after~~
7 ~~January 1, 2009, there shall be allowed as a credit against the “net~~
8 ~~tax,” as defined in Section 17039, three thousand dollars (\$3,000)~~
9 ~~for each net increase in qualified full-time employees, as specified~~
10 ~~in subdivision (c), hired during the taxable year by a qualified~~
11 ~~employer.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 ~~17053.80. (a) For each taxable year beginning on or after~~
13 ~~January 1, 2009, there~~ *There shall be allowed as a credit against*
14 *the “net tax,” as defined in Section 17039, three thousand dollars*
15 *(\$3,000) for each net increase in qualified full-time employees, as*
16 *specified in subdivision (c), hired during the taxable year by a*
17 *qualified employer, as follows:*

18 *(1) For each taxable year beginning on or after January 1,*
19 *2009, and before January 1, 2011, the credit shall be equal to*
20 *three thousand dollars (\$3,000).*

21 *(2) For each taxable year beginning on or after January 1,*
22 *2011, the credit shall be equal to four thousand dollars (\$4,000).*

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 either of the following:*

15 (A) *For each taxable year beginning on or after January 1,*
16 *2009, and before January 1, 2011, a taxpayer that, as of the last*
17 *day of the preceding taxable year, employed a total of 20 or fewer*
18 *employees.*

19 (B) *For each taxable year beginning on or after January 1,*
20 *2011, a taxpayer that, as of the last day of the preceding taxable*
21 *year, employed a total of 50 or fewer employees.*

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

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

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

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

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

36 (1) (A) The net increase in qualified full-time employees shall
37 be determined on an annual full-time equivalent basis by
38 subtracting from the amount determined in subparagraph (C) the
39 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~~ 17276.20, without application
24 of 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 million dollars (\$400,000,000)~~
34 ~~for all taxable years. earlier date of the following:~~

35 (i) *The last day of the calendar quarter within which the*
36 *Franchise Tax Board estimates it will have received timely filed*
37 *original returns claiming credits under this section and Section*
38 *23623 that cumulatively total four hundred million dollars*
39 *(\$400,000,000) for all taxable years.*

40 (ii) *December 31, 2012.*

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

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

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

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

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

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

29 (i) This section shall remain in effect only until December 1 of
30 ~~the calendar year after the year of the cut-off date, and as of that~~
31 ~~December 1 is repealed 1, 2013, and as of that date is repealed.~~

32 *SEC. 4. Section 17053.86 is added to the Revenue and Taxation*
33 *Code, to read:*

34 *17053.86. (a) (1) For each taxable year beginning on or after*
35 *January 1, 2012, there shall be allowed as a credit against the*
36 *“net tax,” as defined in Section 17039, an amount equal to 75*
37 *percent of the amount contributed during the taxable year by a*
38 *taxpayer to either the K-12 Investment Tax Credit Program Special*
39 *Fund or the Higher Education Investment Tax Credit Program*
40 *Special Fund.*

1 (2) Contributions shall be made only in cash.

2 (b) (1) The aggregate amount of credit that may be allocated
3 pursuant to this section and Section 23686 shall not exceed one
4 billion dollars (\$1,000,000,000) for the 2012 calendar year and
5 one billion dollars (\$1,000,000,000) for each calendar year
6 thereafter.

7 (2) (A) Credit under this section and Section 23686 shall be
8 allowed only for credits claimed on timely filed original returns
9 received by the Franchise Tax Board on or before the cut-off date
10 established by the Franchise Tax Board and shall be allocated on
11 a first-come-first-served basis. The date a return is received shall
12 be determined by the Franchise Tax Board.

13 (B) For purposes of this subdivision, the cut-off date shall be
14 the last day of the calendar quarter within which the Franchise
15 Tax Board estimates it will have received timely filed original
16 returns claiming credits under this section and Section 23686.

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

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

27 (4) The Franchise Tax Board shall periodically provide notice
28 on its Internet Web site with respect to the amount of credit under
29 this section and Section 23686 claimed on timely filed original
30 returns received by the Franchise Tax Board.

31 (c) (1) In the case where the credit allowed by this section
32 exceeds the “net tax,” the excess may be carried over to reduce
33 the “net tax” in the following year, and succeeding five years if
34 necessary, until the credit is exhausted.

35 (2) A deduction shall not be allowed under this part for amounts
36 taken into account under this section in calculating the credit
37 allowed by this section.

38 (d) (1) The K–12 Investment Tax Credit Program Special Fund
39 is hereby created as a special fund in the State Treasury consisting
40 of funds contributed by taxpayers. Notwithstanding Section 13340

1 of the Government Code, all revenue in this special fund is
2 continuously appropriated, without regard to fiscal year, as
3 follows:

4 (A) First to school districts in an amount equal to any amounts
5 suspended, deferred, or otherwise not appropriated, regardless of
6 fiscal year, to each school district pursuant to a suspension of the
7 minimum funding obligation, determined pursuant to subdivision
8 (b) of Article XVI of the California Constitution.

9 (B) Any surplus moneys shall be allocated to the Superintendent
10 of Public Instruction for educational purposes.

11 (2) The tax credit allowed by subdivision (a) of this section and
12 subdivision (a) of Section 23686 for donations to the K–12
13 Investment Tax Credit Program Special Fund shall be known as
14 the K–12 Investment Tax Credit Program. The Superintendent of
15 Public Instruction shall maintain an Internet Web site that lists
16 all the taxpayers that contribute to the K–12 Investment Tax Credit
17 Program Special Fund. The contributing taxpayer may honor a
18 school that motivated its contribution by listing the name of the
19 school for inclusion on the Internet Web site. School districts are
20 encouraged to publicly acknowledge taxpayers that contribute to
21 this program in honor of schools within their district.

22 (e) (1) The Higher Education Investment Tax Credit Program
23 Special Fund is hereby created as a special fund in the State
24 Treasury consisting of funds contributed by taxpayers. All revenue
25 in this special fund, upon appropriation by the Legislature, shall
26 be allocated in equal parts to the Regents of the University of
27 California, the Trustees of the California State University, and the
28 Board of Governors of the California Community Colleges.

29 (2) The tax credit allowed by subdivision (a) of this section and
30 subdivision (a) of Section 23686 for donations to the Higher
31 Education Investment Tax Credit Program Special Fund shall be
32 known as the Higher Education Investment Tax Credit Program.
33 The President of the University of California is encouraged, and
34 the Chancellors of the California State University and California
35 Community Colleges are directed to, maintain an Internet Web
36 site that lists all the taxpayers that contribute to the Higher
37 Education Investment Tax Credit Program Special Fund. The
38 contributing taxpayer may honor a California university or college
39 that motivated its contribution by listing the name of the university
40 or college for inclusion on the Internet Web sites. The University

1 of California, the California State University, and the California
2 Community Colleges are encouraged to publicly acknowledge
3 taxpayers that contribute to this program in honor of their
4 institutions.

5 (f) (1) The Franchise Tax Board may prescribe rules,
6 guidelines, or procedures necessary or appropriate to carry out
7 the purposes of this section, including any guidelines regarding
8 the limitation on total credits allowable under this section and
9 Section 23686.

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

15 ~~SECTION 4.~~

16 SEC. 5. Section 23101 of the Revenue and Taxation Code is
17 amended to read:

18 23101. (a) “Doing business” means actively engaging in any
19 transaction for the purpose of financial or pecuniary gain or profit.

20 (b) For taxable years beginning on or after January 1, 2011, a
21 taxpayer is doing business in this state for a taxable year if any of
22 the following conditions has been satisfied:

23 (1) The taxpayer is organized or commercially domiciled in this
24 state.

25 (2) Sales, as defined in subdivision (f) of Section 25120, of the
26 taxpayer in this state exceed the lesser of five hundred thousand
27 dollars (\$500,000) or 25 percent of the taxpayer’s total sales. For
28 purposes of this paragraph, sales of the taxpayer include sales by
29 an agent or independent contractor of the taxpayer. For purposes
30 of this paragraph, sales in this state shall be determined using the
31 rules for assigning sales under Section 25135 and Section 25136
32 and the regulations thereunder, as modified by regulations under
33 Section 25137.

34 (3) The real property and tangible personal property of the
35 taxpayer in this state exceed the lesser of fifty thousand dollars
36 (\$50,000) or 25 percent of the taxpayer’s total real property and
37 tangible personal property. The value of real and tangible personal
38 property and the determination of whether property is in this state
39 shall be determined using the rules contained in Sections 25129

1 to 25131, inclusive, and the regulations thereunder, as modified
2 by regulation under Section 25137.

3 (4) The amount paid in this state by the taxpayer for
4 compensation, as defined in subdivision (c) of Section 25120,
5 exceeds the lesser of fifty thousand dollars (\$50,000) or 25 percent
6 of the total compensation paid by the taxpayer. Compensation in
7 this state shall be determined using the rules for assigning payroll
8 contained in Section 25133 and the regulations thereunder, as
9 modified by regulations under Section 25137.

10 (c) (1) The Franchise Tax Board shall annually revise the
11 amounts in paragraphs (2), (3), and (4) of subdivision (b) in
12 accordance with subdivision (h) of Section 17041.

13 (2) For purposes of the adjustment required by paragraph (1),
14 subdivision (h) of Section 17041 shall be applied by substituting
15 “2012” in lieu of “1988.”

16 (d) The sales, property, and payroll of the taxpayer include the
17 taxpayer’s pro rata or distributive share of pass-through entities.
18 For purposes of this subdivision, “pass-through entities” means a
19 partnership or an “S” corporation.

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

23 ~~23623. (a) For each taxable year beginning on or after January~~
24 ~~1, 2009, there shall be allowed as a credit against the “tax,” as~~
25 ~~defined in Section 23036, three thousand dollars (\$3,000) for each~~
26 ~~net increase in qualified full-time employees, as specified in~~
27 ~~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 ~~(e) 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 “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, without application of~~
24 ~~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 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 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 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 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, 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 17053.80~~
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. 7. Section 23623 of the Revenue and Taxation Code, as*
27 *added by Section 8 of Chapter 17 of the Third Extraordinary*
28 *Session of the Statutes of 2009, is amended to read:*

29 23623. (a) ~~For each taxable year beginning on or after January~~
30 ~~1, 2009, there~~ *There shall be allowed as a credit against the "tax,"*
31 *as defined in Section 23036, three thousand dollars (\$3,000) for*
32 *each net increase in qualified full-time employees, as specified in*
33 *subdivision (c), hired during the taxable year by a qualified*
34 *employer: as follows:*

35 *(1) For each taxable year beginning on or after January 1,*
36 *2009, and before January 1, 2011, the credit shall be equal to*
37 *three thousand dollars (\$3,000).*

38 *(2) For each taxable year beginning on or after January 1,*
39 *2011, the credit shall be equal to four thousand dollars (\$4,000).*

40 (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 either of the following:*
- 31 (A) *For each taxable year beginning on or after January 1,*
32 *2009, and before January 1, 2011, a taxpayer that, as of the last*
33 *day of the preceding taxable year, employed a total of 20 or fewer*
34 *employees.*
- 35 (B) *For each taxable year beginning on or after January 1,*
36 *2011, a taxpayer that, as of the last day of the preceding taxable*
37 *year, employed a total of 50 or fewer employees.*
- 38 (5) “Qualified wages” means wages subject to Division 6
39 (commencing with Section 13000) of the Unemployment Insurance
40 Code.

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

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

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

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

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

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

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

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

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

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

32 (f) For purposes of this section:

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

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

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

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

11 (i) *The last day of the calendar quarter within which the*
12 *Franchise Tax Board estimates it will have received timely filed*
13 *original returns claiming credits under this section and Section*
14 *17053.80 that cumulatively total four hundred million dollars*
15 *(\$400,000,000) for all taxable years.*

16 (ii) *December 31, 2012.*

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

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

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

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

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

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

6 (i) This section shall remain in effect only until December 1 of
7 the calendar year after the year of the cut-off date, and as of that
8 December 1 is repealed 1, 2013, and as of that date is repealed.

9 *SEC. 8. Section 23686 is added to the Revenue and Taxation*
10 *Code, to read:*

11 23686. (a) (1) *For each taxable year beginning on or after*
12 *January 1, 2012, there shall be allowed as a credit against the*
13 *“tax,” as defined in Section 23036, an amount equal to 75 percent*
14 *of the amount contributed during the taxable year by a taxpayer*
15 *to either the K-12 Investment Tax Credit Program Special Fund,*
16 *created by subdivision (d) of Section 17053.86, or the Higher*
17 *Education Investment Tax Credit Program Special Fund, created*
18 *by subdivision (e) of Section 17053.86.*

19 (2) *Contributions shall be made only in cash.*

20 (b) (1) *The aggregate amount of credit that may be allocated*
21 *pursuant to this section and Section 17053.86 shall not exceed one*
22 *billion dollars (\$1,000,000,000) for the 2012 calendar year and*
23 *one billion dollars (\$1,000,000,000) for each calendar year*
24 *thereafter.*

25 (2) (A) *Credit under this section and Section 17053.86 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 and shall be allocated on*
29 *a first-come-first-served basis. The date a return is received shall*
30 *be determined by the Franchise Tax Board.*

31 (B) *For purposes of this subdivision, the cut-off date shall be*
32 *the last day of the calendar quarter within which the Franchise*
33 *Tax Board estimates it will have received timely filed original*
34 *returns claiming credits under this section and Section 17053.86.*

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

39 (B) *Any disallowance of a credit claimed due to a determination*
40 *under this subdivision, including the application of the limitation*

1 *specified in paragraph (1), shall be treated as a mathematical*
2 *error appearing on the return. Any amount of tax resulting from*
3 *such disallowance may be assessed by the Franchise Tax Board*
4 *in the same manner as provided by Section 19051.*

5 *(4) The Franchise Tax Board shall periodically provide notice*
6 *on its Internet Web site with respect to the amount of credit under*
7 *this section and Section 17053.86 claimed on timely filed original*
8 *returns received by the Franchise Tax Board.*

9 *(c) (1) In the case where the credit allowed by this section*
10 *exceeds the “tax,” the excess may be carried over to reduce the*
11 *“tax” in the following year, and succeeding five years if necessary,*
12 *until the credit is exhausted.*

13 *(2) A deduction shall not be allowed under this part for amounts*
14 *taken into account under this section in calculating the credit*
15 *allowed by this section.*

16 *(d) (1) The Franchise Tax Board may prescribe rules,*
17 *guidelines or procedures necessary or appropriate to carry out*
18 *the purposes of this section, including any guidelines regarding*
19 *the limitation on total credits allowable under this section and*
20 *Section 17053.86.*

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

26 ~~SEC. 2:~~

27 *SEC. 9.* Section 25113 of the Revenue and Taxation Code, as
28 added by Section 4 of Chapter 657 of the Statutes of 2003, is
29 amended to read:

30 25113. (a) Except as provided in subdivision (f), for taxable
31 years beginning on or after January 1, 2003, the election provided
32 for in Section 25110 shall be made on an original, timely filed
33 return for the year of the election. The election will be considered
34 valid if both of the following conditions are satisfied:

35 (1) The tax is computed in a manner consistent with a
36 water’s-edge election.

37 (2) A written notification of election is filed with the return on
38 a form prescribed by the Franchise Tax Board. Pursuant to
39 regulations promulgated under this section, the Franchise Tax
40 Board may accept the filing of other objective evidence that

1 supports the conclusion that a water’s-edge election was intended
2 in lieu of notification on the designated form.

3 (b) Except as otherwise provided, a water’s-edge election shall
4 be effective only if made by every member of the self-assessed
5 combined reporting group that is subject to taxation under this
6 part.

7 (1) An election made on a group return of a self-assessed
8 combined reporting group shall constitute an election by each
9 taxpayer member included in that group return, unless one of those
10 taxpayers files a separate return in which no election is made and
11 paragraph (2) does not apply.

12 (2) A taxpayer that fails to make an election on its own timely
13 filed original return shall be deemed to have elected if either of
14 the following applies:

15 (A) It has a parent corporation that is an electing taxpayer that
16 included the income and apportionment factors of the nonelecting
17 taxpayer in the self-assessed combined reporting group reflected
18 in the electing parent’s timely filed original return, including a
19 group return.

20 (B) The income and apportionment factors of the nonelecting
21 taxpayer are reflected in the self-assessed combined reporting
22 group of a timely filed original return of an electing taxpayer, and
23 the notification of election filed by the electing taxpayer pursuant
24 to paragraph (2) of subdivision (a) is signed by an officer or other
25 authorized agent of either a parent corporation of the nonelecting
26 taxpayer or another corporation with authority to bind the
27 nonelecting taxpayer to an election.

28 (3) For purposes of this subdivision, a “parent corporation” of
29 the taxpayer is a corporation that owns or constructively owns
30 stock possessing more than 50 percent of the voting power of the
31 taxpayer as determined under subdivisions (e) and (f) of Section
32 25105.

33 (4) If a corporation that is a member of a combined reporting
34 group is not itself subject to taxation under this part in the year for
35 which the water’s-edge election is made, but subsequently becomes
36 subject to taxation under this part, that corporation shall be deemed
37 to have elected with the other taxpayer members of the combined
38 reporting group.

39 (5) A taxpayer that is engaged in more than one apportioning
40 trade or business, as defined in paragraph (2) of subdivision ~~(b)~~

1 (c) of Section 25128, may make a separate election for each
2 apportioning trade or business.

3 (c) A water's-edge election shall remain in effect or be
4 terminated in accordance with this subdivision.

5 (1) Except as otherwise provided in this subdivision, if one or
6 more electing taxpayer members of a combined reporting group
7 later become disaffiliated or otherwise cease to be included in the
8 combined reporting group, the water's-edge election shall remain
9 in effect as to both the departing taxpayer members and any
10 remaining taxpayer members.

11 (2) If an electing taxpayer and a nonelecting taxpayer become
12 members of a new unitary affiliate group, the nonelecting taxpayer
13 shall be deemed to have elected if the value of the total business
14 assets of the electing taxpayer, and its component unitary group,
15 if any, is larger than the value of the total business assets of the
16 nonelecting taxpayer, and its component unitary group, if any.
17 Otherwise, the water's-edge election shall be automatically
18 terminated at the time the electing members become part of the
19 combined report. For purposes of applying paragraphs (9) and
20 (10), the commencement date of the deemed election shall be the
21 same as the commencement date of the electing taxpayers.

22 (3) If taxpayers filing under water's-edge elections with different
23 commencement dates become members of a new unitary affiliate
24 group, the earliest election date shall be deemed to apply to all
25 electing taxpayers if the total business assets of the earlier electing
26 taxpayer, and its component unitary group, if any, is larger than
27 the value of the total business assets of the later electing taxpayer,
28 and its component unitary group, if any. Otherwise, the later
29 election commencement date shall apply to all electing taxpayers.

30 (4) (A) If a taxpayer with an election that has been terminated
31 under paragraph (9) or (10) becomes a member of a new unitary
32 affiliate group that includes another electing or nonelecting
33 taxpayer not affected by those paragraphs, any water's-edge
34 election of the other taxpayer member, if applicable, shall
35 terminate, and any restrictions on making a new water's-edge
36 election, relating to an election terminated under those paragraphs,
37 shall apply to all taxpayer members of the new unitary affiliate
38 group if the total business assets of the taxpayer with the terminated
39 election, and its component unitary group, if any, is larger than
40 the other taxpayer, and its component unitary group, if any.

1 Otherwise, paragraph (2) shall apply, if applicable. If paragraph
2 (2) does not apply, all taxpayer members of the new unitary affiliate
3 group will be treated as nonelecting taxpayers that are not subject
4 to any restrictions on making a new water's-edge election.

5 (B) If two nonelecting taxpayers with different termination dates
6 under paragraph (9) or (10) become members of a new unitary
7 affiliate group, the earliest termination date shall be deemed to
8 apply to all nonelecting taxpayers, as well as any restrictions on
9 making a new water's-edge election relating to that termination,
10 if the total business assets of the earlier terminating taxpayer, and
11 its component unitary group, if any, is larger than the value of the
12 total business assets of the later terminating taxpayer, and its
13 component unitary group, if any. Otherwise, the later termination
14 date, and the related restrictions on making a new water's-edge
15 election, shall apply to all taxpayer members of the new unitary
16 affiliate group.

17 (5) (A) Except as provided in subparagraph (B), if one or more
18 electing taxpayers did not report their income and apportionment
19 factors as members of a combined reporting group with one or
20 more nonelecting taxpayers, and, pursuant to a Franchise Tax
21 Board audit determination, the nonelecting taxpayers, are properly
22 in the same combined reporting group as the electing taxpayers,
23 the water's-edge election of the electing taxpayers shall remain in
24 effect and the nonelecting taxpayers shall be deemed to have made
25 a water's-edge election. The commencement date of the deemed
26 water's-edge election shall be the same as the commencement date
27 of the electing taxpayers.

28 (B) Subparagraph (A) may not apply if the value of total
29 business assets of the electing taxpayers does not exceed the value
30 of total business assets of the nonelecting taxpayers. In that event,
31 the water's-edge election of each electing taxpayer is terminated
32 as of the date the nonelecting taxpayers are, pursuant to the audit
33 determination described in subparagraph (A), properly included
34 in the same combined reporting group as the electing taxpayers.

35 (C) For purposes of applying the business asset test of this
36 paragraph, the term "business assets" shall have the same meaning
37 as subparagraph (A) of paragraph (6), except that the business
38 assets of other members of the unitary affiliate group that are not
39 taxpayers shall not be taken into account.

1 (D) Notwithstanding subparagraph (A), nonelecting taxpayers
2 may not be deemed to have made a water's-edge election if the
3 Franchise Tax Board audit determination described in subparagraph
4 (A) is withdrawn or otherwise overturned.

5 (6) For purposes of paragraphs (2) to (5), inclusive, the following
6 shall apply:

7 (A) "Business assets" are assets, including intangible assets,
8 other than stock of a member of the unitary affiliate group, which
9 are used in the conduct of the business of the unitary affiliate group
10 or would produce business income to the unitary affiliate group,
11 if an election were not in place, if the assets were sold. Business
12 assets shall be valued at net book value.

13 (B) The phrase "unitary affiliate group" refers to all of those
14 corporations that would constitute a unitary group if a water's-edge
15 election were not made.

16 (C) The phrase "new unitary affiliate group" refers to a unitary
17 affiliate group that is created by a new affiliation of two or more
18 corporations, or by the addition of one or more new members to
19 an existing unitary affiliate group.

20 (D) The phrase "component unitary group" means that portion
21 of a group of corporations that have become members of a new
22 unitary affiliate group that were members of their own respective
23 unitary affiliate group prior to entering the new unitary affiliate
24 group, disregarding any corporations that did not become part of
25 the new unitary group.

26 (7) In the application of paragraphs (2) to (4), inclusive, a series
27 of acquisitions as steps of a single transaction shall be aggregated
28 as a single change of membership.

29 (8) In the event of a merger or consolidation, the water's-edge
30 status and election commencement date or termination date of the
31 surviving corporation shall be consistent with the result that would
32 have been obtained under paragraphs (2) to (4), inclusive, if the
33 surviving corporation had acquired the stock of the transferor
34 corporation.

35 (9) A water's-edge election may be terminated without the
36 consent of the Franchise Tax Board after it has been in effect for
37 at least 84 months. The termination shall be made on an original,
38 timely filed return for the first year in which the water's-edge
39 election is to be terminated. To be effective, the termination shall
40 be made by every taxpayer that is a member of the water's-edge

1 group in the same manner as the election provided under
2 subdivisions (a) and (b).

3 (10) A water's-edge election may be terminated before the
4 84-month period described in paragraph (9) has elapsed, but only
5 with the consent of the Franchise Tax Board. A request for
6 termination shall be made at the time and in the manner specified
7 by the Franchise Tax Board.

8 (A) The request may be granted for good cause. For purposes
9 of this section, good cause shall have the same meaning as specified
10 in Treasury Regulations Section 1.1502-75(c).

11 (B) The Franchise Tax Board shall consent to a termination
12 requested by all members of a water's-edge group, if the purpose
13 of the request is to permit the state to contract with an expatriate
14 corporation, or its subsidiary, pursuant to paragraph (2) of
15 subdivision (b) of Section 10286 of the Public Contract Code. A
16 water's-edge election terminated pursuant to this subparagraph
17 shall, however, be effective for the year in which the expatriate
18 corporation, or its subsidiary, enters into the contract with the state.

19 (11) Except for deemed elections as provided in paragraphs (2),
20 (4), and (5), if a water's-edge election is terminated under
21 paragraph (9) or (10), another election may not be made under this
22 section for any taxable year that begins within the 84-month period
23 following the last day of the election period that was terminated.
24 The Franchise Tax Board may waive the application of this
25 prohibition period for good cause.

26 (12) A water's-edge election shall remain in effect until
27 terminated.

28 (d) For purposes of this section, the following shall apply:

29 (1) A "combined reporting group" means those corporations
30 whose income and apportionment factors are properly considered
31 pursuant to this chapter in computing the income of the individual
32 taxpayer that is derived from or attributable to sources within this
33 state, taking into account a valid water's-edge election.

34 (2) A "group return" refers to the single return which taxpayer
35 members of a combined reporting group may elect by contract to
36 file, in the form and manner prescribed by the Franchise Tax Board,
37 in lieu of filing their own respective returns.

38 (3) A "self-assessed combined reporting group" means that
39 group of corporations whose income and apportionment factors
40 are reflected in a combined report prepared pursuant to this chapter

1 in a timely filed return, taking into account the effects of a
2 purported water's-edge election, whether or not the membership
3 of the corporations in that combined report was correctly
4 determined.

5 (e) The Franchise Tax Board may prescribe any regulations as
6 may be necessary or appropriate to carry out the purposes of this
7 section.

8 (f) To the extent that a taxpayer would have been required to
9 file on a water's-edge basis in its first taxable year beginning on
10 or after January 1, 2003, pursuant to a water's-edge election made
11 in a prior year under Section 25111, the terms of Section 25111
12 may not apply and the election shall be deemed to have been made
13 under the terms of this section. However, the commencement date
14 of the election made in a prior year under Section 25111 shall
15 continue to be treated as the commencement date of the
16 water's-edge election period for purposes of applying this section.

17 (g) *The amendments made to this section by the act adding this*
18 *subdivision shall apply to taxable years beginning on or after*
19 *January 1, 2011.*

20 ~~SEC. 3:~~

21 *SEC. 10.* Section 25128 of the Revenue and Taxation Code is
22 amended to read:

23 ~~25128. (a) If an apportioning trade or business derives more~~
24 *25128. (a) (1) Notwithstanding Section 38006, for taxable*
25 *years beginning on or after January 1, 2011, any apportioning*
26 *trade or business, other than an apportioning trade or business*
27 *that is described in subdivision (b) or that makes an election to*
28 *apportion its income in accordance with Section 25128.5, shall*
29 *apportion its business income in accordance with this subdivision.*

30 *(2) Notwithstanding Section 38006, for taxable years beginning*
31 *on or after January 1, 2011, all business income of an apportioning*
32 *trade or business described in paragraph (1) shall be apportioned*
33 *to this state by multiplying the business income by the sales factor.*

34 *(b) If an apportioning trade or business derives more than 50*
35 *percent of its "gross business receipts" from conducting one or*
36 *more qualified business activities, as defined in subdivision*
37 *(c), all business income of the apportioning trade or business shall*
38 *be apportioned to this state by multiplying business income by a*
39 *fraction, the numerator of which is the property factor plus the*

1 payroll factor plus the sales factor, and the denominator of which
2 is three.

3 ~~(b)~~

4 (c) For purposes of this section:

5 (1) “Agricultural business activity” means any activity relating
6 to any stock, dairy, poultry, fruit, furbearing animal, or truck farm,
7 plantation, ranch, nursery, or range. “Agricultural business activity”
8 also includes any activity relating to cultivating the soil or raising
9 or harvesting any agricultural or horticultural commodity,
10 including, but not limited to, the raising, shearing, feeding, caring
11 for, training, or management of animals on a farm as well as the
12 handling, drying, packing, grading, or storing on a farm of any
13 agricultural or horticultural commodity in its unmanufactured state,
14 but only if the owner, tenant, or operator of the farm regularly
15 produces more than one-half of the commodity so treated.

16 (2) “Apportioning trade or business” means a distinct trade or
17 business whose business income is required to be apportioned
18 under Sections 25101 and 25120, limited, if applicable, by Section
19 25110, using the same denominator for each of the applicable
20 payroll, property, and sales factors.

21 (3) “Banking or financial business activity” means any activity
22 attributable to dealings in money or moneyed capital in substantial
23 competition with the business of national banks.

24 (4) “Extractive business activity” means any activity relating
25 to the production, refining, or processing of oil, natural gas, or
26 mineral ore.

27 (5) “Gross business receipts” means gross receipts described in
28 subdivision (f) of Section 25120 (other than gross receipts from
29 sales or other transactions within an apportioning trade or business
30 between members of a group of corporations whose income and
31 apportionment factors are required to be included in a combined
32 report under Section 25101, limited, if applicable, by Section
33 25110), whether or not the receipts are excluded from the sales
34 factor by operation of Section 25137.

35 (6) “Qualified business activity” means any of the following:

36 (A) An agricultural business activity.

37 (B) An extractive business activity.

38 (C) A savings and loan activity.

39 (D) A banking or financial business activity.

1 (7) “Savings and loan activity” means any activity performed
2 by savings and loan associations or savings banks which have been
3 chartered by federal or state law.

4 (e)

5 (d) In any case where the income and apportionment factors of
6 two or more savings associations or corporations are required to
7 be included in a combined report under Section 25101, limited, if
8 applicable, by Section 25110, both of the following shall apply:

9 (1) The application of the more than 50 percent test of
10 subdivision ~~(a)~~ (b) shall be made with respect to the “gross business
11 receipts” of the entire apportioning trade or business of the group.

12 (2) The entire business income of the group shall be apportioned
13 in accordance with either this section or Section ~~25128.7, 25128.5,~~
14 as applicable.

15 (d)

16 (e) The amendments made to this section by the act adding this
17 subdivision, shall apply to taxable years beginning on or after
18 January 1, 2011.

19 ~~SEC. 4. Section 25128.5 of the Revenue and Taxation Code~~
20 ~~is repealed.~~

21 ~~SEC. 5. Section 25128.7 is added to the Revenue and Taxation~~
22 ~~Code, to read:~~

23 ~~25128.7. (a) Notwithstanding Section 38006, for taxable years~~
24 ~~beginning on or after January 1, 2011, any apportioning trade or~~
25 ~~business, other than an apportioning trade or business described~~
26 ~~in subdivision (b) of Section 25128, shall apportion its business~~
27 ~~income in accordance with this section, and not in accordance with~~
28 ~~Section 25128.~~

29 ~~(b) Notwithstanding Section 38006, for taxable years beginning~~
30 ~~on or after January 1, 2011, all business income of an apportioning~~
31 ~~trade or business described in subdivision (a) shall be apportioned~~
32 ~~to this state by multiplying the business income by the sales factor.~~

33 ~~(c) The Franchise Tax Board may issue regulations necessary~~
34 ~~or appropriate regarding the administration of this section.~~

35 ~~SEC. 11. Section 25128.5 of the Revenue and Taxation Code~~
36 ~~is amended to read:~~

37 ~~25128.5. (a) Notwithstanding Section 38006, for taxable years~~
38 ~~beginning on or after January 1, 2011, any apportioning trade or~~
39 ~~business, other than an apportioning trade or business described~~
40 ~~in subdivision (b) of Section 25128, may make an irrevocable~~

1 annual election on an original timely filed return, in the manner
2 and form prescribed by the Franchise Tax Board, to apportion its
3 income in accordance with this section, and not in accordance with
4 Section 25128, *if the “tax,” as defined in Section 23036 before*
5 *the application of any credits, using this section to apportion its*
6 *business income, is not less than the “tax,” as defined in Section*
7 *23036 before the application of any credits, using subdivision (a)*
8 *of Section 25128 to apportion its business income.*

9 (b) Notwithstanding Section 38006, for taxable years beginning
10 on or after January 1, 2011, all business income of an apportioning
11 trade or business making an election ~~described in subdivision (a)~~
12 ~~shall be apportioned to this state by multiplying the business~~
13 ~~income by the sales factor under subdivision (a) shall be~~
14 *apportioned to this state by multiplying the business income by a*
15 *fraction, the numerator of which is the property factor plus the*
16 *payroll factor plus twice the sales factor, and the denominator of*
17 *which is four.*

18 (c) The Franchise Tax Board is authorized to issue regulations
19 necessary or appropriate regarding the making of an election under
20 this section, including regulations that are consistent with rules
21 prescribed for making an election under Section 25113.

22 ~~SEC. 6.~~

23 *SEC. 12.* Section 25136 of the Revenue and Taxation Code is
24 amended to read:

25 25136. (a) For taxable years beginning on or after January 1,
26 2011:

27 (1) Sales from services are in this state to the extent the
28 purchaser of the service received the benefit of the service in this
29 state.

30 (2) Sales from intangible property are in this state to the extent
31 the property is used in this state. In the case of marketable
32 securities, sales are in this state if the customer is in this state.

33 (3) Sales from the sale, lease, rental, or licensing of real property
34 are in this state if the real property is located in this state.

35 (4) Sales from the rental, lease, or licensing of tangible personal
36 property are in this state if the property is located in this state.

37 (b) The Franchise Tax Board may prescribe those regulations
38 as necessary or appropriate to carry out the purposes of subdivision
39 (a).

1 ~~SEC. 7. This act provides for a tax levy within the meaning of~~
2 ~~Article IV of the Constitution and shall go into immediate effect.~~

3 *SEC. 13. Section 25136.1 is added to the Revenue and Taxation*
4 *Code, to read:*

5 *25136.1. (a) For taxable years beginning on or after January*
6 *1, 2011, a qualified taxpayer that apportions its business income*
7 *under Section 25128 shall apply the following provisions:*

8 *(1) Notwithstanding Section 25137, qualified sales assigned to*
9 *this state shall be equal to 50 percent of the amount of qualified*
10 *sales that would be assigned to this state pursuant to Section 25136*
11 *but for the application of this section. The remaining 50 percent*
12 *shall not be assigned to this state.*

13 *(2) All other sales shall be assigned pursuant to Section 25136.*

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

15 *(1) "Qualified taxpayer" means a member, as defined in*
16 *paragraph (10) of subdivision (b) of Section 25106.5 of Title 18*
17 *of the California Code of Regulations, as in effect on the effective*
18 *date of the act adding this section, of a combined reporting group*
19 *that is also a qualified group.*

20 *(2) "Qualified group" means a combined reporting group, as*
21 *defined in paragraph (3) of subdivision (b) of Section 25106.5 of*
22 *Title 18 of the California Code of Regulations, as in effect on the*
23 *effective date of the act adding this section, that satisfies the*
24 *following conditions:*

25 *(A) Has satisfied the minimum investment requirement for the*
26 *taxable year.*

27 *(B) For the combined reporting group's taxable year beginning*
28 *in calendar year 2006, the combined reporting group derived more*
29 *than 50 percent of its United States network gross business receipts*
30 *from the operation of one or more cable systems.*

31 *(C) For purposes of satisfying the requirements of subparagraph*
32 *(B), the following rules shall apply:*

33 *(i) If a member of the combined reporting group for the taxable*
34 *year was not a member of the same combined reporting group for*
35 *the taxable year beginning in calendar year 2006, the gross*
36 *business receipts of that nonincluded member shall be included*
37 *in determining the combined reporting group's gross business*
38 *receipts for its taxable year beginning in calendar year 2006 as*
39 *if the nonincluded member were a member of the combined*

1 reporting group for the taxable year beginning in calendar year
2 2006.

3 (ii) The gross business receipts shall include the gross business
4 receipts of a qualified partnership, but only to the extent of a
5 member's interest in the partnership.

6 (3) "Cable system," and "network" shall have the same
7 meaning as defined in Section 5830 of the Public Utilities Code,
8 as in effect on the effective date of the act adding this section.
9 "Network services" means video, cable, voice, or data services.

10 (4) "Gross business receipts" means gross receipts defined in
11 paragraph (2) of subdivision (f) of Section 25120 (other than gross
12 receipts from sales or other transactions between or among
13 members of a combined reporting group, limited, if applicable, by
14 Section 25110).

15 (5) "Minimum investment requirement" means qualified
16 expenditures of not less than two hundred fifty million dollars
17 (\$250,000,000) by a combined reporting group during the calendar
18 year that includes the beginning of the taxable year.

19 (6) "Qualified expenditures" means any combination of
20 expenditures attributable to this state for tangible property, payroll,
21 services, franchise fees, or any intangible property distribution or
22 other rights, paid or incurred by or on behalf of a member of a
23 combined reporting group.

24 (A) An expenditure for other than tangible property shall be
25 attributable to this state if the member of the combined reporting
26 group received the benefit of the purchase or expenditure in this
27 state.

28 (B) A purchase of or expenditure for tangible property shall be
29 attributable to this state if the property is placed in service in this
30 state.

31 (C) Qualified expenditures shall include expenditures by a
32 combined reporting group for property or services purchased,
33 used, or rendered by independent contractors in this state.

34 (D) Qualified expenditures shall also include expenditures by
35 a qualified partnership, but only to the extent of the member's
36 interest in the partnership.

37 (7) "Qualified partnership" means a partnership if the
38 partnership's income and apportionment factors are included in
39 the income and apportionment factors of a member of the combined

1 reporting group, but only to the extent of the member’s interest in
2 the partnership.

3 (8) “Qualified sales” means gross business receipts from the
4 provision of any network services, other than gross business
5 receipts from the sale or rental of customer premises equipment.
6 “Qualified sales” shall include qualified sales by a qualified
7 partnership, but only to the extent of a member’s interest in the
8 partnership.

9 (c) The rules in this section with respect to qualified sales by a
10 qualified partnership are intended to be consistent with the rules
11 for partnerships under paragraph (3) of subdivision (f) of Section
12 25137-1 of Title 18 of the California Code of Regulations.

13 SEC. 14. This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety within
15 the meaning of Article IV of the Constitution and shall go into
16 immediate effect. The facts constituting the necessity are:

17 In order to mitigate acute fiscal difficulties facing the state, it
18 is necessary that this act take effect immediately.